



Registration of a Charge

Company Name: **BLUE PHOENIX LIMITED**

Company Number: **03290431**



Received for filing in Electronic Format on the: **01/07/2021**

XA7TN2LL

Details of Charge

Date of creation: **01/07/2021**

Charge code: **0329 0431 0007**

Persons entitled: **LLOYDS BANK PLC**

Brief description: **BLUE PHOENIX LIMITED (THE COMPANY) CHARGES IN FAVOUR OF LLOYDS BANK PLC (THE LENDER), WITH FULL TITLE GUARANTEE AND BY WAY OF FIRST FIXED CHARGE, ALL OF ITS RIGHTS, CLAIMS, TITLE AND INTEREST FROM TIME TO TIME IN AND TO THE ACCOUNT (OPENED OR MAINTAINED BY THE COMPANY WITH THE LENDER WITH THE ACCOUNT NAME "LLOYDS BANKING RE BLUE PHOENIX LIMITED") AND ALL PROCEEDS IN RESPECT THEREOF AS CONTINUING SECURITY (AS DEFINED IN THE AGREEMENT) FOR THE PAYMENT AND DISCHARGE OF ALL THE SECURED OBLIGATIONS (AS DEFINED IN THE AGREEMENT).**

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by:

PRIYANKA PAUNRANA



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3290431

Charge code: 0329 0431 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st July 2021 and created by BLUE PHOENIX LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st July 2021 .

Given at Companies House, Cardiff on 2nd July 2021

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



Companies House



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

DATED 1 JULY 2021

BLUE PHOENIX LIMITED

IN FAVOUR OF

LLOYDS BANK PLC

AS THE LENDER

SECURITY OVER CASH DEPOSIT AGREEMENT

CONTENTS

Clause	Page
1. Definitions and Interpretation	1
2. Covenant to Pay	4
3. Charge	4
4. Provisions as to Security and Perfection.....	4
5. Account	5
6. Set-Off.....	6
7. Company's Representations and Undertakings	6
8. Enforcement of Security	8
9. Extension of Powers and Right of Appropriation.....	9
10. Application of Proceeds	10
11. Protection of Purchasers	10
12. Effectiveness of Security	11
13. Prior Security Interests.....	13
14. Subsequent Security Interests	13
15. Suspense Accounts.....	14
16. Release of Security	14
17. Assignment	14
18. Notices	15
19. Currency Conversion	17
20. Currency Indemnity	17
21. Counterparts.....	17
22. Discretion and Delegation.....	17
23. Calculations and Certificates	18
24. Governing Law	18
25. Enforcement.....	18

THIS AGREEMENT is made by way of deed on 1 July 2021

BY

- (1) **BLUE PHOENIX LIMITED** registered in England and Wales with company registration number 03290431 (the "**Company**") in favour of
- (2) **LLOYDS BANK PLC** (the "**Lender**").

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"**Account**" means the account opened or maintained by the Company with the Lender with (a) the account name "Lloyds Banking re Blue Phoenix Limited", (b) the sort code [REDACTED] and (c) the account number [REDACTED] (including any renewal, re-designation, replacement, subdivision or subaccount of such account) and the debt or debts represented thereby.

"**Administration Event**" means:

- (a) the presentation of an application to the court for the making of an administration order in relation to the Company; or
- (b) the giving of written notice by any person (who is entitled to do so) of its intention to appoint an administrator of the Company or the filing of such a notice with the court.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**BIG**" has the meaning given to that term in the Facility Letter.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"**Collateral Rights**" means all rights, powers and remedies of the Lender provided by or pursuant to this Agreement or by law.

"**Facility Letter**" means the facility letter dated on or about the date of this Agreement between the Company and the Lender (as amended, restated, varied, novated, supplemented, re-issued or renewed from time to time).

"**Legal Reservations**" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency,

bankruptcy, liquidation, reorganisation, court schemes, moratoria and other laws generally affecting the rights of creditors;

- (b) the time barring of claims under the Limitation Act 1980 and the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim; and
- (c) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered to the Lender by its legal counsel in connection with this Agreement.

"Party" means a party to this Agreement.

"Perfection Requirements" means the making or the procuring of the appropriate registrations, recordings, delivery, filings, endorsements, notarisations, stampings and/or notifications of this Agreement necessary or otherwise required by the Lender in order to perfect the Security contemplated by this Agreement or to achieve the relevant priority for such Security.

"Secured Obligations" means all present and future obligations and liabilities at any time due, owing or incurred by the Company to the Lender in respect of any BIGs issued by the Lender under or pursuant to the Facility Letter, whether actual or contingent, and including the obligation of the Company to indemnify the Lender in respect of any current and future BIG issued by the Lender pursuant to the Facility Letter, except for any obligation or liability which, if it were included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful, prohibited or invalid by or under any applicable law.

"Security" means a 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 Agreement and ending on the date on which the Lender is satisfied that the Secured Obligations have been irrevocably and unconditionally paid or discharged in full and the Lender is under no further actual or contingent obligation to (a) issue any further BIG to any person or (b) make any payments to any beneficiary in respect of any BIG already issued.

1.2 **Construction**

- (a) Unless a contrary indication appears any reference in this Agreement to:
 - (i) the **"Lender"** or the **"Company"** shall be construed so as to include its or their (and any subsequent) successors in title, permitted assigns and permitted transferees in accordance with their respective interests;
 - (ii) an agreement or instrument is a reference to that agreement or instrument as amended, extended, novated, supplemented, replaced or restated;

- (iii) an "**amendment**" includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (in each case, however fundamental and whether or not more onerous or involving any change in or addition to the parties to any agreement or document and including any change in the purpose of, any extension of or any increase in the amount of a facility or any additional facility) and amended shall be construed accordingly;
- (iv) "**including**" and "**include**" shall mean including and include "without limitation" and any words following such terms shall be construed as illustrative and shall not limit the meaning or scope of the phrase or words preceding such terms;
- (v) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (vi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (vii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (viii) a provision of law is a reference to that provision as amended or re-enacted from time to time.

(b) Section, Clause and Schedule headings are for ease of reference only.

1.3 **Third party rights**

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.4 **Present and future assets**

- (a) A reference in this Agreement to the Account or other asset includes, unless the contrary intention appears, present and future Account(s) and other assets.
- (b) The absence of or incomplete details of the Account shall not affect the validity or enforceability of any Security under this Agreement.

2. COVENANT TO PAY

The Company covenants with the Lender that it shall, immediately on demand of the Lender:

- (a) pay, discharge and satisfy the Secured Obligations in accordance with their respective terms; and
- (b) (without limiting paragraph (a) above) indemnify the Lender against any cost, loss or liability it incurs in connection with any claim under any BIG from the relevant beneficiary of such BIG.

3. CHARGE

The Company charges in favour of the Lender, with full title guarantee and by way of first fixed charge, all of its rights, claims, title and interest from time to time in and to the Account and all proceeds in respect thereof as continuing Security for the payment and discharge of all the Secured Obligations.

4. PROVISIONS AS TO SECURITY AND PERFECTION

4.1 Negative pledge and restriction on dealings

Except where agreed in writing by the Lender, the Company shall not at any time during the Security Period create or permit to subsist any Security over, or otherwise deal in any way with, the Account or any part of it.

4.2 Implied covenants for title

- (a) The covenants set out in sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clause 3 (*Charge*).
- (b) It shall be implied in respect of Clause 3 (*Charge*) that the Company is disposing of the Account free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

4.3 Notice of Charge

The execution of this Agreement by the Company and Lender shall constitute notice to the Lender of the charge created over the Account.

4.4 Further advances

Subject to the terms of the Facility Letter, the Lender is under an obligation to issue further BIGs on the request of the Company and that obligation shall be deemed to be incorporated into this Agreement as if set out in this Agreement.

5. ACCOUNT

5.1 Terms of Account

- (a) The Company shall ensure that the cash balance of the Account is at all times no less than the aggregate actual and contingent liability of the Lender to the beneficiaries of all BIGs issued by the Lender pursuant to the Facility Letter.
- (b) For the purpose of determining whether the cash balance of the Account is sufficient for the purposes of paragraph (a) above, each BIG issued in a currency other than sterling shall be notionally converted into sterling on the date such BIG is issued on the basis of the rate at which the Bank would sell the relevant currency for sterling at that time.
- (c) Except with the Lender's prior written consent and subject to Clause 5.2, the Account shall be maintained on the terms that any credit balance from time to time on that Account shall mature on the earlier of:
 - (i) the first time at which (A) there are no remaining Secured Obligations and (B) the Lender is not under any obligation or liability (actual or contingent) to (x) issue any further BIGs to any person or (y) make any payments to any person in respect of any BIG already issued; and
 - (ii) close of business in London on the date on which any of the Secured Obligations shall have become due and payable and shall not have been paid upon becoming so due and payable,

so that, at such time as any such credit balance shall mature (or at any time thereafter), the Lender may exercise in relation to that credit balance any rights of set-off, combination or consolidation to which the Lender may be entitled under this Agreement or at law.

5.2 Partial maturity

If on any day any of the Secured Obligations become due and payable and have not been paid by close of business in London on the same day, then only so much of the credit balances from time to time on the Account shall mature as equals the amount of the Secured Obligations which became due and payable and had not been paid by close of business on that day.

5.3 Restrictions on Account(s)

The Company shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on the Account except:

- (a) with the prior written consent of the Lender, or
- (b) as expressly permitted pursuant to the terms of the Facility Letter.

6. **SET-OFF**

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8 (*Enforcement of Security*), the Lender may (but the Lender shall not be obliged to exercise such right), set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Lender to the Company and apply any credit balance to which the Company is entitled on any account with the Lender in accordance with Clause 10 (*Application of Proceeds*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

7. **COMPANY'S REPRESENTATIONS AND UNDERTAKINGS**

7.1 **Representations**

The Company makes the representations and warranties set out in this Clause 7.1 to the Lender on the date of this Agreement.

(a) *Status*

- (i) It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (ii) It has the power to own its assets and carry on its business substantially as it is being conducted.

(b) *Binding obligations*

Subject to the Legal Reservations and Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.

(c) *Non-conflict with other obligations*

Subject to the Legal Reservations and Perfection Requirements, the entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not conflict with:

- (i) any law or regulation applicable to it in any material respect;
- (ii) its constitutional documents in any material respect; or
- (iii) any agreement or instrument binding upon it or any of its assets in any way which has or could reasonably be expected to materially (A) impair its ability to perform its obligations under this Agreement or (B) negatively affect the rights of the Lender under this Agreement.

(d) ***Power and authority***

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated by this Agreement.

(e) ***Validity and admissibility in evidence***

Subject to the Legal Reservations and Perfection Requirements, all Authorisations required or desirable:

- (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Agreement; and
- (ii) to make this Agreement admissible in evidence in its jurisdiction of incorporation and the jurisdiction in which the Account is located,

have been (or will be within any applicable time limits prescribed by law) obtained or effected and are (or will be within any applicable time limits prescribed by law) in full force and effect.

(f) ***Governing law and enforcement***

Subject to the Legal Reservations, the choice of English law as the governing law of this Agreement and any judgement obtained in England in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation and the jurisdiction where the Account is located.

(g) ***Security***

No Security exists over the Account other than the Security created pursuant to this Agreement.

(h) ***Ranking***

The Security created by this Agreement has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* Security.

(i) ***Valid Security***

Subject to the Legal Reservations and Perfection Requirements, this Agreement validly creates the Security which is expressed to be created pursuant to Clause 3 (*Charge*) and evidences the Security it is expressed to evidence.

(j) ***Ownership of Account***

- (i) It is the absolute legal and beneficial owner of the Account and has not sold or disposed of or granted any interest in or rights in respect of any of its right, title and interest, in the Account (other than as expressly permitted under the Facility Letter).

- (ii) The Account is not subject to any options, rights, restrictions or other interest which would operate in any way to restrict the disposal by the Lender of any credit balance on the Account after the Security created by or pursuant to this Agreement has become enforceable.

(k) ***Repetition***

The representations set out in paragraphs (a) (Status) to (j) (*Ownership of Account*) of this Clause are deemed to be made by the Company (by reference to the facts and circumstances then existing) on each date on which the Company requests the issuance of a BIG under the Facility Letter and on six monthly intervals after the date of this Agreement.

7.2 **Undertakings**

(a) ***Authorisations***

Subject to the Legal Reservations and Perfection Requirements, the Company shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any applicable law or regulation to enable it to perform its obligations under this Agreement and (subject to the Legal Reservations and the Perfection Requirements) to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement in England and Wales, save to the extent where failure to do so does not and could not reasonably be expected to materially (A) impair its ability to perform its obligations under this Agreement or (B) negatively affect the rights of the Lender under this Agreement.

(b) ***Compliance with laws***

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

(c) ***Information and access***

The Company shall from time to time on request of the Lender, provide the Lender with any information as the Lender may reasonably require about the Company's business and affairs, the Account and the Company's compliance with the terms of the Facility Letter and this Agreement.

8. **ENFORCEMENT OF SECURITY**

8.1 **Enforcement**

Any time after the occurrence of:

- (a) a claim against the Lender in respect of a BIG by the beneficiary of such BIG;
- (b) an Administration Event;

- (c) any event or the receipt by the Lender of any information or the coming to the attention of the Lender of any other matter or thing whatsoever which causes the Lender to believe that all or any part of the Account and/or any credit balance on the Account is in danger of seizure, distress or other legal process or that all or any part of the Security created by or pursuant to this Agreement is otherwise for any reason whatsoever in jeopardy; or
- (d) a request from the Company to the Lender that it exercise any of its powers under this Agreement,

the Security created by or pursuant to this Agreement is immediately enforceable and the Lender may, without notice to the Company or prior authorisation from any court, in its absolute discretion:

- (i) secure and perfect its title to the Account (including transferring the same into the name of the Lender or its nominee(s)) or otherwise exercise in relation to the Account all the rights of an absolute owner;
- (ii) enforce all or any part of that Security, at the times, in the manner and on the terms it thinks fit, and take possession of and hold, dispose of, apply or transfer all or any part of the credit balance on the Account, at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration); and
- (iii) exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement) on mortgagees or otherwise conferred by law on mortgagees.

9. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION

9.1 Extension of power of sale

The power of sale or other disposal conferred on the Lender by this Agreement shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Agreement.

9.2 Restrictions

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the exercise by the Lender of its right to consolidate all or any of the Security created by or pursuant to this Agreement with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Lender without notice to the Company on or at any time after the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8 (*Enforcement of Security*).

9.3 **Right of appropriation**

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8 (*Enforcement of Security*), to the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended, (the "**Regulations**") apply to the Account, the Lender shall have the right to appropriate all or any part of the credit balance on the Account in or towards the payment or discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Company. For this purpose, the parties agree that the value of the Account shall be the amount of the credit balance on it, together with any accrued but unposted interest that is paid in relation to the Account, at the time the right of appropriation is exercised. The parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

9.4 **Statutory powers**

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

10. **APPLICATION OF PROCEEDS**

All monies received or recovered and any non-cash recoveries made or received by the Lender pursuant to this Agreement or the powers conferred by it shall (subject to the claims of any person having prior rights thereto) be applied by the Lender (notwithstanding any purported appropriation by the Company) for application towards the discharge of the Secured Obligations, with the balance, if any, to be applied in payment to the Company.

11. **PROTECTION OF PURCHASERS**

11.1 **Consideration**

The receipt of the Lender shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any credit balance on the Account, the Lender may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit.

11.2 **Protection of purchasers**

No purchaser or other person dealing with the Lender shall be bound to inquire whether the right of the Lender to exercise any of its powers has arisen or become exercisable or be concerned to inquire whether that power has been properly or regularly exercised by the Lender in such dealings.

12. EFFECTIVENESS OF SECURITY

12.1 Continuing security

- (a) The Security created by or pursuant to this Agreement shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Lender in writing.
- (b) No part of the Security from time to time intended to be created by this Agreement will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

12.2 Cumulative rights

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which the Lender may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent Security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Lender over the whole or any part of the Account shall merge into the Security created by this Agreement.

12.3 No prejudice

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Company or any other person, or the Lender or by any other thing which might otherwise prejudice that Security or any Collateral Right.

12.4 Remedies and waivers

No failure on the part of the Lender to exercise, nor any delay on its part in exercising, any Collateral Right, shall operate as a waiver of that Collateral Right or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

12.5 No liability

Neither the Lender nor its nominee(s) shall be liable:

- (a) to account as a mortgagee or mortgagee in possession; or
- (b) for any loss arising by reason of taking any action permitted by this Agreement or any neglect or default in connection with the Account or taking possession of or realising all or any part of the Account,

except in the case of gross negligence or wilful default upon its part.

12.6 Partial invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

12.7 Waiver of defences

The obligations assumed, and the Security created, by the Company under this Agreement, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 12.5, would reduce, release or prejudice any of its obligations under, or the Security created by, this Agreement (whether or not known to the Company or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement with any creditor of any person;
- (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 person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of, any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise), restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of the Facility Letter, this Agreement or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under the Facility Letter, this Agreement or any other document or Security or of the Secured Obligations; or
- (g) any insolvency or similar proceedings.

12.8 Company intent

The Company expressly confirms that it intends that the Security created under this Agreement, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to the Facility Letter or this Agreement and/or any facility or amount made available under any of the Facility Letter, including without limitation for the purposes of or in connection with any of the following: increasing

working capital; refinancing existing facilities; refinancing any other indebtedness; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

12.9 Immediate recourse

The Company waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or Security or claim payment from any other person before claiming from the Company under this Agreement or enforcing the Security created by this Agreement. This waiver applies irrespective of any law or any provision of this Agreement to the contrary.

12.10 Additional Security

The Security created by the Company under this Agreement and the Collateral Rights are in addition to and are not in any way prejudiced by any other guarantee or Security now or subsequently held by the Lender.

13. PRIOR SECURITY INTERESTS

13.1 Redemption or transfer

In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against the Account or in case of exercise by the Lender of any power of sale or right of appropriation or application under this Agreement, the Lender may redeem such prior Security or procure the transfer thereof to itself.

13.2 Accounts

The Lender may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Company.

13.3 Costs of redemption or transfer

All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Company to the Lender on demand.

14. SUBSEQUENT SECURITY INTERESTS

If the Lender at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all or any part of the Account which is prohibited by the terms of the Facility Letter or this Agreement, all payments thereafter by or on behalf of the Company to the Lender will (in the absence of any express contrary appropriation by the Company) be treated as having been credited to a new account of the Company and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

15. SUSPENSE ACCOUNTS

All monies received, recovered or realised by the Lender under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Lender be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Lender considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Lender's discretion, in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

16. RELEASE OF SECURITY

16.1 Release of Security

Upon the expiry of the Security Period, the Lender shall, at the request and cost of the Company, release and cancel the Security constituted by this Agreement subject to Clause 16.2 (*Clawback*) and without recourse to, or any representation or warranty by, the Lender or any of its nominees.

16.2 Clawback

If the Lender considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Company under this Agreement and the Security created by this Agreement will continue and such amount will not be considered to have been irrevocably paid or credited.

17. ASSIGNMENT

17.1 No assignments or transfers by Company

The Company may not assign any of its rights or transfer any of its rights or obligations under this Agreement.

17.2 Assignments by the Lender

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

17.3 Successors

This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Lender. References to the Lender shall include (a) any transferee, assignee or successor in title of the Lender, (b) any entity into which the Lender is merged or converted or with which it may be consolidated, (c) any legal entity

resulting from any merger, conversion or consolidation to which such Lender is a party and (d) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Lender under this Agreement or to which, under such laws, those rights and obligations have been transferred (such person described in (a) to (d) being a successor to the Lender for all purposes under the Facility Letter and this Agreement).

18. NOTICES

18.1 Communications in writing

Each communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, shall be made by electronic mail or letter.

18.2 Addresses

The address (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 Agreement is:

- (a) in the case of the Company: Blue Phoenix Limited 1 Victoria Stables, Essex Way, Bourne, Lincs. PE10 9JZ;
- (b) in the case of the Lender: Lloyds Bank plc, 2nd Floor, 125 Colmore Row, Birmingham, B3 3 SD.

or any substitute address or department or officer as one Party may notify to the other Party by not less than five days' notice.

18.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

- (i) if by way of electronic mail 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 18.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified above (or any substitute department or officer as the Lender shall specify for this purpose).

18.4 Electronic communication

- (a) Any communication to be made between the Company and the Lender under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above may only be made in that way to the extent that the Company and the Lender agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (b) above will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by the Company to the Lender only if it is addressed in such manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the addressee of the relevant communication has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 18.4.

18.5 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, 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.

19. CURRENCY CONVERSION

For the purpose of or pending the discharge of any of the Secured Obligations the Lender may convert amounts outstanding in a currency other than sterling into sterling at the spot rate at which the Lender would sell the relevant currency for sterling at that time.

20. CURRENCY INDEMNITY

(a) If any sum due from the Company under this Agreement (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 Company;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings; or
- (iii) applying the Sum in satisfaction of any Secured Obligations,

the Company shall as an independent obligation, within 5 days' of demand, indemnify the Lender 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 Lender at the time of its receipt of that Sum.

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

21. COUNTERPARTS

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

22. DISCRETION AND DELEGATION

22.1 Discretion

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

22.2 Delegation

The Lender shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall

not preclude the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Lender itself.

23. CALCULATIONS AND CERTIFICATES

23.1 Accounts

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

23.2 Certificates and determinations

Any certification or determination by the Lender of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

24. GOVERNING LAW

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

25. ENFORCEMENT

25.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Company agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and, accordingly it will not argue to the contrary.
- (c) Notwithstanding paragraph (a) of this Clause 25.1 (*Jurisdiction*), the Lender may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

25.2 Service of process

The Company agrees that the documents which start any proceedings in relation to any the Facility Letter or this Agreement, and any other documents required to be served in connection with those proceedings, may be served on it by being delivered to its registered office or place of business in England, or to such other address in England and Wales as the Company may specify by notice in writing to the Lender. Nothing in this Clause 25.2 shall affect the right of the Lender to serve process in any other manner permitted by law. This Clause 25.2 applies to proceedings in England and proceedings elsewhere.

THIS AGREEMENT has been signed by the Lender and executed as a deed by the Company and is delivered by it as a deed on the date stated at the beginning of this Agreement.

EXECUTION PAGE

The Company

EXECUTED AS A DEED)
by **BLUE PHOENIX LIMITED**)

[REDACTED]

Signature of director

Name of director

in the presence of

Signature of witness

Name of witness

Address of witness

The Lender

For and on behalf of
Lloyds Bank plc

By: 

Name: CRAIG BAKER

Title: ASSOCIATE DIRECTOR, SDF ASSET MANAGEMENT