



**Registration of a Charge**

Company name: **GEOACOUSTICS LTD**

Company number: **02571389**

Received for Electronic Filing: **05/01/2021**



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**Details of Charge**

Date of creation: **18/12/2020**

Charge code: **0257 1389 0010**

Persons entitled: **KONGSBERG GRUPPEN ASA**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

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**Authentication of Form**

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

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**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:

**HARRISON CLARK RICKERBYS**



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

Company number: 2571389

Charge code: 0257 1389 0010

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th December 2020 and created by GEOACOUSTICS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th January 2021 .

Given at Companies House, Cardiff on 6th January 2021

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



**Companies House**



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

Dated 18 December 2020

**KONGSBERG GEOACOUSTICS LIMITED**

**and**

**KONGSBERG GRUPPEN ASA**

**DEBENTURE**

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THIS DEED is made on  
by

18 December

2020

- (1) **KONGSBERG GEOACOUSTICS LIMITED**, a company incorporated under the laws of England and Wales with company registration number 02571389 whose registered office is at Shuttleworth Close, Garton Hall Industrial Estate Limited, Great Yarmouth, Norfolk, NR31 0NQ, England (the "**Company**")

in favour of

- (2) **KONGSBERG GRUPPEN ASA**, a company registered under the laws of Norway with business registration number 943 753 709, having its registered office at Kirkegårdsveien 45, NO-3616 Kongsberg, Norway (the "**Lender**").

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed:

"**Account Bank**" means any bank or financial institution with whom the Company holds an account, from time to time.

"**Administrator**" means any person appointed under Schedule B1 to the Insolvency Act 1986 to manage any Company's affairs, business and property.

"**Charged Property**" means all the property, assets and undertaking of the Company which from time to time are the subject of the security created or expressed to be created in favour of the Lender by or pursuant to this Deed.

"**Default Rate**" means the rate of two per cent. (2.00%) per annum above the rate of interest payable under the Acquisition Agreement.

"**Environment**" means the air (including the air within buildings and the air within other natural or man-made structures above or below ground), water (including ground and surface water) and land (including surface and sub-surface soil) and any other meaning given to the term under Environmental Law.

"**Environmental Law**" means any applicable law concerning the protection of the Environment or human health, the condition of any property or of any place of work or the production, storage treatment, transport or disposal of any substance capable of causing harm to any living organism or the Environment.

"**EU Regulation**" means the Council of the European Union Regulation No. 1346/2000 on insolvency proceedings. "**Facility Agreement**" means the term loan agreement dated on or about the date of this Deed and made between the Company and the Lender.

"**Financial Collateral**" shall have the same meaning as in the Financial Collateral Regulations.

"**Financial Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226).

"**Floating Charge Property**" has the meaning given in Clause 3.3 (*Floating Charges*).

"**Insurance Policy**" means any policy of insurance and cover note in which the Company may from time to time have an interest.

"**Intellectual Property**" means:

- (a) the Company's present and future patents, trade marks, service marks, rights in designs, business names, copyrights, database rights, domain names, moral rights, rights to inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered;
- (b) the benefit of all applications and rights to use such assets; and

- (c) all Related Rights.

**"Material Contracts"** means:

- (a) any contract entered into by the Company which relates to the day to day running of the Company's business that may from time to time be identified in writing by the Lender as a Material Contract;
- (b) any contract the loss of which would have a material adverse effect on the continuing operation of the Company's business;
- (c) any contract of strategic importance to the Company's business;
- (d) any other single contract the total value of which is in excess of £50,000; and
- (e) all Related Rights.

**Material Intellectual Property** means patents, trade marks and rights in design.

**Plant and Machinery** means:

- (a) all equipment, plant, machinery, computers, vehicles, furniture, fittings and all other assets of a similar nature which are now, or at any time after the date of this Deed become, the property of the Company; and
- (b) all Related Rights.

**"Real Property"** means the Company's estates or interests in all present and future freehold (including commonhold), leasehold or other immovable property (including the property specified in Schedule 1 (*Real Property*)), and any buildings, fixtures or fittings from time to time situated on or forming part of such property, and includes all Related Rights.

**"Receivables"** means:

- (a) all present and future book and other debts and monetary claims owing to a Company; and
- (b) all Related Rights.

**"Receiver"** means a receiver or receiver and manager or administrative receiver appointed pursuant to the provisions of this Deed or any applicable law.

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

- (a) the proceeds of sale or rental 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, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that asset; and
- (d) any income, moneys and proceeds paid or payable in respect of that asset.

**"Secured Obligations"** means all present and future obligations and liabilities of the Company to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity and whether or not the Lender was an original party to the relevant transaction and in whatever name or style, together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities except for any money or liability which, if it were so included, would cause the infringement of section 678 or 679 of the Companies Act 2006. **"Security"** means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Security Financial Collateral Arrangement"** shall have the same meaning as in the Financial Collateral Regulations.

**"Security Period"** means the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that all the Secured Obligations have been unconditionally and

irrevocably paid and discharged in full and no further Secured Obligations are capable of being outstanding.

## **1.2 Defined Expressions**

Defined terms in the Facility Agreement have the same meanings in this Deed unless otherwise expressly defined in this Deed.

## **1.3 Interpretation**

In this Deed:

- (a) clause and schedule headings are for convenience of reference only and shall not affect the construction of this Deed;
- (b) references to Clauses and Schedules are references to the Clauses of and Schedules to this Deed;
- (c) references to this Deed or any other agreement or instrument shall be construed as references to that agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) references to a person shall be construed to include that person's assigns, transferees or successors in title and shall be construed as including any individual, firm, trust, partnership, joint venture, company, corporation, unincorporated body of persons or any state or agency thereof, whether or not having separate legal personality;
- (e) references to a provision of law are references to that provision as amended or re-enacted;
- (f) words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- (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;
- (h) the words "**including**" shall not be construed as limiting the generality of the words preceding it; and
- (i) an Event of Default is "**continuing**" if it has not been waived by the Lender.

## **1.4 Third Party Rights**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term of this Deed.

## **1.5 Incorporation of Terms**

The terms of any directions from the Lender and of any side letters between any of the parties thereto are incorporated in this Deed to the extent required to ensure that any disposition of Real Property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

## **1.6 Effect as a Deed**

This Deed is intended to take effect as a deed, notwithstanding that the Lender may have executed it under hand only.

## **2. COVENANT TO PAY**

The Company covenants that it will, on demand, pay and discharge the Secured Obligations to the Lender when due.

## **3. GRANT OF SECURITY**

### **3.1 Fixed Charges**

The Company with full title guarantee charges in favour of the Lender as continuing security for the payment and discharge of the Secured Obligations:

- (a) by way of legal mortgage, the Real Property and all Related Rights;



- (b) by way of fixed charge, any Real Property and all Related Rights now or at any time after the date of this Deed belonging to the Company (other than property mortgaged under Clause 3.1(a) above);
- (c) by way of fixed charge, all Related Rights in relation the Real Property charged pursuant to this Deed;
- (d) by way of fixed charge, all present and future Plant and Machinery and other fixtures and fittings attached to any Real Property;
- (e) by way of fixed charge,
  - (i) all present and future bank accounts, cash at bank and credit balances of the Company with any bank or other person;
  - (ii) all Related Rights in relation to the accounts charged pursuant to Clause 3.1(e)(i) above;
- (f) by way of fixed charge, all present and future Receivables, other than those validly and effectively assigned under Clause 3.2;
- (g) by way of fixed charge, all present and future Intellectual Property;
- (h) by way of fixed charge, the goodwill of the Company;
- (i) by way of fixed charge, the uncalled capital of the Company;
- (j) by way of fixed charge, all rights, interests and claims in the Insurance Policies, other than those validly and effectively assigned under Clause 3.2;
- (k) by way of fixed charge, all rights, interests and claims in the Material Contracts, other than those validly and effectively assigned under Clause 3.2;
- (l) by way of fixed charge, the benefits of all licences, consents and authorisations held in connection with its business or the use of any Charged Property, and the right to any compensation in respect of any of them; and
- (m) by way of fixed charge, all rights, interests and claims in any pension fund now or in the future.

### 3.2 Security Assignment

The Company with full title guarantee assigns absolutely to the Lender as continuing security for the payment and discharge of the Secured Obligations all of its rights, title, interest and benefit from time to time in and to:

- (a) the Material Contracts;
- (b) the Insurance Policies; and
- (c) the Receivables.

### 3.3 Floating Charges

The Company charges and agrees to charge by way of first floating charge all of its present and future assets and undertaking (wherever located) not otherwise effectively charged by way of fixed mortgage or charge pursuant to Clause 3.1 (*Fixed Charges*), or assigned pursuant to Clause 3.2 (*Security Assignment*), or any other provision of this Deed being the "**Floating Charge Property**". The floating charge created pursuant to this Clause 3.3 shall be deferred in point of priority to all fixed security validly and effectively created by the Company under this Deed in favour of the Lender as security for the Secured Obligations.

### 3.4 Qualifying Floating Charge

Paragraph 14 of Schedule B1 of the Insolvency Act 1986 shall apply to any floating charge created by this Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986).

### 3.5 Financial Collateral

To the extent that the Charged Property constitutes Financial Collateral, the Company agrees that such Charged Property shall be held or designated so as to be under the control of the

Lender (or by a person acting on its behalf) for the purposes of the Financial Collateral Regulations. To the extent that the Charged Property constitutes Financial Collateral and is subject to a Security Financial Collateral Arrangement created by or pursuant to this Deed, the Lender shall have the right at any time after this Deed becomes enforceable, to appropriate all or any part of that Charged Property in or towards the payment or discharge of the Secured Obligations. The value of any Charged Property appropriated in accordance with this Clause shall be (a) in the case of cash, the amount standing to the credit of any account, together with accrued but unposted interest, at the time the right of appropriation is exercised, and (b) in the case of Investments, the market price of that Charged Property at the time the right of appropriation is exercised, as listed on any recognised market index, or as determined by such other method as the Lender may select (acting reasonably). The Company agrees that the methods of valuation provided for in this Clause are commercially reasonable for the purposes of Regulation 18 of the Financial Collateral Regulations.

### **3.6 Implied covenants for title**

- (a) The covenants set out in sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clauses 3.1 (Fixed Charges), 3.2 (Security Assignment) or 3.3 (Floating Charges)
- (b) It shall be implied in respect of Clauses 3.1 (Fixed Charges), 3.2 (Security Assignment) or 3.3 (Floating Charges) that each Chargor is disposing of the Charged Property free from all charges and incumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

## **4. NEGATIVE PLEDGE**

The Company shall not, except with the prior written consent of the Lender:

- (a) create or permit to subsist any Security over any of the Charged Property other than this Deed; or
- (b) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, discount, factor, transfer, assign, lease, lend or otherwise dispose of any of the Charged Property other than the Floating Charge Property in the ordinary course of trading on an arm's length basis.

## **5. CRYSTALLISATION OF FLOATING CHARGE**

### **5.1 Conversion of Floating Charge**

The Lender may at any time by notice in writing to the Company immediately convert the floating charge created by Clause 3.3 (*Floating Charges*) into a fixed charge as regards any property or assets specified in the notice if:

- (a) an Event of Default has occurred and is continuing;
- (b) the Lender 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;
- (c) the Lender reasonably considers that it is desirable in order to protect the priority of the security; or
- (d) the Company requests the Lender to exercise any of its powers under this Deed.

### **5.2 Automatic Conversion**

- (a) If, without the prior written consent of the Lender,
  - (i) the Company disposes of any of the Floating Charge Property other than in the ordinary course of trading on an arm's length basis or as otherwise with the prior written consent of the Lender;
  - (ii) the Company creates any Security over any of the Charged Property;
  - (iii) any steps are taken for any of the Charged Property to become subject to any Security in favour of any other person; or

- (iv) any person levies or attempts to levy any distress, execution or other process against any of the Charged Property; or
- (v) a resolution is passed or an order is made for the winding-up, dissolution, or re-organisation of or any steps are taken for the appointment of an Administrator in respect of the Company or any analogous step is taken in any jurisdiction,

the floating charge created under Clause 3.3 (*Floating Charges*) by the Company will automatically be converted (without notice) with immediate effect into a fixed charge in respect of the relevant Floating Charge Property.

- (b) At any time after the floating charge constituted under this Deed shall have crystallised as a fixed charge over all or part of the Charged Property pursuant to this Clause 5 but before the appointment of any Receiver pursuant hereto, the said fixed charge shall upon the written consent of the Lender cease to attach to the assets then subject to the fixed charge and shall again subsist as a floating charge.

## **6. PERFECTION OF SECURITY**

### **6.1 Deposit of Title Documents**

- (a) Immediately following the execution of this Deed (or, if later, the date of acquisition of the relevant Charged Property), the Company shall deposit with the Lender:
  - (i) all deeds and documents of title relating to the Charged Property; and
  - (ii) copies of all Insurance Policies to which the Company is entitled to possession.
- (b) A breach of clause 6.1(a) will not arise if there are no documents of title in respect of any part of the Charged Property.

### **6.2 Notices of Assignment**

The Company shall, promptly following request by the Lender:

- (a) give notice, in such form notified to the Company, to each Account Bank of the charging of the Company's rights and interest in its bank accounts and shall use its reasonable endeavours to procure that each Account Bank will promptly provide an acknowledgement to the Lender of such notice;
- (b) give notice, in such form notified to the Company, to each person with whom the Company has entered into a Material Contract of the assignment of the Company's rights and interest in and under such Material Contract and shall use its reasonable endeavours to procure that each addressee of such notice will promptly provide an acknowledgement to the Lender of such notice; and
- (c) give notice, in such form notified to the Company, to each insurer with whom the Company has an Insurance Policy of the assignment of the Company's rights and interest in and under such Insurance Policy and shall use its reasonable endeavours to procure that each addressee of such notice will promptly provide an acknowledgement to the Lender of such notice.

### **6.3 Registration of Intellectual Property**

The Company shall, if requested by the Lender, execute all such documents and do all acts that the Lender may reasonably require to record the interest of the Lender in any registers relating to any registered Intellectual Property.

### **6.4 Land Registry disposal restriction**

In respect of any Real Property or part of or interest in any Real Property title to which is registered at the Land Registry (or any unregistered land subject to first registration), the Company shall apply or consent to an application being made to the Chief Land Registrar to enter the following restriction on the Register of Title for such Real Property:

*"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Deed dated 2020 in favour of Kongsberg Gruppen ASA referred to in the charges register or their conveyancer."*

**6.5 Tacking**

The obligation on the part of the Lender to make further advances to the Company is deemed to be incorporated in this Deed and the Company shall apply to the Chief Land Registrar for a note of such obligation to be entered on the Register of Title of all present and future registered Real Property.

**7. FURTHER ASSURANCE**

**7.1 Extension of covenant**

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in 7.2 below.

**7.2 Further assurance**

- (a) The Company shall, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require):
  - (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 intended to be, the subject of this Deed) or for the exercise of any rights, powers and remedies of the Lender;
  - (ii) to confer on the Lender Security over any property and assets of the Company located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or
  - (iii) to facilitate the realisation of the assets which are, or intended to be, the subject of this Deed.
- (b) The Company 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, protection or maintenance of any Security conferred or intended to be conferred on the Lender.

**8. REPRESENTATIONS**

The Company makes the representations and warranties set out in this Clause 8 (*Representations*) to the Lender on each day during the Security Period.

**8.1 Due incorporation**

- (a) The Company is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation; and
- (b) The Company has the power to own its assets and carry on its business as it is being conducted.

**8.2 Powers**

The Company has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this Deed and the transactions contemplated by it. No limit on its powers will be exceeded as a result of the grant of Security contemplated by this Deed.

**8.3 Non-contravention**

The entry into and performance by the Company of, and the transactions contemplated by, this Deed do not and will not contravene or conflict with:

- (a) the Company's constitutional documents;
- (b) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- (c) any law or regulation or judicial or official order applicable to it.

#### 8.4 Authorisations

The Company has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations under this Deed and to make it admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.

#### 8.5 Binding obligations

- (a) The Company's obligations under this Deed are legal, valid, binding and enforceable; and
- (b) This Deed creates:
  - (i) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
  - (ii) subject to registration pursuant to Part 25 of the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets referred to in this Deed,

in favour of the Lender having the priority and ranking expressed to be created by this Deed and ranking ahead of all (if any) Security and rights of third parties, except those preferred by law.

#### 8.6 Registration

It is not necessary to file, record or enrol this Deed (other than at Companies House or the Land Registry) with any court or other authority or pay any stamp, registration or similar taxes in relation to this Deed or the transactions contemplated by it.

#### 8.7 No default

- (a) No Event of Default or, on the date of this Deed, event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default, has occurred and is continuing.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets is subject which has or is likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Deed.

#### 8.8 Litigation

No litigation, arbitration or administrative proceedings are taking place, pending or, to the Company's knowledge, threatened against it, any of its directors or any of its assets.

#### 8.9 Information

The information, in written or electronic format, supplied by, or on behalf of, the Company to the Lender in connection with this Deed was, at the time it was supplied or at the date it was stated to be given (as the case may be), to the best of the Company's knowledge and belief:

- (a) if it was factual information, complete, true and accurate in all material respects;
- (b) if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration;
- (c) if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
- (d) not misleading in any material respect nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Company to the Lender.

#### **8.10 Centre of Main Interests**

For the purposes of the EU Regulation, the Company's centre of main interests (as that expression is used in Article 3(1) of the EU Regulation, is situated in England and Wales and the Company has no other "establishment" (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

### **9. UNDERTAKINGS**

The Company covenants and agrees with the Lender that it will, during the Security Period, comply with the covenants in this Clause 9 (*Undertakings*).

#### **9.1 General**

(a) Notification of default

The Company shall notify the Lender of any Event of Default or event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

(b) Authorisations

The Company shall promptly obtain all consents and authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability and admissibility in evidence of this Deed in its jurisdiction of incorporation.

(c) Compliance with law

The Company shall comply in all respects with all laws to which it may be subject if failure to do so would materially impair its ability to perform its obligations under this Deed.

(d) Change of business

The Company shall not make any material change to the nature or scope of its business as carried out on the date of this Deed.

(e) Information

The Company shall supply to the Lender:

- (i) all documents dispatched by the Company to its shareholders (or any class of them), or its creditors generally, at the same time as they are dispatched;
- (ii) details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Company as soon as it becomes aware of them and which might, if adversely determined, have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Deed or any document evidencing the Secured Obligations; and
- (iii) promptly, any further information about the financial condition, business and operations of the Company as the Lender may reasonably request.

#### **9.2 Charged Property Generally**

(a) The Company shall:

- (i) permit the Lender (or its designated representatives), on reasonable written notice:
  - (A) access during normal office hours to the accounting records of the Company and to any documents and records relating to the Charged Property; and
  - (B) to inspect, take extracts from, and make copies of, the same,

and to provide (at the Company's expense), such clerical and other assistance which the Lender may reasonably require to do this provided always that such access or inspection shall not unduly interrupt the business of the Company;

- (ii) comply in all material respects with all obligations in relation to the Charged Property under any present or future law, regulation, order or instrument of any competent authority or other approvals, licences or consents;
- (iii) comply with all material covenants and obligations affecting any of the Charged Property or the manner of use of any of it; and
- (iv) provide the Lender with all information which it may reasonably request in relation to the Charged Property.

(b) The Company shall not:

- (i) except with the prior written consent of the Lender, enter into any onerous or restrictive obligation affecting any of the Charged Property; or
- (ii) do, cause or permit to be done or omit to do anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any of the Charged Property;

### 9.3 Property matters

(a) The Company shall

- (i) notify the Lender within 14 days of receipt of every material notice, order or proposal given, or made in relation to, the Real Property by any competent authority and (if required by the Lender) immediately provide it with a copy of the same and either:
  - (A) comply with such notice, order or proposal; or
  - (B) make such objections to the same as the Lender may require or approve;
- (ii) duly and punctually pay all rates, rents, taxes and other outgoings owed by it in respect of the Real Property;
- (iii) comply with all material covenants and obligations affecting any of the Real Property or the manner of use of any of it;
- (iv) maintain all buildings and erections forming part of the Charged Property in a good state of repair provided that nothing in this Clause shall oblige the Company to keep any of its buildings and erections in a better state of repair or in better working order or condition than they are at the date of this Deed, or than is required for the business of the Company, and in all cases subject to fair wear and tear; and
- (v) properly discharge all duties of care and responsibility placed on it by Environmental Law and apply for and obtain all authorisations necessary to ensure that it does not breach Environmental Law;
- (vi) notify the Lender immediately upon the acquisition of any Real Property;
- (vii) permit the Lender and any person nominated by any of them at all reasonable times with reasonable notice to enter any part of the Real Property and view the state of it;
- (viii) grant the Lender on request all reasonable facilities within the power of the Company to allow the Lender (or its lawyers) to carry out (at the Company's expense) investigations of title to the Real Property and to make all enquiries in relation to any part of the Real Property which a prudent mortgagee might carry out;
- (ix) As soon as reasonably practicable and upon demand by the Lender, provide the Lender with a report as to title of the Company to the Real Property concerning those items which may properly be sought to be covered by a prudent mortgagee in a lawyer's report of this nature;

- (x) in respect of any Real Property which is acquired after the date of this Deed, title to which is registered at the Land Registry or which is required to be so registered:
    - (A) give written notice of this Deed to the Land Registry and procure that notice of this Deed is clearly noted in the Register of Title for such Real Property;
    - (B) procure that no person is registered as proprietor of any such property under the Land Registration Acts 1925 to 2002 without the prior written consent of the Lender;
  - (xi) authorise the Lender to make any application which the Lender deems appropriate for the designation of this Deed and/or any other document as an exempt information document under rule 136 of the Land Registration Rules 2003 and use its best endeavours to assist with any such application made by or on behalf of the Lender; and
  - (xii) notify the Lender in writing as soon as it receives notice of any person's application under rule 137 of the Land Registration Rules 2003 for the disclosure of this Deed or any other document, following its designation as an exempt information document and not make any application under rule 138 of the Land Registration Rules 2003 for the removal of the designation of such document as an exempt information document.
- (b) The Company shall not
- (i) except with the prior written consent of the Lender confer on any person:
    - (A) any lease or tenancy of any of the Real Property or accept a surrender of any lease or tenancy (whether independently or under any statutory power);
    - (B) any right or licence to occupy any land or buildings forming part of the Real Property;
    - (C) any licence to assign or sub-let any part of the Real Property; or
    - (D) enter into any onerous or restrictive obligation affecting any of the Real Property;
  - (ii) carry out any development within the meaning of section 55 of the Town and Country Planning Act 1990 without first obtaining such permissions as may be required under applicable legislation and, in the case of development involving a substantial change in the structure of, or a change in use of, any part of the Real Property, without first obtaining the written consent of the Lender; or
  - (iii) do or permit to be done anything as a result of which any lease may be liable to forfeiture or otherwise be determined.

#### **9.4 Plant and Machinery**

- (a) The Company shall:
- (i) maintain at its own expense all Plant and Machinery for the time being owned by it in good working order and serviceable condition provided that nothing in this Clause shall oblige the Company to keep any of its Plant and Machinery in a better state of repair or in better working order or condition than they are at the date of this Deed, or than is required for the business of the Company, and in all cases subject to fair wear and tear; and
  - (ii) immediately on request by the Lender, acting reasonably, affix to any item of Plant and Machinery a durable notice of this Deed in such form as the Lender may require.
- (b) The Company shall not
- (i) make any material alterations or additions to any Plant and Machinery which are reasonably likely to depreciate, jeopardise or prejudice their value or marketability; or



- (ii) remove any Plant and Machinery from the Charged Property except in the ordinary course of its business and for the purpose of maintenance pursuant to the terms of this Deed.

#### 9.5 Insurance

(a) The Company shall:

- (i) effect and maintain at its expense insurances in respect of all its assets and business with insurers as are reasonably acceptable to the Lender. Such insurances shall:
    - (A) provide cover against such risks and in such amounts as is issued for prudent companies owning or possessing similar assets and carrying on similar businesses and against all other risks which the Lender acting reasonably may from time to time specify;
    - (B) have the interest of the Lender as mortgagee noted on all relevant policies;
    - (C) be on such terms and contain such clauses as the Lender may reasonably require and in particular will require the relevant insurer to inform the Lender of:
      - (1) any cancellation, alteration, termination or expiry of any such insurance at least 30 days before it is due to take effect;
      - (2) any default in payment of any premium or failure to renew at least 30 days before the renewal date; or
      - (3) any act, omission or event of which the insurer has knowledge which may make any insurance void, voidable or unenforceable (in whole or in part);
  - (ii) promptly pay all premiums relating to all policies of insurance;
  - (iii) supply to the Lender on request copies of each policy of insurance required to be maintained in accordance with this Deed together with current premium receipts relating to it;
  - (iv) if it defaults at any time in effecting or maintaining such insurances or in producing any policy or receipt to the Lender on demand, authorise the Lender to take out or renew such policies of insurance in any sum which the Lender may reasonably think expedient. All moneys which are expended by the Lender in so doing shall be deemed to be properly paid by the Lender and shall be reimbursed by the Company on demand;
  - (v) notify the Lender if any claim arises or may be made under the insurances; and
  - (vi) give the Lender the sole right to conduct or settle any insurance claim.
- (b) The Company shall not do or permit to be done or omit to do anything which may render any insurance void, voidable or unenforceable (in whole or in part) nor vary, amend or terminate any policy of insurance.

#### 9.6 Intellectual Property

(a) The Company shall:

- (i) observe and comply with all material obligations and laws to which it is subject in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of its Intellectual Property or any part of it;
- (ii) do all acts as are reasonably practicable to maintain, protect and safeguard its Material Intellectual Property and not discontinue the use of any of its Material Intellectual Property nor allow it to be used in such a way that it is put at risk by becoming generic or by being identified as disreputable in any way;
- (iii) duly register in such register(s), or with such authorities as may be available for the purpose and in such name(s) as may be required by the law and practice of the place or registration, such of its Material Intellectual Property (and all

assignments, licences and mortgages of it) as may be capable of registration in such places unless the Company deems such act or acts as not commercially reasonable to its business;

- (iv) pay all fees necessary to maintain, protect and safeguard its Material Intellectual Property and the registrations required to be made for such purposes prior to the latest time provided for payment of them unless the Company deems such act or acts as not commercially reasonable to its business;
  - (v) take all reasonable steps (including the commencement of legal proceedings) as may be necessary to safeguard and maintain the validity, reputation, integrity, registration or subsistence of its Material Intellectual Property; and
  - (vi) maintain a comprehensive, detailed and up-to-date centralised record of all its Material Intellectual Property (including details of agents engaged in relation to registrations of it) and, when reasonably requested by the Lender, immediately provide to the Lender a copy of such record and/or a summary of all its Intellectual Property created or acquired since the date of this Deed or the date of last notification.
- (b) The Company shall not:
- (i) change the specification referred to in any of its registrations of Material Intellectual Property or permit any disclaimer, condition, restriction, memorandum or other thing to be entered on the registration of any of the trade marks comprised within such Material Intellectual Property, the effect of which will be to materially and adversely affect the value of such trade marks; or
  - (ii) grant any licence to any person to use its Material Intellectual Property in any manner which will materially and adversely affect the value of such Material Intellectual Property.

#### 9.7 Receivables

The Company shall, after the security constituted by this Deed becomes enforceable:

- (a) deal with the Receivables in accordance with any directions given in writing from time to time by the Lender and, in the absence of such directions, hold the Receivables on trust for the benefit of the Lender;
- (b) comply with any notice served by the Lender on the Company prohibiting the Company from withdrawing all or any monies from time to time standing to the credit of its accounts with any bank, financial institution or other person, except with the prior written consent of the Lender;
- (c) if called upon so to do by the Lender, execute a legal assignment of the Receivables to the Lender in such terms as the Lender may require and give notice thereof to the debtors from whom the Receivables are due, owing or incurred; and
- (d) deliver to the Lender such information as to the amount and nature of its Receivables as the Lender may from time to time reasonably require.

#### 9.8 Material Contracts

- (a) The Company shall:
  - (i) duly perform its obligations under each Material Contract, notify the Lender of any material default by it or any other party under any Material Contract and not take any action which would reduce or impede recoveries in respect of any Material Contract; and
  - (ii) provide to the Lender, as soon as practicable upon receipt, copies of all notices which it may from time to time receive from any other party to any Material Contract.
- (b) The Company shall not, without the prior written consent of the Lender, amend or waive any term of any Material Contract, terminate any Material Contract or release any other party from its obligations under any Material Contract.

**9.9 Centre of Main Interests**

The Company shall not, without the prior written consent of the Lender, change its centre of main interest (as that expression is used in Article 3(1) of the EU Regulation) to somewhere other than England and Wales, nor will it have any establishment (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

**9.10 Goodwill**

- (a) The Company shall not, except with the prior written consent of the Lender, grant any franchise, licence or other authority to any person to use its company name, trade name or business name or any other business asset which will materially and adversely affect the value of the goodwill of the Company.
- (b) The Company shall where the prior written consent of the Lender had been given under Clause 9.10(a), it will comply with Clause 9.7 (*Receivables*) in relation to any income or monies receivable in respect of such franchise, licence or authority as if such income or monies were Receivables.

**9.11 Uncalled capital**

- (a) The Company shall promptly apply any paid capital towards the repayment, in full or in part, of the Secured Obligations.
- (b) The Company shall not call up, or receive in advance of its due date, any uncalled capital.

**10. ENFORCEMENT OF SECURITY**

**10.1 Enforcement**

The security constituted by this Deed shall become immediately enforceable at any time after the occurrence of:

- (a) an Event of Default which is continuing;
- (b) a request from the Company to the Lender that it exercises any of its powers under this Deed; or
- (c) after the Lender has demanded payment of the Secured Obligations.

**10.2 Powers on enforcement**

At any time after the security created under this Deed becomes enforceable, the Lender may, without notice to the Company or prior authorisation from any court and whether or not it has appointed a Receiver, in its absolute discretion:

- (a) secure and perfect its title to all or any part of the Charged Property;
- (b) 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 any assets of the Company which, when got in, would be part of the Charged Property) at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration);
- (c) exercise all or any of the powers, authorities and discretions conferred on mortgagees by the Law of Property Act 1925 (as varied or extended by this Deed);
- (d) exercise all of the powers conferred on the holder of a qualifying floating charge (as defined in the Insolvency Act 1986) by the Insolvency Act 1986; and
- (e) exercise all or any of the powers conferred by this Deed.

**10.3 No Liability as Mortgagee in Possession**

Neither the Lender 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 for which a mortgagee in possession might otherwise be liable other than in the case of gross negligence or willful default upon its part.

## **11. POWERS OF THE LENDER**

### **11.1 Extension of Powers**

The power of sale conferred on the Lender and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Deed.

### **11.2 Restrictions**

Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed.

### **11.3 Power of Leasing**

At any time after the security created by this Deed becomes enforceable, the Lender may lease or make arrangements to lease, at a premium or otherwise, and accept surrenders of leases without any restriction and in particular without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925. For the purposes of sections 99 and 100 of the Law of Property Act 1925, the expression "Mortgagor" will include any incumbrancer deriving title under the Company and neither section 99(18) nor section 100(12) of the Law of Property Act 1925 will apply.

### **11.4 Discretion**

Any liberty or power which may be exercised or any determination which may be made hereunder by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

### **11.5 Delegation**

Each of the Lender and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Lender or the Receiver itself or any subsequent delegation or revocation thereof.

### **11.6 Investigations**

Following the occurrence of an Event of Default which is continuing, the Lender may initiate an investigation of, and/or instruct any report (accounting, legal, valuation or other) on the business and affairs of the Company which it considers necessary to ascertain the financial position of the Company. All fees and expenses incurred by the Lender in connection with such investigations shall be payable by the Company and the Company consents to the provision by the Lender of all information in relation to the Company which the Lender provides to any person in relation to the preparation of any such report.

### **11.7 Power to Remedy**

If at any time the Company does not comply with any of its obligations under this Deed, the Lender may (but shall not be obliged to) rectify such default and the Company irrevocably authorises the Lender, its employees and agents, at the Company's expense, to do all such things as are necessary or desirable to rectify such default.

### **11.8 Statutory powers**

The powers conferred by this Deed on the Lender are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise by law (as extended by this Deed) and such powers shall remain exercisable from time to time by the Lender in respect of any part of the Charged Property. In the case of any conflict between the statutory powers contained in any such acts and those conferred by this Deed, the terms of this Deed shall prevail.

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

### **12.1 Appointment and Removal**

- (a) At any time after the security created under this Deed becomes enforceable, or if requested to do so by a Company, the Lender may (by deed or otherwise and acting through its authorised officer) without prior notice to the Company:

- (i) appoint one or more persons jointly or severally to be a Receiver of the whole or any part of the Charged Property;
  - (ii) appoint two or more Receivers of separate parts of the Charged Property;
  - (iii) remove (so far as it is lawfully able) any Receiver(s) so appointed;
  - (iv) appoint another person(s) as an additional or replacement Receiver(s); and
  - (v) appoint one or more persons to be an Administrator of that Company.
- (b) At any time after the security created under this Deed becomes enforceable, or if requested to do so by the Company, the Lender may (by deed or otherwise and acting through its authorised officer) appoint one or more persons to be an administrator of the Company pursuant to paragraph 12 of Schedule B1 of the Insolvency Act 1986.
- (c) Notwithstanding anything to the contrary in this Deed, neither the obtaining of a moratorium by the Company under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Company with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:
  - (i) an event under this Deed which causes any floating charge created by this Deed to crystallise;
  - (ii) an event under this Deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Company; or
  - (iii) a ground under this Deed for the appointment of a Receiver.

## **12.2 Capacity of Receivers**

Each Receiver shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receivers;
- (b) an agent of the Company which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Lender from time to time (without being limited to the maximum rate specified in Section 109(6) of the Law of Property Act 1925).

## **13. POWERS OF RECEIVER**

### **13.1 General Powers**

Every Receiver shall have all the powers:

- (a) conferred by the Law of Property Act 1925 on mortgagees in possession and receivers appointed under that Act;
- (b) set out in Schedule 1 to the Insolvency Act 1986; and
- (c) conferred from time to time on receivers by statute.

### **13.2 Additional Powers**

In addition to the powers referred to in Clause 13.1 (*General Powers*) a Receiver shall have the power, at the cost of the Company and either in his own name or in the name of the Company or (with the written approval of the Lender) in the name of the Lender:

- (a) to take possession of, collect and get in all or any part of the Charged Property;
- (b) to carry on, manage or concur in carrying on and managing all or any part of the business of the Company;
- (c) to borrow or raise money and secure the payment of any money in priority to the charges created by this Deed for the purpose of exercising his powers and/or defraying any costs or expenses incurred by him in such exercise;
- (d) without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925, to sell, let, lease or concur in selling, letting or leasing and

to vary the terms or determine, surrender and to accept surrenders of leases or tenancies of or grant options or licences over all or any part of the Charged Property in any manner and on such terms as he thinks fit and the consideration for any such transaction may consist of cash or of shares or securities of another company (and the amount of such consideration may be dependent on profit or turnover or be determined by a third party) and may be payable in a lump sum or in instalments; all moneys paid to the holder of such Security in accordance with such accounts shall form part of the Secured Obligations;

- (e) to sever any fixtures (including trade and tenant's fixtures) from the property of which they form part, without the consent of the Company;
- (f) to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Property, including, without limitation, all voting and other rights attaching to the Investments;
- (g) to make and effect all repairs, renewals, improvements, and insurances;
- (h) to redeem any prior Security in respect of all or any of the Charged Property and to settle and pass the accounts of the holder of such prior Security and any accounts so settled and passed will, in the absence of manifest error, be conclusive and binding on the Company; all moneys paid to the holder of such Security in accordance with such accounts shall form part of the Secured Obligations;
- (i) to promote the formation of subsidiaries of the Company for the purpose of purchasing, leasing, licensing or otherwise acquiring interests in all or any of the assets of the Company and to arrange for any such subsidiaries to trade or cease to trade on such terms as the Receiver thinks fit;
- (j) to take such proceedings and to make any arrangement or compromise which the Lender or the Receiver may think fit;
- (k) to appoint managers, officers and agents at such salaries and for such periods as the Receiver may determine;
- (l) to exercise in relation to all or any part of the Charged Property all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Charged Property; and/or
- (m) to do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise expedient for or incidental or conducive to the preservation, improvement or realisation of the Charged Property.

#### **14. APPLICATION OF MONEYS**

##### **14.1 Application**

- (a) All moneys received or recovered by the Lender or any Receiver pursuant to this Deed, including any non-cash recoveries, shall (subject to the rights and claims of any person having security ranking in priority to the security constituted by this Deed) be applied in the following order:
  - (i) first, in satisfaction of, or provision for, all costs, charges and expenses incurred by the Lender or any Receiver and the payment of the remuneration of any Receiver;
  - (ii) second, in or towards payment of any debts or claims which are required by law to be paid in preference to the Secured Obligations, but only to the extent to which such debts or claims have such preference;
  - (iii) third, in or towards payment of all matters referred to in the first three paragraphs of Section 109(8) of the Law of Property Act 1925 (other than the remuneration of the Receiver);
  - (iv) fourth, in or towards satisfaction of the Secured Obligations; and
  - (v) fifth, any surplus shall be paid to the Company or any other person entitled thereto.

- (b) Only money actually paid by the Receiver to the Lender, or received or recovered by the Lender under this Deed, shall be capable of being applied in or towards the satisfaction of the Secured Obligations and the Company shall have no rights in respect of the application by the Lender of any sums received, recovered or realised by the Lender under this Deed.

#### **14.2 Suspense Account**

Until all Secured Obligations have been irrevocably and unconditionally paid and discharged in full, the Lender and any Receiver may place and keep for such time as it thinks prudent any moneys received, recovered or realised under or by virtue of this Deed in a separate or suspense account to the credit of either the Company or of the Lender without any obligation to apply all or any part of such moneys in or towards the discharge of the Secured Obligations. Amounts standing to the credit of such suspense account shall bear interest at a fair market rate.

#### **14.3 Avoidance of Payments**

If the Lender 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 Company under this Deed and the security constituted hereby shall continue and such amount shall not be considered to have been irrevocably paid.

#### **14.4 Use of insurance proceeds**

All moneys receivable by virtue of any of the Insurance Policies shall be paid to the Lender (or if not paid by the insurers directly to the Lender shall be held on trust for the Lender) and shall at the option of the Lender be applied in replacing, restoring or reinstating the Charged Property (any deficiency being made good by the Company) or (except where the Company is obliged (as landlord or tenant) to lay out such insurance moneys under the provisions of any lease of any Real Property) in reduction of the Secured Obligations provided always that such payment to the Lender shall only be required following the occurrence of an Event of Default which is continuing.

### **15. PROTECTION OF PURCHASERS**

#### **15.1 Receipts**

The receipt of the Lender or its delegate or any Receiver shall be conclusive discharge to a purchaser in any sale or disposal of any of the Charged Property.

#### **15.2 Protection of Purchasers**

No purchaser or other person dealing with the Lender or its delegate or any Receiver shall be bound to inquire whether the right of the Lender or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any notice to the contrary, or be concerned to see whether any such delegation by the Lender shall have lapsed for any reason or have been revoked.

### **16. POWER OF ATTORNEY**

#### **16.1 Appointment**

The Company, by way of security and to more fully secure the performance of its obligations under this Deed, irrevocably appoints the Lender, each person to whom the Lender shall from time to time have delegated the exercise of the power of attorney conferred by this Clause and any Receiver jointly and severally to be its attorney and in its name and on its behalf to execute, deliver and perfect all documents and to do all things which the attorney may consider to be necessary for:

- (a) carrying out any obligation imposed on the Company by this Deed that the Company has failed to perform (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property); and
- (b) enabling the Lender and any Receiver to exercise any of the powers conferred on them by or pursuant to this Deed or by law,

provided that the power of attorney constituted by this clause 16.1 shall be exercisable only on the occurrence of an Event of Default which is continuing.

**16.2 Ratification**

The Company ratifies and confirms and agrees to 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. CONTINUING SECURITY**

**17.1 Continuing Security**

The security created by or pursuant to this Deed will be a continuing security for the Secured Obligations notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations or other matter or thing whatsoever and will be without prejudice and in addition to and shall not merge with any other right, remedy or security which the Lender may hold at any time for the Secured Obligations and will not be affected by any release, reassignment or discharge of such other right, remedy or security.

**17.2 Settlements conditional**

Any release, discharge or settlement between the Company and the Lender shall be conditional upon no security, disposition or payment to the Lender by the Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy or insolvency or for any other reason whatsoever, and if such condition shall not be fulfilled the Lender shall be entitled to enforce this Deed subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

**18. SET-OFF AND CURRENCY**

**18.1 Consolidation of accounts and set off**

In addition to any general lien or similar rights to which it may be entitled by operation of law, the Lender may at any time and without notice to the Company combine or consolidate all or any of the Company's then existing accounts with and liabilities to the Lender and set off or transfer any sum or sums standing to the credit of any one of more of such accounts in or towards satisfaction of the Secured Obligations.

**18.2 Currency**

For the purpose of or pending the discharge of the Secured Obligations, the Lender may, in its sole discretion, convert any moneys received, recovered or realised in any currency under this Deed (including the proceeds of any previous conversion under this Clause) from their existing currency into any other currency at such rate or rates of exchange and at such time as the Lender acting reasonably thinks fit.

**19. NEW ACCOUNTS**

If the Lender at any time receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Charged Property it may open a new account or accounts with the Company. If the Lender does not open a new account or accounts it shall nevertheless be treated as if it had done so as at the time when it received or was deemed to have received such notice and as from such time all payments made to the Lender shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount of the Secured Obligations.

**20. EXPENSES AND INDEMNITY**

**20.1 Expenses**

The Company shall, from time to time on demand of the Lender, pay or reimburse the Lender on a full indemnity basis for all costs and expenses (including legal fees) together with any VAT or similar taxes thereon incurred by it in connection with the preparation, execution, perfection, amendment, enforcement, discharge and/or assignment of this Deed. Such costs and expenses (reasonably and properly incurred in relation to the preparation, execution, perfection and amendment of this Deed) shall form part of the Secured Obligations and shall carry interest from the date of such demand until so paid or reimbursed at the Default Rate.

**20.2 Indemnity**

The Company shall, notwithstanding any release or discharge of all or any part of the security constituted by this Deed, indemnify the Lender, its agents, attorneys and any Receiver against any action, proceeding, claim, loss, liability and cost which it may sustain:



- (a) in the exercise (or purported exercise) of any of the rights, powers or discretions vested in them by this Deed (or by law); and/or
- (b) in connection with or otherwise relating to this Deed or the Charged Property.

## **21. MISCELLANEOUS**

### **21.1 No Deduction**

All payments to be made to the Lender under this Deed shall be made in freely available funds and shall be made clear of and without deduction for or on account of tax. If the Company is required by law to make a tax deduction, the sum payable by the Company shall be increased to the extent necessary to ensure that, after the making of such deduction, the recipient of such sum receives and retains a net sum equal to the sum which it would have received and retained had no such deduction been made or required to be made.

### **21.2 Assignment and disclosure of information**

The Lender may assign and transfer all or any of its rights and obligations under this Deed. The Lender shall be entitled to disclose such information concerning the Company and this Deed as the Lender considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

### **21.3 Perpetuity Period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of one hundred and twenty five years from the date of this Deed.

### **21.4 Remedies and Waivers**

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

### **21.5 No Liability**

None of the Lender, its delegate(s) nominee(s) or any Receiver shall be liable for any loss by reason of (a) taking any action permitted by this Deed 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, except in the case of gross negligence or wilful default upon its part.

### **21.6 Partial Invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed 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 Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

### **21.7 Certificates**

A certificate of the Lender specifying any amount due from the Company shall, in the absence of manifest error, be prima facie evidence of such amount.

## **22. NOTICES**

- (a) All notices under or in connection with this Deed shall be given in writing in English and may be made by letter .
- (b) The address (and the department or officer, if any, for whose attention the communication is to be made) of each party is:
  - (i) in the case of the Company:

Address:                      Shuttleworth Close, Gapton Hall Industrial Estate, Great Yarmouth NR31 0NQ, England

Attention:                  Richard Dowdeswell
  - (ii) in the case of the Lender:

Address: Kirkegårdsveien 45, 3616 Kongsberg, Norway

Attention: Treasury/ Dag Eide

or any substitute address or department or officer as the parties may notify to each other by not less than five Business Days' notice.

- (c) Any notice to the Company will be effective if by way of letter, when it has been left at the relevant address or two Business Days after being deposited in the post, postage prepaid, in an envelope correctly addressed to the addressee.
- (d) Any notice to the Lender will be effective only when actually received by the Lender.

## **23. COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

## **24. GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.

## **25. JURISDICTION**

### **25.1 English Courts**

The courts of England have exclusive jurisdiction to settle any disputes (a "Dispute") arising out of, or connected with this Deed (including a dispute regarding the existence, validity or termination of this Deed or the consequences of its nullity).

### **25.2 Convenient Forum**

The parties 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.

### **25.3 Exclusive Jurisdiction**

This Clause 25 is for the benefit of the Lender only. As a result and notwithstanding Clause 25.1 (*English Courts*), it does not prevent the Lender from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Lender may take concurrent proceedings in any number of jurisdictions.

**THIS DEED** has been **EXECUTED AS A DEED** by the Lender and the Company and is delivered by them on the date first specified above.

**Schedule 1**  
**REAL PROPERTY**

Part A  
Registered Land

Address	Title Number

Part B  
Unregistered Land

	Document describing the Real Property		
Address	Date	Document	Parties

**COMPANY**

Executed as a deed by

**KONGSBERG GEOACOUSTICS LIMITED**

by:



Director *SVERRE TETLIE*

in the presence of:



Witness signature

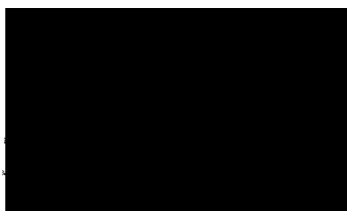


Witness name

*SJØALE MYKLEBUST*

(block capitals)

Witness address



**LENDER**

Signed by

For and on behalf of

**KONGSBERG GRUPPEN ASA**

.....  
Authorised Signatory

Dated 18 December 2020

**KONGSBERG GEOACOUSTICS LIMITED**

**and**

**KONGSBERG GRUPPEN ASA**

**DEBENTURE**

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18 December

2020

**THIS DEED** is made on  
by

- (1) **KONGSBERG GEOACOUSTICS LIMITED**, a company incorporated under the laws of England and Wales with company registration number 02571389 whose registered office is at Shuttleworth Close, Garton Hall Industrial Estate Limited, Great Yarmouth, Norfolk, NR31 0NQ, England (the "**Company**")

in favour of

- (2) **KONGSBERG GRUPPEN ASA**, a company registered under the laws of Norway with business registration number 943 753 709, having its registered office at Kirkegårdsveien 45, NO-3616 Kongsberg, Norway (the "**Lender**").

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Deed:

"**Account Bank**" means any bank or financial institution with whom the Company holds an account, from time to time.

"**Administrator**" means any person appointed under Schedule B1 to the Insolvency Act 1986 to manage any Company's affairs, business and property.

"**Charged Property**" means all the property, assets and undertaking of the Company which from time to time are the subject of the security created or expressed to be created in favour of the Lender by or pursuant to this Deed.

"**Default Rate**" means the rate of two per cent. (2.00%) per annum above the rate of interest payable under the Acquisition Agreement.

"**Environment**" means the air (including the air within buildings and the air within other natural or man-made structures above or below ground), water (including ground and surface water) and land (including surface and sub-surface soil) and any other meaning given to the term under Environmental Law.

"**Environmental Law**" means any applicable law concerning the protection of the Environment or human health, the condition of any property or of any place of work or the production, storage treatment, transport or disposal of any substance capable of causing harm to any living organism or the Environment.

"**EU Regulation**" means the Council of the European Union Regulation No. 1346/2000 on insolvency proceedings. "**Facility Agreement**" means the term loan agreement dated on or about the date of this Deed and made between the Company and the Lender.

"**Financial Collateral**" shall have the same meaning as in the Financial Collateral Regulations.

"**Financial Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226).

"**Floating Charge Property**" has the meaning given in Clause 3.3 (*Floating Charges*).

"**Insurance Policy**" means any policy of insurance and cover note in which the Company may from time to time have an interest.

"**Intellectual Property**" means:

- (a) the Company's present and future patents, trade marks, service marks, rights in designs, business names, copyrights, database rights, domain names, moral rights, rights to inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered;
- (b) the benefit of all applications and rights to use such assets; and

- (c) all Related Rights.

**"Material Contracts"** means:

- (a) any contract entered into by the Company which relates to the day to day running of the Company's business that may from time to time be identified in writing by the Lender as a Material Contract;
- (b) any contract the loss of which would have a material adverse effect on the continuing operation of the Company's business;
- (c) any contract of strategic importance to the Company's business;
- (d) any other single contract the total value of which is in excess of £50,000; and
- (e) all Related Rights.

**Material Intellectual Property** means patents, trade marks and rights in design.

**Plant and Machinery** means:

- (a) all equipment, plant, machinery, computers, vehicles, furniture, fittings and all other assets of a similar nature which are now, or at any time after the date of this Deed become, the property of the Company; and
- (b) all Related Rights.

**"Real Property"** means the Company's estates or interests in all present and future freehold (including commonhold), leasehold or other immovable property (including the property specified in Schedule 1 (*Real Property*)), and any buildings, fixtures or fittings from time to time situated on or forming part of such property, and includes all Related Rights.

**"Receivables"** means:

- (a) all present and future book and other debts and monetary claims owing to a Company; and
- (b) all Related Rights.

**"Receiver"** means a receiver or receiver and manager or administrative receiver appointed pursuant to the provisions of this Deed or any applicable law.

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

- (a) the proceeds of sale or rental 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, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that asset; and
- (d) any income, moneys and proceeds paid or payable in respect of that asset.

**"Secured Obligations"** means all present and future obligations and liabilities of the Company to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity and whether or not the Lender was an original party to the relevant transaction and in whatever name or style, together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities except for any money or liability which, if it were so included, would cause the infringement of section 678 or 679 of the Companies Act 2006. **"Security"** means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Security Financial Collateral Arrangement"** shall have the same meaning as in the Financial Collateral Regulations.

**"Security Period"** means the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that all the Secured Obligations have been unconditionally and



irrevocably paid and discharged in full and no further Secured Obligations are capable of being outstanding.

## 1.2 Defined Expressions

Defined terms in the Facility Agreement have the same meanings in this Deed unless otherwise expressly defined in this Deed.

## 1.3 Interpretation

In this Deed:

- (a) clause and schedule headings are for convenience of reference only and shall not affect the construction of this Deed;
- (b) references to Clauses and Schedules are references to the Clauses of and Schedules to this Deed;
- (c) references to this Deed or any other agreement or instrument shall be construed as references to that agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) references to a person shall be construed to include that person's assigns, transferees or successors in title and shall be construed as including any individual, firm, trust, partnership, joint venture, company, corporation, unincorporated body of persons or any state or agency thereof, whether or not having separate legal personality;
- (e) references to a provision of law are references to that provision as amended or re-enacted;
- (f) words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- (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;
- (h) the words "**including**" shall not be construed as limiting the generality of the words preceding it; and
- (i) an Event of Default is "**continuing**" if it has not been waived by the Lender.

## 1.4 Third Party Rights

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term of this Deed.

## 1.5 Incorporation of Terms

The terms of any directions from the Lender and of any side letters between any of the parties thereto are incorporated in this Deed to the extent required to ensure that any disposition of Real Property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

## 1.6 Effect as a Deed

This Deed is intended to take effect as a deed, notwithstanding that the Lender may have executed it under hand only.

## 2. COVENANT TO PAY

The Company covenants that it will, on demand, pay and discharge the Secured Obligations to the Lender when due.

## 3. GRANT OF SECURITY

### 3.1 Fixed Charges

The Company with full title guarantee charges in favour of the Lender as continuing security for the payment and discharge of the Secured Obligations:

- (a) by way of legal mortgage, the Real Property and all Related Rights;

- (b) by way of fixed charge, any Real Property and all Related Rights now or at any time after the date of this Deed belonging to the Company (other than property mortgaged under Clause 3.1(a) above);
- (c) by way of fixed charge, all Related Rights in relation the Real Property charged pursuant to this Deed;
- (d) by way of fixed charge, all present and future Plant and Machinery and other fixtures and fittings attached to any Real Property;
- (e) by way of fixed charge,
  - (i) all present and future bank accounts, cash at bank and credit balances of the Company with any bank or other person;
  - (ii) all Related Rights in relation to the accounts charged pursuant to Clause 3.1(e)(i) above;
- (f) by way of fixed charge, all present and future Receivables, other than those validly and effectively assigned under Clause 3.2;
- (g) by way of fixed charge, all present and future Intellectual Property;
- (h) by way of fixed charge, the goodwill of the Company;
- (i) by way of fixed charge, the uncalled capital of the Company;
- (j) by way of fixed charge, all rights, interests and claims in the Insurance Policies, other than those validly and effectively assigned under Clause 3.2;
- (k) by way of fixed charge, all rights, interests and claims in the Material Contracts, other than those validly and effectively assigned under Clause 3.2;
- (l) by way of fixed charge, the benefits of all licences, consents and authorisations held in connection with its business or the use of any Charged Property, and the right to any compensation in respect of any of them; and
- (m) by way of fixed charge, all rights, interests and claims in any pension fund now or in the future.

### 3.2 Security Assignment

The Company with full title guarantee assigns absolutely to the Lender as continuing security for the payment and discharge of the Secured Obligations all of its rights, title, interest and benefit from time to time in and to:

- (a) the Material Contracts;
- (b) the Insurance Policies; and
- (c) the Receivables.

### 3.3 Floating Charges

The Company charges and agrees to charge by way of first floating charge all of its present and future assets and undertaking (wherever located) not otherwise effectively charged by way of fixed mortgage or charge pursuant to Clause 3.1 (*Fixed Charges*), or assigned pursuant to Clause 3.2 (*Security Assignment*), or any other provision of this Deed being the "**Floating Charge Property**". The floating charge created pursuant to this Clause 3.3 shall be deferred in point of priority to all fixed security validly and effectively created by the Company under this Deed in favour of the Lender as security for the Secured Obligations.

### 3.4 Qualifying Floating Charge

Paragraph 14 of Schedule B1 of the Insolvency Act 1986 shall apply to any floating charge created by this Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986).

### 3.5 Financial Collateral

To the extent that the Charged Property constitutes Financial Collateral, the Company agrees that such Charged Property shall be held or designated so as to be under the control of the

Lender (or by a person acting on its behalf) for the purposes of the Financial Collateral Regulations. To the extent that the Charged Property constitutes Financial Collateral and is subject to a Security Financial Collateral Arrangement created by or pursuant to this Deed, the Lender shall have the right at any time after this Deed becomes enforceable, to appropriate all or any part of that Charged Property in or towards the payment or discharge of the Secured Obligations. The value of any Charged Property appropriated in accordance with this Clause shall be (a) in the case of cash, the amount standing to the credit of any account, together with accrued but unposted interest, at the time the right of appropriation is exercised, and (b) in the case of Investments, the market price of that Charged Property at the time the right of appropriation is exercised, as listed on any recognised market index, or as determined by such other method as the Lender may select (acting reasonably). The Company agrees that the methods of valuation provided for in this Clause are commercially reasonable for the purposes of Regulation 18 of the Financial Collateral Regulations.

**3.6 Implied covenants for title**

- (a) The covenants set out in sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clauses 3.1 (Fixed Charges), 3.2 (Security Assignment) or 3.3 (Floating Charges)
- (b) It shall be implied in respect of Clauses 3.1 (Fixed Charges), 3.2 (Security Assignment) or 3.3 (Floating Charges) that each Chargor is disposing of the Charged Property free from all charges and incumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

**4. NEGATIVE PLEDGE**

The Company shall not, except with the prior written consent of the Lender:

- (a) create or permit to subsist any Security over any of the Charged Property other than this Deed; or
- (b) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, discount, factor, transfer, assign, lease, lend or otherwise dispose of any of the Charged Property other than the Floating Charge Property in the ordinary course of trading on an arm's length basis.

**5. CRYSTALLISATION OF FLOATING CHARGE**

**5.1 Conversion of Floating Charge**

The Lender may at any time by notice in writing to the Company immediately convert the floating charge created by Clause 3.3 (*Floating Charges*) into a fixed charge as regards any property or assets specified in the notice if:

- (a) an Event of Default has occurred and is continuing;
- (b) the Lender 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;
- (c) the Lender reasonably considers that it is desirable in order to protect the priority of the security; or
- (d) the Company requests the Lender to exercise any of its powers under this Deed.

**5.2 Automatic Conversion**

- (a) If, without the prior written consent of the Lender,
  - (i) the Company disposes of any of the Floating Charge Property other than in the ordinary course of trading on an arm's length basis or as otherwise with the prior written consent of the Lender;
  - (ii) the Company creates any Security over any of the Charged Property;
  - (iii) any steps are taken for any of the Charged Property to become subject to any Security in favour of any other person; or

- (iv) any person levies or attempts to levy any distress, execution or other process against any of the Charged Property; or
- (v) a resolution is passed or an order is made for the winding-up, dissolution, or re-organisation of or any steps are taken for the appointment of an Administrator in respect of the Company or any analogous step is taken in any jurisdiction,

the floating charge created under Clause 3.3 (*Floating Charges*) by the Company will automatically be converted (without notice) with immediate effect into a fixed charge in respect of the relevant Floating Charge Property.

- (b) At any time after the floating charge constituted under this Deed shall have crystallised as a fixed charge over all or part of the Charged Property pursuant to this Clause 5 but before the appointment of any Receiver pursuant hereto, the said fixed charge shall upon the written consent of the Lender cease to attach to the assets then subject to the fixed charge and shall again subsist as a floating charge.

## **6. PERFECTION OF SECURITY**

### **6.1 Deposit of Title Documents**

- (a) Immediately following the execution of this Deed (or, if later, the date of acquisition of the relevant Charged Property), the Company shall deposit with the Lender:
  - (i) all deeds and documents of title relating to the Charged Property; and
  - (ii) copies of all Insurance Policies to which the Company is entitled to possession.
- (b) A breach of clause 6.1(a) will not arise if there are no documents of title in respect of any part of the Charged Property.

### **6.2 Notices of Assignment**

The Company shall, promptly following request by the Lender:

- (a) give notice, in such form notified to the Company, to each Account Bank of the charging of the Company's rights and interest in its bank accounts and shall use its reasonable endeavours to procure that each Account Bank will promptly provide an acknowledgement to the Lender of such notice;
- (b) give notice, in such form notified to the Company, to each person with whom the Company has entered into a Material Contract of the assignment of the Company's rights and interest in and under such Material Contract and shall use its reasonable endeavours to procure that each addressee of such notice will promptly provide an acknowledgement to the Lender of such notice; and
- (c) give notice, in such form notified to the Company, to each insurer with whom the Company has an Insurance Policy of the assignment of the Company's rights and interest in and under such Insurance Policy and shall use its reasonable endeavours to procure that each addressee of such notice will promptly provide an acknowledgement to the Lender of such notice.

### **6.3 Registration of Intellectual Property**

The Company shall, if requested by the Lender, execute all such documents and do all acts that the Lender may reasonably require to record the interest of the Lender in any registers relating to any registered Intellectual Property.

### **6.4 Land Registry disposal restriction**

In respect of any Real Property or part of or interest in any Real Property title to which is registered at the Land Registry (or any unregistered land subject to first registration), the Company shall apply or consent to an application being made to the Chief Land Registrar to enter the following restriction on the Register of Title for such Real Property:

*"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Deed dated 2020 in favour of Kongsberg Gruppen ASA referred to in the charges register or their conveyancer."*

**6.5 Tacking**

The obligation on the part of the Lender to make further advances to the Company is deemed to be incorporated in this Deed and the Company shall apply to the Chief Land Registrar for a note of such obligation to be entered on the Register of Title of all present and future registered Real Property.

**7. FURTHER ASSURANCE**

**7.1 Extension of covenant**

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in 7.2 below.

**7.2 Further assurance**

- (a) The Company shall, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require):
  - (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 intended to be, the subject of this Deed) or for the exercise of any rights, powers and remedies of the Lender;
  - (ii) to confer on the Lender Security over any property and assets of the Company located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or
  - (iii) to facilitate the realisation of the assets which are, or intended to be, the subject of this Deed.
- (b) The Company 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, protection or maintenance of any Security conferred or intended to be conferred on the Lender.

**8. REPRESENTATIONS**

The Company makes the representations and warranties set out in this Clause 8 (*Representations*) to the Lender on each day during the Security Period.

**8.1 Due incorporation**

- (a) The Company is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation; and
- (b) The Company has the power to own its assets and carry on its business as it is being conducted.

**8.2 Powers**

The Company has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this Deed and the transactions contemplated by it. No limit on its powers will be exceeded as a result of the grant of Security contemplated by this Deed.

**8.3 Non-contravention**

The entry into and performance by the Company of, and the transactions contemplated by, this Deed do not and will not contravene or conflict with:

- (a) the Company's constitutional documents;
- (b) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- (c) any law or regulation or judicial or official order applicable to it.

#### 8.4 Authorisations

The Company has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations under this Deed and to make it admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.

#### 8.5 Binding obligations

- (a) The Company's obligations under this Deed are legal, valid, binding and enforceable; and
- (b) This Deed creates:
  - (i) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
  - (ii) subject to registration pursuant to Part 25 of the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets referred to in this Deed,in favour of the Lender having the priority and ranking expressed to be created by this Deed and ranking ahead of all (if any) Security and rights of third parties, except those preferred by law.

#### 8.6 Registration

It is not necessary to file, record or enrol this Deed (other than at Companies House or the Land Registry) with any court or other authority or pay any stamp, registration or similar taxes in relation to this Deed or the transactions contemplated by it.

#### 8.7 No default

- (a) No Event of Default or, on the date of this Deed, event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default, has occurred and is continuing.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets is subject which has or is likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Deed.

#### 8.8 Litigation

No litigation, arbitration or administrative proceedings are taking place, pending or, to the Company's knowledge, threatened against it, any of its directors or any of its assets.

#### 8.9 Information

The information, in written or electronic format, supplied by, or on behalf of, the Company to the Lender in connection with this Deed was, at the time it was supplied or at the date it was stated to be given (as the case may be), to the best of the Company's knowledge and belief:

- (a) if it was factual information, complete, true and accurate in all material respects;
- (b) if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration;
- (c) if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
- (d) not misleading in any material respect nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Company to the Lender.

#### **8.10 Centre of Main Interests**

For the purposes of the EU Regulation, the Company's centre of main interests (as that expression is used in Article 3(1) of the EU Regulation, is situated in England and Wales and the Company has no other "establishment" (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

### **9. UNDERTAKINGS**

The Company covenants and agrees with the Lender that it will, during the Security Period, comply with the covenants in this Clause 9 (*Undertakings*).

#### **9.1 General**

(a) **Notification of default**

The Company shall notify the Lender of any Event of Default or event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

(b) **Authorisations**

The Company shall promptly obtain all consents and authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability and admissibility in evidence of this Deed in its jurisdiction of incorporation.

(c) **Compliance with law**

The Company shall comply in all respects with all laws to which it may be subject if failure to do so would materially impair its ability to perform its obligations under this Deed.

(d) **Change of business**

The Company shall not make any material change to the nature or scope of its business as carried out on the date of this Deed.

(e) **Information**

The Company shall supply to the Lender:

- (i) all documents dispatched by the Company to its shareholders (or any class of them), or its creditors generally, at the same time as they are dispatched;
- (ii) details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Company as soon as it becomes aware of them and which might, if adversely determined, have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Deed or any document evidencing the Secured Obligations; and
- (iii) promptly, any further information about the financial condition, business and operations of the Company as the Lender may reasonably request.

#### **9.2 Charged Property Generally**

(a) **The Company shall:**

- (i) permit the Lender (or its designated representatives), on reasonable written notice:
  - (A) access during normal office hours to the accounting records of the Company and to any documents and records relating to the Charged Property; and
  - (B) to inspect, take extracts from, and make copies of, the same,

and to provide (at the Company's expense), such clerical and other assistance which the Lender may reasonably require to do this provided always that such access or inspection shall not unduly interrupt the business of the Company;

- (ii) comply in all material respects with all obligations in relation to the Charged Property under any present or future law, regulation, order or instrument of any competent authority or other approvals, licences or consents;
  - (iii) comply with all material covenants and obligations affecting any of the Charged Property or the manner of use of any of it; and
  - (iv) provide the Lender with all information which it may reasonably request in relation to the Charged Property.
- (b) The Company shall not:
- (i) except with the prior written consent of the Lender, enter into any onerous or restrictive obligation affecting any of the Charged Property; or
  - (ii) do, cause or permit to be done or omit to do anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any of the Charged Property;

### 9.3 Property matters

- (a) The Company shall
- (i) notify the Lender within 14 days of receipt of every material notice, order or proposal given, or made in relation to, the Real Property by any competent authority and (if required by the Lender) immediately provide it with a copy of the same and either:
    - (A) comply with such notice, order or proposal; or
    - (B) make such objections to the same as the Lender may require or approve;
  - (ii) duly and punctually pay all rates, rents, taxes and other outgoings owed by it in respect of the Real Property;
  - (iii) comply with all material covenants and obligations affecting any of the Real Property or the manner of use of any of it;
  - (iv) maintain all buildings and erections forming part of the Charged Property in a good state of repair provided that nothing in this Clause shall oblige the Company to keep any of its buildings and erections in a better state of repair or in better working order or condition than they are at the date of this Deed, or than is required for the business of the Company, and in all cases subject to fair wear and tear; and
  - (v) properly discharge all duties of care and responsibility placed on it by Environmental Law and apply for and obtain all authorisations necessary to ensure that it does not breach Environmental Law;
  - (vi) notify the Lender immediately upon the acquisition of any Real Property;
  - (vii) permit the Lender and any person nominated by any of them at all reasonable times with reasonable notice to enter any part of the Real Property and view the state of it;
  - (viii) grant the Lender on request all reasonable facilities within the power of the Company to allow the Lender (or its lawyers) to carry out (at the Company's expense) investigations of title to the Real Property and to make all enquiries in relation to any part of the Real Property which a prudent mortgagee might carry out;
  - (ix) As soon as reasonably practicable and upon demand by the Lender, provide the Lender with a report as to title of the Company to the Real Property concerning those items which may properly be sought to be covered by a prudent mortgagee in a lawyer's report of this nature;



- (x) in respect of any Real Property which is acquired after the date of this Deed, title to which is registered at the Land Registry or which is required to be so registered:
    - (A) give written notice of this Deed to the Land Registry and procure that notice of this Deed is clearly noted in the Register of Title for such Real Property;
    - (B) procure that no person is registered as proprietor of any such property under the Land Registration Acts 1925 to 2002 without the prior written consent of the Lender;
  - (xi) authorise the Lender to make any application which the Lender deems appropriate for the designation of this Deed and/or any other document as an exempt information document under rule 136 of the Land Registration Rules 2003 and use its best endeavours to assist with any such application made by or on behalf of the Lender; and
  - (xii) notify the Lender in writing as soon as it receives notice of any person's application under rule 137 of the Land Registration Rules 2003 for the disclosure of this Deed or any other document, following its designation as an exempt information document and not make any application under rule 138 of the Land Registration Rules 2003 for the removal of the designation of such document as an exempt information document.
- (b) The Company shall not
- (i) except with the prior written consent of the Lender confer on any person:
    - (A) any lease or tenancy of any of the Real Property or accept a surrender of any lease or tenancy (whether independently or under any statutory power);
    - (B) any right or licence to occupy any land or buildings forming part of the Real Property;
    - (C) any licence to assign or sub-let any part of the Real Property; or
    - (D) enter into any onerous or restrictive obligation affecting any of the Real Property;
  - (ii) carry out any development within the meaning of section 55 of the Town and Country Planning Act 1990 without first obtaining such permissions as may be required under applicable legislation and, in the case of development involving a substantial change in the structure of, or a change in use of, any part of the Real Property, without first obtaining the written consent of the Lender; or
  - (iii) do or permit to be done anything as a result of which any lease may be liable to forfeiture or otherwise be determined.

#### **9.4 Plant and Machinery**

- (a) The Company shall:
- (i) maintain at its own expense all Plant and Machinery for the time being owned by it in good working order and serviceable condition provided that nothing in this Clause shall oblige the Company to keep any of its Plant and Machinery in a better state of repair or in better working order or condition than they are at the date of this Deed, or than is required for the business of the Company, and in all cases subject to fair wear and tear; and
  - (ii) immediately on request by the Lender, acting reasonably, affix to any item of Plant and Machinery a durable notice of this Deed in such form as the Lender may require.
- (b) The Company shall not
- (i) make any material alterations or additions to any Plant and Machinery which are reasonably likely to depreciate, jeopardise or prejudice their value or marketability; or

- (ii) remove any Plant and Machinery from the Charged Property except in the ordinary course of its business and for the purpose of maintenance pursuant to the terms of this Deed.

#### 9.5 Insurance

(a) The Company shall:

- (i) effect and maintain at its expense insurances in respect of all its assets and business with insurers as are reasonably acceptable to the Lender. Such insurances shall:
    - (A) provide cover against such risks and in such amounts as is issued for prudent companies owning or possessing similar assets and carrying on similar businesses and against all other risks which the Lender acting reasonably may from time to time specify;
    - (B) have the interest of the Lender as mortgagee noted on all relevant policies;
    - (C) be on such terms and contain such clauses as the Lender may reasonably require and in particular will require the relevant insurer to inform the Lender of:
      - (1) any cancellation, alteration, termination or expiry of any such insurance at least 30 days before it is due to take effect;
      - (2) any default in payment of any premium or failure to renew at least 30 days before the renewal date; or
      - (3) any act, omission or event of which the insurer has knowledge which may make any insurance void, voidable or unenforceable (in whole or in part);
  - (ii) promptly pay all premiums relating to all policies of insurance;
  - (iii) supply to the Lender on request copies of each policy of insurance required to be maintained in accordance with this Deed together with current premium receipts relating to it;
  - (iv) if it defaults at any time in effecting or maintaining such insurances or in producing any policy or receipt to the Lender on demand, authorise the Lender to take out or renew such policies of insurance in any sum which the Lender may reasonably think expedient. All moneys which are expended by the Lender in so doing shall be deemed to be properly paid by the Lender and shall be reimbursed by the Company on demand;
  - (v) notify the Lender if any claim arises or may be made under the insurances; and
  - (vi) give the Lender the sole right to conduct or settle any insurance claim.
- (b) The Company shall not do or permit to be done or omit to do anything which may render any insurance void, voidable or unenforceable (in whole or in part) nor vary, amend or terminate any policy of insurance.

#### 9.6 Intellectual Property

(a) The Company shall:

- (i) observe and comply with all material obligations and laws to which it is subject in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of its Intellectual Property or any part of it;
- (ii) do all acts as are reasonably practicable to maintain, protect and safeguard its Material Intellectual Property and not discontinue the use of any of its Material Intellectual Property nor allow it to be used in such a way that it is put at risk by becoming generic or by being identified as disreputable in any way;
- (iii) duly register in such register(s), or with such authorities as may be available for the purpose and in such name(s) as may be required by the law and practice of the place or registration, such of its Material Intellectual Property (and all

assignments, licences and mortgages of it) as may be capable of registration in such places unless the Company deems such act or acts as not commercially reasonable to its business;

- (iv) pay all fees necessary to maintain, protect and safeguard its Material Intellectual Property and the registrations required to be made for such purposes prior to the latest time provided for payment of them unless the Company deems such act or acts as not commercially reasonable to its business;
- (v) take all reasonable steps (including the commencement of legal proceedings) as may be necessary to safeguard and maintain the validity, reputation, integrity, registration or subsistence of its Material Intellectual Property; and
- (vi) maintain a comprehensive, detailed and up-to-date centralised record of all its Material Intellectual Property (including details of agents engaged in relation to registrations of it) and, when reasonably requested by the Lender, immediately provide to the Lender a copy of such record and/or a summary of all its Intellectual Property created or acquired since the date of this Deed or the date of last notification.

(b) The Company shall not:

- (i) change the specification referred to in any of its registrations of Material Intellectual Property or permit any disclaimer, condition, restriction, memorandum or other thing to be entered on the registration of any of the trade marks comprised within such Material Intellectual Property, the effect of which will be to materially and adversely affect the value of such trade marks; or
- (ii) grant any licence to any person to use its Material Intellectual Property in any manner which will materially and adversely affect the value of such Material Intellectual Property.

#### 9.7 Receivables

The Company shall, after the security constituted by this Deed becomes enforceable:

- (a) deal with the Receivables in accordance with any directions given in writing from time to time by the Lender and, in the absence of such directions, hold the Receivables on trust for the benefit of the Lender;
- (b) comply with any notice served by the Lender on the Company prohibiting the Company from withdrawing all or any monies from time to time standing to the credit of its accounts with any bank, financial institution or other person, except with the prior written consent of the Lender;
- (c) if called upon so to do by the Lender, execute a legal assignment of the Receivables to the Lender in such terms as the Lender may require and give notice thereof to the debtors from whom the Receivables are due, owing or incurred; and
- (d) deliver to the Lender such information as to the amount and nature of its Receivables as the Lender may from time to time reasonably require.

#### 9.8 Material Contracts

(a) The Company shall:

- (i) duly perform its obligations under each Material Contract, notify the Lender of any material default by it or any other party under any Material Contract and not take any action which would reduce or impede recoveries in respect of any Material Contract; and
- (ii) provide to the Lender, as soon as practicable upon receipt, copies of all notices which it may from time to time receive from any other party to any Material Contract.

(b) The Company shall not, without the prior written consent of the Lender, amend or waive any term of any Material Contract, terminate any Material Contract or release any other party from its obligations under any Material Contract.

#### **9.9 Centre of Main Interests**

The Company shall not, without the prior written consent of the Lender, change its centre of main interest (as that expression is used in Article 3(1) of the EU Regulation) to somewhere other than England and Wales, nor will it have any establishment (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

#### **9.10 Goodwill**

- (a) The Company shall not, except with the prior written consent of the Lender, grant any franchise, licence or other authority to any person to use its company name, trade name or business name or any other business asset which will materially and adversely affect the value of the goodwill of the Company.
- (b) The Company shall where the prior written consent of the Lender had been given under Clause 9.10(a), it will comply with Clause 9.7 (*Receivables*) in relation to any income or monies receivable in respect of such franchise, licence or authority as if such income or monies were Receivables.

#### **9.11 Uncalled capital**

- (a) The Company shall promptly apply any paid capital towards the repayment, in full or in part, of the Secured Obligations.
- (b) The Company shall not call up, or receive in advance of its due date, any uncalled capital.

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

#### **10.1 Enforcement**

The security constituted by this Deed shall become immediately enforceable at any time after the occurrence of:

- (a) an Event of Default which is continuing;
- (b) a request from the Company to the Lender that it exercises any of its powers under this Deed; or
- (c) after the Lender has demanded payment of the Secured Obligations.

#### **10.2 Powers on enforcement**

At any time after the security created under this Deed becomes enforceable, the Lender may, without notice to the Company or prior authorisation from any court and whether or not it has appointed a Receiver, in its absolute discretion:

- (a) secure and perfect its title to all or any part of the Charged Property;
- (b) 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 any assets of the Company which, when got in, would be part of the Charged Property) at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration);
- (c) exercise all or any of the powers, authorities and discretions conferred on mortgagees by the Law of Property Act 1925 (as varied or extended by this Deed);
- (d) exercise all of the powers conferred on the holder of a qualifying floating charge (as defined in the Insolvency Act 1986) by the Insolvency Act 1986; and
- (e) exercise all or any of the powers conferred by this Deed.

#### **10.3 No Liability as Mortgagee in Possession**

Neither the Lender 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 for which a mortgagee in possession might otherwise be liable other than in the case of gross negligence or willful default upon its part.

## **11. POWERS OF THE LENDER**

### **11.1 Extension of Powers**

The power of sale conferred on the Lender and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Deed.

### **11.2 Restrictions**

Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed.

### **11.3 Power of Leasing**

At any time after the security created by this Deed becomes enforceable, the Lender may lease or make arrangements to lease, at a premium or otherwise, and accept surrenders of leases without any restriction and in particular without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925. For the purposes of sections 99 and 100 of the Law of Property Act 1925, the expression "Mortgagor" will include any incumbrancer deriving title under the Company and neither section 99(18) nor section 100(12) of the Law of Property Act 1925 will apply.

### **11.4 Discretion**

Any liberty or power which may be exercised or any determination which may be made hereunder by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

### **11.5 Delegation**

Each of the Lender and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Lender or the Receiver itself or any subsequent delegation or revocation thereof.

### **11.6 Investigations**

Following the occurrence of an Event of Default which is continuing, the Lender may initiate an investigation of, and/or instruct any report (accounting, legal, valuation or other) on the business and affairs of the Company which it considers necessary to ascertain the financial position of the Company. All fees and expenses incurred by the Lender in connection with such investigations shall be payable by the Company and the Company consents to the provision by the Lender of all information in relation to the Company which the Lender provides to any person in relation to the preparation of any such report.

### **11.7 Power to Remedy**

If at any time the Company does not comply with any of its obligations under this Deed, the Lender may (but shall not be obliged to) rectify such default and the Company irrevocably authorises the Lender, its employees and agents, at the Company's expense, to do all such things as are necessary or desirable to rectify such default.

### **11.8 Statutory powers**

The powers conferred by this Deed on the Lender are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise by law (as extended by this Deed) and such powers shall remain exercisable from time to time by the Lender in respect of any part of the Charged Property. In the case of any conflict between the statutory powers contained in any such acts and those conferred by this Deed, the terms of this Deed shall prevail.

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

### **12.1 Appointment and Removal**

- (a) At any time after the security created under this Deed becomes enforceable, or if requested to do so by a Company, the Lender may (by deed or otherwise and acting through its authorised officer) without prior notice to the Company:

- (i) appoint one or more persons jointly or severally to be a Receiver of the whole or any part of the Charged Property;
  - (ii) appoint two or more Receivers of separate parts of the Charged Property;
  - (iii) remove (so far as it is lawfully able) any Receiver(s) so appointed;
  - (iv) appoint another person(s) as an additional or replacement Receiver(s); and
  - (v) appoint one or more persons to be an Administrator of that Company.
- (b) At any time after the security created under this Deed becomes enforceable, or if requested to do so by the Company, the Lender may (by deed or otherwise and acting through its authorised officer) appoint one or more persons to be an administrator of the Company pursuant to paragraph 12 of Schedule B1 of the Insolvency Act 1986.
- (c) Notwithstanding anything to the contrary in this Deed, neither the obtaining of a moratorium by the Company under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Company with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:
  - (i) an event under this Deed which causes any floating charge created by this Deed to crystallise;
  - (ii) an event under this Deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Company; or
  - (iii) a ground under this Deed for the appointment of a Receiver.

## **12.2 Capacity of Receivers**

Each Receiver shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receivers;
- (b) an agent of the Company which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Lender from time to time (without being limited to the maximum rate specified in Section 109(6) of the Law of Property Act 1925).

## **13. POWERS OF RECEIVER**

### **13.1 General Powers**

Every Receiver shall have all the powers:

- (a) conferred by the Law of Property Act 1925 on mortgagees in possession and receivers appointed under that Act;
- (b) set out in Schedule 1 to the Insolvency Act 1986; and
- (c) conferred from time to time on receivers by statute.

### **13.2 Additional Powers**

In addition to the powers referred to in Clause 13.1 (*General Powers*) a Receiver shall have the power, at the cost of the Company and either in his own name or in the name of the Company or (with the written approval of the Lender) in the name of the Lender:

- (a) to take possession of, collect and get in all or any part of the Charged Property;
- (b) to carry on, manage or concur in carrying on and managing all or any part of the business of the Company;
- (c) to borrow or raise money and secure the payment of any money in priority to the charges created by this Deed for the purpose of exercising his powers and/or defraying any costs or expenses incurred by him in such exercise;
- (d) without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925, to sell, let, lease or concur in selling, letting or leasing and

to vary the terms or determine, surrender and to accept surrenders of leases or tenancies of or grant options or licences over all or any part of the Charged Property in any manner and on such terms as he thinks fit and the consideration for any such transaction may consist of cash or of shares or securities of another company (and the amount of such consideration may be dependent on profit or turnover or be determined by a third party) and may be payable in a lump sum or in instalments; all moneys paid to the holder of such Security in accordance with such accounts shall form part of the Secured Obligations;

- (e) to sever any fixtures (including trade and tenant's fixtures) from the property of which they form part, without the consent of the Company;
- (f) to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Property, including, without limitation, all voting and other rights attaching to the Investments;
- (g) to make and effect all repairs, renewals, improvements, and insurances;
- (h) to redeem any prior Security in respect of all or any of the Charged Property and to settle and pass the accounts of the holder of such prior Security and any accounts so settled and passed will, in the absence of manifest error, be conclusive and binding on the Company; all moneys paid to the holder of such Security in accordance with such accounts shall form part of the Secured Obligations;
- (i) to promote the formation of subsidiaries of the Company for the purpose of purchasing, leasing, licensing or otherwise acquiring interests in all or any of the assets of the Company and to arrange for any such subsidiaries to trade or cease to trade on such terms as the Receiver thinks fit;
- (j) to take such proceedings and to make any arrangement or compromise which the Lender or the Receiver may think fit;
- (k) to appoint managers, officers and agents at such salaries and for such periods as the Receiver may determine;
- (l) to exercise in relation to all or any part of the Charged Property all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Charged Property; and/or
- (m) to do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise expedient for or incidental or conducive to the preservation, improvement or realisation of the Charged Property.

#### **14. APPLICATION OF MONEYS**

##### **14.1 Application**

- (a) All moneys received or recovered by the Lender or any Receiver pursuant to this Deed, including any non-cash recoveries, shall (subject to the rights and claims of any person having security ranking in priority to the security constituted by this Deed) be applied in the following order:
  - (i) first, in satisfaction of, or provision for, all costs, charges and expenses incurred by the Lender or any Receiver and the payment of the remuneration of any Receiver;
  - (ii) second, in or towards payment of any debts or claims which are required by law to be paid in preference to the Secured Obligations, but only to the extent to which such debts or claims have such preference;
  - (iii) third, in or towards payment of all matters referred to in the first three paragraphs of Section 109(8) of the Law of Property Act 1925 (other than the remuneration of the Receiver);
  - (iv) fourth, in or towards satisfaction of the Secured Obligations; and
  - (v) fifth, any surplus shall be paid to the Company or any other person entitled thereto.

- (b) Only money actually paid by the Receiver to the Lender, or received or recovered by the Lender under this Deed, shall be capable of being applied in or towards the satisfaction of the Secured Obligations and the Company shall have no rights in respect of the application by the Lender of any sums received, recovered or realised by the Lender under this Deed.

#### **14.2 Suspense Account**

Until all Secured Obligations have been irrevocably and unconditionally paid and discharged in full, the Lender and any Receiver may place and keep for such time as it thinks prudent any moneys received, recovered or realised under or by virtue of this Deed in a separate or suspense account to the credit of either the Company or of the Lender without any obligation to apply all or any part of such moneys in or towards the discharge of the Secured Obligations. Amounts standing to the credit of such suspense account shall bear interest at a fair market rate.

#### **14.3 Avoidance of Payments**

If the Lender 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 Company under this Deed and the security constituted hereby shall continue and such amount shall not be considered to have been irrevocably paid.

#### **14.4 Use of insurance proceeds**

All moneys receivable by virtue of any of the Insurance Policies shall be paid to the Lender (or if not paid by the insurers directly to the Lender shall be held on trust for the Lender) and shall at the option of the Lender be applied in replacing, restoring or reinstating the Charged Property (any deficiency being made good by the Company) or (except where the Company is obliged (as landlord or tenant) to lay out such insurance moneys under the provisions of any lease of any Real Property) in reduction of the Secured Obligations provided always that such payment to the Lender shall only be required following the occurrence of an Event of Default which is continuing.

### **15. PROTECTION OF PURCHASERS**

#### **15.1 Receipts**

The receipt of the Lender or its delegate or any Receiver shall be conclusive discharge to a purchaser in any sale or disposal of any of the Charged Property.

#### **15.2 Protection of Purchasers**

No purchaser or other person dealing with the Lender or its delegate or any Receiver shall be bound to inquire whether the right of the Lender or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any notice to the contrary, or be concerned to see whether any such delegation by the Lender shall have lapsed for any reason or have been revoked.

### **16. POWER OF ATTORNEY**

#### **16.1 Appointment**

The Company, by way of security and to more fully secure the performance of its obligations under this Deed, irrevocably appoints the Lender, each person to whom the Lender shall from time to time have delegated the exercise of the power of attorney conferred by this Clause and any Receiver jointly and severally to be its attorney and in its name and on its behalf to execute, deliver and perfect all documents and to do all things which the attorney may consider to be necessary for:

- (a) carrying out any obligation imposed on the Company by this Deed that the Company has failed to perform (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property); and
- (b) enabling the Lender and any Receiver to exercise any of the powers conferred on them by or pursuant to this Deed or by law,

provided that the power of attorney constituted by this clause 16.1 shall be exercisable only on the occurrence of an Event of Default which is continuing.



**16.2 Ratification**

The Company ratifies and confirms and agrees to 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. CONTINUING SECURITY**

**17.1 Continuing Security**

The security created by or pursuant to this Deed will be a continuing security for the Secured Obligations notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations or other matter or thing whatsoever and will be without prejudice and in addition to and shall not merge with any other right, remedy or security which the Lender may hold at any time for the Secured Obligations and will not be affected by any release, reassignment or discharge of such other right, remedy or security.

**17.2 Settlements conditional**

Any release, discharge or settlement between the Company and the Lender shall be conditional upon no security, disposition or payment to the Lender by the Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy or insolvency or for any other reason whatsoever, and if such condition shall not be fulfilled the Lender shall be entitled to enforce this Deed subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

**18. SET-OFF AND CURRENCY**

**18.1 Consolidation of accounts and set off**

In addition to any general lien or similar rights to which it may be entitled by operation of law, the Lender may at any time and without notice to the Company combine or consolidate all or any of the Company's then existing accounts with and liabilities to the Lender and set off or transfer any sum or sums standing to the credit of any one of more of such accounts in or towards satisfaction of the Secured Obligations.

**18.2 Currency**

For the purpose of or pending the discharge of the Secured Obligations, the Lender may, in its sole discretion, convert any moneys received, recovered or realised in any currency under this Deed (including the proceeds of any previous conversion under this Clause) from their existing currency into any other currency at such rate or rates of exchange and at such time as the Lender acting reasonably thinks fit.

**19. NEW ACCOUNTS**

If the Lender at any time receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Charged Property it may open a new account or accounts with the Company. If the Lender does not open a new account or accounts it shall nevertheless be treated as if it had done so as at the time when it received or was deemed to have received such notice and as from such time all payments made to the Lender shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount of the Secured Obligations.

**20. EXPENSES AND INDEMNITY**

**20.1 Expenses**

The Company shall, from time to time on demand of the Lender, pay or reimburse the Lender on a full indemnity basis for all costs and expenses (including legal fees) together with any VAT or similar taxes thereon incurred by it in connection with the preparation, execution, perfection, amendment, enforcement, discharge and/or assignment of this Deed. Such costs and expenses (reasonably and properly incurred in relation to the preparation, execution, perfection and amendment of this Deed) shall form part of the Secured Obligations and shall carry interest from the date of such demand until so paid or reimbursed at the Default Rate.

**20.2 Indemnity**

The Company shall, notwithstanding any release or discharge of all or any part of the security constituted by this Deed, indemnify the Lender, its agents, attorneys and any Receiver against any action, proceeding, claim, loss, liability and cost which it may sustain:

- (a) in the exercise (or purported exercise) of any of the rights, powers or discretions vested in them by this Deed (or by law); and/or
- (b) in connection with or otherwise relating to this Deed or the Charged Property.

## **21. MISCELLANEOUS**

### **21.1 No Deduction**

All payments to be made to the Lender under this Deed shall be made in freely available funds and shall be made clear of and without deduction for or on account of tax. If the Company is required by law to make a tax deduction, the sum payable by the Company shall be increased to the extent necessary to ensure that, after the making of such deduction, the recipient of such sum receives and retains a net sum equal to the sum which it would have received and retained had no such deduction been made or required to be made.

### **21.2 Assignment and disclosure of information**

The Lender may assign and transfer all or any of its rights and obligations under this Deed. The Lender shall be entitled to disclose such information concerning the Company and this Deed as the Lender considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

### **21.3 Perpetuity Period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of one hundred and twenty five years from the date of this Deed.

### **21.4 Remedies and Waivers**

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

### **21.5 No Liability**

None of the Lender, its delegate(s) nominee(s) or any Receiver shall be liable for any loss by reason of (a) taking any action permitted by this Deed 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, except in the case of gross negligence or wilful default upon its part.

### **21.6 Partial Invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed 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 Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

### **21.7 Certificates**

A certificate of the Lender specifying any amount due from the Company shall, in the absence of manifest error, be prima facie evidence of such amount.

## **22. NOTICES**

- (a) All notices under or in connection with this Deed shall be given in writing in English and may be made by letter .
- (b) The address (and the department or officer, if any, for whose attention the communication is to be made) of each party is:
  - (i) in the case of the Company:

Address: Shuttleworth Close, Gapton Hall Industrial Estate, Great Yarmouth NR31 0NQ, England

Attention: Richard Dowdeswell
  - (ii) in the case of the Lender:

Address: Kirkegårdsveien 45, 3616 Kongsberg, Norway

Attention: Treasury/ Dag Eide

or any substitute address or department or officer as the parties may notify to each other by not less than five Business Days' notice.

(c) Any notice to the Company will be effective if by way of letter, when it has been left at the relevant address or two Business Days after being deposited in the post, postage prepaid, in an envelope correctly addressed to the addressee.

(d) Any notice to the Lender will be effective only when actually received by the Lender.

## **23. COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

## **24. GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.

## **25. JURISDICTION**

### **25.1 English Courts**

The courts of England have exclusive jurisdiction to settle any disputes (a "**Dispute**") arising out of, or connected with this Deed (including a dispute regarding the existence, validity or termination of this Deed or the consequences of its nullity).

### **25.2 Convenient Forum**

The parties 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.

### **25.3 Exclusive Jurisdiction**

This Clause 25 is for the benefit of the Lender only. As a result and notwithstanding Clause 25.1 (*English Courts*), it does not prevent the Lender from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Lender may take concurrent proceedings in any number of jurisdictions.

**THIS DEED** has been **EXECUTED AS A DEED** by the Lender and the Company and is delivered by them on the date first specified above.

**Schedule 1**  
**REAL PROPERTY**

Part A  
Registered Land

Address	Title Number

Part B  
Unregistered Land

	Document describing the Real Property		
Address	Date	Document	Parties

**COMPANY**

Executed as a deed by

**KONGSBERG GEOACOUSTICS LIMITED**

by:

Director *SVERRE TETLIE*

in the presence of:

Witness signature

Witness name

(block capitals)

Witness address

**LENDER**

Signed by

For and on behalf of

**KONGSBERG GRUPPEN ASA**

Authorised Signatory