



Registration of a Charge

Company name: **HARVEY NASH GROUP LIMITED**

Company number: **03320790**



X7ZURZ6J

Received for Electronic Filing: **22/02/2019**

Details of Charge

Date of creation: **13/02/2019**

Charge code: **0332 0790 0008**

Persons entitled: **NATIONAL WESTMINSTER BANK PLC (AS SECURITY AGENT FOR AND ON BEHALF OF THE SECURED PARTIES (AS DEFINED IN THE INSTRUMENT)).**

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: **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:

IGNACIO MIRASOL, SOLICITOR, DLA PIPER UK LLP, LONDON



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3320790

Charge code: 0332 0790 0008

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th February 2019 and created by HARVEY NASH GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd February 2019 .

Given at Companies House, Cardiff on 25th February 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**

DATED 13 February 2019

(1) HARVEY NASH GROUP LIMITED
(2) NATIONAL WESTMINSTER BANK PLC

EQUITABLE SHARE MORTGAGE IN RESPECT OF SHARES OF HARVEY NASH LIMITED

WALKERS

6 Gracechurch Street, London EC3V 0AT
T +44 (0)20 7220 4999 F +44 (0)20 7220 4998 www.walkersglobal.com

REF: NM/CO/ge/L09181

8110286.2 D4005.L09181



I CERTIFY THAT, SAVE FOR MATERIAL REDACTED
PURSUANT TO s859G OF THE COMPANIES ACT 2006,
THIS IS A TRUE, COMPLETE AND CORRECT COPY
OF THE ORIGINAL INSTRUMENT

DATE 20 February 2019

SIGNED [Signature]
DLA PIPER UK LLP

TABLE OF CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION.....	1
2. REPRESENTATION AND WARRANTIES	4
3. COVENANT TO PAY	6
4. SECURITY.....	6
5. RIGHTS IN RESPECT OF MORTGAGED PROPERTY.....	8
6. PRESERVATION OF SECURITY.....	8
7. ENFORCEMENT OF SECURITY	12
8. APPOINTMENT OF A RECEIVER	14
9. POWERS OF A RECEIVER.....	14
10. FURTHER ASSURANCES.....	15
11. INDEMNITIES.....	15
12. POWER OF ATTORNEY	16
13. RELEASE	17
14. NOTICES.....	17
15. ASSIGNMENTS.....	18
16. SET-OFF	18
17. SUBSEQUENT SECURITY INTERESTS	18
18. EXPENSES	18
19. MISCELLANEOUS.....	19
20. LAW AND JURISDICTION	19
SCHEDULE 1	1
SCHEDULE 2.....	3
SCHEDULE 3	5
SCHEDULE 4.....	3
SCHEDULE 5.....	5

THIS EQUITABLE SHARE MORTGAGE is made on 13 February 2019

BETWEEN

- (1) **HARVEY NASH GROUP LIMITED**, a company established under the laws of England and Wales with company number 03320790 and having its registered office at 110 Bishopsgate, London, United Kingdom, EC2N 4AY (the "**Mortgagor**"); and
- (2) **NATIONAL WESTMINSTER BANK PLC**, a company established under the laws of England and Wales as security agent for and on behalf of the Secured Parties and acting in such capacity (the "**Mortgagee**").

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Mortgage, unless the context otherwise requires, words and expressions which are capitalised but not defined herein shall have the same meanings as are given to them in the Senior Facilities Agreement. In addition, the following definitions shall apply:

"**BVI Act**" means the BVI Business Companies Act, 2004 (as amended) of the British Virgin Islands.

"**BVI Working Day**" means a day on which government offices are ordinarily open for business in the British Virgin Islands.

"**CLP Ordinance**" means the Conveyancing and Law of Property Ordinance (as amended) of the British Virgin Islands.

"**Company**" means Harvey Nash Limited, a BVI business company with company number 281633 and having its registered office at Vistra Corporate Services Centre, Wickhams Cay II, Road Town, Tortola VG1110, British Virgin Islands.

"**Declared Default**" means the occurrence of an Event of Default which has resulted in a notice being served by the Agent in accordance with clause 24.18 (*Acceleration*) of the Senior Facilities Agreement.

"**Debtor**" means the Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of clause 22 (*Changes to the Parties*) of the Intercreditor Deed.

"**Event of Default**" means any event or circumstance specified as such in clause 24 (*Events of Default*) (other than clause 24.18 (*Acceleration*) and clause 24.19 (*Clean-Up Period*)) of the Senior Facilities Agreement.

"**Finance Documents**" shall have the meaning ascribed to such term in the Senior Facilities Agreement.

"**Insolvency Act**" means the Insolvency Act, 2003 (as amended) of the British Virgin Islands.

"**Intercreditor Deed**" means the intercreditor deed dated 9 November 2018 and made between, among others, Harvey Nash Group Holdings Limited (formerly The Power of Talent Ltd.), RBS Invoice Finance Limited, HSBC Invoice Finance Limited, the Debtors (as defined in the Intercreditor Deed), the Security Agent, the Senior Lenders and the Senior Arrangers.

"**Law**" means the Companies Act 2006 of the United Kingdom.

"Lender" shall have the meaning ascribed to it in the Senior Facilities Agreement.

"Mortgage" means this share mortgage.

"Mortgaged Property" means the Mortgaged Shares and all rights, benefits and advantages now or at any time in the future deriving from or incidental to any of the Mortgaged Shares including:

- (a) all dividends or other distributions (whether in cash, securities or other property), interest and other income paid or payable in relation to any Mortgaged Shares;
- (b) all shares, securities, rights, monies or other property whether certificated or uncertificated accruing, offered or issued at any time by way of redemption, conversion, exchange, substitution, preference, option, bonus issue or otherwise in respect of any Mortgaged Shares (including but not limited to proceeds of sale); and
- (c) all certificates or other evidence of title to any of the Mortgaged Shares now and from time to time hereafter deposited with the Mortgagee.

"Mortgaged Shares" means:

- (a) 1,083,750 ordinary shares (of par value US\$1.00 each) owned by the Mortgagor in the Company;
- (b) any shares acquired in respect of Mortgaged Shares by reason of a division or combination of shares, share dividend, reclassification or otherwise; and
- (c) all other shares in the Company from time to time legally or beneficially owned by the Mortgagor.

"Original Debtor" means Harvey Nash Group Holdings Limited (formerly The Power of Talent Ltd.), a company registered in England and Wales with registration number 11464274.

"Parties" means the parties to this Mortgage.

"Register of Directors" means the register of directors of the Company maintained by the Company in accordance with section 118 of the BVI Act.

"Register of Members" means the register of members of the Company (including any applicable branch register and non-listed shares register) maintained by the Company in accordance with section 41 of the BVI Act.

"Registrar of Corporate Affairs" means the Registrar of Corporate Affairs of the British Virgin Islands appointed under section 229 of the BVI Act.

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of each Obligor to the Security Agent and/or the other Secured Parties (or any of them) under or pursuant to any Finance Document (including all monies covenanted to be paid under this Mortgage).

"Secured Parties" shall have the meaning ascribed to it in the Intercreditor Deed.

"Security Interest" means:

- (a) a mortgage, charge, pledge, lien, assignment by way of security or other encumbrance or security arrangement (including any hold back or **"flawed asset"** arrangement) securing any obligation of any person;
- (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any person;
- (c) any other type of arrangement having a similar effect; or
- (d) agreements to create the foregoing.

"Security Period" means the period beginning on the date of this Mortgage and ending on the date on which: (a) all of the Secured Obligations have been unconditionally and irrevocably paid and discharged in full; and (b) no Secured Party has any further commitment, obligation or liability under or pursuant to the Finance Documents.

"Senior Arranger" means any *"Arranger"* under and as defined in the Senior Facilities Agreement.

"Senior Facilities Agreement" means the senior term facilities agreement dated 9 November 2018 and made between (1) Harvey Nash Group Holdings Limited (formerly The Power of Talent Ltd.) as the Company, (2) the companies listed in part 1 of schedule 1 thereto as Original Borrowers, (3) the companies listed in part 1 of schedule 1 thereto as Original Guarantors, (4) National Westminster Bank Plc and HSBC UK Bank plc as Arrangers, (5) the financial institutions listed in part 2 of schedule 1 thereto as Original Lenders, (6) National Westminster Bank Plc as Agent and (7) National Westminster Bank Plc as Security Agent.

"Senior Lenders" means each Lender as defined in the Senior Facilities Agreement.

1.2 In construing this Mortgage, unless otherwise specified:

- (a) references to any Party shall be construed so as to include that Party's respective successors in title, permitted assigns and permitted transferees;
- (b) **"including"** and **"in particular"** shall not be construed restrictively but shall mean respectively "including, without prejudice to the generality of the foregoing" and "including without limitation", and "in particular, but without prejudice to the generality of the foregoing";
- (c) references to a **"person"** shall be construed so as to include any individual, firm, company or other body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality); and in each case, its successors and assigns and persons deriving title under or through it, in whole or in part, and any person which replaces any party to any document in its respective role thereunder, whether by assuming the rights and obligations of the party being replaced or whether by executing a document in or substantially in the form of the document it replaces;
- (d) **"variation"** includes any variation, amendment, accession, novation, restatement, modification, assignment, transfer, supplement, extension, deletion or replacement however effected and **"vary"** and **"varied"** shall be construed accordingly;

- (e) "writing" includes facsimile transmission legibly received except in relation to any certificate, notice or other document which is expressly required by this Mortgage to be signed and "written" has a corresponding meaning;
- (f) references to the "consent" of the Mortgagee shall be construed as the consent of the Mortgagee acting in its absolute discretion;
- (g) references to this Mortgage or to any other document include references to this Mortgage or such other document as varied from time to time, even if changes (however fundamental) are made to:
 - (i) the composition of the Parties to this Mortgage or such other document or to the nature or amount (including any increase or addition) of any facilities made available or liability assumed under such other document; or
 - (ii) the nature or extent (including any increase or addition) of any obligations under such other document;
- (h) references to uncertificated shares are to shares the title to which can be transferred by means of an electronic or other entry and references to certificated shares are to shares which are not uncertificated shares;
- (i) references to the singular shall include the plural and vice versa and references to the masculine shall include the feminine or neuter and vice versa;
- (j) references to clauses and schedules are to clauses of, and schedules to, this Mortgage;
- (k) references to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be amended, modified or re-enacted;
- (l) headings and titles are for convenience only and do not affect the interpretation of this Mortgage; and
- (m) this Mortgage is a "Transaction Security Document" and a "Finance Document" under the terms of the Senior Facilities Agreement.

2. REPRESENTATION AND WARRANTIES

2.1 The Mortgagor hereby represents and warrants to the Mortgagee on the date of this Mortgage that:

- (a) it has been duly incorporated and registered as a public limited company under the Law;
- (b) it has the power to own its assets and carry on its business as it is being conducted;
- (c) it is the sole legal and beneficial owner of the Mortgaged Property free from any Security Interest (other than that created by this Mortgage) or other interest and any options or rights of pre-emption;
- (d) the Mortgaged Shares represent 100 percent of the issued shares of the Company;
- (e) any Mortgaged Shares are, or will be when mortgaged and charged, duly authorised, validly issued, fully paid, non-assessable, freely transferable and constitute shares in the capital of a BVI business company. To the extent they are in existence there are no

moneys or liabilities outstanding or payable in respect of any such shares nor will there be any and they have not been redeemed nor cancelled in any way nor will they be;

- (f) 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;
- (g) the Mortgaged Shares are freely transferable on the books of the Company and no consents or approvals are required in order to register a transfer of the Mortgaged Shares;
- (h) the Mortgaged Shares are not issued with any preferred, deferred or other special rights or restrictions whether in regard to dividends, voting, return of any amount paid on account of shares or otherwise which are not expressly set out in the memorandum and articles of association of the Company;
- (i) there are no covenants, agreements, conditions, interest, rights or other matters whatsoever which adversely affect the Mortgaged Property;
- (j) it has not received any notice of an adverse claim by any person in respect of the ownership of the Mortgaged Property or any interest in the Mortgaged Property;
- (k) it has full power and authority to:
 - (i) execute and deliver this Mortgage;
 - (ii) be the legal and beneficial owner of the Mortgaged Property; and
 - (iii) comply with the provisions of, and perform all its obligations under this Mortgage;
- (l) it has duly executed and delivered this Mortgage;
- (m) this Mortgage constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms;
- (n) the execution and performance of its obligations and liabilities under this Mortgage will not:
 - (i) contravene any law or regulation or any order of any governmental or other official authority, body or agency or any judgment, order or decree of any court having jurisdiction over it
 - (ii) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or
 - (iii) contravene or conflict with any provision of its constitutional documents;
- (o) it has not taken any action nor have any steps been taken or legal proceedings been started or threatened in writing against it for:
 - (i) winding up, dissolution or reorganisation;
 - (ii) the enforcement of any Security Interest over its assets; or

- (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, trustee or similar officer of it or of any or all of its assets;
 - (p) it is not in breach (nor would be in breach with the giving of notice, passing of time, or satisfaction of any other condition) or in default under any deed, instrument or any agreement to which it is a party or which is binding on it or any of its assets;
 - (q) no action, litigation, arbitration or administrative proceeding has been commenced or is pending or threatened in writing against it, nor is there subsisting any unsatisfied judgment or award given against it by any court, board of arbitration or other body;
 - (r) all licences, consents, exemptions, clearance filings, registration, payments of taxes, notarisation and authorisations as are or may be necessary or desirable for the proper conduct of its business, trade, and ordinary activities and for the performance and discharge of its obligations and liabilities under this Mortgage and which are required in connection with the execution, delivery, validity, enforceability or admissibility in evidence of this Mortgage and the creation of security over the Mortgaged Property have been obtained and are in full force and effect;
 - (s) it has not taken any action whereby the rights attaching to the Mortgaged Property are altered or diluted save to the extent such alteration or dilution is expressly permitted under this Mortgage;
 - (t) it has taken all corporate and other action required to approve its execution, delivery, performance and enforceability of this Mortgage; and
 - (u) this Mortgage is effective to create a valid and enforceable first priority equitable mortgage and first priority fixed charge upon the Mortgaged Property in favour of the Mortgagee ranking in priority to the interests of any of its creditors or any liquidator (or similar officer) appointed in respect of it.
- 2.2 The Mortgagor also represents and warrants to and undertakes with the Mortgagee that the foregoing representations and warranties will be true and accurate throughout the continuance of this Mortgage with reference to the facts and circumstances subsisting from time to time.

3. COVENANT TO PAY

The Mortgagor hereby covenants with the Mortgagee as primary obligor and not merely as surety that it will pay and discharge the Secured Obligations when due in accordance with the terms of the Finance Documents.

4. SECURITY

- 4.1 As a continuing security for the discharge and payment of the Secured Obligations, the Mortgagor as legal and beneficial owner hereby:
- (a) mortgages in favour of the Mortgagee by way of a first equitable mortgage all right, title and interest in and to the Mortgaged Shares; and
 - (b) charges in favour of the Mortgagee, by way of a first fixed charge, all of its right, title and interest in and to the Mortgaged Property including all benefits, present and future, actual and contingent accruing in respect of the Mortgaged Property (to the extent not effectively mortgaged under Clause 4.1(a)).

- 4.2 The Mortgagor hereby agrees to deliver, or cause to be delivered, to the Mortgagee on the date hereof (save in the case of the share certificates (as mentioned in sub-clause 4.2(c) below) which shall be delivered, or caused to be delivered, as soon as reasonably practicable and in any event within ten BVI Working Days from the date hereof):
- (a) the corporate documents, resolutions and authorities of the Mortgagor required to authorise the execution of this Mortgage;
 - (b) an executed but undated share transfer certificate in respect of the Mortgaged Shares in favour of the Mortgagee or its nominees (as the Mortgagee shall direct) in the form set out in Schedule 1 to this Mortgage and any other documents which from time to time may be requested by the Mortgagee in order to enable the Mortgagee or its nominees to be registered as the owner or otherwise obtain legal title to the Mortgaged Shares;
 - (c) share certificates representing the Mortgaged Shares, a certified copy of the Register of Members showing the Mortgagor as registered owner of the Mortgaged Shares and a certified copy of the Register of Directors;
 - (d) an executed irrevocable proxy and an executed irrevocable power of attorney made in respect of the Mortgaged Shares in favour of the Mortgagee in respect of all general meetings and written resolutions of the Company respectively in the form set out in Schedule 2 to this Mortgage;
 - (e) executed but undated letters of resignation and release together with letters of authority to date the same from each of the directors of the Company in the forms set out in Parts I and II of Schedule 3 to this Mortgage;
 - (f) an executed irrevocable deed of undertaking and confirmation from the Company to the Mortgagee in the form set out in Schedule 4 to this Mortgage; and
 - (g) an executed irrevocable letter of instructions from the Company to its registered agent in the form set out in Schedule 5 of this Mortgage (which executed letter shall be delivered by, or on behalf of, the Company to its registered agent promptly after execution of this Mortgage).
- 4.3 The Mortgagor will procure that there shall be no increase or reduction in the number of authorised or issued shares of the Company, no change in the registered office or registered agent, no change to the Register of Members, no appointment of any further director or officers of the Company and no change to the Register of Directors, in each case, without the prior consent in writing of the Mortgagee.
- 4.4 The Mortgagor will deliver, or cause to be delivered, to the Mortgagee promptly upon (without prejudice to Clause 4.3) the issue of any further Mortgaged Shares, the items listed in Clauses 4.2(c) and 4.2(d) in respect of all such further Mortgaged Shares.
- 4.5 The Mortgagor will deliver or cause to be delivered to the Mortgagee promptly upon (without prejudice to Clause 4.3) the appointment of any further director or officer of the Company, the items listed in Clause 4.2(e) (with respect to each newly appointed director or officer).
- 4.6 The Mortgagor shall (including by providing any and all written consents required by the Company in accordance with the articles of association of the Company) promptly after execution of this Mortgage procure that the following notation be entered on the Register of Members of the Company:

"All the ordinary shares registered in the name of Harvey Nash Group Limited are mortgaged and charged in favour of National Westminster Bank Plc pursuant to a share mortgage dated [Date] 2019, as amended from time to time. The date on which this annotation was entered in the Register of Members is [registered agent to complete]."

- 4.7 The Mortgagor shall, within five BVI Working Days from the execution of this Mortgage, provide the Mortgagee with a certified true copy of the Register of Members with the annotation referred to in Clause 4.6.

5. RIGHTS IN RESPECT OF MORTGAGED PROPERTY

- 5.1 Unless and until the occurrence of a Declared Default:

- (a) the Mortgagor shall be entitled to exercise all voting and consensual powers pertaining to the Mortgaged Property or any part thereof for all purposes not inconsistent with the terms of this Mortgage; and
- (b) the Mortgagor shall be entitled to receive and retain any dividends, interest or other moneys or assets accruing on or in respect of the Mortgaged Property or any part thereof.

- 5.2 The Mortgagor shall pay all calls, instalments or other payments and shall discharge all other obligations, which may become due in respect of any of the Mortgaged Property. The Mortgagee may at any time after the occurrence of a Declared Default, if it thinks fit, make such payments or discharge such obligations on behalf of the Mortgagor. Any sums so paid by the Mortgagee in respect thereof shall be repayable on demand and pending such repayment shall constitute part of the Secured Obligations.

- 5.3 The Mortgagee shall not have any duty to ensure that any dividends, interest or other moneys and assets receivable in respect of the Mortgaged Property are duly and punctually paid, received or collected as and when the same become due and payable or to ensure that the correct amounts (if any) are paid or received on or in respect of the Mortgaged Property or to ensure the taking up of any (or any offer of any) stocks, shares, rights, moneys or other property paid, distributed, accruing or offered at any time by way of redemption, bonus, rights, preference, or otherwise on or in respect of, any of the Mortgaged Property.

- 5.4 The Mortgagor hereby authorises the Mortgagee to arrange at any time and from time to time prior to or after the occurrence of a Declared Default for the Mortgaged Property or any part thereof to be registered in the name of the Mortgagee (or its nominee) thereupon to be held, as so registered, subject to the terms of this Mortgage and at the request of the Mortgagee, the Mortgagor shall without delay procure that the foregoing shall be done.

6. PRESERVATION OF SECURITY

- 6.1 It is hereby agreed and declared that:

- (a) the security created by this Mortgage shall be held by the Mortgagee as a continuing security for the payment and discharge of the Secured Obligations and the security so created shall not be satisfied by any intermediate payment or satisfaction of any part of the Secured Obligations;
- (b) the Mortgagee shall not be bound to enforce any other security before enforcing the security created by this Mortgage;

- (c) no delay or omission on the part of the Mortgagee in exercising any right, power or remedy under this Mortgage shall impair such right, power or remedy or be construed as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies herein provided are cumulative and not exclusive of any rights, powers and remedies provided by law and may be exercised from time to time and as often as the Mortgagee may deem expedient; and
 - (d) any waiver by the Mortgagee of any terms of this Mortgage shall only be effective if given in writing and then only for the purpose and upon the terms for which it is given.
- 6.2 Any settlement or discharge under this Mortgage between the Mortgagee and the Mortgagor shall be conditional upon no security or payment to the Mortgagee by the Mortgagor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and, if such condition is not satisfied, the Mortgagee shall be entitled to recover from the Mortgagor on demand the value of such security or the amount of any such payment as if such settlement or discharge had not occurred the payment of which amounts shall, for the avoidance of doubt, form part of the Secured Obligations.
- 6.3 The rights of the Mortgagee under this Mortgage and the security hereby constituted shall not be affected by any act, omission, matter or thing which, but for this provision, might operate to impair, affect or discharge such rights and security, in whole or in part, including, and whether or not known to or discoverable by the Company, the Mortgagor, the Mortgagee or any other person:
 - (a) any time or waiver granted to or composition with the Company, the Mortgagor or any other person;
 - (b) the taking, variation, compromise, renewal or release of or refusal or neglect to perfect or enforce any rights, remedies or securities against the Company, the Mortgagor or any other person;
 - (c) any legal limitation, disability, incapacity or other circumstances relating to the Company, the Mortgagor or any other person;
 - (d) any variation to, or entry into, any other document or security (including any amendment the effect of which is to change the nature or amount of any facilities made available thereunder or to change the nature or extent of any obligations thereunder);
 - (e) the dissolution, liquidation, amalgamation, reconstruction or reorganisation of the Company, the Mortgagor or any other person; or
 - (f) the unenforceability, invalidity or frustration of any obligations of the Company, the Mortgagor or any other person under any other document or security.
- 6.4 Until the expiry of the Security Period, the Mortgagor shall not by virtue of any payment made hereunder on account of the Secured Obligations or by virtue of any enforcement by the Mortgagee of its rights under, or the security constituted by, this Mortgage or any Finance Document or by virtue of any relationship between or transaction involving the Mortgagor and/or the Company (whether such relationship or transaction shall constitute the Mortgagor a creditor of the Company, a guarantor of the obligations of the Company or in part subrogated to the rights of others against the Company or otherwise howsoever and whether or not such relationship or transaction shall be related to, or in connection with, the subject matter of this Mortgage):

- (a) exercise any rights of subrogation against the Company or any other person in relation to any rights, security or moneys held or received or receivable by the Mortgagee or any person;
- (b) exercise any right of contribution from any co-surety liable in respect of such moneys and liabilities under any other guarantee, security or agreement;
- (c) exercise any right of set-off or counterclaim against the Company or any such co-surety;
- (d) receive, claim or have the benefit of any payment, distribution, security or indemnity from the Company or any such co-surety; or
- (e) unless so directed by the Mortgagee (when the Mortgagor will prove in accordance with such directions), claim as a creditor of the Company or any such co-surety in competition with the Mortgagee.

The Mortgagor shall hold in trust for the Mortgagee and forthwith pay or transfer (as appropriate) to the Mortgagee any such payment (including an amount to any such set-off), distribution or benefit of such security, indemnity or claim in fact received by it.

- 6.5 Until the expiry of the Security Period, the Mortgagee may at any time keep in a separate account or accounts (without liability to pay interest thereon) in the name of the Mortgagee for as long as it may think fit, any moneys received, recovered or realised under this Mortgage or under any other guarantee, security or agreement relating in whole or in part to the Secured Obligations without being under any intermediate obligation to apply the same or any part thereof in or towards the discharge of the Secured Obligations; provided that the Mortgagee shall be obliged to apply amounts standing to the credit of such account or accounts once the aggregate amount held by the Mortgagee in any such account or accounts opened pursuant hereto is sufficient to satisfy the outstanding amount of the Secured Obligations in full.
- 6.6 The Mortgagor shall not, without the prior written consent of the Mortgagee:
- (a) cause or permit any rights attaching to the Mortgaged Property to be varied or abrogated;
 - (b) cause or permit any of the Mortgaged Property to be consolidated, sub-divided or converted or the capital of the Company to be re-organised, exchanged or repaid; or
 - (c) cause or permit anything to be done which may depreciate, jeopardise or otherwise prejudice the value of the security hereby given.
- 6.7 The Mortgagor hereby covenants that during the Security Period it will remain the legal and beneficial owner of the Mortgaged Property (subject to the Security Interests hereby created) and that it will not:
- (a) create or suffer the creation of any Security Interests (other than those created by this Mortgage) or any other interest on or in respect of the whole or any part of the Mortgaged Property or any of its interest therein; or
 - (b) sell, assign, transfer or otherwise dispose of any of its interest in the Mortgaged Property without the prior consent in writing of the Mortgagee; or
 - (c) permit the Register of Members for the Company to be maintained outside of the British Virgin Islands or by a service provider other than the person to whom the letter of instructions in Schedule 5 has been given (unless in the latter case, the Company has

executed and delivered a new letter of instruction in substantially the form of Schedule 5 to the new service provider).

- 6.8 The Mortgagor shall remain liable to perform all the obligations assumed by it in relation to the Mortgaged Property and the Mortgagee shall be under no obligation of any kind whatsoever in respect thereof or be under any liability whatsoever in the event of any failure by the Mortgagor to perform its obligations in respect thereof.
- 6.9 The Mortgagor shall ensure that it shall not, without the prior written consent of the Mortgagee, use its voting rights to permit the Company to amend its memorandum or articles of association in a way which could be expected to adversely affect the interests of the Mortgagee.
- 6.10 The Mortgagor shall procure that the Company shall not:
- (a) create or permit to subsist any Security Interest upon the whole or any part of its assets, except as permitted by the Finance Documents;
 - (b) register any transfer of the Mortgaged Shares to any person (except to the Mortgagee or its nominees pursuant to the provisions of this Mortgage);
 - (c) issue any replacement share certificates in respect of any of the Mortgaged Shares;
 - (d) continue its existence under the laws of any jurisdiction other than the British Virgin Islands;
 - (e) do anything which might prejudice its status as a BVI business company;
 - (f) issue, allot or grant warrants or options with respect to any additional shares;
 - (g) exercise any rights of forfeiture over any of the Mortgaged Shares; or
 - (h) purchase, redeem, otherwise acquire, cancel, sub-divide, amalgamate, reclassify or otherwise restructure any of the Mortgaged Property,
- during the Security Period without the prior written consent of the Mortgagee.
- 6.11 The Mortgagor shall procure that the Company irrevocably waives in favour of the Mortgagee:
- (a) any lien; and
 - (b) any rights of forfeiture,
- which it may have over the Mortgaged Shares.
- 6.12 The Mortgagor shall procure that the Company shall irrevocably consent to any transfer of the Mortgaged Shares by the Mortgagee or its nominee to any other person pursuant to the exercise of the Mortgagee's rights under this Mortgage.
- 6.13 The Mortgagor shall procure that the Company shall conduct its affairs in a way which does not prejudice the Mortgagee's legal and economic interests in relation to the Mortgaged Property.
- 6.14 The Mortgagor shall not, without the prior written consent of the Mortgagee, participate in any vote concerning a members' liquidation or compromise in respect of the Company pursuant to sections 177, 179A and 199 of the BVI Act or Part VI of the Insolvency Act.

7. ENFORCEMENT OF SECURITY

7.1 At any time after the occurrence of a Declared Default the security hereby constituted shall become immediately enforceable and the rights of enforcement of the Mortgagee under this Mortgage shall be immediately exercisable upon and at any time thereafter and, without prejudice to the generality of the foregoing the Mortgagee without further notice to the Mortgagor may, whether acting on its own behalf or through a receiver or agent:

- (a) solely and exclusively exercise all voting and/or consensual powers pertaining to the Mortgaged Property or any part thereof and may exercise such powers in such manner as the Mortgagee may think fit;
- (b) date and present to the Company or any other person any undated documents provided to it pursuant to Clause 4 or any other provision of this Mortgage, including to remove the then existing directors and officers (with or without cause) by dating and presenting the undated, signed letters of resignation delivered pursuant to this Mortgage to appoint such persons as directors of the Company as it shall deem appropriate;
- (c) receive and retain all dividends, interest or other moneys or assets accruing on or in respect of the Mortgaged Property or any part thereof, such dividends, interest or other moneys or assets to be held by the Mortgagee, as additional security mortgaged and charged under and subject to the terms of this Mortgage and any such dividends, interest and other moneys or assets received by the Mortgagor after such time shall be held in trust by the Mortgagor for the Mortgagee and paid or transferred to the Mortgagee on demand;
- (d) take possession of, get in, assign, exchange, sell, transfer, grant options over or otherwise dispose of the Mortgaged Property or any part thereof at such place and in such manner and at such price or prices as the Mortgagee may deem fit, and thereupon the Mortgagee shall have the right to deliver, assign and transfer in accordance therewith the Mortgaged Property so sold, transferred, granted options over or otherwise disposed of including by way of changing the ownership of the Mortgaged Shares as shown on the Register of Members;
- (e) borrow or raise money either unsecured or on the security of the Mortgaged Property (either in priority to the Mortgage or otherwise);
- (f) settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Mortgagor or relating to the Mortgaged Property;
- (g) bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Mortgaged Property or any business of the Mortgagor;
- (h) redeem any security (whether or not having priority to the Mortgage) over the Mortgaged Property and to settle the accounts of any person with an interest in the Mortgaged Property;
- (i) exercise and do (or permit the Mortgagor or any nominee of the Mortgagor to exercise and do) all such rights and things as the Mortgagee would be capable of exercising or doing if it were the absolute beneficial owner of the Mortgaged Property;
- (j) do anything else it may think fit for the realisation of the Mortgaged Property or incidental to the exercise of any of the rights conferred on the Mortgagee under or by virtue of any document to which the Mortgagor is party; and

- (k) exercise all rights and remedies afforded to it under this Mortgage and applicable law.
- 7.2 The Mortgagee shall not be obliged to make any enquiry as to the nature or sufficiency of any payment received by it under this Mortgage or to make any claim or to take any action to collect any moneys assigned by this Mortgage or to enforce any rights or benefits assigned to the Mortgagee by this Mortgage or to which the Mortgagee may at any time be entitled hereunder.
- 7.3 Upon any sale of the Mortgaged Property or any part thereof by the Mortgagee, the purchaser shall not be bound to see or enquire whether the Mortgagee's power of sale has become exercisable in the manner provided in this Mortgage and the sale shall be deemed to be within the power of the Mortgagee, and the receipt of the Mortgagee for the purchase money shall effectively discharge the purchaser who shall not be concerned with the manner of application of the proceeds of sale or be in any way answerable therefor.
- 7.4 Any money received or realised under the powers conferred by this Mortgage shall be paid or applied in accordance with the terms of the Intercreditor Deed.
- 7.5 Until all Secured Obligations have been unconditionally and irrevocably paid and discharged in full, the Mortgagee may refrain from applying or enforcing any other moneys, security or rights held by it in respect of the Secured Obligations or may apply and enforce such moneys, security or rights in such manner and in such order as it shall decide in its unfettered discretion.
- 7.6 Neither the Mortgagee nor its agents, managers, officers, employees, delegates and advisers shall be liable for any claim, demand, liability, loss, damage, cost or expense incurred or arising in connection with the exercise or purported exercise of any rights, powers and discretions hereunder in the absence of dishonesty or wilful default.
- 7.7 The Mortgagee shall not by reason of the taking of possession of the whole or any part of the Mortgaged Property or any part thereof be liable to account as mortgagee-in-possession or for anything except actual receipts or be liable for any loss upon realisation or for any default or omission for which a mortgagee-in-possession might be liable.
- 7.8 The following shall apply with respect to statutory restrictions:
- (a) the restriction on the consolidation of mortgages and on power of sale imposed by sections 35 and 40 respectively of the CLP Ordinance shall not apply to the security constituted by this Mortgage;
 - (b) for the purposes of section 66(5) of the BVI Act there are no limitations on the remedies available to a mortgagee, chargee or receiver in respect of mortgages or charges of shares;
 - (c) for the purposes of section 66(7A) of the BVI Act, the remedies available in section 66(5) of the BVI Act are exercisable immediately following the occurrence of a Declared Default.
- 7.9 For the purpose of all rights and powers implied or granted by statute, the Secured Obligations are deemed to have fallen due on the date of this Mortgage. The power of sale and other powers conferred by sections 38 and 39 of the CLP Ordinance and all other enforcement powers conferred by this Mortgage shall be immediately exercisable at any time after the occurrence of a Declared Default.
- 7.10 If there is any ambiguity or conflict between the powers contained in the Insolvency Act and/or the CLP Ordinance and those contained in this Mortgage, those contained in this Mortgage shall prevail.

7.11 Section 46(1) of the CLP Ordinance shall not apply to this Mortgage.

7.12 Section 46(6) of the CLP Ordinance shall not apply to a receiver appointed under this Mortgage.

8. APPOINTMENT OF A RECEIVER

8.1 At any time after:

- (a) the occurrence of a Declared Default; or
- (b) a request has been made by the Mortgagor to the Mortgagee for the appointment of a receiver over its assets or a bankruptcy trustee in respect of the Mortgagor,

then notwithstanding the terms of any other agreement between the Mortgagor and any person, the Mortgagee may (unless precluded by law) appoint in writing any person or persons to be a receiver or receiver and manager of all or any part of the Mortgaged Property as the Mortgagee may choose in its entire discretion.

8.2 Where more than one receiver is appointed, the appointees shall have power to act jointly or separately unless the Mortgagee shall specify to the contrary.

8.3 The Mortgagee may from time to time determine the remuneration of a receiver.

8.4 The Mortgagee may remove a receiver from all or any of the Mortgaged Property of which he is the receiver and after the receiver has vacated office or ceased to act in respect of any of the Mortgaged Property, appoint a further receiver over all or any of the Mortgaged Property in respect of which he shall have ceased to act.

8.5 Such an appointment of a receiver shall not preclude:

- (a) the Mortgagee from making any subsequent appointment of a receiver over all or any Mortgaged Property over which a receiver has not previously been appointed or has ceased to act; or
- (b) the appointment of an additional receiver to act while the first receiver continues to act.

8.6 The receiver shall be the agent of the Mortgagor (which shall be solely liable for his acts, defaults and remuneration). The receiver shall not at any time become the agent of the Mortgagee.

9. POWERS OF A RECEIVER

9.1 In addition to those powers conferred by law, a receiver shall have and be entitled to exercise in relation to the Mortgagor all the powers set out below:

- (a) to exercise all rights of the Mortgagee under or pursuant to this Mortgage including all voting and other rights attaching to the Mortgaged Property;
- (b) to make any arrangement or compromise with others as he shall think fit;
- (c) to appoint managers, officers and agents for the above purposes at such remuneration as the receiver may determine;
- (d) to redeem any prior encumbrance and settle and pass the accounts of the encumbrancer and any accounts so settled and passed shall (subject to any manifest error) be

conclusive and binding on the Mortgagor and the money so paid shall be deemed an expense properly incurred by the receiver;

- (e) to pay the proper administrative charges in respect of time spent by his agents and employees in dealing with matters raised by the receiver or relating to the receivership of the Mortgagor; and
- (f) to do all such other acts and things as may be considered by the receiver to be incidental or conducive to any of the above matters or powers or otherwise incidental or conducive to the preservation, improvement or realisation of the Mortgaged Property or the value thereof.

10. FURTHER ASSURANCES

10.1 The Mortgagor shall at its own expense promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Mortgagee may specify and in such form as the Mortgagee may reasonably require in order to:

- (a) perfect or protect the security created or intended to be created under or evidenced by this Mortgage (which may include the execution of a legal mortgage, charge, assignment or other security over all or any of the assets which are, or are intended to be, the subject of this Mortgage) or for the exercise of any rights, powers and remedies of the Mortgagee provided by or pursuant to this Mortgage or by law;
- (b) confer on the Mortgagee security over any property and assets of the Mortgagor located in any jurisdiction which is (to the extent permitted by local law) equivalent or similar to the security intended to be conferred by or pursuant to this Mortgage; or
- (c) following the occurrence of a Declared Default, facilitate the realisation of the assets which are, or are intended to be, the subject of this Mortgage.

10.2 Without limiting the other provisions of this Mortgage, the Mortgagor shall at its own expense take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Mortgagee by or pursuant to this Mortgage.

11. INDEMNITIES

11.1 The Mortgagor will indemnify and save harmless the Mortgagee, any receiver and each agent or attorney appointed under or pursuant to this Mortgage from and against any and all expenses, claims, liabilities, losses, taxes, costs, duties, fees and charges suffered, incurred or made by the Mortgagee or such agent or attorney:

- (a) in the exercise or purported exercise of any rights, powers or discretions vested in them pursuant to this Mortgage;
- (b) in the preservation or enforcement of the Mortgagee's rights under this Mortgage or the priority thereof;
- (c) on the release of any part of the Mortgaged Property from the security created by this Mortgage; or
- (d) arising out of any breach by the Mortgagor of any term of this Mortgage,

and the Mortgagee or such receiver, agent or attorney may retain and pay all sums in respect of the same out of money received under the powers conferred by this Mortgage. All amounts suffered, incurred or paid by the Mortgagee or such receiver, agent or attorney or any of them shall be recoverable on a full indemnity basis provided that nothing in this Clause 11.1 shall require the Mortgagor to indemnify and save harmless the Mortgagee from and against any expenses, claims, liabilities, losses, taxes, costs, duties, fees and charges suffered, incurred or made by the Mortgagee as a result of the Mortgagee's dishonesty or wilful default.

- 11.2 If, under any applicable law or regulation, and whether pursuant to a judgment being made or registered against the Mortgagor or the bankruptcy or liquidation of the Mortgagor or for any other reason any payment under or in connection with this Mortgage is made or fails to be satisfied in a currency (the "**Payment Currency**") other than the currency in which such payment is due under or in connection with this Mortgage (the "**Contractual Currency**"), then to the extent that the amount of such payment actually received by the Mortgagee when converted into the Contractual Currency at the rate of exchange, falls short of the amount due under or in connection with this Mortgage, the Mortgagor, as a separate and independent obligation, shall indemnify and hold harmless the Mortgagee against the amount of such shortfall. For the purposes of this Clause 11.2, "**rate of exchange**" means the rate at which the Mortgagee is able on or about the date of such payment to purchase the Contractual Currency with the Payment Currency and shall take into account any premium and other costs of exchange with respect thereto.
- 11.3 All payments to be made to the Mortgagee under this Mortgage shall be made free and clear of and without deduction for or on account of tax unless the Mortgagor is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Mortgagor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

12. POWER OF ATTORNEY

- 12.1 The Mortgagor, by way of security and in order more fully to secure the performance of its obligations hereunder, hereby irrevocably appoints the Mortgagee and the persons deriving title under it (including, but without any limitation, any receiver) jointly and also severally (with full power of substitution and delegation) to be its attorney-in-fact:
- (a) to execute and complete in favour of the Mortgagee or its nominees or of any purchaser any documents which the Mortgagee may from time to time require for perfecting the Mortgagee's title to, for vesting any of the assets and property hereby mortgaged or charged in the Mortgagee or its nominees or in any purchaser or for any of the purposes contemplated in Clause 7.1 hereof;
 - (b) to give effectual discharges for payments, to take and institute on non-payment (if the Mortgagee in its sole discretion so decides) all steps and proceedings in the name of the Mortgagor or of the Mortgagee for the recovery of such moneys, property and assets hereby mortgaged or charged;
 - (c) to agree accounts and make allowances and give time or other indulgence to any surety or other person liable;
 - (d) so as to enable the Mortgagee to carry out in the name of the Mortgagor any obligation imposed on the Mortgagor by this Mortgage (including the execution and delivery of any deeds, mortgages, charges, assignments or other security and any transfers of the

Mortgaged Property and the exercise of all the Mortgagor's rights and discretions in relation to the Mortgaged Property);

- (e) so as to enable the Mortgagee and any receiver or other person to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Mortgage or by law (including the exercise of any right of a legal and beneficial owner of the Mortgaged Property); and
 - (f) generally for it and in its name and on its behalf and as its act and deed or otherwise execute, seal and deliver and otherwise perfect and do any such legal assignments and other assurances, charges, authorities and documents over the moneys, property and assets hereby charged, and all such deeds, instruments, acts and things which may be required for the full exercise of all or any of the powers conferred or which may be deemed proper on or in connection with any of the purposes aforesaid.
- 12.2 Notwithstanding any other provision of Clause 12.1, such power shall not be exercisable by or on behalf of the Mortgagee as the case may be until after a Declared Default has occurred.
- 12.3 The power hereby conferred shall be a general power of attorney and the Mortgagor hereby ratifies and confirms and agrees to ratify and confirm any instrument, act or thing which any attorney appointed pursuant hereto may execute or do. In relation to the power referred to herein, the exercise by the Mortgagee of such power shall be conclusive evidence of its right to exercise the same.

13. RELEASE

- 13.1 Subject to Clause 13.2, upon the expiry of the Security Period, the Mortgagee shall (at the request and cost of the Mortgagor) execute such documents and do all such reasonable acts as may be necessary to release the Mortgaged Property from the security constituted by this Mortgage. Such release shall not prejudice the rights of the Mortgagee under Clause 11.
- 13.2 If the Mortgagee considers in good faith that any amount received in payment or purported payment of the Secured Obligations is capable of being avoided or reduced by virtue of any insolvency or other similar laws:
- (a) the liability of the Mortgagor under this Mortgage and the security constituted by this Mortgage shall continue and such amount shall not be considered to have been irrevocably paid; and
 - (b) the Mortgagee may keep any security held by it in respect of the Mortgagor's liability under the Finance Documents in order to protect the Secured Parties against any possible claim under insolvency law. If a claim is made against a Secured Party prior to the discharge of any such security, the Mortgagee may keep the security until that claim has finally been dealt with.

14. NOTICES

- 14.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Mortgage shall be in accordance with the provisions of clause 33 of the Senior Facilities Agreement.

15. ASSIGNMENTS

- 15.1 This Mortgage shall be binding upon and shall enure to the benefit of the Mortgagor, the Mortgagee and each of their respective successors and (subject as hereinafter provided) assigns and references in this Mortgage to any of them shall be construed accordingly.
- 15.2 The Mortgagor may not assign or transfer all or any part of its rights and/or obligations under this Mortgage.
- 15.3 The Mortgagee may assign or transfer all or any part of its rights or obligations under this Mortgage. The Mortgagee shall notify the Mortgagor promptly following any such assignment or transfer in accordance with the terms of Clause 25.7 of the Senior Facilities Agreement.

16. SET-OFF

The Mortgagor authorises the Mortgagee (but the Mortgagee shall not be obliged to exercise such right), after the occurrence of a Declared Default to set-off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Mortgagee to the Mortgagor.

17. SUBSEQUENT SECURITY INTERESTS

If the Mortgagee at any time receives or is deemed to have received notice of any subsequent Security Interest affecting all or any part of the Mortgaged Property or any assignment or transfer of the Mortgaged Property which is prohibited by the terms of this Mortgage, all payments thereafter by or on behalf of the Mortgagor to the Mortgagee shall be treated as having been credited to a new account of the Mortgagor and not as having been applied in reduction of the Secured Obligations as at the time when the Mortgagee received such notice.

18. EXPENSES

- 18.1 The Mortgagor shall pay to the Mortgagee on demand all costs, fees and expenses (including, but not limited to, legal fees and expenses) and taxes thereon incurred by the Mortgagee or for which the Mortgagee may become liable in connection with:
- (a) the negotiation, preparation and execution of this Mortgage;
 - (b) the preserving or enforcing of, or attempting to preserve or enforce, any of its rights under this Mortgage or the priority hereof;
 - (c) any variation of, or amendment or supplement to, any of the terms of this Mortgage; or
 - (d) any consent or waiver required from the Mortgagee in relation to this Mortgage,
- and in the case referred to in Clauses 18.1(c) and 18.1(d) regardless of whether the same is actually implemented, completed or granted, as the case may be.
- 18.2 The Mortgagor shall pay promptly all registration, stamp, documentary and other like duties and taxes to which this Mortgage may be subject or give rise and shall indemnify the Mortgagee on demand against any and all liabilities with respect to or resulting from any delay or omission on the part of the Mortgagor to pay any such duties or taxes.

19. MISCELLANEOUS

- 19.1 The Mortgagee, at any time and from time to time, may delegate by power of attorney or in any other manner to any person or persons all or any of the powers, authorities and discretions which are for the time being exercisable by the Mortgagee under this Mortgage in relation to the Mortgaged Property or any part thereof. Any such delegation may be made upon such terms and be subject to such regulations as the Mortgagee may think fit. The Mortgagee shall not be in any way liable or responsible to the Mortgagor for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate provided the Mortgagee has acted reasonably in selecting such delegate.
- 19.2 If any of the clauses, conditions, covenants or restrictions (the "**Provision**") of this Mortgage or any deed or document emanating from it shall be found to be void but would be valid if some part thereof were deleted or modified, then the Provision shall apply with such deletion or modification as may be necessary to make it valid and effective.
- 19.3 This Mortgage (together with any documents referred to herein) constitutes the whole agreement between the Parties relating to its subject matter and no variations hereof shall be effective unless made in writing and signed by each of the Parties.
- 19.4 Each document, instrument, statement, report, notice or other communication delivered in connection with this Mortgage shall be in English or where not in English shall be accompanied by a certified English translation which translation shall with respect to all documents of a contractual nature and all certificates and notices to be delivered hereunder be the governing version and upon which in all cases the Mortgagee shall be entitled to rely.
- 19.5 This Mortgage may be executed in counterparts each of which when executed and delivered shall constitute an original but all such counterparts together shall constitute one and the same instrument.
- 19.6 The Parties intend that this Mortgage takes effect as a deed notwithstanding the fact that the Mortgagee may only execute it under hand.
- 19.7 Nothing in this Mortgage shall constitute or be deemed to constitute a partnership between any of the Secured Parties and the Mortgagee.

20. LAW AND JURISDICTION

- 20.1 This Mortgage shall be governed by and construed in accordance with the laws of the British Virgin Islands and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the British Virgin Islands.
- 20.2 The Mortgagor agrees that the process by which any proceedings in the British Virgin Islands are begun may be served on it by being delivered to the process agent referred to below.
- 20.3 Without prejudice to any other mode of service allowed under any relevant law, the Mortgagor:
- (a) irrevocably appoints Harvey Nash Limited as its agent for service of process in relation to any proceedings before the British Virgin Islands courts in connection with this Mortgage and confirms that such agent for service of process has duly accepted such appointment; and
 - (b) agrees that failure by the process agent to notify the Mortgagor of the process will not invalidate the proceedings concerned.

20.4 If the appointment of the person mentioned in Clause 20.3 ceases to be effective, the Mortgagor shall promptly appoint another person in the British Virgin Islands to accept service of process on its behalf. If the Mortgagor fails to do so, the Mortgagee shall be entitled to appoint such a person by notice to the Mortgagor. Nothing contained herein shall restrict the right to serve process in any other manner allowed by law.

IN WITNESS whereof this Deed has been executed by the Parties on the day and year first above written.

EXECUTED AS A DEED for and on behalf of HARVEY
NASH GROUP LIMITED:

Director

Name:

MARK GARRATT

Title:

Director

In the presence of:



Signature of Witness

Name:

Mabel O'Connor

Address:

Addleshaw Goddard LLP
Milton Gate, 60 Chiswell
Street, London, EC1Y 4AG

EXECUTED AS A DEED for and on behalf of)
NATIONAL WESTMINSTER BANK PLC:)



) Authorised Signatory

) Name: SERGIO MORENO

) Title: ASSOCIATE DIRECTOR

SCHEDULE 1

HARVEY NASH LIMITED

(the "Company")

SHARE TRANSFER CERTIFICATE

SHARE TRANSFER CERTIFICATE dated _____
_____ (the "Transferor") does hereby transfer to
of _____ (the "Transferee")
_____ shares of a par value of _____ each in the Company
(the "Shares").

SIGNED for and on behalf of the Transferor:

)
)
) _____
) Duly Authorised Signatory
)
) Name: _____
)
) Title: _____
)

)
)
) _____
) Duly Authorised Signatory
)
) Name: _____
)
) Title: _____
)

And I/we do hereby agree to take the Shares.

SIGNED for and on behalf of the Transferee:

)
)
) _____
) Duly Authorised Signatory
)
) Name: _____
)
) Title: _____
)

)
)
) _____
) Duly Authorised Signatory
)

) Name: _____
) _____
) Title: _____

SCHEDULE 2

HARVEY NASH LIMITED

IRREVOCABLE APPOINTMENT OF PROXY AND POWER OF ATTORNEY

We, Harvey Nash Group Limited, hereby irrevocably appoint National Westminster Bank Plc as our:

1. proxy to vote at meetings of the Shareholders of Harvey Nash Limited (the "**Company**") in respect of any existing or further shares in the Company which may have been or may from time to time be issued and/or registered in our name (the "**Shares**"); and
2. duly authorised representative and duly appointed attorney-in-fact to sign resolutions in writing of the Company in respect of any Shares,

in each case, following the occurrence of a Declared Default (as defined in the equitable share mortgage in respect of shares of the Company dated _____ 2019 between Harvey Nash Group Limited as mortgagor and National Westminster Bank Plc as mortgagee).

This proxy and this power of attorney are irrevocable by reason of being given for valuable consideration (the receipt and sufficiency of which is hereby acknowledged by Harvey Nash Group Limited).

This proxy and power of attorney shall be governed by and construed in accordance with the laws of the British Virgin Islands.

IN WITNESS whereof this proxy and power of attorney has been executed as a deed and delivered on _____ 2019.

EXECUTED AS A DEED for and on behalf of)
HARVEY NASH GROUP LIMITED:)

) _____
) Duly Authorised Signatory

) Name: _____

) Title: _____

) _____
) Duly Authorised Signatory

) Name: _____

) Title: _____

in the presence of:

Signature of Witness

Name: _____

Address: _____

SCHEDULE 3

PART I

LETTER OF RESIGNATION FROM DIRECTOR

[LEFT UNDATED]

Board of Directors
Harvey Nash Limited
Vistra Corporate Services Centre
Wickhams Cay II
Road Town
Tortola
British Virgin Islands

Dear Sirs

LETTER OF RESIGNATION RE: HARVEY NASH LIMITED (THE "COMPANY")

I hereby resign as a director of the Company and confirm that I have no claims against the Company for loss of office, arrears of pay or otherwise howsoever arising, but to the extent that I may have any such claim, I hereby irrevocably waive the same.

This resignation is to be effective as at the date hereof.

Yours faithfully

EXECUTED AS A DEED by [NAME]:

)
)
)
)
)
)

Signature

in the presence of:

Signature of Witness

Name: _____

Address: _____

PART II

LETTER OF AUTHORISATION FROM DIRECTOR

_____ 2019

National Westminster Bank Plc

Dear Sirs

SHARE MORTGAGE BETWEEN HARVEY NASH GROUP LIMITED AND NATIONAL WESTMINSTER BANK PLC DATED _____ 2019 (THE "MORTGAGE") IN RESPECT OF SHARES IN HARVEY NASH LIMITED (THE "COMPANY")

I refer to my executed but undated letter of resignation as a director of the Company provided in accordance with the Mortgage.

I hereby irrevocably authorise you to date, deliver, and give full effect to and otherwise complete (as you see fit) the resignation letter referred to above following the occurrence of a Declared Default (as defined in the Mortgage).

I hereby irrevocably authorise you to send such resignation letter to the Company's registered office thereby terminating my directorship of the Company without compensation for loss of office. I acknowledge and agree that your discretion to act in this regard is to be exercised solely in the interests of the Mortgagee relating to the Mortgage executed over shares in the Company in your favour.

I hereby irrevocably confirm that you may delegate the authority conferred by this letter to any of your successors and assigns as Mortgagee in relation to the mortgage and charge granted or to be granted over shares in the Company.

This letter shall be governed by and construed in accordance with the laws of the British Virgin Islands.

Yours faithfully

EXECUTED AS A DEED by [NAME]:

)
)
)
)
)
)

Signature

in the presence of:

Signature of Witness

Name: _____

Address: _____

SCHEDULE 4

DEED OF UNDERTAKING AND CONFIRMATION FROM THE COMPANY TO THE MORTGAGEE

HARVEY NASH LIMITED

_____ 2019

National Westminster Bank Plc (the "**Mortgagee**")

Dear Sirs

HARVEY NASH LIMITED (THE "COMPANY")

We refer to the equitable share mortgage in respect of Shares of the Company dated _____ 2019 between Harvey Nash Group Limited as mortgagor (the "**Mortgagor**") and the Mortgagee whereby, *inter alia*, the Mortgagor granted a mortgage and charge over the Mortgaged Property in favour of the Mortgagee (the "**Mortgage**").

Capitalised words and expressions used in this deed poll which are not expressly defined herein have the meanings ascribed to them in the Mortgage.

This deed poll is given pursuant to the Mortgage.

1. For valuable consideration receipt of which is hereby acknowledged, the Company hereby irrevocably and unconditionally undertakes to register (and hereby permits the Mortgagee or its nominee(s), if they have custody of the original Register of Members to register) in the Register of Members any and all share transfers to the Mortgagee or its nominee in respect of the Mortgaged Shares submitted to the Company by the Mortgagee.
2. The Company hereby confirms that it has instructed its registered agent to make an annotation of the existence of the Mortgage and the security interests created thereby in the original Register of Members (if it retains the original or update its copy if it retains a copy) pursuant to the Mortgage.
3. The Company hereby agrees to accept service of process on behalf of the Mortgagor pursuant to the Mortgage.

THIS DEED POLL has been executed and delivered as a Deed Poll on the day and year first above written.

EXECUTED AS A DEED for and on behalf of)
HARVEY NASH LIMITED by:)

) _____
) Duly Authorised Signatory

) Name: _____

) Title: _____

SCHEDULE 5

FORM OF LETTER OF INSTRUCTIONS FROM THE COMPANY TO ITS REGISTERED AGENT

HARVEY NASH LIMITED

_____ 2019

Vistra (BVI) Limited
Vistra Corporate Services Centre
Wickhams Cay II
Road Town
Tortola VG1110
British Virgin Islands

cc: National Westminster Bank Plc, [*Mortgagee Address*]

Dear Sirs

HARVEY NASH LIMITED (THE "COMPANY") – INSTRUCTIONS TO REGISTERED AGENT

1. We irrevocably instruct that as from the date hereof, the following shall be an instructing party for the Company:

National Westminster Bank Plc (the "**New Instructing Party**"), until such time as you are informed otherwise by the New Instructing Party. As from the period starting from the date on which the New Instructing Party (or any successor-in-title) informs you that a Declared Default (as defined in the Share Mortgage between Harvey Nash Group Limited and the New Instructing Party dated _____ 2019 in respect of shares in the Company ("**Mortgage**")) has occurred and ending on the date on which the New Instructing Party (or its successor-in-title) informs you that such Declared Default no longer subsists, you will be irrevocably instructed to regard the New Instructing Party (or its successor-in-title) as the sole instructing party for the Company and without limiting the foregoing if at any time the New Instructing Party instructs you to register the New Instructing Party or its nominee (or any successor-in-title) as the registered holder of any of the shares the subject of the Mortgage you are hereby authorised and instructed to do so and update the original Register of Members of the Company accordingly without notice to us or consent from us.

2. The Company confirms and agrees that the Mortgagee has custody of, keeps and maintains the original Register of Members and that the Mortgagee will do so until the Mortgagee notifies the Company and the Registered Agent in writing to the contrary.
3. We irrevocably instruct you to make an annotation of the existence of the Mortgage and the security interests created thereby in the Company's Register of Members in the form set out in Clause 4.6 of the Mortgage.

Please confirm by countersigning below and returning a copy of such countersigned letter to us with a copy to the New Instructing Party at the address stated above that you have received this letter and that you have actioned the above and updated your records accordingly.

Yours faithfully

[Name]
Director

Acknowledged and agreed.

[Name]
for and on behalf of Vistra (BVI)
Limited