



Registration of a Charge

Company name: **IFCO SYSTEMS UK LTD**

Company number: **02997052**



X8EMXVBD

Received for Electronic Filing: **23/09/2019**

Details of Charge

Date of creation: **13/09/2019**

Charge code: **0299 7052 0002**

Persons entitled: **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED (AS COMMON SECURITY AGENT)**

Brief description: **NOT APPLICABLE**

Contains fixed charge(s).

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

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: **FRANCESCA MOSELY**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2997052

Charge code: 0299 7052 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th September 2019 and created by IFCO SYSTEMS UK LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd September 2019 .

Given at Companies House, Cardiff on 24th September 2019

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**

13 September 2019

IFCO SYSTEMS UK LTD
(as the Chargor)

and

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
(as Common Security Agent)

ACCOUNT AND FLOATING CHARGE

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THIS AGREEMENT (this “**Agreement**”) is made on 13 September 2019

BETWEEN:

- (1) **IFCO Systems UK Ltd**, a company incorporated under the laws of England and Wales with its registered office at Albert House, Queen Victoria Road, High Wycombe, Buckinghamshire, HP11 1AG and with registered number 02997052 (the “**Chargor**”); and
- (2) **HSBC Corporate Trustee Company (UK) Limited** as Common Security Agent for the benefit of the Secured Parties (the “**Common Security Agent**”).

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

“**Acceleration Event**” means a Pari Passu Acceleration Event and a Second Lien Acceleration Event.

“**Account Notice**” means a notice substantially in the form set out in Schedule 2 (*Forms of Account Notice*) or such other form as the Chargor and the Common Security Agent may reasonably agree.

“**Accounts**” means, in relation to the Chargor, all its Material Accounts (excluding any tax accounts, payroll accounts, employee share scheme accounts and trust accounts, in each case to the extent monies held in them are held on trust for beneficiaries which are not Group Companies) opened or maintained by the Chargor in England and Wales from time to time, including without limitation the bank accounts set out in Schedule 1 (*Accounts*) (or such accounts as may be agreed by the relevant Chargor and the Common Security Agent from time to time) including the debt or debts represented thereby, but excluding (for the avoidance of doubt) any account or debt represented thereby that constitutes an Excluded Asset.

“**Charged Property**” means all the assets, rights, title, interests, benefits and undertakings charged, assigned or otherwise secured or expressed to be charged, assigned or otherwise secured in favour of the Common Security Agent by or pursuant to this Agreement.

“**Excluded Asset**” means, in relation to the Chargor:

- (a) any assets of any acquired entity which are subject to security (other than Transaction Security), to the extent permitted under the terms of the Primary Creditor Debt Documents;
- (b) any asset in respect of which the granting of security under this Agreement:
 - (i) is not within the legal capacity of the Chargor;
 - (ii) would conflict with the fiduciary duties of the directors or managers of the Chargor;
 - (iii) would contravene any legal prohibition or regulatory condition; or
 - (iv) would result in a risk of personal or criminal liability on the part of any director, officer or employee;

provided that the Chargor shall use reasonable endeavours (not involving the payment of money or incurrence of any external expenses) to overcome such obstacle;

- (c) any asset or undertaking subject to third party arrangements which may prevent such asset or undertaking from being charged or assigned (or, if charged or assigned, would give a third party the right to terminate or otherwise amend any rights, benefits and/or obligations of the Group in respect of such asset or undertaking or require any Group Company to take any action materially adverse to the interests of the Group or any Group Company) *provided* that the Chargor shall use reasonable endeavours to procure the relevant consent (not involving the payment of material cost or incurrence of any material external expenses) if (i) at least 15 Business Days prior to the date of this Agreement the Common Security Agent (acting reasonably) determines that such asset is material in the context of the business of the Group and notifies the Chargor in writing that such consent should be sought and (ii) the Chargor is satisfied that such endeavours would not reasonably be expected to adversely impact relationships with third parties (or otherwise cause the Group to incur any material cost); and
- (d) any other assets where the cost of obtaining a security interest in, or perfection of a security interest in, such assets exceeds the practical benefit to the Secured Parties afforded thereby (as reasonably determined by the Company and notified to the Common Security Agent).

“**Final Discharge Date**” has the meaning given to that term in the Intercreditor Agreement.

“**Group Company**” means a member of the Group.

“**Intercreditor Agreement**” means the intercreditor agreement dated 15 April 2019 (as amended and/or restated from time to time) between, among others, Irel Midco SARL as original affiliate creditor and original security grantor, Irel BidCo SARL as parent, Irel HoldCo GmbH as German holdco, Irel AcquiCo GmbH as company, the senior secured facility lenders named therein, the senior secured facility arrangers named therein, the original second lien facility lenders named therein, the original debtors named therein, HSBC Bank plc as senior secured facility agent and original second lien facility agent and HSBC Corporate Trustee Company (UK) Limited as Common Security Agent.

“**Material Account**” any account held by the Chargor with cash credited to such account in an amount exceeding EUR3,000,000 for a period of more than four consecutive weeks.

“**Parties**” means each of the parties to this Agreement from time to time.

“**Primary Creditor Debt Documents**” has the meaning given to that term in the Intercreditor Agreement.

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

- (a) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by the Chargor or any other Group Company;
- (b) sells, transfers or otherwise disposes of any of its receivables on recourse terms;
- (c) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enters into any other preferential arrangement having a similar effect,

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

“Receiver” has the meaning given to that term in the Intercreditor Agreement.

“Required Creditor Consent” means the consent of the applicable Secured Parties in accordance with the terms of the Primary Creditor Debt Documents.

“Second Lien Facilities Agreement” means the second lien facilities agreement dated 15 April 2019 (as amended and/or restated from time to time) between, among others, Irel BidCo SARL as parent and original guarantor, Irel HoldCo GmbH as German holdco and original guarantor, Irel AcquiCo GmbH as company, original borrower and original guarantor, the GS lenders named therein, the KKR lenders named therein, the original lenders named therein, HSBC Bank plc as second lien agent and HSBC Corporate Trustee Company (UK) Limited as Common Security Agent.

“Secured Obligations” has the meaning given to the term “Priority Creditor Only Secured Obligations” in the Intercreditor Agreement.

“Secured Parties” has the meaning given to the term “Priority Creditor Only Secured Parties” in the Intercreditor Agreement.

“Senior Facilities Agreement” means the senior facilities agreement dated 15 April 2019 (as amended and/or restated from time to time) between, among others, the Irel BidCo SARL as parent and original guarantor, Irel HoldCo GmbH as German holdco and original guarantor, Irel AcquiCo GmbH as company, original borrower and original guarantor, the mandated lead arrangers named therein, certain financial institutions as original lenders, HSBC Bank plc as agent and the HSBC Corporate Trustee Company (UK) Limited as Common Security Agent.

1.2 Construction

- (a) Unless a contrary indication appears in this Agreement, the provisions of clause 1.2 (*Construction*) of the Intercreditor Agreement shall apply to this Agreement as if set out in full in this Agreement with references to “this Agreement” being treated as references to this Agreement and:
 - (i) a “company” includes any company, corporation or other body corporate;
 - (ii) an Acceleration Event is “continuing” if it has not been revoked or has not otherwise ceased to be continuing in accordance with the terms of the relevant Primary Creditor Debt Document;
 - (iii) “law” includes any present or future common law, principles of equity and any constitution, decree, judgment, decision, legislation, statute, order, ordinance, regulation, by-law or other legislative measure in any jurisdiction or any present or future official directive, regulation, guideline, request, rule, code of practice, treaty or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is customary in accordance with the general practice of a person to whom the directive, regulation, guideline, request, rule, code of practice, treaty or requirement is intended to apply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

- (iv) references to a matter being “permitted” under this Agreement or any other agreement shall include references to such matters not being prohibited or otherwise being approved under this Agreement or such other agreement;
 - (v) “rights” includes all rights, title, benefits, powers, privileges, interests, claims, authorities, discretions, remedies, liberties, easements, quasi easements and appurtenances (in each case, of every kind, present, future and contingent); and
 - (vi) “security” includes any charge, pledge, lien, security assignment, hypothecation or trust arrangement for the purpose of providing security and any other encumbrance or security interest of any kind having the effect of securing any obligation of any person (including the deposit of moneys or property with a person with the intention of affording such person a right of lien, set-off, combination or counter-claim) and any other agreement or any other type of arrangement having a similar effect (including any flawed-asset or hold back arrangement) and “security interest” shall be construed accordingly.
- (b) The fact that the details of any assets in the Schedules are incorrect or incomplete shall not affect the validity or enforceability of this Agreement in respect of the assets of the Chargor.
 - (c) Unless the context otherwise requires, a reference to Charged Property includes:
 - (i) any part of the Charged Property;
 - (ii) any proceeds of that Charged Property; and
 - (iii) any present and future assets of that type (other than Excluded Assets).
 - (d) Where this Agreement refers to any provision of any Primary Creditor Debt Document and that Primary Creditor Debt Document is amended in manner that would result in that reference being incorrect, this Agreement shall be construed so as to refer to that provision as renumbered in the amended Primary Creditor Debt Document, unless the context requires otherwise.

1.3 Other references

- (a) In this Agreement, unless a contrary intention appears, a reference to:
 - (i) any Secured Party, the Chargor or any other person is, where relevant, deemed to be a reference to or to include, as appropriate, that person’s successors in title, permitted assignees and transferees and in the case of the Common Security Agent, any person for the time being appointed as Common Security Agent in accordance with the Primary Creditor Debt Documents;
 - (ii) any Primary Creditor Debt Document or other agreement or instrument (including to the extent referenced in any other definition referred to herein) is to be construed as a reference to that agreement or instrument as amended (howsoever fundamentally and whether or not such amendments result in new and/or more onerous obligations and liabilities) or novated, including by way of change in the purpose of the facilities or increase of the facilities or other obligations or addition of new facilities or other obligations made available under them or accession or retirement of the parties to these agreements. The parties hereto acknowledge and confirm that the entry into of any Primary Creditor Debt Document is within the general purview of the Parties as at the

date of entry into this Agreement and, it is the intention of such Parties that the obligations of the Chargor (including the grant of security interests hereunder) be construed accordingly; and

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

1.4 Incorporation by reference

Unless the context otherwise requires or unless otherwise defined in this Agreement, words and expressions defined in the Intercreditor Agreement have the same meanings when used in this Agreement. In the event of any inconsistency or conflict between this Agreement on the one hand and the Intercreditor Agreement, the Senior Facilities Agreement and the Second Lien Facilities Agreement on the other, the Intercreditor Agreement, the Senior Facilities Agreement and the Second Lien Facilities Agreement shall prevail.

1.5 Miscellaneous

- (a) Notwithstanding any other provision of this Agreement, the obtaining of a moratorium under section 1A of the Insolvency Act 1986, or anything done with a view to obtaining such a moratorium (including any preliminary decision or investigation), shall not be an event causing any floating charge created by this Agreement to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the Chargor or a ground for the appointment of a Receiver.
- (b) Notwithstanding anything to the contrary in this Agreement (and without prejudice to the terms of the Intercreditor Agreement or any other Primary Creditor Debt Document in relation to the requirement for the Common Security Agent to enter into documentation in relation to this Agreement (including releases)), nothing in this Agreement shall (or shall be construed to) prohibit, restrict or obstruct any transaction, matter or other step (or the Chargor taking or entering into the same) or dealing in any manner whatsoever in relation to any asset (including all rights, claims, benefits, proceeds and documentation and contractual counterparties in relation thereto) the subject of (or expressed to be the subject of) this Agreement and the security arising thereunder in each case if not prohibited by the Primary Creditor Debt Documents or where Required Creditor Consent has been obtained. The Common Security Agent shall promptly enter into such documentation and/or take such other action as is required by the Chargor (acting reasonably) in order to facilitate any such transaction, matter or other step, including by way of executing any confirmation, consent to dealing, release or other similar or equivalent document, *provided that* any costs and expenses incurred by the Common Security Agent entering into such documentation and/or taking such other action at the request of such Chargor pursuant to this paragraph (b) shall be for the account of such Chargor, in accordance with clause 27 (*Costs and Expenses*) of the Intercreditor Agreement.
- (c) Except as otherwise expressly provided in Clause 16 (*Protection for Third Parties*) or elsewhere in this Agreement, the terms of this Agreement may be enforced only by a Party and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- (d) Notwithstanding any term of this Agreement, no consent of a third party is required for any termination or amendment of this Agreement.

- (e) The Parties intend that this document shall take effect as a deed, notwithstanding that any party may only execute this document under hand.
- (f) All Security created pursuant to this Agreement is created over the present and future assets of the Chargor.
- (g) The Common Security Agent holds the benefit of this Agreement on trust for itself and each of the other Secured Parties from time to time on the terms of the Primary Creditor Debt Documents.
- (h) The Security created pursuant to this Agreement by the Chargor is made with full title guarantee under the Law of Property (Miscellaneous Provisions) Act 1994.
- (i) Notwithstanding any other provision of this Agreement, the Security constituted in relation to the trusts created by this Agreement and the exercise of any right or remedy by the Common Security Agent hereunder shall be subject to the Intercreditor Agreement.

1.6 Distinct Security

All Security created pursuant to this Agreement shall be construed as creating a separate and distinct Security over each relevant asset within any particular class of assets defined or referred to in this Agreement. The failure to create an effective Security, whether arising out of any provision of this Agreement or any act or omission by any person, over any one such asset shall not affect the nature or validity of the Security imposed on any other such asset, whether within that same class of assets or otherwise.

2. COVENANT TO PAY

Subject to any limits on its liability specified in the Primary Creditor Debt Documents, the Chargor as primary obligor and not merely as surety covenants with the Common Security Agent (for the benefit of itself and the other Secured Parties) that it will on demand pay or discharge the Secured Obligations when they fall due in the manner provided for in the relevant Primary Creditor Debt Document.

3. CHARGING PROVISIONS

3.1 Specific Security

Subject to Clause 3.4 (*Property restricting charging*), the Chargor, as continuing security for the payment and discharge of the Secured Obligations, charges in favour of the Common Security Agent with full title guarantee by way of first fixed charge all monies standing to the credit of, and all its right, title and interest from time to time in and to the Accounts.

3.2 Floating charge

- (a) As further continuing security for the payment and discharge of the Secured Obligations, the Chargor charges with full title guarantee in favour of the Common Security Agent by way of first floating charge all its present and future assets, undertakings and rights including to the extent not effectively charged under Clause 3.1 (*Specific Security*).
- (b) The floating charge created by the Chargor pursuant to paragraph (a) of this Clause 3.2 shall be deferred in point of priority to all fixed Security constituted by this Agreement.

- (c) The floating charge created by the Chargor pursuant to paragraph (a) of this Clause 3.2 is a “qualifying floating charge” for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

3.3 Conversion of floating charge

- (a) The Common Security Agent may, by notice in writing to the Chargor, convert the floating charge created under this Agreement into one or more fixed charges with immediate effect as regards those assets specified in the notice:
 - (i) upon or after the occurrence of an Acceleration Event which is continuing; or
 - (ii) the Common Security Agent reasonably considers that it is required in order to protect the priority of the Security created by the floating charge.
- (b) Any notice given by, or on behalf of the Common Security Agent under paragraph (a) above in relation to an asset shall not be construed as a waiver or abandonment of the Common Security Agent’s right to give any other notice in respect of any other asset or of any other right of a Secured Party under this Agreement or any other Primary Creditor Debt Document.
- (c) The floating charge created under this Agreement will automatically (without notice) and immediately be converted into a fixed charge over all the assets of the Chargor which are subject to the floating charge created under this Agreement, if:
 - (i) the Chargor takes any step to create Security or Quasi-Security on or over any asset which is subject to the floating charge created under this Agreement; or
 - (ii) any person (entitled to do so) takes any step to effect any expropriation, attachment, sequestration, distress or execution against any such asset,except, in each case, as permitted or not prohibited by the Primary Creditor Debt Documents or where Required Creditor Consent has been obtained or with the prior consent of the Common Security Agent.
- (d) Upon the conversion of any floating charge pursuant to this Clause 3.3, the Chargor shall, at its own expense, following written request by the Common Security Agent execute a fixed charge or legal assignment on terms no more onerous to the Chargor than the terms set out in this Agreement (and otherwise in such form as the Common Security Agent may reasonably request in writing).
- (e) Any floating charge which has crystallised under this Clause 3.3 may, by notice in writing given at any time by the Common Security Agent (acting on the unanimous instructions of the Secured Parties) to the Chargor, be reconverted into a floating charge under paragraph (a) of Clause 3.2 (*Floating charge*) in relation to the assets, rights and property specified in that notice. The conversion to a fixed charge and reversion to a floating charge (or the converse) may occur any number of times.

3.4 Property restricting charging

For the avoidance of doubt, all and any Excluded Assets owned by the Chargor or in which the Chargor has any interest shall be excluded from the charge created by Clause 3.1 (*Specific Security*) and from the operation of Clause 4 (*Further Assurance*).

4. FURTHER ASSURANCE

Subject to the terms of the Agreed Security Principles, this Agreement and any other Primary Creditor Debt Document, the Chargor shall:

- (a) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Common Security Agent may reasonably specify (and in such form as the Common Security Agent may reasonably require in favour of the Common Security Agent or its nominee(s)):
 - (i) to perfect the Security created or intended to be created by or evidenced by this Agreement (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this Agreement) or for the exercise of any rights, powers and remedies of the Common Security Agent or the Secured Parties provided by or pursuant to the Primary Creditor Debt Documents; and/or
 - (ii) (following the occurrence of an Acceleration Event which is continuing) to facilitate the realisation of the Charged Property.
- (b) Subject to the terms of the Agreed Security Principles, any other Primary Creditor Debt Document and the terms of this Agreement, the Chargor 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 Common Security Agent or the Secured Parties by or pursuant to the Primary Creditor Debt Documents.

5. NEGATIVE PLEDGE

The Chargor shall not create or permit to subsist any Security or Quasi-Security over all or any part of the Charged Property, or assign, transfer or otherwise dispose of all or any part of the Charged Property other than (but only in the case of Charged Property that is only the subject of the floating charge created pursuant to Clause 3.2 (*Floating Charge*) before it has crystallised) in the ordinary course of business, except as permitted or not prohibited by the Primary Creditor Debt Documents or with the prior written consent of the Common Security Agent or to the extent Required Creditor Consent has been obtained.

6. PROTECTION OF SECURITY

6.1 Accounts

- (a) The Chargor shall, where an Account is not maintained with the Common Security Agent, promptly upon the occurrence of an Acceleration Event which is continuing, serve an Account Notice on the bank with whom the Account is maintained.
- (b) The Common Security Agent shall only be entitled to give the notice referred to in paragraph 1 of the Account Notice upon or after the occurrence of an Acceleration Event which is continuing or at such later date as it deems appropriate.
- (c) Notwithstanding anything in this Agreement to the contrary, until an Acceleration Event has occurred which is continuing, the Chargor shall be free to receive, use and make withdrawals from any Account, transfer any credit balance from time to time or close any Account that is no longer required by the Chargor, in any manner permitted or not prohibited by the Primary Creditor Debt Documents (including where Required Creditor Consent has been obtained).

- (d) Upon or after the occurrence of an Acceleration Event which is continuing, the Common Security Agent shall be entitled with notice to the Chargor to withdraw, apply, transfer or set-off any or all of the credit balances from time to time on any Account (or, by notice to the bank with whom such Account is maintained, block the withdrawal of any such sums) in or towards payment or other satisfaction of all or part of the Secured Obligations in accordance with Clause 12 (*Application of proceeds*).

6.2 Rights of the Chargor

Notwithstanding anything in this Agreement to the contrary, until an Acceleration Event has occurred which is continuing (or such later date as provided by this Agreement), the Chargor shall continue to have the sole right to:

- (a) deal with any Charged Property (including making any disposal of or in relation thereto) and all contractual counterparties in respect thereof; and
- (b) amend, waive or terminate (or allow to lapse) any rights, benefits and/or obligations in respect of Charged Property (including agreeing to surrender or terminate any lease), in each case without reference to any Secured Party,

except as expressly prohibited by the Primary Creditor Debt Documents (save where Required Creditor Consent has been obtained).

7. COMMON SECURITY AGENT'S POWER TO REMEDY

If the Chargor fails to comply with any obligation set out in Clause 6 (*Protection of Security*) and that failure is not remedied to the satisfaction of the Common Security Agent within 20 Business Days (or such later date as the Common Security Agent may agree in its reasonable discretion) of the Common Security Agent giving written notice to the Chargor or the Chargor becoming aware of the failure to comply, it will allow (and irrevocably authorises) the Common Security Agent or any person which the Common Security Agent nominates to take any action on behalf of the Chargor which is necessary to ensure that those obligations are complied with.

8. CONTINUING SECURITY

8.1 Continuing Security

All Security constituted by this Agreement is a continuing security for the payment, discharge and performance of all of the Secured Obligations, shall extend to the ultimate balance of all sums payable under the Primary Creditor Debt Documents and shall remain in full force and effect until the Final Discharge Date. No part of the Security will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

8.2 Other Security

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

9. ENFORCEMENT OF SECURITY

9.1 Timing and manner of enforcement

- (a) Subject to the terms of the Intercreditor Agreement, the Security constituted by this Agreement shall become enforceable and the powers referred to in Clause 9.2 (*Enforcement powers*) shall become exercisable immediately upon or after the occurrence of an Acceleration Event which is continuing or as otherwise specified in any provision of this Agreement.
- (b) Without prejudice to any other provision of this Agreement, any time after the Security created pursuant to this Agreement has become enforceable, the Common Security Agent may without notice to the Chargor enforce all or any part of that Security and exercise all or any of the powers, authorities and discretions conferred by the Primary Creditor Debt Documents including this Agreement or otherwise by law on chargees and Receivers (whether or not it has appointed a Receiver), in each case at the times, in the manner and on the terms it thinks fit or as otherwise directed in accordance with the terms of the Primary Creditor Debt Documents.
- (c) No Secured Party shall be liable to the Chargor for any loss arising from the manner in which the Common Security Agent or any other Secured Party enforces or refrains from enforcing the Security constituted by this Agreement.

9.2 Enforcement powers

- (a) The Secured Obligations shall be deemed to have become due and payable on the date of this Agreement in respect of the Chargor, for the purposes of section 101 of the Law of Property Act 1925.
- (b) The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (as varied and extended by this Agreement) and all other powers conferred on a mortgagee by law shall be deemed to arise immediately upon an Acceleration Event which is continuing.
- (c) For the purposes of sections 99 and 100 of the Law of Property Act 1925, the expression “mortgagor” shall include any encumbrancer deriving title under the original mortgagor and section 99(18) of the Law of Property Act 1925 and section 100(12) of the Law of Property Act 1925 shall not apply.

9.3 Statutory powers

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

9.4 Exercise of powers

All or any of the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this Agreement, and all or any of the rights and powers conferred by this Agreement on a Receiver (whether expressly or impliedly), may be exercised by the Common Security Agent without further notice to the Chargor at any time upon or after the occurrence of an Acceleration Event which is continuing, irrespective of whether the Common Security Agent has taken possession or appointed a Receiver of the Charged Property.

9.5 Disapplication of statutory restrictions

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

9.6 Appropriation under the Financial Collateral Regulations

To the extent that any of the Charged Property constitutes “financial collateral” and this Agreement and the obligations of the Chargor under it constitute a “security financial collateral arrangement” (in each case, as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the “FCR Regulations”)), upon and after the Security created pursuant to this Agreement has become enforceable, the Common Security Agent or any Receiver shall have the benefit of all the rights of a collateral taker conferred upon it by the FCR Regulations, including the right to appropriate without notice to the Chargor (either on a single occasion or on multiple occasions) all or any part of that financial collateral in or towards discharge of the Secured Obligations and, for this purpose, the value of the financial collateral so appropriated shall be in the case of cash, the face value at the time of appropriation, as converted, where necessary, into the currency in which the liabilities under the Primary Creditor Debt Documents are denominated at a market rate of exchange prevailing at the time of appropriation selected by the Common Security Agent or any Receiver. The Parties agree that the methods of valuation set out in this Clause 9.6 are commercially reasonable methods of valuation for the purposes of the FCR Regulations.

10. ADMINISTRATOR

- (a) Subject to the Insolvency Act 1986, the Common Security Agent may appoint one or more qualified persons to be an administrator of the Chargor (to act together with or independently of any others so appointed):
 - (i) if so requested by the Chargor; or
 - (ii) at any time upon or after the occurrence of an Acceleration Event which is continuing.
- (b) Any such appointment may be made pursuant to an application to court under paragraph 12 of Schedule B1 to the Insolvency Act 1986 or by filing the specified documents with the court under paragraphs 14 to 21 of Schedule B1 to the Insolvency Act 1986.
- (c) In this Clause 10, “**qualified person**” means a person who, under the Insolvency Act 1986, is qualified to act as an administrator of any company with respect to which he is appointed.

11. RECEIVERS

11.1 Appointment of Receiver

- (a) At any time upon or after the occurrence of an Acceleration Event which is continuing, or if so requested by the Chargor, the Common Security Agent may, by writing under hand signed by an officer or manager of the Common Security Agent, appoint any person (or persons) to be a Receiver of all or any part of the Charged Property (save to the extent prohibited by section 72A of the Insolvency Act 1986).
- (b) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created by this Agreement.

- (c) Section 109(1) of the Law of Property Act 1925 shall not apply to this Agreement.
- (d) If the Common Security Agent appoints more than one person as Receiver, the Common Security Agent may give those persons power to act either jointly or severally.
- (e) Any Receiver may be appointed Receiver of all of the Charged Property or Receiver of a part of the Charged Property specified in the appointment. In the case of an appointment in respect of a part of the Charged Property, the rights conferred on a Receiver as set out in Clause 11.2 (*Powers of Receiver*) shall have effect as though every reference in Clause 11.2 (*Powers of Receiver*) to the Charged Property were a reference to the part of the Charged Property so specified or any part of that Charged Property.

11.2 Powers of Receiver

Each Receiver appointed under this Agreement shall have (subject to any limitations or restrictions which the Common Security Agent may incorporate in the deed or instrument appointing it) all the powers conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this Agreement), so that the powers set out in Schedule 1 to the Insolvency Act 1986 shall extend to every Receiver, whether or not an administrative receiver. In addition, notwithstanding any liquidation of the Chargor, each Receiver shall have the following rights, powers and discretions:

- (a) all the rights conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession;
- (b) to manage or carry on any part of the business of the Chargor;
- (c) to enter into, vary or cancel any contracts on any terms or conditions;
- (d) to take immediate possession of, get in and collect any Charged Property and to require payment to it or to the Common Security Agent of any Monetary Claims or credit balance on any Account;
- (e) to incur any liability on any terms, whether secured or unsecured, and whether to rank for payment in priority to this security or not and generally on terms and for whatever purpose which he considers fit;
- (f) to establish subsidiaries to acquire interests in any of the Charged Property and/or arrange for those subsidiaries to trade or cease to trade and acquire any of the Charged Property on any terms and conditions;
- (g) to make and effect all repairs, renewals and improvements to any of the Charged Property and maintain, renew, take out or increase insurances;
- (h) to redeem any prior Security on or relating to the Charged Property and settle and pass the accounts of the person entitled to that prior Security, so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver;
- (i) to appoint, hire, employ and discharge officers, employees, contractors, agents, advisors and others for any of the purposes of this Agreement and/or to guard or protect the Charged Property upon terms as to remuneration or otherwise as he may think fit;

- (j) to settle any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating to any of the Charged Property; and
- (k) to do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental or conducive to any of the matters or powers in this Clause 11.2, or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property, and use the name of the Chargor for all such purposes,

and in each case may use the name of the Chargor and exercise the relevant power in any manner which he may think fit.

11.3 Receiver as Agent

- (a) Any Receiver shall be the agent of the Chargor for all purposes and accordingly shall be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Law of Property Act 1925.
- (b) The Chargor is solely responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.

11.4 Removal of Receiver

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

11.5 Remuneration of Receiver

The Common Security Agent may (subject to section 36 of the Insolvency Act 1986) reasonably determine the remuneration of any Receiver appointed by it and any maximum rate imposed by any law (including under section 109(6) of the Law of Property Act 1925) shall not apply to this Agreement and may direct payment of such remuneration out of moneys accruing to him as Receiver, but the Chargor alone shall be liable for the payment of such remuneration and for all other reasonable costs, charges, losses, liabilities and expenses of the Receiver.

11.6 Several Receivers

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this Agreement (unless the deed or instrument appointing such Receiver states otherwise).

12. APPLICATION OF PROCEEDS

12.1 Order of application

All moneys and other proceeds or assets received or recovered by the Common Security Agent or any Receiver pursuant to this Agreement or the powers conferred by it shall be applied in the order and manner specified in the Intercreditor Agreement.

12.2 Section 109 Law of Property Act 1925

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

12.3 Application against Secured Obligations

Subject to Clause 12.1 (*Order of application*) above, any moneys or other value received or realised by the Common Security Agent from the Chargor or a Receiver under this Agreement may be applied by the Common Security Agent to any item of account or liability or transaction forming part of the Secured Obligations to which they may be applicable in any order or manner which the Common Security Agent may determine.

12.4 Suspense account

At any time upon or after the occurrence of an Acceleration Event which is continuing, until the Final Discharge Date, the Common Security Agent may place and keep (for such time as it shall determine) any money received, recovered or realised pursuant to this Agreement or on account of the Chargor's liability in respect of the Secured Obligations in an interest bearing separate suspense account (to the credit of either the Chargor or the Common Security Agent as the Common Security Agent shall think fit) and the Receiver may retain the same for the period which he and the Common Security Agent consider expedient without having any obligation to apply all or any part of that money in or towards discharge of such Secured Obligations.

13. PROTECTION OF COMMON SECURITY AGENT AND RECEIVER

13.1 Possession of Charged Property

If the Common Security Agent or the Receiver enters into possession of the Charged Property, it will not be liable to account as mortgagee in possession by reason of viewing or repairing any of the present or future assets of the Chargor and may at any time at its discretion go out of such possession.

13.2 Primary liability of Chargor

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

13.3 Waiver of defences

Clause 31.4 (*Waiver of defences*) of the Intercreditor Agreement is incorporated *mutatis mutandis* into this Agreement (including all capitalised terms as defined therein) but as if each reference therein to:

- (a) a "Debtor" is a reference to a Chargor; and
- (b) a "Debt Document" is a reference to a Primary Creditor Debt Document.

13.4 Common Security Agent

The provisions set out in clause 24 (*The Common Security Agent*) of the Intercreditor Agreement shall govern the rights, duties and obligations of the Common Security Agent under this Agreement.

13.5 Cumulative powers

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

14. COSTS AND EXPENSES

The provisions of clause 27 (*Costs and Expenses*) of the Intercreditor Agreement shall apply to this Agreement *mutatis mutandis*.

15. POWER OF ATTORNEY

- (a) The Chargor, by way of security, irrevocably and severally appoints the Common Security Agent, each Receiver and any person nominated for the purpose by the Common Security Agent or any Receiver (in writing and signed by an officer of the Common Security Agent or Receiver) as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed at any time upon or after the occurrence of an Acceleration Event which is continuing and in such manner as the attorney considers fit:
 - (i) to do anything which the Chargor is obliged to do under this Agreement (including to do all such acts or execute all such documents, assignments, transfers, charges, notices, instructions, filings and registrations as the Common Security Agent may reasonably specify (and in such form as the Common Security Agent may reasonably require in favour of the Common Security Agent or its nominee(s))); and
 - (ii) to exercise any of the rights conferred on the Common Security Agent, any Receiver or any delegate in relation to (i) the Security granted pursuant to this Agreement, (ii) any Primary Creditor Debt Document or (iii) under any law.
- (b) The power of attorney conferred on the Common Security Agent and each Receiver pursuant to paragraph (a) above shall continue notwithstanding the exercise by the Common Security Agent or any Receiver of any right of appropriation pursuant to Clause 9.6 (*Appropriation under the Financial Collateral Regulations*).
- (c) The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in this Clause 15.

16. PROTECTION FOR THIRD PARTIES

16.1 No obligation to enquire

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

- (a) whether the right of the Common Security Agent or any Receiver to exercise any of the powers conferred by this Agreement has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power;
- (b) whether any consents, regulations, restrictions or directions relating to such powers have been obtained or complied with;
- (c) whether the Common Security Agent, any Receiver or its agents is acting within such powers;
- (d) as to the propriety or validity of acts purporting or intended to be in exercise of any such powers;
- (e) whether any of the Secured Obligations remain outstanding and/or are due and payable or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters; or
- (f) as to the application of any money paid to the Common Security Agent, any Receiver or its agents,

and any such person who is not a party to this Agreement may rely on this Clause 16.1 and enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

16.2 Receipt conclusive

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

17. REINSTATEMENT AND RELEASE

17.1 Amounts avoided

- (a) If any payment by the Chargor or any discharge, arrangement or release given by a Secured Party (whether in respect of the obligations of the Chargor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
 - (i) the liability of the Chargor and the relevant security shall continue as if the payment, discharge, release, avoidance or reduction had not occurred; and
 - (ii) the relevant Secured Party shall be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.
- (b) The Common Security Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

17.2 Discharge conditional

Any settlement or discharge between the Chargor and any Secured Party shall be conditional upon no security or payment to that Secured Party by the Chargor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency and accordingly (but without limiting the other rights of that Secured Party under this Agreement) that Secured Party shall be entitled to recover from the Chargor

the value which that Secured Party has placed on that security or the amount of any such payment as if that settlement or discharge had not occurred.

17.3 Covenant to release

- (a) Subject to paragraph (b) below, on the Final Discharge Date, the Common Security Agent and each Secured Party shall, at the request and cost of the Chargor:
 - (i) promptly take any and all action which the Chargor reasonably requests and/or which may be necessary to release, reassign or discharge (as appropriate) the Charged Property from the Security constituted by this Agreement; and
 - (ii) promptly take all other actions and steps contemplated by the Intercreditor Agreement in relation to the release of any Security contemplated by this Agreement, or any other steps, confirmations or actions in relation to this Agreement.
- (b) Notwithstanding anything to the contrary in this Agreement, to the extent contemplated by the Intercreditor Agreement or any other Primary Creditor Debt Document (or to the extent agreed between the Common Security Agent and the Chargor), the Common Security Agent and each Secured Party shall, at the request and cost of the Chargor, take any and all action which is necessary to release, reassign or discharge (as appropriate) the Charged Property from the Security constituted by this Agreement in accordance with the terms of the Intercreditor Agreement.

17.4 Immediate recourse

- (a) The Chargor 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 or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any other Obligor or any other person before claiming from or enforcing against the Chargor under this Agreement.
- (b) The waiver in this Clause 17.4 applies irrespective of any law or any provision of an Primary Creditor Debt Document to the contrary.

17.5 Appropriations

Upon or after the occurrence of an Acceleration Event which is continuing and until the Final Discharge Date, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it considers fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Agreement.

17.6 Deferral of Chargor's rights

- (a) Until the Final Discharge Date and unless the Common Security Agent otherwise directs, the Chargor shall not exercise any rights which it may have to:

- (i) be indemnified by any other surety or Group Company of the Chargor's obligations under the Primary Creditor Debt Documents;
 - (ii) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Primary Creditor Debt Documents or of any other guarantee or security taken pursuant to, or in connection with, the Primary Creditor Debt Documents by any Secured Party; and/or
 - (iii) bring legal or other proceedings for an order requiring the Chargor to make any payment, or perform any obligation, in respect of which the Chargor had given a guarantee, undertaking or indemnity.
- (b) If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Chargors and Debtors under or in connection with the Primary Creditor Debt Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Common Security Agent or as the Common Security Agent may direct for application in accordance with the Intercreditor Agreement.

17.7 Security held by the Chargor

- (a) The Chargor shall not, without the prior written consent of the Common Security Agent, hold or otherwise take the benefit of any Security in respect of the Chargor's liability under this Agreement.
- (b) The Chargor shall hold any Security and the proceeds thereof held by it in breach of this Clause 17.7 on trust for the Common Security Agent and shall promptly pay or transfer those proceeds to the Common Security Agent or as the Common Security Agent may direct.

17.8 Additional security/non-merger

The Security created pursuant to this Agreement is in addition to, independent of and not in substitution for or derogation of, and shall not be merged into or in any way be excluded or prejudiced by, any other guarantees or Security at any time held by any Secured Party in respect of or in connection with any or all of the Secured Obligations or any other amount due by the Chargor to any Secured Party.

17.9 New accounts and ruling off

- (a) Any Secured Party may open a new account in the name of the Chargor at any time after that Secured Party has received or is deemed to have received notice of any subsequent Security affecting any Charged Property (except as permitted by the Primary Creditor Debt Documents or where Required Creditor Consent has been obtained).
- (b) If an Secured Party does not open a new account in the circumstances referred to in paragraph (a) above it shall nevertheless be deemed to have done so upon the occurrence of such circumstances, and all payments made by or on behalf of the Chargor to that Secured Party shall be credited or be treated as having been credited to the relevant new account.

- (c) No moneys paid into any account (whether new or continuing) after the occurrence of the circumstances referred to in paragraph (a) above shall reduce or discharge the Secured Obligations.

18. CURRENCY CLAUSES

18.1 Conversion

All monies received or held by the Common Security Agent, or any Receiver, under this Agreement may be converted into any other currency which the Common Security Agent considers necessary to cover the obligations and liabilities comprised in the Secured Obligations in that other currency, at the Common Security Agent's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.

18.2 No discharge

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

19. SET-OFF

19.1 Set-off rights

Upon or after the occurrence of an Acceleration Event which is continuing, the Common Security Agent may set off any matured obligation due from the Chargor under the Primary Creditor Debt Documents (to the extent beneficially owned by the Common Security Agent) against any matured obligation owed by the Common Security Agent to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Common 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.

19.2 Unliquidated claims

If, at any time upon or after the occurrence of an Acceleration Event which is continuing, the relevant obligation or liability is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

20. REDEMPTION OF PRIOR SECURITY

The Common Security Agent or any Receiver may, at any time upon or after the occurrence of an Acceleration Event which is continuing, redeem any prior Security on or relating to any of the Charged Property or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will on demand pay to the Common Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

21. NOTICES

Any communication to be made under or in connection with this Agreement shall be made in accordance with clause 30 (*Notices*) of the Intercreditor Agreement.

22. CHANGES TO PARTIES

22.1 Assignment by the Common Security Agent

The Common Security Agent may at any time assign or otherwise transfer all or any part of its rights under this Agreement in accordance with the Primary Creditor Debt Documents.

22.2 Assignment by the Chargor

The Chargor may not assign or transfer, or attempt to assign or transfer, any of its rights or obligations under this Agreement.

22.3 Changes to Parties

The Chargor authorises and agrees to changes to parties under clause 26 (*Changes to the Parties*) of the Intercreditor Agreement, and authorises the Common Security Agent to execute on its behalf any document required to effect the necessary transfer of rights or obligations contemplated by those provisions.

23. MISCELLANEOUS

23.1 Certificates conclusive

A certificate or determination of the Common Security Agent or any Receiver under this Agreement will be conclusive evidence of the matters to which it relates and binding on the Chargor, except in the case of manifest error.

23.2 Counterparts

This Agreement 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 Agreement. Delivery of a counterpart of this Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

23.3 Invalidity of any provision

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

23.4 Failure to execute

Failure by one or more Parties (“**Non-Signatories**”) to execute this Agreement on the date hereof will not invalidate the provisions of this Agreement as between the other Parties who do execute this Agreement. Such Non-Signatories may execute this Agreement on a subsequent date and will thereupon become bound by its provisions.

23.5 Amendments

Subject to the terms of the Intercreditor Agreement, any provision of this Agreement may be amended in writing by the Common Security Agent and the Chargor.

23.6 Notice of charge or assignment

This Agreement constitutes notice in writing to the Chargor of any charge or assignment of a debt owed by the Chargor to any other Group Company and contained in any other Primary Creditor Debt Document.

23.7 Tacking

Each Secured Party shall comply with its obligations under the Primary Creditor Debt Documents (including the obligation to make further advances).

24. GOVERNING LAW AND JURISDICTION

- (a) This Agreement and any non-contractual claims arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) Subject to paragraphs (c) and (d) below, the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement, whether contractual or non-contractual (including a dispute regarding the existence, validity or termination of this Agreement) (a “Dispute”). The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) The Parties agree that, for the benefit of the Secured Parties only, nothing in this Agreement shall limit the right of the Secured Parties to bring any legal action against the Chargor in any other court of competent jurisdiction and the Chargor irrevocably submits to the jurisdiction of any such court. To the extent permitted by law, the Common Security Agent may take concurrent proceedings in any number of jurisdictions.
- (d) The Chargor agrees that a judgment or order of any court referred to in this Clause 24 is conclusive and binding and may be enforced against it in the courts of any other jurisdiction.

IN WITNESS whereof this Agreement has been duly executed as a deed on the date first above written.

SCHEDULE 1

ACCOUNTS

Name of Chargor	Name and address of institution at which account is held	Currency of account	Account number	BIC
IFCO Systems UK LTD	HSBC Bank Plc	GBP		

SCHEDULE 2

FORM OF ACCOUNT NOTICE

To: [insert name and address of Account Bank] (the “**Account Bank**”)

Dated: [●]

Dear Sirs

Re: The [●] Group of Companies - Security over Accounts

We notify you that [insert name of Chargor] (the “**Chargor**”) charged to [insert name of Common Security Agent] (the “**Common Security Agent**”) for the benefit of itself and certain other banks and financial institutions all their right, title and interest in and to the monies from time to time standing to the credit of the accounts identified in the schedule to this notice and to any account held by the Chargor with cash credited to such account in an amount exceeding EUR3,000,000 for a period of more than four consecutive weeks (“**Material Account**”) from time to time maintained with you by the Chargor (the “**Charged Accounts**”) and to all interest (if any) accruing on the Charged Accounts by way of a security agreement dated [●].

1. We further notify you that, subject to paragraph 2 below, you may continue to deal with the Chargor in relation to the Charged Accounts until you receive written notice to the contrary from the Common Security Agent. Thereafter the Chargor will cease to have any right to deal with you in relation to the Charged Accounts and from that time you should deal only with the Common Security Agent.
2. Following receipt of written notice in accordance with paragraph 1 above, we irrevocably authorise and instruct you:
 - (a) to hold all monies from time to time standing to the credit of the Charged Accounts to the order of the Common Security Agent and to pay all or any part of those monies to the Common Security Agent (or as it may direct) promptly following receipt of written instructions from the Common Security Agent to that effect;
 - (b) comply with the terms of any written notice or instruction relating to any Charged Account received by you from the Common Security Agent; and
 - (c) to disclose to the Common Security Agent any information relating to the Chargor and the Charged Accounts which the Common Security Agent may, from time to time in writing, request you to provide.
3. The provisions of this notice may only be revoked or varied with the prior written consent of the Common Security Agent.
4. Please sign and return the enclosed copy of this notice to the Common Security Agent (with a copy to the Chargor) by way of your confirmation that:
 - (a) you agree to act in accordance with the provisions of this notice; and
 - (b) you have not received notice that the Chargor has assigned its rights to the monies standing to the credit of the Charged Accounts or otherwise granted any security or other interest over those monies in favour of any third party.

The provisions of this notice and any non-contractual obligations arising under or in connection with it are governed by English law.

Schedule

Chargor

Account Number

Sort Code

[•]

[•]

[•]

Yours faithfully,

.....
for and on behalf of
[Insert name of Chargor]

Counter-signed by

.....
for and on behalf of
[Insert name of Common Security Agent]

[On acknowledgement copy]

To: [Insert name and address of Common Security Agent]

Copy to: [Insert name of Chargor]

We acknowledge receipt of the above notice and confirm the matters set out above.

.....
for and on behalf of
[Insert name of Account Bank]

Dated: [●]

SIGNATORIES TO AGREEMENT

THE CHARGOR

EXECUTED as a **DEED** by
IFCO SYSTEMS UK LTD acting by:

Margit Kendler

as Director:

Witness:

Name:

Address:

Occupation:

C. Fager

Christine Fager

[REDACTED ADDRESS]

Personal Assistant

THE COMMON SECURITY AGENT

EXECUTED as a DEED by)
HSBC CORPORATE TRUSTEE COMPANY (UK))
LIMITED acting by)

..... Daisuke Takekawa)
(PRINT NAME))

in the presence of:)

..... FRANCESCA MORELY)
(PRINT NAME))

Occupation: *Solicitor*
Address: *10 Gresham Street*



Authorised Signatory



Witness