

MR01

Particulars of a charge



Companies House

227685/13

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 no  
instrument. Use form MR02

For further information, please  
refer to our guidance at  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

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



You must enclose a certified copy of the instrument with this form  
scanned and placed on the public record



\*A3EWID22\*

A21

23/08/2014

#252

COMPANIES HOUSE

SATURDAY

**1 Company details**

Company number 0 0 1 6 4 2 9 1

Company name in full Austin Reed Group Limited

For official use

13

→ 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 2 2 0 8 2 0 1 4

**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 Burdale Financial 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

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Particulars of a charge

<b>4</b>	<b>Description</b>	Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security	<b>Continuation page</b> Please use a continuation page if you need to enter more details
Description			
<b>5</b>	<b>Fixed charge or fixed security</b>	<p>Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box</p> <p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>	
<b>6</b>	<b>Floating charge</b>	<p>Is the instrument expressed to contain a floating charge? Please tick the appropriate box</p> <p><input type="checkbox"/> <b>Yes</b> Continue</p> <p><input checked="" type="checkbox"/> <b>No</b> Go to <b>Section 7</b></p> <p>Is the floating charge expressed to cover all the property and undertaking of the company?</p> <p><input type="checkbox"/> <b>Yes</b></p>	
<b>7</b>	<b>Negative Pledge</b>	<p>Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box</p> <p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>	

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Particulars of a charge

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**Trustee statement <sup>①</sup>**

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

☐

<sup>①</sup> This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X

*Red Smith LLP*

X

This form must be signed by a person with an interest in the charge

# MR01

## Particulars of a charge



### Presenter information

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name	Victoria Thompson
Company name	Reed Smith LLP
Address	The Broadgate Tower
	20 Primrose Street
Post town	London
County/Region	Greater London
Postcode	E C 2 A 2 R S
Country	United Kingdom
DX	DX 1066/DX 18 City/London
Telephone	02031163509



### 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

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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: 164291

Charge code: 0016 4291 0015

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd August 2014 and created by AUSTIN REED GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd August 2014

DX

Given at Companies House, Cardiff on 1st September 2014



**Companies House**



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

Certified as a true copy of the  
original instrument other than material  
redacted pursuant to s.859G of the  
Companies Act 2006

Reed Smith LLP  
Reed Smith LLP  
Date 22 August 2014

DATED 22 Aug 2014

**AUSTIN REED GROUP LIMITED**

as Grantor

AND

**BURDALE FINANCIAL LIMITED**

as Security Trustee

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**SECURITY INTEREST AGREEMENT IN RESPECT OF SHARES IN  
AUSTIN REED (JERSEY) LIMITED**

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**WALKERS**

Walker House, PO Box 72, 2B-34 Hill Street, St Helier  
Jersey JE4 8PN, Channel Islands

T +44 (0)1534 700 700 F +44 (0)1534 700 800 [www.walkersglobal.com](http://www.walkersglobal.com)

**REF: AC/J39986**

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THIS SECURITY INTEREST AGREEMENT (the "Agreement") is made on 22 August 2014

**BETWEEN**

- (1) **AUSTIN REED GROUP LIMITED**, a company incorporated in England with registration number 00164291 (the "Grantor"), and
- (2) **BURDALE FINANCIAL LIMITED**, as security trustee for the Secured Parties (the "Security Trustee" which expression includes its successors and assigns)

**RECITALS**

- (A) Pursuant to the Facility Agreement (as defined below), the Original Lenders (as defined therein) have agreed to make the Facility (as defined therein) available to Austin Reed Group Limited and certain other group companies for the purposes set out in the Facility Agreement
- (B) Pursuant to this Agreement, the Grantor agrees to create first ranking security over its interest in the Collateral (as defined below) in favour of the Security Trustee in connection with, and as required by, the Facility Agreement
- (C) The Grantor is satisfied that entering into this Agreement is for the purposes of its business and to the benefit of the Grantor
- (D) This Agreement includes the terms of and constitutes a security agreement in accordance with the provisions of the Security Law (as defined below)

**IT IS AGREED** as follows

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless the context otherwise requires, words and expressions which are capitalised but not defined herein shall have the same meanings as given to them in the Facility Agreement. In addition,

"**Certificate of Title**" means any document of title whereby a person recognises the title of another to securities issued or to be issued by the first-mentioned person, and in the case of any such document with coupons (whether attached or on separate coupon sheets) includes any coupons which have not been detached

"**City Code**" means the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers of the United Kingdom.

"**Collateral**" means the Shares, the Related Rights and proceeds therefrom

"**Companies Law**" means the Companies (Jersey) Law 1991

"**Default Rate**" shall be calculated in accordance with clause 12.3 of the Facility Agreement

"**Event of Default**" shall have the same meaning given to such term in the Facility Agreement and as if each such event or circumstance therein specified was specifically set out in this Agreement



**"Facility Agreement"** means the facility agreement dated 21 May 2014 between Austin Reed Group Limited, the Affiliates (as Original Borrowers and Original Guarantors) and Burdale Financial Limited (as Agent, Security Trustee, Arranger and Original Lender)

**"Finance Document"** means has the meaning given to it in the Facility Agreement

**"Issuer"** means Austin Reed (Jersey) Limited a company incorporated in Jersey with the registration number 8997

**"Jersey Security Interest"** means the security interest granted and created pursuant to this Agreement

**"Notice of Event of Default"** means a notice given in accordance with clause 7 1(b)

**"Obligor"** has the same meaning given to such term in the Facility Agreement

**"Permitted Security Interest"** means any Security Interest that is

- (a) permitted by any Finance Document, or
- (b) granted with the consent in writing of the Security Trustee

**"Register"** means the register of title to any Collateral (if any)

**"Registrar"** means the Jersey Registrar of Companies (who is also the registrar under the Security Law)

**"Related Rights"** means.

- (a) all present and future monies paid or payable by the Issuer in respect of the Shares (whether by way of redemption, return of capital, distribution or otherwise howsoever), and
- (b) all present and future stocks, shares and securities (and all monies paid or payable in respect thereof (whether by way of redemption, return of capital, distribution or otherwise howsoever)), rights, money, property accrued, accruing or offered at any time by way of redemption, bonus, preference, option or otherwise howsoever to or in respect of any of the Shares or in substitution or exchange for any of the Shares (provided always that any Shares shall be excluded from this paragraph (b) of this definition of Related Rights and accordingly the Shares shall not constitute Related Rights for the purposes of this Agreement)

**"Secured Obligations"** means all present and future obligations and liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety, or in any other capacity whatsoever, of the Grantor and each other Obligor to any Secured Party

**"Security Interest"** means a mortgage, charge, encumbrance, assignment by way of security, hypothecation, pledge, lien, netting, set-off, trust or security interest (including one created under the Security Law) or any other agreement, arrangement, equity or other right or interest in intangible movable property that secures payment or performance of an obligation

**"Security Law"** means the Security Interests (Jersey) Law 2012

**"Security Period"** means the period beginning on the date of this Agreement and ending on the date on which the Secured Obligations have been irrevocably and unconditionally paid and discharged in full

**"Shares" means**

- (a) 38 ordinary shares of £1, 00 each in the capital of the Issuer which shares are on the date of this Agreement issued to and registered in the name of the Grantor; and
- (b) all other shares in the capital of the Issuer which may at any time on or after the date of this Agreement be issued to and registered in the name of the Grantor

**"Transfer Form"** means, in respect of any investment security forming part of the Collateral, an instrument of transfer in a form that:

- (a) complies in all respects with the constitutional documents or terms of issue of such investment security and all the laws applying to a transfer of such investment security, and
- (b) is sufficient to enable the Security Trustee, its nominee or any transferee of such investment security to acquire legal title to it, and

## **1 2 Construction of Other Terms**

In this Agreement, unless the context otherwise requires, any reference to

**"account"** means a deposit account or a securities account,

**"agreement"** includes an agreement, assignment, contract, conveyance, deed, security interest, guarantee, licence, franchise, novation, permit, transfer, undertaking or legally enforceable arrangement (whether or not in writing),

**"amendment"** includes a supplement, novation, extension (whether of maturity or otherwise), restatement or replacement however fundamental and whether or not more onerous (and amended will be construed accordingly),

**"authorisation"** includes an agreement, approval, consent, exemption, filing, licence, notansation, permit, registration or resolution,

**"bankruptcy"** means any state of bankruptcy (including any state referred to in article 8 of the Interpretation (Jersey) Law 1954), insolvency, insolvent winding up, administration, receivership, administrative receivership, liquidation or similar status or analogous procedure or proceedings under the laws of any jurisdiction (and bankrupt will be construed accordingly),

**"business day"** has the meaning given to it in the Facility Agreement,

**"clauses and schedules"** are to clauses and schedules of this Agreement (unless the context otherwise requires) Clause headings are used for convenience only and do not affect the interpretation of this Agreement,

**"company"** means any company, corporation, foundation or any other body corporate (other than an incorporated limited partnership) wherever incorporated,

**"constitutional documents"** includes a certificate of incorporation, a certificate of incorporation on change of name, memorandum and articles of association, a trust instrument, an instrument creating or acknowledging a debt and any other documents specified by the Security Trustee;

**"cost"** includes any charge, commission, expense (including legal expenses on a full indemnity basis), interest, penalty and tax,

**"dispose"** means to assign, declare a trust, grant an option, lease, license, sell, transfer, part with possession of or otherwise dispose of, whether voluntarily or involuntarily, but not to create a security interest (and disposal will be construed accordingly),

**"distribution"** includes any distribution of income, return of capital or any other payment,

**"document"** includes an agreement, certificate, direction, notice, transfer form, instrument, order, power of attorney, statement or document (in any such case in writing),

**"executed"** means signed, dated and unconditionally delivered,

**"guarantee"** includes a guarantee, indemnity, letter of credit, performance bond or legally enforceable undertaking or obligation (whatever called and of whatever nature) the economic effect of which is to provide security or otherwise assume responsibility for the liabilities or obligations of another person,

**"law"** includes common or customary law and any constitution, decree, legislation, statute, regulation, order, ordinance, by-law, enactment, treaty or other measure having force of law or judgment, judicial or administrative order, determination or decision in any jurisdiction,

**"loss"** includes any action, claim, damage, demand, liability or loss (whether direct, indirect or consequential and including loss of profit or margin),

any **"person"** includes

- (a) its successors in title or permitted transferees whether immediate or derivative, and
- (b) an individual, partnership, corporation, unincorporated association, government agency or other body or entity whether or not having separate legal personality (including such person acting in its capacity as partner, trustee, or nominee or in any other capacity whatsoever),

**"power of enforcement"** is a reference to a power of enforcement under this agreement and/or the Security Law,

**"property"** includes, unless the context otherwise requires, any present or after-acquired property and any proceeds, revenue or right under or derived from that property,

**"representative"**, in relation to the Security Trustee, includes an agent, attorney, employee, director, delegate, sub-delegate, nominee or delegate of a nominee of the Security Trustee (but does not include the Grantor, any Obligor or a person acting on behalf of the Grantor),

**"right"** includes any authority, benefit, claim, consent, discretion, interest, power, right or remedy and a reference to rights includes having an interest in property (whether legal or beneficial) and the power to grant rights in property,

a **"subsidiary"** or **"holding body"** of a person includes

- (a) a subsidiary or holding body as defined in Article 2 of the Companies Law; and
- (b) any other person treated as a subsidiary or holding company in accordance with applicable law or with generally accepted accounting principles adopted in accordance with applicable law, and
- (c) any other person treated as a subsidiary or holding company in accordance with the provisions of any of the Finance Documents,

"**tax**" includes any present or future tax, levy, impost, imposition, duty, rate, charge, fee, deduction or withholding whatever called and of whatever nature regardless of where or by whom assessed, collected, levied, imposed or withheld together with any costs imposed or made on or in respect of any of the foregoing (and taxation will be construed accordingly), and

"**winding-up**" includes the winding-up, dissolution or striking-off a register of a person or an equivalent or analogous procedure under the law of any jurisdiction (and "**wound-up**" will be construed accordingly)

### **1 3 Interpretation**

- (a) References to "**legislation**" (or to any provision of legislation) include a modification or re-enactment of it, a legislative provision substituted for it and any regulation or statutory instrument issued under it
- (b) Any reference to any agreement, deed, instrument or other document (including this Agreement) is a reference to that agreement, deed, instrument or other document as amended, novated, supplemented, extended or restated and shall in each case be construed as including any recitals, schedules, appendices or similar to such agreement, deed, instrument or other document
- (c) The singular includes the plural and the converse and a gender includes all genders. Where a word or phrase is defined or its construction is provided for in this Agreement, its other grammatical forms have a corresponding meaning.
- (d) References to an Event of Default being "**continuing**" mean that such Event of Default has not been waived in writing or cured to the satisfaction of the Agent,
- (e) References to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them
- (f) The exercise of any right and the discharge of any obligation of the Security Trustee under this Agreement (howsoever described but including the right of discretion or any right to act on its opinion or belief and any obligation of consultation) shall require that the Security Trustee, prior to the occurrence of an Event of Default, to act reasonably and in good faith (in each case by reference to the reasonable credit judgement of the Security Trustee) in exercising that right or discharging that obligation and, where practicable, on prior written notice to the Grantor

In this Agreement, unless the context otherwise requires, a reference to after-acquired property, attach, control, financing statement, financing change statement, further advance, intangible movable property, intermediary, investment security, perfect, proceeds, securities account, transfer, value and writing has the meaning given to it in the Security Law

## **2. COVENANT TO PAY**

The Grantor hereby covenants with the Security Trustee as primary obligor and not merely as surety to pay and discharge the Secured Obligations in the manner provided for in any document creating or evidencing the Secured Obligations and/or as otherwise agreed from time to time

## **3. CREATION OF SECURITY INTERESTS**

### **3 1 General**

Pursuant to the Security Law, the Grantor hereby grants to the Security Trustee a security interest in and over all of its present and future rights, title and interest in and to the Collateral to secure due payment and performance of the Secured Obligations

### **3.2 Attachment**

The Grantor acknowledges that value has been given by the Security Trustee in respect of this Agreement and agrees that the Jersey Security Interest will attach, in the case of

- (a) any present rights, title and interest of the Grantor in and to any Collateral, on the date of this Agreement, and
- (b) any future rights, title and interest of the Grantor in and to any Collateral, on the acquisition of such rights, title and interest by the Grantor and without the need for any specific appropriation by the Grantor

The Grantor further acknowledges and agrees that the security interest created by clause 3.1 will extend to any proceeds in accordance with Article 24 of the Security Law to the extent that such proceeds are capable, according to Part 2 of the Security Law, of being the subject of a security interest to which the Security Law applies.

### **3.3 Registration**

Subject to Article 62 (Contents of Registration) of the Security Law, the Security Trustee or its representative may register such financing statements and financing change statements as it thinks fit during the Security Period without any consent of the Grantor

### **3.4 Priority**

The Jersey Security Interest

- (a) secures the irrevocable and unconditional payment and satisfaction in full of the Secured Obligations,
- (b) constitutes a first ranking Security Interest in the Collateral (subject to any Permitted Security Interest) unless the Security Trustee otherwise agrees in writing, and
- (c) has the same priority in relation to all Secured Obligations (including further advances)

### **3.5 Control of Shares and Investment securities**

The Grantor undertakes to

- (a) prior to or contemporaneously with the execution of this Agreement, deliver to the Security Trustee (or as the Security Trustee may direct)
  - (i) share certificates in respect of all Shares which have been issued on or before the date hereof together with Transfer Forms executed by the Grantor (left undated and with the transferee left blank) in respect of such Shares, and
  - (ii) certified copies of
    - (A) the constitutional documents of the Issuer;

- (B) any statutory or regulatory authorisation issued in respect of the Shares referred to in clause 3 5(a)(i) above,
  - (C) any declaration of trust of such Shares signed by any nominee, and
  - (D) the register of members of the Issuer showing that such Shares are registered in the name of the Grantor (or its nominees),
- (b) deliver, or procure the delivery, to the Security Trustee (or as the Security Trustee may direct) share certificates in respect of all Shares which are issued or transferred to the Grantor after the date hereof promptly after such Shares are issued and together with
  - (i) Transfer Forms executed by the Grantor (left undated and with the transferee left blank) in respect of such Shares, and
  - (ii) certified copies of
    - (A) the then current constitutional documents of the Issuer,
    - (B) any statutory or regulatory authorisation issued in respect of such Shares,
    - (C) any declaration of trust of such Shares signed by any nominee,
    - (D) the register of members of the Issuer showing that such Shares are registered in the name of the Grantor (or its nominees), and
- (c) deliver, or procure the delivery, to the Security Trustee (or as the Security Trustee may direct) any certificates in respect of any investment securities which constitute Related Rights which are issued after the date hereof promptly after such certificates are issued and together with
  - (i) Transfer Forms executed by the Grantor (left undated and with the transferee left blank) in respect of such investment securities, and
  - (ii) certified copies of
    - (A) the constitutional documents of the issuer of such investment securities,
    - (B) any statutory or regulatory authorisation issued in respect of such investment securities,
    - (C) any declaration of trust of such investment securities signed by any nominee, and
    - (D) the register of members of the issuer of such investment securities showing that such investment securities are registered in the name of the Grantor (or its nominees)

### 3 6 General

- (a) Any direction, notice or document to be given or delivered pursuant to this clause 3 must be in the form specified by the Security Trustee (acting reasonably).

- (b) If required by the Security Trustee, the Grantor undertakes to procure that any person served with a notice pursuant to this clause 3 promptly gives an acknowledgement to such notice in the form specified by the Security Trustee (acting reasonably)
- (c) The Grantor authorises the Security Trustee to complete, date and deliver any document, notice or Transfer Form (in favour of the Security Trustee, its nominee or any transferee) delivered by the Grantor to the Security Trustee pursuant to this clause 3 (but in the case of a Transfer Form only following an Event of Default which is continuing)

### **3.7 Transfer of Collateral to Security Trustee or nominee**

The Security Trustee may (without exercising the power of enforcement)

- (a) at any time, if it has possession of certificates of title or other documentary evidence of ownership of any Collateral, transfer possession of all or any of them to a nominee, and
- (b) following an Event of Default which is continuing, become (or cause its nominee to become) the registered holder of any investment security forming part of the Collateral

## **4. PAYMENT AND VOTING RIGHTS**

### **4.1 General**

- (a) The Security Trustee is not obliged
  - (i) if it (or its nominee) is the registered holder of any Collateral, to enforce payment of any distribution or other payment in relation to that Collateral, or
  - (ii) to exercise, or procure the exercise of, any voting rights granted to it under this clause 4,

and is not liable to the Grantor or any other person for not doing so or for the way in which it does so
- (b) If any issuer would, but for Article 2A(7) of the Companies Law, be regarded as a subsidiary of the Security Trustee, rights attached to the shares of such issuer forming part of the Collateral will, apart from the right to exercise them for the purpose of preserving the value of such shares or of realising the security, be exercisable
  - (i) only in accordance with the Grantor's instructions, or
  - (ii) where such shares are held in connection with the granting of loans as part of normal business activities, only in the Grantor's interests
- (c) The Security Trustee may give notice to the Grantor that clause 4.1(b) above will cease to have effect for any period specified in such notice

### **4.2 Payment Rights**

- (a) If no Event of Default is continuing
  - (i) the Grantor may retain, or
  - (ii) the Security Trustee must release and pay (or procure that its nominee releases and pays) to the Grantor,

any cash dividend or other cash income payment paid in respect of the Collateral that are received by Grantor or the Security Trustee (or its nominee) respectively

- (b) If an Event of Default is continuing, all distributions payable in respect of the Collateral must be paid to the Security Trustee (or as it may direct)

#### **4.3 Voting Rights**

- (a) If no Event of Default is continuing, the Grantor is entitled to exercise (and to direct the Security Trustee, on not less than five business days' notice, to exercise) any voting rights in respect of the Collateral except in any manner that may be prejudicial to the interests of the Security Trustee
- (b) If an Event of Default is continuing
  - (i) all voting rights attaching to the Collateral must be exercised by, or at the direction of, the Security Trustee, and
  - (ii) the Grantor
    - (A) must, and must procure that its nominees will, comply with any directions that the Security Trustee may give, as it thinks fit, concerning the exercise of those rights, and
    - (B) hereby irrevocably appoints the Security Trustee to be its proxy for these purposes and authorises the Security Trustee to complete, sign and deliver on its behalf any proxy forms that the Security Trustee may require

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

#### **5.1 Timing**

The Grantor makes the representations and warranties set out in this clause 5 to the Security Trustee (but not to a nominee) on the date of this Agreement and shall be deemed to have repeated each of them on each date that any representation made in the Facility Agreement is repeated or deemed repeated with reference to the facts and circumstances then existing

#### **5.2 The Collateral**

- (a) Subject to the Jersey Security Interest and any Permitted Security Interest, the Grantor is the sole legal and beneficial owner of all the Collateral
- (b) The Grantor is not aware of any person (save for the Security Trustee pursuant to this Agreement) claiming or threatening to claim any Security Interest in respect of the Collateral and the Grantor is not aware of any circumstances which could or might give rise to any such claim or threat
- (c) There is no attachment or other order or process made against the Collateral or any part of it and the Grantor is not aware of any reason why any attachment or other order or process will or might be made or attempted against the Collateral or any part of it
- (d) The Shares are duly issued and fully paid
- (e) The Grantor does not owe any sum to the Issuer that would entitle the Issuer to claim a lien, or to exercise any right of sale or forfeiture, in respect of the Shares



- (f) The Shares do not confer a right of occupation of land in Jersey
- (g) The Shares comprise all of the shares issued by the Issuer
- (h) The Issuer is a limited liability company, duly constituted and validly existing under the Companies Law and is not a company to which the City Code applies
- (i) The Issuer has obtained all consents required by law or any governmental or other authority or agency for its incorporation and each issue of shares by it.
- (j) The Certificates of Title to the Shares required to be delivered pursuant to clause 3.5 will when so delivered be the only Certificates of Title to such Shares
- (k) The Collateral is not subject to any
  - (i) option, pre-emptive right or similar right; or
  - (ii) restriction or prohibition that would delay, prejudice or prevent either
    - (A) the exercise by the Security Trustee or its representatives of any of its rights under this Agreement (including the power of enforcement), or
    - (B) any transfer of any Collateral to the Security Trustee or any transferee under this Agreement
- (l) The Security Trustee does not need to obtain the authorisation of any person to do any of the things referred to in clause 5.2(k) above in relation to any Shares or any such authorisation has been obtained by the Grantor in writing and it is in full force and effect

### **5.3 This Agreement**

- (a) All actions and authorisations that are required or desirable to enable the Grantor to enter into and perform this Agreement (and each other agreement creating or constituting the Secured Obligations to which the Grantor is party) have been taken or obtained and in the case of authorisations are in full force and effect
- (b) This Agreement creates the Security Interests it purports to create and such Security Interests will be recognised as first ranking rights of security in the Collateral by way of security for the Secured Obligations and will not be liable to be avoided or otherwise set aside on a bankruptcy of the Grantor or otherwise
- (c) This Agreement constitutes valid, legal and binding obligations of the Grantor and subject to the Legal Reservations is enforceable in accordance with its terms
- (d) The entry into and performance by the Grantor of this Agreement (and each other agreement creating or constituting the Secured Obligations to which the Grantor is party) and each transaction contemplated by the same do not and will not conflict with
  - (i) any law to which the Grantor is subject,
  - (ii) the constitutional documents of the Grantor or of the Issuer,
  - (iii) any agreement or document which is binding upon the Grantor or its property, or

- (iv) so far as the Grantor is aware, any agreement or document binding upon the Grantor or on the Issuer
- (e) The Grantor will not be entitled to claim immunity from suit, execution or attachment or other legal process in any proceedings taken in its jurisdiction of incorporation or elsewhere in relation to this Agreement (or any other agreement creating or constituting the Secured Obligations to which the Grantor is party)
- (f) No Event of Default is continuing or might result from the Grantor entering into, or performing any transaction contemplated by, this Agreement (or any other agreement creating or constituting the Secured Obligations to which the Grantor is party) and no other event is continuing which constitutes an event of default (however described) under any agreement or document which is binding on the Grantor or of its property

#### **5.4 The Grantor**

- (a) The Grantor is a limited liability company, duly incorporated and validly existing under the laws of the jurisdiction of its incorporation, and has the power to execute and perform, and has taken all necessary action to authorise its execution and performance of, this Agreement
- (b) The Grantor has the power to own its own assets and carry on its business as it is being conducted
- (c) The entry into, execution and performance of this Agreement (and each other agreement creating or constituting the Secured Obligations to which the Grantor is party) and each transaction contemplated by each of them is within the capacity and powers and in the interests and to the benefit of the Grantor
- (d) The Grantor is able to pay its debts as they fall due and it will not be rendered unable to do so as a result of entering into this Agreement (or any other agreement creating or constituting the Secured Obligations to which the Grantor is party)
- (e) The Grantor has not been declared bankrupt or suffered or instituted similar proceedings, nor has it committed any act indicative of insolvency under the laws of any jurisdiction or had any judgment made against it in any court of law or arbitration, and no one has threatened or commenced bankruptcy proceedings against the Grantor
- (f) The Grantor
  - (i) has disclosed in writing the Grantor's current full name and all of the Grantor's previous full names (if any) to the Security Trustee and all such names are correctly spelt as they appear in the Grantor's current or former constitutional documents, as the case may be,
  - (ii) has provided the Security Trustee with a certified copy of the Grantor's current and former constitutional documents (unless the Security Trustee confirms that any are not required),
  - (iii) is not, at the date of this Agreement, in the process of changing the Grantor's name

### **6. UNDERTAKINGS**

#### **6.1 General Undertakings**

The Grantor undertakes to the Security Trustee as follows

- (a) To give or deliver to the Security Trustee
  - (i) notice in writing that it proposes to change its name (along with the correct spelling of its new full name) at least five business days before the change takes effect, and
  - (ii) a certified copy of the constitutional documents issued with the Grantor's new name as soon as practicable after they are issued
- (b) Unless the Security Trustee otherwise agrees in writing, the Grantor will procure the discharge of any financing statement that is registered against it in relation to any Security Interest (other than in respect of the Jersey Security Interest or a Permitted Security Interest)
- (c) If any Security Interest (other than the Jersey Security Interest) is created in any Collateral, it will
  - (i) exercise its rights under Article 85 (Security Trustee to provide information) of the Security Law in respect of that Security Interest in such manner as the Security Trustee may demand, and
  - (ii) deliver a copy of the documents provided to the Grantor under Article 85 to the Security Trustee

## **6.2 General undertakings relating to the Collateral**

The Grantor undertakes to the Security Trustee as follows

- (a) It will remain the sole legal and beneficial owner of all the Shares
- (b) The Grantor shall pay all calls or other payments which may be or become due in respect of the Collateral or any part of it and shall remain liable to observe and perform all other obligations in respect of the Collateral or any part of it
- (c) The Grantor shall not save where expressly permitted by the terms of the Finance Documents or otherwise permitted in writing by the Security Trustee
  - (i) assign, transfer, surrender, sell, redeem or otherwise dispose of or deal with the Collateral or any part of it or any interest in the same or agree or purport to do or permit any such thing,
  - (ii) have subsisting or create any Security Interests other than the Jersey Security Interest applying to or affecting the Collateral or any part of it or permit the same to subsist or be created, or
  - (iii) without the prior written consent of the Security Trustee amend, supplement, terminate or otherwise modify the Jersey Security Interest or purport to do so
- (d) The Grantor shall, to the extent they may be material to the Jersey Security Interest or the Secured Obligations, deliver to the Security Trustee all accounts, circulars, notices, prospectuses, reports or any other communications of whatever nature received by the Grantor from or relating to the Issuer or the Collateral or any part of it forthwith on receipt of them by the Grantor

- (e) The Grantor shall disclose to the Security Trustee such information relating to the Collateral as the Security Trustee may require and at the request of the Security Trustee shall, so far as it is able to, procure that the Issuer will do the same
- (f) If the Security Trustee or any representative of the Security Trustee sells the Collateral or any part of it under or pursuant to the rights of the Security Trustee under this Agreement or the Security Law, the Grantor shall, at the request and on the direction of the Security Trustee, deliver a valid receipt for the proceeds of sale of such Collateral to any person specified by the Security Trustee

### **6.3 Undertakings in relation to Shares**

- (a) Unless expressly permitted by the terms of the Finance Document, to the extent that it is within the right of the Grantor, the Grantor undertakes to the Security Trustee not to take, or permit the taking of, any action in relation to Shares that results in
  - (i) the amendment of the constitutional documents of, or authorisations issued in relation to, the Shares,
  - (ii) any rights or liabilities attaching to the Shares being varied,
  - (iii) further Shares being issued to anyone other than the Grantor,
  - (iv) further investment securities being issued by the Issuer to anyone other than the Grantor,
  - (v) any Shares being cancelled, forfeited, surrendered, consolidated, subdivided, redeemed, repurchased or made the subject of a capital reduction,
  - (vi) any replacement certificates embodying the right to or otherwise representing such Shares being issued,
  - (vii) the Issuer merging or amalgamating with another entity or continuing as a body incorporated in another jurisdiction,
  - (viii) any Shares being re-registered in a Register (including an electronic register or an overseas branch register) that is different from the Register in which they were recorded or registered either on the date of this Agreement or, if subsequently, the date on which they were acquired by the Grantor,
  - (ix) the refusal to register the transfer of any Shares lodged for registration by, or on behalf of, the Security Trustee or the Grantor in accordance with this Agreement, or
  - (x) the Issuer being wound-up
- (b) Where no Certificate of Title has been issued, the Grantor will promptly obtain a certificate embodying the right to or otherwise representing the Shares (and comply with clause 3.5 in respect of them)
- (c) If the Security Trustee so requires, the Grantor will use reasonable endeavours to procure that the Security Trustee's interest in the Shares is noted on any Register

### **6.4 Further Assurance**

The Grantor shall at its own expense take whatever action the Security Trustee may at any time require

- (a) for creating, perfecting or protecting the Jersey Security Interests or any of them,
- (b) without prejudice to the generality of the foregoing, for the exercise of any right, power or discretion exercisable by the Security Trustee or any representative of the Security Trustee in respect of the Collateral or any part of it,
- (c) without prejudice to the generality of the foregoing, for creating new Security Interests (which, for the avoidance of doubt, need not be governed by Jersey law) over the Collateral or any part of it on such terms as the Security Trustee may in its discretion require to give the Security Trustee security for the payment and discharge of the Secured Obligations, and/or
- (d) without prejudice to the generality of the foregoing, for facilitating the realisation of the Collateral or any part of it (provided that an Event of Default is continuing)

The actions referred to in this clause 6.4 include (i) the execution of any power of attorney, transfer, conveyance, assignment or assurance of any property or rights whether to the Security Trustee or any representative of the Security Trustee, and (ii) the giving of any notice, order or direction and the making of any registration which is in the opinion of the Security Trustee necessary or desirable

## **7. EVENTS OF DEFAULT AND POWER OF SALE**

### **7.1 Enforcement**

The power of enforcement in respect of the Jersey Security Interest will become exercisable if

- (a) an Event of Default is continuing, and
- (b) the Security Trustee has served on the Grantor written notice specifying the Event of Default

### **7.2 Powers**

- (a) Subject to clause (c) below, the Security Trustee may exercise any power of enforcement set out in Article 43 (Enforcement) of the Security Law in relation to all or any part or item of Collateral as many times as the Security Trustee thinks fit, and shall include the power to
  - (i) take possession and assume control of the Collateral or any part of it and otherwise generally appropriate or apply all or any part of the Collateral in such manner and for such consideration (whether payable or deliverable immediately or by instalments or otherwise deferred) as the Security Trustee may in its absolute discretion determine,
  - (ii) sell or agree to sell the Collateral or any part of it on such terms as the Security Trustee thinks fit including
    - (A) by public auction, private treaty or by tender,
    - (B) for cash or on terms that payment of any or all or part of the purchase price is deferred (with interest or not and with or without security),
    - (C) in one lot or in parcels,

- (D) whether or not in conjunction with the sale of other property by the Security Trustee or any other person,
    - (E) with or without special provisions as to title or time or mode of payment of the purchase money, and
    - (F) by sale to the Security Trustee or any representative of the Security Trustee,
  - (iii) grant to any person an option to purchase the Collateral or any part of it upon such terms as the Security Trustee thinks fit,
  - (iv) exchange with any person the Collateral or any part of it for an interest in any property (and the property so acquired may, to the extent it is property capable of being the subject of a Security Interest under the Security Law, be dealt with by the Security Trustee as if it were part of the Collateral) and the Security Trustee may require that a Security Interest is created by the Grantor over any interest in any property so exchanged in favour of the Security Trustee on such terms as are specified by the Security Trustee,
  - (v) carry out and enforce, or refrain from carrying out or enforcing, rights and obligations of the Grantor which may arise in connection with the Collateral or any part of it or which may be obtained or incurred in the exercise of the rights, powers and remedies of the Security Trustee,
  - (vi) institute, conduct, defend, settle, arrange, compromise and submit to arbitration any claims, questions or disputes whatsoever which may arise in respect of any Security Interest created pursuant hereto or in any way relating to this Agreement or the Collateral and execute releases or other discharges in relation thereto, and/or
  - (vii) carry out any method or process by which value is given, allowed or credited by the Security Trustee for the Collateral or any part of it against the Secured Obligations (including by appropriation of the Collateral or any part of it)
- (b) Providing that a Notice of Event of Default has been served, the Security Trustee may exercise its power of appropriation or sale of any Collateral
- (i) not less than 14 days after the Security Trustee serves written notice of appropriation or sale of that Collateral on
    - (A) any person who, 21 days before the appropriation or sale, has a registered security interest under the Security Law in that Collateral, and
    - (B) any person (other than the Grantor) who has an interest in that Collateral and has, not less than 21 days before the appropriation or sale, given the Security Trustee notice of that interest, or
  - (ii) immediately on or after service of a Notice of Event of Default if
    - (A) no one is entitled to receive notice of appropriation or sale of that Collateral under paragraph (i) above or every person entitled to such notice has waived that right in writing,
    - (B) the Collateral to be sold is a quoted investment security,

- (C) the Security Trustee believes on reasonable grounds that the Collateral to be sold will decline substantially in value if it is not disposed of within 14 days after the relevant Event of Default, or
  - (D) a Jersey court orders that a notice of sale need not be given
- (c) Within 14 days after the day on which any Collateral is appropriated or sold, the Security Trustee must give a written statement of account, prepared in accordance with Article 48 (Security Trustee to give statement of account to grantor and others) of the Security Law, to the Grantor and any other person entitled to receive it
- (d) All moneys or value received or recovered by the Security Trustee after the power of enforcement has become exercisable must be applied by it in the following order or priority
  - (i) in paying or providing for all costs incurred by the Security Trustee or its representatives under, or in connection with, this Agreement,
  - (ii) in or towards payment of all Secured Obligations, and
  - (iii) in payment of any surplus to the Grantor or any other person entitled to it,
 subject always to the payment of any claim having priority over the Jersey Security Interest
- (e) The Security Trustee may, if it thinks fit, pay any surplus referred to in clause 7 2(d)(d)(iii) above into court
- (f) To the extent permitted by law, neither the Security Trustee nor any representative will be liable for any
  - (i) conduct, delay, negligence or breach of duty in the exercise or non-exercise of any right or the performance of any obligation or duty under this Agreement or provided by law, or
  - (ii) loss that results from anything referred to in clause 7 2(f)(i),
 unless it arises from the Security Trustee's deliberate misconduct or deliberate default
- (g) To the extent permitted by law, in exercising the power of enforcement, the Security Trustee will not become liable to pay or discharge the liabilities or obligations of the Grantor in relation to any Collateral (for which the Grantor will remain liable)
- (h) The Security Trustee is not obliged to marshal, enforce, apply, appropriate, recover or exercise any security, guarantee or other right held by it, or any moneys or property that it holds or is entitled to receive, before the power of enforcement is exercised
- (i) The Security Trustee will be accountable (and the Grantor is entitled to be credited) only for actual value or proceeds realised by the Security Trustee arising from the appropriation, sale or other realisation of any Collateral by the Security Trustee
- (j) If the value or proceeds of the appropriation, sale or other realisation of any Collateral are insufficient to discharge the Secured Obligations in full, the Grantor will remain liable to the Security Trustee for any shortfall.
- (k) In addition to the powers specified in this clause 7 2(a) above, the Security Trustee may

- (i) redeem any prior Security Interest in any Collateral,
  - (ii) procure the transfer of that Security Interest to itself, and/or
  - (iii) settle and approve the accounts of the holder of that Security Interest and any accounts so settled and approved will be, in the absence of manifest error, conclusive and binding on the Grantor
- (l) All sums paid by the Security Trustee to redeem or transfer a prior Security Interest will
- (i) be owed by the Grantor to the Security Trustee,
  - (ii) be repayable on demand,
  - (iii) bear interest at the Default Rate, and
  - (iv) form part of the Secured Obligations
- (m) To the fullest extent permitted by Jersey law, the Security Trustee shall incur no liability whatsoever for any loss arising out of an exercise of the power of sale or enforcement pursuant to this Agreement (whether or not the Grantor or any other person would have benefited from a deferral or advancement of the date of sale)
- (n) In the event that at the time the Security Trustee exercises a power of sale or of appropriation and the Secured Obligations are for any reason contingent, the Security Trustee may pay the proceeds into a suspense account as a continuing security for the Secured Obligations and the Grantor hereby expressly consents to this

## **8. POWER OF ATTORNEY**

### **8.1 Power**

For the purpose of facilitating the exercise of the powers of the Security Trustee under the Security Law or this Agreement the Grantor irrevocably appoints the Security Trustee to be its attorney and on its behalf and in its name or otherwise to execute and do all such acts, deeds and things which the Grantor is obliged to take under this Agreement and generally, on its behalf and in its name, to exercise all or any of the powers, authorities and discretions conferred by or pursuant to this Agreement on the Security Trustee provided that the Security Trustee may not exercise (or purport to exercise) such powers, rights or authorities prior to the occurrence of any Event of Default which is continuing unless the Grantor has failed to do such act, deed or thing during the relevant time period for such action and the Security Trustee has notified the Grantor

### **8.2 General**

- (a) The power of attorney granted by this clause 8 shall take effect upon this Agreement being executed by or on behalf of the Grantor and the Grantor ratifies and confirms and agrees to ratify and confirm whatever may lawfully be done by the Security Trustee in exercising any power granted to it by this clause 8
- (b) The power of attorney granted by this clause 8 is given to the Security Trustee and its representatives and any other person deriving rights under it and the Security Trustee and each such person has a right to appoint substitutes



**9 GENERAL**

**9.1 Delegation by Security Trustee**

The Security Trustee may delegate by power of attorney or in any other manner any or all of the rights, powers and discretions exercisable by it under this Agreement in such manner upon such terms (including the power to sub-delegate) and to such persons as the Security Trustee may in its discretion think fit. The Security Trustee will not be in any way liable or responsible to the Grantor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

**9.2 Exercise of rights, etc.**

Every right, benefit, power, discretion, authority and remedy given to or vested in the Security Trustee by or pursuant to this Agreement shall be

- (a) in addition to and not a limitation of any and every other right, benefit, power, discretion, authority and remedy given to or vested in the Security Trustee by or pursuant to this Agreement or any Finance Document, and
- (b) exercisable from time to time and at any time and in any circumstances and without waiving or releasing any other right, benefit, power, discretion, authority or remedy and as often as the Security Trustee may in its discretion deem expedient,

and the Security Trustee shall without prejudice to its other rights and powers under this Agreement be entitled (but not bound) at any time and as often as may be necessary to take any such action as it may in its discretion think fit for the purpose of protecting the Security Interests created pursuant to this Agreement.

**9.3 Further advances, etc.**

The Jersey Security Interest and Secured Obligations will extend to and include

- (a) any further advances made under any Finance Document,
- (b) any liabilities and obligations pursuant to any Finance Document notwithstanding any transfer or amendment thereof, and
- (c) to the extent permitted by law, all debts and liabilities of the Grantor transferred by a third party to the Security Trustee.

**9.4 Rights cumulative**

- (a) The rights of the Security Trustee and any representative under this Agreement
  - (i) may be exercised as often as it thinks fit,
  - (ii) are cumulative and not exclusive of its rights provided by law, and
  - (iii) may be waived only in writing and expressly
- (b) Any delay in exercising, or the non-exercise of, any right is not a waiver of that right
- (c) Any single or partial exercise of any right does not prevent any other exercise of that or any other right.

**9 5 No obligation to fulfil Grantor's obligations, enquire, claim or collect**

The Security Trustee is not obliged to fulfil any obligation of the Grantor or to make any payment in respect of the Collateral or any part of it, or to make any enquiry as to the nature or sufficiency of any payment received by the Security Trustee or the Grantor in respect of the Collateral, or to present or file any claim or take any other action to collect or enforce the payment of any amount in respect of the Collateral to which the Security Trustee or the Grantor may be entitled under this Agreement or otherwise

**9 6 Discretion to fulfil Grantor's obligations**

The Security Trustee may elect to satisfy obligations or liabilities of the Grantor and any obligation or liability so satisfied shall be an obligation or liability (as the case may be) owing by the Grantor to the Security Trustee and shall be satisfied on demand, and where the Security Trustee has paid money to satisfy such an obligation or liability shall be repaid together with interest at the Default Rate from the date of such payment by the Security Trustee and pending such reimbursement shall form part of the Secured Obligations

**9 7 Certificate shall be prima facie evidence**

Any certificate submitted by the Security Trustee to the Grantor as to the amount of the Secured Obligations or any part of them shall be in the absence of manifest error conclusive evidence of the matters to which it relates

**9 8 Change in constitution of Security Trustee**

The rights, benefits, powers, discretion, authorities and remedies of the Security Trustee under or pursuant to this Agreement shall remain valid and binding for all purposes notwithstanding any change which may be made (whether by amalgamation, consolidation, merger, universal succession or otherwise) in the constitution of the entity by which the business of the Security Trustee may from time to time be carried on and shall be available to the entity carrying on that business for the time being

**9 9 Currency conversion**

The Security Trustee may convert any moneys received, recovered or realised by the Security Trustee in connection with this Agreement from their existing currency of denomination into such other currency of denomination as the Security Trustee may in its discretion think fit and any such conversion shall be effected at the Security Trustee's then prevailing spot selling rate of exchange for such other currency against the existing currency, or if there is no such rate at such other rate as the Security Trustee shall in its discretion consider appropriate and any costs or commissions for, or charges payable in respect of, such conversion shall form part of the Secured Obligations

**9 10 Grantor waivers**

The Grantor irrevocably and unconditionally waives its right to

- (a) receive a copy of any verification statement relating to the Jersey Security Interest,
- (b) receive notice of appropriation or sale of any Collateral, and
- (c) reinstate this Agreement pursuant to Article 54 (Entitled persons may redeem collateral, grantor may reinstate agreement) of the Security Law

**9 11 Confidential Information**

If confidential information forms part of the Collateral, the Grantor must use reasonable endeavours to procure the consent of any person that may be required to transfer title to and possession of, that confidential information to the Security Trustee or its transferee

**9 12 Withholding**

All payments to be made by the Grantor under this Agreement must be made without any withholding, set off or cross-claim or other deduction of any kind

**9 13 Grossing up**

If the Grantor is required by any applicable law to deduct any amount (whether on account of tax or otherwise) from any payment under this Agreement, it must pay any additional amount that is necessary to ensure that the Security Trustee receives an amount equal to the original payment before any deduction

**9 14 No enquiry by person dealing with Security Trustee**

No person (including a purchaser) dealing with the Security Trustee or a representative of the Security Trustee shall be concerned to enquire (whether upon the exercise of any power granted by clause 7 or otherwise)

- (a) whether or not an Event of Default is continuing,
- (b) whether the Secured Obligations have become due or payable,
- (c) whether any power which any of them is purporting to exercise has become exercisable,
- (d) as to the propriety or regularity of any action of any of them, or
- (e) how any money paid to the Security Trustee is to be applied

**9 15 Severability**

If at any time one or more provisions of this Agreement becomes invalid, illegal or unenforceable that will not affect the legality, validity or enforceability of any other provision of this Agreement

**9 16 Variations in writing**

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Agreement

**9 17 Possession of Certificates of Title deemed pursuant to this Agreement**

If the Security Trustee takes possession of any Certificate of Title to the Collateral before the execution of this Agreement, such possession shall be deemed to be pursuant to this Agreement

**9 18 Security Trustee holds on trust**

The Security Trustee holds the benefit of this Agreement on trust for the Secured Parties on the terms set out in the Facility Agreement

**10. PRESERVATION OF SECURITY, ETC.**

**10 1 Continuing and independent security**

- (a) The Jersey Security Interests are a continuing security and will extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge in whole or in part
- (b) While all or part of a payment made or other value given by the Grantor or a surety to the Security Trustee is liable to avoidance
  - (i) it shall not be effective to extinguish or reduce the Secured Obligations, and
  - (ii) the Grantor must not serve a demand for the discharge of a registration of a financing statement made by the Security Trustee under or in connection with this Agreement
- (c) The Jersey Security Interests in respect of each of the relevant property comprising the Collateral from time to time shall be deemed to be separate and independent and the invalidity or failure of this Agreement to take full effect in respect of any part of the Collateral for any reason whatsoever shall not affect the validity hereof in relation to all other such Collateral

#### **10 2 Reinstatement**

If any discharge (whether in respect of the Secured Obligations or any security for the Secured Obligations or otherwise) is made in whole or in part, or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on bankruptcy, insolvency, liquidation or otherwise without limitation, the obligations and liabilities of the Grantor under this Agreement shall continue as if the discharge or arrangement had not occurred

#### **10 3 Waiver of defences**

The obligations of the Grantor under this Agreement will not be affected by any act, omission, matter or thing which but for this provision would reduce, release or prejudice any obligation or liability of the Grantor under this Agreement (whether or not known to it), including

- (a) any time, waiver, concession or indulgence granted to any person,
- (b) the release of any person under the terms of any composition or arrangement,
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against or security over assets of any person,
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security,
- (e) any incapacity or lack of power, authority or legal personality of or winding-up or change in the members or status of any person,
- (f) any amendment of any Finance Document or any other document or security;
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security, and
- (h) any bankruptcy proceedings

#### **10 4 Grantor intent**

Without prejudice to the generality of clauses 10.3 and 10.5 the Grantor expressly confirms that it intends that the Jersey Security Interests and its obligations under this Agreement shall extend from time to time to any (however fundamental and of whatsoever nature and whether or not more onerous) transfer, variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection, without limitation, with any of the following

- (a) business acquisitions of any nature,
- (b) increasing working capital,
- (c) enabling investor distributions to be made,
- (d) carrying out restructurings,
- (e) refinancing existing facilities,
- (f) refinancing any other indebtedness,
- (g) making facilities available to new borrowers,
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time, and
- (i) any fees, costs and/or expenses associated with any of the foregoing

#### **10.5 Immediate recourse**

The Security Trustee is not obliged, before exercising any of the rights, powers or remedies conferred upon it pursuant to this Agreement or by law

- (a) save as required by the Security Law, to make any demand of any person,
- (b) to take any action or obtain judgment in any court against any person,
- (c) to make or file any claim or proof in a bankruptcy, winding-up or dissolution of any person, or
- (d) to enforce or seek to enforce any security taken in respect of or pursuant to any Finance Document or any other document or arrangement relating to the Secured Obligations

#### **10.6 Specific waiver of customary law rights**

Without prejudice to the generality of any waiver granted in any Finance Document, the Grantor irrevocably and unconditionally abandons and waives any right or rights it may have at any time under the existing or future laws of Jersey by virtue of the *droit de discussion* or the *droit de division*

#### **10.7 Appropriations**

The Security Trustee or any representative of the Security Trustee may at any time during the Security Period without affecting the obligations and liabilities of the Grantor under this Agreement

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by or on behalf of such person in respect of those amounts or apply and/or enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise), and

- (b) hold in a suspense account any moneys received from the Grantor or on account of the Secured Obligations

#### **10 8 Non-competition**

Unless all amounts which are or may become payable to the Security Trustee under or in connection with any Finance Document have been irrevocably paid in full, the Grantor shall not (unless the Security Trustee otherwise directs the Grantor in writing) at any time during the Security Period after any claim has been made under this Agreement or by virtue of any payment or performance by it under this Agreement

- (a) be subrogated to any rights, security or moneys held, received or receivable by the Security Trustee or any representative of the Security Trustee,
- (b) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Secured Obligations,
- (c) claim, rank, prove or vote as a creditor of any person or any person's estate in competition with the Security Trustee or any representative of the Security Trustee, or
- (d) receive, claim or have the benefit of any payment, distribution or security from or on account of a debtor of the Security Trustee, or exercise any right of set-off as against a debtor of the Security Trustee

#### **10 9 Turnover**

Without prejudice to clause 10 8, the Grantor shall hold on trust for and forthwith pay or transfer to the Security Trustee, any payment or distribution or benefit received by it and a sum equal to any right of set-off exercised by it, which is contrary to clause 10 8

#### **10 10 Additional security**

The Jersey Security Interests are in addition to and are not in any way prejudiced by any other Security interest for any of the Secured Obligations now or subsequently held by the Security Trustee or any representative of the Security Trustee

### **11. SET-OFF**

#### **11 1 Event of Default**

The Security Trustee may at any time while an Event of Default is continuing (and notwithstanding any settlement of account or any other matter)

- (a) combine or consolidate any or all of its then existing accounts with the Grantor wherever they may be situate (including accounts in the name of the Grantor jointly with others) whether such accounts are current, deposit, loan or of any other nature, whether they are subject to notice or not and whether they are denominated in sterling or in any other currency,
- (b) set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any or all of the Secured Obligations which to the extent not then payable shall automatically become payable to the extent necessary to effect such set-off,

- (c) without prejudice to clause 9.9, the Security Trustee is authorised to purchase with the moneys standing to the credit of any such account such other currencies as may be necessary to give full effect to this clause, and
- (d) where any obligation of the Grantor under any Finance Document is a contingent obligation, withhold payment of any sum owed by the Security Trustee to the Grantor until the contingent obligation becomes a mature obligation or ceases to exist

## **12. ASSIGNMENT**

### **12.1 Assignment – Security Trustee**

- (a) The Security Trustee may at its discretion assign or grant a participation in any or all of the benefit of this Agreement and/or the Jersey Security Interests or any of them and shall be entitled to impart any information regarding the Grantor to any assignee or taker of a sub-participation as it thinks fit
- (b) To the extent permitted by law, on a transfer under clause 12.1(a), any debts and liabilities owed by the Grantor to the transferee incurred before or after the transfer will form part of the Secured Obligations

### **12.2 Assignment – Grantor**

The Grantor shall not assign, novate or transfer any or all of its rights, benefits and/or obligations under this Agreement without the prior written consent of the Security Trustee

### **12.3 Financing change statement**

If all or part of the Jersey Security Interest is transferred, the Security Trustee or its representative may register a financing change statement to reflect the transfer without any consent of the Grantor

## **13. ENFORCEMENT COSTS AND INDEMNITIES**

### **13.1 Enforcement costs**

The Grantor undertakes to pay within three business days of demand all costs and expenses (including legal fees) incurred in connection with

- (a) the creation or perfection of the security intended to be created by this Agreement,
- (b) the protection, preservation, enforcement or attempted protection, preservation or enforcement of any of the Security Trustee's rights under this Agreement,
- (c) the exercise, or attempted exercise, of any right under this Agreement,
- (d) the conversion of an amount denominated in one currency into another,
- (e) the breach by the Grantor of any of its obligations under this Agreement,
- (f) any proceedings to recover the Secured Obligations, or
- (g) the valuation of any Collateral while an Event of Default is continuing,

on a full indemnity basis together with interest at the Default Rate from the due date for payment of such costs and expenses until the date of payment by the Grantor (both before and after judgment)

### 13.2 Indemnities

The Grantor undertakes to pay within three business days of demand (and to keep the Security Trustee, each representative of the Security Trustee and each other attorney (or substitute attorney), employee, officer and shareholder of any of them (each an "Indemnified Party") at all times fully indemnified against) all costs, losses, actions, claims, expenses, demands or liabilities (together, the "Losses"), whether arising in contract, tort or otherwise, which may be incurred by, or made against, any Indemnified Party (or against any person in whatever capacity for whose liabilities, acts or omissions any Indemnified Party may be liable) at any time relating to or arising directly or indirectly out of or as a consequence of

- (a) the Security Trustee or any representative of the Security Trustee having possession or control of, or title to, the Collateral or any part of it,
- (b) the performance of any function in relation to or the taking of any steps to create, perfect or administer the Jersey Security Interests or any of them,
- (c) the preservation, defence or enforcement or attempted enforcement of any rights of the Security Trustee under this Agreement,
- (d) the breach by the Grantor of any of its obligations under this Agreement, or
- (e) anything done or not done by the Security Trustee under or pursuant to the power of attorney granted under clause 8, save for any Losses arising as a result of the fraud, wilful misconduct or gross negligence of the Security Trustee or any representative of the Security Trustee

### 14 RELEASE

Upon the expiry of the Security Period, the Security Trustee shall at the request and cost of the Grantor take the action necessary to release and discharge this Agreement and release the Collateral from the Jersey Security Interests, including

- (a) deliver back to the Grantor all Certificates of Title delivered by or on behalf of the Grantor to the Security Trustee pursuant to this Agreement and which are then in the Security Trustee's possession, and/or
- (b) file a financing change statement to reflect the release of the security interest constituted pursuant to this Agreement

If the Grantor is comprised of more than one person, the Security Trustee may release or discharge any one of them from this Agreement without affecting the obligations of any other of them or releasing or discharging any other of them

### 15. NOTICES

15.1 The provisions of clause 35 (*Notices*) of the Facility Agreement shall apply, *mutatis mutandis*, to this Agreement

### 15.2 Change demands, etc

Any

- (a) demand served by the Grantor under Article 75 (Demand for registration of financing change statement) of the Security Law, or



- (b) notice of objection served by the Security Trustee under Article 76 (Procedure where no compliance with demand) of the Security Law,

by way of the Jersey Security Interests Register will be taken as given by email (whether or not it is sent by the Registrar to the same email address of the recipient as is specified in this Agreement)

#### **16. ENTIRE AGREEMENT**

This Agreement, together with the Facility Agreement and the Finance Documents, constitutes the entire agreement between the Grantor and the Security Trustee and supersedes all previous drafts, agreements, arrangements and understandings between them, whether oral or written

#### **17. PROCESS AGENT**

If the Security Trustee is or will be unable to effect valid service of process on the Grantor in Jersey, the Grantor

- (a) must
  - (i) irrevocably appoint a process agent acceptable to the Security Trustee for service of any proceedings before the Jersey courts in connection with this Agreement, and
  - (ii) deliver to the Security Trustee a copy of the process agent's acceptance of that appointment,
- (b) agrees that, if a process agent is not appointed under clause 17(a), the Security Trustee may at the cost of the Grantor appoint a process agent on the Grantor's behalf,
- (c) agrees that, if a process agent appointed under clause 17(a) ceases to act in that capacity or no longer has an address in Jersey, the Grantor must
  - (i) appoint a substitute process agent acceptable to the Security Trustee within five business days; and
  - (ii) deliver to the Security Trustee a copy of the new process agent's acceptance of that appointment and failing this, the Security Trustee may at the cost of the Grantor appoint another agent on the Grantor's behalf, and
- (d) agrees that the failure by a process agent to notify it of any proceedings will not invalidate those proceedings

#### **18. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and this shall have the same effect as if the signatures on the counterparts were on a single copy of this Agreement

#### **19. JURISDICTION AND WAIVER OF IMMUNITY**

##### **19.1 Jurisdiction**

- (a) This Agreement shall be governed and construed in accordance with Jersey law and the Grantor irrevocably submits to the non-exclusive jurisdiction of the Jersey courts in connection with this Agreement

- (b) Subject to any applicable law, nothing contained in this clause 19 shall limit the right of the Security Trustee to institute proceedings against the Grantor in any other court of competent jurisdiction nor shall the institution of proceedings in one or more jurisdictions preclude the institution of proceedings in any other jurisdiction whether concurrently or not.
- (c) The Grantor irrevocably and unconditionally waives any
  - (i) objection which it may have now or at any time to the commencement of any proceedings in any such court as is referred to in this clause 19, and
  - (ii) claim that any such proceedings have been commenced in an inconvenient forum
- (d) The Grantor unconditionally agrees that a judgment in any proceedings brought in any such court as is referred to in this clause 19 shall be conclusive and binding upon the Grantor and may be enforced in the court of any other jurisdiction

## **19.2 Waiver of Immunity**

The Grantor irrevocably and unconditionally



- (a) agrees not to claim any immunity from proceedings brought by the Security Trustee against it in connection with this Agreement and to ensure that no such claim is made on its behalf,
- (b) consents generally to the giving of any relief or the issue of any process in connection with such proceedings, and
- (c) waives all rights of immunity in respect of it or its assets

**SIGNATORIES**

The parties to this Agreement have caused it to be duly executed on the date stated at the beginning of this Agreement

**GRANTOR**

**SIGNED by**  
for and on behalf of  
**AUSTIN REED GROUP LIMITED**

)   
) \_\_\_\_\_  
) Duly Authorised Signatory  
)  
) Name.   
)  
) Title Director  
)  
)

**SECURITY TRUSTEE**

**SIGNED by**  
for and on behalf of  
**BURDALE FINANCIAL LIMITED**

) \_\_\_\_\_  
) Duly Authorised Signatory  
)  
) Name \_\_\_\_\_  
)  
) Title \_\_\_\_\_  
)  
)

## SIGNATORIES

The parties to this Agreement have caused it to be duly executed on the date stated at the beginning of this Agreement



### GRANTOR

SIGNED by  
for and on behalf of  
AUSTIN REED GROUP LIMITED

)  
) \_\_\_\_\_  
) Duly Authorised Signatory  
)  
) Name \_\_\_\_\_  
)  
) Title Director \_\_\_\_\_  
)

### SECURITY TRUSTEE

SIGNED by  
for and on behalf of  
BURDALE FINANCIAL LIMITED

)  
)  \_\_\_\_\_  
) Duly Authorised Signatory  
)  
) Name  \_\_\_\_\_  
)  
) Title Director \_\_\_\_\_  
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