



**Registration of a Charge**

Company Name: **PROFINE UK LTD.**

Company Number: **01811296**



XC836BHD

Received for filing in Electronic Format on the: **19/07/2023**

**Details of Charge**

Date of creation: **17/07/2023**

Charge code: **0181 1296 0004**

Persons entitled: **THE LAW DEBENTURE TRUST CORPORATION P.L.C.**

Brief description: **N/A**

**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: **FRESHFIELDS BRUCKHAUS DERINGER**



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

Company number: 1811296

Charge code: 0181 1296 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th July 2023 and created by PROFINE UK LTD. was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th July 2023 .

Given at Companies House, Cardiff on 20th July 2023

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**

**17 July 2023**

**PROFINE UK LTD.**

and

**THE LAW DEBENTURE TRUST  
CORPORATION P.L.C.**

(as Security Agent)

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**SECURITY ASSIGNMENT AGREEMENT IN  
RELATION TO INTERCOMPANY  
RECEIVABLES**

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**LATHAM & WATKINS**

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FORM OF COUNTERPARTY NOTICE	

THIS DEED is made on 17 July 2023 BETWEEN:

- (1) **PROFINE UK LTD.**, a company incorporated in England and Wales with registered number 01811296 (the “Assignor”); and
- (2) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.**, as security trustee for itself and the other Secured Parties (the “Security Agent”).

IT IS AGREED AS FOLLOWS:

## 1. INTERPRETATION

### 1.1 Definitions

In this Deed:

“Assigned Agreements” means:

- (a) the GBP500,000 deposit and loan agreement originally dated 12 February 2019 between the Assignor and Recycling PVC Limited, as amended by the first amendment agreement dated 5 May 2021 and as amended by the second amendment agreement dated 4 January 2023; and
- (b) any other intercompany loan agreement governed by English law entered into by the Assignor as lender from time to time.

“Assigned Property” means all the assets and undertakings of the Assignor which from time to time are subject of the Security created or expressed to be created in favour of the Security Agent by or pursuant to this Deed;

“Counterparty Notice” means a notice substantially in the form set out in Schedule 1 (*Form of Notice*);

“Declared Default” means an Acceleration Event (as defined in the Intercreditor Agreement) that is continuing;

“Deed of Release” means the deed of release dated on or around the date hereof between, among others, the Assignor and the Security Agent.

“Effective Date” has the meaning given to that term in the Deed of Release.

“Intercreditor Agreement” means the intercreditor agreement dated on or about the date of this Deed (as amended from time to time) and made between, among others, HT Troplast GmbH (as Company), the Assignor (as an Original Debtor) and the Security Agent (each term as defined therein);

“Parties” means each of the parties to this Deed from time to time;

“Quasi-Security” means a transaction in which the Assignor:

- (a) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by the Assignor or any other member of the Group;
- (b) sells, transfers or otherwise disposes of any of its receivables on recourse terms;

- (c) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enters into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset;

**“Receiver”** means a receiver, receiver and manager or administrative receiver whether appointed under this Deed or by any statute, court or otherwise of the Assigned Property or any part of it;

**“Revolving Facilities Agreement”** means the super senior revolving German law governed facilities agreement dated on or about the date of this Deed (as amended from time to time) and made between, among others, HT Troplast GmbH and profine GmbH as original borrowers, the Assignor, as an original guarantor, Commerzbank Aktiengesellschaft, Deutsche Bank AG and J.P. Morgan SE as mandated lead arrangers, and certain financial institutions listed therein as original lenders;

**“Secured Debt Documents”** means the Secured Debt Documents as defined in the Intercreditor Agreement;

**“Secured Obligations”** means all present and future monies, debts, liabilities and obligations due at any time of any Debtor, member of the Group or Third Party Chargor to the Security Agent (including in respect of the Parallel Debt) and the Secured Parties (whether actual or contingent and whether incurred solely or jointly and as principal or surety or with any other person or in any other capacity), including without limitation any amounts (such as post-insolvency interest) that would be included in any thereof but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings, under:

- (a) the RCF Finance Documents;
- (b) the Hedging Agreements;
- (c) the Senior Secured Notes Documents;
- (d) the Future Pari Passu Debt Documents;
- (e) the Credit Facility Documents (other than the RCF Finance Documents);
- (f) the Future Senior Subordinated Debt Documents (to the extent the Transaction Security is expressed to secure the Future Senior Subordinated Debt Liabilities); and
- (g) any Additional Liabilities in respect of any Senior Secured Debt Documents,

provided that (d), (e) and (f) above shall only constitute “Secured Obligations” to the extent that the Security Agent has agreed in writing with HT Troplast GmbH to act as security trustee in respect of them and that no present and future monies, debts, liabilities and obligations shall be included in the definition of “Secured Obligations” to the extent that, if it were so included, the Security created by this Deed (or any part thereof) or any other provision of this Deed would be unlawful or prohibited by any applicable law;

**“Secured Parties”** means the Super Senior Creditors, the Senior Secured Creditors, the Future Pari Passu Creditors and the Future Senior Subordinated Creditors (to the extent the Transaction Security is expressed to secure the Future Senior Subordinated Debt Liabilities), the Arrangers, the Security Agent (including as creditor of the Parallel Debt) and any Receiver or Delegate

from time to time but, in the case of the Senior Secured Notes Trustee, Arranger, Super Senior Creditor, Future Pari Passu Creditor, or Future Senior Subordinated Creditor only if it is a party to the Intercreditor Agreement or has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to Clause 20.14 (*Creditor/Creditor Representative Accession Undertaking*) of the Intercreditor Agreement; and

**“Security”** means a mortgage, standard security, charge, pledge, assignment, assignation, transfer, lien, right of set-off, retention or extended retention of title provision, or any other security interest securing any obligation of any person or any other agreement or arrangement having the effect of giving security or preferential ranking to a creditor, or any other agreement or arrangement having a similar effect.

## 1.2 Construction

In this Deed, unless a contrary intention appears, a reference to:

- (a) an **“agreement”** includes any legally binding arrangement, concession, contract, deed or franchise (in each case whether oral or written);
- (b) an **“amendment”** includes any amendment, supplement, variation, novation, modification, replacement or restatement and **“amend”**, **“amending”** and **“amended”** shall be construed accordingly;
- (c) **“assets”** includes present and future properties, revenues and rights of every description;
- (d) **“including”** means including without limitation and **“includes”** and **“included”** shall be construed accordingly;
- (e) **“losses”** includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including fees) and liabilities and **“loss”** shall be construed accordingly;
- (f) a **“person”** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any two or more of the foregoing; and
- (g) 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.

## 1.3 Other References

- (a) In this Deed, unless a contrary intention appears, a reference to:
  - (i) any Secured Party, the Assignor or any other person is, where relevant, deemed to be a reference to or to include, as appropriate, that person’s successors in title, permitted assignees and transferees and in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Intercreditor Agreement;
  - (ii) any Secured Debt Document or other agreement or instrument is to be construed as a reference to that agreement or instrument as amended, restated, varied, novated or supplemented from time to time (howsoever fundamentally and whether or not such amendment, restatement, variation, novation or supplementation results in new and / or more onerous obligations and

liabilities), including by way of a change in the purpose of the facilities, or by way of a refinancing, deferral or extension of the facilities or by way of an addition or increase of or other changes to the facilities or other obligations or liabilities under the agreements or accession or retirement of the parties to the agreements;

- (iii) any clause or schedule is a reference to, respectively, a clause of and schedule to this Deed and any reference to this Deed includes its schedules; and
- (iv) a provision of law is a reference to that provision as amended or re-enacted.
- (b) The index to and the headings in this Deed are inserted for convenience only and are to be ignored in construing this Deed.
- (c) Words importing the plural shall include the singular and vice versa.

#### 1.4 Incorporation by reference

Unless the context otherwise requires or unless otherwise defined in this Deed, words and expressions defined (or expressed to be subject to a particular construction) in the Intercreditor Agreement (whether directly or by way of cross-reference) shall have the same meanings (or be subject to the same construction) when used in this Deed. In the event of any conflict between the terms of this Deed and the terms of the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail.

#### 1.5 Miscellaneous

- (a) All security made with “full title guarantee” is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- (b) The terms of the documents under which the Secured Obligations arise and of any side letters between the Assignor and any Secured Party relating to the Secured Obligations are incorporated in this Deed to the extent required for any purported disposition of the Assigned Property contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- (c) The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and except and to the extent that this Deed expressly provides otherwise, no rights or benefits expressly or impliedly conferred by this Deed shall be enforceable under that Act against the Parties by any other person except that Clause 19 (*Set-Off*) shall be enforceable by any third party referred to in such clause as if such third party were a party to this Deed and (ii) a third party shall have those rights it would have had if the Contracts (Rights of Third Parties) Act 1999 had not come into effect.
- (d) The parties to this Deed may without the consent of any third party vary or rescind this Deed.
- (e) The Parties hereto intend that this document shall take effect as a deed notwithstanding that a Party may only execute this document under hand.

#### 1.6 Effective Date

Each provision of this Deed will take effect on and from the occurrence of the Effective Date, other than the following clauses, which will take effect on and from the date of this Deed:

- (a) Clause 1 (*Interpretation*);



- (b) Clause 24 (*Changes to the parties*);
- (c) Clause 25 (*Miscellaneous*); and
- (d) Clause 26 (*Governing law and jurisdiction*).

## **2. COVENANT TO PAY**

The Assignor as primary obligor covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it will promptly on demand of the Security Agent pay and discharge the Secured Obligations when they fall due for payment.

## **3. SECURITY ASSIGNMENT**

As continuing security for the payment and discharge of the Secured Obligations, the Assignor assigns absolutely with full title guarantee to the Security Agent all its rights, title and interest and benefits, both present and future, from time to time in the Assigned Agreements subject in each case to reassignment by the Security Agent to the Assignor of all such rights, title and interest upon payment or discharge in full of the Secured Obligations.

## **4. FURTHER ASSURANCE**

- (a) The covenants set out in Section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 and the covenants for further assurance implied by such act shall extend to include the obligations set out in paragraphs (b) and (c) below.
- (b) Subject to the Agreed Security Principles, the Assignor shall, promptly at its own expense, do all such acts (including payment of all stamp duties or fees) or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s):
  - (i) to perfect the Security created or intended to be created under or evidenced by this Deed (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this Deed) or for the exercise of any rights, powers and remedies of the Security Agent, any Receiver or the other Secured Parties provided by or pursuant to this Deed or by law; and/or
  - (ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created under this Deed.
- (c) The Assignor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, preservation, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to this Deed.

## **5. NEGATIVE PLEDGE**

The Assignor may not:

- (a) create or agree to create or permit to subsist any Security or Quasi-Security over all or any part of the Assigned Property; or
- (b) sell, transfer, lease out, lend or otherwise dispose of all or any part of the Assigned Property or the right to receive or to be paid the proceeds arising on the disposal of the same, or agree or attempt to do so,

except as permitted by the Secured Debt Documents or with the prior written (email to suffice) consent of the Security Agent.

## **6. REPRESENTATIONS AND WARRANTIES**

The Assignor represents and warrants to the Security Agent on (i) the date of this Deed, (ii) each date that the Repeated Representations are repeated under the Revolving Facilities Agreement and (iii) at any time when the Repeated Representations do not apply under the Revolving Facilities Agreement (whether as a result of termination or otherwise) on each Quarter Date:

- (a) subject only to the Security created by this Deed or Permitted Security, no person other than the Assignor has any legal or beneficial interest (or any right to claim any such interest) in the Assigned Property and the Assignor has not received notice of any such claim; and
- (b) the Assignor is not a lender of any intercompany loans other than the Assigned Agreements unless otherwise is permitted under the Intercreditor Agreement.

## **7. PROTECTION OF SECURITY**

### **7.1 Title Documents**

- (a) The Assignor shall:
  - (i) duly and promptly perform its obligations under each of the Assigned Agreements;
  - (ii) promptly deposit with the Security Agent (or as it shall direct):
    - (A) following a Declared Default and, to the extent requested by the Security Agent, copies of all Assigned Agreements; and
    - (B) following a Declared Default, all other documents relating to the Assigned Property which the Security Agent may from time to time reasonably require.
- (b) The Security Agent may retain any document delivered to it under this Clause 7.1 or otherwise until the Security created under this Deed is released and, if for any reason it ceases to hold any such document before that time, it may by notice to the Assignor require that the document be redelivered to it and the Assignor shall promptly comply (or procure compliance) with that notice.
- (c) Any document required to be delivered to the Security Agent under Clause 7.1(a) which is for any reason not so delivered or which is released by the Security Agent to the Assignor shall be held on trust by the Assignor for the Security Agent.

### **7.2 Assigned Agreements**

- (a) The Assignor shall as soon as reasonably practicable and in any event within 10 Business Days of the execution of this Deed in respect of a Assigned Agreement dated on or prior to the date of this Deed or as soon as reasonably practicable and in any event within 10 Business Days of the execution of any Assigned Agreement dated after the date of this Deed give notice to the other party to each Assigned Agreement that it has assigned or charged its right under the relevant agreement to the Security Agent under this Deed. Such notice will be a Counterparty Notice. The Assignor shall use its best endeavours to procure that the relevant counterparty signs and delivers to the Security

Agent an acknowledgement substantially in the form of that set out in the schedule to the relevant notice within 20 Business Days of service. If the Assignor has used its best endeavours but has not been able to obtain acknowledgement or acceptance its obligation to obtain acknowledgement will cease on the expiry of that 20 Business Days period.

- (b) The Security Agent shall not be entitled to give any notice referred to in paragraph 2 of the Counterparty Notice, unless and until a Declared Default has occurred.

## **8. UNDERTAKING**

### **8.1 Information**

The Assignor shall promptly deliver to the Security Agent or any Receiver upon its written request, details of any intercompany loan receivables owed to it by a member of the Group (if any) as at the date of such request provided that the Security Agent or any Receiver may only request such details at any time upon the occurrence of an Declared Default.

### **8.2 Rights**

- (a) Subject to the rights of the Security Agent under paragraph (b) below, the Assignor shall pursue its rights under each of its Assigned Agreements, but only if and to the extent that the exercise (or non-exercise) of those rights in the manner proposed would not result in a Default under the terms of any Senior Secured Debt Document.
- (b) After the occurrence of a Declared Default, the Security Agent may exercise (without any further consent or authority on the part of the Assignor and irrespective of any direction given by the Assignor) any of the Assignor's rights under the Assigned Agreements.

## **9. CONTINUING SECURITY**

### **9.1 Continuing Security**

The Security constituted by this Deed shall be a continuing security which shall not be released or discharged by any intermediate payment or settlement of all or any part of the Secured Obligations or any other act, matter or thing.

### **9.2 Other Security**

The Security constituted by this Deed is to be in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other Security or invalidity or any other agreement or document or any other right which the Security Agent and/or any other Secured Party may now or after the date of this Deed hold for any of the Secured Obligations, and this Security may be enforced against the Assignor without first having recourse to any other rights of the Security Agent or any other Secured Party.

### **9.3 Appropriation**

Neither the Security Agent nor any other Secured Party shall be obliged to apply any sums held or received by it in respect of the Secured Obligations in or towards payment of the Secured Obligations and any such sum shall be held by or paid to the Security Agent for application pursuant to the terms of this Deed or in accordance with the Intercreditor Agreement.

#### **9.4 Immediate Recourse**

Neither the Security Agent nor any other Secured Party shall be obliged before exercising any of the rights conferred on it by this Deed or by law to seek to recover amounts due from the Assignor or to exercise or enforce any other rights or Security it may have in respect of the Secured Obligations or any of them.

#### **9.5 No Competition**

Any right which the Assignor may have (a) by way of subrogation, contribution or indemnity in relation to the Secured Obligations or (b) otherwise to claim or prove as a creditor of a Debtor or any other person or its estate in competition with the Security Agent or any other Secured Party, shall be exercised by the Assignor only if and to the extent that the Security Agent so requires and in such manner and upon such terms as the Security Agent may specify and the Assignor shall hold any moneys, rights or Security held or received by it as a result of the exercise of any such rights for and on behalf of, and to the order of, the Security Agent for application in accordance with the terms of this Deed as if such moneys, rights or Security were held or received by the Security Agent under this Deed.

### **10. ENFORCEMENT OF SECURITY**

#### **10.1 Enforcement Powers**

For the purpose of all rights and powers implied or granted by statute, the Secured Obligations are deemed to have fallen due on the date of this Deed. The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 and all other enforcement powers conferred by this Deed shall be immediately exercisable at any time after a Declared Default has occurred.

#### **10.2 Statutory Powers**

The powers conferred on mortgagees, receivers or administrative receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (as the case may be) shall apply to the Security created under this Deed, unless they are expressly or impliedly excluded. If there is ambiguity or conflict between the powers contained in those Acts and those contained in this Deed, those contained in this Deed shall prevail.

#### **10.3 Exercise of Powers**

All or any of the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this Deed, and all or any of the rights and powers conferred by this Deed on a Receiver (whether expressly or impliedly), may be immediately exercised by the Security Agent without further notice to the Assignor at any time after a Declared Default has occurred, irrespective of whether the Security Agent has taken possession or appointed a Receiver of the Assigned Property.

#### **10.4 Disapplication of Statutory Restrictions**

The restriction on the consolidation of mortgages and on power of sale imposed by sections 93 and 103 respectively of the Law of Property Act 1925 shall not apply to the Security constituted by this Deed.

#### **10.5 Appropriation under the Financial Collateral Regulations**

- (a) To the extent that any of the Assigned Property constitutes “financial collateral” and this Deed and the obligations of the Assignor hereunder constitute “security financial collateral arrangement” (in each case as defined in, and for the purposes of, the

Financial Collateral Arrangements (No. 2) Regulations 2003 (as amended) (the “Regulations”)), the Security Agent shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise that right to appropriate by giving notice to the Assignor at any time after a Declared Default has occurred.

- (b) The Parties agree that the value of any such appropriated financial collateral shall be: (x) in the case of securities, the price at which such securities can be disposed of by the Security Agent; and (y) in the case of any other asset, the market value of such financial collateral as determined by the Security Agent, in each case, in a commercially reasonable manner (including by way of an independent valuation). The Parties agree that the methods of valuation provided for in this paragraph shall constitute commercially reasonable methods of valuation for the purposes of the Regulations.

## **11. RECEIVERS**

### **11.1 Appointment of Receiver**

- (a) Subject to paragraph (c) below, at any time after notice demanding payment of any sum which is then due but unpaid in respect of the Secured Obligations has been given by the Security Agent to the Assignor, or if so requested by the Assignor, the Security Agent may by writing under hand signed by any officer or manager of the Security Agent, appoint any person (or persons) to be a Receiver of all or any part of the Assigned Property.
- (b) Section 109(1) of the Law of Property Act 1925 shall not apply to this Deed.
- (c) The Security Agent shall be entitled to appoint a Receiver save to the extent prohibited by section 72A Insolvency Act 1986. The Security Agent is also not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under Part A1 of the Insolvency Act 1986.

### **11.2 Powers of Receiver**

Each Receiver appointed under this Deed shall have (subject to any limitations or restrictions which the Security Agent may incorporate in the deed or instrument appointing it) all the rights, powers, privileges and immunities conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this Deed), so that the powers set out in schedule 1 to the Insolvency Act 1986 shall extend to every Receiver, whether or not an administrative receiver. The Assignor alone shall be responsible for each Security Agent's and Receiver's contracts, engagements, acts, omissions, defaults and losses and for all liabilities incurred by either of them and none of the Secured Parties shall incur any liability therefor (either to the Assignor or to any other person other than those caused by a Secured Party's gross negligence or wilful misconduct).

### **11.3 Receiver as Agent**

Each Receiver shall be the agent of the Assignor, which shall be solely responsible for his acts or defaults, and for his remuneration and expenses, and be liable on any agreements or engagements made or entered into by him. Each Receiver shall be deemed to be in the same position as a receiver appointed by a mortgagee under the Law of Property Act 1925. The Security Agent will not be responsible for any misconduct, negligence or default of a Receiver.

#### **11.4 Removal of Receiver**

The Security Agent may, whenever it may deem expedient or appropriate, by notice remove from time to time any Receiver appointed by it (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receivership or any other applicable provision of the Insolvency Act 1986) and, whenever it may deem expedient or appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated, for whatever reason.

#### **11.5 Remuneration of Receiver**

The Security Agent may from time to time fix the remuneration of any Receiver appointed by it without the limitations imposed by Section 109 of the Law of Property Act 1925. The Assignor shall be solely responsible for the payment of the remuneration of any Receiver appointed pursuant to this Deed.

#### **11.6 Security Agent's Rights**

To the fullest extent permitted by law, all or any of the powers, authorities and discretions of a Receiver in respect of the Assigned Property may, if a Receiver has been or could have been appointed, be exercised by the Security Agent in relation to the whole or any part of the Assigned Property whether or not a Receiver is or has been appointed.

### **12. APPLICATION OF PROCEEDS**

#### **12.1 Order of Application**

All monies received or recovered by the Security Agent or any Receiver pursuant to this Deed shall (subject to the claims of any person having prior rights thereto) be applied in the order and manner specified by the Intercreditor Agreement notwithstanding any purported appropriation by the Assignor.

#### **12.2 Section 109 Law of Property Act 1925**

Sections 109(6) and (8) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.

#### **12.3 Application against Secured Obligations**

Subject to Clause 12.1 above, any monies or other value received or realised by the Security Agent from the Assignor or a Receiver under this Deed may be applied by the Security Agent to any item of account or liability or transaction forming part of the Secured Obligations to which they may be applicable in any order or manner which the Security Agent may determine.

#### **12.4 Suspense Account**

Until the Secured Obligations are paid in full, the Security Agent or the Receiver (as applicable) may open and maintain with such banks or other financial institutions as it thinks fit one or more suspense accounts and may place and keep (for such time as it shall determine) any money received, recovered or realised pursuant to this Deed or on account of the Assignor's liability in respect of the Secured Obligations in an interest bearing separate suspense account (to the credit of either the Assignor or the Security Agent or the Receiver as the Security Agent or the Receiver shall think fit) and the Security Agent or the Receiver may retain the same for the period which it considers expedient without having any obligation to apply all or any part of that money in or towards discharge of the Secured Obligations.

### **13. PROTECTION OF SECURITY AGENT AND RECEIVER**

#### **13.1 No Liability**

Neither the Security Agent nor any Receiver shall be liable in respect of any of the Assigned Property or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless caused by its or his gross negligence, wilful default or breach of any obligations under the Debt Documents.

#### **13.2 Possession of Assigned Property**

Without prejudice to Clause 13.1 above, if the Security Agent or the Receiver enters into possession of the Assigned Property, it will not be liable to account as mortgagee in possession or otherwise be liable for any loss of any kind or for any default or omission for which a mortgagee in possession might be liable, and may at any time go out of such possession.

#### **13.3 Primary liability of Assignor**

The Assignor shall be deemed to be a principal debtor and the sole, original and independent obligor for the Secured Obligations and the Assigned Property shall be deemed to be a principal security for the Secured Obligations. The liability of the Assignor under this Deed and the charges contained in this Deed shall not be impaired by any forbearance, neglect, indulgence, abandonment, extension of time, release, surrender or loss of securities, dealing, variation or arrangement by the Security Agent or any other Secured Party, or by any other act, event or matter whatsoever whereby the liability of the Assignor (as a surety only) or the charges contained in this Deed (as secondary or collateral charges only) would, but for this provision, have been discharged.

#### **13.4 Excluded defences**

Clause 27.4 (*Waiver of defences*) of the Intercreditor Agreement will be deemed to be incorporated into this Deed with all necessary modifications as if they were set out in full in this Deed, but (i) as if references to those paragraphs to the “Agreement” and other similar expressions were references to this Deed, (ii) as if the reference to “reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement” were a reference to “discharge, impair or otherwise affect the obligations of the Assignor under, or the Security created by, this Deed and the rights, powers and remedies conferred on the Security Agent by this Deed or by law” and (iii) as if the following new paragraph (j) is inserted after paragraph (i) of that clause: “(j) any other act, event or omission which might operate to discharge, impair or otherwise affect the obligations of the Assignor under this Deed, the Security created by this Deed or any of the rights, powers and remedies conferred on the Security Agent by this Deed or by law.”

#### **13.5 Security Agent**

The provisions set out in Clause 18 (*The Security Agent*) of the Intercreditor Agreement shall govern the rights, duties and obligations of the Security Agent under this Deed.

#### **13.6 Delegation**

The Security Agent may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by it under this Deed to any person or persons upon such terms and conditions (including the power to sub-delegate) as it may think fit. The Security Agent will not be liable or responsible to the Assignor or any other person for any losses or damage arising from any act, default, omission or misconduct on the part of any Delegate or sub-delegate.

### **13.7 Cumulative Powers**

The powers which this Deed confers on the Security Agent, the other Secured Parties and any Receiver appointed under this Deed are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate. The Security Agent, the other Secured Parties or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever. The respective powers of the Security Agent, the other Secured Parties and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

### **14. POWER OF ATTORNEY**

- (a) Subject to paragraph (b) below, the Assignor, by way of security, irrevocably and severally (or jointly with any other attorney or attorneys appointed under this Clause 14) appoints the Security Agent, each Receiver and any person nominated for the purpose by the Security Agent or any Receiver (in writing and signed by an officer of the Security Agent or Receiver) as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed to execute, seal and deliver (using the company seal where appropriate) and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing which it ought to execute and do under the terms of this Deed, or which may be required or deemed proper in the exercise of any rights or powers conferred on the Security Agent or any Receiver under this Deed or otherwise for any of the purposes of this Deed, and the Assignor covenants with the Security Agent and each Receiver to ratify and confirm all such acts or things made, done or executed by that attorney.
- (b) The Security Agent, any Receiver or any person nominated for the purpose by the Security Agent or any Receiver (in writing and signed by an officer of the Security Agent or Receiver) may not exercise (or purport to exercise) any such powers, rights or authorities under paragraph (a) above unless a Declared Default has occurred and is continuing.

### **15. PROTECTION FOR THIRD PARTIES**

#### **15.1 No Obligation to Enquire**

No purchaser from, or other person dealing with, the Security Agent or any Receiver (or their agents) shall be obliged or concerned to enquire whether:

- (a) the right of the Security Agent or any Receiver to exercise any of the powers conferred by this Deed has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power; or
- (b) any of the Secured Obligations remain outstanding and/or are due and payable or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters.

#### **15.2 Receipt Conclusive**

The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Security Agent or any Receiver.



**16. COSTS AND EXPENSES**

The Assignor shall on demand pay to each of the Security Agent and any Receiver the amount of all costs and expenses in accordance with Clause 23 (*Costs and Expenses*) of the Intercreditor Agreement.

**17. REINSTATEMENT AND RELEASE**

**17.1 Amounts Avoided**

If any amount paid or credited by the Assignor in respect of the Secured Obligations is capable of being avoided or set aside on the insolvency, liquidation or administration of the Assignor or otherwise, then for the purposes of this Deed that amount shall not be considered to have been paid or credited. No interest shall accrue on any such amount, unless and until such amount is so avoided or set aside.

**17.2 Discharge Conditional**

Any settlement or discharge between the Assignor and any Secured Party shall be conditional upon no security or payment to that Secured Party by the Assignor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency, liquidation or otherwise whether or not such Secured Party has conceded or compromised any claim that any such payment or other disposition will or should be avoided or repaid, and accordingly (but without limiting the other rights of that Secured Party under this Deed) that Secured Party shall be entitled to recover from the Assignor the value which that Secured Party has placed on that security or the amount of any such payment as if that settlement or discharge had not occurred.

**17.3 Covenant to Release**

Once all the Secured Obligations have been irrevocably paid in full and none of the Security Agent nor any Secured Party has any actual or contingent liability to advance further monies to, or incur liability on behalf of, the Assignor, the Security Agent and each Secured Party shall, at the request and cost of the Assignor, execute any documents (or procure that its nominees execute any documents) or take any action which may be necessary to release the Assigned Property from the Security constituted by this Deed in each case without recourse to or any representation or warranty by or from the Security Agent.

**18. PAYMENTS**

**18.1 Payments without Set-Off**

Any payment made by the Assignor under this Deed shall be made free and clear of and without any deduction for or on account of any set off or counterclaim.

**18.2 Manner of Payment**

Each payment made by the Assignor under this Deed shall be paid in the manner required by the Security Agent and, where appropriate, in accordance with the Intercreditor Agreement.

**19. SET-OFF**

**19.1 Right to Set-Off**

Each Secured Party may set off any rights in respect of any Secured Obligation which is due and payable against any liability (whether or not due and payable) of such Secured Party to the Assignor, regardless of the place of payment, booking branch or currency of such obligation,

and may in order to do so convert, at such time as it considers appropriate, an amount in one currency into an amount in another currency at such rate of exchange as is then available to it.

**19.2 No Obligation**

No Secured Party shall be obliged to exercise any right given to it by Clause 19.1 (*Right to Set-Off*).

**20. CURRENCY CLAUSES**

**20.1 No Discharge**

No payment to the Security Agent (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Assignor in respect of which it was made unless and until the Security Agent has received payment in full in the currency in which the obligation or liability is payable or, if the currency of payment is not specified, was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Security Agent shall have a further separate cause of action against the Assignor and shall be entitled to enforce the Security constituted by this Deed to recover the amount of the shortfall.

**20.2 Rights Cumulative**

The rights and remedies provided by this Deed are cumulative and not exclusive of any rights or remedies provided by law.

**21. RULING OFF**

If the Security Agent or any other Secured Party receives notice of any subsequent Security or other interest affecting any of the Assigned Property (except as permitted by Secured Debt Documents) or makes demand of the Assignor for payment of any or all of the Secured Obligations, it may open a new account for the Assignor in its books. If it does not do so then (unless it gives express notice to the contrary to the Assignor), as from the time it receives that notice, all payments made by the Assignor to it (in the absence of any express appropriation to the contrary) shall be treated as having been credited to a new account of the Assignor and not as having been applied in reduction of the Secured Obligations.

**22. REDEMPTION OF PRIOR CHARGES**

The Security Agent may, at any time after a Declared Default has occurred, redeem any prior Security on or relating to any of the Assigned Property or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Assignor. The Assignor will on demand pay to the Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

**23. NOTICES**

Any communication to be made under or in connection with this Deed shall be made in accordance with Clause 26 (*Notices*) of the Intercreditor Agreement.

**24. CHANGES TO PARTIES**

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of this Deed except as permitted by Clause 20 (*Changes to the Parties*) of the Intercreditor Agreement.

## **25. MISCELLANEOUS**

### **25.1 Certificates Conclusive**

A certificate or determination of the Security Agent as to the amount of any Secured Obligation will be *prima facie* evidence of the existence and amount of such Secured Obligation under this Deed and conclusive and binding on the Assignor, except in the case of manifest error.

### **25.2 Counterparts**

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

### **25.3 Invalidity of any Provision**

If any provision of this Deed is or becomes invalid, illegal or unenforceable in any respect under any law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way and, if any part of the Security intended to be created by or pursuant to this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

### **25.4 Remedies and Waivers**

No failure by the Security Agent to exercise, nor any delay by the Security Agent in exercising, any right or remedy under this Deed shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or the exercise of any other such right or remedy.

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

- (a) This Deed and any non-contractual claims arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) Subject to paragraph (c) below, the Parties agree that the courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any dispute arising out of or in connection with this Deed, whether contractual or non-contractual (including a dispute regarding the existence, validity or termination of this Deed) (a “Dispute”). The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) The Parties agree that, for the benefit of the Secured Parties only, nothing in this Deed shall limit the right of the Secured Parties to bring any legal action against the Assignor in any other court of competent jurisdiction.

IN WITNESS whereof this Deed has been duly executed as a deed and is delivered on the date first above written.

## SCHEDULE 1

### FORM OF COUNTERPARTY NOTICE

To: [insert *name and address of counterparty*]

Dated: [ ● ]

Dear Sirs

**Re: Intercompany loan agreement dated [ ● ] (the “Agreement”)**

We notify you that, profine UK Ltd. (the “Assignor”) has assigned to The Law Debenture Trust Corporation p.l.c. (the “Security Agent”) for the benefit of itself and certain other banks and financial institutions (the “Secured Parties”) all its right, title, interest and benefits in the Agreement as security for certain obligations owed by the Assignor to the Secured Parties by way of a security agreement dated [ ● ].

We further notify you that:

1. the Assignor will remain liable under the Agreement to perform all the obligations assumed by it under the Agreement. None of the Security Agent, its agents, any receiver or any other person will at any time be under any obligation or liability to you under or in respect of the Agreement;
2. (a) you may continue to deal with the Assignor in relation to the Agreement, (b) the Assignor will remain entitled to exercise all of its rights, powers, remedies and discretions under the Agreement, and (c) you should continue to give notices and make payments under the Agreement to the Assignor, until you receive written notice to the contrary from the Security Agent. Thereafter the Assignor will cease to have any right to deal with you in relation to the Agreement and therefore from that time you should deal only with the Security Agent;
3. you are authorised to disclose information in relation to the Agreement to the Security Agent on request;
4. after receipt of written notice in accordance with paragraph 2 above, you must pay all monies to which the Assignor is entitled under the Agreement direct to the Security Agent (and not to the Assignor) unless the Security Agent otherwise agrees in writing; and
5. the provisions of this notice may only be revoked with the written consent of the Security Agent.

Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to the Assignor) by way of confirmation that:

- (a) you agree to the terms set out in this notice and to act in accordance with its provisions;
- (b) you have not received notice that the Assignor has assigned its rights under the agreement to a third party or created any other interest (whether by way of security or otherwise) in the agreement in favour of a third party; and
- (c) you have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Assignor any right of set-off, counter-claim or other right relating to the Agreement.

The provisions of this notice are governed by English law.

Yours faithfully

.....

for and on behalf of  
**profine UK Ltd.**

*[On acknowledgement copy]*

To:                   **The Law Debenture Trust Corporation p.l.c.**

Copy to:           **profine UK Ltd.**

We acknowledge receipt of the above notice and confirm the matters set out in paragraphs (a) to (c) above.

.....


for and on behalf of  
*[insert name of Counterparty]*

Dated:


**SIGNATORIES TO SECURITY AGREEMENT**

**THE ASSIGNOR**

**EXECUTED as a DEED by**  
**PROFINE UK LTD. acting by:**


Authorised Signatory: 

Name: Peter Mrosik  
Director

In the presence of: 

Witness:

Name: Claudia Melzer

Address: 

Occupation: Assistant Dr. Mrosik

THE SECURITY AGENT

EXECUTED by  
THE LAW DEBENTURE TRUST CORPORATION P.L.C. acting by:



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