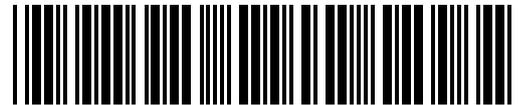




**Registration of a Charge**

Company Name: **STEMCOR DISTRIBUTION LIMITED**

Company Number: **00759991**



XAFGLZ4Y

Received for filing in Electronic Format on the: **19/10/2021**

**Details of Charge**

Date of creation: **01/10/2021**

Charge code: **0075 9991 0057**

Persons entitled: **HSBC UK BANK PLC**

Brief description: **ASSIGNMENT OF CONTRACTUAL RIGHTS**

**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: **HSBC UK BANK PLC**



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

Company number: 759991

Charge code: 0075 9991 0057

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st October 2021 and created by STEMCOR DISTRIBUTION LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th October 2021 .

Given at Companies House, Cardiff on 20th October 2021

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



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**DATED** 1st October **2021**

**STEMCOR DISTRIBUTION LIMITED**

**and**

**HSBC UK BANK PLC**

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**SECURITY ASSIGNMENT OF CONTRACTUAL RIGHTS**

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## CONTENTS

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### CLAUSE

1.	DEFINITIONS AND INTERPRETATIONS.....	3
2.	COVENANT TO PAY .....	5
3.	GRANT OF SECURITY .....	6
4.	LIABILITY OF THE BORROWER .....	6
5.	REPRESENTATIONS AND WARRANTIES.....	7
6.	COVENANTS .....	9
7.	POWERS OF THE BANK.....	12
8.	WHEN SECURITY BECOMES ENFORCEABLE .....	13
9.	ENFORCEMENT OF SECURITY .....	14
10.	RECEIVER .....	16
11.	POWERS OF RECEIVER .....	17
12.	DELEGATION .....	18
13.	APPLICATION OF PROCEEDS.....	19
14.	COSTS AND INDEMNITY .....	20
15.	FURTHER ASSURANCE .....	20
16.	POWER OF ATTORNEY .....	21
17.	RELEASE .....	21
18.	ASSIGNMENT AND TRANSFER.....	21
19.	SET-OFF .....	22
20.	AMENDMENTS, WAIVERS AND CONSENTS .....	22
21.	SEVERANCE .....	23
22.	COUNTERPARTS.....	23
23.	THIRD PARTY RIGHTS .....	23
24.	FURTHER PROVISIONS .....	23
25.	NOTICES .....	24
26.	GOVERNING LAW AND JURISDICTION .....	25

THIS DEED is dated 1st October 2021

## PARTIES

- (1) **Stemcor Distribution Limited** (registered number 00759991) a company incorporated in England and Wales whose registered office is at Longbow House, 14-20 Chiswell Street, London EC1Y 4TW (the **Borrower**); and
- (2) **HSBC UK Bank plc** incorporated in England and Wales under company number 09928412 and registered address at 1 Centenary Square, Birmingham, B1 1HQ (the **Bank** which expression shall include its successors and assigns).

## BACKGROUND

- (A) The Bank has agreed, pursuant to the Facility Agreement, to provide the Borrower with certain facilities (**Facilities**) on a secured basis.
- (B) Under this deed, the Borrower provides security to the Bank for the Facilities made available under the Facility Agreement.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

The following definitions apply in this deed:

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

**Counterparty** means any party to a Relevant Agreement other than the Borrower;

**Delegate** means any person appointed by the Bank or any Receiver pursuant to clause 12, and any person appointed as attorney of the Bank, Receiver or Delegate;

**Facility Agreement** means the facility agreement dated on or around the date of this deed, between the Borrower and the Bank for the provision of the Facilities secured by this deed;

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

**Receiver** means a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Bank under clause 10;

**Relevant Agreement** means all and any agreements entered into from time to time between the Borrower and a Counterparty for the sale, purchase, supply or trading of goods financed by the Bank and any other agreement designated as a "Relevant Agreement" by the Bank and the Borrower.

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

**Secured Liabilities** means all present and future monies, obligations and liabilities owed by the Borrower to the Bank, whether actual or contingent and whether owed

jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 24.3(b)), together with all interest (including, without limitation, default interest) accruing in respect of such monies or liabilities;

**Security** means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect; and

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

## 1.2 Interpretation

In this deed:

- (a) terms defined in the Facility Agreement have the same meanings when used in this deed unless otherwise defined in this deed;
- (b) clause and paragraph headings shall not affect the interpretation of this deed;
- (c) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- (d) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (e) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (f) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- (g) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (h) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (i) a reference to **writing** or **written** includes fax but not e-mail;
- (j) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (k) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or

such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;

- (l) unless the context otherwise requires, a reference to a clause is to a clause of this deed;
- (m) where any statement is qualified by the expression **so far as [Party] is aware or to [Party's] knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry;
- (n) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (o) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (p) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (q) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (r) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (s) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

If the Bank considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

### 1.4 Perpetuity period

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

## 2. COVENANT TO PAY

The Borrower will, on demand, pay to the Bank and discharge the Secured Liabilities.

### **3. GRANT OF SECURITY**

#### **3.1 Assignment**

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

- (a) the benefit of each Relevant Agreement;
- (b) the benefit of all other contracts, guarantees, appointments, warranties and other documents related to any Relevant Agreement to which the Borrower is a party, which are in its favour or of which it has the benefit (including, in each case, but without limitation, the right to demand and receive all monies whatsoever payable to or for its benefit under or arising from any of them (including proceeds of letters of credit if payment is to be made through a letter of credit), all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatsoever accruing to or for its benefit arising from any of them), to the extent not effectively assigned under clause 3.1(a); and
- (c) all authorisations (statutory or otherwise) held or required in connection with the use of any Secured Assets, and all rights in connection with them,

provided that nothing in this clause 3.1 shall constitute the Bank as a mortgagee in possession.

#### **3.2 Borrower entitled to exercise rights**

Until the Bank serves a notice on the Borrower to the contrary, the Borrower shall be entitled to exercise all its rights in the Secured Assets, subject to the other provisions of this deed.

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

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

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

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Bank that is or becomes wholly or partially illegal, void or unenforceable on any ground;
- (b) the Bank renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

- (c) any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

#### **4.2 Immediate recourse**

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

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

#### **5.1 Representations and warranties**

The Borrower makes the representations and warranties set out in this clause 5 to the Bank.

#### **5.2 Ownership of Secured Assets**

The Borrower is the legal and beneficial owner of, and has good, valid and marketable title to the Secured Assets.

#### **5.3 Secured Assets**

- (a) The counterparts and instruments comprising the Relevant Agreements or other document, agreement or arrangement comprising the Secured Assets as provided to the Bank, evidence all terms of the relevant Secured Assets, and there are no other documents, agreements or arrangements that may affect the operation or enforceability of any Secured Assets.
- (b) No Relevant Agreement or other document, agreement or arrangement comprising the Secured Assets is void, voidable or otherwise unenforceable.
- (c) No variation of any Relevant Agreement or other document, agreement or arrangement comprising the Secured Assets is contemplated.
- (d) The Borrower is not in breach of its obligations under any Relevant Agreement or other document, agreement or arrangement comprising the Secured Assets and nothing has occurred:
  - (i) which is, or would constitute (with the giving of notice or passage of time or both), an event of default (however described) under any Relevant Agreement or other document, agreement or arrangement comprising the Secured Assets; or
  - (ii) which would entitle a person to terminate or rescind a Relevant Agreement or other document, agreement or arrangement comprising the Secured Assets.

#### **5.4 No Security**

The Secured Assets are free from any Security other than the Security created by this deed, and excluding also the following Security provided by each obligor to secure Borrowing Base Facilities:

- a) a Debenture entered into between: (1) Stemcor Distribution Limited and (2) Coöperatieve Rabobank U.A. (as Security Agent) dated 8<sup>th</sup> August 2019; and
- b) a Debenture entered into between: (1) Stemcor London Limited and (2) ING Belgium, Brussels, Lancy/Geneva Branch (as Security Agent) dated 24<sup>th</sup> January 2020.

Or, any such Security as it may relate to the replacement, substitution or restatement of the Borrowing Base Facilities ("BB Security").

**5.5 No adverse claims**

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

**5.6 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

**5.7 No breach of laws**

There is no breach of any law or regulation, which materially and adversely affects the Secured Assets.

**5.8 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Borrower or otherwise.

**5.9 No prohibitions**

There is no prohibition on assignment in any Relevant Agreement, and the entry into this deed by the Borrower does not and will not constitute a breach of any Relevant Agreement or any other agreement, instrument or obligation binding on the Borrower or its assets.

**5.10 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms.

**5.11 Times for making representations and warranties**

The representations and warranties set out in clause 5.2 to clause 5.10 are made by the Borrower on the date of this deed are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

## **6. COVENANTS**

### **6.1 Negative pledge and disposal restrictions**

Save to the extent of the BB Security, the Borrower will not at any time, except with the prior written consent of the Bank:

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

### **6.2 Preservation of Secured Assets**

The Borrower will not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Bank or diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

### **6.3 Relevant Agreements**

The Borrower will, unless the Bank agrees otherwise in writing:

- (a) comply with the terms of;
- (b) not amend or vary or agree to any change in, or waive any requirement of;
- (c) not settle, compromise, terminate, rescind or discharge (except by performance); and
- (d) not abandon, waive, dismiss, release or discharge any action, claim or proceedings against any Counterparty or other person in connection with,

any Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets.

### **6.4 Rights**

The Borrower will:

- (a) not waive any of the Bank's rights or release any person from its obligations in connection with the Secured Assets; and

- (b) take all necessary or appropriate action against any person (including as reasonably required by the Bank) to protect and enforce its rights, and recover money or receive other property in connection with, the Secured Assets.

#### **6.5 Payment of money**

The Borrower will, if the Bank directs, ensure that all money payable to, or other property receivable by, the Borrower under or in relation to any Secured Assets is paid or delivered to the Bank (or that the Borrower pays over or delivers such amounts to the Bank) to be applied in accordance with the provisions of the Facility Agreement.

#### **6.6 Borrower's waiver of set-off**

The Borrower waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Borrower under this deed).

#### **6.7 Compliance with laws and regulations**

- (a) The Borrower will not, without the Bank's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- (b) The Borrower will:
  - (i) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of them or any part of them; and
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset.

#### **6.8 Enforcement of rights**

The Borrower will use its best endeavours to:

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower's counterparties (including each Counterparty in respect of a Relevant Agreement); and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Bank may require from time to time.

#### **6.9 Notice of misrepresentations and breaches**

The Borrower will, promptly on becoming aware of any of the same, notify the Bank in writing of:

- (a) any representation or warranty set out in clause 5 which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this deed.

#### 6.10 Notices to be given by Borrower

Where the bank is able to enforce its rights under this deed, the Borrower will immediately following a request by the Bank:

- (a) give notice to each Counterparty to a Relevant Agreement, in a form acceptable to the Bank, of the assignment of the Borrower's rights and interest in and under that Relevant Agreement pursuant to clause 3.1(a); and
- (b) use reasonable endeavours to procure that each Counterparty will promptly provide to the Bank within five Business Days an acknowledgement of the notice, in a form acceptable to the Bank, of the Bank's interest, and if the Borrower does not comply with its obligations under this clause 6.10, it acknowledges and agrees that the Bank may (whilst being under no obligation to do so) give the notice to the relevant Counterparty.

#### 6.11 Documents

The Borrower shall if so required by the Bank, deposit with the Bank and the Bank shall, for the duration of this deed, be entitled to hold all the Borrower's original counterparts of, and instruments comprising, each Relevant Agreement and each other document, instrument or agreement comprising the Secured Assets.

#### 6.12 Information

The Borrower will:

- (a) give the Bank such information concerning the Secured Assets as the Bank may require; and
- (b) promptly notify the Bank in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Borrower's proposals for settling, liquidating, compounding or contesting any such action, claim or demand and shall, subject to the Bank's prior approval, implement those proposals at its own expense.

#### 6.13 Payment of outgoings

The Borrower will promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Bank.

## **7. POWERS OF THE BANK**

### **7.1 Power to remedy**

- (a) The Bank will be entitled (but will not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.
- (b) The Borrower irrevocably authorises the Bank and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Bank in remedying a breach by the Borrower of its obligations contained in this deed, will be reimbursed by the Borrower to the Bank on a full indemnity basis and shall carry interest in accordance with clause 14.1.

### **7.2 Exercise of rights**

The rights of the Bank under clause 7.1 are without prejudice to any other rights of the Bank under this deed. The exercise of any rights of the Bank under this deed shall not make the Bank liable to account as a mortgagee in possession.

### **7.3 Bank has Receiver's powers**

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

### **7.4 Conversion of currency**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Bank may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 7.4) from their existing currencies of denomination into such other currencies of denomination as the Bank may think fit.
- (b) Any such conversion shall be effected at the Bank's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this clause 7.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

### **7.5 New accounts**

- (a) If the Bank receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Bank may open a new account for the Borrower in the Bank's books. Without prejudice to the extent of the Bank's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be

appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

- (b) If the Bank does not open a new account immediately on receipt of the notice, or deemed notice, under clause 7.5(a), then, unless the Bank gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Bank shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Bank.

## 7.6 Bank's set-off rights

If the Bank has more than one account for the Borrower in its books, the Bank may at any time after:

- (a) the security constituted by this deed has become enforceable; or
- (b) the Bank has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Secured Assets,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account which may be in debit. After making any such transfer, the Bank shall notify the Borrower of that transfer.

## 7.7 Indulgence

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

## 8. WHEN SECURITY BECOMES ENFORCEABLE

### 8.1 Enforcement of security

The security constituted by this deed will be immediately enforceable on the occurrence of any of the following:

- (a) if the Borrower fails to pay or discharge any of the Secured Liabilities when the same ought to be paid and discharged (or within any applicable grace period) by the Borrower (whether on demand or at scheduled maturity or by acceleration or otherwise as the case may be); or
- (b) if the Borrower is in default of any of the terms of this deed; or
- (c) if the Borrower is unable or admits to being unable to pay its debts as they become due or is subject to any proceedings (excluding frivolous or vexatious claims) in or analogous to insolvency, bankruptcy, administration or

liquidation or enters into any composition or arrangement for the benefit of its creditors or if a receiver or administrative receiver is appointed in respect of any of the Borrower's assets or if legal process is levied or enforced against any of its assets; or

- (d) if any action is threatened or taken which might have a material adverse impact on the ability of the Borrower to discharge the Secured Liabilities or prejudice the Bank's interest in and rights against the Secured Assets (in both cases subject to a *de minimis* of US\$6 million)

## 8.2 Discretion

After the security constituted by this deed has become enforceable, the Bank may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

## 9. ENFORCEMENT OF SECURITY

### 9.1 Enforcement powers

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Bank and a purchaser from the Bank, arise on and be exercisable at any time after the execution of this deed, but the Bank shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 8.1.
- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

### 9.2 Access on enforcement

- (a) At any time after the Bank has demanded payment of the Secured Liabilities or if the Borrower defaults in the performance of its obligations under this deed or the Facility Agreement, the Borrower will allow the Bank or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies. In particular (and without limitation), to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Bank or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Borrower for, or by any reason of, that entry.
- (b) At all times, the Borrower must use its best endeavours to allow the Bank or its Receiver access to any premises for the purpose of clause 9.2(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### 9.3 Prior Security

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

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

The settlement and passing of any such account shall, in the absence of any manifest error, be conclusive and binding on the Borrower. All monies paid by the Bank to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Bank, be due from the Borrower to the Bank on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

#### **9.4 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Bank, any Receiver or Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Bank, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Bank, any Receiver or any Delegate is to be applied.

#### **9.5 Privileges**

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

#### **9.6 No liability as mortgagee in possession**

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

#### **9.7 Conclusive discharge to purchasers**

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

## **10. RECEIVER**

### **10.1 Appointment**

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

### **10.2 Removal**

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

### **10.3 Remuneration**

The Bank may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, which shall be due and payable immediately on its being paid by the Bank.

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

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

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

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

### **10.6 Agent of the Borrower**

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

## **11. POWERS OF RECEIVER**

### **11.1 General**

- (a) Any Receiver appointed by the Bank under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause **Error! Reference source not found.** to clause 11.13.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (c) Any exercise by a Receiver of any of the powers given by clause 11 may be on behalf of the Borrower, the directors of the Borrower or himself.

### **11.2 Remuneration**

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

### **11.3 Realise Secured Assets**

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

### **11.4 Dispose of Secured Assets**

A Receiver may sell or assign (or concur in selling or assigning), all or any of the Secured Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit.

### **11.5 Valid receipts**

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

### **11.6 Make settlements**

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

### **11.7 Bring proceedings**

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

#### **11.8 Powers under the LPA 1925**

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

#### **11.9 Borrow**

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

#### **11.10 Redeem prior Security**

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

#### **11.11 Delegation**

A Receiver may delegate his powers in accordance with this deed.

#### **11.12 Absolute beneficial owner**

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

#### **11.13 Incidental powers**

A Receiver may do any other acts and things that he:

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

### **12. DELEGATION**

#### **12.1 Delegation**

The Bank or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 16.1).

## 12.2 Terms

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

## 12.3 Liability

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

## 13. APPLICATION OF PROCEEDS

### 13.1 Order of application of proceeds

Subject to the Stemcor UK Security Agreement, all monies received by the Bank, a Receiver or a Delegate pursuant to this deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Bank (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Bank determines; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

### 13.2 Appropriation

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

### 13.3 Suspense account

All monies received by the Bank, a Receiver or a Delegate under this deed:

- (a) may, at the discretion of the Bank, Receiver or Delegate, be credited to any suspense or securities realised account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Bank and the Borrower; and
- (c) may be held in that account for so long as the Bank, Receiver or Delegate thinks fit.

## **14. COSTS AND INDEMNITY**

### **14.1 Costs**

The Borrower shall, promptly on demand, pay to, or reimburse, the Bank and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) reasonably incurred by the Bank, any Receiver or any Delegate in connection with:

- (a) this deed or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Bank's, a Receiver's or a Delegate's rights under this deed; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Borrower) at the rate and in the manner specified in the Facility Agreement.

### **14.2 Indemnity**

The Borrower shall indemnify the Bank, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- (c) any default or delay by the Borrower in performing any of its obligations under this deed.

Any past or present employee or agent may enforce the terms of this clause 14.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **15. FURTHER ASSURANCE**

The Borrower shall, at its own expense, take whatever action the Bank or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security intended to be created by this deed;
- (b) facilitating the realisation of any Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Bank or any Receiver in respect of any Secured Asset,

including, without limitation (if the Bank or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Bank or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **16. POWER OF ATTORNEY**

### **16.1 Appointment of attorneys**

By way of security (and in circumstances where the Bank is able to enforce the terms of this deed), the Borrower irrevocably appoints the Bank, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things which:

- (a) the Borrower is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Bank, any Receiver or any Delegate.

### **16.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 16.1.

## **17. RELEASE**

Subject to clause 24.3, on the expiry of the Security Period (but not otherwise), the Bank shall, at the request and cost of the Borrower, take whatever action is necessary to:

- (a) release the Secured Assets from the security constituted by this deed; and
- (b) reassign the Secured Assets to the Borrower.

## **18. ASSIGNMENT AND TRANSFER**

### **18.1 Assignment by Bank**

- (a) At any time, without the consent of the Borrower, the Bank may assign or transfer any or all of its rights and obligations under this deed.

- (b) The Bank may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Secured Assets and this deed that the Bank considers appropriate.

## 18.2 **Assignment by Borrower**

The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## 19. **SET-OFF**

### 19.1 **Bank's right of set-off**

The Bank may (but is under no obligation to do so) at any time set off any liability of the Borrower arising from the Trade Services provided under an Uncommitted Facility Agreement entered into on or around the date of this deed to the Bank against any liability of the Bank to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Bank may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Bank of its rights under this clause 19 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

## 20. **AMENDMENTS, WAIVERS AND CONSENTS**

### 20.1 **Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

### 20.2 **Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Bank shall be effective unless it is in writing.

### 20.3 **Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **21. SEVERANCE**

### **21.1 Severance**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

## **22. COUNTERPARTS**

This deed may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

## **23. THIRD PARTY RIGHTS**

### **23.1 Third party rights**

- (a) Except as expressly provided elsewhere in this deed, a person who is not a party to this deed (other than a permitted successor or assign, any Receiver or any Delegate) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- (b) The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

## **24. FURTHER PROVISIONS**

### **24.1 Independent security**

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

### **24.2 Continuing security**

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

### 24.3 Discharge conditional

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

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

### 24.4 Certificates

A certificate or determination by the Bank as to any amount for the time being due to it from the Borrower under this deed and the Facility Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

### 24.5 Consolidation

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

## 25. NOTICES

### 25.1 Delivery

Each notice or other communication required to be given under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service; and
- (c) sent to:

the Borrower at:  
**Stemcor Distribution Limited**  
Longbow House 14-20  
Chiswell Street  
London  
EC1Y 4TW  
Attention: The Directors

the Bank at:

**HSBC UK Bank plc**  
1 Centenary Square, London, B1 1HQ  
Attention: Mr Richard M Kramer

or to any other address or fax number as is notified in writing by one party to the other from time to time.

#### **25.2 Receipt by Borrower**

Any notice or other communication that the Bank gives to the Borrower shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

#### **25.3 Receipt by Bank**

Any notice or other communication given to the Bank shall be deemed to have been received only on actual receipt.

#### **25.4 Service of proceedings**

This clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **26. GOVERNING LAW AND JURISDICTION**

#### **26.1 Governing law**

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

#### **26.2 Jurisdiction**

Each party irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Bank to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of

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

**26.3 Other service**

The Borrower irrevocably consents to any process in any proceedings under clause 26.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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

{REDACTED}

Executed as a deed by **Stemcor Distribution Limited** acting by two directors or one director and the company secretary

Director {REDACTED}

{REDACTED}

Director / Company Secretary

Executed as a deed by **HSBC UK Bank plc** acting by an authorised signatory in the presence of:

.....

.....

Name:

Address:

Occupation: