



**Registration of a Charge**

Company name: **MANDARIN ORIENTAL LONDON LIMITED**

Company number: **03200312**



X83MPGK3

Received for Electronic Filing: **18/04/2019**

---

**Details of Charge**

Date of creation: **15/04/2019**

Charge code: **0320 0312 0005**

Persons entitled: **NATIONAL WESTMINSTER BANK PLC**

Brief description: **N/A**

**Contains fixed charge(s).**

**Contains negative pledge.**

---

**Authentication of Form**

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

---

**Authentication of Instrument**

Certification statement: **EXCEPT FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006, 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: **KATHRYN WELSH**



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

Company number: 3200312

Charge code: 0320 0312 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th April 2019 and created by MANDARIN ORIENTAL LONDON LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th April 2019 .

Given at Companies House, Cardiff on 23rd April 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

# **SHARE CHARGE**

**DATED** 15 April **2019**

**BETWEEN**

**MANDARIN ORIENTAL LONDON LIMITED**  
**as Chargor**

**AND**

**NATIONAL WESTMINSTER BANK PLC**  
**as Security Trustee**

**ALLEN & OVERY**

**Allen & Overy**

0011398-0005135 BK:48086528.6

## CONTENTS

Clause	Page
1. Interpretation .....	1
2. Creation of security .....	3
3. Representations .....	4
4. Restrictions on dealings.....	6
5. Shares .....	7
6. General Undertakings .....	8
7. When security becomes enforceable .....	10
8. Enforcement of security .....	10
9. Receiver.....	11
10. Powers of Receiver.....	12
11. Application of proceeds.....	13
12. Enforcement expenses .....	13
13. Payments .....	14
14. Tax gross up and indemnities .....	14
15. Rights, waivers and determinations.....	16
16. Indemnities .....	16
17. Set-off .....	17
18. Delegation .....	17
19. Further assurances .....	18
20. Power of attorney .....	18
21. Preservation of security .....	18
22. Changes to the Parties .....	20
23. Miscellaneous .....	20
24. Release.....	21
25. Notices .....	21
26. Calculations and Certificates .....	22
27. Partial invalidity .....	22
28. Remedies and waivers .....	22
29. Counterparts .....	22
30. Governing law .....	23
31. Enforcement .....	23
 <b>Schedule</b>	
1. Shares .....	24
 <b>Signatories</b> .....	
	25

**THIS DEED** is dated 15 April 2019 and is made

**BETWEEN:**

- (1) **MANDARIN ORIENTAL LONDON LIMITED**, a private company incorporated and registered in England and Wales with company number 3200312 (the **Chargor**); and
- (2) **NATIONAL WESTMINSTER BANK PLC** (the **Security Trustee**) as security trustee for and on behalf of the Finance Parties (as defined in the Facility Agreement defined below).

**BACKGROUND:**

- (A) The Chargor enters into this Deed in connection with the Facility Agreement (as defined below).
- (B) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Deed:

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

**Company** means Mandarin Oriental Hyde Park Limited, a private company incorporated and registered in England and Wales with company number 6192910.

**Currency of Account** means the currency in which the relevant indebtedness is denominated or, if different, is payable.

**Delegate** means a delegate or sub-delegate appointed under Clause 18 (Delegation).

**Dividends** means, in relation to any Share, all present and future:

- (a) dividends and distributions of any kind and any other sum received or receivable in respect of that Share;
- (b) rights, shares, money or other assets accruing or offered by way of redemption, bonus, option or otherwise in respect of that Share;
- (c) allotments, offers and rights accruing or offered in respect of that Share; and
- (d) other rights and assets attaching to, deriving from or exercisable by virtue of the ownership of, that Share.

**Enforcement Event** means:

- (a) any corporate action, legal proceedings or other procedure or step is taken in relation to the administration of the Chargor; or
- (b) an Event of Default.

**Facility Agreement** means the £90,000,000 facility agreement dated 11 April 2019 between the Company as borrower, National Westminster Bank plc as Arranger, Agent and Security Trustee and the Lender named therein.

**Party** means a party to this Deed.

**Receiver** means an administrative receiver, a receiver and manager or a receiver, in each case, appointed under this Deed.

**Secured Liabilities** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Finance Party under each Finance Document, except for any obligation which, if it were so included, would result in this Deed contravening sections 678 or 679 of the Companies Act 2006.

**Security Assets** means all assets of the Chargor the subject of any security created by this Deed.

**Security Interest** means a bill of sale (as defined by statute), mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**Security Period** means the period beginning on the date of this Deed and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

**Shares** means:

- (a) all present and future shares in the Company, including the shares issued and outstanding at the date of this Deed described in Schedule 1 (Shares);
- (b) all rights relating to any such shares which are deposited with or registered in the name of, any depository, custodian, nominee, clearing house or system, investment manager, chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including any rights against any such person); and
- (c) all warrants, options and other rights to subscribe for, purchase or otherwise acquire any such shares.

## **1.2 Construction**

- (a) Capitalised terms defined in the Facility Agreement have, unless expressly defined in this Deed, the same meaning in this Deed.
- (b) The provisions of clause 1.2 (Construction) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed except that references to the Facility Agreement will be construed as references to this Deed.
- (c)
  - (i) A Finance Document or other agreement or instrument includes (without prejudice to any prohibition on amendments) any amendment to that Finance Document or other agreement or instrument, including any change in the purpose of, any extension of or any increase in the amount of a facility or any additional facility;
  - (ii) the term **this Security** means any Security Interest created, evidenced or conferred by or under this Deed; and

- (iii) a reference to any asset includes present and future properties, revenues and rights of every description.
- (d) Any covenant of the Chargor under this Deed (other than a payment obligation) remains in force during the Security Period.
- (e) If the Security Trustee considers that an amount paid to a Finance Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
- (f) Unless the context otherwise requires, a reference to a Security Asset includes the proceeds of sale of that Security Asset.

### **1.3 Third party rights**

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the Third Parties Act) to enforce or enjoy the benefit of any term of this Deed.
- (b) Subject to paragraph (b) of clause 36.2 (Exceptions) of the Facility Agreement but otherwise notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (c) Any Receiver, Delegate or any person described in clause 27.9 (No proceedings) of the Facility Agreement may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Deed which expressly confers rights on it.

### **1.4 Contractual recognition of bail-in**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

## **2. CREATION OF SECURITY**

### **2.1 General**

- (a) All the security created under this Deed:

- (i) is created in favour of the Security Trustee;
  - (ii) is created over present and future Security Assets of the Chargor;
  - (iii) is security for the payment and satisfaction of all the Secured Liabilities; and
  - (iv) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- (b) The Security Trustee holds the benefit of this Deed on trust for the Finance Parties.

## **2.2 Shares**

The Chargor charges by way of a first fixed charge all its:

- (a) Shares; and
- (b) Dividends.

## **3. REPRESENTATIONS**

### **3.1 Representations**

The Chargor makes the representations and warranties set out in:

- (a) this Clause to each Finance Party on the date of this Deed; and
- (b) Clauses 3.2 (Status) to 3.6 (Validity and enforceability), Clause 3.9 (Ranking) and Clause 3.13 (No other interests) on each Utilisation Date and on the first day of each Interest Period, in each case by reference to the facts and circumstances then existing.

### **3.2 Status**

It is a company duly incorporated and validly existing under the laws of England & Wales with power to carry on its business as presently conducted and to own its property and other assets.

### **3.3 Binding obligations**

The obligations expressed to be assumed by it in this Deed are (or when executed will be), subject to the application of any laws of general application and to any qualifications in the legal opinion referred to in schedule 2 (Conditions Precedent) to the Facility Agreement and the Reservations, its legal, valid, binding and enforceable obligations.

### **3.4 Non-conflict with other obligations**

The execution of this Deed and the performance by it of its obligations hereunder and under the transactions contemplated by the other Finance Documents to which it is a party will not, so far as it is aware (having used its best endeavours to enquire):

- (a) contravene any existing applicable law, statute, rule or regulation or any judgment, decree or permit to which it is subject;
- (b) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument binding upon it or any of its assets; or



- (c) contravene or conflict with any provision of its constitutional documents.

### **3.5 Power and authority**

It has power to enter into this Deed and to exercise its rights and perform its obligations hereunder and all corporate or other action required to authorise the execution of this Deed and the performance by it of its obligations hereunder has been (or when executed will have been) duly taken.

### **3.6 Validity and enforceability**

Every consent, authorisation, licence, approval, resolution or exemption of or declaration to, or filing, notarisation or registration with, governmental or public bodies or authorities or courts required by it to authorise, or required by it in connection with, the execution, delivery, validity or enforceability of and its compliance with this Deed and the performance by it of its obligations hereunder has been obtained or made and is in full force and effect and there has been no default in any material respect in the observance of any of the terms or conditions of the same, subject to the Perfection Requirements.

### **3.7 Validity and admissibility in evidence**

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed;
- (b) to make this Deed admissible in evidence in its jurisdiction of incorporation; and
- (c) to enable it to create this Security and to ensure that this Security have and will have the priority and ranking which they are expressed to have,

have been obtained or effected and are in full force and effect save for the Perfection Requirements.

### **3.8 No proceedings pending or threatened**

To the best of its knowledge and belief, no litigation, arbitration or administrative proceeding of or before any court, arbitral body or agency is taking place, pending or threatened against it which would, if adversely determined, have a Material Adverse Effect except as disclosed to the Security Trustee.

### **3.9 Ranking**

- (a) This Deed creates those Security Interests which it is expressed to create with the ranking and priority it is expressed to have, subject to the Perfection Requirements.
- (b) Without limiting paragraph (a) above, its payment obligations under this Deed rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

### **3.10 Insolvency**

It has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it, for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of it or of any or all of its or their assets or revenues.

### **3.11 Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under this Deed.

### **3.12 No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Deed or the transactions contemplated by this Deed subject to any qualifications in the legal opinion referred to in schedule 2 (Conditions precedent) to the Facility Agreement, the Reservations and the Perfection Requirements.

### **3.13 No other interests**

- (a) The Company has not undertaken nor had an interest in any trading or other activity other than any activity undertaken in the ordinary course of trading in the provision of hospitality services or in the hotel business or otherwise as contemplated by this Deed or any other Finance Document to which it is a party.
- (b) The Company has not entered into any agreement which imposes any material liability (contingent or actual) other than as permitted or contemplated by this Deed or any other Finance Document to which it is a party or as notified to the Security Trustee.
- (c) The Company does not have any material assets or material actual or contingent liabilities which have arisen or may arise other than as permitted or contemplated by this Deed or any other Finance Document to which it is a party or as notified to the Security Trustee.
- (d) The Company has not entered into any transaction which, if entered into after the date of this Agreement, would be prohibited by Clause 6.10 (Financial Indebtedness) or Clause 6.11 (New agreements) of this Deed.

### **3.14 Ownership**

The Chargor is the sole beneficial owner of the Shares.

### **3.15 Shares Fully Paid etc**

The Shares described in Schedule 1 (Shares) are duly authorised, validly issued and fully paid, non-assessable and freely transferable and constitute shares in the capital of limited companies. There are no moneys or liabilities outstanding or payable in respect of any of the Shares.

### **3.16 Share Capital**

The Shares constitute all the share capital in the Company and no person has or is entitled to any conditional or unconditional option, warrant or other right to subscribe for, purchase or otherwise acquire any issued or unissued Shares, or any interest in Shares, in the capital of the Company.

## **4. RESTRICTIONS ON DEALINGS**

### **4.1 Security**

The Chargor shall not create or permit to subsist any Security Interest over any Security Asset.

## **4.2 Disposal**

The Chargor shall not nor agree to enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any Security Asset except, in the case of Dividends, as permitted by Clause 5.6 (Dividends before enforcement).

## **5. SHARES**

### **5.1 Deposit**

The Chargor must on the date of this Deed and, where Shares are acquired by it after the date of this Deed, on the date of that acquisition:

- (a) deposit with the Security Trustee, or as the Security Trustee may direct, all certificates and other documents of title or evidence of ownership, to the extent there is any in relation to any Security Asset; and
- (b) deliver to the Security Trustee all share transfers executed in blank and other documents which may be requested by the Security Trustee in order to enable the Security Trustee or its nominees to be registered as the owner or otherwise obtain a legal title to any Security Asset.

### **5.2 Calls**

- (a) The Chargor must pay all calls and other payments due and payable in respect of any Security Asset.
- (b) If the Chargor fails to do so, the Security Trustee may pay any such calls or other payments on behalf of the Chargor. The Chargor must immediately on request reimburse the Security Trustee for any payment made by the Security Trustee under this Clause.

### **5.3 Other obligations in respect of Security Assets**

- (a) The Chargor must promptly copy to the Security Trustee and comply with all requests for information which is within its knowledge and which are made under any law or regulation or by any listing or other authority or any similar provision contained in any articles of association or other constitutional document relating to any Security Assets. If it fails to do so, the Security Trustee may elect to provide such information as it may have on behalf of the Chargor.
- (b) The Chargor must comply with all other conditions and obligations assumed by it in respect of any Security Asset.
- (c) The Security Trustee is not obliged to:
  - (i) perform any obligation of the Chargor;
  - (ii) make any payment;
  - (iii) make any enquiry as to the nature or sufficiency of any payment received by it or the Chargor; or
  - (iv) present or file any claim or take any other action to collect or enforce the payment of any amount to which it may be entitled under this Deed,

in respect of any Security Assets.

#### **5.4 Voting before enforcement**

Subject to Clause 5.5 (Voting after enforcement), the Chargor shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Share as it sees fit where it does so for a purpose which would not have a Material Adverse Effect.

#### **5.5 Voting after enforcement**

At any time while an Enforcement Event is continuing and the Security Trustee has given notice to the Chargor:

- (a) the Security Trustee shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Share as it sees fit; and
- (b) the Chargor shall comply or procure the compliance with any directions of the Security Trustee in respect of the exercise of those rights and shall promptly execute and/or deliver to the Security Trustee such forms of proxy as the Chargor requires with a view to enabling such person as it selects to exercise those rights.

#### **5.6 Dividends before enforcement**

Subject to Clause 5.7 (Dividends after enforcement), the Chargor is entitled to retain any cash income derived from the Shares.

#### **5.7 Dividends after enforcement**

At any time while an Enforcement Event is continuing the Chargor shall hold any Dividend received by it on trust for the Finance Parties and pay the same immediately to the Security Trustee or as it may direct. The Security Trustee shall be entitled to apply the same as it sees fit.

### **6. GENERAL UNDERTAKINGS**

#### **6.1 Authorisations**

The Chargor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Security Trustee of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this Deed.

#### **6.2 Perfection requirements**

The Chargor shall promptly comply with the Perfection Requirements in respect of this Deed.

#### **6.3 Compliance with laws**

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

#### **6.4 Ranking**

The Chargor shall ensure that its payment obligations under this Deed rank and continue to rank at least pari passu with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

#### **6.5 No other prejudicial conduct**

The Chargor shall not do, or permit to be done, anything which could prejudice this Security.

#### **6.6 Merger**

The Chargor shall ensure that the Company will not enter into any amalgamation, demerger, merger or corporate reconstruction.

#### **6.7 Negative Pledge**

The Chargor shall ensure that the Company will not create or permit to subsist any Security Interest to secure Borrowed Money over any of its assets except as permitted under the Facility Agreement.

#### **6.8 Disposals**

The Chargor shall ensure that the Company will not sell, lease, transfer or otherwise dispose of (whether in a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary)) any fixed asset or equity investment except as permitted under the Facility Agreement.

#### **6.9 Change of business**

The Chargor shall procure that no substantial change is made to the general nature of the business of the Company taken as a whole from that carried on at the date of this Deed.

#### **6.10 Financial Indebtedness**

The Chargor shall ensure that the Company will not incur or allow to remain outstanding any Borrowed Money, except as permitted under the Facility Agreement.

#### **6.11 New agreements**

- (a) Subject to paragraph (b) below, the Chargor shall ensure that the Company will not enter into any agreement that imposes material obligations (whether contingent or actual) on it.
- (b) Paragraph (a) above does not apply to:
  - (i) any documents entered into by the Company in connection with any transaction that is permitted under the Facility Agreement (including any document pursuant to which Borrower Money is permitted pursuant to Clause 6.10 above (Financial Indebtedness) above is incurred); or
  - (ii) any agreement entered into with the prior written consent of the Security Trustee (acting on the instructions of the Majority Lenders).

## **6.12 Loans and guarantees**

The Chargor shall procure that the Company will not make any loan, or provide any form of credit or financial accommodation, to any other person or issue or allow to remain outstanding any guarantee in respect of any obligation of any person or voluntarily assume any liability (whether actual or contingent) on any other person, except as permitted under the Facility Agreement.

## **7. WHEN SECURITY BECOMES ENFORCEABLE**

### **7.1 Event of Default**

This Security will become immediately enforceable if an Enforcement Event is continuing.

### **7.2 Discretion**

After this Security has become enforceable, the Security Trustee may in its absolute discretion enforce all or any part of this Security in any manner it sees fit or as the Majority Lenders direct.

### **7.3 Statutory powers**

The power of sale and other powers conferred by section 101 of the Act, as amended by this Deed, will be immediately exercisable at any time after this Security has become enforceable.

## **8. ENFORCEMENT OF SECURITY**

### **8.1 General**

- (a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Act (restricting the power of sale) and section 93 of the Act (restricting the right of consolidation) do not apply to this Security.

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

Neither the Security Trustee nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

### **8.3 Privileges**

Each Receiver and the Security Trustee is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers duly appointed under the Act, except that section 103 of the Act does not apply.

### **8.4 Protection of third parties**

No person (including a purchaser) dealing with the Security Trustee or a Receiver or its or his agents will be concerned to enquire:

- (a) whether the Secured Liabilities have become payable;
- (b) whether any power which the Security Trustee or a Receiver is purporting to exercise has become exercisable or is being properly exercised;

- (c) whether any money remains due under the Finance Documents; or
- (d) how any money paid to the Security Trustee or to that Receiver is to be applied.

## **8.5 Redemption of prior mortgages**

- (a) At any time after this Security has become enforceable, the Security Trustee may:
  - (i) redeem any prior Security Interest against any Security Asset; and/or
  - (ii) procure the transfer of that Security Interest to itself; and/or
  - (iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.
- (b) The Chargor must pay to the Security Trustee, immediately on demand, the costs and expenses incurred by the Security Trustee in connection with any such redemption and/or transfer, including the payment of any principal or interest.

## **8.6 Contingencies**

If this Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Security Trustee (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account or other account selected by it.

# **9. RECEIVER**

## **9.1 Appointment of Receiver**

- (a) Except as provided below, the Security Trustee may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:
  - (i) this Security has become enforceable;
  - (ii) the Chargor so requests the Security Trustee in writing at any time.
- (b) Any appointment under paragraph (a) above may be by deed, under seal or in writing under its hand.
- (c) Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the Act) does not apply to this Deed.
- (d) The Security Trustee is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under section 1A of the Insolvency Act 1986.
- (e) The Security Trustee may not appoint an administrative receiver (as defined in section 29(2) of the Insolvency Act 1986) over the Security Assets if the Security Trustee is prohibited from so doing by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

## **9.2 Removal**

The Security Trustee may by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may,

whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **9.3 Remuneration**

The Security Trustee may fix the remuneration of any Receiver appointed by it and the maximum rate specified in section 109(6) of the Act will not apply.

### **9.4 Agent of the Chargor**

- (a) A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver.
- (b) No Finance Party will incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

### **9.5 Relationship with Security Trustee**

To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Security Trustee in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

## **10. POWERS OF RECEIVER**

### **10.1 General**

- (a) A Receiver has all of the rights, powers and discretions set out below in this Clause in addition to those conferred on it by any law, this includes:
  - (i) in the case of an administrative receiver, all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the Act and the Insolvency Act 1986; and
  - (ii) otherwise, all rights, powers and discretions conferred on a receiver (or a receiver and manager) under the Act and the Insolvency Act 1986
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

### **10.2 Possession**

A Receiver may take immediate possession of, get in and collect any Security Asset.

### **10.3 Sale of assets**

- (a) A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he thinks fit.
- (b) The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit.



#### **10.4 Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

#### **10.5 Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit.

#### **10.6 Receipts**

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

#### **10.7 Delegation**

A Receiver may delegate his powers in accordance with this Deed.

#### **10.8 Other powers**

A Receiver may:

- (a) do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
- (b) exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset; and
- (c) use the name of the Chargor for any of the above purposes.

### **11. APPLICATION OF PROCEEDS**

Any moneys received by the Security Trustee, any Receiver or Delegate in exercise of their rights under this Deed must be applied in the following order of priority:

- (a) in or towards payment of or provision for the Secured Liabilities in accordance with clause 29.6 (Order of Application) of the Facility Agreement; and
- (b) in payment of the surplus (if any) to the Chargor or other person entitled to it.

This Clause is subject to the payment of any claims having priority over this Security. This Clause does not prejudice the right of any Finance Party to recover any shortfall from the Chargor.

### **12. ENFORCEMENT EXPENSES**

#### **12.1 Expenses**

The Chargor shall, within three Business Days of demand, pay to the Security Trustee the amount of all costs, losses, liabilities and expenses (including legal fees) incurred by any Finance Party, any Receiver or Delegate in relation to any Finance Document (including the administration, protection, realisation, enforcement or preservation of any rights under or in connection with this Deed, or any

consideration by the Security Trustee as to whether to realise or enforce the same, and/or any amendment, waiver, consent or release of any Finance Document and/or any other document referred to in this Deed).

## **12.2 Value Added Tax**

Clause 14.7 (VAT) of the Facility Agreement (with any necessary consequential amendments) shall apply also to any amount payable by the Chargor under this Deed to any Finance Party, Receiver or its Delegate.

## **12.3 Default interest**

If the Chargor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate equal to the sum of one per cent. and the rate (whatever called) then published by the Security Trustee as its base rate for advances in sterling calculated for successive interest periods, each of a duration selected by the Security Trustee (acting reasonably). Any interest accruing under this Clause 12.3 shall be immediately payable by the Chargor on demand by the Security Trustee.

Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each interest period applicable to that overdue amount but will remain immediately due and payable.

## **13. PAYMENTS**

### **13.1 Demands**

Any demand for payment made by any Finance Party shall be valid and effective even if it contains no statement of the relevant Secured Liabilities or an inaccurate or incomplete statement of them.

### **13.2 Payments**

All payments by the Chargor under this Deed (including damages for its breach) shall be made in the Currency of Account and to such account, with such financial institution and in such other manner as the Security Trustee may direct.

## **14. TAX GROSS UP AND INDEMNITIES**

### **14.1 Definitions**

(a) In this Clause 14:

**Tax Credit** means a credit against, relief or remission for, or repayment of any Tax.

**Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**Tax Payment** means an increased payment made by the Chargor to a Finance Party under Clause 14.2 (Tax gross-up) or a payment under Clause 14.3 (Tax indemnity).

(b) In this Clause 14 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

## **14.2 Tax gross-up**

- (a) The Chargor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Chargor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Security Trustee accordingly.
- (c) If the Tax Deduction is required by law to be made by the Chargor, the amount of the payment due from the Chargor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Chargor is required to make a Tax Deduction, the Chargor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Chargor shall deliver to the Security Trustee evidence reasonably satisfactory to the Security Trustee that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

## **14.3 Tax indemnity**

- (a) The Chargor shall (within three Business Days of demand by the Security Trustee) pay to the Security Trustee and any Delegate an amount equal to the loss, liability or cost which it determines will be or has been (directly or indirectly) suffered for or on account of Tax by any Finance Party.
- (b) Paragraph (a) above shall not apply with respect to any Tax assessed on the any Finance Party:
  - (i) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
  - (ii) under the law of the jurisdiction in which /that Finance Party's office through which it is acting in connection with this Deed is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party.

## **14.4 Tax Credit**

If the Chargor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) that Finance Party has obtained, utilised and retained that Tax Credit,

that Finance Party shall pay an amount to the Chargor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Chargor.

## **15. RIGHTS, WAIVERS AND DETERMINATIONS**

### **15.1 Ambiguity**

Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to any Finance Document, the terms of that Finance Document shall, to the extent possible under applicable law, prevail.

## **16. INDEMNITIES**

### **16.1 Environmental indemnity**

The Chargor shall indemnify each Finance Party against any and all costs, losses, liabilities or expenses together with any associated VAT incurred by each Finance Party arising (directly or indirectly) out of or in connection with any breach or potential breach of or liability (whether civil and/or criminal) under any Environmental Law.

### **16.2 Currency indemnity**

(a) If any sum due from the Chargor under this Deed (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:

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

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

(b) The Chargor waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency or currency unit other than that in which it is expressed to be payable.

### **16.3 Other indemnities**

(a) The Chargor shall, within three Business Days of demand, indemnify the each Finance Party and any Delegate against all losses, liabilities, damages, costs and expenses incurred by it or them in the execution or performance of the terms and conditions of this Deed and against all actions, proceedings, claims, demands, costs, charges and expenses which may be incurred, sustained or arise in respect of the non-performance or non-observance of any of the undertakings and agreements of the Chargor in this Deed or in respect of any matter or thing done or omitted relating in any way whatsoever to the Security Assets, including without limitation, losses, liabilities, damages, costs and expenses (on a full indemnity basis) suffered or incurred in connection with:

- (i) the perfection, preservation, protection, enforcement, realisation or exercise, or attempted perfection, preservation, protection, enforcement, realisation or exercise, of any Security created, or any powers conferred, by this Deed or by law;

- (ii) the exchange of any share certificate(s) or other documents of title in respect of the Security Assets of any denomination(s) for any share certificate(s) or other documents of title of other denomination(s);
- (iii) any Security Assets being deemed not to be freely transferable or deliverable or to be defective,

and, for the avoidance of doubt, each of the indemnities in this paragraph shall survive discharge of the Secured Liabilities.

- (b) The Security Trustee may retain, out of any money in the Security Trustee's hands, all sums necessary to effect the indemnities contained in this Clause and all sums payable by the Chargor under this Clause shall form part of the monies secured by this Deed.

#### **16.4 Indemnities separate**

Each indemnity in each Finance Document shall:

- (a) constitute a separate and independent obligation from the other obligations in that or any other Finance Document;
- (b) give rise to a separate and independent cause of action;
- (c) apply irrespective of any indulgence granted by any Finance Party;
- (d) continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any liability or any other judgment or order; and
- (e) apply whether or not any claim under it relates to any matter disclosed by the Chargor or otherwise known to any Finance Party.

#### **17. SET-OFF**

Each Finance Party may set off any matured obligation due from the Chargor under this Deed (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, a Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

#### **18. DELEGATION**

##### **18.1 Power of Attorney**

The Security Trustee or 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.

##### **18.2 Terms**

Any such delegation may be made upon any terms (including power to sub-delegate) which the Security Trustee or any Receiver may think fit.

### **18.3 Liability**

Neither the Security Trustee nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

## **19. FURTHER ASSURANCES**

The Chargor must, at its own expense, take whatever action the Security Trustee or a Receiver may require for:

- (a) creating, perfecting or protecting any security intended to be created by this Deed; or
- (b) facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Security Trustee or any Receiver or Delegate of the Security Trustee or the Receiver in respect of any Security Asset.

This includes:

- (i) the execution of any transfer, conveyance, assignment or assurance of any property, whether to the Security Trustee or to its nominee; or
- (ii) the giving of any notice, order or direction and the making of any registration,

which, in any such case, the Security Trustee may think expedient.

## **20. POWER OF ATTORNEY**

The Chargor, by way of security, irrevocably and severally appoints the Security Trustee, each Receiver and Delegate to be its attorney to take any action which the Chargor is obliged to take under a Finance Document (but has not taken). The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause.

## **21. PRESERVATION OF SECURITY**

### **21.1 Continuing security**

This Security is a continuing security and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or discharge in whole or in part.

### **21.2 Reinstatement**

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

### **21.3 Waiver of defences**

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

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;

- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or any other person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (f) any amendment of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security; or
- (h) any insolvency or similar proceedings.

#### **21.4 Immediate recourse**

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

#### **21.5 Appropriations**

Each Finance Party (or any trustee or agent on its behalf) may at any time during the Security Period:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) against the Secured Liabilities or apply and enforce them in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor will not be entitled to the benefit of such moneys, security or rights; 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 Deed.

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

Unless the Security Period has expired or the Security Trustee otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or by reason of any amount being payable, or liability arising under this Clause:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Chargor has given a guarantee, undertaking or indemnity under this Clause;
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If the Chargor receives any benefit, payment or distribution in relation to such rights it must hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and must promptly pay or transfer them to the Security Trustee or as the Security Trustee may direct for application in accordance with clause 29.6 (Order of application) of the Facility Agreement.

## **21.7 Additional security**

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

## **22. CHANGES TO THE PARTIES**

### **22.1 The Chargor**

The Chargor may not assign or transfer any of its rights or obligations under this Deed without the prior consent of the Security Trustee.

### **22.2 The Finance Parties**

- (a) The Finance Parties may assign or otherwise dispose of all or any of its rights under this Deed in accordance with the Finance Documents to which it is a party.

## **23. MISCELLANEOUS**

### **23.1 Covenant to pay**

The Chargor must pay or discharge the Secured Liabilities in the manner provided for in the Finance Documents.

### **23.2 Tacking**

Each Finance Party must perform its obligations under the Facility Agreement (including any obligation to make available further advances).

### **23.3 New Accounts**

- (a) If:
  - (i) any subsequent charge or other interest affects any Security Asset; or



(ii) a petition is presented or a resolution is passed in relation to the winding up of the Chargor, the Finance Party may open a new account with the Chargor.

- (b) If the Finance Party does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.
- (c) As from that time all payments made to the Finance Party will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

## **24. RELEASE**

At the end of the Security Period, the Finance Parties must, at the request and cost of the Chargor, take whatever action is necessary to release, assign or discharge (as appropriate) the Security Assets from this Security.

## **25. NOTICES**

### **25.1 Communications in writing**

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

### **25.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below, or any substitute address or fax number or department or officer as the Party may notify to the other by not less than five Business Days' notice.

### **25.3 Delivery**

- (a) Any communication or document made or delivered to the Chargor under or in connection with this Deed will only be effective:
- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
- and, if a particular department or officer is specified as part of its address details provided under Clause 25.2 (Addresses), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Security Trustee will be effective only when actually received by the Security Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Security Trustee's signature below (or any substitute department or officer as the Security Trustee shall specify for this purpose).

### **25.4 Notification of address and fax number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 25.2 (Addresses) or changing its own address or fax number, the Security Trustee shall notify the other Parties.

## **25.5 English language**

- (a) Any notice given under or in connection with this Deed must be in English.
- (b) All other documents provided under or in connection with this Deed must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Security Trustee, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **26. CALCULATIONS AND CERTIFICATES**

### **26.1 Accounts**

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

### **26.2 Certificates and determinations**

Any certification or determination by a Finance Party, Receiver or Delegate of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **26.3 Day count conventions**

Any interest, commission or fee accruing under this Deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

## **27. PARTIAL INVALIDITY**

If, at any time, any term of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Deed; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Deed.

## **28. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Finance Party, Receiver or Delegate, any right or remedy under the Finance Documents will operate as a waiver, nor will any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

## **29. COUNTERPARTS**

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

### **30. GOVERNING LAW**

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

### **31. ENFORCEMENT**

#### **31.1 Jurisdiction**

- (a) The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a **Dispute**).
- (b) 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) Notwithstanding paragraph (a) above:
  - (i) the Security Trustee will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction; and
  - (ii) the Security Trustee may take concurrent proceedings in any number of jurisdictions.

**THIS DEED** has been entered into as a deed on the date stated at the beginning of this Deed.

## SCHEDULE 1

### SHARES

Number of Shares	Class of Shares	Share Certificate Number
1000	Ordinary	1
90,000,000	Ordinary	2

## SIGNATORIES

### Chargor

EXECUTED AS A DEED by )  
MANDARIN ORIENTAL )  
LONDON LIMITED )  
acting by *Alexander Li* )



### Director

In the presence of:

Witness's signature:



Name: *Agnes Wong*

Address: *7<sup>th</sup> Floor, The Excelsior Hotel, 281 Gloucester Road, Causeway Bay, Hong Kong*

Chargor's contact details:

Address: 3 Lombard Street, London, EC3V 9AQ, England

Fax: +44 20 7816 8182

Attention: Matheson & Co., Limited, Secretary

**Security Trustee**

**NATIONAL WESTMINSTER BANK PLC**

By:



*CB Rees*

Address: 9th Floor, 250 Bishopsgate, London EC2M 4AA, United Kingdom

Fax: +44 20 7444 4516

Attention: Oliver Kelly