

# MR01

## Particulars of a charge



Companies House

A fee is payable with this form  
Please see 'How to pay' on the  
last page

You can use the WebFiling service to file this form online.  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where there is  
an instrument. Use form MR08

SATURDAY



\*A49Y8SUB\*

A22

20/06/2015

#345

COMPANIES HOUSE

This form must be delivered to the Registrar for registration within  
21 days beginning with the day after the date of creation of the charge. If  
delivered outside of the 21 days it will be rejected unless it is accompanied by a  
court order extending the time for delivery



You must enclose a certified copy of the instrument with this form. This will be  
scanned and placed on the public record. **Do not send the original**

### 1 Company details

Company number 08607470

Company name in full HARDMAN HEALEY LIMITED

For official use

→ **Filing in this form**  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date 01/06/2015

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name GANITA WEALTH FUND LIMITED

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

MRO1

Particulars of a charge

4	<b>Brief description</b>	
	Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument	Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"
Brief description	A first fixed charge over all future properties acquired by the Company and all intellectual property of the Company (including, inter alia, the Company's present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions and confidential information and know-how)	Please limit the description to the available space
5	<b>Other charge or fixed security</b>	
	Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box  <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
6	<b>Floating charge</b>	
	Is the instrument expressed to contain a floating charge? Please tick the appropriate box  <input checked="" type="checkbox"/> <b>Yes</b> Continue <input type="checkbox"/> <b>No</b> Go to <b>Section 7</b>  Is the floating charge expressed to cover all the property and undertaking of the company? <input checked="" type="checkbox"/> <b>Yes</b>	
7	<b>Negative Pledge</b>	
	Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box  <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
8	<b>Trustee statement <sup>①</sup></b>	
	You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge  <input type="checkbox"/>	<sup>①</sup> This statement may be filed after the registration of the charge (use form MR06)
9	<b>Signature</b>	
Signature	Please sign the form here  <div style="border: 1px solid black; padding: 5px;">             Signature              X <i>Kaye Schuler UP.</i> X           </div> This form must be signed by a person with an interest in the charge	

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name Sherry Scrivens

Company name Kaye Scholer LLP

Address 140 Aldersgate Street

Post town London

County/Region

Postcode E C 1 A 4 H Y .

Country United Kingdom

DX

Telephone 02071050586



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



### Checklist

We may return forms completed incorrectly or with information missing

Please make sure you have remembered the following

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



### Important information

Please note that all information on this form will appear on the public record.



### How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'.



### Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.

**For companies registered in England and Wales**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



### Further information

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)



**FILE COPY**

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

Company number: 8607470

Charge code: 0860 7470 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th June 2015 and created by HARDMAN HEALEY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th June 2015

Given at Companies House, Cardiff on 29th June 2015

①



**Companies House**



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

Dated 12 June 2015

**HARDMAN HEALEY LIMITED**  
as Borrower

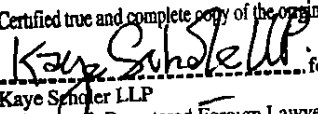
and

**GANITA WEALTH FUND LIMITED**  
as Lender

---

**DEBENTURE**

---

Certified true and complete copy of the original  
  
Kaye Scholer LLP for  
Solicitors & Registered Foreign Lawyers

**KAYE | SCHOLER LLP**

A DELAWARE (USA) LIMITED LIABILITY PARTNERSHIP REGISTERED FOREIGN LAWYERS AND SOLICITORS  
REGULATED BY THE SOLICITORS REGULATION AUTHORITY

140 Aldersgate Street, London EC1A 4HY  
Tel +44 (0)20 7105 0500 Fax +44 (0)20 7105 0505 [www.kayescholer.com](http://www.kayescholer.com)

## **TABLE OF CONTENTS**

1	DEFINITIONS AND INTERPRETATION	1
2	COVENANT TO PAY	4
3	GRANT OF SECURITY	5
4	LIABILITY OF THE BORROWER	7
5	REPRESENTATIONS AND WARRANTIES	7
6	UNDERTAKINGS	8
7	POWERS OF THE LENDER	16
8	ENFORCEMENT	18
9	APPOINTMENT OF RECEIVERS	19
10	RELEASE	23
11	ASSIGNMENT AND TRANSFER	24
12	SET-OFF	24
13	CERTIFICATES	24
14	AMENDMENTS, WAIVERS AND CONSENTS	24
15	NOTICES	25
16	COUNTERPARTS	25
17	GOVERNING LAW	25
18	JURISDICTION	25
	Schedule 1 PROPERTY	26
	Schedule 2 RELEVANT AGREEMENTS	27
	Schedule 3 FORM OF NOTICE AND ACKNOWLEDGMENT – RELEVANT AGREEMENT	28
	Schedule 4 FORM OF NOTICE AND ACKNOWLEDGEMENT – INSURANCE POLICY	30
	Schedule 5 FORM OF NOTICE AND ACKNOWLEDGEMENT – BANK ACCOUNT	32

**THIS DEED** is dated and **DELIVERED** on 12 June 2015 and made between

- (1) **HARDMAN HEALEY LIMITED**, a company incorporated in England and Wales, with registered number 08607470 having its registered address at City House 4<sup>th</sup> Floor, 86-90 Paul Street, London EC2A 4NE (the "**Borrower**"), and
- (2) **GANITA WEALTH FUND LIMITED**, a business company incorporated under the BVI Business Companies Act 2004 (the "**Lender**") acting through its investment adviser, Ganita Wealth Limited,

**WHEREAS**

- (A) The Lender has agreed, pursuant to the Facility Agreement, to provide the Borrower with loan facilities on a secured basis
- (B) Under this Deed, the Borrower provides security to the Lender for the loan facilities made available under the Facility Agreement

**IT IS AGREED** as follows

**SECTION 1**

**INTERPRETATION**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed

"**Administrator**" means an administrator appointed to manage the affairs, business and property of the Borrower pursuant to Clause 7.8 (*Appointment of an Administrator*)

"**Book Debts**" means all present and future book and other debts, and monetary claims due or owing to the Borrower, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Borrower in relation to any of them

"**Delegate**" means any person appointed by the Lender or any Receiver pursuant to Clause 9.3 (*Delegation*) and any person appointed as attorney of the Lender, Receiver or Delegate

"**Designated Account**" means each of the accounts with account number 41073068 and sort code 30-96-85 in the name of Hardman Healey Ltd with Lloyds Bank plc and any other account of the Borrower nominated by the Lender as a designated account for the purposes of this Deed

"**Environment**" means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media

"**Environmental Law**" means all applicable laws, statutes, regulations, secondary legislation, by-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment

"**Equipment**" means all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Borrower, including any part of it and all spare parts, replacements, modifications and additions

**"Event of Default"** has the meaning given to such term in the Facility Agreement

**"Facility Agreement"** means the facility agreement dated 12 June 2015 between the Borrower and the Lender for the provision of the loan facilities secured by this Deed

**"Financial Collateral"** means shall have the meaning given to that expression in the Financial Collateral Regulations

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

**"Insurance Policy"** means each contract and policy of insurance effected or maintained by the Borrower from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Properties or the Equipment)

**"Intellectual Property"** means the Borrower's present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights

**"Investments"** means all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Borrower, including any

- (a) dividend, interest or other distribution paid or payable in relation to any of the Investments, and
- (b) right, money, shares or property accruing offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise

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

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

**"Properties"** means all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Borrower, or in which the Borrower holds an interest (including, but not limited to, the properties specified in Schedule 1 (*Property*)), and Property means any of them

**"Receiver"** means a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Lender under Clause 9 (*Appointment of Receivers*)

**"Relevant Agreement"** means each agreement specified in Schedule 2 (*Relevant Agreements*) and the Relevant Agreements as defined in the Facility Agreement

**"Secured Assets"** means all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this Deed (and references to the Secured Assets shall include references to any part of them)



"**Secured Liabilities**" means all present and future monies, obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity (including under or in connection with the Facility Agreement or this Deed and those arising under paragraph (b) of Clause 10 (*Release*)), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities

"**Security Financial Collateral Arrangement**" shall have the meaning given to that expression in the Financial Collateral Regulations

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

## 1 2 **Facilities Agreement**

Unless otherwise expressly defined in this Deed or the context otherwise requires, words and expressions defined in the Facility Agreement shall have the same meaning in this Deed or any notice given in relation to this Deed

## 1 3 **Construction**

- (a) The provisions of Clauses 1 2 (*Construction*) of the Facility Agreement shall apply to this Deed with all necessary modifications as if they were expressly set out in full in this Deed
- (b) In this Deed
  - (i) "**rights**" shall be construed as including rights, benefits, privileges, consents, authorities, discretions, remedies and powers and "**right**" shall be construed accordingly
  - (ii) a reference to "**Secured Liabilities**" includes any liabilities which would be treated as such but for the liquidation or dissolution or similar event affecting the Borrower
  - (iii) any reference to the Lender and the Borrower shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests
  - (iv) references to any Clause or Schedule shall be to a clause or schedule of this Deed unless otherwise specified
  - (v) a reference to **writing** or **written** includes fax but not e-mail

## 1 4 **Miscellaneous**

- (a) **Clawback** If the Lender considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed
- (b) **Nature of security over real property:** A reference in this Deed to a charge or mortgage of or over any Property includes
  - (i) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time,
  - (ii) the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property,

- (iii) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of that Property, and any monies paid or payable in respect of those covenants, and
- (iv) all rights under any licence, agreement for sale or agreement for lease in respect of that Property
- (c) **Law of Property (Miscellaneous Provisions) Act 1989** The terms of the documents under which the Secured Liabilities arise and of any side letters relating thereto between the Borrower and the Lender are incorporated herein to the extent required for any purported disposition of the Charged Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989
- (d) **Perpetuity period.** If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009)
- (e) **Schedules.** The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules
- (f) **Deed:** This document is to take effect as a deed notwithstanding that the Lender has executed it under hand only
- (g) **Law of Property (Miscellaneous Provisions) Act 1994** The obligations of the Borrower under this Deed and any document entered into pursuant to this Deed shall be in addition to the covenants deemed to be included in this Deed or such other document by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994
- (h) **Schedules.** Any failure to state any Secured Assets in the Schedules will not affect any Security created by this Deed over such assets

#### 1.5 **Third party rights**

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed

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

## **SECTION 2**

### **THE SECURITY**

#### **2 COVENANT TO PAY**

The Borrower shall, on demand pay to the Lender and discharge the Secured Liabilities when they become due

### **3 GRANT OF SECURITY**

#### **3.1 Legal mortgage**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender, by way of first legal mortgage, each Property specified in Schedule 1 (*Property*)

#### **3.2 Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender by way of first fixed charge

- (a) all Properties acquired by the Borrower in the future,
- (b) all present and future interests of the Borrower not effectively mortgaged or charged under the preceding provisions of this Clause 3 in, or over, freehold or leasehold property,
- (c) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property,
- (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Borrower's business or the use of any Secured Asset, and all rights in connection with them,
- (e) all its present and future goodwill,
- (f) all its uncalled capital,
- (g) all the Equipment,
- (h) all the Intellectual Property,
- (i) all the Book Debts,
- (j) all the Investments,
- (k) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest),
- (l) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.3 (*Assignment*), and
- (m) all its rights in respect of each Relevant Agreement and all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under clause 3.3

#### **3.3 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy, and
- (b) the benefit of each Relevant Agreement and the benefit of all other agreements, instruments and rights relating to the Secured Assets

### 3.4 Floating charge

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender, by way of first floating charge, all the undertaking, property, assets and rights of the Borrower at any time not effectively mortgaged, charged or assigned pursuant to Clause 3.1 (*Legal mortgage*) to 3.3 (*Assignment*) inclusive. The floating charge created by the Borrower under this Clause 3.4 shall be a qualifying floating charge for the purposes of Paragraph 14 of Schedule B1 to the Insolvency Act 1986.

### 3.5 Crystallisation of floating charge

- (a) **Automatic crystallisation of floating charge:** The floating charge created by clause 3.4 (*Floating charge*) shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if (i) the Borrower (1) creates, or attempts to create, without the prior written consent of the Lender, a Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this Deed or the Facility Agreement) or (2) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised), or (ii) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets or (iii) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Borrower or (iv) an administrator or receiver is appointed in respect of the Borrower or the Lender receives notice of an intention to appoint an administrator pursuant to paragraph 15 or 26 of Schedule B1 of the Insolvency Act 1986 in respect of the Borrower.
- (b) **Crystallisation of floating charge by notice.** The Lender may, in its sole discretion, by written notice to the Borrower, convert the floating charge created under this Deed into a fixed charge as regards any part of the Secured Assets specified by the Lender in that notice if (i) an Event of Default occurs and is continuing or (ii) the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy or (iii) the Lender reasonably considers that it is necessary in order to protect the priority of the Security created by this Deed.
- (c) **Moratorium.** No floating charge created by this Deed may be converted into a fixed charge on assets for which a moratorium is in force if and for so long as such conversion would breach paragraph 13 of Schedule A1 of the Insolvency Act 1986.
- (d) **Reconversion.** Any charge which has converted into a fixed charge under paragraphs (a) (*Automatic crystallisation of floating charge*) or (b) (*Crystallisation of floating charge by notice*) may be reconverted into a floating charge by notice in writing given at any time by the Lender to the Borrower in relation to the assets specified in such notice.
- (e) **Fixed and Floating Security.** If for any reason any Security created by the Deed in respect of any asset created or purported to be created pursuant to this Clause 3 (*Grant of Security*) as a fixed charge or assignment does not, or ceases to, take effect as a fixed charge or assignment, then it shall take effect as a first floating charge in respect of such asset. However, it is the intent of the parties that the Security over other Charged Assets shall remain unaffected.
- (f) **Assets acquired after any floating charge has crystallised:** Any asset acquired by the Borrower after any crystallisation of the floating charge created under this Deed that, but for that crystallisation, would be subject to a floating charge under this Deed, shall (unless the

Lender confirms otherwise to the Borrower in writing) be charged to the Lender by way of first fixed charge

#### **4 LIABILITY OF THE BORROWER**

##### **4.1 Liability not discharged**

The Borrower's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground,
- (b) the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person, or
- (c) any other act or omission that, but for this Clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower

##### **4.2 Immediate recourse**

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Borrower

##### **4.3 Independent security**

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

##### **4.4 Continuing security**

The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this Deed in writing

##### **4.5 Consolidation**

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

### **SECTION 3**

#### **REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

##### **5 REPRESENTATIONS AND WARRANTIES**

The Borrower makes the representations and warranties set out in this Clause 5 to the Lender. Such representations and warranties are made by the Borrower on the date of this Deed and are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition

- (a) **Ownership of Secured Assets:** The Borrower is the sole legal and beneficial owner of the Secured Assets
- (b) **No Security:** The Secured Assets are free from any Security other than the Security created by this Deed

- (c) **No adverse claims.** The Borrower has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them
- (d) **No adverse covenants.** There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets
- (e) **No breach of laws.** There is no breach of any law or regulation that materially and adversely affects the Secured Assets
- (f) **No interference in enjoyment.** No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use
- (g) **No overriding interests.** Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property
- (h) **Avoidance of security.** No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Borrower or otherwise
- (i) **No prohibitions or breaches.** There is no prohibition on assignment in any Insurance Policy or Relevant Agreement and the entry into this Deed by the Borrower does not, and will not, constitute a breach of any Insurance Policy, Relevant Agreement or any other agreement or instrument binding on the Borrower or its assets
- (j) **Environmental compliance.** The Borrower has, at all times, complied in all material respects with all applicable Environmental Law
- (k) **Enforceable security.** This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower, and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms
- (l) **Investments.** The Investments are fully paid and are not subject to any option to purchase or similar rights. No constitutional document of an issuer of an Investment, nor any other agreement (i) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this Deed, or (ii) contains any rights of pre-emption in relation to the Investments

## 6 UNDERTAKINGS

The Borrower agrees that during the Security Period

### 6.1 Preservation of Secured Assets

- (a) **Negative Pledge.** The Borrower shall not at any time, except with the prior written consent of the Lender (i) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this Deed, (ii) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets or (iii) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party, other than (1) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by it, (2) any netting or set-off arrangement entered into by it in the ordinary course of its banking arrangements for the purpose of netting its debit and credit balances, (3) where as part of any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to it in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by the Borrower

- (b) **Preservation of Secured Assets** The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this Deed
- (c) **Borrower's waiver of set-off.** The Borrower waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Borrower under this Deed)
- (d) **Compliance with laws and regulations:** The Borrower shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law. The Borrower shall (i) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them, (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset and (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets
- (e) **Enforcement of rights** The Borrower shall use its best endeavours to (i) procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower's counterparties (including each counterparty in respect of a Relevant Agreement and each insurer in respect of an Insurance Policy) and (ii) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Lender may require from time to time
- (f) **Notice of misrepresentation and breaches** The Borrower shall, promptly on becoming aware of any of the same, notify the Lender in writing of (i) any representation or warranty set out in Clause 5 (*Representations and Warranties*) which is incorrect or misleading in any material respect when made or deemed to be repeated and (ii) any breach of any undertaking set out in this Deed
- (g) **Title documents** The Borrower shall, as so required by the Lender, deposit with the Lender and the Lender shall, for the duration of this Deed be entitled to hold (i) all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title), (ii) all Insurance Policies and any other insurance policies relating to any of the Secured Assets that the Borrower is entitled to possess, (iii) all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time and (iv) copies of all the Relevant Agreements, certified to be true copies by either a director of the Borrower or by the Borrower's solicitors
- (h) **Information** The Borrower shall (i) give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require, (ii) permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice and (iii) promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with in each case, the Borrower's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense

- (i) **Payment of outgoings** The Borrower shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand produce evidence of payment to the Lender
- (j) **Appointment of accountants:** The Borrower shall (i) at its own cost, if at any time so required by the Lender, appoint an accountant or firm of accountants nominated by the Lender to investigate the financial affairs of the Borrower and report to the Lender and (ii) co-operate fully with any accountants so appointed and immediately provide those accountants with all information requested. The Borrower authorises the Lender to make an appointment as it shall think fit at any time, without further authority from the Borrower. In every case, the Borrower shall pay, or reimburse the Lender for, the fees and expenses of those accountants

## 6.2 Insurances

- (a) **Insurance:** The Borrower shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against (i) loss or damage by fire or terrorist acts, (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower and (iii) any other risk, perils and contingencies as the Lender may reasonably require. Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender, and must be for not less than the replacement value of the relevant Secured Assets. The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to the aforementioned insurance (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease). The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed upon each insurance policy maintained by it or any person on its behalf in accordance with this paragraph and that the terms of each such insurance policy require the insurer not to invalidate the policy as against the Lender by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Lender
- (b) **Insurance premiums:** The Borrower shall (i) promptly pay all premiums in respect of each insurance policy maintained by it in accordance with paragraph (a) (*Insurance*) above and do all other things necessary to keep that policy in full force and effect and (ii) (if the Lender so requires) produce to, or deposit with, the Lender the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with paragraph (a) (*Insurance*) above
- (c) **No invalidation of insurance:** The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with paragraph (a) (*Insurance*) above
- (d) **Proceeds of insurance policies:** All monies received or receivable by the Borrower under any insurance policy maintained by it in accordance with paragraph (a) (*Insurance*) above (including all monies received or receivable by it under any Insurance Policy) at any time (whether or not the security constituted by this Deed has become enforceable) shall (i) immediately be paid into a Designated Account, (ii) if they are not paid directly to the Lender by the insurers, be held by the Borrower as trustee of the same for the benefit of the Lender (and the Borrower shall account for them to the Lender) and (iii) at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in or towards, discharge or reduction of the Secured Liabilities



### 6.3 Perfection of Security

- (a) **Notices to be given by the Borrower.** The Borrower shall
- (i) After the occurrence of an Event of Default (1) give notice to each counterparty to a Relevant Agreement in the form set out in Part 1 of Schedule 3 (*Form of Notice and Acknowledgement – Relevant Agreement*) and (2) procure that each counterparty promptly provides to the Lender an acknowledgement of the notice in the form set out in Part 2 of Schedule 3 (*Form of Notice and Acknowledgement – Relevant Agreement*),
  - (ii) After the occurrence of an Event of Default (1) give notice to each insurer under an Insurance Policy in the form set out in Part 1 of Schedule 4 (*Form of Notice and Acknowledgement – Insurance Policy*) and (2) procure that each insurer promptly provides to the Lender within five Business Days an acknowledgement of the notice in the form set out in Part 2 of Schedule 4 (*Form of Notice and Acknowledgement – Insurance Policy*), and
  - (iii) *If so requested by the Lender from time to time* (1) give notice to each bank, financial institution or other person (other than the Lender) with whom the Borrower holds an account (including each Designated Account) in the form set out in Part 1 of Schedule 5 (*Form of Notice and Acknowledgement – Bank Accounts*) and (2) use its commercially reasonable efforts to procure that each such bank, financial institution or other person promptly provides to the Lender an acknowledgement of the notice substantially in the form of Part 2 of Schedule 5 (*Form of Notice and Acknowledgement – Bank Accounts*) or otherwise acceptable to the Lender (acting reasonably)

### 6.4 Property covenants

- (a) **Maintenance and conduct of business:** The Borrower shall keep all buildings and all fixtures on each Property in good and substantial repair and condition. The Borrower shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in that trade or business.
- (b) **Preservation of Property, fixtures and Equipment** The Borrower shall not, without the prior written consent of the Lender (i) pull down or remove the whole, or any part of, any building forming part of any Property or permit the same to occur (ii) make or permit any material alterations to any Property, or sever or remove, or permit to be severed or removed, any of its fixtures or (iii) remove or make any material alterations to any of the Equipment belonging to or in use by, the Borrower on any Property (except to effect necessary repairs or replace them with new or improved models or substitutes)
- (c) **Planning information:** The Borrower shall (i) give full particulars to the Lender of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (Planning Notice) that specifically applies to any Property, or to the locality in which it is situated within seven days after becoming aware of the relevant Planning Notice and (ii) at its own expense, immediately on request by the Lender, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Lender in making, any objections or representations in respect of that Planning Notice that the Lender may desire
- (d) **Compliance with covenants and payment of rent:** The Borrower shall (i) observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or

may be subjected, and (if the Lender so requires) produce evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed, (ii) diligently enforce all covenants, stipulations and conditions benefiting each Property and shall not (and shall not agree to) waive, release or vary any of the same and (iii) (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions

- (e) **Payment of rent and outgoings:** The Borrower shall (i) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and (ii) pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier
- (f) **Maintenance of interests in Properties:** The Borrower shall not, without the prior written consent of the Lender (i) grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise, or agree to exercise, the statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the Law of Property Act 1925, or (ii) in any other way dispose of, surrender or create, or agree to dispose of surrender or create, any legal or equitable estate or interest in the whole or any part of any Property
- (g) **Registration restrictions:** If the title to any Property is not registered at the Land Registry, the Borrower shall procure that no person (other than itself) shall be registered under the Land Registration Acts 1925 to 2002 as proprietor of all or any part of any Property without the prior written consent of the Lender. The Borrower shall be liable for the costs and expenses of the Lender in lodging cautions against the registration of the title to the whole or any part of any Property from time to time
- (h) **Development restrictions:** The Borrower shall not, without the prior written consent of the Lender (i) make or, insofar as it is able, permit others to make any application for planning permission or development consent in respect of the Property or (ii) carry out, or permit, or suffer to be carried out on any Property any development as defined in the Town and Country Planning Act 1990 and the Planning Act 2008, or change or permit or suffer to be changed the use of any Property
- (i) **Environment:** The Borrower shall (i) comply with all the requirements of Environmental Law both in the conduct of its general business and in the management, possession or occupation of each Property and (ii) obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law
- (j) **No restrictive obligations:** The Borrower shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of any Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Property
- (k) **Proprietary rights:** The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Property without the prior written consent of the Lender
- (l) **Inspection:** The Borrower shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice
- (m) **Property information:** The Borrower shall inform the Lender promptly of any acquisition by the Borrower of, or contract made by the Borrower to acquire, any freehold, leasehold or other interest in any property

- (n) **VAT option to tax** The Borrower shall not without the prior written consent of the Lender (i) exercise any VAT option to tax in relation to any Property or (ii) revoke any VAT option to tax exercised, and disclosed to the Lender, before the date of this Deed
- (o) **Registration at the Land Registry** The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to each Property

"No disposition of the registered estate by the proprietor of the registered estate [or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction] is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of [NAME OF PARTY] referred to in the charges register [or [their conveyancer or specify appropriate details]] "

## 6.5 INVESTMENTS COVENANTS

- (a) **Deposit of title documents** The Borrower shall (i) on the execution of this Deed, deliver to the Lender, or as the Lender may direct, all stock or share certificates and other documents of title or evidence of ownership relating to any Investments owned by the Borrower at that time and (ii) on the purchase or acquisition by it of Investments after the date of this Deed, deposit with the Lender, or as the Lender may direct, all stock or share certificates and other documents of title or evidence of ownership relating to those Investments. At the same time as depositing documents with the Lender, or as the Lender may direct, in accordance with this paragraph (a), the Borrower shall also deposit with the Lender, or as the Lender may direct (1) all stock transfer forms relating to the relevant Investments duly completed and executed by or on behalf of the Borrower, but with the name of the transferee, the consideration and the date left blank and (2) any other documents (in each case duly completed and executed by or on behalf of the Borrower) that the Lender may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments, so that the Lender may, at any time and without notice to the Borrower, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration
- (b) **Nominations** The Borrower shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated (i) does not exercise any rights in respect of any Investments without the prior written approval of the Lender and (ii) immediately on receipt by it, forward to the Lender all communications or other information received by it in respect of any Investments for which it has been so nominated. The Borrower shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments
- (c) **Pre-emption rights and restrictions on transfer.** The Borrower shall (i) obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Investments, for the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this Deed, and procure the amendment of the share transfer provisions (including but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document

or otherwise of each issuer of the Investments in any manner that the Lender may require in order to permit the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this Deed

- (d) **Dividends and voting rights before enforcement.** Before the security constituted by this Deed becomes enforceable, the Borrower may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Lender or any of its nominees, the Lender will hold all those dividends, interest and other monies received by it for the Borrower and will pay them to the Borrower promptly on request. Before the security constituted by this Deed becomes enforceable, the Borrower may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Lender or any of its nominees, to direct in writing the exercise of those voting and other rights and powers *provided that* (i) it shall not do so in any way that would breach any provision of the Facility Agreement or this Deed or for any purpose inconsistent with the Facility Agreement or this Deed and (ii) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Lender's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Lender's security under this Deed

The Borrower shall indemnify the Lender against any loss or liability incurred by the Lender (or its nominee) as a consequence of the Lender (or its nominee) acting in respect of the Investments at the direction of the Borrower

The Lender shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Lender considers prejudicial to, or impairing the value of, the security created by this Deed

- (e) **Dividends and voting rights after enforcement** After the security constituted by this Deed has become enforceable (i) all dividends and other distributions paid in respect of the Investments and received by the Borrower shall be held by the Borrower on trust for the Lender and immediately paid into a Designated Account or, if received by the Lender, shall be retained by the Lender and (ii) all voting and other rights and powers attaching to the Investments shall be exercised by, or at the direction of, the Lender and the Borrower shall, and shall procure that its nominees shall, comply with any directions the Lender may give, in its absolute discretion, concerning the exercise of those rights and powers
- (f) **Calls on Investments** Notwithstanding the security created by this Deed, the Borrower shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Borrower acknowledges that the Lender shall not be under any liability in respect of any such calls, instalments or other payments
- (g) **No alteration of constitutional documents or rights attaching to Investments** The Borrower shall not, without the prior written consent of the Lender, amend, or agree to the amendment of (i) the memorandum or articles of association, or any other constitutional documents, of any issuer of the Investments that is not a public company or (ii) the rights or liabilities attaching to, or conferred by, all or any of the Investments
- (h) **Preservation of Investments:** The Borrower shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of the Investments that is not a public company shall not (i) consolidate or subdivide any of the Investments, or re-organise, exchange, repay or reduce its share capital in any way, (ii) issue any new shares or stock or (iii) refuse to register any transfer of any of the Investments that

may be lodged with it for registration by, or on behalf of, the Lender or the Borrower in accordance with this Deed

- (i) **Investments information.** The Borrower shall, promptly following receipt, send to the Lender copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments

#### 6 6 EQUIPMENT COVENANTS

- (a) **Maintenance of Equipment.** The Borrower shall (i) maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules, (ii) at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value and (iii) not permit any Equipment to be (1) used or handled other than by properly qualified and trained persons or (2) overloaded or used for any purpose for which it is not designed or reasonably suitable
- (b) **Payment of Equipment taxes.** The Borrower shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Lender
- (c) **Notice of charge.** The Borrower (i) shall, if so requested by the Lender, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording

"NOTICE OF CHARGE

This [DESCRIBE ITEM] and all additions to it [and ancillary equipment] are subject to a fixed charge dated [DATE] in favour of [LENDER] ", and

(ii) shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with the foregoing sentence

#### 6 7 BOOK DEBTS COVENANTS

- (a) **Realising Book Debts.** The Borrower shall as an agent for the Lender, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender. The Borrower shall not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account. The Borrower shall, if called on to do so by the Lender, execute a legal assignment of the Book Debts to the Lender on such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred
- (b) **Preservation of Book Debts.** The Borrower shall not (except as provided by paragraph (a) or with the prior written consent of the Lender) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts

#### 6 8 RELEVANT AGREEMENTS COVENANTS

The Borrower shall, unless the Lender agrees otherwise in writing, comply with the terms of any Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets (other than the Insurance Policies)

The Borrower shall not, unless the Lender agrees otherwise in writing (i) amend or vary or agree to any change in, or waive any requirement of, (ii) settle, compromise, terminate, rescind or discharge

(except by performance) or (iii) abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty to a Relevant Agreement or other person in connection with, any Relevant Agreement or any other document, agreement or arrangement comprising the Secured Assets (other than the Insurance Policies), in each case to the extent prohibited by the terms of the Facility Agreement

## **6.9 INTELLECTUAL PROPERTY COVENANTS**

- (a) **Preservation of rights:** The Borrower shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings
- (b) **Registration of Intellectual Property:** The Borrower shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Lender informed of all matters relating to each such registration
- (c) **Maintenance of Intellectual Property** The Borrower shall not permit any Intellectual Property to be abandoned, cancelled or to lapse

## **SECTION 4**

### **LENDER'S RIGHTS AND ENFORCEMENT**

## **7 POWERS OF THE LENDER**

### **7.1 Power to remedy**

The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this Deed. The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose. Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this Deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with Clause 9.5(a) (*Costs*).

### **7.2 Exercise of rights**

- (a) The rights of the Lender under Clause 7.1 (*Power to remedy*) are without prejudice to any other rights of the Lender under this Deed
- (b) The exercise of any rights of the Lender under this Deed shall not make the Lender liable to account as a mortgagee in possession

### **7.3 Power to dispose of chattels**

- (a) At any time after the Security constituted by this Deed has become enforceable, the Lender or any Receiver may, as agent for the Borrower, dispose of any chattels or produce found on any Property
- (b) Without prejudice to any obligation to account for the proceeds of any disposal made under paragraph (a) above, the Borrower shall indemnify the Lender and any Receiver against any liability arising from any disposal made under paragraph (a) above

### **7.4 Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Lender in

relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver

**7.5 Conversion of currency**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this clause 7.5) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit
- (b) Any such conversion shall be effected at the prevailing spot selling rate of exchange for such other currency against the existing currency available to the Lender
- (c) Each reference in this Clause 7.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency

**7.6 New accounts**

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

**7.7 Indulgence**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Borrower) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Borrower for the Secured Liabilities

**7.8 Appointment of an Administrator**

- (a) The Lender may, without notice to the Borrower, appoint any one or more persons to be an Administrator of the Borrower pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable. Any such appointment shall (i) be in writing signed by a duly authorised signatory of the Lender and (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986
- (b) The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 7.8 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified

**7.9 Further advances**

The Lender covenants with the Borrower that it shall perform its obligations to make advances under the Facility Agreement (including any obligation to make available further advances)

## 8 ENFORCEMENT

### 8.1 Enforceability

- (a) The Security constituted by this Deed shall become immediately enforceable if (i) an Event of Default occurs, (ii) a petition is presented or application made for the appointment of an Administrator in respect of the Borrower or (iii) notice being given by a person entitled to do so of the intention to appoint an Administrator or such notice being filed with the court. After the security constituted by this Deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.
- (b) The Security over the Charged Assets will not become enforceable solely as a result of any person obtaining or taking steps to obtain a moratorium under Schedule A1 of the Insolvency Act 1986.
- (c) If the Security constituted by this Deed are enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Lender (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account.

### 8.2 Enforcement of Security

- (a) **Enforcement powers.** For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed. The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the security constituted by this Deed has become enforceable under Clause 8.1(a) (*Enforceability*). Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.
- (b) **Extension of statutory powers of leasing.** The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this Deed has become enforceable, whether in its own name or in that of the Borrower, to (i) grant a lease or agreement to lease, (ii) accept surrenders of leases or (iii) grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it, in each case, whether or not at a premium and containing such covenants on the part of the Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.
- (c) **Access on enforcement:** At any time after the Lender has demanded payment of the Secured Liabilities or if the Borrower defaults in the performance of its obligations under this Deed or the Facility Agreement, the Borrower will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Borrower for, or by any reason of, that entry. At all times the Borrower must use its best endeavours to allow the Lender or its Receiver access to any premises for the purposes set out in the preceding sentence (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.
- (d) **Prior Security.** At any time after the security constituted by this Deed has become enforceable, or after any powers conferred by any Security having priority to this Deed shall have become exercisable, the Lender may (i) redeem that or any other prior Security, (ii)



procure the transfer of that Security to it and (iii) settle and pass any account of the holder of any prior Security

- (e) The settlement and passing of any such account passed shall, in the absence of any manifest error, be conclusive and binding on the Borrower. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Lender, be due from the Borrower to the Lender on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities
- (f) **Protection of third parties.** No purchaser, mortgagee or other person dealing with the Lender, any Receiver or Delegate shall be concerned to enquire (i) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged, (ii) whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable or (iii) how any money paid to the Lender, any Receiver or any Delegate is to be applied
- (g) **Privileges.** Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers
- (h) **No liability as mortgagee in possession.** Neither the Lender, any Receiver, any Delegate nor any Administrator shall be liable, by reason of entering into possession of a Secured Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such
- (i) **Conclusive discharge to purchasers.** The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit
- (j) **Right of appropriation.** To the extent that (i) the Secured Assets constitute Financial Collateral and (ii) this Deed and the obligations of the Borrower under it constitute a Security Financial Collateral Arrangement, the Lender shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine. The value of any Secured Assets appropriated in accordance with this clause shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Lender may select (including independent valuation). The Borrower agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations

## **9 APPOINTMENT OF RECEIVERS**

### **9.1 Terms of appointment and removal**

- (a) **Appointment.** At any time after the security constituted by this Deed has become enforceable, or at the request of the Borrower, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets
- (b) **Removal.** The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or

otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated

- (c) **Remuneration.** The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, to the extent not otherwise discharged
- (d) **Power of appointment additional to statutory powers:** The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise
- (e) **Power of appointment exercisable despite prior appointments.** The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets
- (f) **Agent of the Borrower.** Any Receiver appointed by the Lender under this Deed shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender

## 9.2 Powers of Receiver

- (a) **General** Any Receiver appointed by the Lender under this Deed shall, in addition to the powers conferred on him by statute, have the powers set out in paragraphs (b) to (w). If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver. Any exercise by a Receiver of any of the powers given by this Clause 9.2 may be on behalf of the Borrower, the directors of the Borrower (in the case of the power contained in clause (p)) or himself
- (b) **Repair and develop Properties** A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same
- (c) **Surrender leases** A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that he thinks fit
- (d) **Employ personnel and advisers.** A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Borrower
- (e) **Make VAT elections** A Receiver may make, exercise or revoke any value added tax option to tax as he thinks fit
- (f) **Remuneration:** A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Lender may prescribe or agree with him
- (g) **Realise Secured Assets** A Receiver may collect and get in the Secured Assets or any part of them in respect of which he is appointed and make any demands and take any proceedings as

may seem expedient for that purpose, and take possession of the Secured Assets with like rights

- (h) **Manage or reconstruct the Borrower's business.** A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower
- (i) **Dispose of Secured Assets:** A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold
- (j) **Sever fixtures and fittings:** A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Borrower
- (k) **Sell Book Debts** A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit
- (l) **Valid receipts:** A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets
- (m) **Make settlements** A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person that he may think expedient
- (n) **Bring proceedings:** A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as he thinks fit
- (o) **Improve the Equipment:** A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient
- (p) **Make calls on Borrower members** A Receiver may make calls conditionally or unconditionally on the members of the Borrower in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Borrower on its directors in respect of calls authorised to be made by them
- (q) **Insure** A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 20, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this Deed
- (r) **Powers under the LPA 1925:** A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986
- (s) **Borrow** A Receiver may, for any of the purposes authorised by this clause 17, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this Deed)
- (t) **Redeem prior Security:** A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver

- (u) **Delegation** A Receiver may delegate his powers in accordance with this Deed
- (v) **Absolute beneficial owner** A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights he would be capable of exercising and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets
- (w) **Incidental powers** A Receiver may do any other acts and things that he (i) may consider desirable or necessary for realising any of the Secured Assets, (ii) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law or (iii) lawfully may or can do as agent for the Borrower

### 9 3 DELEGATION

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under Clause 9 7 (*Power of attorney*)). The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit. Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

### 9 4 APPLICATION OF PROCEEDS

- (a) **Order of application of proceeds** All monies received by the Lender, a Receiver or a Delegate pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:
  - (i) **firstly**, in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed,
  - (ii) **secondly**, in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines, and
  - (iii) **thirdly**, in payment of the surplus (if any) to the Borrower or other person entitled to it
- (b) **Appropriation:** Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities
- (c) **Suspense account:** All monies received by the Lender, a Receiver or a Delegate under this Deed (i) may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account, (ii) shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower and (iii) may be held in that account for so long as the Lender, Receiver or Delegate thinks fit

### 9 5 COSTS AND INDEMNITY

- (a) **Costs:** The Borrower shall, promptly pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with (i) this Deed or the Secured Assets, (ii) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the

Lender's, a Receiver's or a Delegate's rights under this Deed or (iii) taking proceedings for, or recovering, any of the Secured Liabilities, in each case, together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Borrower) at the rate and in the manner specified in the Facility Agreement

- (b) **Indemnity** The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Secured Assets, (ii) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed or (iii) any default or delay by the Borrower in performing any of its obligations under this Deed. Any past or present employee or agent may enforce the terms of this paragraph (b) subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999

#### 9.6 FURTHER ASSURANCE

The Borrower shall, at its own expense, take whatever action the Lender or any Receiver may reasonably require for (i) creating, perfecting or protecting the security intended to be created by this Deed, (ii) facilitating the realisation of any Secured Asset or (iii) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset, including, without limitation (if the Lender or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration

#### 9.7 POWER OF ATTORNEY

- (a) **Appointment of attorneys:** By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that (i) the Borrower is required to execute and do under this Deed or (ii) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Lender, any Receiver or any Delegate
- (b) **Ratification of acts of attorneys.** The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in paragraph (a) above

### SECTION 5 ADMINISTRATION

#### 10 RELEASE

- (a) Subject to paragraph (b) below, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to (i) release the Secured Assets from the security constituted by this Deed, and (ii) reassign the Secured Assets to the Borrower

- (b) Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up administration, receivership or otherwise. Despite any such release, discharge or settlement (i) the Lender or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund and (ii) the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

## 11 ASSIGNMENT AND TRANSFER

- (a) **Assignment by Lender:** At any time, without the consent of the Borrower, the Lender may assign or transfer any or all of its rights and obligations under this Deed to a New Lender (as defined in the Facility Agreement). The Lender may disclose to any actual or proposed New Lender any information in its possession that relates to the Borrower, the Secured Assets and this Deed that the Lender considers appropriate.
- (b) **Assignment by Borrower.** The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this Deed.

## 12 SET-OFF

- (a) **Lender's right of set-off.** The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 25 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.
- (b) **No obligation to set off:** The Lender is not obliged to exercise its rights under paragraph (a). If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.
- (c) **Exclusion of Borrower's right of set-off:** All payments made by the Borrower to the Lender under this Deed shall be made without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 13 CERTIFICATES

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower under this Deed shall be, in the absence of any manifest error, conclusive evidence of the amount due or the matter to which it relates (as applicable).

## 14 AMENDMENTS, WAIVERS AND CONSENTS

- (a) **Amendments:** No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
- (b) **Waivers and consents:** A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision. A failure to exercise, or a delay in exercising any right or remedy provided under this Deed or by law shall not constitute a waiver of that or

any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Lender shall be effective unless it is in writing.

- (c) **Rights and remedies:** The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.
- (d) **Partial invalidity:** If any provision (or part of a provision) of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Deed.

## 15 NOTICES

Each notice or communication under this Deed shall be made as provided in the Facility Agreement.

## 16 COUNTERPARTS

- (a) This Deed (and any amendments thereto) may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- (b) Transmission of an executed counterpart of this Deed (but for the avoidance of doubt not just a signature page) by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

## 17 GOVERNING LAW

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

## 18 JURISDICTION

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 18 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.
- (d) The Borrower irrevocably consents to any process in any legal action or proceedings under this Clause 18 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

**This document has been executed as a DEED and is DELIVERED and takes effect on the date stated at the beginning of it.**

**Schedule 1**

**PROPERTY**

**Part 1 Registered Property**

None

**Part 2 Unregistered Property**

None



**Schedule 2**

**RELEVANT AGREEMENTS**

<b>Date of the Relevant Agreement</b>	<b>Trade Debtor</b>	<b>Interest Rate of the Loan</b>	<b>Term (Months)</b>	<b>Total Amount Payable</b>
14/07/2015	PRI Ltd	10 0%	60	£12,000 00
06/10/2014	JODSG Ltd	15 0%	9	£9,450 00
28/10/2014	Newton & Bell Ltd	12 0%	60	£101,941 00
28/11/2014	Farringtons Ltd	10 0%	12	£54,108 75
15/09/2014	RDA Property Ltd	12 0%	12	£53,432 23
08/12/2014	JODSG Ltd	8 5%	9	£27,215 70
19/01/2015	JODSG Ltd	8 0%	9	£18,360 00
26/01/2015	Really Welsh Trading Company Ltd	8 0%	9	£70,250 00
09/02/2015	Drysdale Ltd	8 0%	9	£36,750 00
09/03/2015	Farringtons Ltd	8 0%	9	£10,350 00
02/03/2015	D&L Growers Ltd	8 0%	10	£93,283 55
23/03/2015	Drysdale Ltd	8 0%	9	£24,450 00
08/06/2015	D&L Growers Ltd	8 0%	9	£22,250 00

### Schedule 3

#### FORM OF NOTICE AND ACKNOWLEDGMENT – RELEVANT AGREEMENT

##### Part 1. Form of notice

*[On the letterhead of the Borrower]*

[NAME OF COUNTERPARTY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (the "Debenture") dated [DATE] between [BORROWER] and [LENDER]**

We refer to the [DESCRIBE RELEVANT AGREEMENT] (the "Contract")

This letter constitutes notice to you that under the Debenture *[(a copy of which is attached)]* we have assigned, by way of security, to [LENDER] (the "Lender") all our rights in respect of the Contract

We confirm that

- We will remain liable under the Contract to perform all the obligations assumed by us under the Contract
- None of the Lender, any delegate appointed by the Lender or any receiver will at any time be under any obligation or liability to you under or in respect of the Contract

Neither the Debenture nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Contract

Subject to the above, we will remain entitled to exercise all our rights, powers and discretions under the Contract and you may continue to deal with us in relation to the Contract and give notices under the Contract to us unless and until you receive written notice to the contrary from the Lender. Thereafter, all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Lender or as it directs and we will cease to have any right to deal with you in relation to the Contract and you must deal only with the Lender

Please note that we have agreed that we will not amend or waive any provision of or terminate the Contract without the prior written consent of the Lender

The instructions in this notice may only be revoked or amended with the prior written consent of the Lender

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Lender at [ADDRESS OF LENDER], with a copy to us

This notice, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales

Yours faithfully,

[NAME OF BORROWER]

## Part 2 Form of acknowledgement

*[On the letterhead of the counterparty]*

[NAME OF LENDER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (the "Debenture") dated [DATE] between [BORROWER] and [LENDER]**

We confirm receipt from [BORROWER] (the "**Borrower**") of a notice (the "**Notice**") dated [DATE] of an assignment, by way of security, of all the Borrower's rights under {*DESCRIBE RELEVANT AGREEMENT*} (the "**Contract**")

*[Terms defined in the Notice shall have the same meaning when used in this acknowledgement ]*

We confirm that

- We accept the confirmations and instructions contained in the Notice and agree to comply with the Notice
- There has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract
- We will not cancel, avoid, release or otherwise allow the Contract to lapse without giving the Lender at least 30 days' prior written notice
- We have not, as at the date of this acknowledgement, received notice that the Borrower has assigned its rights under the Contract to a third party, or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party
- The Lender will not in any circumstances have any liability in relation to the Contract
- The Contract shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender

This letter, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales

Yours faithfully,

[COUNTERPARTY]

#### Schedule 4

### FORM OF NOTICE AND ACKNOWLEDGEMENT – INSURANCE POLICY

#### Part 1 Form of notice

*[On the letterhead of the Borrower]*

[NAME OF INSURANCE COMPANY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs

**Debenture (the "Debenture") dated [DATE] between [BORROWER] and [LENDER]**

We refer to the [DESCRIBE INSURANCE POLICY AND SPECIFY ITS POLICY NUMBER] (THE "Policy")

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have assigned by way of security, to [LENDER] (the "Lender") all our rights in respect of the Policy (including all claims and all returns of premium in connection with the Policy)

We irrevocably instruct and authorise you to

- [Note the Lender's interest on the Policy as [DESCRIBE NOTATION REQUIRED BY LENDER TO BE ENDORSED ON POLICY, FOR EXAMPLE, "FIRST MORTGAGEE"]] and first loss payee]
- Comply with the terms of any written instructions received by you from the Lender relating to the Policy, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions
- Hold all sums from time to time due and payable by you to us under the Policy to the order of the Lender
- Pay, or release, all monies to which we are entitled under the Policy to the Lender, or to such persons as the Lender may direct
- Disclose information in relation to the Policy to the Lender on request by the Lender

Neither the Debenture nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Policy

Subject to the foregoing, you may continue to deal with us in relation to the Policy until you receive written notice to the contrary from the Lender. Thereafter, we will cease to have any right to deal with you in relation to the Policy and you must deal only with the Lender

The instructions in this notice may only be revoked or amended with the prior written consent of the Lender

Please confirm that you agree to the terms of this notice and to act in accordance with its provisions by sending the attached acknowledgement to the Lender at [ADDRESS OF LENDER], with a copy to us

This notice, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales

Yours faithfully,

[NAME OF BORROWER]

---

**Part 2. Form of acknowledgement**

*[On the letterhead of the insurance company]*

[NAME OF LENDER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (the "Debenture") dated [DATE] between [BORROWER] and [LENDER]**

We confirm receipt from [BORROWER] (the "**Borrower**") of a notice (the "**Notice**") dated [DATE] of an assignment, by way of security, of all the Borrower's rights under [DESCRIBE INSURANCE POLICY AND ITS NUMBER] (the "**Policy**")

*[Terms defined in the Notice shall have the same meaning when used in this acknowledgement]*

We confirm that

- We accept the instructions and authorisations contained in the Notice and agree to comply with the Notice
- We have noted the Lender's interest on the Policy as [DESCRIBE NOTATION REQUIRED BY LENDER TO BE ENDORSED ON POLICY, FOR EXAMPLE, "FIRST MORTGAGEE AND FIRST LOSS PAYEE"]
- There has been no amendment, waiver or release of any rights or interests in the Policy since the date the Policy was issued
- We will not cancel, avoid, release or otherwise allow the Policy to lapse without giving the Lender at least 30 days' prior written notice
- We have not, as at the date of this acknowledgement, received notice that the Borrower has assigned its rights under the Policy to a third party, or created any other interest (whether by way of security or otherwise) in the Policy in favour of a third party
- The Lender will not in any circumstances be liable for the premiums in relation to the Policy
- The Policy shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender

This letter, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales

Yours faithfully,

[INSURER]

## Schedule 5

### FORM OF NOTICE AND ACKNOWLEDGEMENT – BANK ACCOUNT

#### Part 1 Form of notice

*[On the letterhead of the Borrower]*

[NAME OF ACCOUNT BANK]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs

**Debenture (the "Debenture") dated [DATE] between [BORROWER] and [LENDER]**

This letter constitutes notice to you that under the Debenture *[(a copy of which is attached)]* we have charged by way of first fixed charge, in favour of [LENDER] (the "Lender") all monies from time to time standing to the credit of the account held with you and detailed below (the "Account"), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest)

Name of Account [NAME OF ACCOUNT]

Sort code [SORT CODE]

Account number [ACCOUNT NUMBER]

We irrevocably instruct and authorise you to

- Disclose to the Lender any information relating to the Account requested from you by the Lender
- *[Comply with the terms of any written notice or instructions relating to the Account received by you from the Lender ]*
- *[Hold all sums from time to time standing to the credit of the Account to the order of the Lender ]<sup>1</sup>*
- *[Pay or release all or any part of the monies standing to the credit of the Account in accordance with the written instructions of the Lender ]<sup>1</sup>*

*[We acknowledge that you may comply with the instructions in this notice without any further permission from us ]*

We agree that following notification by the Lender to you of the occurrence of an Event of Default (as defined in the Facility Agreement (as defined in the Debenture)), we will not be permitted to withdraw any amount from the Account without the prior written consent of the Lender

*[The instructions in this notice may only be revoked or amended with the prior written consent of the Lender ]*

This notice, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales

---

<sup>1</sup> Only to be included in post Event of Default notice

Please *[acknowledge receipt of this notice/confirm that you agree to the terms of this notice and to act in accordance with its provisions]* by sending the attached acknowledgement to the Lender at *[ADDRESS OF LENDER]* with a copy to us

Yours faithfully,

Signed

*[NAME OF BORROWER]*

---

## Part 2 Form of acknowledgement

*[On the letterhead of the account bank]*

*[NAME OF LENDER]*

*[ADDRESS LINE 1]*

*[ADDRESS LINE 2]*

*[POSTCODE]*

*[DATE]*

Dear Sirs,

**Debenture (the "Debenture") dated *[DATE]* between *[BORROWER]* and *[LENDER]***

We confirm receipt from *[BORROWER]* (the "Borrower") of a notice (the "Notice") dated *[DATE]* of a charge (on the terms of the Debenture) over all monies from time to time standing to the credit of the account detailed below (the "Account"), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest)

We confirm that we

- Accept the instructions contained in the Notice and agree to comply with the Notice
- Will not, following receipt of a notification of the occurrence of an Event of Default from the Lender, permit any amount to be withdrawn from the Account without your prior written consent
- Have not received notice of the interest of any third party in the Account
- Have neither claimed nor exercised, nor will claim or exercise any security interest set-off, counter-claim or other right in respect of the Account

The Account is

Name of Account *[NAME OF ACCOUNT]*

Sort code *[SORT CODE]*

Account number *[ACCOUNT NUMBER]*

This letter, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales

Yours faithfully,

Signed

*[NAME OF ACCOUNT BANK]*

Executed as a deed by  
**HARDMAN HEALEY LIMITED**  
acting by Stephen Farrington, a  
director, in the presence of



Director



Shaine Skariah  
4<sup>th</sup> Floor, 80-90 Paul Street  
London, EC2A 4NE  
Operations

Executed as a deed by  
**GANITA WEALTH FUND  
LIMITED** acting through its  
Investment Adviser  
**Ganita Wealth Ltd**

  
Member

Member