



Registration of a Charge

Company name: **DITCHLEY FOUNDATION(THE)**

Company number: **00599389**



X8ZGM0R6

Received for Electronic Filing: **24/02/2020**

Details of Charge

Date of creation: **21/02/2020**

Charge code: **0059 9389 0002**

Persons entitled: **UNION BANCAIRE PRIVEE, UBP SA**

Brief description: **ALL OF THE COMPANY'S RIGHTS, TITLE, INTEREST AND BENEFIT, PRESENT AND FUTURE, IN, TO AND UNDER THE CHARGED PROPERTY WHICH MEANS THE FOLLOWING ASSETS: (A) ALL CUSTODIAL ASSETS TOGETHER WITH ANY RELATED INTEREST, DIVIDENDS, ANY OTHER DISTRIBUTIONS, RIGHTS AND ENTITLEMENTS AND ANY OTHER BENEFITS OR ASSETS DERIVED FROM SUCH ASSETS, (B) ALL DEPOSITS AND (C) ALL PROCEEDS OF SALE OF ANY OF THE FOREGOING. PLEASE REFER TO THE INSTRUMENT FOR MORE INFORMATION.**

Contains floating charge(s) .

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **AARON DANELIAN FOR AND ON BEHALF OF WOMBLE BOND DICKINSON (UK) LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 599389

Charge code: 0059 9389 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st February 2020 and created by DITCHLEY FOUNDATION(THE) was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th February 2020 .

Given at Companies House, Cardiff on 25th February 2020

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

**SECURITY DEED
(CHARITY)**

THIS SECURITY DEED is dated 21/02/2020 and is made as a deed between:

PARTIES:

- (1) **CHARITABLE COMPANY** The Ditchley Foundation a company incorporated in United Kingdom whose registered office is at Ditchley Park, Enstone, Chipping Norton, Oxfordshire OX7 4ER (the "Client"); and
- (2) **UNION BANCAIRE PRIVEE, UBP SA** of Seymour Mews House, 26 – 37 Seymour Mews, London, W1H 6BN, United Kingdom acting through any of its branches, including without limitation its head office in Geneva (the "Bank").

NOW THIS DEED WITNESSES as follows:

1. Covenant to discharge Secured Liabilities

The Client covenants with the Bank that it will pay and discharge to the Bank the Secured Liabilities at the time or times when, in the manner in which and in the currencies in which, they are expressed to be due and payable.

2. Security

The Client with full title guarantee and free from any other security interest, hereby charges by way of first fixed charge to the Bank, as continuing security for the full and punctual payment or discharge of the Secured Liabilities, all of its rights, title, interest and benefit, present and future, in, to and under the Charged Property.

3. Perfection of security

The Client shall, if requested by the Bank, promptly deliver to the Bank:

- (A) all certificates, documents of title and other documentary evidence of ownership in relation to the Charged Investments;

- (B) transfers of the Charged Investments duly executed by it or its nominee with the name of the transferee left blank or, if the Bank so requires, in favour of the Bank or its nominee and duly stamped; and

- (C) all other documents the Bank may require to enable the Bank (or its nominee, sub-custodian or agent) to be registered as owner or otherwise entitled to the Charged Investments.

4. Continuing security

- 4.1** The security created by this Deed shall be a continuing security and will extend to the ultimate balance of all the Secured Liabilities regardless of any intermediate discharge or payment in whole or in part and notwithstanding any settlement of account or the existence at any time of a credit balance on any current or other account or any other act.

- 4.2** The covenants and provisions of this Deed shall remain in force from the date of this Deed for so long as any of the Secured Liabilities are outstanding or any security interest created under this Deed has not been released or discharged.

- 4.3 The security created by this Deed is intended to secure any further advances. Secured Liabilities then due and payable.
5. **Additional security**
- The security created by this Deed and the rights of the Bank under this Deed shall be in addition to, and shall not prejudice or be prejudiced by, any other security or guarantee or any other right which the Bank has in respect of or in connection with any or all of the Secured Liabilities. All such rights may be exercised from time to time as often as the Bank may deem expedient.
- 7.3 The provisions of this Deed shall apply notwithstanding that the Deposit or any part of it may have been made or deposited for a fixed period and that period may not have expired.
- 7.4 The Client undertakes to pay such further sums to the Bank (for credit to the Account or, if there is more than one Account, the Account specified by the Bank) as the Bank may from time to time require in relation to the Secured Liabilities forthwith upon demand by the Bank. Such additional sums shall form part of the Deposit for the purposes of this Deed.
6. **Immediate recourse**
- The Bank need not, before exercising any of the rights, title, benefit and interest conferred upon it by this Deed or by law, (i) take action or obtain judgment against the Client or any other person in any court, (ii) make or file any claim or proof in the liquidation of the Client or any other person, (iii) enforce or seek to enforce the recovery of the moneys and liabilities hereby secured, or (iv) enforce or seek to enforce any other security interest or guarantee.
- 7.5 The Client understands that on receipt of any part of the Deposit the Bank may issue a confirmation which may, at its discretion, bear the legend "Non-Assignable" and which may have added to it words to the effect that the Deposit is subject to the terms and conditions set out in this Deed.
8. **New account**
7. **Account terms**
- At any time after:
- 7.1 The Client shall not at any time be entitled to, or agree or seek to, withdraw or require the repayment of, and the Bank shall be under no obligation to repay, all or any part of the Deposit from any of the Accounts, until all Secured Liabilities have been unconditionally and irrevocably paid or discharged in full.
- (A) the Bank receives, or is deemed to be affected by, notice (either actual or constructive) of any subsequent security interest or any disposition affecting the Deposit, or part thereof or interest therein; or
- 7.2 The Bank is hereby irrevocably and unconditionally authorised, without prior notice to the Client, at any time or times without restriction to set-off the whole or any part of the Deposit, (whether or not then payable) against any or all of the
- (B) the commencement of the Dissolution of the Client,
- the Bank may open a new account in the name of the Client (whether or not it permits any existing account to continue). If the Bank does not open

such a new account, it shall nevertheless be treated as if it had done so at the time when the notice was received or was deemed to have been received or, as the case may be, the Dissolution commenced. As from that time, all payments made by the Client to the Bank or received by the Bank for the account of the Client shall be credited or treated as having been credited to the new account and will not operate to reduce the amount secured by this Deed at any time.

9. Waiver of defences

9.1 Without prejudice to the provisions of this Deed, neither this Deed nor the security created under this Deed nor the liability of the Client for the Secured Liabilities shall be prejudiced or affected by:

(A) any variation or amendment of, or waiver or release granted under or in connection with any other security or any guarantee or indemnity or other document;

(B) any time or waiver granted, or any other indulgence or concession granted, by the Bank to the Client or any other person;

(C) the taking, holding, failure to take or hold, varying, realisation, non-enforcement, non-perfection or release by the Bank or any other person of any other security or any guarantee or indemnity or other document;

(D) the insolvency, administration, reorganisation, liquidation or Dissolution of, or any analogous proceedings in

respect of, the Client or any other person;

(E) any change in the constitution of the Client;

(F) any amalgamation, merger or reconstruction that may be effected by the Bank with any other person, including any reconstruction by the Bank involving the formation of a new company and the transfer of all or any of its assets to that company, or any sale or transfer of the whole or any part of the undertaking and assets of the Bank to any other person;

(G) the existence of any claim, set-off or other right which the Client may have at any time against the Bank or any other person;

(H) the making or absence of any demand for payment or discharge of any Secured Liabilities on the Client or any other person, whether by the Bank or any other person;

(I) any arrangement or compromise entered into by the Bank with the Client or any other person; or

(J) any other thing done or omitted or neglected to be done by the Bank or any other person or any other dealing, fact, matter or thing which, but for this provision, might operate to prejudice or affect any of the security interests created under this Deed or the liability of the Client for the Secured Liabilities.

- 9.2** No delay or omission by the Bank in exercising any right, power or remedy provided by law or under this Deed shall impair, affect, or operate as a waiver of, that or any other right, power or remedy. The single or partial exercise by the Bank of any right, power or remedy shall not preclude or prejudice any other or further exercise of that, or the exercise of any other, right, power or remedy. The rights of the Bank under this Deed are in addition to and do not affect any other rights available to it by law.

10. Further assurance

In addition and without prejudice to any other provision of this Deed, the Client shall, at the request of the Bank but at its own cost, promptly take whatever action the Bank may from time to time require:

- (A) to ensure that the security intended to be created by this Deed is and remains valid, legally binding and enforceable;
- (B) to perfect, preserve or protect the security interests created or intended to be created under this Deed; and
- (C) to facilitate the exercise of any and all of the rights vested or intended to be vested in the Bank or any Receiver by or pursuant to this Deed and to facilitate the realisation of the Charged Property,

and for such purposes it shall in particular, but without limitation, execute all such documents, transfers, conveyances, assignments and assurances in respect of the Charged Property and give all such notices, orders, instructions and directions as the Bank may require.

11. Exercise of rights

- 11.1** The charge on the terms set out in clause 2 constitutes and effects an immediate and full charge of the Charged Property, and shall be effective, and the security intended to be created by this Deed shall be constituted, immediately upon its execution.

- 11.2** Notwithstanding but without prejudice to clause 11.1 above, the Bank agrees that, subject to clause 11.3 below, the Client shall, until the security created by this Deed shall become enforceable, continue to be entitled to receive payments and to exercise all of the rights, powers, discretions, claims and remedies which would (but for this Deed) be vested in the Client under and in respect of the Charged Property unless and except to the extent that the Bank requires otherwise.

- 11.3** Nothing in this clause 11 limits or affects the rights of the Bank under clause 13.

12. Representations and covenants

- 12.1** The Client represents on the date of this Deed that:

- (A) it is and will remain the sole legal and beneficial owner of the Charged Property free from all security interests, encumbrances, trusts, equities and claims whatsoever other than as contemplated by this Deed;
- (B) no security interest exists on, over, or with respect to any of the Charged Property at the date of this Deed;
- (C) **APPLICABLE FOR INCORPORATED CHARITIES ONLY** it has been duly

- incorporated under the laws of its jurisdiction of incorporation;
- (D) all authorisations required or desirable:
- (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed;
 - (ii) to permit the creation of security and ensure that (subject to all registrations required by law) the security created under this Deed is legal, valid and binding and enforceable security having the priority and ranking it is expressed to have; and
 - (iii) to make this Deed admissible in evidence in the courts of England and the Client's jurisdiction of incorporation,
- have been obtained or effected and are in full force and effect;
- (E) there has been no Dissolution in relation to the Client nor any application made or petition presented or other steps taken or threatened for the Dissolution of the Client or the opening of any insolvency proceedings against it;
- (F) it has all requisite powers under its governing document or otherwise by operation of law to enter into this Deed and all other arrangements contemplated herein; and
- (G) its financial condition is in good order and it is not insolvent or unable to pay its debts nor will it become so as a consequence of entering into this Deed and there are no reasons existing or likely to occur whatsoever which may cause it to become insolvent under any insolvency laws that may be applicable to it.
- 12.2** Each of the representations and covenants above will be correct and complied with in all respect at all times during the continuance of the security created under this Deed as if repeated then by reference to the then existing circumstances.
- 12.3** The Client covenants with the Bank that from the date of this Deed for so long as any of the Secured Liabilities are outstanding or any security interest created under this Deed has not been released or discharged:
- (A) it shall not create or permit to subsist any security interest over any of the Charged Property or any of its other assets, without the prior written consent of the Bank save for the security interests created by or pursuant to this Deed;
 - (B) it shall not without the prior written consent of the Bank enter into any transaction or series of transactions (whether related or not) and whether voluntary or involuntary to sell,

transfer, assign, lease, license or otherwise dispose of any interest in the Charged Property or any of its other assets;

required to be paid and other liabilities that may be sustained, incurred or made against the Bank in respect of the Charged Property;

(C) it shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any authorisation required under any law or regulation of its jurisdiction of incorporation or establishment to enable it to create security and perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence in the courts of England and the Client's jurisdiction of incorporation or establishment of this Deed and the security created under this Deed;

(G) it shall not amend, modify, give waivers, terminate or suspend any provision of or performance of any obligation under any document relating to the Charged Property unless it has the prior written consent of the Bank; and

(H) it shall notify the Bank immediately on the occurrence of any Enforcement Event.

(D) it shall comply in all respects with all laws and regulations to which it may be subject, if failure so to comply would materially impair the security created under or evidenced by this Deed or its ability to perform its obligations under this Deed;

12.4 The Client hereby agrees to ensure that the value of Charged Property at all times exceeds the value of Secured Liabilities from time to time by an amount which the Bank may specify from time to time (the "Margin"). The Client hereby agrees that if the value of the Charged Property falls below what is required to maintain the Margin, the Client shall immediately deposit further assets with the Bank, which shall become Charged Property in accordance with clause 2 of this Deed, so that the value of Charged Property is sufficient to maintain the Margin.

(E) it shall remain liable to observe and perform all of the obligations and liabilities assumed by it under or in respect of the Charged Property to the same extent as if the security interests under this Deed had not been created;

13. Enforcement

(F) it shall duly and promptly pay, and indemnify the Bank against all calls and other moneys which may lawfully be

13.1 Security enforceable

Immediately upon and at any time after the occurrence of an Enforcement Event, the security created by this Deed shall become enforceable and the Bank shall be entitled (whether or not it shall have taken possession or appointed a Receiver) without notice or further demand or prior authorisation from any court to exercise all the rights, powers and remedies possessed by it according

to law as a secured party in respect of the Charged Property in any manner it sees fit and to:

- (i) demand and receive all and any monies due under or arising out of the Charged Property and take such other steps to take possession of, collect and get in the Charged Property;
- (ii) sell or dispose of all or any of the Charged Property in the name of the Bank or its nominee at the times and on the terms it sees fit;
- (iii) exercise in relation to the Charged Property all such rights as the Client was then entitled to exercise in relation to the Charged Property or might, but for the terms of this Deed;
- (iv) apply, set-off, appropriate or transfer any or all of the Charged Property (including the whole or any part of the Deposits (whether or not then payable)) in or towards the payment or other satisfaction of the Secured Liabilities or any part of them; and

- (v) arrange for any of the Charged Investments to be registered in the name of the Bank or its nominee or any purchaser or otherwise take such steps as may be necessary or desirable to ensure that the Bank or its nominee or any purchaser is recorded as entitled to all the Client's rights to and interest in the Charged Investments (whether held in any bank entity, depository, clearance or settlement system or otherwise).

13.2

Application of monies

All monies arising from the exercise of the powers of enforcement under this Deed shall (except as may be otherwise required by applicable law) be held by the Bank and any Receiver and applied in or towards the cost of selling or disposing of the Charged Property and the payment or discharge of such of the Secured Liabilities in such order as the Bank in its absolute discretion may from time to time determine and, after all the Secured Liabilities have been paid or discharged in full, in payment of any surplus to the Client or other person entitled to it, and section 109(8) of the LPA 1925 shall be deemed varied and extended in such respect.

13.3 Power of sale

(A) Notwithstanding any other provisions of this Deed, the Secured Liabilities shall be deemed for the purposes of section 101 of the LPA 1925 to have become due and payable within the meaning of section 101 of the LPA 1925, and the power of sale and other powers conferred on mortgagees by the LPA 1925 as varied or extended by this Deed including the power to appoint a Receiver shall arise, immediately on execution of this Deed.

(B) Section 103 of the LPA 1925 shall not restrict the exercise by the Bank of the statutory power of sale conferred on it by section 101 of the LPA 1925 which power may be exercised by the Bank without notice to the Client on or at any time after the occurrence of an Enforcement Event and the provisions of the LPA 1925 relating to and regulating the exercise of the said power of sale shall, so far as they relate to the Charged Property, be varied and extended accordingly.

(C) Section 109(1) of the LPA 1925 shall not apply to this Deed.

13.4 Consolidation

The Bank shall, so far as it is lawful, be entitled to consolidate all or any of the security created under this Deed with any other securities whether now in existence or hereafter created. The restriction on the right of consolidating

mortgage securities which is contained in sub-section 93(1) of the LPA 1925 shall not apply to this Deed.

13.5 Other rights

At any time after an Enforcement Event has occurred, the Bank shall do all such acts and things it may consider necessary or expedient for the realisation of any of the Charged Property or incidental to the exercise of any of the rights conferred on it under or in connection with this Deed or under applicable law.

13.6 Financial Collateral

To the extent that any of the Charged Property constitutes "financial collateral" and this Deed and the obligations of the Client hereunder constitute a "financial collateral arrangement" (in each case for the purposes of the Financial Collateral Arrangements (No. 2) Regulations (SI 2003/3226) (the "Regulations")) the Bank shall have the benefit of all of the rights of a collateral taker conferred upon it by the Regulations, including, without limitation, the right to appropriate all or any part of such financial collateral (as defined in the Regulations) in or towards discharge of the Secured Liabilities in such manner as the Bank shall (in its absolute discretion) determine.

14. Receivers**14.1 At any time:**

- (A) after any of the security created by this Deed has become enforceable (whether or not the Bank shall have taken possession of the Charged Property); or
- (B) after the making of an application or the presentation

of a petition for an administration order in relation to the Client or the giving or filing by any person of notice in relation to the appointment of an administrator of the Client;

the Bank may, without notice to the Client, appoint under seal or by instrument in writing signed by any officer or other person authorised for such purpose by it, one or more qualified persons to be Receiver or Receivers.

14.2 Any Receiver appointed under this Deed will (subject to any contrary provision specified in his appointment but notwithstanding the liquidation or Dissolution of the Client) have:

- (A) all the rights and powers conferred by the LPA 1925 on mortgagors and on mortgagees in possession and on any receiver appointed under the LPA 1925;
- (B) in addition, all the rights and powers of an administrative receiver set out in Schedule 1 to the Insolvency Act (and whether or not the Receiver is in fact an administrative receiver) and (in the event that the Receiver is an administrative receiver) all the powers exercisable by an administrative receiver by virtue of the provisions of the Insolvency Act; and
- (C) in addition, all the rights and powers expressed to be conferred upon the Bank under clause 13.

15. Third Party liability

15.1 Third parties

No person dealing with the Bank, any Receiver or any delegate shall be bound to enquire (a) whether any Secured Liabilities have become or remain due and payable, or (b) whether any right or power which the Bank or any Receiver or any delegate is purporting to exercise has become exercisable, or (c) whether any consents, regulations, restrictions or directions relating to such rights or powers have been obtained or complied with or otherwise, or (d) into the application of any money borrowed or raised or other proceeds of enforcement.

All the protections given to purchasers from a mortgagee by sections 104 and 107 of the LPA 1925, and to persons dealing with a receiver in section 42(3) of the Insolvency Act or in any other legislation for the time being in force, shall apply equally to any person purchasing from or dealing with the Bank, any Receiver or any delegate.

15.2 Liability

- (A) If the Bank, any Receiver or any delegate shall take possession of the Charged Property, it or he may at any time relinquish such possession.
- (B) The Bank will not in any circumstances (whether by reason of taking possession of the Charged Property or for any other reason whatsoever and whether as mortgagee in possession or on any other basis whatsoever) (i) be liable to account to the Client or any other person for anything, or (ii) be liable to the Client or any other person for any costs, charges, losses, damages, liabilities or expenses arising from or connected with any realisation of the Charged

Property or from any act, neglect, default, omission or misconduct of any nature of the Bank, or any of its officers, employees or agents in relation to the Charged Property, except to the extent that they shall be caused by the fraud or wilful default or gross negligence of the Bank or any Receiver or any of their respective officers, employees or agents. All the provisions of this paragraph (B) shall apply, mutatis mutandis, in respect of the liability of any Receiver or delegate or any officer, employee or agent of the Bank, any Receiver or any delegate.

- (C) The Bank and every Receiver, any delegate, attorney, manager, agent or other person appointed by the Bank under this Deed shall be entitled to be indemnified out of the Charged Property in respect of all liabilities and expenses incurred by any of them in the execution or purported execution of any of its rights and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this Deed or the Charged Property, and the Bank and any such Receiver, delegate, attorney, agent or other person appointed by the Bank under this Deed may retain and pay all sums in respect of them out of any monies received.

16.1 The Client irrevocably and by way of security for the performance of its obligations under this Deed appoints the Bank, every Receiver and every delegate of the Bank severally to be the attorney of the Client on its behalf and in its name or otherwise and as its act and deed, at such time and in such manner as the attorney may think fit:

- (A) to take any action which it is obliged to take under this Deed but has not taken promptly following a request to do so from the Bank or any Receiver; and
- (B) to take whatever action may be required for enabling the Bank and any Receiver to exercise all or any of the rights, powers, authorities and discretions conferred on them by or pursuant to this Deed or by law,

and the taking of action by the attorney or attorneys shall (as between it and any third party) be conclusive evidence of its right to take such action.

16.2 The Client undertakes to ratify and confirm everything that any attorney does or purports to do in the exercise or purported exercise of the power of attorney under this clause 16.

17. Currency indemnity

17.1 If, under any applicable law, whether pursuant to a judgment against the Client or the Dissolution of the Client or for any other reason, any payment under or in connection with this Deed is made or fails to be satisfied in a currency (the "Other Currency") other than the currency in which the relevant payment is expressed to be payable (the "Required Currency"), then, to the

extent that the payment actually received by the Bank (when converted into the Required Currency at the rate of exchange on the date of payment or, if it is not practicable for the Bank to make the conversion on that date, at the rate of exchange as soon afterwards as it is practicable for the Bank to do so or, in the case of a Dissolution, at the rate of exchange on the latest date permitted by applicable law for the determination of liabilities in such proceeding) falls short of the amount expressed to be due or payable under or in connection with this Deed, the Client shall, as an original and independent obligation under this Deed, indemnify and hold the Bank harmless against the amount of such shortfall.

- 17.2** The Client waives any right it may have in any jurisdiction to pay any amount under or in connection with this Deed in a currency or currency unit other than that in which it is expressed to be payable.

18. Governing law and jurisdiction

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

- 18.2** The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "Dispute").

- 18.3** The parties to this Deed 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.

- 18.4** The parties to this Deed shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed

by law, the parties may take concurrent proceedings in any number of jurisdictions.

19. Service of process

The parties irrevocably consent to service of process or any other documents in connection with proceedings in any court in any other manner permitted by English law, or by the law of the place of service and the law of the jurisdiction where proceedings are instituted.

20. Partial invalidity

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

21. Assignment

- 21.1** The rights, interests and obligations of the Client under this Deed are personal to it. Accordingly, [save for clause 21.2] they are not capable of being assigned, transferred or delegated in any manner. The Client undertakes that it shall not at any time assign or transfer any of its rights, interests or obligations under or in respect of this Deed to any person.

21.2 APPLICABLE FOR CHARITABLE

TRUST ONLY Notwithstanding clause 21.1, the trustees for the time being of the Client (or any of them) shall be deemed on retirement to assign all rights and obligations under this Deed to the continuing trustees from time to time validly appointed.

- 21.3** The Bank may, at any time, without the consent of the Client, assign or transfer any of its rights and obligations under this Deed.
- 22. Execution as a deed**
- Each of the parties to this Deed intends it to be a deed and confirms that it is executed and delivered as a deed, in each case notwithstanding the fact that any one or both of the parties may only execute this Deed under hand.
- 23. Counterparts**
- This Deed may be executed in any number of counterparts, and by the parties on separate counterparts, but will not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Deed, but all the counterparts will together constitute one and the same instrument.
- 24. Definitions**
- 24.1** In this Deed:
- "Accounts"** means any and all accounts (including, but without limitation, any account specified in Schedule 1), held by the Client with the Bank either now or at any time in the future and all other entitlements to interest and other rights and benefits accruing to or arising in connection with such accounts.
- "Charged Investments"** means all Custodial Assets other than Deposits.
- "Charged Property"** means the following assets:
- (A) all Custodial Assets together with any related interest, dividends, any other distributions, rights and entitlements and any other benefits or assets derived from such assets;
- (B) all Deposits; and
- (C) all proceeds of sale of any of the foregoing.
- "Custodial Assets"** means all rights, title and interest to and in respect of (i) all stocks, shares, bonds, debentures, certificates of deposit, warrants and any other securities of any kind (whether in registered, bearer, book-entry, dematerialised or other form); and (ii) all other assets, which are held by or with the Bank from time to time (whether directly or through a nominee, sub-custodian, agent or depository, clearance or settlement system or otherwise) as custodian of the Client, including without limitation under the Custodian Agreement.
- "Custodian Agreement"** means any custodian agreement between the Bank and the Client pursuant to which the Bank acts as custodian of the Client.
- "Deposit"** means all credit balances now or at any time in the future on any of the Accounts, all debts from time to time represented by such credit balances and all other rights of the Client accruing or arising in relation to the Accounts.
- "Dissolution"** of a person includes the amalgamation, reconstruction (other than as part of a solvent reconstruction or amalgamation the terms of which have been approved by the Bank), reorganisation, winding-up, administration, administrative or other receivership or dissolution or liquidation of that person or the entry by that person into a voluntary arrangement or composition or similar arrangement with any of its creditors, and any equivalent or

analogous proceeding or arrangement in any jurisdiction by whatever name known and any step taken (including, without limitation, the giving or filing of notice or the making of an application or formal request or the presentation of a petition or the passing of a resolution or the making of an order or the taking of any other steps or measures) for or with a view to any of the foregoing.

"Enforcement Event" in relation to the Client means any of the following events:

- (A) it does not pay any Secured Liabilities in accordance with clause 1;
- (B) it fails to comply with any provision of this Deed;
- (C) any representation, warranty or statement made or deemed to be made or repeated by it in or in connection with this Deed is or proves to have been incorrect or misleading in any material respect when made or deemed to be made or repeated;
- (D) it or any member of its Group is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (E) the value of the assets of any member of its Group is less than its liabilities (taking into account contingent and prospective liabilities);

(F) a moratorium is obtained or declared in respect of any indebtedness of any member of its Group;

(G) any corporate action, legal proceedings or other procedure or step is taken in relation to or which may lead to:

(i) the suspension of payments, a moratorium of any indebtedness or Dissolution of any member of its Group other than a solvent liquidation or reorganisation;

(ii) a composition, assignment or arrangement with any creditor of any member of its Group;

(iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager, supervisor or other similar officer in respect of any member of its Group or any of its assets;

(iv) enforcement of any security over any of its assets or any member of its Group;

or any analogous procedure or step is taken in any jurisdiction; or

(H) any expropriation, attachment, sequestration, distress or execution in any jurisdiction affects any of its assets or the assets of a member of its Group.

"Insolvency Act" means the Insolvency Act 1986.

"Group" means the Client and its Subsidiaries for the time being.

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

"Receiver" means any one or more persons, individually or together with additional persons, appointed as an administrative receiver, receiver and manager, or other receiver appointed in respect of the Charged Property by the Bank pursuant to powers conferred by this Deed, statute or otherwise.

"Secured Liabilities" means:

(A) each and every present and future obligation and liability of the Client (whether actual or contingent and whether owed jointly or severally or as principal or surety or in any other capacity whatsoever) which is, or is expressed to be, or may become, due, owing or payable to the Bank, upon any account or otherwise;

(B) all interest, costs, commissions, fees and other charges and expenses which are, or are expressed to be, or may become due, owing or payable by the Client at any time to the Bank; and

(C) all legal and other costs, charges and expenses which

the Bank may incur in enforcing or obtaining, or attempting to enforce or obtain, payment of any obligation, liability or money referred to in paragraphs (A) and (B) above.

"Subsidiary" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006 (or successor legislation).

24.2 In this Deed, unless otherwise specified, any reference to:

(A) **"assets"** includes properties, revenues and rights of every kind, present, future and contingent, and whether tangible or intangible;

(B) **"authorisation"** or **"consent"** shall be construed as including, without limitation, any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

(C) a **"company"** includes any company, corporation or other body corporate, wherever and however incorporated or established;

(D) **"this Deed"** or any other agreement or instrument is a reference to this Deed or other agreement or instrument as it may have been amended, supplemented, replaced or novated from time to time and includes a reference to any document which amends, supplements, replaces, novates or is entered into, made or given pursuant to or in accordance with any of the

- terms of this Deed or, as the case may be, the relevant deed, agreement or instrument;
- (E) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (F) **"law"** includes common or customary law, principles of equity and any constitution, code of practice, decree, judgment, decision, legislation, order, ordinance, regulation, bye-law, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, guideline, request, rule or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive, regulation, guideline, request, rule or requirement is intended to apply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (G) a **"person"** includes any person, firm, company, government, state or agency of a state, any local or municipal authority, trust, or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (H) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (I) **"rights"** includes all rights, title, benefits, powers, privileges, interests, claims, authorities, discretions, remedies, liberties, easements, quasi-easements and appurtenances (in each case, of every kind, present, future and contingent); and
- (J) **"security" or "security interest"** includes any mortgage, charge, pledge, lien, security assignment, hypothecation or trust arrangement for the purpose of providing security and any other encumbrance or security interest of any kind having the effect of securing any obligation of any person (including, without limitation, the deposit of moneys or property with a person with the intention of affording such person a right of set-off or lien) and any other agreement or any other type of arrangement having a similar effect.
- 25. Interpretation of this Deed**
- (A) Words importing the singular shall include the plural and vice versa.
- (B) Unless a contrary indication appears, a reference to any

party or person shall be construed as including its and any subsequent successors in title, permitted transferees and permitted assigns, in each case in accordance with their respective interests.

- (C) Section, clause and Schedule headings are for ease of reference only and shall be ignored in construing this Deed.

- (D) Unless a contrary indication appears, references to any provision of any law or

regulation are to be construed as referring to that provision as it may have been, or may from time to time be, amended or re-enacted, and as referring to all bye-laws, instruments, orders and regulations for the time being made under or deriving validity from that provision.

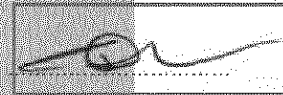
IN WITNESS of which this document has been executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed as a deed by
UNION BANCAIRE PRIVÉE, UBP SA
acting by
N Woodhead

and

C Walsh

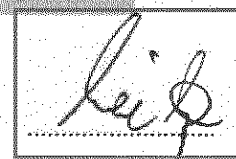
who, in accordance with the laws of Switzerland are acting under the authority of Union Bancaire Privée, UBP SA.

(Authorised signatories)

Charitable company

Executed as a deed by
The Ditchley Foundation
acting by one authorised signatory
M Montagu
under the authority of The Ditchley Foundation in the presence of a witness



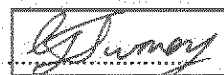
(Authorised Signatory)

Witness's signature:

Name (print):

Occupation:

Address:



(Witness)

Guy Turney

Senior Associate

Partners Capital
5 Young Street
W8 5EH

SCHEDULE 1

Specified Accounts

The accounts set out in the table below shall be included as accounts for the purpose of the definition of "Accounts":

	<i>[Name of Account]</i>	<i>[Account Number]</i>	<i>[Branch of UBP]</i>
[1.]	The Ditchley Foundation		
[2.]			
[3.]			
[4.]			
[5.]			

