



Registration of a Charge

Company name: **NYK INVESTMENTS LIMITED**

Company number: **02767722**



X5MSXLSA

Received for Electronic Filing: **28/12/2016**

Details of Charge

Date of creation: **23/12/2016**

Charge code: **0276 7722 0007**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **STEPHENSON HARWOOD LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2767722

Charge code: 0276 7722 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd December 2016 and created by NYK INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th December 2016 .

Given at Companies House, Cardiff on 29th December 2016

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

EXECUTION VERSION

Subordinated Creditor's Security Agreement

Dated 23 December 2016

- (1) **NYK Investments Limited**
the Assignor
- (2) **The Royal Bank of Scotland plc**
the Security Agent

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**STEPHENSON
HARWOOD**

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Assignment

Dated 23 December 2016

Between

- (1) **NYK Investments Limited** registered in England with registered number 02767722 (the "**Assignor**"), and
- (2) **The Royal Bank of Scotland plc** as security trustee for the Secured Parties (the "**Security Agent**").

This deed witnesses

1 Definitions and Interpretation

1.1 Definitions

This Assignment is intended to be a deed between the parties to it and is referred to here as "**this Deed**". Words and expressions defined in the Facility Agreement have the same meanings in this Deed, unless they are expressly defined in this Deed:

"**Assigned Assets**" means all of the assets of whatever nature of the Assignor which are the subject of any Security created by or under this Deed.

"**Contracts**" means the Subordinated Debt Documents.

"**Default Rate**" means the rate of interest specified in, and calculated in accordance with, clause 8.4 (*Default interest*) of the Facility Agreement.

"**Facility Agreement**" means the facility agreement dated on or around the date of this Deed between, the Borrowers, the Arranger, the Original Lenders, the Hedge Counterparty, the Agent and the Security Agent.

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

"**Receiver**" means a receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and manager and, if the Security Agent is permitted by law to appoint an administrative receiver, includes an administrative receiver.

"**Secured Liabilities**" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under each Finance Document.

"**Security Period**" means the period starting on the date of the Facility Agreement and ending on the date on which the Agent is satisfied (acting reasonably) that all of the Secured Liabilities are irrevocably discharged in full and no Finance Party has any commitment or liability, whether present or future, actual or contingent, in relation to any Facility under the Facility Agreement.

"**Subordinated Debt**" means any monies, obligations and liabilities (whether actual or contingent, whether incurred solely or jointly with any other person and whether

incurred as principal or surety) now or in the future due, owing or incurred by any Borrower to the Assignor in any currency, together with all interest on any of the same, and all costs, charges and expenses incurred in connection with any of the same.

"Subordinated Debt Documents" means any agreements evidencing or recording the terms of the Subordinated Debt from time to time.

1.2 Construction

- 1.2.1 The principles of construction set out in clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed, insofar as they are relevant to it and subject to only necessary changes, as they apply to the Facility Agreement.
- 1.2.2 Unless a contrary intention appears, any reference in this Deed to:
- (a) this **Deed** is a reference to this Assignment as amended, varied, novated, supplemented and replaced from time to time;
 - (b) a **Contract** is a reference to that Contract as amended, varied, novated, supplemented or replaced from time to time;
 - (c) a person includes any permitted assigns, transferees and successors in title; and
 - (d) the **Security Agent** or any other **Secured Party** or a **Receiver** (except for the references in Clause 15 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.
- 1.2.3 Each of the fixed charges and assignments contained in Clauses 5.1 (*Assignment of Contractual rights*) and 5.2 (*Charge of Contractual rights*) over each category of assets and each asset shall be read and construed separately, as though each asset were charged or assigned (as applicable), independently and separately of each other.
- 1.2.4 The Assignor confirms it has received a copy of the Facility Agreement.

1.3 Third party rights

- 1.3.1 Each Secured Party and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, principally in relation to rights and indemnities in Clauses 12 (*Protection of the Secured Parties*) and 16 (*Currency*), but no other person who is not a party to this Deed has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- 1.3.2 Notwithstanding any term of any Finance Document, the Parties to this Deed and any Receiver may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person who is not a Party to this Deed.

1.4 Effect as a deed

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Security Agent.

2 Covenant to pay

2.1 Subject to Clause 3 (*Limited Recourse*), the Assignor shall pay and discharge the Secured Liabilities when due and payable in accordance with the terms of the Finance Documents.

2.2 The Assignor shall pay interest at the Default Rate on the sums payable under this Deed from the date on which the liability was incurred to the date of actual payment, both before and after judgment.

3 Limited Recourse

Notwithstanding any other provision of this Deed, the total amount recoverable by the Security Agent from the Assignor shall be limited to the Assigned Assets and to its rights of enforcement and recovery against the Assigned Assets and, accordingly, the Security Agent agrees that the total amount recoverable from or against the Assignor under this Deed shall be limited to the Assigned Assets and the aggregate proceeds received by the Agent Security as a result of realising the Assigned Assets in accordance with the terms of this Deed.

4 Nature of Security created

4.1 General

All of the Security created under this Deed is created:

- 4.1.1 In favour of the Security Agent as trustee for the Secured Parties;
- 4.1.2 as a continuing security to secure the payment and discharge of all of the Secured Liabilities;
- 4.1.3 over all present and future Subordinated Debt Documents which are owned by the Assignor and, to the extent that it does not own those assets, shall extend to any right or interest which it may have in them; and
- 4.1.4 with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

5 Creation of Security

5.1 Assignment of Contractual rights

The Assignor assigns absolutely, subject to a proviso for re-assignment on redemption, all its rights and interests under or in respect of:

- 5.1.1 the Subordinated Debt Documents; and
- 5.1.2 (a) all sums which may be or become payable;
(b) all payments, claims and causes of action; and

- (c) all proceeds;

under each Subordinated Debt Document.

5.2 Charge of Contractual rights

The Assignor charges by way of first fixed charge (to the extent the same are not capable of assignment under Clause 5.1 (*Assignment of contractual rights*)) all its rights and interests under or in respect of:

5.2.1 the Subordinated Debt Documents; and

5.2.2 (a) all sums which may be or become payable;

(b) all payments, claims and causes of action; and

(c) all proceeds;

under each Subordinated Debt Document.

5.3 Trust

5.3.1 To the extent that any assignment of any Assigned Asset is prohibited, the Assignor holds it on trust for the Security Agent.

5.3.2 If:

(a) a consent or waiver must be obtained; or

(b) a condition must be satisfied,

for the Assignor to be permitted to assign or grant a charge of whatever nature over any of its assets, then:

(i) subject to Clause 5.3.3, the Assignor shall apply for the consent or waiver; and

(ii) the Assignor shall use its best endeavours to satisfy the condition,

in each case within 14 days of the date of this Deed or, if the Assigned Asset is acquired after the date of this Deed, within 14 days of the date of acquisition.

5.3.3 Where the consent or waiver is not to be unreasonably withheld, the Assignor shall:

(a) use its reasonable endeavours to obtain it as soon as possible; and

(b) keep the Security Agent informed of the progress of the negotiations to obtain it.

5.3.4 On the waiver or consent being obtained, or the condition being satisfied, the Assigned Asset shall be charged by way of fixed charge or assigned, under this Clause 5 and, in relation to such Assigned Asset, the trust referred to in Clause 5.3.1 shall terminate.

6 Reassignment

- 6.1 At the end of the Security Period the Security Agent shall, or shall procure that its appointees will, at the request and cost of the Assignor, take whatever action is necessary to release the Assigned Asset from the Security created under this Deed and re-assign to the Assignor those Assigned Assets.
- 6.2 The Security Agent shall make no representation or warranty or give any undertaking in respect of the Assigned Assets reassigned under Clause 6.1.
- 6.3 Section 93 (Restriction on consolidation of mortgages) of the LPA shall not apply to this Deed.

7 Representations

The Assignor makes the representations and warranties set out in this Clause 7 to the Security Agent and the other Secured Parties on the date of this Deed and (other than in relation to Clause 7.6 (*No proceedings pending or threatened*)) on each date on which the Repeating Representations are deemed to be made by under the Facility Agreement. In entering into the Finance Documents to which they are party, the Security Agent and the other Finance Parties have relied on the representations and warranties of the Assignor set out in this Clause.

7.1 Status

- 7.1.1 It is a limited liability corporation, duly incorporated and validly existing under the laws of England.
- 7.1.2 It has the power to own its assets and carry on its business as it is being conducted.

7.2 Binding obligations

The obligations expressed to be assumed by it under this Deed, and any other Finance Document to which it is a party, are subject to the Legal Reservations legal, valid, binding and obligations which are enforceable in accordance with their terms.

7.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Deed, any other Finance Document to which it is a party and the granting of the Security over the Contracts and other rights under this Deed do not, and will not, conflict with:

- 7.3.1 any law or regulation applicable to it;
- 7.3.2 its constitutional documents; or
- 7.3.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument which has or is reasonably likely to have a Material Adverse Effect.

7.4 Power and authority

- 7.4.1 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party, the transactions contemplated by them, and each Contract.
- 7.4.2 No limit on its powers will be exceeded as a result of the grant of Security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

7.5 Validity and admissibility in evidence

7.5.1 All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed and any other Finance Documents to which it is a party;
- (b) to make the Finance Documents to which it is a party admissible in evidence; and
- (c) to permit the assignment of each Contract,

have been obtained or effected and are in full force and effect except registration of particulars of this Deed at Companies House under the Companies Act 2006 and payment of associated fees which registrations, filings and fees will be made and paid promptly after the date of this Deed

7.6 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have, to the best of its knowledge and belief, been started or threatened against it.

7.7 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in England and Wales.

7.8 Ranking of Security

The Security conferred by this Deed constitutes a first priority security interest over the Assigned Assets which are not subject to any prior or pari passu Security.

7.9 Contracts

- 7.9.1 It is the sole legal and beneficial owner of the Assigned Assets.
- 7.9.2 Each Assigned Asset is in full force and effect.
- 7.9.3 All obligations under each Assigned Asset have been duly performed by each party so far as it is aware.

7.9.4 Neither the Assignor, nor any of its officers, employees or agents has made any false declaration or any misstatement or any misrepresentation in the course of entering into any Contract.

7.9.5 No Security subsists over any of the Assigned Assets except any Security permitted by the Facility Agreement.

8 Undertakings relating to the Security Assets

The undertakings in this Clause 8 remain in force from the date of this Deed until the expiry of the Security Period.

8.1 Disposals

The Assignor shall not enter into a single transaction or a series of transactions (whether related or not, and whether voluntary or involuntary), to dispose of any Assigned Asset or part of any Assigned Asset, or enter into an agreement to make any disposal.

8.2 Negative pledge

The Assignor shall not create, purport to create or permit to subsist any Security over any Assigned Asset.

8.3 Preservation of Assets

The Assignor:

- 8.3.1 shall notify the Security Agent of any action commenced by a third party to seize, attach, charge, take possession of or sell any Assigned Asset which (to the best of its knowledge and belief) has been started or threatened and at its own cost, defend such proceedings;
- 8.3.2 shall not enter into any onerous obligation or restriction materially adversely affecting any Assigned Asset;
- 8.3.3 shall provide the Security Agent with all information concerning each Assigned Asset which the Security Agent reasonably requests from time to time;
- 8.3.4 shall do everything necessary to keep each Assigned Asset in full force and effect;
- 8.3.5 shall duly perform all obligations under each Assigned Asset;
- 8.3.6 shall provide evidence and receipts relating to each Assigned Asset as the Security Agent may reasonably request;
- 8.3.7 shall comply with and perform all undertakings, laws and regulations affecting each Assigned Asset and the exercise of the rights under each of them;
- 8.3.8 shall notify the Security Agent in writing if any Assigned Asset becomes void, unenforceable or is the matter of any dispute;

- 8.3.9 shall notify the Security Agent in writing of any default or breach of any Assigned Asset;
- 8.3.10 shall commence and maintain proceedings necessary to preserve and protect the interests of the Security Agent in the Assigned Asset;
- 8.3.11 shall not make or agree to make any amendment, variation, suspension, cancellation or termination of any Assigned Asset;
- 8.3.12 shall not consent to any waiver or release of any obligation of any party to a Contract which is an Assigned Asset;
- 8.3.13 shall not do, purport to do nor permit any act or thing which may materially jeopardise or otherwise prejudice the value of any Assigned Asset or any Security created under this Deed;
- 8.3.14 shall not take any Security in connection with its liability under this Deed from any guarantor of, or provider of Security for, any of the Secured Liabilities.

8.4 No deductions

The Assignor shall make all payments to be made by it in respect of this Deed without any deduction for set-off, counterclaim or any other circumstance.

8.5 Notices of assignment

The Assignor shall promptly after the execution of this Deed,

- 8.5.1 serve the notices substantially in the forms set out in Schedule 1 (*Forms of notice for assigned Contracts and acknowledgment*) to the relevant party to each Assigned Asset;
- 8.5.2 deliver to the Security Agent a certified copy of each notice; and
- 8.5.3 use all reasonable endeavours to procure that the recipient of such notice acknowledges that notice in writing substantially in the form set out in Schedule 1 (*Forms of notice for assigned Contracts and acknowledgment*).

8.6 Exercise of rights before an Event of Default

Subject to the terms of the Facility Agreement, and to the terms of any such notice or acknowledgment given or received under Clause 8.5 (*Notices of assignment*), while no Event of Default has occurred and is continuing, the Assignor may:

- 8.6.1 exercise its rights in respect of each Assigned Asset; and
- 8.6.2 deal with the relevant counterparties in respect of each Assigned Asset.

8.7 Exercise of rights on an Event of Default

Once an Event of Default has occurred the Assignor shall promptly pay over to the Security Agent all moneys which it may receive in relation to the Assigned Asset, and shall direct such moneys to be paid into such account as the Security Agent shall direct.

9 Enforcement

9.1 When Security becomes enforceable

The Security created by this Deed shall become immediately enforceable:

- 9.1.1 If an Event of Default occurs and is continuing, or
- 9.1.2 if the Assignor so requests.

9.2 Powers on enforcement

At any time after the Security created by this Deed has become enforceable, the Security Agent may (without prejudice to any other of its rights and remedies and without notice to the Assignor) do all or any of the following:

- 9.2.1 subject to Clause 10.1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Assigned Assets;
- 9.2.2 exercise all the powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 (*Regulation of exercise of power of sale*) or 109(1) (*Appointment, powers, remuneration and duties of receiver*) of the LPA; and
- 9.2.3 If it has not done so, serve notices substantially in the forms set out in Schedule 1 (*Forms of notice for assigned Contracts and acknowledgment*) and obtain acknowledgments under Clause 8.5 (*Notices of assignment*)

9.3 Disposal of the Assigned Assets

In exercising the powers referred to in Clause 9.2 (*Powers on enforcement*), the Security Agent or any Receiver may sell or dispose of all or any of the Assigned Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

9.4 Application of moneys

9.4.1 The Security Agent or any Receiver shall apply moneys received by them under this Deed in the following order:

- (a) **first**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid costs and expenses of the Security Agent and any Receiver under this Deed or which are incidental to any Receiver's appointment, together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full;
- (b) **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Security Agent and any Receiver;
- (c) **thirdly**, in or towards the discharge of all liabilities having priority to the Secured Liabilities;

(d) **fourthly**, in or towards the discharge of the Secured Liabilities in accordance with the Facility Agreement; and

(e) **fifthly**, in the payment of any surplus to the Assignor or other person entitled to it,

and section 109(8) (*Appointment, powers, remuneration and duties of receiver*) of the LPA shall not apply.

9.4.2 Clause 9.4.1 will override any appropriation made by the Assignor.

10 Appointment and powers of Receivers

10.1 Method of appointment and removal

10.1.1 The Security Agent may not appoint a Receiver by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A (*Moratorium*) of the Insolvency Act 1986.

10.1.2 Every appointment or removal of a Receiver, of any delegate or of any other person by the Security Agent pursuant to this Deed may be made in writing under the hand of any officer or manager of the Security Agent.

10.2 Powers of Receiver

Every Receiver shall have all the powers:

10.2.1 of the Security Agent under this Deed;

10.2.2 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;

10.2.3 which are specified in schedule 1 (*Powers of Administrator or Administrative Receiver*) of the Insolvency Act 1986 in relation to, and to the extent applicable to, the Assigned Assets or any of them (whether or not the Receiver is an administrative receiver within the meaning of the Insolvency Act 1986);

10.2.4 of the only legal and absolute beneficial owner of each Assigned Asset;

10.2.5 to do whatever, in the opinion of the Receiver it

(a) considers necessary or desirable to realise, protect, exploit, maintain or increase the value of the Assigned Assets or any of them, including bringing or defending proceedings in the name or on behalf of the Assignor or Security Agent and entering into and executing documents and taking any action in the name of the Assignor or Security Agent,

(b) considers incidental or conducive to any right, power, function, discretion or authority of the Receiver under this Deed or by law; and

- (c) considers necessary or desirable to undertake as agent of the Assignor.

10.3 Joint or several

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on a Receiver by this Deed.

10.4 Receiver as agent

Every Receiver shall be the agent of the Assignor without personal liability. The Assignor shall be solely responsible for the acts and defaults of the Receiver and for the payment of the Receiver's remuneration.

10.5 Receiver's remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Security Agent and the maximum rate specified in section 109(6) (*Appointment, powers, remuneration and duties of receiver*) of the LPA shall not apply.

11 Protection of purchasers

No purchaser or other person dealing with the Security Agent or any Receiver shall be bound or concerned:

- 11.1.1 to see or enquire whether the right of the Security Agent or any Receiver to exercise any of the powers conferred by this Deed has arisen or not;
- 11.1.2 with the propriety of the exercise or purported exercise of those powers; or
- 11.1.3 with the application of any moneys paid to the Security Agent, to any Receiver or to any other person.

12 Protection of the Secured Parties

12.1 Exclusion of liability

None of the Secured Parties, or any of their respective officers, employees or agents shall have any responsibility or liability:

- 12.1.1 for any action taken, in relation to all or any of the Assigned Assets;
- 12.1.2 for failure to take action relating to the Assigned Assets, in particular for any failure:
 - (a) to notify or send to the Assignor any notice, report or other letter received by it concerning any Assigned Asset;
 - (b) to accept or decline any offer relating to any Assigned Asset;
 - (c) to make any payment in any form relating to any Assigned Asset;

- (d) to enquire about the nature and amount of any payment relating to any Assigned Asset;
 - (e) to take any step to enforce payment of any moneys due in respect of any Assigned Asset;
- 12.1.3 to account as mortgagee in possession or for any loss upon realisation of any Assigned Asset;
 - 12.1.4 for any other default or omission in relation to all or any of the Assigned Assets for which a mortgagee in possession might be liable;
 - 12.1.5 for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies as referred to in the Facility Agreement; or
 - 12.1.6 for the loss or destruction of, or damage to, any of the Assigned Assets, or to the Contracts, any documents evidencing the Contracts, or rights under them which are Assigned Assets, which are in the possession or held to the order of any such person (and which will be held by such persons at the expense and risk of the Assignor),

except in the case of gross negligence or wilful misconduct on the part of that person.

12.2 General indemnity

The Assignor shall indemnify the Secured Parties and their respective officers, employees and agents against all actions, proceedings, demands, claims, costs, expenses, loss and other liabilities incurred by them in respect of all or any of the following:

- 12.2.1 any act or omission by any of them in relation to all or any of the Assigned Assets, including, but not limited to, any act or omission by any of them on the directions of the Assignor in relation to any Assigned Asset;
- 12.2.2 any payment relating to or in respect of all or any of the Assigned Assets which becomes payable at any time by any of them;
- 12.2.3 any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed or any Security created under it;
- 12.2.4 the cost of holding and safekeeping any documents of whatever nature which the Assignor delivers to the Security Agent under Clause 14 (*Further assurance*) or any other provision of this Deed;
- 12.2.5 carrying out or purporting to carry out any of the rights, powers, authority and discretions conferred on them by, or permitted under, this Deed; and
- 12.2.6 any breach by the Assignor of any of its undertakings or other obligations to the Security Agent or any other Secured Party,

except in the case of gross negligence or wilful misconduct on the part of that person.

12.3 Indemnity out of the Security Assets

Each Secured Party and their respective officers, employees and agents shall be entitled to be indemnified out of the Assigned Assets or any part of them in respect of the indemnities referred to in Clause 12.2 (*General indemnity*) and may retain and use monies received by it under this Deed towards payment of any sums under those indemnities.

13 Preservation of Security

13.1 Reinstatement

If any payment by the Assignor or discharge given by the Security Agent (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- 13.1.1 the liabilities of the Assignor and the Security created by this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- 13.1.2 the Secured Parties shall be entitled to recover the value or amount of that Security or payment from the Assignor, as if the payment, discharge, avoidance or reduction had not occurred.

13.2 Waiver of defences

Neither the Security created by this Deed nor the obligations of the Assignor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it, the Security Agent or any other Secured Party) including:

- 13.2.1 any time, waiver or consent granted to, or composition with, any Obligor, the Assignor, or other person;
- 13.2.2 the release of any Obligor, the Assignor, or any other person under the terms of any composition or arrangement with any person;
- 13.2.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Obligor, the Assignor, or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 13.2.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor, the Assignor, or any other person;
- 13.2.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any document or Security, including without limitation any change in the

purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or Security;

13.2.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or

13.2.7 any insolvency, liquidation, administration or similar proceedings.

13.3 Assignor intent

Without prejudice to the generality of Clause 13.2 (*Waiver of defences*), the Assignor expressly confirms that it intends that the Security created by this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following:

13.3.1 acquisitions of any nature;

13.3.2 increasing working capital;

13.3.3 enabling distributions to be made;

13.3.4 carrying out restructurings;

13.3.5 refinancing existing facilities;

13.3.6 refinancing any other indebtedness;

13.3.7 making facilities available to new borrowers;

13.3.8 any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and

13.3.9 any fees, costs and expenses associated with any of the foregoing.

13.4 Immediate recourse

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

13.5 Appropriations

During the Security Period, each Secured Party may:

13.5.1 refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 9.4 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether

against the Secured Liabilities or otherwise) and the Assignor shall not be entitled to the benefit of the same; and

- 13.5.2 hold in an interest-bearing suspense account any moneys received from a Assignor or on account of the Secured Liabilities.

13.6 Deferral of the Assignor's rights

During the Security Period, the Assignor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or the enforcement of the Security created by this Deed:

- 13.6.1 to receive or claim payment from, or be indemnified by an Obligor;
- 13.6.2 to claim any contribution from any guarantor of, or party who has granted Security in respect of, any Obligor's obligations under the Finance Documents;
- 13.6.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under any Finance Document or of any guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- 13.6.4 to exercise any right of set-off against any Obligor; or
- 13.6.5 to claim or prove as a creditor of any Obligor in competition with any Secured Party.

If the Assignor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent as the Security Agent may direct for application in accordance with this Deed and the Facility Agreement.

13.7 Additional Security

This Deed is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other Security now or in the future held by or available to any Secured Party.

13.8 New accounts

If any subsequent Security is granted over or affects all or any of the Security Assets, the Security Agent or any other Secured Party may open a new account or accounts in the name of the Assignor from the date it receives notice of such Security or the date it is deemed to have received such notice. If it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that subsequent Security. As from that time, all payments made by or on behalf of the Assignor to that Secured Party:

- 13.8.1 shall be credited or be treated as having been credited to the new account of the Assignor; and
- 13.8.2 shall not operate to reduce the Secured Liabilities.

14 Further assurance

14.1 Further action

The Assignor shall, at its own expense, promptly take whatever action and sign or execute any further documents which the Security Agent may reasonably require to:

- 14.1.1 give effect to the requirements of this Deed;
- 14.1.2 create, protect, preserve and perfect the Security intended to be created by or under this Deed;
- 14.1.3 protect and preserve the ranking of the Security intended to be created by or under this Deed; and
- 14.1.4 (after the Security created by this Deed has become enforceable) facilitate the realisation of all or any of the Assigned Assets, or the exercise of any rights, powers and discretions by the Security Agent, any Receiver or any administrator or any delegate, agent or employee in connection with all or any of the Assigned Assets, including but not limited to executing and delivering all documentation necessary to create a legal assignment of any of the Assigned Assets under Section 136 (*Legal assignments of things in action*) of the LPA to the Security Agent, its nominee or any third party;

and any such document may disapply section 93 (*Restriction on consolidation of mortgages*) of the LPA.

14.2 Law of Property (Miscellaneous Provisions) Act 1994

The covenant set out in section 2(1)(b) (*Right to dispose and further assurance*) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to the provisions set out in this Clause 14.

15 Power of attorney

- 15.1 The Assignor by way of security, irrevocably and severally, appoints each of the Security Agent, any Receiver, and any of its delegates or sub-delegates, or other person nominated in writing by, an officer of the Security Agent or Receiver jointly and severally as its attorney, in its name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit to take any action, sign or execute any documents which the Assignor is obliged to take, sign or execute under with this Deed where the Assignor has been notified in writing by the Security Agent of such failure.
- 15.2 The Assignor ratifies and confirms, and agrees to ratify and confirm, all such actions taken and documents signed or executed or purported to be done by any attorney under its appointment under this Deed.

16 Currency

16.1 Currency indemnity

- 16.1.1 Subject to Clause 3 (*Limited Recourse*), if any sum due from the Assignor under this Deed (a "Sum"), or any order, judgment or award given or made

in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (a) making or filing a claim or proof against the Assignor; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Assignor shall as an independent obligation, within three Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- 16.1.2 The Assignor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

16.2 Currency Conversion

- 16.2.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- 16.2.2 The obligations of the Assignor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

16.3 Currency of account

- 16.3.1 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- 16.3.2 Any amount payable under this Deed shall be paid in the currency in which it is owed.

16.4 Change of currency

- 16.4.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (a) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Security Agent (after consultation with the Assignor); and
 - (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank

for the conversion of that currency or currency unit into the other, rounded up or down by the Security Agent (acting reasonably).

16.4.2 If a change in any currency of a country occurs, this Deed will, to the extent the Security Agent (acting reasonably and after consultation with the other Secured Parties and the Assignor) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant market and otherwise to reflect the change in currency.

17 Costs and expenses

17.1 Transaction expenses

The Assignor shall promptly on demand pay the Security Agent the amount of all costs and expenses (including legal fees) reasonably and properly incurred by it and by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of this Deed and any other Finance Document related to or entered into pursuant to it.

17.2 Amendment costs and expenses

If the Assignor (i) requests an amendment, waiver or consent, or (ii) an amendment is required pursuant to Clause 16.4 (*Change of currency*), it shall, within three Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) reasonably and properly incurred by it and by any Receiver or Delegate in responding to, evaluating, negotiating or complying with that request or requirement.

17.3 Enforcement costs

The Assignor shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under this Deed and the Security created under it and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

18 Resignation of Security Agent

18.1 Procedure

The Security Agent may resign, and a successor Security Agent may be appointed, in accordance with the Facility Agreement.

18.2 Disclosure of information

The Security Agent may disclose to any successor Security Agent any information it reasonably believes it has received as Security Agent under this Deed in accordance with the provisions of the Facility Agreement.

19 Set off

At any time whilst an Event of Default is continuing, the Security Agent may set off any matured obligation due from the Assignor under the Finance Documents (to the

extent beneficially owned by it) against any matured obligation owed by the Security Agent to the Assignor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

20 Notices

20.1 Communications in writing

Any communication to be made under or in connection with this Deed and any Finance Documents pursuant to it shall be made in writing and, unless otherwise stated, may be made by fax or letter.

20.2 Addresses

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

20.2.1 In the case of the Assignor, that identified with its name below;

20.2.2 In the case of the Security Agent, that identified with its name below,

or any substitute address or fax number or department or officer as the Party may notify to the other Parties, if a change is made by not less than five Business Days' notice.

20.3 Delivery

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

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

and, if a particular department or officer is specified as part of its address details provided under Clause 20.2 (*Addresses*), if addressed to that department or officer.

20.3.2 Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

20.3.3 Any communication or document which becomes effective, in accordance with Clauses 20.3.1 and 20.3.2, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

20.4 Electronic communication

20.4.1 Any communication to be made between any of the Parties under or in connection with this Deed or any other Finance Document relating to it may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the Parties:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
- (b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

20.4.2 Any such electronic communication as specified in Clause 20.4.1 to be made between the Assignor and the Security Agent may only be made in that way to the extent that the Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

20.4.3 Any such electronic communication as specified in Clause 20.4.1 made between the Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

20.4.4 Any electronic communication which becomes effective, in accordance with Clause 20.4.3, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Deed shall be deemed only to become effective on the following day.

20.4.5 Any reference in this Deed or in any other to a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 20.

20.5 English language

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

21 Calculations and certificates

21.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Security Agent are prima facie evidence of the matters to which they relate.

21.2 Certificates and Determinations

Any certification or determination by the Security Agent of a rate or amount under this Deed or any other Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

21.3 Day count convention

Any interest, commission or fee accruing under this Deed or any other Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in accordance with market practice.

22 Partial invalidity

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

23 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Deed or any Finance Document pursuant to it, shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed or any of the Finance Documents. No election to affirm this Deed or any such Finance Document on the part of the Security Agent shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed and in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

24 Amendments and waivers

Any term of this Deed may be amended or waived only with the written consent of the Assignor and the Security Agent.

25 Assignments and Transfers

25.1 The Assignor may not assign any of its rights or transfer any of its rights or obligations under this Deed or any of the Finance Documents.

25.2 The Security Agent may assign any of its rights or transfer any of its rights or obligations under this Deed or any of the Finance Documents to any person who replaces the Security Agent as security trustee for the Secured Parties.

26 Counterparts

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

27 Governing law

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

28 Enforcement

28.1 Jurisdiction

- 28.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity and termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed (a "**Dispute**").
- 28.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 28.1.3 This clause is for the benefit of the Security Agent only. As a result the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in a number of jurisdictions.

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

Schedule 1

Forms of notice for assigned Contracts and acknowledgment

To: [Insert name and address of counterparty]

Attention: []

[Date]

Dear Sirs

Notice of assignment

- 1 We refer to the [specify the relevant Assigned Assets] dated [] between us and you (the "Contract"). The terms of this notice have the same meanings as in the Assignment.
- 2 We notify you that:
 - 2.1 under a Subordinated Creditor's Security Agreement dated [] between, among others, us and The Royal Bank of Scotland plc (the "Security Agent") we have assigned absolutely to the Security Agent as trustee for the benefit of itself and certain other banks and financial institutions (together with the Security Agent, the "Secured Parties") all our right, title and interest in and to, and all benefits and payments accruing under, the Contract, including any claim or action against you, security for certain obligations owed to the Secured Parties;
 - 2.2 we may not agree to amend or terminate the Contract or any of the rights relating to the Contract, without the prior written consent of the Security Agent;
 - 2.3 until you receive written notice to the contrary from the Security Agent that an Event of Default has occurred, you may continue to deal with us in relation to the Contract and credit all moneys to which we are entitled under the Contract to the following account in our name: [insert details of relevant Account];
 - 2.4 after receipt of written notice in accordance with paragraph 2.3 we will cease to have any right to deal with you in relation to the Contract and from that time you should deal only with the Security Agent and comply with all instructions to you from the Security Agent in relation to the Contract; and
 - 2.5 you are authorised to disclose information relating to the Contract to the Security Agent on request of the Security Agent.
- 3 We request that you:
 - 3.1 after receipt of written notice in accordance with paragraph 2.3, ensure that all moneys to which we are entitled under the Contract are credited to the account of the Security Agent specified in that notice (and are not paid to us);

- 3.2 give the Security Agent written notice of any breach of the Contract as soon as you become aware of it; and
- 3.3 give the Security Agent not less than 30 days' written notice of you terminating the Contract.
- 4 Please sign and return the enclosed copy of this notice to the Security Agent at The Royal Bank of Scotland plc, 3rd Floor, 5-10 Great Tower Street, London, EC3P 3HX for the attention of Gavin Richards (with a copy to us).
- 5 This notice is governed by English law.

Yours faithfully

for and on behalf of **[insert name of the Assignor]**

Copy to: Security Agent

[On acknowledgment copy]

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

Copy to: **[insert name and address of Security Agent]**

We acknowledge receipt of the notice from you [] to us [] dated [] of the Assignment of the Contract by you to [] the Security Agent. The terms of this acknowledgment have the same meanings as in the Assignment.

- 1 We confirm that:
 - 1.1 we agree to the terms of this notice and to act in accordance with its provisions;
 - 1.2 the Contract is in full force and effect and all moneys and due and payable under it have been duly paid in full without set-off;
 - 1.3 we have not received notice that you have assigned your rights under the Contract to a third party or created any other interest (whether by way of Security or otherwise) in the Contract in favour of a third party; and
 - 1.4 we have not claimed or exercised, nor do we have any outstanding right to claim or exercise against you, any right of set-off, counter-claim or other right relating to the Contract.
- 2 We acknowledge your reliance on this letter in granting the Assignment.
- 3 This acknowledgment is governed by English law.

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

Date: []

EXECUTION PAGE TO ASSIGNMENT

The Assignor

Executed as a deed by NYK
Investments Limited acting by a
director in the presence of:

Signature
redacted

Director

signature
of witness

Signature
redacted

signature

print name

Alain MILLET

name

KAREN JOAN

print name of witness

address

Address redacted

Address: c/o CLSH Management Limited
85 Bondway
London SW8 1SF

Fax: 020 7840 7728

Attention: Alain Millet

The Security Agent

Signed for and on behalf of)
The Royal Bank of Scotland plc)

Address: The Royal Bank of Scotland plc,
3rd Floor,
5-10 Great Tower Street,
London EC3P 3HX

Fax: +44 (0)20 7615 4470

Attention: Gavin Richards

EXECUTION PAGE TO ASSIGNMENT

The Assignor

Executed as a **deed** by **NYK Investments Limited** acting by a director in the presence of:

signature Director

signature
of witness _____

print name

name _____
print name of witness

address

Address: c/o CLSH Management Limited
86 Bondway
London SW8 1SF

Fax: 020 7840 7728

Attention: Alain Millet

The Security Agent

Signed for and on behalf of)
The Royal Bank of Scotland plc) *Signature*
redacted

Address: The Royal Bank of Scotland plc,
3rd Floor,
5-10 Great Tower Street,
London EC3P 3HX

Fax: +44 (0)20 7615 4470

Attention: Gavin Richards