Companies House

MR01 (ef)

Registration of a Charge

Company name: **PORTLAND HARBOUR AUTHORITY LIMITED**

Company number: **03002686**

Received for Electronic Filing: **13/12/2018**

X7KQFNSA

Details of Charge

Date of creation: **29/11/2018**

Charge code: **0300 2686 0005**

Persons entitled: **SVENSKA HANDELSBANKEN AB (PUBL)**

Brief description:

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 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **SVENSKA HANDELSBANKEN AB (PUBL)**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3002686

Charge code: 0300 2686 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th November 2018 and created by PORTLAND HARBOUR AUTHORITY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th December 2018 .

Given at Companies House, Cardiff on 14th December 2018

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

THIS DEBENTURE is made on 29th November 2018 **BETWEEN:**

(1) **Portland Harbour Authority Limited** company number 03002686 (the "**Borrower**"); and

(2) **Svenska Handelsbanken AB (publ)** (the "**Bank**").

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

"**Authorisations**" means all authorisations, consents and permits issued by any governmental body, agency, department or regulatory, self-regulatory or other authority including, without limitation, local and public authorities and statutory undertakings.

"**Bank Account**" means any account held by the Borrower with the Bank from time to time.

"**Charged Assets**" means all the undertaking, property and assets of the Borrower described in clause 3.1 *(Fixed charge)* and clause 3.2 *(Floating charge)*, including any part thereof and any interest therein.

"**Collateral Instruments**" means instruments, guarantees, indemnities and other assurances against financial loss and any other documents which contain or evidence an obligation to pay or discharge any liabilities of any person.

"**Debts**" means the assets of the Borrower described in clause 3.1.9 *(Fixed charge)*.

"**Default**" means any event of default (howsoever described) which entitles the Bank to accelerate or demand payment of the Secured Liabilities.

"**Deposits**" means any and all sums for the time being standing to the credit of, and the debt represented by, any bank account maintained by the Borrower or in which the Borrower has an interest.

"**Enforcement Date**" means the date on which the Bank demands the payment or discharge of all or any part of the Secured Liabilities or, if earlier, the date on which an application is made or other action is taken for the administration of the Borrower.

"**Insurances**" means all contracts or policies of insurance in which the Borrower from time to time has an interest.

"**Party**" means a party to this Deed and includes its successors in title, permitted assigns and permitted transferees, whether immediate or derivative.

"**Planning Acts**" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004, and any subordinate legislation made (before or after this Deed) under those statutes and any other statute governing or controlling the use or development of land and property.

"**Properties**" means the assets of the Borrower described in clause 3.1.1 *(Fixed charge)* and all present and future heritable and leasehold property in Scotland now or hereafter vested in the Borrower together with all buildings, fixtures and fixed plant and machinery on such property, the proceeds of sale of the whole or any part of such property and all rights appurtenant to or benefiting such property (each a "**Property**").

"**Receiver**" means any one or more receivers and/or managers appointed by the Bank pursuant to this Deed in respect of the Borrower or over all or any of the Charged Assets.

"Related Rights" means any dividend, interest or other amount (cash or otherwise) paid or payable in relation to any Share and any shares, stocks, securities, rights, money, assets or property accruing or offered at any time in relation to any Share by way of redemption, substitution, exchange, distribution, bonus, allotment, preference, under option rights or otherwise.

"Security Interest" means any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, right of set-off, trust arrangement for the purpose of providing security or any other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect.

"Secured Liabilities" means all moneys, obligations and liabilities covenanted to be paid or discharged under or pursuant to clause 2 *(Covenant to pay)*.

"Security Period" means the period from the date of this Deed until the Bank confirms in writing to the Borrower that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

"Shares" means the Borrower's interests in any share in the share capital of any person.

1.2 **Construction**

1.2.1 Any reference in this Deed to:

(i) an **"amendment"** includes amendment, implement, novation, re-enactment, replacement, reinstatement or variation and **"amend"** or **"amended"** will be considered accordingly;

(ii) **"assets"** includes present and future property, revenues and rights of every description;

(iii) **"consent"** shall be construed as including, without limitation, any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

(iv) **"this Deed"** or any other agreement or instrument is a reference to this Deed or that other agreement or instrument as the same may have been, or may from time to time be, amended, novated, replaced, restated or supplemented provided that, where the consent of the Bank is required to such amendment, novation, replacement, restatement or supplement, such consent has been obtained;

(v) a **"guarantee"** includes any guarantee, indemnity, counter indemnity or other assurance in respect of the indebtedness of any person;

(vi) the words **"includes"**, **"including"** and **"in particular"** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any foregoing words;

(vii) **"law"** includes common or customary law, principles of equity and any constitution, code of practice, decree, judgement, decision, legislation, order, ordinance, regulation, bye-law, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, guideline, request, rule 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 in accordance with the general practice of persons to whom the directive, regulation, guideline, request, rule or requirement is intended to apply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(viii) a **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;

(ix) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of the law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(x) **"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

(x) "**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

(xi) "**security**" includes any mortgage, charge, pledge, lien, security assignment, hypothecation or, trust or other 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, without limitation, the deposit of moneys, property or title documents with a person with the intention of affording such person a right of set-off or lien) and any other agreement or any other type of arrangement having a similar effect.

1.2.2 Clause and schedule headings are for ease of reference only.

1.2.3 A reference in this Deed to any person includes that person's successors in title, whether immediate or derivative and (in the case of the Bank only) its permitted assignees and permitted transferees, whether immediate or derivative.

1.3 Qualifying floating charge

This Deed contains a qualifying floating charge, and paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.2 *(Floating charge).*

2 COVENANT TO PAY

2.1 Covenant

The Borrower covenants that it will on demand pay to the Bank all moneys and discharge all obligations and liabilities now or hereafter due, owing or incurred by it to the Bank when the same become due for payment or discharge whether by acceleration or otherwise, and whether such moneys, obligations or liabilities are expressed or implied; present, future, actual or contingent; joint or several; incurred as principal or surety; originally owing to the Bank or purchased or otherwise acquired by it; denominated in sterling or in any other currency; or incurred on any banking account or in any other manner whatsoever.

2.2 Certain liabilities

The liabilities referred to in clause 2.1 *(Covenant)* shall, without limitation, include:

2.2.1 all liabilities under or in connection with foreign exchange transactions, interest rate swaps and hedging transactions and other arrangements entered into for the purpose of limiting exposure to fluctuations in interest or exchange rates;

2.2.2 all liabilities arising from the issue, acceptance, endorsement, confirmation or discount of any negotiable or non-negotiable instruments, documentary or other credits, bonds, guarantees, indemnities or other instruments of any kind;

2.2.3 interest (both before and after judgement) to date of payment at such rates and on such terms as may from time to time be agreed, commission, fees and other charges and all legal and other costs, charges and expenses on a full and unqualified indemnity basis which may be incurred by the Bank in relation to any such moneys, obligations or liabilities or generally in respect of the Borrower; and

2.2.4 all costs, charges, expenses and liabilities incurred as a result of or pursuant to the exercise of the rights and powers contained in this Deed.

3 CHARGES

3.1 Fixed charge

The Borrower charges to the Bank with full title guarantee as a continuing security for the payment and discharge of the Secured Liabilities the following assets, both present and future by way of fixed charge:

3.1.1 all estates or interests in any freehold or leasehold property in England and Wales now or hereafter belonging to the Borrower;

3.1.2 all other interests belonging to it in or over land or the proceeds of sale of land and all licences now or in the future held by it to enter on or use land;

3.1.3 the benefit of all other agreements relating to the Property to which it is or may become a party or otherwise entitled;

3.1.4 all plant and machinery owned by the Borrower and its interest in any plant and machinery in its possession;

3.1.5 all Shares held by it and/or any nominee on its behalf and all Related Rights;

3.1.6 all benefits in respect of the Insurances including all claims and the refund of any premiums;

3.1.7 its rights under the appointment of any managing agent of any of the Properties;

3.1.8 the Deposits;

3.1.9 all of its book debts, other debts and prepayments, the proceeds of the same and all monies due and owing to it together with the full benefit of all Security Interests, Collateral Instruments and other rights relating to any of the foregoing;

3.1.10 all its goodwill and uncalled capital from time to time; and

3.1.11 the benefit of all Authorisations held in connection with its business or the use of any Charged Assets and the right to recover and receive all compensation which may be payable to it in respect of such Authorisations or the Charged Assets.

3.2 **Floating charge**

The Borrower charges to the Bank as a continuing security for the payment and discharge of the Secured Liabilities by way of floating charge all its undertaking, property, rights and assets whatsoever and wheresoever both present and future, other than any property, rights or assets from time to time effectively charged by way of fixed charge pursuant to clause 3.1 *(Fixed charge)*.

3.3 **Conversion of floating charge by notice**

The Bank may by notice to the Borrower convert the floating charge created by this Deed into a fixed charge as regards all or any of the Borrower's assets specified in the notice if:

3.3.1 a Default is continuing; or

3.3.2 the Bank considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution, sequestration or other process or to be otherwise in jeopardy.

3.4 **Automatic conversion**

Notwithstanding anything contained in this Deed if, without the prior written consent of the Bank or as permitted under this Deed:

3.4.1 the Borrower creates any Security Interest (whether by way of fixed or floating Security Interest) over, or otherwise encumbers, any of the Charged Assets subject to a floating charge under this Deed or attempts to do so; or

3.4.2 any person levies or attempts to levy any distress, attachment, execution, sequestration or other process against any of the Charged Assets,

the floating charge created by this Deed over such of the Charged Assets shall automatically without notice operate and have effect as a fixed charge instantly such event occurs.

3.5 **Set Off**

The Borrower hereby agrees that the Bank may at any time and from time to time without notice, set off any amounts owed by it to the Borrower in or towards satisfaction of the Secured Liabilities (which

shall be in addition to and without prejudice to such rights of set-off, combination, lien and other rights whatsoever conferred on the Bank by law) and may transfer any sum or sums standing to the credit of any account of the Borrower with the Bank at any of its branches, of whatever nature and in whatever currency denominated, in or towards satisfaction of any sums due and payable from the Borrower to the Bank under this Deed or in or towards satisfaction of the Secured Liabilities.

If the liability in respect of which the Bank is exercising its rights of set-off is contingent, or not yet payable, it shall automatically be accelerated, and shall accordingly be due and payable, before and at the time of such set-off. If the sums standing to the credit of any account of the Borrower with the Bank at any of its branches against which set-off is to be made are not due or matured or otherwise payable, they shall notwithstanding anything to the contrary contained in this Deed be deemed already to be so for the purposes of the set-off contemplated in this clause 3.5 provided that the Bank shall not be obliged to exercise any right given to it by this clause 3.5.

4 UNDERTAKINGS

4.1 Duration

The undertakings in this clause 4 remain in force during the Security Period.

4.2 Negative Pledge

The Borrower will not create or agree to create or permit to subsist any Security Interest over any part of the Charged Assets.

4.3 Debts

The Borrower will:

4.3.1 collect in the ordinary course of its business and pay immediately into the Bank Account all moneys which it receives in respect of the Debts and hold the proceeds of such Debts (until payment into the Bank Account) on trust (for which the perpetuity period shall be 125 years) for the Bank;

4.3.2 if requested by the Bank, open such bank accounts (including separate designated accounts, blocked accounts or trust accounts) in the name of the Borrower with such mandates as the Bank may specify; and if requested by the Bank, procure that all payments received by it in respect of the Debts are paid into such account in accordance with the written directions of the Bank from to time (subject only to such rights as the bank at which the account is held may have in respect thereof); and

4.3.3 not, without the prior written consent of the Bank:

(i) set off, vary, postpone or release any of the Debts;

(ii) factor or assign its Debts; or

(iii) do or omit to do anything which may delay or prejudice the full recovery of any Debt.

4.4 Deposit of deeds

The Borrower will deposit with the Bank (to be held at the risk of the Borrower) all deeds and documents of title relating to the Properties and such other Charged Assets as the Bank may require.

4.5 Calls

The Borrower will duly and promptly pay all calls, instalments or other moneys which may from time to time become due in respect of any of the Shares.

4.6 Compliance with covenants

The Borrower will:

4.6.1 observe and perform all covenants, burdens, stipulations, requirements and obligations from time to time affecting the Charged Assets or the use, ownership, occupation, possession or other enjoyment of the Charged Assets whether imposed by statute, contract, lease or otherwise;

4.6.2 do all acts necessary to preserve its rights, title and interest in and to the Charged Assets; and

4.6.3 not, without the written prior consent of the Bank, enter into any onerous or restrictive obligations affecting any of the Charged Assets.

4.7 **Development and alterations**

4.7.1 The Borrower will not, without the prior written consent of the Bank, make or permit others to make any application for planning permission in respect of any part of the Properties or make any structural or material alteration or addition to the Properties or carry out or permit to be carried out any development (within the meaning of that expression in the Planning Acts) on any part of the Properties.

4.7.2 In the event that, during the Security Period, any Property is intended to be developed or is in the course of development (in each case with the prior written consent of the Bank), the Borrower shall:

(i) proceed diligently and to the reasonable satisfaction of the Bank and any competent authority with such development in all respects in conformity with all planning and by-law consents which shall together with the plans and specifications be produced to the Bank for approval prior to the commencement of any works of development; and

(ii) obtain such further insurance as shall be required and specified by the Bank.

4.8 **Repair**

The Borrower will keep all its buildings, fixtures, fittings, plant and machinery (or procure that they are kept) in good repair and in good working order and condition (fair wear and tear excepted in the case of fixtures, plant and machinery) and fully protected against damage or deterioration and not commit any waste thereon or lessen the value thereof.

4.9 **Access**

The Borrower will permit any person appointed by the Bank, without the Bank becoming liable to account as mortgagee in possession, (at reasonable times and on reasonable notice) to enter on and inspect the state of the Properties and other premises (if any) on which the Borrower shall from time to time be carrying out any contract or other works.

4.10 **Information**

The Borrower will produce to the Bank such documents or information relating to the Properties as the Bank may from time to time reasonably request and promptly deliver to the Bank a copy of any notice or proceedings served by any person on the Borrower concerning the Properties or alleging any breach of its obligations relating to the Properties.

4.11 **Notices**

4.11.1 The Borrower will, within 5 Business Days of receipt, give full particulars to the Bank of any notice, order, direction, designation, resolution or proposal having specific application to any Properties or to the area in which it is situate, given or made by any planning authority or other public body or authority whatever or in pursuance of the powers conferred by any other statute.

4.11.2 The Borrower will, if requested by the Bank, without delay and at its own cost take all reasonable or necessary steps to comply with any such notice or order.

4.11.3 The Borrower will further, if requested by the Bank, but at its own cost, make or join with the Bank in making such objections or representations against or in respect of any proposal for such a notice or order as the Bank shall reasonably deem expedient.

4.11.4 Any compensation received by the Borrower as a result of any notice or order shall be applied in repayment of the Secured Liabilities.

4.12 **Jeopardy**

The Borrower will not do, or cause or permit to be done, anything which may depreciate, jeopardise or otherwise prejudice the value to the Bank of the Properties nor incur any expenditure or liability of an exceptional or unusual nature in relation to the Properties without the prior written consent of the Bank.

4.13 **Land Registration Acts**

The costs incurred by the Bank in lodging from time to time a notice or restriction against registration of the Properties shall be deemed to be costs properly incurred by it under this Deed.

4.14 **Additional Property**

4.14.1 The Borrower will inform the Bank immediately on contracting to purchase any estate or interest in any freehold, leasehold or heritable property and will supply the Bank with such details of any such purchase as the Bank may from time to time reasonably require.

4.14.2 The Borrower will, on demand by the Bank, and at the cost of the Borrower, execute and deliver to the Bank a legal mortgage in favour of the Bank over any freehold or leasehold property which becomes vested in it after the date of this Deed in form and substance satisfactory to the Bank.

4.15 **Insurances**

4.15.1 The Borrower shall effect insurance of the Charged Assets all such insurances to be in amount and in form and with an insurance company or underwriters acceptable to the Bank (acting reasonably).

4.15.2 If requested by the Bank:

(i) the Borrower must procure that at all times the Bank is named as co-insured on each such insurance policy but without any liability on the part of the Bank for any premium in relation to those insurances; and

(ii) the Borrower must procure that at all times every such policy complies with the following requirements:

(a) it must contain:

- a non-invalidation and non-vitiation clause under which the insurances will not be vitiated or avoided as against any insured party or the Bank as a result of any misrepresentation, non-disclosure, or breach of any policy term or condition on the part of the insured party, the Bank or any agent of the insured party or any circumstances beyond the control of the insured party or the Bank;

- a waiver of the rights of subrogation of the insurer as against the Borrower, the Bank and the tenants of the Property; and

- a loss payee clause in such terms as the Bank may reasonably require in respect of insurance claim payments otherwise payable to the Borrower.

(b) the insurers must give at least 30 days' notice to the Bank if any insurer proposes to repudiate, rescind or cancel any insurance policy, to treat it as avoided in whole or in part, or treat it as expired due to non-payment of premium or otherwise decline any valid claim under it by or on behalf of any insured party or the Bank and must give the Bank the opportunity to rectify any such non-payment of premium within the notice period.

4.15.3 The Borrower will use its best endeavours to procure that there be given to the Bank such information in connection with the Insurances and copies of the policies as the Bank may reasonably require and will notify the Bank of renewals made and material variations or cancellations of policies made or, to the knowledge of the Borrower, threatened or pending.

4.15.4 The Borrower shall not do or permit to be done anything which may make void or voidable any of the Insurances.

4.15.5 The Borrower shall promptly pay all premiums and do all other things necessary to keep all of the Insurances.

4.15.6 If the Borrower fails to comply with any of the provisions of this clause 4.15, the Bank shall immediately be entitled to effect the Insurances concerned at the expense of the Borrower.

4.15.7 Except as provided below, the proceeds of any insurance in respect of physical damage must be used towards replacing, restoring or reinstating the Property.

4.15.8 At the Bank's request insurance proceeds in respect of physical damage shall be used to prepay the Secured Liabilities and until such payment occurs the Borrower shall hold the insurance proceeds on trust for the Bank (the perpetuity period for which trust shall be 125 years).

4.16 **Restrictions on dealing with Charged Assets**

4.16.1 The Borrower will not, without the prior written consent of the Bank (whether by a single transaction or a series of related or unrelated transactions and whether at the same time or over a period of time) sell, transfer, lease or otherwise dispose of any of the assets described in clause 3.1 *(Fixed charge)* or agree to do so.

4.16.2 The Borrower will not, without the prior written consent of the Bank (whether by a single transaction or a series of related or unrelated transactions and whether at the same time or over a period of time) sell, transfer, lease or otherwise dispose of any of the assets described in clause 3.2 *(Floating charge)* or agree to do so, other than in the ordinary course of business.

4.16.3 The Borrower shall not exercise any of the powers of leasing or of accepting surrenders of leases conferred by sections 99 and 100 of the Law of Property Act 1925 or by common law or vary any lease or tenancy agreement or reduce any sum payable under the same.

4.17 **Power to remedy**

If the Borrower at any time defaults in complying with any of its obligations contained in this Deed, the Bank shall, without prejudice to any other rights arising as a consequence of such default, be entitled to make good such default and the Borrower irrevocably authorises the Bank and its employees and agents by way of security to do all such things necessary or desirable in connection with the same.

5 FURTHER ASSURANCE

5.1 **Further assurance**

The Borrower shall, if and when required by the Bank:

5.1.1 execute such further Security Interests and assurances in favour of the Bank and do all such acts and things as the Bank shall from time to time require over or in relation to all or any of the Charged Assets to secure the Secured Liabilities or to perfect or protect the security intended to be created by this Deed over the Charged Assets or any part thereof or to facilitate the realisation of the same; and

5.1.2 affix to such items of the Charged Assets or endorse or cause to be endorsed thereon as the Bank shall stipulate such labels, signs, memoranda or other recognisable identification markings as the Bank shall require referring or drawing attention to the security constituted by or pursuant to this Deed.

6 POWERS OF THE BANK

6.1 **The Shares**

After the Enforcement Date, the Borrower will, if so requested by the Bank, transfer all or any of the Shares to the Bank or such nominees or agents of the Bank as the Bank may select and, until such time, the Borrower shall exercise the voting rights in respect of the Shares in a manner which is not prejudicial to the interests of the Bank.

6.2 **Powers on enforcement**

At any time on or after the Enforcement Date, or if requested by the Borrower, the Bank may, without further notice and whether or not an administrator or a Receiver shall have been appointed, exercise all the powers conferred on mortgagees by the Law of Property Act 1925, as varied or extended by this Deed, and all the powers and discretions conferred by this Deed on a Receiver either expressly or by reference.

6.3 **Subsequent Security Interests**

6.3.1 If the Bank receives notice of any subsequent Security Interest affecting the Charged Assets or any part thereof, the Bank may open a new account for the Borrower.

6.3.2 If it does not open a new account then, unless the Bank gives express written notice to the contrary to the Borrower, it shall nevertheless be treated as if it had opened a new account at the time when it received such notice and as from that time all payments made by or on behalf of the Borrower to the Bank shall be credited or be treated as having been credited to the new account and shall not operate to reduce the Secured Liabilities at the time when it received such notice.

6.4 **Statutory power of leasing**

The Bank shall have the power to lease and make agreements for leases at a premium or otherwise, to accept surrenders of leases and to grant options on such terms as the Bank shall consider expedient and without the need to observe any of the provisions of sections 99 and 100 of the Law of Property Act 1925.

6.5 **Contingencies**

6.5.1 If the Bank enforces the security constituted by this Deed at a time when no amount in respect of the Secured Liabilities is due and payable, the Bank (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account.

6.5.2 The Bank may (subject to the payment of any claims having priority to this security) withdraw amounts standing to the credit of such account for application as follows:

(i) paying all costs, charges and expenses incurred and payments made by the Bank (or the Receiver) in the course of such enforcement;

(ii) paying remuneration to the Receiver as and when the same becomes due and payable; and

(iii) paying amounts due and payable in respect of the Secured Liabilities as and when the same become due and payable.

6.6 **Power of sale and right of consolidation**

Sections 93 and 103 of the Law of Property Act 1925 do not apply to the security constituted by this Deed.

7 APPOINTMENT AND POWERS OF ADMINISTRATOR AND RECEIVER

7.1 **Appointment**

7.1.1 At any time on or after the Enforcement Date, or if requested by the Borrower, the Bank may by instrument in writing executed as a deed or under the hand of any duly authorised officer appoint:

(i) a Receiver of the Charged Assets or any part thereof; or

(ii) an administrator of the Borrower.

7.1.2 Where more than one Receiver is appointed, each joint Receiver shall have power to act severally, independently of any other joint Receivers, except to the extent that the Bank may specify to the contrary in the appointment.

7.1.3 The Bank may (subject to section 45 of the Insolvency Act 1986) remove any Receiver so appointed and appoint another in his place and may (subject to the provisions of any applicable law) replace an administrator of the Borrower previously appointed by the Bank where there is a vacancy in such office.

7.2 **Receiver as agent**

A Receiver shall be the agent of the Borrower and the Borrower shall be solely responsible for his acts or defaults and for his remuneration.

7.3 **Powers of Receiver**

A Receiver shall have all the powers conferred from time to time on receivers, administrative receivers and administrators by statute and power on behalf and at the expense of the Borrower to do, or omit to do, anything which the Borrower could do, or omit to do, in relation to the Charged Assets or any part thereof including:

7.3.1 take possession of, collect and get in, and give a good discharge for, all or any of the Charged Assets; and/or

7.3.2 exercise in respect of the Charged Assets all voting or other powers or rights available to a registered or other holder in such manner as he may think fit; and/or

7.3.3 carry on, manage, develop, reconstruct, amalgamate or diversify the business of the Borrower or any part thereof; and/or

7.3.4 lease or otherwise acquire and develop or improve properties or other assets without being responsible for loss or damage; and/or

7.3.5 raise or borrow any money from or incur any other liability to the Bank or others on such terms, with or without security, as he may think fit and so that any such security may be or include a charge on the whole or any part of the Charged Assets ranking in priority to this security or otherwise; and/or

7.3.6 sell, let, surrender or accept surrenders, grant licences or otherwise dispose of or deal with all or any of the Charged Assets for such consideration and generally on such terms and conditions as he may think fit and the consideration for such sale, lease or disposition may be for cash, debentures or other obligations, shares, stock, securities or other valuable consideration and be payable immediately or by instalments spread over such period as he shall think fit and so that any consideration received or receivable shall immediately be and become charged with the payment of all the Secured Liabilities; and/or

7.3.7 promote the formation of companies with a view to the same becoming a Subsidiary of the Borrower and purchasing, leasing, licensing or otherwise acquiring interests in all or any of the Charged Assets or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any of the Charged Assets on such terms and conditions as he may think fit; and/or

7.3.8 make any arrangement or compromise or enter into, or cancel, any contracts which he shall think expedient; and/or

7.3.9 make and effect such repairs, renewals and improvements to the Charged Assets or any part thereof as he may think fit and maintain, renew, take out or increase insurances; and/or

7.3.10 appoint managers, agents, officers and employees for any of the purposes referred to in this clause 7.3; and/or

7.3.11 make calls conditionally, or unconditionally, on the members of the Borrower in respect of uncalled capital; and/or

7.3.12 institute, continue, enforce, defend, settle or discontinue any actions, suits or proceedings in relation to the Charged Assets or any part thereof or submit to arbitration as he may think fit; and/or

7.3.13 delegate his powers in accordance with clause 10 *(Delegation)*; and/or

7.3.14 sign any document, execute any deed and do all such other acts and things as may be considered by him to be incidental or conducive to any of the matters or powers referred to in this clause 7.3 or to the realisation of the security created by or pursuant to this Deed and to use the name of the Borrower for all the purposes referred to in this clause 7.3.

7.4 Remuneration

The Bank may from time to time determine the remuneration of any Receiver and section 109(6) of the Law of Property Act 1925 shall be varied accordingly.

8 APPLICATION OF PROCEEDS

All moneys received by the Bank or by any Receiver shall be applied, after the discharge of the remuneration and expenses of the Receiver and all liabilities having priority to the Secured Liabilities, in or towards satisfaction of such of the Secured Liabilities and in such order as the Bank in its absolute discretion may from time to time conclusively determine, except that the Bank may credit the same to a suspense account for so long and in such manner as the Bank may from time to time conclusively determine and the Receiver may retain the same for such period as he and the Bank consider expedient.

9 PROTECTION OF THIRD PARTIES

9.1 Deemed right to enforce

In favour of any purchaser (as defined in section 205 of the Law of Property Act 1925) or person dealing in good faith, the Secured Liabilities shall be deemed to become due, and all rights of enforcement conferred on the Bank by the Law of Property Act 1925, as varied and extended by this Deed, shall be deemed to arise, immediately after the execution of this Deed.

9.2 No enquiry required

No purchaser or other person dealing with the Bank or a Receiver shall be bound or concerned to enquire whether any power exercised or purported to be exercised under this Deed has become exercisable or whether any money is due on the security of this Deed or as to the propriety or regularity of any sale by, or other dealing with, the Bank or such Receiver or be concerned with notice to the contrary. Any such sale or dealing shall be deemed to be within the powers conferred by this Deed and to be valid and effectual accordingly.

10 DELEGATION

The Bank and any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed. Any such delegation may be made on the terms (including power to sub-delegate) and subject to any regulations which the Bank or such Receiver (as the case may be) may think fit. Neither the Bank nor any Receiver will be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

11 INDEMNITIES

11.1 Enforcement costs

The Borrower shall on demand, indemnify the Bank against any cost, loss or liability incurred by the Bank or by any Receiver as a result of the enforcement, preservation or attempted preservation of any of the security created by or pursuant to this Deed or any of the Charged Assets.

11.2 Indemnity from Charged Assets

The Bank and any administrator, Receiver, attorney, agent or other person appointed by the Bank under this Deed and the officers and employees of the Bank and any such administrator, Receiver, attorney, agent or other person (each an "**Indemnified Party**") shall be entitled to be indemnified out of the Charged Assets in respect of all costs and losses which may be incurred by, or made against, any of them (or by or against any manager, agent, officer or employee for whose liability, act or omission any of them may be answerable) at any time relating to or arising out of or as a consequence of:

11.2.1 anything done or omitted in the exercise, or purported exercise, of the powers contained in this Deed; or

11.2.2 any breach by the Borrower of any of its obligations under this Deed; or

11.2.3 any claim made or asserted against an Indemnified Party which would not have arisen if this Deed had not been executed and which was not caused by the gross negligence or wilful default of the relevant Indemnified Party.

12 POWER OF ATTORNEY

12.1 Power of attorney

The Borrower, by way of security (and to secure proprietary interests of any delegates), irrevocably appoints each of the Bank and any Receiver and their respective delegates severally to be its attorney in its name and on its behalf:

12.1.1 to execute and complete any documents or instruments which the Bank or such Receiver may require for perfecting the title of the Bank to the Charged Assets or for vesting the same in the Bank, its nominee or any purchaser;

12.1.2 to sign, execute, seal and deliver, and otherwise perfect, any further Security Interest or document referred to in clause 5.1 *(Further assurance)*; and

12.1.3 otherwise generally to sign, seal, execute and deliver all deeds, agreements and other documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Bank or a Receiver under this Deed or which may be deemed expedient by the Bank or a Receiver in connection with any disposition, realisation or getting in of the Charged Assets or any part thereof or in connection with any other exercise of any power under this Deed.

12.2 Ratification

The Borrower ratifies and confirms and agrees to ratify and confirm all acts and things which any attorney pursuant to clause 12.1 *(Power of attorney)* shall do, or purport to do, in the exercise of his powers under clause 12.1 *(Power of attorney)*.

13 MISCELLANEOUS PROVISIONS

13.1 Continuing security

This Deed and the obligations of the Borrower under this Deed shall:

13.1.1 secure the ultimate balance of the Secured Liabilities and shall be a continuing security notwithstanding any settlement of account or other matter whatsoever;

13.1.2 be in addition to, and not prejudice or affect, any present or future Collateral Instrument, Security Interest, right or remedy held by or available to the Lender; and

13.1.3 not merge with, or be in any way prejudiced or affected by the existence of, any such collateral instrument, security interest, right or remedy.

13.2 Settlements conditional

Any settlement or discharge between the Bank and the Borrower shall be conditional on no security of, or disposition or payment to, the Bank (whether by the Borrower or otherwise) being avoided or reduced or required to be paid away or refunded by virtue of any requirement or enactment (in each case whether or not having the force of law and whether relating to bankruptcy, insolvency, liquidation, administration or otherwise) at any time in force or by virtue of any obligation to give effect to any preference or priority and the Bank shall be entitled to recover the value or amount of any such security or payment from the Borrower and to enforce this Deed as if such settlement or discharge had not occurred.

13.3 **Deposits**

Without prejudice to any right of set-off the Bank may have, if any time deposit matures on any account the Borrower has with the Bank at any time when:

13.3.1 this security has become enforceable; and

13.3.2 no amount of the Secured Liabilities is due and payable,

that time deposit shall automatically be renewed for any further maturity which the Bank considers appropriate.

13.4 **Land Registry**

13.4.1 In respect of any Property charged by this Deed, the title to which is or is to be registered at the Land Registry, the Borrower:

(i) certifies that the security created by this Deed does not contravene any of the provisions of the constitutional documents of the Borrower; and

(ii) hereby consents to the lodgement at the Land Registry of an application by or on behalf of the Bank for the entry of the following restriction in the Proprietorship Register of any relevant Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated [the date of this Deed] in favour of Svenska Handelsbanken AB (publ) referred to in the charges register or, their conveyancer".

13.4.2 The obligation on the part of the Bank to make further advances to the Borrower under any facility or other documentation issued by the Bank to the Borrower shall be deemed to be incorporated in this Deed for the purposes of Section 94(1)(c) of the Law of Property Act 1925, Section 49(3) of the Land Registration Act 2002 and Rule 108 of the Land Registration Rules 2003 and for the purposes of the Land Registration Rules 2003 and Section 49(3) of the Land Registration Act 2002 the Borrower hereby agrees to submit to the Chief Land Registrar such forms as are necessary to enter a note of such obligation on the register of each of the titles referred to in clause 13.4.1.

13.5 **No responsibility for loss**

Neither the Bank nor any Receiver shall be responsible for any loss occasioned by the timing of the exercise of its powers under this Deed.

13.6 **No liability as mortgagee in possession**

Neither the Bank nor any Receiver shall be liable to account as mortgagee or heritable creditor in possession in respect of all or any of the Charged Assets or be liable for any loss on realisation or for any neglect or default of any nature whatsoever for which a mortgagee or heritable creditor in possession may be liable as such.

14 CHANGES TO THE PARTIES AND DISCLOSURE

14.1 **Assignments and transfers by the Borrower**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under this Deed.

14.2 **Assignments and transfers by the Bank and disclosure**

The Bank may assign and transfer any of its rights and obligations under this Deed to any person or otherwise grant an interest in them to any person.

15 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 provisions under the law of any other jurisdiction will in any way be affected or impaired.

16 NOTICES

Any communication to be made by the Bank under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter to the address of the Borrower last known to the Bank.

17 CALCULATIONS AND CERTIFICATES

17.1 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 Bank are prima facie evidence of the matters to which they relate.

17.2 Certificates and determinations

Any certification or determination by the Bank under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

17.3 No set-off by the Borrower

All payments to be made by the Borrower under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

18 LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1989

For the purposes of the Law of Property (Miscellaneous Provisions) Act 1989, any provisions of each document governing the terms of the Secured Liabilities and relating to any disposition of property shall be deemed to be incorporated in this Deed.

19 THIRD PARTY RIGHTS

Save as permitted in this Deed, a person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed. This clause 19 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

20 EXECUTION AS A DEED

The parties agree and confirm that this Deed shall take effect as a deed notwithstanding that the Bank may have executed this Deed under hand only.

21 GOVERNING LAW

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

This Deed has been entered into as a deed at the date stated at the beginning of this Deed.

SIGNATORIES

Borrower

Executed as a deed)
by the Borrower)
acting by two directors or)
by a director and the company secretary)
)

Director

Director/Secretary

Please sign

For and on behalf of the Bank

Authorised Signatory

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