



**Registration of a Charge**

Company name: **PAUL COOK DEVELOPMENTS (WHITEHAVEN) LIMITED**

Company number: **07889841**



X6GG1JBT

Received for Electronic Filing: **05/10/2017**

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**Details of Charge**

Date of creation: **29/09/2017**

Charge code: **0788 9841 0001**

Persons entitled: **TOWER GRANGE FINANCE LIMITED**

Brief description:

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

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

Certified by: **NAOMI MARTIN**



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

Company number: 7889841

Charge code: 0788 9841 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th September 2017 and created by PAUL COOK DEVELOPMENTS (WHITEHAVEN) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th October 2017 .

Given at Companies House, Cardiff on 9th October 2017

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 29<sup>th</sup> September 2017

Paul Cook Developments (Whitehaven) Limited

(Chargor)

and

Tower Grange Finance Limited

(Lender)

**DEBENTURE**

**DRAFT NO**

1.1

**REFERENCE**

KR.TOW023.004

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THIS DEED is made on

29th

September 2017

## PARTIES

- (1) Paul Cook Developments (Whitehaven) Limited, a company incorporated in England and Wales with registered number 07889841 whose registered office is at 18 Broadway Bramhall Stockport Cheshire SK7 3BT (the **Chargor**); and
- (2) Tower Grange Finance Limited, a company incorporated in England and Wales with registered number 10714683 whose registered office is at C/O Lonsdale & Marsh 7<sup>th</sup> Floor Cotton House Liverpool L3 9TX (the **Lender**).

## RECITALS:

- A The Lender provides facilities to the Chargor under various financing arrangements.
- B It is a condition of the Lender making the facilities available to the Chargor that the Chargor enter into this Deed in favour of the Lender.

IT IS AGREED as follows:

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Deed, unless otherwise provided:

**Business Day** means a day, other than a Saturday, Sunday or public holiday, on which banks are open for business in London;

**Financial Indebtedness** means indebtedness arising from:

- (a) borrowing (including overdrafts) and amounts raised that have the commercial effect of borrowing;
- (b) any issued bonds, notes, debentures or similar instruments;
- (c) any liabilities under finance or capital leases;
- (d) any sold or discounted receivables;
- (e) counter-indemnity obligations in relation to guarantees, indemnities, standby or documentary letters of credit and similar instruments; and
- (f) the amount of any liability under a guarantee or indemnity for any of the items listed in paragraphs (a) to (f) above;

**Floating Charge Assets** means the assets for the time being comprised within the floating charge created by Clause 3.4 (Floating charge);

**Insurance Policies** means each of the insurance policies now or in the future held by or otherwise benefiting the Chargor and any insurance policies that are effected to renew, substitute or replace any such insurance policies and 'Insurance Policy' means any one of them;

**Intellectual Property** means any present or future:

- (a) patents, trade marks, service marks, brand and trade names, domain names, copyrights, design rights and registered designs, documented trade secrets and know-how, confidential information and other intellectual property rights and interests;
- (b) applications for the protection of any such rights and assets in any part of the world; and

- (c) agreements and licences relating to the rights to use such assets or exploitation of any such rights and assets,  
held by or for the benefit of the Chargor;

**Legal  
Reservations**

means:

- (a) the principle that the granting or not of equitable remedies is at the discretion of a court;
- (b) the time barring of claims under any limitation acts in any relevant jurisdiction; and
- (c) any other principles of law applicable to companies generally;

**LPA 1925**

means the Law of Property Act 1925;

**Party**

means a party to this Deed;

**Permitted  
Disposal**

means any disposal (including by way of sale, transfer, licence or lease) on arm's length terms:

- (a) of cash or stock in the ordinary course of trading;
- (b) of assets (except for real property, shares and investments and intellectual property) in exchange for replacement assets of the equivalent or better type, value and quality;
- (c) arising in connection with any Permitted Security; or
- (d) that has been given prior written approval by the Lender; or

**Permitted  
Security**

means:

- (a) the Security Interests constituted by or arising under this Deed;
- (b) any lien arising in the ordinary course of trading and by operation of law; and
- (c) any Security Interest arising under retention of title, hire purchase or similar arrangements entered into in the ordinary course of business and on the supplier's usual terms and not because the Chargor has breached those terms;

**Plant and  
Machinery**

means any present or future plant, machinery, office equipment, computers, vehicles and other chattels of the Chargor (excluding those forming part of the Chargor's stock in trade or work in progress);

**Real Property**

means:

- (a) any present or future freehold and/or leasehold properties in which the Chargor has an interest (including the Specific Properties); and
- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of any of such properties;

**Receiver**

means any receiver appointed under this Deed or pursuant to any applicable law, whether alone or jointly, and includes a receiver and/or manager and an administrative receiver (if the Lender is permitted to appoint such administrative receiver);

**Related Rights**

means all of the present and future rights to:

- (a) dividends, distributions, interest and other income from the Shares and Investments;
- (b) allotments, rights, money or property arising from the Shares and Investments by

|                               |  |
|-------------------------------|--|
|                               | way of conversion, exchange, redemption, bonus, preference, option or otherwise;   |
|                               | (c) stock, shares and securities offered in addition to or substitution for the Shares and Investments; and  |
|                               | (d) proceeds of, or from, the disposal of, or other dealing with, any Shares and Investments;  |
| <b>Secured Assets</b>         | means all of the present and future assets and undertaking of the Chargor which from time to time are the subject of any Security Interest created, or purported to be created, by or pursuant to this Deed;   |
| <b>Secured Obligations</b>    | means all present and future obligations and liabilities (whether actual or contingent, whether incurred alone, jointly or severally, whether as principal or surety and/or in any other capacity whatsoever and regardless of how they arise) owed by the Chargor to the Lender [together with all losses, costs, charges, expenses and liabilities including interest incurred by the Lender in connection with the protection, preservation or enforcement of its rights under any document evidencing or securing any such liabilities and including all interest, costs, commissions, charges and expenses the Lender may in the course of its business as banker charge against the Chargor; |
| <b>Secured Share Assets</b>   | means all of the: <ul style="list-style-type: none"> <li>(a) Shares and Investments; and</li> <li>(b) Related Rights;</li> </ul>   |
| <b>Security Interest</b>      | means any charge, pledge, mortgage, lien or other security interest securing any obligations of any person or any other arrangement of any type whatsoever having the effect of conferring security or a similar effect;   |
| <b>Security Period</b>        | means the period beginning on the date of this Deed and ending on the date on which the Lender is satisfied that the Secured Obligations have been unconditionally and irrevocably discharged in full and that no further Secured Obligations are capable of being outstanding;  |
| <b>Shares and Investments</b> | means all of the present and future: <ul style="list-style-type: none"> <li>(a) shares owned or held by the Chargor, or by any nominee on behalf of the Chargor, in any company; and</li> <li>(b) stocks, debentures, securities and certificates of deposit held by the Chargor or by any nominee on behalf of the Chargor,</li> </ul>  |
| <b>Specific Contracts</b>     | means the contracts specified in Schedule 11 (Specific Contracts)  |
| <b>Sterling</b>               | and £ mean the lawful currency of the United Kingdom.  |

## 1.2 Interpretation

### 1.2.1 In this Deed, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa;
- (b) including means including without limitation;
- (c) where an act is required to be performed promptly, it must be performed as soon as reasonably possible from the moment when the act could reasonably have been performed, having regard to all of the circumstances;
- (d) a time of day is a reference to London time;



- (e) a reference to any Party shall be construed as including, where relevant, successors in title to that Party, and that Party's permitted assigns and transferees (if any);
- (f) a reference to a person includes individuals, unincorporated bodies, government entities, companies and corporations;
- (g) a reference to a Clause or a Schedule is to a clause of, or schedule to, this Deed;
- (h) a reference to this Deed or any other agreement is a reference to that document as amended, novated, supplemented, restated or replaced from time to time in accordance with its terms; and
- (i) references to legislation include any modification or re-enactment of such legislation or any part of it.

1.2.2 A reference to this Deed includes its Schedules, which form part of this Deed.

1.2.3 The table of contents and any Clause title, Schedule title or other headings in this Deed are included for convenience only and shall have no effect on the interpretation of this Deed.

1.2.4 An enforcement event is 'continuing' if it has not been waived in writing by the Lender.

### **1.3 Contract for the disposition of Real Property**

The terms of any agreement or side letter entered into between the Parties in relation to this Deed or the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of any Real Property contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### **1.4 Third party rights**

1.4.1 Except as expressly provided for in this Deed, a person who is not a Party (other than a Receiver or any of its delegates or sub-delegates) shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Deed. This does not affect any right or remedy of such a person that exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

1.4.2 The Parties may terminate or rescind this Deed, or agree to any variation, waiver or settlement in connection with it, without the consent of any third party, whether or not it extinguishes or alters any entitlement they may have to enforce any of the provisions of this Deed.

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## **2 Covenant to pay**

The Chargor covenants with the Lender that it shall, on demand by the Lender, pay and discharge all the Secured Obligations when due, (together with all interest, fees, costs and expenses charged by or incurred by the Lender in connection with the Chargor's obligations to pay and discharge the Secured Obligations).

## **3 Fixed and floating security**

### **3.1 Legal mortgage**

The Chargor, with full title guarantee, charges by way of legal mortgage, in favour of the Lender, all of the Real Property in which the Chargor has an interest on the date of this Deed as security for the payment and discharge of the Secured Obligations.

### **3.2 Fixed charges**

To the extent not validly or effectively charged by way of legal mortgage under Clause 3.1 (Legal mortgage) or assigned under Clause 3.3 (Assignments by way of security), the Chargor, with full title guarantee, charges by way of fixed charge, in favour of the Lender, all of the Chargor's rights, title and interest from time to time in and to each of the following assets, as security for the payment and discharge of the Secured Obligations:

#### **3.2.1 Real Property**

- (a) its Real Property;

- (b) all rental and other income and all debts, rights and claims now or in the future due or owing to the Chargor under or in connection with any lease, agreement or licence relating to its Real Property;
- (c) all of the Chargor's present and future rights and claims against the lessees, sub-lessees or licensees of its Real Property and all guarantors and sureties for the obligations of such lessees, sub-lessees or licensees; and
- (d) each of the present and future agreements, licences, options, contracts, guarantees, warranties, easements, agreements for lease, and any other document, in each case, entered into by the Chargor relating to the use, acquisition, exploitation, disposal of or dealings with any of the Real Property;

**3.2.2 Plant and Machinery**

all Plant and Machinery;

**3.2.3 Shares and Investments**

- (a) all of its Shares and Investments; and
- (b) all the Related Rights;

**3.2.4 Insurance Policies**

- (a) all of the Chargor's rights and claims arising in relation to each of the Insurance Policies, including the benefit of all claims arising and all money payable under such Insurance Policies;

**3.2.5 Goodwill and uncalled capital**

all its goodwill and all rights and claims relating to the uncalled capital of the Chargor;

**3.2.6 Intellectual Property**

all of the Chargor's rights, title and interest in the Intellectual Property;

**3.2.7 Debts**

all of its present and future book and other debts and;

**3.2.8 Specific Contracts**

all of the Chargor's rights and claims in relation to the Specific Contracts.

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**3.3 Assignments by way of security**

3.3.1 The Chargor, with full title guarantee, assigns absolutely to the Lender, as security for the payment and discharge of the Secured Obligations:

- (a) all rental and other income and all debts, rights and claims now or in the future due or owing to the Chargor under or in connection with any lease, agreement or licence relating to its Real Property;
- (b) all of the Chargor's present and future rights and claims against the lessees, sub-lessees or licensees of its Real Property and all guarantors and sureties for the obligations of such lessees, sub-lessees or licensees;
- (c) the benefit of each of the present and future agreements, licences, options, contracts, guarantees, warranties, easements, agreements for lease, and any other document, in each case, entered into by the Chargor relating to the use, acquisition, exploitation, disposal of or dealings with any of the Real Property;
- (d) all of the Chargor's rights and claims in relation to the Insurance Policies; and
- (e) all of the Chargor's rights and claims in relation to the Specific Contracts.

3.3.2 Notwithstanding the other terms of this Clause 3.3 (Assignments by way of security), prior to this Deed becoming enforceable, the Chargor may continue to exercise all and any of its rights under and in connection with the Specific Contracts or any of the other assets specified in Clause 3.3.1.

### **3.4 Floating charge**

- 3.4.1 The Chargor, with full title guarantee, charges by way of floating charge in favour of the Lender as security for the payment and discharge of the Secured Obligations, all of its present and future assets (except to the extent that those assets are for the time being effectively charged by way of legal mortgage or fixed charge or assigned under Clauses 3.1 (Legal mortgage), 3.2 (Fixed charges) or 3.3 (Assignments by way of security)) including any assets which have been reconverted into a floating charge under Clause 4.4 (Decrystallisation of floating charge).
- 3.4.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by Clause 3.4.1.

## **4 Crystallisation of floating charge**

### **4.1 Crystallisation by notice**

- 4.1.1 Unless automatic crystallisation has already occurred under Clause 4.2 (Automatic crystallisation), the floating charge created by Clause 3.4 (Floating charge) may be crystallised into a fixed charge by the Lender giving written notice to the Chargor in relation to any or all of the Floating Charge Assets, if:
- (a) the Security Interests created by or pursuant to this Deed become enforceable in accordance with Clause 10 (Enforcement); or OR .
  - (b) the Lender considers (in its reasonable opinion), that crystallisation is required to protect the priority of the security created under this Deed.
- 4.1.2 If no Floating Charge Assets are specified in the notice referred to in Clause 4.1.1, the crystallisation shall take effect over all the Floating Charge Assets.

### **4.2 Automatic crystallisation**

The floating charge created by Clause 3.4 (Floating charge) shall automatically and with immediate effect crystallise (without notice) into a fixed charge in relation to all the Floating Charge Assets upon the occurrence of any of the following:

- 4.2.1 the Chargor, without the Lender's prior written consent, resolves to take or takes any step to create a Security Interest (other than Permitted Security) or trust over any Floating Charge Asset or to dispose of any Floating Charge Asset (except any disposal in the ordinary course of its business unless such disposal is prohibited by this Deed); or
- 4.2.2 any person resolves to take or takes any step to levy any distress, execution, sequestration or other process against any Floating Charge Asset; or
- 4.2.3 an application is presented to the court for the making of an administration order in relation to the Chargor; or
- 4.2.4 any person (who is entitled to do so) gives notice of its intention to appoint an administrator to the Chargor or files such a notice with the court.

### **4.3 Assets acquired post-crystallisation**

Any assets acquired by the Chargor after crystallisation has occurred (and that are not effectively charged by way of legal mortgage or fixed charge or assigned under Clauses 3.1 (Legal mortgage), 3.2 (Fixed charges) or 3.3 (Assignments by way of security)) shall become subject to the floating charge created by Clause 3.4 (Floating charge) so that the crystallisation shall be effective as if such assets were owned by the Chargor at the date of crystallisation.

### **4.4 Decrystallisation of floating charge**

Any charge that has crystallised under Clause 4.1 (Crystallisation by notice) or Clause 4.2 (Automatic crystallisation) may by notice in writing (given at any time by the Lender), be reconverted into a floating charge in relation to the assets or class of assets specified in that notice.

## **5 Representations and warranties**

**5.1** The Chargor makes the following representations and warranties to and for the benefit of the Lender on the date of this Deed and acknowledges that the Lender makes financing available to the Chargor in reliance on such representations and warranties:

### **5.1.1 General**

- (a) it is a limited company duly incorporated and validly existing under the laws of England and Wales;
- (b) it has the corporate power to carry on its business as it is now being conducted and own its assets;
- (c) subject to the Legal Reservations, its obligations under this Deed are legal, valid, binding and enforceable;
- (d) the entry into, delivery and performance by it of this Deed, will not involve or result in a contravention of:
  - (i) its constitutional documents;
  - (ii) any law or regulation applicable to it; or
  - (iii) any contractual or other obligation or restriction that is binding on it or any of its assets;
- (e) it has taken the necessary corporate action to allow it to enter into, deliver and perform its obligations under this Deed and it does not exceed any limit on its powers in so doing;
- (f) all authorisations, consents and licences necessary to enable it to enter into, deliver and perform its obligations under this Deed and to enable it to conduct its business in its current form have been obtained;
- (g) none of the enforcement events listed in Clause 10.1 has occurred;
- (h) subject to the Legal Reservations, this Deed creates the Security Interests that it purports to create and each such Security Interest constitutes a legal, valid and effective Security Interest with first ranking priority;
- (i) no Security Interest subsists over any of the Secured Assets except for the Security Interests created by or pursuant to any Permitted Security and no person holds an interest in any of the Secured Assets other than under a Permitted Security;
- (j) it is the sole legal and beneficial owner of all of the Secured Assets and on it acquiring any property forming part of the Secured Assets, it will be the sole legal and beneficial owner of that property; and
- (k) all third party consents required to ensure the effective creation of the Security Interests envisaged by this Deed have been obtained;

### **5.1.2 Real Property**

- (a) no breach of any law (including environmental law), regulation or covenant or the terms of any planning permission has occurred and is continuing which has or would be reasonably likely to have a material adverse effect on the value or use of its Real Property or any part of it;
- (b) no covenants, agreements, stipulations, reservations, conditions, interest, rights or other matters whatsoever affect any of its Real Property which have or would be reasonably likely to have a material adverse effect on the value or use of its Real Property or any part of it;
- (c) nothing has arisen or has been created or is subsisting which would be an overriding interest or an unregistered interest over any of its Real Property which would have or be reasonably likely to have a material adverse effect on the value or use of its Real Property or any part of it;
- (d) it has all facilities (including access) necessary for the enjoyment and use of all of its Real Property where the lack of those facilities would have or be reasonably likely to

have a material adverse effect on the value or use of its Real Property or any part of it;

- (e) no facility necessary for the enjoyment and use of any of its Real Property is on terms entitling any person to terminate or curtail its use;
- (f) it has received no notice of any adverse claims by any person in respect of any of its Real Property which, if adversely determined, would or would be reasonably likely to have a material adverse effect on the value or use of its Real Property or any part of it; and
- (g) no hazardous or toxic materials, substances, pollutants, contaminants or wastes have at any time been released into the environment or deposited, discharged, displaced or disposed of at its Real Property.

#### **5.1.3 Shares and Investments**

- (a) the Secured Share Assets are duly authorised, validly issued, fully called up, fully paid and not subject to any option to purchase or similar right;
- (b) any transfer of any of the Secured Share Assets as a result of the creation or enforcement of this Deed is and will not be restricted in any way by the constitutional documents of any company in which the Secured Share Assets are held; and
- (c) no company in which the Shares and Investments are held is obliged under the terms of any agreement to issue or allot any of its shares to any particular person or class of persons, whether or not following the making of a call or demand and;
- (d) it has not made any nomination under section 145 of the Companies Act 2006 in connection with any of the Secured Share Assets;

#### **5.1.4 Specific Contracts**

- (a) all of the contracts which are material to the Chargor's business are identified in Schedule 11 (Specific Contracts);
- (b) subject to the Legal Reservations, its obligations under each of the Specific Contracts are legal, valid, binding and enforceable;
- (c) it has taken the necessary corporate action to allow it to enter into and perform its obligations under each of the Specific Contracts;
- (d) ~~all authorisations, consents and licences necessary to enable it to enter into and~~ perform its obligations under the Specific Contracts have been obtained;
- (e) the Specific Contracts are in full force and effect;
- (f) there have been no amendments to any of the Specific Contracts (other than those disclosed in writing to the Lender on or prior to the date of this Deed);
- (g) the Chargor's rights, title and interest under the Specific Contracts are not subject to any rights of set-off or counterclaim by any other person;
- (h) there have been no defaults under any of the Specific Contracts (other than those disclosed in writing to the Lender on or prior to the date of this Deed);
- (i) no right of action is vested in any party to any of the Specific Contracts in respect of any representation, breach of condition, breach of warranty or breach of any other express or implied term by the Chargor under any of the Specific Contracts; and
- (j) the Chargor has no knowledge of any fact that would or might prejudice or affect any right, power or ability of the Lender to enforce any of the Specific Contracts or any term or condition under them.

### **5.2 Repetition of representations and warranties**

The representations contained in this Clause 5 (Representations and warranties) are deemed to be repeated by the Chargor by reference to the facts and circumstances then existing on each day during the Security Period.

## **6 Undertakings**

The undertakings in this Clause 6 (Undertakings) remain in effect throughout the Security Period.

### **6.1 General**

6.1.1 The Chargor must:

- (a) ensure that it has all authorisations, consents and licences necessary to enable it to enter into, deliver and perform its obligations under this Deed and to enable it to conduct its business in its current form;
- (b) comply with all laws and regulations applicable to it;
- (c) maintain, preserve, protect and keep good and marketable title to all of the Secured Assets;
- (d) maintain and preserve the Security Interests created by or pursuant to this Deed and the first-ranking priority of such Security Interests;
- (e) provide the Lender with any notices, reports, accounts, circulars and other documents relating to the Secured Assets promptly when they are received; and
- (f) promptly on becoming aware of the same, notify the Lender of the occurrence of any of the enforcement events listed in Clause 10.1 together with the steps being taken to remedy it (if applicable).

6.1.2 The Chargor must not:

- (a) create or permit to subsist any Security Interest over any of the Secured Assets other than any Security Interest created by or pursuant to any Permitted Security;
- (b) either in a single transaction or in a series of transactions sell, transfer, licence, lease, grant any option in respect of or otherwise dispose of all or any part of the Secured Assets or agree or attempt to do so unless such disposal is a Permitted Disposal.

### **6.2 Real Property**

6.2.1 The Chargor must:

- (a) keep all buildings, plant, machinery, fixtures, fittings and other effects charged under this Deed in good and substantial repair and in good working order (except only for fair wear and tear) and renew and replace them when they become obsolete, worn out or destroyed;
- (b) punctually pay or cause to be paid and keep the Lender indemnified against, all present and future rents, rates, taxes, levies, charges, duties, assessments, impositions and other outgoings assessed, charged or imposed upon or in respect of its Real Property and, when required, produce to the Lender proof of such payment;
- (c) ensure compliance with all laws, statutes, statutory instruments, regulations and by-laws for the time being in force and all notices, orders and requirements of any competent authority, and all directives and codes of practice affecting its Real Property, business or assets or relating to the protection of the environment or health and safety and give effect to all arrangements which any such authority may direct or recommend;
- (d) complete (with reasonable expedition and in compliance with all planning and by-law consents or agreements entered into with a competent authority) any building operations commenced at any time by it on its Real Property to the satisfaction of the Lender all of which building operations shall have been previously approved by the Lender;
- (e) observe and perform all agreements, assignments, contracts, conveyances, grants and other deeds and documents for the time being binding on it or affecting its Real Property or its use or enjoyment, and the Chargor must not take or omit to take any action of any kind whereby its interest or estate in its Real Property may be forfeited or otherwise adversely affected;

- (f) if the Chargor receives any notice served under section 146 of the LPA 1925 or any proceedings are commenced for forfeiture of any lease or any superior lease or the landlord or any superior landlord attempts to re-enter under the provisions of such lease: (i) immediately notify the Lender in writing, and (ii) take such steps as the Lender requires (at the Chargor's own expense);
- (g) permit the Lender to enter any of its Real Property, without prejudice to the powers conferred by this Deed and without becoming a mortgagee in possession, for any reasonable purpose and to view the state of the same;
- (h) punctually pay the rents and perform any other obligations contained in any lease, agreement for lease, tenancy agreement or licence to occupy its Real Property and enforce the observance and performance by the landlord or licensor of their respective obligations under any such document;
- (i) supply to the Lender, within 7 days of receipt, copies of any notice, order or proposal received by the Chargor from any competent authority or from any landlord or tenant affecting any of the Real Property in any material respect, and, at the cost of the Chargor, either punctually comply with the notice or order or, if so requested by the Lender, make or join with the Lender in making such objections or representations or taking such other steps as the Lender may think fit, and any compensation received by the Chargor as a result shall be charged to the Lender and paid to it and applied in or towards the discharge of the Secured Obligations;
- (j) promptly on receipt, provide to the Lender a copy of each professional valuation report it obtains in relation to any of the Real Property;
- (k) notify the Lender, promptly on receipt, of any claim, notice or other communication received by it alleging non-compliance by it in relation to any matter referred to in this Clause 6.2 (Real Property); and
- (l) insure and keep insured all its Real Property.

**6.2.2 The Chargor must not:**

- (a) create any legal or equitable estate or interest (including any license or sub-license, or grant any interest or right relating to the use, occupation or possession) in or over the whole or any part of its Real Property (or purport to do so) or part with possession or ownership or allow any third party access to or the right to use any of its Real Property;
- (b) without the prior written consent of the Lender:
  - (i) exercise any power of leasing its Real Property, or accepting any lease surrenders, nor (except where obliged to do so by law) extend, renew or vary any lease or tenancy agreement or grant any licence to assign or underlet;
  - (ii) construct any building or make any structural alteration or apply for any planning consent for the development or change of use of any of its Real Property, or, except in the ordinary course of repair, replacement or improvement, at any time sever, remove or dispose of any fixture on it;
  - (iii) enter into onerous or restrictive obligations affecting its Real Property or create or permit to arise any overriding interest or any easement or right in or over it; or
  - (iv) alter, pull down, remove or dispose of any of buildings, plant, machinery, fixtures, fittings on its Real Property except in the ordinary course of repair, maintenance or improvement.

**6.3 Shares and Investments**

6.3.1 The Chargor must promptly pay when due all calls on any of its Secured Share Assets that, despite Clause 5.1.3(a), are not fully paid.

6.3.2 The Chargor must not:

- (a) make any nomination under section 145 of the Companies Act 2006 in connection with any of the Secured Share Assets;
- (b) convert any of the Secured Share Assets from certificated to uncertificated form;
- (c) cause or permit any of the Secured Share Assets to be consolidated, sub-divided or converted and must take such action as the Lender may direct in respect of any proposed compromise, arrangement, capital organisation, conversion, exchange, repayment or takeover offer affecting any of the Secured Share Assets or any proposal to vary or abrogate any rights attaching to any of the Secured Share Assets;
- (d) permit the articles of association of any company in which the Chargor holds any of the Secured Share Assets to be amended or modified in any way that would be adverse to the interests of the Lender or adversely affect the Security Interests created, or purported to be created, by or pursuant to this Deed; or
- (e) exercise any voting or other rights in respect of the Secured Share Assets in any way that is likely to prejudice the value of the Secured Share Assets or otherwise jeopardise the Security Interests created, or purported to be created, by or pursuant to this Deed in respect of the Secured Share Assets.

#### 6.4 Insurance

##### 6.4.1 The Chargor must:

- (a) upon request, provide the Lender with copies of the Insurance Policies;
- (b) comply with the terms of the Insurance Policies;
- (c) promptly, and in any event no later than their due date, pay all premiums required for keeping up the Insurance Policies and, upon request, deliver to the Lender the receipts for all such premiums;
- (d) provide the Lender with copies of all correspondence given to or received from any insurer under any Insurance Policy promptly after they are given or received;
- (e) renew each Insurance Policy in good time prior to its expiry date;
- (f) if any of the Insurance Policies becomes void or voidable, immediately at its own cost, effect a new Insurance Policy of the same value as the void or voidable Insurance Policy;
- (g) if any of the Insurance Policies is suspended, immediately at its own cost, effect a new Insurance Policy of the same value as the suspended Insurance Policy for the duration of the suspension;
- (h) procure that the Lender is named as composite insured in respect of its own separate insurable interest under each Insurance Policy (but without any liability on the part of the Lender to pay any premium in relation to the Insurance Policies) and that the Lender is first loss payee under each Insurance Policy;
- (i) ensure that all proceeds of any of the Insurance Policies will be paid to the Lender and applied towards making good the loss or damage in respect of which the money was received or, at the option of the Lender after the Security Interests created by or pursuant to this Deed become enforceable, towards the discharge of the Secured Obligations; and
- (j) pay all money it may receive in respect of any Insurance Policy to the Lender immediately on receipt and, pending such payment, hold all money so received upon trust for the Lender.

##### 6.4.2 The Chargor must not do any act or commit any default by which any Insurance Policy may become void, voidable, treated as if it had been entered into on different terms or subject to any suspension, restriction, limitation or an increased premium or which could entitle the insurer to reduce the amount to be paid on a claim or prevent the Lender from receiving any money payable under any Insurance Policy.



## **6.5 Intellectual Property**

### **6.5.1 The Chargor must:**

- (a) take all necessary action to protect and maintain its Intellectual Property and franchises, wherever situated, that are material to its business and contracts, and promptly notify the Lender of any infringement or alleged infringement or any challenge to the validity of any Intellectual Property of which the Chargor has notice and supply the Lender with all relevant information in its possession relating to them as the Lender may request;
- (b) maintain an up-to-date record of all trade marks and Intellectual Property belonging to it, all applications for registration of trade marks and all copyright, patents and patent applications owned by the Chargor and provide a copy to the Lender on written request;
- (c) diligently commence and prosecute all proceedings that may be necessary to prevent infringement of any Intellectual Property belonging to it where the infringement has or could have a material effect on its business; and
- (d) pay all application, registration, renewal and other payments necessary to effect, protect, maintain or renew registrations in respect of its Intellectual Property and do all such things necessary to maintain all Intellectual Property rights in full force and effect, and send or deliver to the Lender the receipt for every such payment immediately after it has been made.

### **6.5.2 The Chargor must not:**

- (a) sell, assign, transfer, license or agree to license any Intellectual Property belonging to it or any interest in them, or permit any third party to use them; or
- (b) alter any specification for which any of its trade marks has been registered or give its consent to registration by a third party of any trade mark which is the same or confusingly similar to any of its trade marks.

## **6.6 Book and other debts**

6.6.1 The Chargor must collect and realise all its book and other debts and must pay all money it may receive in respect of them into one of its bank accounts immediately on receipt and, pending such payment, will hold all money so received upon trust for the Lender;

6.6.2 The Chargor must not, without the prior written consent of the Lender, charge, factor, discount, assign, postpone, subordinate, release or waive its rights in respect of any of its book or other debts in favour of any other person or purport to do so.

## **6.7 Bank accounts**

The Chargor must:

- 6.7.1 maintain each of its bank accounts with the Lender or a bank approved by the Lender; and
- 6.7.2 deliver details of each of its bank accounts (and any changes thereto) to the Lender promptly upon request;

## **6.8 Specific Contracts**

### **6.8.1 The Chargor must:**

- (a) enforce its rights under the Specific Contracts;
- (b) perform its obligations under the Specific Contracts in a prompt and efficient manner;
- (c) provide the Lender promptly with copies of the Specific Contracts and any amendments thereto (to the extent not provided to the Lender on or prior to the date of this Deed);

- (d) take all action necessary to procure that all moneys from time to time payable to the Chargor under or in connection with the Specific Contracts are paid directly to the Lender;
  - (e) provide to the Lender promptly on request all information, accounts and records in the possession or control of the Chargor that may be necessary or of assistance to enable the Lender to verify:
    - (i) the amount of all payments made or payable under any of the Specific Contracts by the other party to each Specific Contract; or
    - (ii) the performance by each such other party of all its obligations under any of the Specific Contracts; and
  - (f) provide the Lender with copies of all notices given to or received from the other party under any of the Specific Contracts promptly after they are given or received.
- 6.8.2 The Chargor must not do or omit to do anything in relation to the Specific Contracts which may reasonably be expected to adversely and materially affect the Chargor's ability to perform the Secured Obligations.
- 6.8.3 The Chargor must not without the Lender's prior written consent:
- (a) amend or waive any of its rights under any of the Specific Contracts;
  - (b) release any other party to any of the Specific Contracts from any of its obligations thereunder or allow such party to exercise any right of set-off; or
  - (c) waive any breach by such other party of, or agree to accept termination of such other party's obligations under any of the Specific Contracts.

## **7 Shares and Investments: voting rights and dividends**

### **7.1 Before this Deed becomes enforceable**

Unless and until the Security Interests created by or pursuant to this Deed become enforceable:

- 7.1.1 all voting and other rights (including the right to receive dividends) attaching to any of the Secured Share Assets shall continue to be exercised by the Chargor; and
- 7.1.2 the Chargor shall be free to deal with all the dividends, distributions and interest and other money paid on the Secured Share Assets.

### **7.2 After this Deed becomes enforceable**

At any time after the Security Interests created by or pursuant to this Deed become enforceable:

- 7.2.1 the Lender or its nominee may, in the name of the Chargor or otherwise and without any further consent or authority on the part of the Chargor, exercise any or all voting and other rights attaching to the Secured Share Assets and any rights attaching to the Secured Share Assets to nominate or remove a director as if the Lender or its nominee were the sole beneficial owner of the Secured Share Assets;
- 7.2.2 all the Related Rights shall, if received by the Chargor or its nominee, be held on trust for, and shall be paid or transferred to, the Lender or its nominee;
- 7.2.3 the Chargor must, and must procure that its nominees will, accept short notice for and attend any meeting of the holders of any of the Secured Share Assets, appoint proxies and exercise voting and other rights and powers exercisable by the holders of the Secured Share Assets as the Lender or its nominee may direct from time to time; and
- 7.2.4 the Lender or its nominee may without notice to the Chargor:
  - (a) deal with the documents referred to in Clause 8.1 which relate to the Secured Share Assets and complete any transfers of any of the Secured Share Assets as if it was the absolute and unencumbered owner of such Secured Share Assets; and
  - (b) in exercising a power of sale, deliver the documents referred to in Clause 8.1 which relate to the relevant Secured Share Assets to a purchaser of any such Secured Share Assets.

## **8 Perfection of security**

### **8.1 Title documents**

The Chargor must:

- 8.1.1 immediately upon the execution of this Deed (and promptly upon the acquisition of any Secured Assets after the date of this Deed), deposit with the Lender, all deeds, title documents, certificates, account mandates, signing authorities and other documents constituting or evidencing title to each of the Secured Assets; and
- 8.1.2 at any time after the execution of this Deed, deposit with the Lender any further deeds, title documents, certificates, account mandates, signing authorities and other documents constituting or evidencing title to the Secured Assets, promptly upon coming into possession of any of them.

### **8.2 Document delivery and other steps to perfect security**

8.2.1 The Chargor must, immediately upon the execution of this Deed (and promptly upon the acquisition of any Secured Assets after the date of this Deed), execute and deliver to the Lender (at the Chargor's expense) in such form and substance as the Lender may reasonably require:

- (a) all documents required to perfect the Security Interests created, or purported to be created, by or pursuant to this Deed (including any documents required in connection with any registration formalities);
- (b) in relation to the Secured Share Assets, stock transfer forms or other instruments of transfer (executed by the Chargor with the details of the transferee and the date left blank); and
- (c) any notices to any third party of any of the charges or assignments contained in this Deed.

8.2.2 The Chargor must take all such other action as is available to it as may be necessary or as may reasonably be requested by the Lender to create, perfect, protect or maintain any of the Security Interests created, or purported to be created, by or pursuant to this Deed or to vest title to any Secured Asset in the Lender or its nominee or any purchaser, or to facilitate the realisation of any Secured Asset under this Deed or the exercise of any of the rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law, including:

- (a) making all filings and registrations with and paying all taxes and duties to the appropriate authorities (including Companies House, HM Land Registry and the Intellectual Property Office); and
- (b) if required by the Lender, making an application to HM Land Registry for a restriction to be placed on the Proprietorship Register of the Chargor's Real Property so that no disposition of any such Real Property by the Chargor is to be registered without the prior written consent of the Lender.

### **8.3 Notices of charge and/or assignment**

The Chargor must give notices of assignment or charge, as required by the Lender, in relation to each Secured Asset which is subject to an assignment or charge pursuant to Clause 3.2 (Fixed charges) or Clause 3.3 (Assignments by way of security), to each of the relevant counterparties including:

8.3.1 Insurance Policies:

- (a) immediately upon the execution of this Deed, by giving notice of assignment substantially in the form set out in 2 (Insurance Policies—Form of notice of assignment and acknowledgement) to each of the other parties to each of the Insurance Policies and use all reasonable endeavours to procure that the other party returns the signed acknowledgement of such notice directly to the Lender within 28 days from the date of this Deed;
- (b) if the Chargor acquires any rights, title or interest in an Insurance Policy after the date of this Deed, promptly upon the acquisition by it of such rights, title or interest,

by giving notice of the assignment substantially in the form set out in 2 (Insurance Policies—Form of notice of assignment and acknowledgement) to each of the other parties to each of such Insurance Policies and use all reasonable endeavours to procure that the other party returns the signed acknowledgement of such notice directly to the Lender within 28 days from the date the notice of assignment is served;

- 8.3.2 Specific Contracts: immediately upon the execution of this Deed, by giving notice of assignment substantially in the form set out in 3 (Specific Contracts—Form of notice of assignment and acknowledgement) to each of the other parties to each of the Specific Contracts and use all reasonable endeavours to procure that such parties return the signed acknowledgement of such notice directly to the Lender within 28 days from the date of this Deed.

## **9 Further assurance**

### **9.1 Further assurance**

- 9.1.1 The Chargor must, if requested by the Lender, execute in favour of the Lender (or as the Lender directs) such further legal or other assignments or mortgages of, charges on or transfers of the Secured Assets as the Lender requires to secure the payment and discharge of the Secured Obligations.
- 9.1.2 The assignments, mortgages, charges or transfers shall be prepared by or on behalf of the Lender at the cost of the Chargor, and shall contain such provisions as the Lender may require.

### **9.2 Real Property: future acquisitions**

If the Chargor acquires any freehold or leasehold property after the date of this Deed, the Chargor must:

- 9.2.1 immediately notify the Lender;
- 9.2.2 immediately upon request by the Lender and at the cost of the Chargor, execute and deliver to the Lender a legal mortgage in favour of the Lender of that property in a form consistent with this Deed, which the Lender may require;
- 9.2.3 give HM Land Registry written notice of the Security Interests created by this Deed and any mortgage;
- 9.2.4 if applicable, ensure that the Security Interests created by this Deed and any mortgage are correctly noted against the Charges Register against the title of the relevant freehold or leasehold property at HM Land Registry; and
- 9.2.5 attend to any other perfection of security requirements required by the Lender.

## **10 Enforcement**

- 10.1 The Security Interests created by or pursuant to this Deed shall become immediately enforceable at any time after the occurrence of any of the following events:

- 10.1.1 **Non-payment:** the Chargor fails to pay any amount payable by it to the Lender on the date it falls due;
- 10.1.2 **Breach of obligations:** other than the events referred to in Clause 10.1.1, the Chargor fails to comply with any term, condition, covenant or provision of this Deed or of any facility present or future from the Lender or any other document with the Lender or fails to perform promptly any of its obligations or liabilities to the Lender under this Deed or otherwise;
- 10.1.3 **Misrepresentation:** any representation or warranty from time to time made to the Lender by the Chargor under this Deed, in any financing arrangement or any other document is incorrect or misleading when made or deemed to be made;
- 10.1.4 **Enforcement of security:** any step is taken to enforce any security over the undertaking, property, revenue or assets of the Chargor;

- 10.1.5 **Composition:** any step is taken by the Chargor or its directors (or any agent of the Chargor) with a view to resolving to enter into, commence negotiations in respect of, make any requisite application to court in respect of, or the Chargor or its directors convene meetings for the approval of, any:
- (a) composition;
  - (b) compromise;
  - (c) moratorium (including a moratorium statutorily obtained, whether or not as a precursor to a voluntary arrangement under the Insolvency Act 1986);
  - (d) scheme of arrangement with its creditors or any of them, whether or not under the Insolvency Act 1986, the Companies Act 2006 or otherwise;
  - (e) assignment with or for the benefit of creditors; or
  - (f) re-scheduling of all or any part of the liabilities of the Chargor;
- 10.1.6 **Winding up:** any of the following occur:
- (a) the Chargor or its directors (or any agent of the Chargor) take any steps under the Insolvency Act 1986 and/or Insolvency (England and Wales) Rules 2016, SI 2016/1024 to wind up the Chargor voluntarily or to apply to the court for a winding-up order;
  - (b) a petition is presented to wind up the Chargor;
  - (c) a provisional liquidator is appointed to the Chargor or the Chargor goes into liquidation within the meaning of that term under section 247 of the Insolvency Act 1986;
  - (d) the Chargor or its directors (or any agent of the Chargor) request or suffer the appointment of a Law of Property Act 1925 receiver, court appointed receiver or other receiver/manager or similar officer over or in relation to the whole of its undertaking, property, revenue or assets or any part thereof, or any person holding security over all or any of its undertaking, property, revenue or assets takes possession of them or any part of them or any distress is executed or levied over all or any of its undertaking, property, revenue or assets;
  - (e) the Chargor or its directors (or any agent of the Chargor) resolve to appoint an administrator of the Chargor or to apply to court for an administration order in respect of it, or an application for an administration order in respect of it is made or any steps pursuant to the Insolvency Act 1986, Schedule B1 and/or the Insolvency (England and Wales) Rules 2016, SI 2016/1024 are taken to appoint an administrator to it out of court, or it enters administration;
  - (f) the Chargor is dissolved, or is removed from the Register of Companies, or ceases to exist (whether or not capable of reinstatement or reconstitution) or the directors or agents of the Chargor apply for the relevant company to be struck-off the Register of Companies or cause for the relevant company to be struck-off the Register of Companies;
- 10.1.7 **Attachment or distress:** any step is taken to levy, enforce upon or sue on any distress, execution, sequestration, attachment or other process against any of the assets of the Chargor;
- 10.1.8 **Insolvency:** the Chargor is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (ignoring the requirement in that section that any fact or matter 'is proved to the satisfaction of the court') or suspends or threatens to suspend making payments with respect to all or any class of its debts; or
- 10.1.9 **Analogous process or proceedings:** the Chargor is or becomes subject to, takes or has taken against it or in relation to it, or against any or all of its undertaking, property, revenue, or assets, any equivalent analogous, corresponding, or similar finding, step, process or proceeding to those in Clause 10.1 in any jurisdiction, whether or not any finding, step, process or proceeding had been taken against it or in relation to it, or any or all of its undertaking, property, revenue, or assets in England and Wales.

10.2 After the Security Interests created by or pursuant to this Deed have become enforceable, the Lender may in its absolute discretion enforce all or any part of this Deed in any manner it sees fit.

10.3 Without limiting the generality of the foregoing, at any time after the Security Interests created by or pursuant to this Deed have become enforceable, the Lender may appoint an administrator of the Chargor pursuant to Schedule B1 to the Insolvency Act 1986 (IA 1986).

## **11 Right of appropriation**

To the extent that the provisions of the Financial Collateral Arrangements (No 2) Regulations 2003, SI 2003/3226 apply to a Secured Asset, the Lender shall have the right to appropriate all or any part of that Secured Asset in or towards the payment or discharge of the Secured Obligations. For this purpose, a commercially reasonable method of valuing a Secured Asset shall be:

11.1 in the case of cash, the amount standing to the credit of the relevant bank account, together with any accrued interest, at the time of appropriation; and

11.2 in the case of any other Secured Asset, its market value determined by the Lender by reference to a public index, independent valuation or by such other process as the Lender may select.

## **12 Appointment and powers of a Receiver**

### **12.1 Appointment of a Receiver**

At any time:

12.1.1 after the Security Interests created by or pursuant to this Deed have become enforceable; or

12.1.2 if so requested by the Chargor,

the Lender may appoint by writing any person to be a Receiver of all or any part of the Secured Assets.

### **12.2 Powers of Receivers joint and several**

Where more than one Receiver is appointed, they shall have power to act separately unless the Lender in the appointment specifies to the contrary.

### **12.3 Remuneration of Receiver**

The Lender may from time to time determine the remuneration of the Receiver.

### **12.4 Power of the Lender to remove Receiver**

The Lender may, subject to section 45 of the Insolvency Act 1986, remove the Receiver from the assets of which it is Receiver.

### **12.5 Further appointment**

The appointment of a Receiver shall not preclude:

12.5.1 the Lender from making any subsequent appointment of a Receiver over all or any of the Secured Assets over which a Receiver has not previously been appointed or has ceased to act; or

12.5.2 a Receiver, while continuing to act, consenting to the appointment of an additional Receiver to act with it.

### **12.6 Status of Receiver as agent**

A Receiver shall be the agent of the Chargor and the Chargor shall be solely liable for the Receiver's acts, defaults and remuneration, unless and until the Chargor goes into liquidation, after which the Receiver shall act as principal and shall not become the agent of the Lender.

### **12.7 Powers of Receiver**

A Receiver shall have and be entitled to exercise in relation to the Chargor all the powers set out in Schedule I to the Insolvency Act 1986, and in particular, by way of addition and without limiting such

powers, and without prejudice to the powers of the Lender, a Receiver shall have power either in its own name or in the name of the Chargor:

- 12.7.1 in connection with any sale or other disposition of the Secured Assets, to receive the consideration for the sale in a lump sum or in instalments and to receive shares by way of consideration;
- 12.7.2 to grant options, licences or any other interests in the Secured Assets;
- 12.7.3 to sever fixtures from, and to repair, improve and make any alterations to, the Secured Assets;
- 12.7.4 to exercise any voting rights belonging to the Chargor;
- 12.7.5 to do all other acts and things which it may consider desirable or necessary for realising any Secured Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed; and
- 12.7.6 to exercise in relation to any of the Secured Assets all the powers, authorities and things which it would be capable of exercising if it was the absolute beneficial owner of the Secured Asset.

## **12.8 Limitation on Lender's liability**

Neither the Lender nor any Receiver shall be liable:

- 12.8.1 for any loss, however caused, arising out of:
  - (a) any sale or other disposal of any of the Secured Assets and whether or not a better price could or might have been obtained by deferring or advancing the date of such sale or other disposal; or
  - (b) the exercise of or failure to exercise any of the Lender's powers under this Deed; or
- 12.8.2 to account as mortgagee in possession for any of the Secured Assets.

## **12.9 Section 109 of the LPA 1925**

Section 109 of the LPA 1925 shall not apply to this Deed.

## **13 Power of attorney**

### **13.1 Power of attorney**

The Chargor, by way of security, irrevocably appoints the Lender (whether or not a Receiver has been appointed) and any Receiver separately, to be the attorney of the Chargor with full power to appoint substitutes and to delegate, for the Chargor in its name and on its behalf, and as its act and deed or otherwise, to execute, deliver and otherwise perfect any document, or perform any act:

- 13.1.1 that may be required of the Chargor under this Deed; or
- 13.1.2 that may be deemed by the attorney necessary or desirable for any purpose of this Deed (including, after the Security Interests created by or pursuant to this Deed have become enforceable, to transfer legal ownership of any of the Secured Assets).

### **13.2 Ratification**

Without prejudice to the generality of Clause 13.1 (Power of attorney), the Chargor covenants with the Lender and separately with any Receiver to ratify:

- 13.2.1 all transactions entered into by any attorney in the proper exercise of its powers in accordance with this Deed; and
- 13.2.2 all transactions entered into by any attorney in signing, sealing or delivering any deed, assurance or document, perfecting any Security Interest or performing any act, in each case in the proper exercise of its powers in accordance with this Deed.

**14 Other powers exercisable by the Lender**

**14.1 Lender may exercise Receiver's powers**

All powers of a Receiver conferred by this Deed may be exercised by the Lender after the Security Interests created by or pursuant to this Deed have become enforceable, whether as attorney of the Chargor or otherwise, and whether or not a Receiver has been appointed.

**14.2 Lender empowered to receive receivables**

The Lender or any manager or officer of the Lender is irrevocably empowered to receive all receivables and claims that may be assigned to the Lender under this Deed, on payment to give an effectual discharge for them, on non-payment to take and institute if the Lender in its sole discretion so decides all steps and proceedings either in the name of the Chargor or in the name of the Lender for their recovery, and to agree accounts and to make allowances and to give time to any surety. The Chargor undertakes to ratify and confirm whatever the Lender or any manager or officer of the Lender shall do or purport to do under this Clause 14 (Other powers exercisable by the Lender).

**14.3 Lender not obliged to take action relating to receivables**

The Lender shall not be obliged to:

14.3.1 make any enquiry as to the nature or sufficiency of any sums received by it in respect of any receivables or claims assigned to it under this Deed or pursuant to any of the Secured Assets;

14.3.2 make any enquiry as to the adequacy of performance by any other party to any of the Specific Contracts of that party's obligations under any of the Specific Contracts;

14.3.3 make any claim or take any other action under this Deed; or

14.3.4 collect any money or enforce any of its other rights under this Deed.

**14.4 Lender has no obligation under the Insurance Policies or Specific Contracts**

The Lender shall have no obligation under the Insurance Policies or the Specific Contracts and shall have no liability in the event of failure by the Chargor to perform its obligations under the Insurance Policies or the Specific Contracts.

**15 Powers of sale, leasing, accepting surrenders and severance**

**15.1 Statutory power of sale to arise on execution**

Section 103 of the LPA 1925 shall not apply to this Deed, but the statutory power of sale shall, as between the Lender and a purchaser from the Lender, arise on, and be exercisable at any time after, the execution of this Deed. However, the Lender shall not exercise such power of sale until the Security Interests created by or pursuant to this Deed become enforceable, or a Receiver has been appointed, but this provision shall not affect a purchaser or require a purchaser to ask whether a demand or appointment has been made.

**15.2 Power of the Lender to grant leases**

15.2.1 The statutory powers of sale, leasing and accepting surrenders exercisable by the Lender by virtue of this Deed shall be extended so as to authorise the Lender (whether in its own name or that of the Chargor) after the Security Interests created by or pursuant to this Deed have become enforceable, to grant leases of any of the Real Property on such terms and conditions as the Lender shall think fit.

15.2.2 The Chargor must not exercise any of the powers of leasing or accepting surrenders of leases conferred by sections 99 and 100 of the LPA 1925 or by common law without the Lender's prior written consent.

**15.3 Lender may sever fixtures**

The statutory power of sale exercisable by the Lender is extended so as to authorise the Lender to sever any fixtures from any Real Property and sell them separately.



## **16 Protection of third parties**

No person (including a purchaser) dealing with the Lender or any Receiver or any of their respective nominees or agents, shall be concerned to enquire:

- 16.1 whether the Security Interests created by or pursuant to this Deed have become enforceable;
- 16.2 whether any Receiver is validly appointed or acting within its powers;
- 16.3 whether any power exercised or purported to be exercised has become exercisable;
- 16.4 whether any of the Secured Obligations remain due;
- 16.5 as to the necessity or expediency of any stipulations or conditions subject to which the sale of any Secured Asset is made, or otherwise as to the propriety or regularity of the sale of any Secured Asset; or
- 16.6 how any money paid to the Lender or a Receiver, or their respective nominees or agents, is applied.

## **17 Consolidation of mortgages**

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

## **18 Rights of Lender or Receiver to remedy breach**

If the Chargor defaults in its performance of any of the undertakings under Clause 6 (Undertakings) or other obligations in this Deed, the Lender or any Receiver may (but shall not be obliged to) do whatever may be necessary to rectify the default or protect the Lender's interest under this Deed (including, if applicable, entering the Chargor's Real Property without becoming liable as mortgagee in possession) at the expense of the Chargor.

## **19 Application of money received by the Lender or a Receiver**

### **19.1 Application of recoveries**

Any money received under this Deed shall, subject to the discharge of any prior-ranking claims, be paid or applied in the following order of priority:

- 19.1.1 in payment of the remuneration of the Receiver and the costs of realisation incurred by the Lender and/or the Receiver including all costs, charges and expenses of or incidental to any exercise of any power conferred by this Deed;
- 19.1.2 in or towards the payment of any debts or other amounts which are by statute made payable in preference to the Secured Obligations, to the extent that such debts or other amounts are made so payable;
- 19.1.3 in or towards satisfaction of the Secured Obligations in such order as the Lender determines, in its absolute discretion; and
- 19.1.4 as to the surplus, if any, to the Chargor or to any other person or persons entitled to it.

### **19.2 Credit to a suspense account**

The Lender may, in its absolute discretion on or at any time or times after demand and pending the payment to the Lender of the whole of the Secured Obligations, place and keep to the credit of an interest-bearing separate or suspense account any money received, recovered or realised by the Lender under or in connection with this Deed for so long and in such manner as the Lender may determine without any intermediate obligation on its part to apply the same or any part of such money in or towards the discharge of any of the Secured Obligations.

## **20 Default interest**

If the Chargor fails to make any payment due under this Deed on its due date, interest on the unpaid amount shall accrue daily, from the date of non-payment to the date of actual payment (both before and after judgment) at a rate of 24 % and the Chargor undertakes to pay any such interest to the Lender immediately on demand by the Lender.

## **21 Costs, expenses and indemnity**

21.1 The Chargor must, within 3 (*three*) Business Days of demand by the Lender, pay to the Lender all costs and expenses (including legal fees) together with VAT on such amounts incurred by the Lender arising at any time in connection with:

21.1.1 the negotiation, preparation, execution or perfection of this Deed (or the Security Interests created by it) including pursuant to Clauses 8 (Perfection of security) and 9 (Further assurance); and/or

21.1.2 responding to, considering or implementing any request for a consent, amendment or waiver to this Deed.

21.2 The Chargor must, within 3 (*three*) Business Days of demand by the Lender, pay to the Lender on a full indemnity basis all costs, losses and liabilities (including legal fees) together with VAT thereon incurred by or on behalf of the Lender arising at any time as a result of or in connection with:

21.2.1 the occurrence of an enforcement event under Clause 10.1; or

21.2.2 the preservation and/or enforcement of any of the rights of the Lender under this Deed.

## **22 Payments**

22.1 All sums payable by the Chargor under this Deed must be paid in Sterling in full without any set-off or counterclaim and in cleared funds no later than 11:00 am on the day in question to such account as the Lender may have specified for this purpose.

22.2 Where the day on or by which any payment is to be made is not a Business Day, that payment must be made on or by the preceding Business Day.

## **23 Currency indemnity**

23.1 The Chargor must, as an independent obligation, indemnify the Lender against any loss or liability which the Lender incurs as a consequence of:

23.1.1 the Lender receiving an amount in respect of the Chargor's liability under this Deed; or

23.1.2 that liability being converted into a claim, proof, judgment or order,  
in a currency other than Sterling.

23.2 Unless otherwise required by law, the Chargor waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency other than Sterling.

## **24 Set-off**

### **24.1 Retention and set-off**

The Lender may retain any money standing to the credit of any of the Chargor's bank accounts with the Lender (in any currency) as cover for any of the Secured Obligations and/or may at any time, without notice to the Chargor, combine or consolidate all or any of such money with all or such part of the Secured Obligations as the Lender may select, whether presently payable or not, and the Lender may purchase with any such money any other currency required to effect such combination.

### **24.2 Power to sign documents**

The Chargor irrevocably authorises the Lender in its name and at its expense to perform such acts and sign such documents as may be required to give effect to any set-off or transfer pursuant to Clause 24.1 (Retention and set-off), including the purchase with the money standing to the credit of any such bank account of such other currencies as may be necessary to effect such set-off or transfer.

### **24.3 No security**

This Clause 24 (Set-off) gives to the Lender a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Chargor.

## **25 Information**

The Lender may from time to time seek from any other creditor or provider of finance to the Chargor such information about the Chargor and its affairs as the Lender may think fit and the Chargor directs such third party to provide such information to the Lender.

## **26 Transfers**

### **26.1 Right of Lender to transfer**

The Lender is entitled at any time to assign its rights or otherwise transfer all or any part of its rights or obligations under this Deed or any notice and/or acknowledgement referred to in Clause 8.3 (Notices of charge and/or assignment) to any party to whom it has assigned its rights or otherwise transferred its rights or obligations under any financing agreement or arrangement.

### **26.2 No right of Chargor to transfer**

The Chargor is not entitled to assign its rights or otherwise transfer all or any part of its rights or obligations under this Deed.

### **26.3 Disclosure**

The Chargor irrevocably authorises the Lender to disclose any information concerning the Chargor, this Deed or the Secured Obligations to:

- 26.3.1 any prospective assignee or transferee referred to in Clause 26.1 (Right of Lender to transfer) and any other person considered by the Lender to be concerned in the prospective assignment or transfer; and
- 26.3.2 any person who, as part of the arrangements made in connection with any transaction referred to in Clause 26.1 (Right of Lender to transfer), requires such information after the transaction has been effected.

## **27 Notices**

### **27.1 Any notice or other communication given by a party under this Deed must:**

- 27.1.1 be in writing and in English; and
- 27.1.2 be signed by or on behalf of the party giving it.

### **27.2 Notices will be sent to:**

- 27.2.1 Chargor- at its registered office address
- 27.2.2 Lender- at its registered office address

### **27.3 A Party may change any of its details given in Clause 27.2 by giving not less than 5 (*five*) Business Days' notice to the other Party.**

### **27.4 Notices may be given and will be deemed received:**

- 27.4.1 by hand: on receipt of a signature at the time of delivery;
- 27.4.2 by pre-paid recorded signed for post: at 9.00 am on the 2nd (second) Business Day after posting;

### **27.5 This Clause 27 (Notices) does not apply to any notice given in legal proceedings, arbitration or other dispute resolution proceedings.**

### **27.6 A notice given under this Deed is not validly served if sent by email.**

## **28 Amendments**

No amendment, waiver or variation of any of the terms of this Deed will be valid or effective unless made in writing and executed by or on behalf of the Parties.

## **29 Remedies and waivers**

- 29.1 No failure, delay or omission by the Lender in exercising any right, power or remedy provided by law or under this Deed shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 29.2 No single or partial exercise of any right, power or remedy provided by law or under this Deed shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 29.3 The Lender's rights, powers and remedies under this Deed are cumulative and they do not exclude any rights or remedies that arise by law.
- 29.4 Any release, waiver or discharge of the whole or any part of the Secured Obligations or any consent, approval or waiver given by the Lender in relation to this Deed shall only be effective for that specific purpose and for the terms and conditions upon which it was granted.

## **30 Continuing and additional security**

- 30.1 This Deed is a continuing security for the Secured Obligations in favour of the Lender and shall extend to cover the ultimate balance due at any time from the Chargor to the Lender, notwithstanding any intermediate payment or settlement of account (whether in whole or in part) or any other matter whatever.
- 30.2 The Security Interests constituted by this Deed are in addition to and do not prejudice, nor are they in any way prejudiced by, any other Security Interest (other than any Security Interest arising under or pursuant to any Permitted Security), guarantee or right of set-off, combination or other rights exercisable by the Lender against the Chargor or any Security Interest, guarantee, indemnity and/or negotiable instrument now or in the future held by the Lender.

## **31 Opening of new accounts**

- 31.1 If the Lender receives notice (whether actual or constructive) that the Chargor has created a Security Interest over any of the Secured Assets, the Lender may rule off the Chargor's account or accounts and open one or more new accounts with the Chargor.
- 31.2 If the Lender does not open any such new account or accounts, it shall nevertheless be treated as if it had done so at the time when it received such notice and from that time, all payments made by the Chargor to the Lender shall be treated as having been credited to such new account or accounts and shall not operate to reduce the Secured Obligations.

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## **32 No prejudice**

- 32.1 The Security Interests created, or intended to be created, by or pursuant to this Deed shall not be prejudiced by any unenforceability or invalidity of any other agreement or document.
- 32.2 The Lender may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person who is not a Party without prejudicing, affecting or impairing the Security Interests created by or pursuant to it, or any of the powers, rights or remedies of the Lender under this Deed or the exercise of any one of them or other obligation or liability of the Chargor to the Lender.

## **33 No merger**

Nothing contained in this Deed shall operate so as to merge or otherwise prejudice, affect or exclude any other Security Interest which the Lender may for the time being hold for the Secured Obligations or would have but for this Deed.

## **34 Evidence of debt**

- 34.1 A copy of any entry in the Lender's accounts shall in any legal proceedings arising out of or in connection with this Deed be prima facie evidence of the matters, transactions and accounts to which it relates.
- 34.2 A certificate by the Lender as to any sum payable to it under this Deed shall, in the absence of manifest error, be conclusive evidence of the matters, transactions and accounts to which it relates.

### **35 Redemption of security and releases**

Subject to and without prejudice to Clause 36 (Conditional discharge), on the irrevocable and unconditional payment and discharge in full of the Secured Obligations, the Lender shall, at the request and cost of the Chargor:

- 35.1 take whatever action is necessary to release and cancel the Security Interests created by or pursuant to this Deed;
- 35.2 procure the reassignment to the Chargor of the property and assets assigned to the Lender pursuant to this Deed; and
- 35.3 return all deeds, account mandates, signing authorities and other documents of title delivered to the Lender under this Deed,

in each case without recourse to, or any representation or warranty by, the Lender or any of its nominees.

### **36 Conditional discharge**

- 36.1 Any release, settlement or discharge between the Lender and the Chargor will be conditional upon no security, disposition or payment to the Lender by the Chargor or any other person in respect of the Secured Obligations being avoided, set aside, reduced or ordered to be refunded by virtue of any statutory provision relating to insolvency or liquidation or for any reason whatsoever.
- 36.2 If any such release, settlement or discharge is so avoided, set aside, reduced or ordered to be refunded, the liability of the Chargor under this Deed shall continue or be reinstated and the Lender shall be entitled to recover the value or amount of any such security, disposition or payment from the Chargor as if the release, settlement or discharge had not occurred.
- 36.3 Subject to Clauses 36.1 and 36.2, the Lender shall be entitled to retain this Deed after as well as before payment of all the Secured Obligations for such period as the Lender may determine.

### **37 Partial invalidity**

- 37.1 If any provision of this Deed (or part of any provision of this Deed) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Deed (or other part of that provision of this Deed) shall not be affected.
- 37.2 If any provision of this Deed (or part of any provision of this Deed) is or becomes illegal, invalid or unenforceable but would be legal, valid or enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision in place of the provision or part-provision so deleted.

### **38 Counterparts**

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

### **39 Governing law and jurisdiction**

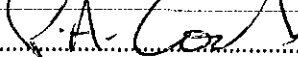
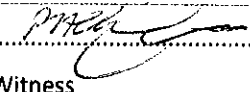
- 39.1 This Deed and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 39.2 Subject to Clause 39.3, the Parties irrevocably agree, for the sole benefit of the Lender, that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or formation (including non-contractual disputes or claims).
- 39.3 Notwithstanding Clause 39.2, the Parties irrevocably agree that the Lender shall have the right to take, and shall not be prevented from taking, proceedings against the Chargor to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or formation (including non-contractual disputes or claims) in any other court of competent jurisdiction and that the Lender may

take such proceedings in any number of jurisdictions, whether concurrently or not, to the extent permitted by law.

THIS DEED has been executed and delivered as a deed and is intended to take effect as a deed by the Parties on the date written at the beginning of this Deed.

## EXECUTION PAGE

### THE CHARGOR

|   |  |
|---|--|
| Executed as a deed by Malvern Hills Properties Limited acting by director, in the presence of a witness | <br>Director  |
|   | <br>Witness<br><br>Name Peter Thompson<br><br>Address 81 Meadway<br>Bramhall<br>SK7 1NL |

### THE LENDER

Signed by \_\_\_\_\_ for and on behalf of Tower Grange Finance Limited

.....  
Authorised signatory/signatories

## SCHEDULE 1

### SPECIFIC CONTRACTS

| <i><b>Name of the contract</b></i>   | <i><b>Parties and date of contract</b></i>   | <i><b>Brief description of contract</b></i>                      |
|--|--|--|
| Contract for the sale of Freehold land with vacant possession at land to the west of Kingmoor Road Carlisle as varied by a deed of Variation | Roy Swinson and Shirley Swinson (1)<br>Paul Cook Developments (Whitehaven) Limited<br><br>Original agreement dated 31 <sup>st</sup> July 2017<br><br>And a deed of variation dated 25 <sup>th</sup> September 2017 | Contract for the purchase of land and deed of variation thereto. |
|  |  |  |
|  |  |  |
|  |  |  |



SCHEDULE 2  
INSURANCE POLICIES—FORM OF NOTICE OF ASSIGNMENT AND  
ACKNOWLEDGEMENT

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**Part A**

**Form of notice of assignment to insurer**

[TO BE PRINTED ON THE HEADED NOTEPAPER OF THE CHARGOR]

To: *[insert name and address of the relevant insurer]*

Date: [•]

Dear Sirs,

*[insert brief description of the relevant insurance policy]*

- 1 We refer to the debenture dated [•] and granted by us as chargor (the 'Chargor') in favour of *[insert name of Lender]* (the 'Lender') (the 'Debenture').
- 2 We refer to the insurance policy effected by us as the policy holder, with you as the insurer relating to *[insert brief description of relevant policy and risks covered]*, with policy number [•] and any policy that may be effected to renew, substitute or replace such insurance policy (the 'Insurance Policy').
- 3 We give you notice that pursuant to the terms of the Debenture, we have assigned (and, to the extent not validly or effectively assigned, we have charged by way of fixed charge) to the Lender by way of security all of our rights and claims from time to time arising in relation to the Insurance Policy including the benefit of all claims arising and all money payable under the Insurance Policy.
- 4 With effect from the date of receipt of this notice, you shall:
  - 4.1 immediately inform the Lender if we default in the payment of any premium or fail to renew the Insurance Policy and, pending receipt of instructions from the Lender, keep the Lender's interest in the Insurance Policy in full force and effect for the full amount insured and for the same risks, subject to any premium for any such period of extended cover being payable by the Lender on behalf of us;
  - 4.2 [not, as against the Lender, avoid the Insurance Policy or refuse any claims (with or without returning any premium paid), treat the Insurance Policy as if it had been entered into on different terms, reduce the amount to be paid on a claim or suspend your liability under the Insurance Policy, as a result of any non-disclosure, misrepresentation or breach of any policy term or condition on the part of any other insured party;]
  - 4.3 advise the Lender of any proposed cancellation of the Insurance Policy at least 30 days before the cancellation is due to take effect; and
  - 4.4 if, in relation to the Insurance Policy, the insurance cover is to be reduced or any insured risks are to be restricted, advise the Lender at least 30 days before the reduction or restriction is due to take effect.
- 5 You must not (without the Lender's prior written consent) exercise any right of set-off or counterclaim in relation to any amounts owed under or in connection with the Insurance Policy.
- 6 We irrevocably and unconditionally instruct and authorise you, without requiring further approval from us, to:
  - 6.1 promptly disclose to the Lender such information relating to the Insurance Policy as the Lender may at any time request; and
  - 6.2 provide the Lender with copies of all correspondence given to or received from us under the Insurance Policy promptly after it is given or received.
- 7 The authority and instructions contained in this notice cannot be revoked or varied by us without the prior written consent of the Lender.

- 8 This notice and any dispute or claim arising out of, or in connection with it, its subject matter or formation [(including non-contractual disputes or claims)] shall be governed by, and construed in accordance with, the laws of England and Wales.
- 9 Please acknowledge safe receipt of this notice within [•] days of receipt of this notice, by signing, dating and returning the attached acknowledgement directly to the Lender at *[insert name and address]*, (marked for the attention of *[insert name of individual and/or position]*) and by sending a copy to us at *[insert name and address]*, (marked for the attention of *[insert name of individual and/or position]*).

Yours faithfully

.....

Director/Authorised signatory

for and on behalf of *[insert name of the Chargor]*

## Part B

### Form of acknowledgement of notice of assignment from insurer

[TO BE PRINTED ON THE HEADED NOTEPAPER OF THE RELEVANT INSURER]

To: *[insert name and address of the Lender]*

For the attention of: *[insert name of individual and/or position]*

Copy to: *[insert name and address of Chargor]*

For the attention of: *[insert name of individual and/or position]*

Date: [•]

Dear Sirs,

*[insert brief description of the relevant insurance policy]*

- 1 We acknowledge receipt of the notice of assignment dated [•] and sent to us by *[insert name of Chargor]* (the 'Chargor') in connection with the insurance policy effected by the Chargor as the policy holder, with us as the insurer relating to *[insert brief description of relevant policy and risks covered]*, with policy number [•] and any policy that may be effected to renew, substitute or replace such insurance policy (the 'Insurance Policy') (the 'Notice').
- 2 [We hereby consent, notwithstanding any provision to the contrary in the Insurance Policy, to the assignment (and, to the extent not validly or effectively assigned, to the fixed charge) of the Insurance Policy under the Debenture (as defined in the Notice).]
- 3 In consideration of your agreement to provide facilities to the Chargor, we accept the instructions and authorisations contained in the Notice and agree to comply with the terms of the Notice.
- 4 We also agree that you are entitled at any time to assign your rights under this acknowledgement to any party to whom you have assigned or otherwise transferred your rights under the Debenture.
- 5 We confirm that we have not received notice of any other assignment, charge or other third party interest whatsoever of or in any of the rights, title or interest of the Chargor under the Insurance Policy.
- 6 This acknowledgement and any dispute or claim arising out of, or in connection with it, its subject matter or formation [(including non-contractual disputes or claims)] shall be governed by, and construed in accordance with, the laws of England and Wales.

Yours faithfully

.....

Director/Authorised signatory

for and on behalf of *[insert name of the Insurer]*

SCHEDULE 3  
SPECIFIC CONTRACTS—FORM OF NOTICE OF ASSIGNMENT AND  
ACKNOWLEDGEMENT

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## Part A

### Form of notice of assignment to contract counterparty

[TO BE PRINTED ON THE HEADED NOTEPAPER OF THE CHARGOR]

To: *[insert name and address of the relevant contract counterparty]*

Date: [•]

Dear Sirs,

*[insert brief description of the relevant assigned contract]*

- 1 We refer to the debenture (the 'Debenture') dated [•] and granted by us as chargor (the 'Chargor') in favour of *[insert name of Lender]* (the 'Lender').
- 2 We refer to the contract relating to *[insert description of relevant contract]* dated [•] and entered into between us as [•] and you, *[insert name of relevant counterparty]*, as [•] (as amended, novated, supplemented, restated or replaced from time to time) (the 'Contract').
- 3 We give you notice that pursuant to the terms of the Debenture, we have assigned (and, to the extent not validly or effectively assigned, we have charged by way of fixed charge) to the Lender by way of security all of our rights, title and interest from time to time in, and the full benefit of, the Contract and all rights, title and interest in any amounts payable to us under the Contract, including any claims for damages in respect of any breach of the Contract.
- 4 [With effect from the date of receipt of this notice OR Upon receiving a written notice from the Lender that the security interests created by the Debenture are enforceable]:
  - 4.1 you shall treat the Lender as entitled to exercise all rights exercisable by us under the Contract;
  - 4.2 you are authorised and instructed, without requiring further approval from us, to comply with your obligations (including without limitation your payment obligations) under the Contract in accordance with the written instructions of the Lender from time to time (and to hold the money for any such payments to the Lender's order pending receipt of written instructions from the Lender); and
  - 4.3 subject to paragraph 6 below, you shall allow the Lender to perform all the obligations assumed by us under the Contract.
- 5 You shall not be released from your obligations under the Contract without the prior written consent of the Lender.
- 6 We shall remain liable to perform all our obligations under the Contract and the Lender shall be under no obligation of any kind whatsoever in respect of the Contract.
- 7 You must not (without the Lender's prior written consent):
  - 7.1 amend, novate, supplement, restate or replace the Contract;
  - 7.2 agree to any waiver or release of any of your obligations under the Contract; or
  - 7.3 exercise any right of set-off or counterclaim in relation to any amounts owed under or in connection with the Contract.
- 8 We irrevocably and unconditionally instruct and authorise you, without requiring further approval from us, to:
  - 8.1 promptly disclose to the Lender such information relating to the Contract as the Lender may at any time request including, without limitation, all information, accounts and records in your possession or control that may be necessary or of assistance to enable the Lender to verify (i) the amount of all

payments made or payable under the Contract by you or (ii) the performance by you of all your obligations under the Contract; and

- 8.2 provide the Lender with copies of all notices given to or received from us under the Contract promptly after they are given or received.
- 9 The authority and instructions contained in this notice cannot be revoked or varied by us without the prior written consent of the Lender.
- 10 This notice and any dispute or claim arising out of, or in connection with it, its subject matter or formation [(including non-contractual disputes or claims)] shall be governed by, and construed in accordance with, the laws of England and Wales.
- 11 Please acknowledge safe receipt of this notice within [•] days of receipt of this notice, by signing, dating and returning the attached acknowledgement directly to the Lender at [*insert name and address*], (marked for the attention of [*insert name of individual and/or position*]) and by sending a copy to us at [*insert name and address*], (marked for the attention of [*insert name of individual and/or position*]).

Yours faithfully

.....

Director/Authorised signatory

for and on behalf of [*insert name of the Chargor*]

## Part B

### Form of acknowledgement of notice of assignment from contract counterparty

[TO BE PRINTED ON THE HEADED NOTEPAPER OF THE RELEVANT CONTRACT COUNTERPARTY]

To: [*insert name and address of the Lender*]

For the attention of: [*insert name of individual and/or position*]

Copy to: [*insert name and address of Chargor*]

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For the attention of: [*insert name of individual and/or position*]

Date: [•]

Dear Sirs,

[*insert brief description of the relevant assigned contract*] (the 'Contract')

- 1 We acknowledge receipt of the notice of assignment dated [•] and sent to us by [*insert name of Chargor*] (the 'Chargor') in connection with the Contract (the 'Notice').
- 2 [We hereby consent, notwithstanding any provision to the contrary in the Contract, to the assignment (and, to the extent not validly or effectively assigned, to the fixed charge) of the Contract under the Debenture (as defined in the Notice).]
- 3 In consideration of your agreement to provide facilities to the Chargor, we accept the instructions and authorisations contained in the Notice and agree to comply with the terms of the Notice.
- 4 We also agree that:
- 4.1 we will not exercise or seek to exercise any right we may have to terminate the Contract or treat it as terminated without first giving you not less than [15] working days' prior written notice specifying our grounds for terminating the Contract or treating it as terminated;
- 4.2 we will not terminate the Contract or treat it as terminated, if:

- 4.2.1 any breach giving rise to the right to terminate the Contract is remedied within [15] working days from the date of the notice sent to you and referred to in paragraph Schedule 3Part B4.1 above (the 'Cure Period'); or
- 4.2.2 before the expiry of the Cure Period, you have agreed to enter into and called upon us to execute a novation agreement in form and substance acceptable to you by which you assume the rights and obligations of the Chargor under the Contract, but giving credit to you for sums already paid by or on behalf of the Chargor pursuant to the Contract, and so that upon being called upon to execute any such novation agreement we will execute the same;
- 4.3 we will provide you promptly with any documents or other relevant information you may from time to time request in order to perform the obligations of the Chargor under the Contract; and
- 4.4 you are entitled at any time to assign your rights under this acknowledgement to any party to whom you have assigned or otherwise transferred your rights under the Debenture.
- 5 We confirm that we have not received notice of any other assignment, charge or other third party interest whatsoever of or in any of the rights, title or interest of the Chargor under the Contract.
- 6 This acknowledgement and any dispute or claim arising out of, or in connection with it, its subject matter or formation [(including non-contractual disputes or claims)] shall be governed by, and construed in accordance with, the laws of England and Wales.

Yours faithfully

.....

Director/Authorised signatory

for and on behalf of [*insert name of the relevant contract counterparty*]