



**Registration of a Charge**

Company name: **EAGLEMOSS LIMITED**

Company number: **02226335**



X4BOLP8R

Received for Electronic Filing: **15/07/2015**

---

**Details of Charge**

Date of creation: **30/06/2015**

Charge code: **0222 6335 0005**

Persons entitled: **SOLUTUS ADVISORS LIMITED (AS FACILITY AGENT)**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) .**

**Contains negative pledge.**

---

**Authentication of Form**

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

---

**Authentication of Instrument**

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

Certified by:

**TRAVERS SMITH LLP**



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

Company number: 2226335

Charge code: 0222 6335 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th June 2015 and created by EAGLEMOSS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th July 2015 .

Given at Companies House, Cardiff on 16th July 2015

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

TRAVERS SMITH

EXECUTION VERSION

DATED 30 JUNE 2015

EAGLEMOSS LIMITED  
AS THE CHARGOR

IN FAVOUR OF

SOLUTUS ADVISORS LIMITED  
AS THE FACILITY AGENT  
(ACTING FOR ITSELF AND ON BEHALF OF EACH OF THE  
SECURED PARTIES)

CHARGE

WE CERTIFY THIS TO BE  
A TRUE COPY OF THE  
ORIGINAL  
TRAVERS SMITH LLP  
10 SNOW HILL, LONDON EC1A 2AL  
SOLICITORS  
Travers Smith LLP (JSP)  
DATE 10/7/15

*Save to the extent redacted as permitted by  
Section 859G of the Companies  
Act 2006*

## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION .....	1
2. PAYMENT OF SECURED OBLIGATIONS .....	6
3. FIXED CHARGES AND FLOATING CHARGE .....	6
4. CRYSTALLISATION OF FLOATING CHARGE .....	7
5. REPRESENTATIONS AND WARRANTIES .....	8
6. FURTHER ASSURANCE .....	9
7. NEGATIVE PLEDGE AND DISPOSALS .....	10
8. ACCOUNTS .....	10
9. MONETARY CLAIMS .....	12
10. ENFORCEMENT OF SECURITY .....	13
11. GUARANTEE AND INDEMNITY .....	14
12. EXTENSION AND VARIATION OF THE ACT .....	17
13. APPOINTMENT OF RECEIVER OR ADMINISTRATOR .....	18
14. POWERS OF RECEIVER .....	19
15. APPLICATION OF MONIES .....	20
16. PROTECTION OF PURCHASERS .....	20
17. POWER OF ATTORNEY .....	20
18. EFFECTIVENESS OF SECURITY .....	21
19. RELEASE OF SECURITY .....	24
20. SET-OFF .....	24
21. SUBSEQUENT SECURITY INTERESTS .....	25
22. ASSIGNMENT .....	25
23. INDEMNITIES .....	25
24. TAX .....	25
25. COSTS AND EXPENSES .....	25
26. NOTICES .....	26
27. DISCRETION AND DELEGATION .....	27
28. COUNTERPARTS .....	27
29. GOVERNING LAW .....	27
30. JURISDICTION .....	28
 SIGNATURES .....	 29

THIS CHARGE is dated

30 June 2015 and made between:

- (1) **EAGLEMOSS LIMITED**, a company registered in England and Wales having its registered office at 1st Floor, Beaumont House, Avonmore Road, London W14 8TS and with company registration number 02226335 (the **Chargor**) in favour of
- (2) **SOLUTUS ADVISORS LIMITED**, a company registered in England and Wales having its registered office at 4-6 Throgmorton Avenue, London EC2N 2DL and with company registration number 07350379, as facility agent acting for itself and for the other Secured Parties (as defined below) on the terms and conditions set out in the Facility Agreement (the **Facility Agent**, which expression shall include any person for the time being appointed as facility agent for the purpose of, and in accordance with, the Facility Agreement).

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Terms defined in the Facility Agreement shall, unless otherwise defined in this Charge, have the same meaning ascribed to their English translation when used in this Charge and in addition:

**Account** means any credit balance from time to time on any account opened or maintained by the Chargor with the Facility Agent or any other financial institution (and any replacement account or subdivision or sub-account of that account) and all Related Rights.

**Act** means the Law of Property Act 1925.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Paris.

**Charged Property** means all the assets and undertaking of the Chargor which from time to time are the subject of the security created or expressed to be created in favour of the Facility Agent (acting for and on behalf of the Secured Parties) by or pursuant to this Charge.

**Collateral Rights** means all rights, powers and remedies of the Facility Agent provided by or pursuant to this Charge or by law.

**Enforcement Event** means a failure by any of the Obligors to pay any amount payable under a Finance Document on its due date.

**Event of Default** has the meaning ascribed to the French term "*Cas de Défaut*" in the Facility Agreement.

**Facility Agreement** means the French law governed facility agreement (*contrat de crédit*) dated on or about the date of this Charge between, amongst others, (i) Solutus Advisors Limited (as Facility Agent), (ii) Crédit Lyonnais, BNP Paribas, Banque Palatine, Société Générale and HSBC France (as Lenders), (iii) Hamsard 3376 Limited (to be renamed Eagleboss Capital Limited) (as holding company) and (iv) Eagleboss France, the Chargor and Eagleboss Publications Limited (as Borrowers), as amended, varied, novated or supplemented from time to time.

**Finance Documents** means this Charge, the Facility Agreement and any other document designated as a "*Document Financier*" (as defined in the Facility Agreement) by the Facility Agent and the Borrowers.

**Finance Parties** means the Facility Agent and the Lenders.

**Insurance Policy** means any policy of insurance (including, without limitation, life insurance or assurance) in which the Chargor may from time to time have an interest.

**Intellectual Property** means all patents, rights in inventions, trademarks, service marks, designs, business names, domain names, geographical indications, copyrights (including rights in computer software), registered designs, design rights, moral rights, database rights, rights in confidential information and know how, trade names, trade dress, formulas, trade secrets and other intellectual property rights and interests, whether registered or unregistered and including all applications for and the right to apply for the same, and any interests (including by way of licence or covenant not to sue) which may subsist anywhere in the world.

**Investments** means:

- (a) any stocks, shares, debentures, bonds, coupons, negotiable instruments, securities and certificates of deposit;
- (b) all interests in collective investment schemes; and
- (c) all warrants, options and other rights to subscribe for or acquire any of the investments described in paragraphs (a) and (b) above,

in each case whether held directly by or to the order of the Chargor or by any trustee, nominee, fiduciary or clearance system on its behalf and all Related Rights (including all rights against any such trustee, nominee, fiduciary or clearance system).

**Lender** means:

- (a) any Lender originally party to the Facility Agreement as a "*Prêteur*" (as such term is defined in the Facility Agreement); and
- (b) any bank, financial institution, trust, fund or other entity which has become a party as a Lender ("*Prêteur*") in accordance with clause 14.3 of the Facility Agreement,

which in each case has not ceased to be a Lender ("*Prêteur*") in accordance with the terms of the Facility Agreement.

**Majority Lenders** has the meaning ascribed to the French term "*Majorité des Prêteurs*" in the Facility Agreement.

**Monetary Claims** means any book and other debts and monetary claims claims (other than Accounts) owing to the Chargor and any proceeds of such debts and claims (including any claims or sums of money deriving from or in relation to any Intellectual Property, any Investment, the proceeds of any Insurance Policy, any court order or judgment, any contract or agreement to which the Chargor is a party and any other assets, property, rights or undertaking of the Chargor).

**Obligors** means Hamsard 3376 Limited (to be renamed Eagle Moss Capital Limited), Eagle Moss Holdings (UK) Limited, Eagle Moss Publishing Group Limited, GE Publishing Limited, Eagle Moss France, the Chargor and Eagle Moss Publications Limited.

**Receiver** means a receiver or receiver and manager or (where permitted by law) administrative receiver of the whole or any part of the Charged Property and that term will include any appointee made under a joint and/or several appointment.

**Related Rights** means, in relation to any asset:

- (a) the proceeds of sale of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset.

**Reservations** means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court and damages may be regarded as an adequate remedy;
- (b) the limitation on enforcement as a result of laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws affecting the rights of creditors generally;
- (c) the statutory time-barring of claims;
- (d) defences of set off or counterclaim;
- (e) rules against penalties and similar principles;
- (f) the fact that security which is described as fixed security may in fact be floating security to the extent that the Chargor is given liberty to deal with the assets which



are the subject matter of the security since it is of the essence of a fixed security that the person creating the security does not have liberty to deal with the assets which are the subject of the security and to remove them from that security;

- (g) the possibility that an undertaking to assume liability for, or indemnify a person against, non-payment of stamp duty may be void; and
- (h) the fact that a court may refuse to give effect to a purported contractual obligation to pay costs imposed upon another person in respect of costs of an unsuccessful litigation brought against that person or may not award by way of costs all of the expenditure incurred by a successful litigant in proceedings brought before that court or that a court may stay proceedings if concurrent proceedings based on the same grounds and between the same parties have previously been brought before another court,

and any other reservations or qualifications of law contained in any legal opinion delivered to the Facility Agent in respect of this Charge.

**Secured Obligations** means all obligations covenanted to be discharged by the Chargor in Clause 2.1 (*Covenant to pay*).

**Secured Parties** means the Facility Agent, the Lenders and any other Finance Parties from time to time party to the Facility Agreement.

**Security** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**Subsidiary** means a subsidiary within the meaning of section 1159 of the Companies Act 2006 and/or a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

## 1.2 Interpretation

In this Charge:

1.2.1 unless a contrary indication appears, a reference in this Charge to:

- (a) the **Chargor**, the **Facility Agent**, any **Finance Party**, any **Lender**, any **Obligor**, any **Secured Party** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Facility Agent, any person for the time being appointed as Facility Agent or Facility Agents in accordance with the Facility Agreement;
- (b) **assets** includes present and future properties, revenues and rights of every description;

- (c) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (e) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (f) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (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 of any regulatory, self-regulatory or other authority or organisation;
- (h) a provision of law is a reference to that provision as amended or re-enacted; and
- (i) a time of day is a reference to London time;

**1.2.2** Clause and Schedule headings are for ease of reference only;

**1.2.3** unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Charge; and

**1.2.4** references in this Charge to any Clause or Schedule shall be to a clause or schedule contained in this Charge.

### **1.3 Third Party Rights**

**1.3.1** Unless expressly provided to the contrary in a Finance Document a person who is not a party to this Charge has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Charge.

**1.3.2** Notwithstanding any term of any Finance Document, the consent of any person who is not a party to this Charge is not required to rescind or vary this Charge at any time.

#### **1.4 Inconsistency**

In the event of any inconsistency arising between any of the provisions of this Charge and the Facility Agreement, the provisions of the Facility Agreement shall prevail.

#### **1.5 Deed**

It is intended that this Charge takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

### **2. PAYMENT OF SECURED OBLIGATIONS**

#### **2.1 Covenant to pay**

The Chargor hereby covenants with the Facility Agent (acting for and on behalf of the Secured Parties) that it shall discharge all obligations, as and when they fall due in accordance with their terms, which the Obligors may at any time have to the Facility Agent (whether for its own account or for and on behalf of the Secured Parties) or any of the other Secured Parties under or pursuant to the Finance Documents (including this Charge) including any liabilities which the Obligors may at any time have to the Secured Parties under or pursuant to the Finance Documents in respect of any further advances made under the Finance Documents, whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or as surety or in some other capacity). The Chargor shall pay to the Facility Agent when due and payable every sum at any time owing, due or incurred by the Obligors to the Facility Agent (whether for its own account or for and on behalf of the Secured Parties) or any of the other Secured Parties in respect of any such obligations and liabilities **provided that** neither such covenant nor the security constituted by this Charge shall extend to or include any liability or sum which would, but for this proviso, cause such covenant or security to be unlawful or prohibited by any applicable law.

#### **2.2 Interest on demands**

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor shall pay interest on any such sum (before and after any judgment and to the extent interest at a default rate is not otherwise being paid on such sum) from the date of demand until the date of payment calculated on a daily basis at the rate determined by and in accordance with the provisions of clause 7.3 of the Facility Agreement.

### **3. FIXED CHARGES AND FLOATING CHARGE**

#### **3.1 Fixed charges**

The Chargor hereby charges with full title guarantee in favour of the Facility Agent (acting for and on behalf of the Secured Parties) as security for the payment and discharge of the Secured Obligations by way of first fixed charge all the Chargor's right, title and interest from time to time in and to each of the following assets (subject in each case to obtaining

any necessary consent to such mortgage or fixed charge from any third party) in each case both present and future:

3.1.1 the Accounts; and

3.1.2 all Monetary Claims other than any claims which are otherwise subject to a fixed charge or assignment (at law or in equity) pursuant to this Charge and all Related Rights.

### 3.2 Floating charge

3.2.1 The Chargor hereby charges with full title guarantee in favour of the Facility Agent (acting for and on behalf of the Secured Parties) as security for the payment and discharge of the Secured Obligations by way of first floating charge in each case both present and future (other than any asset which is situated in England and Wales and which is validly and effectively charged under the laws of England and Wales by way of fixed security created under this Charge in favour of the Facility Agent as security for the Secured Obligations):

(a) stock in trade and work in progress of the Chargor and all Related Rights;

(b) the Accounts; and

(c) all Monetary Claims and all Related Rights.

3.2.2 The floating charge created by this Clause 3.2 shall be deferred in point of priority to all fixed security validly and effectively created by the Chargor under the Finance Documents in favour of the Security Trustee as trustee for the Secured Parties as security for the Secured Obligations.

3.2.3 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to this Clause 3.

## 4. CRYSTALLISATION OF FLOATING CHARGE

### 4.1 Crystallisation: by notice

The Facility Agent may at any time by notice in writing to the Chargor convert the floating charge created by Clause 3 (*Floating charge*) with immediate effect into a fixed charge as regards any property or assets specified in the notice if:

4.1.1 an Enforcement Event occurs (provided that the Facility Agent is acting on the instructions of the Majority Lenders);

4.1.2 the Facility Agent reasonably considers that any of the Charged Property may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process; or

- 4.1.3 the Facility Agent reasonably considers that it is necessary in order to protect the priority of the security.

## **4.2 Crystallisation: automatic**

Notwithstanding Clause 4.1 (*Crystallisation: by notice*) and without prejudice to any law which may have a similar effect, the floating charge will automatically be converted (without notice) with immediate effect into a fixed charge as regards (A) in the case of Clause 4.2.1 or Clause 4.2.2 below, all of the Charged Property affected by or subject to such actions and (B) in the case of Clause 4.2.3 or Clause 4.2.4 below, all of the assets subject to the floating charge if:

- 4.2.1 the Chargor creates or attempts to create any Security (other than any Security permitted under the Facility Agreement (including this Charge)) over any of the Charged Property;
- 4.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property which is not discharged within five Business Days;
- 4.2.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor or an administrator is appointed to the Chargor; or
- 4.2.4 any person (who is entitled to do so) gives notice of its intention to appoint an administrator to the Chargor or files such a notice with the court.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 The Chargor represents and warrants that:**

- 5.1.1 it is the sole, absolute and beneficial owner of the Charged Property owned by it from time to time free and clear from any Security (other than any Security permitted under the Facility Agreement (including this Charge));
- 5.1.2 except in accordance with the terms of the Facility Agreement, it has not disposed of any interest in, or granted any rights (whether of pre-emption or otherwise) over, any of the Charged Property nor agreed to do any of the same;
- 5.1.3 none of the Charged Property is the subject of any claim, assertion, right, action or other restriction or arrangement of whatever nature which does or may impinge upon the ownership of the Charged Property by the Chargor;
- 5.1.4 it is a limited liability company duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has the power and authority to own its assets and to conduct the business and operations which it conducts or proposes to conduct;

- 5.1.5** it has full power and authority to enter into and perform this Charge and has taken all necessary corporate or other action to authorise the execution, delivery and performance of this Charge and the transactions contemplated by this Charge;
- 5.1.6** all action, conditions and things required by all applicable laws and regulations to be taken, fulfilled and done in order to (i) enable it lawfully to enter into, exercise its rights under and perform and comply with its obligations under this Charge, (ii) ensure that those obligations are valid, legally binding and enforceable and (iii) make this Charge admissible in evidence in England and Wales, its jurisdiction of incorporation and any other jurisdiction in which any of its assets may be situated have been taken, fulfilled and done (or, in the case of registrations, will be effected within any applicable required period);
- 5.1.7** the execution by it of this Charge and the exercise by it of its rights and performance of or compliance with its obligations under this Charge do not and will not violate (i) any law or regulation to which it or any of its assets is subject (ii) its constitutional documents or (iii) in any material respect, any agreement to which it is a party or which is binding on it or any of its assets; and
- 5.1.8** its obligations under this Charge are valid, legally binding and enforceable.

**5.2** The representations set out in Clause 5.1 above are made by the Chargor on the date of this Charge and are deemed to be repeated on each day prior to the release of the security constituted by this Charge in accordance with Clause 19.1 (*Redemption of security*).

## **6. FURTHER ASSURANCE**

### **6.1 Necessary action**

The Chargor shall at its own expense 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, protection, confirmation or maintenance of any security created or intended to be created in favour of the Facility Agent by or pursuant to this Charge.

### **6.2 Consent of third parties**

The Chargor shall use all reasonable endeavours to obtain (in form and content reasonably satisfactory to the Facility Agent) as soon as possible any consents necessary to enable the assets of the Chargor to be the subject of an effective fixed charge or assignment pursuant to Clause 3 (*Fixed Charges and Floating Charge*) and, immediately upon obtaining any such consent, the asset concerned shall become subject to such security and the Chargor shall promptly deliver a copy of each consent to the Facility Agent.

### **6.3 Implied covenants for title**

The obligations of the Chargor under this Charge shall be in addition to the covenants for title deemed to be included in this Charge by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994.

## **7. NEGATIVE PLEDGE AND DISPOSALS**

### **7.1 Security**

The Chargor shall not, at any time during the subsistence of this Charge, create or permit to subsist Security (other than any Security permitted under the Facility Agreement (including this Charge)) over all or any part of the Charged Property.

### **7.2 No disposal of interests**

The Chargor shall not (and shall not agree to) at any time during the subsistence of this Charge, except as permitted by this Clause 7:

- 7.2.1** execute any transfer or assignment of, or other right to use, all or any part of the Charged Property;
- 7.2.2** create any legal or equitable estate or other interest in, or over, or otherwise relating to, all or any part of the Charged Property (other than any Security permitted under the Facility Agreement (including this Charge));
- 7.2.3** do, or omit to do, or cause or permit to be done, any other act or thing that would, in each case, be reasonably anticipated to adversely affect the value of any of the Charged Property, the value of the security created or intended to be created by this Charge or the ability of the Facility Agent to exercise any of the Collateral Rights;
- 7.2.4** lend or otherwise dispose of, or grant any rights (whether of pre-emption or otherwise) over, all or any part of the Charged Property; or
- 7.2.5** assign or otherwise dispose of any interest in any Account and no right, title or interest in relation to any Account maintained with the Facility Agent, or the credit balance standing to any such Account shall be capable of assignment or other disposal.

## **8. ACCOUNTS**

### **8.1 Accounts: notification and variation**

The Chargor, during the subsistence of this Charge:

- 8.1.1** shall promptly deliver to the Facility Agent on the date of this Charge (and, if any change occurs thereafter, on the date of such change), details of each Account

maintained by it with any bank or financial institution (other than with the Facility Agent or already notified to the Facility Agent);

**8.1.2** shall maintain each Account; and

**8.1.3** shall not, without the Facility Agent's prior written consent, such consent not to be unreasonably withheld or delayed (save where there would be in the Facility Agent's reasonable opinion a materially adverse effect on the security created under any Finance Document), permit or agree to any variation of the rights attaching to any Account or close any Account (other than as permitted under the Facility Agreement).

**8.2 Accounts: notices**

**8.2.1** The Chargor shall, if requested by the Facility Agent from time to time in respect of any Account, promptly deliver to the Facility Agent (or procure delivery of) a notice of charge (in form and substance reasonably satisfactory to the Facility Agent) duly executed by or on behalf of the Chargor and shall use reasonable endeavours to ensure that such notice is acknowledged by the relevant bank or financial institution with which that Account is maintained.

**8.2.2** The execution of this Charge by the Chargor and the Facility Agent shall constitute notice to (and acknowledgement by) the Facility Agent of the charge created by this Charge over any Account opened or maintained with the Facility Agent.

**8.3 Accounts: operation before an Event of Default**

Prior to the occurrence of an Event of Default, the Chargor shall be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account, subject to the terms of the Facility Agreement.

**8.4 Accounts: operation after an Event of Default**

After the occurrence of an Event of Default, the Chargor shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account except with the prior consent of the Facility Agent.

**8.5 Accounts: application of monies**

Upon the occurrence of an Enforcement Event or this security otherwise becoming enforceable pursuant to Clause 10.1 (*Enforcement*), the Facility Agent (provided that it is acting on the instructions of the Majority Lenders) shall be entitled without notice to apply, transfer or set-off any or all of the credit balances from time to time on any Account in or towards the payment or other satisfaction of all or part of the Secured Obligations in accordance with Clause 15 (*Application of Monies*).



**8.6****Accounts: representations**

The Chargor represents to the Facility Agent on the date of this Charge and on each day prior to the release of the security constituted by this Charge in accordance with Clause 19.1 (*Redemption of security*) that:

- 8.6.1** each Account is the subject of an appropriate mandate in form and content reasonably satisfactory to the Facility Agent which shall be irrevocable until such time as each of the Facility Agent and the Chargor shall otherwise agree;
- 8.6.2** no party (other than the Facility Agent) has any rights of set-off or counterclaim in respect of any Account; and
- 8.6.3** none of the Accounts is the subject of any claim, assertion, right, action or other restriction or arrangement of whatever nature which does or may impinge upon the ownership of the Accounts by the Chargor.

**9.****MONETARY CLAIMS****9.1****Dealing with Monetary Claims**

The Chargor shall not, at any time during the subsistence of this Charge, unless otherwise permitted pursuant to the Facility Agreement, without the prior written consent of the Facility Agent (such consent not to be unreasonably withheld or delayed, save where there would be, in the Facility Agent's reasonable opinion, a materially adverse effect on the security created under any Finance Document):

- 9.1.1** deal with the Monetary Claims except by getting in and realising them in a prudent manner (on behalf of the Facility Agent) and paying the proceeds of those Monetary Claims into an Account or as the Facility Agent may require (and such proceeds shall be held upon trust by the Chargor for the Facility Agent (acting for and on behalf of the Secured Parties) prior to such payment in); or
- 9.1.2** factor or discount any of the Monetary Claims or enter into any agreement for such factoring or discounting.

**9.2****Release of Monetary Claims: before an Event of Default**

Prior to the occurrence of an Event of Default, the proceeds of the realisation of the Monetary Claims shall (subject to any restriction on the application of such proceeds contained in this Charge or in the Facility Agreement), upon such proceeds being credited to an Account, be released from the fixed charge created pursuant to Clause 3.1 (*Fixed charges*) and the Chargor shall be entitled to withdraw such proceeds from such Account **provided that** such proceeds shall continue to be subject to the floating charge created pursuant to Clause 3.2 (*Floating charge*) and the terms of this Charge.

### **9.3 Release of Monetary Claims: after an Event of Default**

After the occurrence of an Event of Default and except with the prior written consent of the Facility Agent, the Chargor shall not be entitled to withdraw or otherwise transfer the proceeds of the realisation of any Monetary Claims standing to the credit of any Account.

## **10. ENFORCEMENT OF SECURITY**

### **10.1 Enforcement**

At any time after a failure by any of the Obligor to pay any amount payable under a Finance Document on its due date, or if a petition or application is presented for the making of an administration order in relation to an Obligor, or if any person who is entitled to do so gives written notice of its intention to appoint an administrator of an Obligor or files such a notice with the court, the security created by or pursuant to this Charge is immediately enforceable and the Facility Agent may (provided that it is acting on the instructions of the Majority Lenders), without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

**10.1.1** 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 Charged Property; and

**10.1.2** whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Act (as varied or extended by this Charge) on mortgagees and by this Charge on any Receiver or otherwise conferred by law on mortgagees or Receivers.

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

Neither the Facility Agent nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Charged Property to which a mortgagee or mortgagee in possession might otherwise be liable. Notwithstanding the foregoing, nothing shall relieve the Facility Agent nor any Receiver from liability for gross negligence or wilful misconduct.

### **10.3 Right of appropriation**

To the extent that any of the Charged Property constitutes "financial collateral" and this Charge and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the **Regulations**)) the Facility Agent (provided that it is acting on the instructions of the Majority Lenders) shall have the right, after an Enforcement Event, to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be (a) in the

case of cash, the amount standing to the credit of each of the Accounts, together with any accrued but unposted interest, at the time the right of appropriation is exercised; and (b) in the case of investments and/or shares, the market price of such investments and/or shares determined by the Facility Agent by reference to a public index or by such other process as the Facility Agent may select, including independent valuation. In each case, the parties agree that the method of valuation provided for in this Charge shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

#### **10.4 Effect of moratorium**

The Facility Agent shall not be entitled to exercise its rights under Clause 10.1 (*Enforcement*), Clause 13.1 (*Appointment and removal*) (other than Clause 9.1.5) or Clause 3.2.2 (*Crystallisation of Floating Charge*) where the right arises as a result of an Enforcement Event occurring solely due to any person obtaining or taking steps to obtain a moratorium pursuant to Schedule A1 of the Insolvency Act 1986.

### **11. GUARANTEE AND INDEMNITY**

#### **11.1 Guarantee and indemnity**

The Chargor irrevocably and unconditionally jointly and severally:

- 11.1.1** guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- 11.1.2** undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, the Chargor shall immediately on demand pay that amount as if it was the principal obligor; and
- 11.1.3** agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Chargor under this indemnity will not exceed the amount it would have had to pay under this Clause 11 if the amount claimed had been recoverable on the basis of a guarantee.

#### **11.2 Continuing Guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

### **11.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under this Clause 11 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

### **11.4 Waiver of defences**

The obligations of the Chargor under this Clause 11 will not be affected by an act, omission, matter or thing which, but for this Clause 11, would reduce, release or prejudice any of its obligations under this Clause 11 (without limitation and whether or not known to it or any Finance Party) including:

- 11.4.1** any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 11.4.2** the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- 11.4.3** the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 11.4.4** any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- 11.4.5** any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- 11.4.6** any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- 11.4.7** any insolvency or similar proceedings.

### **11.5 Chargor Intent**

Without prejudice to the generality of Clause 11.4 (*Waiver of defences*), the Chargor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance

Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **11.6 Immediate recourse**

The Chargor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Clause 11. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **11.7 Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

**11.7.1** refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and

**11.7.2** hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Clause 11.

#### **11.8 Deferral of Chargor's rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility Agent otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 11:

**11.8.1** to be indemnified by an Obligor;

**11.8.2** to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

**11.8.3** to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

**11.8.4** to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Chargor has given a guarantee, undertaking or indemnity under Clause 11.1 (*Guarantee and indemnity*);

**11.8.5** to exercise any right of set-off against any Obligor; and/or

**11.8.6** to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with the provisions of the Facilities Agreement.

**11.9 Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

**11.10 Guarantee Limitations**

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006.

**12. EXTENSION AND VARIATION OF THE ACT**

**12.1 Extension of powers**

The power of sale or other disposal conferred on the Facility Agent and on any Receiver by this Charge shall operate as a variation and extension of the statutory power of sale under Section 101 of the Act and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Charge.

**12.2 Restrictions**

The restrictions contained in Sections 93 and 103 of the Act shall not apply to this Charge or to the exercise by the Facility Agent of its right to consolidate all or any of the Security created by or pursuant to this Charge with any other security in existence at any time or to its power of sale, which powers may be exercised by the Facility Agent (provided that it is acting on the instructions of the Majority Lenders) without notice to the Chargor on or at any time after the occurrence of an Enforcement Event.



### **12.3 Transfer of Security**

**12.3.1** At any time after the occurrence of an Enforcement Event, the Facility Agent (provided that it is acting on the instructions of the Majority Lenders) may:

- (a) redeem any prior Security against any Charged Property; and/or
- (b) procure the transfer of any such Security to itself; and/or
- (c) settle and pass the accounts of the prior mortgagee or chargee; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.

**12.3.2** The Chargor shall pay to the Facility Agent immediately on demand the costs and expenses incurred by the Facility Agent in taking any action contemplated by Clause 12.3.1 above, including the payment of any principal or interest.

### **12.4 Suspense account**

If the security created by this Charge is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Facility Agent (or any Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

## **13. APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

### **13.1 Appointment and removal**

After the occurrence of an Enforcement Event (provided that the Facility Agent is acting on the instructions of the Majority Lenders), or if a petition or application is presented for the making of an administration order in relation to the Chargor, or if any person who is entitled to do so gives written notice of its intention to appoint an administrator of the Chargor or files such a notice with the court or if requested to do so by the Chargor, the Facility Agent may by deed or otherwise (acting through an authorised officer of the Facility Agent), without prior notice to the Chargor:

- 13.1.1** appoint one or more persons to be a Receiver of the whole or any part of the Charged Property;
- 13.1.2** appoint two or more Receivers of separate parts of the Charged Property;
- 13.1.3** remove (so far as it is lawfully able) any Receiver so appointed;
- 13.1.4** appoint another person(s) as an additional or replacement Receiver(s); and
- 13.1.5** appoint one or more persons to be an administrator of the Chargor.

### **13.2 Capacity of Receivers**

Each person appointed to be a Receiver pursuant to Clause 13.1 (*Appointment and removal*) shall be:

- 13.2.1** entitled to act individually or together with any other person appointed or substituted as Receiver;
- 13.2.2** for all purposes shall be deemed to be the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Facility Agent; and
- 13.2.3** entitled to remuneration for his services at a rate to be fixed by the Facility Agent from time to time (without being limited to the maximum rate specified by the Act).

### **13.3 Statutory powers of appointment**

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Facility Agent under the Act (as extended by this Charge) or otherwise and such powers shall remain exercisable from time to time by the Facility Agent in respect of any part of the Charged Property. Except as provided in Clause 10.4 (*Effect of moratorium*), any restriction imposed by law on the right of a mortgagee to appoint a receiver (including under section 109(1) of the Act) does not apply to this Charge.

## **14. POWERS OF RECEIVER**

Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Property (and any assets of the Chargor which, when got in, would be Charged Property) in respect of which he was appointed, and as varied and extended by the provisions of this Charge (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor):

- 14.1.1** all the powers conferred by the Act on mortgagors and on mortgagees in possession and on receivers appointed under the Act;
- 14.1.2** all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- 14.1.3** all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do; and
- 14.1.4** the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to (a) any of the functions, powers, authorities or discretions conferred



on or vested in him or (b) the exercise of the Collateral Rights (including realisation of all or any part of the Charged Property) or (c) bringing to his hands any assets of the Chargor forming part of, or which when got in would be, Charged Property.

## **15. APPLICATION OF MONIES**

All monies received or recovered by the Facility Agent or any Receiver pursuant to this Charge or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Act) be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver, the payment of his remuneration and the discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Facility Agent (notwithstanding any purported appropriation by the Chargor) in discharging the Secured Obligations in accordance with the provisions of the Facility Agreement.

## **16. PROTECTION OF PURCHASERS**

### **16.1 Consideration**

The receipt of the Facility Agent or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property or making any acquisition, the Facility Agent or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

### **16.2 Protection of purchasers**

No purchaser or other person dealing with the Facility Agent or any Receiver shall be bound to inquire whether the right of the Facility Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Facility Agent or such Receiver in such dealings.

## **17. POWER OF ATTORNEY**

### **17.1 Appointment and powers**

The Chargor by way of security irrevocably appoints the Facility Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may properly and reasonably consider to be required or desirable for:

17.1.1 carrying out any obligation imposed on the Chargor by this Charge (including the completion, execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property); and

17.1.2 enabling the Facility Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers, authorities and discretions conferred on them by or

pursuant to this Charge or by law (including, after the occurrence of an Enforcement Event (provided that the Facility Agent is acting on the instructions of the Majority Lenders), the exercise of any right of a legal or beneficial owner of the Charged Property) and (without prejudice to the generality of the foregoing) to execute as a deed or under hand and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which it may reasonably deem proper in or for the purpose of exercising any of such rights, powers, authorities and discretions.

**17.2 Exercise of power of attorney**

The Facility Agent may only exercise the power of attorney granted pursuant to Clause 17.1 (*Appointment and powers*) after the occurrence of an Enforcement Event (provided that the Facility Agent is acting on the instructions of the Majority Lenders).

**17.3 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

**17.4 Facility Agent's power to remedy breaches**

If at any time the Chargor fails to perform any of the covenants contained in this Charge it shall be lawful for the Facility Agent, but the Facility Agent shall have no obligation, to take such action on behalf of the Chargor (including, without limitation, the payment of money) as may in the Facility Agent's reasonable opinion be required to ensure that such covenants are performed. Any losses, costs, charges and expenses incurred by the Facility Agent in taking such action shall be reimbursed by the Chargor on demand.

**18. EFFECTIVENESS OF SECURITY**

**18.1 Continuing security**

**18.1.1** The security created by or pursuant to this Charge shall remain in full force and effect as a continuing security for the Secured Obligations unless and until the Secured Obligations have been irrevocably and unconditionally discharged in full and the Finance Parties have no further obligation to make any advance available to any Obligor pursuant to any Finance Document.

**18.1.2** No part of the security from time to time intended to be constituted by this Charge will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

**18.2 Cumulative rights**

The security created by or pursuant to this Charge and the Collateral Rights shall be cumulative, in addition to and independent of every other security which the Facility Agent

or any Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior security held by the Facility Agent (whether in its capacity as facility agent for the Secured Parties or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Property shall merge into the security constituted by this Charge.

**18.3 No prejudice**

The security created by or pursuant to this Charge and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other security interest, agreement or document or by any time or indulgence granted to the Chargor or any other person, or the Facility Agent (whether in its capacity as facility agent for the Secured Parties or otherwise) or any of the other Secured Parties or by any variation of the terms of the contractual arrangements upon which the Facility Agent holds the security or by any other thing which might otherwise prejudice that security or any Collateral Right.

**18.4 Remedies and waivers**

No failure on the part of the Facility Agent to exercise, or any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right, nor shall any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

**18.5 No liability**

None of the Facility Agent, its nominee(s) or any Receiver shall be liable by reason of (a) taking any action permitted by this Charge or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property. Notwithstanding the foregoing, nothing shall relieve the Facility Agent, its nominees nor any Receiver from liability for gross negligence or wilful misconduct.

**18.6 Partial invalidity**

If, at any time, any provision of this Charge is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Charge nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Charge is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

## **18.7 Waiver of defences**

The obligations of the Chargor under this Charge will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Charge (without limitation and whether or not known to it or any Secured Party) including:

- 18.7.1** any time, waiver or consent granted to, or composition with the Chargor or any other person; or
- 18.7.2** the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of any Obligor; or
- 18.7.3** the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Chargor or any person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security; or
- 18.7.4** any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any person; or
- 18.7.5** any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature) or replacement of a Finance Document or any other document or security or of the Secured Obligations as may be agreed by the parties to the relevant Finance Document from time to time (including, without limitation, any increase to the Secured Obligations); or
- 18.7.6** any unenforceability, illegality or invalidity of any obligation of any other person under any Finance Document or any other document or security or of the Secured Obligations; or
- 18.7.7** any insolvency or similar proceedings.

## **18.8 Immediate recourse**

The Chargor waives any right it may have of first requiring any Secured Party (or the Facility Agent or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Charge. This waiver applies irrespective of any law or any provision of this Charge to the contrary.

## **18.9 Deferral of rights**

Until such time as the Secured Obligations have been discharged in full, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Charge:

- (a) to be indemnified by any Obligor;
- (b) to claim any contribution from any guarantor of the Chargor's obligations under this Charge or any co-surety; and/or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, this Charge by any Secured Parties.

## **19. RELEASE OF SECURITY**

### **19.1 Redemption of security**

Upon the Secured Obligations being irrevocably discharged in full and none of the Secured Parties being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person under any of the Finance Documents, the Facility Agent shall, at the request and cost of the Chargor, promptly do all such deeds, acts and things as may be necessary to release and cancel the security constituted by this Charge subject to Clause 19.2 (*Avoidance of payments*) and without recourse to, or any representation or warranty by, the Facility Agent or any of its nominees.

### **19.2 Avoidance of payments**

If the Facility Agent reasonably considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under, and the security created by, this Charge shall continue and such amount shall not be considered to have been irrevocably paid.

## **20. SET-OFF**

**20.1** The Chargor authorises the Facility Agent (but the Facility Agent shall not be obliged to exercise such right) to set off against the Secured Obligations any amount or other matured obligation due and owing by the Facility Agent to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Facility Agent in accordance with Clause 15 (*Application of monies*).

**20.2** - Without prejudice to any right of set-off the Facility Agent may have under any other Finance Document or otherwise, if any time deposit matures on any account the Chargor has with the Facility Agent prior to the release of all of the Charged Property pursuant to Clause 19.1 (*Redemption of security*) when:



**20.2.1** an Enforcement Event has occurred (provided that the Facility Agent is acting on the instructions of the Majority Lenders); and

**20.2.2** no Secured Obligation is due and payable,

that time deposit will automatically be renewed for any further maturity which the Facility Agent reasonably considers appropriate.

**21. SUBSEQUENT SECURITY INTERESTS**

If the Facility Agent (acting in its capacity as facility agent for the Secured Parties or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent security affecting all or any part of the Charged Property or any assignment or transfer of the Charged Property which is prohibited by the terms of this Charge or the Finance Documents, all payments made thereafter by or on behalf of the Chargor to the Facility Agent (whether in its capacity as facility agent for the Secured Parties or otherwise) or any of the other Secured Parties shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations as at the time when the Facility Agent received such notice.

**22. ASSIGNMENT**

The Facility Agent may assign and transfer all or any of its rights and obligations under this Charge, subject to complying with any confidentiality requirements. The Facility Agent shall be entitled to disclose such information concerning the Chargor and this Charge as the Facility Agent reasonably considers appropriate to any actual or proposed direct or indirect successor as permitted under the Facility Agreement or to any person to whom information is required to be disclosed by any applicable law.

**23. INDEMNITIES**

The Chargor shall indemnify the Facility Agent in accordance with articles 10.2 and 10.6 of the Facility Agreement.

**24. TAX**

The Chargor shall pay all amounts due in respect of tax in accordance with article 10.1 of the Facility Agreement.

**25. COSTS AND EXPENSES**

The Chargor shall pay costs and expenses in accordance with article 10.7 of the Facility Agreement.

## **26. NOTICES**

### **26.1 Communications in writing**

Any communication to be made under or in connection with this Charge shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **26.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Charge is:

#### **26.2.1 in the case of the Chargor:**

Address: 1st Floor  
Beaumont House  
Kensington Village,  
Avonmore Road  
London W14 8TS  
United Kingdom

Attention: Marc Doboin

Tel: +33 (0)6.34.09.04.25

Fax: +44 (0)207 605 1201

E-mail: [marcdoboin@eagle Moss.co.uk](mailto:marcdoboin@eagle Moss.co.uk)

#### **26.2.2 in the case of the Facility Agent:**

Address: [sapprimary@solutus-advisors.com](mailto:sapprimary@solutus-advisors.com)

Attention: Head of Primary Servicing

Tel: +44 (0) 203 735 1200

Fax: +44 (0) 203 004 1789

### **26.3 Delivery**

**26.3.1** Any communication or document made or delivered by one person to another under or in connection with this Charge will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.

- 26.3.2** Any communication or document to be made or delivered to the Facility Agent will be effective only when actually received by the Facility Agent and then only if it is expressly marked for the attention of the department or officer identified with the Facility Agent's details provided under Clause 26.2 (*Addresses*) (or any substitute department or officer as the Facility Agent shall specify for this purpose).

**26.4 English language**

Any notice given under or in connection with this Charge must be in English.

**27. DISCRETION AND DELEGATION**

**27.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Charge by the Facility Agent or any Receiver may, subject to the terms and conditions of the Facility Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

**27.2 Delegation**

Each of the Facility Agent and any Receiver shall have full power to delegate, acting reasonably, (either generally or specifically) the powers, authorities and discretions conferred on it by this Charge (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise any subsequent delegation or any revocation of such power, authority or discretion by the Facility Agent or the Receiver itself. Neither the Facility Agent nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate. Notwithstanding the foregoing, nothing shall relieve the Facility Agent, delegate nor any Receiver from liability for gross negligence or wilful misconduct.

**28. COUNTERPARTS**

This Charge 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 Charge.

**29. GOVERNING LAW**

- This Charge and all matters including non-contractual obligations arising out of or in connection with it are governed by English law.



### 30. JURISDICTION

#### 30.1 English courts

The courts of England have exclusive jurisdiction to settle any dispute arising out of, or connected with this Charge (including a dispute regarding the existence, validity or termination of this Charge or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Charge) (a **Dispute**).

#### 30.2 Convenient forum

The parties to this Charge agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

#### 30.3 Exclusive jurisdiction

This Clause 30 is for the benefit of the Facility Agent only. As a result and notwithstanding Clause 30.1 (*English courts*), it does not prevent the Facility Agent from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Facility Agent may take concurrent proceedings in any number of jurisdictions.

**THIS CHARGE** has been signed on behalf of the Facility Agent and executed as a deed by the Chorgor and is delivered by it on the date specified above.

**SIGNATURES**

**THE CHARGOR**

**EXECUTED as a DEED**  
**by EAGLEMOSS LIMITED**

Director: .....  
*George Bensonian*

In the presence of:

Witness: .....

Witness Address: .....

**Julie-Anna Lucchetti**  
Solicitor  
Squire Patton Boggs (UK) LLP  
7 Devonshire Square, London EC2M 4 YH

Witness Occupation: .....

**THE FACILITY AGENT**

**EXECUTED as a DEED**  
**by SOLUTUS ADVISORS LIMITED**

By: .....

In the presence of:

Witness: ..... *HAMISH SWAN* .....

Witness Address:

Witness Occupation: ..... *MANAGER* .....