



Registration of a Charge

Company Name: **BESPAK EUROPE LIMITED**

Company Number: **03515896**



XC88M4SR

Received for filing in Electronic Format on the: **21/07/2023**

Details of Charge

Date of creation: **20/07/2023**

Charge code: **0351 5896 0003**

Persons entitled: **CRÉDIT AGRICOLE LEASING & FACTORING S.A.**

Brief description: **NOT APPLICABLE**

Contains fixed charge(s).

Contains floating 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 TRUE COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **HENRIETTA ORAM**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3515896

Charge code: 0351 5896 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th July 2023 and created by **BESPAK EUROPE LIMITED** was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st July 2023 .

Given at Companies House, Cardiff on 25th July 2023

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

20 July 2023

BESPAK EUROPE LIMITED
(as Chargor)

- and -

CRÉDIT AGRICOLE LEASING & FACTORING S.A.
(as Bank)

NON-VESTING RECEIVABLES CHARGE

Execution version

**If the Chargor is incorporated in England and Wales,
this Charge must be registered with the Companies Registry within 21 days of execution.**



Ref: F3/AMT/HCO/140429.000260

Hogan Lovells International LLP
Atlantic House, Holborn Viaduct, London EC1A 2FG

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	1
2. COVENANT TO PAY	4
3. CREATION OF SECURITY	4
4. CRYSTALLISATION	5
5. NEGATIVE PLEDGE AND OTHER RESTRICTIONS	6
6. CONTINUING SECURITY	6
7. CONSOLIDATION OF MORTGAGES	6
8. OPENING OF NEW ACCOUNTS	6
9. POWERS OF SALE, LEASING AND ACCEPTING SURRENDERS	7
10. APPOINTMENT OF A RECEIVER OR ADMINISTRATOR	7
11. POWERS OF A RECEIVER	8
12. POWER OF ATTORNEY	9
13. OTHER POWERS EXERCISABLE BY THE BANK	9
14. APPLICATION OF MONEY RECEIVED BY THE BANK OR A RECEIVER	10
15. PROTECTION OF THIRD PARTIES	10
16. PROTECTION OF THE BANK, ANY NOMINEE AND RECEIVER	11
17. INTEREST ON OVERDUE AMOUNTS	11
18. SET-OFF	11
19. TRANSFER BY A BENEFICIARY	11
20. RELEASE OF SECURITY	11
21. THIRD PARTY RIGHTS	11
22. FORBEARANCE, SEVERABILITY, VARIATIONS AND CONSENTS	12
23. COUNTERPARTS	12
24. NOTICES	12
25. ENFORCEMENT COSTS	13
26. GOVERNING LAW	13
27. ENFORCEMENT	13

THIS CHARGE is made on 20 July 2023

BETWEEN:

- (1) **Bespak Europe Limited**, a company organised and existing under the laws of England and Wales, having its registered office at Bergen Way, North Lynn Industrial Estate, King's Lynn, Norfolk, England, PE30 2JJ, registered with the Registrar of Companies (England and Wales) under number 03515896 (the "**Chargor**"); and
- (2) **CRÉDIT AGRICOLE LEASING & FACTORING S.A.**, a company organised and existing under the laws of France, having its registered office at 12 place des États-Unis, 92120, Montrouge, France, registered with the Nanterre Trade and Companies' Registry under number 692.029.457 (the "**Bank**").

WITNESSES AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** Unless the context otherwise requires, words or expressions defined in the Factoring Agreement shall have the same meanings in this Charge and this construction shall survive the termination of the Factoring Agreement. In addition, in this Charge:

"**Beneficiary**" means the Bank, any Receiver or any Delegate.

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

"**Centralising Agent**" has the meaning given to that term in the Factoring Agreement.

"**Charged Assets**" means the Chargor's assets and rights of every description (or any of them) including Non-Vesting Receivables, for the time being comprised in or subject to the Security created, or purported to be created, by this Charge.

"**Declared Default**" means:

- (a) the Bank giving written notice to the Chargor that an Event of Default has occurred, and, at the time of such notice, is continuing; or
- (b) the Bank terminating the Factoring Agreement with respect to the Chargor in accordance with Article 21.2 (*Rights of Crédit Agricole Leasing & Factoring in an event of default*) of the Factoring Agreement.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Bank.

"**Event of Default**" means an "Event of Default" as set out in Article 20.1 (*Definition*) of the Factoring Agreement in respect of the Chargor or the Centralising Agent, save that any reference in such Article 20.1 to the "Agreement" shall for the purposes of this definition be taken to refer to any Finance Document.

"**Factoring Agreement**" means the factoring agreement governed by French law dated 22 March 2023, between, amongst others, the Parties, including all appendices, annexures and schedules thereto.

"**Finance Document**" means:

- (a) this Charge;
- (b) the Factoring Agreement; and

- (c) any other document or instrument which may be designated as such at any time by the Parties.

"Financed Receivable" means any Receivable sold (or purportedly sold) by the Chargor to the Bank (or in relation to which the Bank otherwise provides financing) under or pursuant to the Factoring Agreement.

"Fixed Security Receivable" means a Non-Vesting Receivable for the time being comprised within a mortgage or fixed charge created by clause 3.1 (*Fixed security*) or arising on crystallisation of a floating charge whether under clause 4 (*Crystallisation*) or otherwise.

"Floating Charge Receivable" means a Non-Vesting Receivable for the time being comprised within the floating charge created by clause 3.2 (*Creation of Floating Charge*).

"Goods" means any goods or services which are the subject of a Supply Contract.

"Liability" means any liability, damage, loss, costs, claim or expense of any kind or nature, whether direct, indirect, special, consequential or otherwise.

"Non-Vesting Receivable" means any Financed Receivable ownership of which fails to vest effectively, wholly and absolutely in the Bank for any reason.

"Party" means a party to this Charge.

"Receivable" means any present, future or contingent obligation of a buyer, customer or other person to make a payment under a Supply Contract together with its Related Rights or where the context allows a part of such obligation or its Related Rights, including:

- (a) the future right to recover sums due following the determination, assessment or agreement of the amount of the obligation;
- (b) VAT; and
- (c) all duties and charges.

"Receiver" means any receiver or receiver and manager appointed under clause 9 (*Appointment of a Receiver or an Administrator*) including (where the context requires or permits) any substituted receiver or receiver and manager.

"Related Rights" means, in relation to a Receivable:

- (a) all the Chargor's rights, title and interest in, to and under the relevant Supply Contract;
- (b) all remittances, instruments, security, bonds, guarantees and indemnities relating to that Receivable;
- (c) all documents, ledgers, databases and computer files (including operating systems) recording or evidencing performance of the relevant Supply Contract;
- (d) all Goods returned to or repossessed by the Chargor or rejected by the relevant buyer and all documents of title to such Goods;
- (e) any credit insurance in respect of that Receivable; and

- (f) interest.

"Secured Sums" means all present and future obligations and liabilities of (whether actual or contingent and whether incurred jointly or severally and whether as principal or surety or in any other capacity whatsoever and whether incurred originally by the Chargor or by some other person) due, owed or incurred by the Chargor to all or any of the Beneficiaries under each or any of the Finance Documents, in each case together with:

- (a) all costs, charges and expenses incurred by any Beneficiary in connection with the protection, preservation or enforcement of its rights under any Finance Document; and
- (b) all moneys, obligations and liabilities due, owing or incurred in respect of any variations or increases in the amount or composition of the facilities provided under any Finance Document or the obligations and liabilities imposed thereunder.

"Security" means a mortgage, charge, pledge, lien, security assignment or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Subsidiary" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

"Supply Contract" means a contract for the sale or supply of goods and/or services by the Chargor to a buyer or buyers, a customer or customers, or other person or persons.

1.2 **Interpretation:** Unless the context otherwise requires, the interpretative provisions set out in the paragraphs below shall apply in this Charge.

- (a) References to any Party or other person shall be construed so as to include that Party's or that other person'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 "in particular, but without prejudice to the generality of the foregoing".
- (c) A **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, joint venture, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing.
- (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 Charge to be signed and **"written"** has a corresponding meaning.
- (f) Subject to clause 22.4 (*Variations*), references to this Charge or to any other document (including any Finance Document) include references to this Charge or such other document as varied in any manner from time to time, even if changes are made to the composition of the parties to this Charge or such other document or to the nature or amount of any facilities made available under such other document.

- (g) A time of day is a reference to Paris time.
- (h) The singular shall include the plural and vice versa and any gender shall include the other genders.
- (i) clauses, paragraphs and Schedules shall be construed as references to clauses and paragraphs of, and Schedules to, this Charge.
- (j) Any reference to any statute or statutory instrument or any section of it shall be deemed to include a reference to any statutory modification or re-enactment of it for the time being in force in relation to the particular circumstances.
- (k) Headings in this Charge are inserted for convenience and shall not affect its interpretation.
- (l) An Event of Default for the purpose of this Charge is "**continuing**" if it has not been waived by the Bank.

2. COVENANT TO PAY

- 2.1 **Covenant to pay:** The Chargor (as primary obligor and not merely as surety) covenants with the Bank that it will, on the Bank's written demand, pay or discharge the Secured Sums when due at the times and in the manner provided in the relevant Finance Document(s).
- 2.2 **Proviso:** The covenants contained in this clause 2 and the security created by this Charge shall not extend to or include any liability or sum which would otherwise cause any such covenant or security to be unlawful or prohibited by any applicable law.
- 2.3 **Demands:**
 - (a) The making of one demand shall not preclude the Bank from making any further demands.
 - (b) Any third party dealing with any Beneficiary shall not be concerned to see or enquire as to the validity of any demand under this Charge.

3. CREATION OF SECURITY

- 3.1 **Creation of fixed charge:** The Chargor, with full title guarantee, as security for the payment or discharge of all Secured Sums, charges to the Bank by way of fixed charge each Non-Vesting Receivable.
- 3.2 **Creation of floating charge:** The Chargor, with full title guarantee, as security for the payment or discharge of all Secured Sums, charges to the Bank by way of floating charge each Non-Vesting Receivable, except to the extent that such Non-Vesting Receivable is for the time being effectively charged by any fixed charge contained in clause 3.1 (*Fixed security*), including any Non-Vesting Receivable comprised within a charge which is reconverted under clause 4.4 (*Reconversion*).
- 3.3 **Priority:**
 - (a) Any fixed Security created by the Chargor and subsisting in favour of the Bank shall (save as the Bank may otherwise declare at or after the time of its creation) have priority over the floating charge created by clause 3.2 (*Creation of floating charge*).

- (b) Without prejudice to clause 5 (*Negative pledge and other restrictions*), any Security over Non-Vesting Receivables created in the future by the Chargor (except in favour of the Bank) shall be expressed to be subject to this Charge and shall rank in order of priority behind the charges created by this Charge (except to the extent mandatorily preferred by law).

4. CRYSTALLISATION

4.1 **Crystallisation by notice:** The floating charge created by the Chargor in clause 3.2 (*Creation of floating charge*) may, subject to clause 4.5 (*Moratorium Assets*), be crystallised into a fixed charge by notice in writing given at any time by the Bank to the Chargor if:

- (a) a Declared Default has occurred;
- (b) an Event of Default has occurred and is continuing;
- (c) the Bank in good faith considers that any Non-Vesting Receivable expressed to be charged to the Bank by this Charge may be in danger of being seized or sold pursuant to any form of legal process; or
- (d) a circumstance envisaged by clause 4.2(a) (*Automatic Crystallisation*) occurs and the Bank in good faith considers that such crystallisation is desirable in order to protect the priority of its security.

Such crystallisation shall take effect over each Floating Charge Receivable specified in the notice. If no Floating Charge Receivables are specified, it shall take effect over all Floating Charge Receivables of the Chargor.

4.2 **Automatic crystallisation:** If, without the Bank's prior written consent:

- (a) the Chargor, in contravention of any Finance Document, resolves to take or takes any step to:
 - (i) charge or otherwise encumber any Floating Charge Receivable;
 - (ii) create a trust over any Floating Charge Receivable; or
 - (iii) dispose of any Floating Charge Receivable;
- (b) any person resolves to take or takes any step to seize or sell any Floating Charge Receivable pursuant to any form of legal process; or
- (c) an Event of Default has occurred,

then the floating charge created by clause 3.2 (*Creation of floating charge*) shall, subject to clause 4.5 (*Moratorium Assets*), be automatically and instantly crystallised (without the necessity of notice) into a fixed charge over such Floating Charge Receivable or in the case of paragraph (c) above into a fixed charge over all Floating Charge Receivables of the Chargor.

4.3 **Future Floating Charge Receivables:** Except as otherwise stated in any notice given under clause 4.1 (*Crystallisation by notice*) or unless the crystallisation relates to all its Floating Charge Receivables, prospective Floating Charge Receivables acquired by the Chargor after crystallisation has occurred under clause 4.1 (*Crystallisation by notice*) or clause 4.2 (*Automatic crystallisation*) shall become subject to the floating charge created

by clause 3.2 (*Creation of floating charge*), so that the crystallisation shall be effective only as to the specific Floating Charge Receivables affected by the crystallisation.

- 4.4 **Reconversion:** Any charge which has crystallised under clause 4.1 (*Crystallisation by notice*) or clause 4.2 (*Automatic crystallisation*) may, by notice in writing given at any time by the Bank to the Chargor, be reconverted into a floating charge in relation to the Non-Vesting Receivables specified in such notice.
- 4.5 **Moratorium Assets:** Save as permitted by Part A1 of the Insolvency Act 1986, where the Chargor obtains a moratorium under that Part A1, and whilst the moratorium continues, the floating charge created by the Chargor in clause 3.2 (*Creation of floating charge*):
- (a) may not be converted into a fixed charge by notice in writing under clause 4.1 (*Crystallisation by notice*); and
 - (b) shall not automatically convert into a fixed charge under clause 4.2 (*Automatic crystallisation*).
- 4.6 **Crystallisation exceptions:** Notwithstanding clauses 4.1 and 4.2, and save as permitted under Part A1 of the Insolvency Act 1986, nothing done for or by the Chargor with a view to obtaining a moratorium under that Part A1 shall give rise to any right to crystallise by notice under clause 4.1 or cause the automatic crystallisation under clause 4.2 of the floating charge created by the Chargor under clause 3.2 (*Creation of floating charge*).

5. **NEGATIVE PLEDGE AND OTHER RESTRICTIONS**

- 5.1 **Negative pledge:** Without the prior written consent of the Bank or as specifically permitted by any Finance Document, the Chargor shall not create, or agree or attempt to create, or permit to subsist, any Security or any trust over any of its rights and interests in and to any Charged Asset, save the Security as constituted by this Charge.
- 5.2 **No disposals:** Without the prior written consent of the Bank or as specifically permitted by any Finance Document, the Chargor shall not sell, assign, grant any interest in, transfer, part with or dispose of any Charged Asset, or purport or agree to do so.

6. **CONTINUING SECURITY**

This Charge shall be a continuing security for the Beneficiaries, notwithstanding any intermediate payment or settlement of accounts or other matter whatever, and shall be in addition to and shall not prejudice or be prejudiced by any right of set-off, combination, lien or other rights exercisable by the Bank as banker or otherwise against the Chargor or any security, guarantee, indemnity and/or negotiable instrument now or in the future held by any Beneficiary.

7. **CONSOLIDATION OF MORTGAGES**

Section 93 of the Law of Property Act 1925, dealing with the consolidation of mortgages, shall not apply to this Charge.

8. **OPENING OF NEW ACCOUNTS**

- 8.1 **Creation of new account:** On receiving notice that the Chargor has granted Security over or otherwise encumbered or disposed of any of the Charged Assets in contravention of any Finance Document, a Beneficiary may rule off all its accounts and open new accounts with the Chargor.

- 8.2 **Credits to new account:** If a Beneficiary does not open a new account immediately on receipt of such notice, it shall nevertheless be treated as if it had done so on that day. From that day, all payments made by the Chargor to that Beneficiary shall be treated as having been credited to a new account and shall not operate to reduce the amount owing from the Chargor to such Beneficiary at the time when it received such notice.

9. **POWERS OF SALE, LEASING AND ACCEPTING SURRENDERS**

Section 103 of the Law of Property Act 1925 shall not apply to this Charge, and the statutory power of sale shall arise on, and be exercisable at any time after, the execution of this Charge. However, the Bank shall not exercise such power of sale until this Charge has become enforceable in the manner specified in Clause 10.1.

10. **APPOINTMENT OF A RECEIVER OR ADMINISTRATOR**

10.1 **Appointment:** At any time after:

- (a) the occurrence of a Declared Default;
- (b) in relation to the Chargor, a step or proceeding is taken, or a proposal made, for the appointment of an administrator or for a voluntary arrangement under Part I of the Insolvency Act 1986; or
- (c) a request has been made by the Chargor to the Bank for the appointment of a Receiver or an administrator over the Charged Assets or in respect of the Chargor,

then this Charge shall become enforceable and, notwithstanding the terms of any other agreement between the Chargor and any Beneficiary, the Bank may (unless precluded by law) appoint in writing any person or persons to be a receiver or a receiver and manager (or receivers or receivers and managers) of all or any part of the Charged Assets of the Chargor or, an administrator or administrators of the Chargor, as the Bank may choose in its entire discretion.

Notwithstanding anything to the contrary in this Charge, neither the obtaining of a moratorium by the Chargor under Part A1 of the Insolvency Act 1986 nor the doing of anything for or by the Chargor with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as, a ground under this Charge for the appointment of a Receiver save where such an appointment would be permitted under that Part A1.

- 10.2 **Power to act separately:** Where more than one Receiver or administrator is appointed, the appointees shall have power to act separately unless the Bank shall specify to the contrary.
- 10.3 **Receiver's remuneration:** The Bank may from time to time determine the remuneration of a Receiver.
- 10.4 **Removal of Receiver:** The Bank may (subject to section 45 of the Insolvency Act 1986) remove a Receiver from all or any of the Charged Assets of which he is the Receiver.
- 10.5 **Further appointments of a Receiver:** Such an appointment of a Receiver shall not preclude:

- (a) the Bank from making any subsequent appointment of a Receiver over all or any Charged Assets 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.

10.6 **Receiver's agency:** The Receiver shall be the agent of the Chargor (which shall be solely liable for his acts, defaults and remuneration) unless and until the Chargor goes into liquidation, after which time he shall act as principal and shall not become the agent of the Bank or any other Beneficiary.

11. **POWERS OF A RECEIVER**

The Receiver may exercise all the powers, rights and discretions set out in Schedules 1 and 2 to the Insolvency Act 1986 and in particular, by way of addition to and without limiting such powers, the Receiver may, with or without the concurrence of others:

- (a) sell, grant options over and vary the terms of, terminate, all or any of the Charged Assets, without the need to observe any of the provisions of Sections 99 and 100 of the Law of Property Act 1925, in such manner and generally on such terms and conditions as he shall think fit in his absolute and unfettered discretion and any such sale or disposition may be for cash or other valuable consideration (in each case payable in a lump sum or by instalments) and carry any such transactions into effect in the name of and on behalf of the Chargor;
- (b) promote the formation of a Subsidiary of the Chargor with a view to such Subsidiary purchasing, leasing, licensing or otherwise acquiring interests in all or any of the Charged Assets;
- (c) arrange for the purchase, lease, licence or acquisition of all or any Charged Assets by any Subsidiary contemplated by paragraph (b) above on a basis whereby the consideration may be for cash, shares of profits or sums calculated by reference to profits or turnover or royalties or licence fees or otherwise, whether or not secured on the assets of such Subsidiary and whether or not such consideration is payable or receivable in a lump sum or by instalments over such period as the Receiver may think fit;
- (d) make any arrangement or compromise with any Beneficiary or others as he shall think fit;
- (e) appoint managers, officers and agents for the above purposes at such remuneration as the Receiver may determine;
- (f) 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 Chargor and the money so paid shall be deemed an expense properly incurred by the Receiver;
- (g) pay the proper administrative charges of the Beneficiaries in respect of time spent by their agents and employees in dealing with matters raised by the Receiver or relating to the receivership of the Chargor; and
- (h) 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 any Charged Assets.

12. **POWER OF ATTORNEY**

12.1 **Appointment of attorney:** The Chargor, by way of security and to more fully secure the performance of its obligations under this Charge, hereby irrevocably appoints the Bank and separately any nominee and/or any Receiver to be its attorney (with full power to appoint substitutes and to delegate) with power in its name and on its behalf, and as its act and deed or otherwise (whether or not a Receiver or administrator has been appointed) to:

- (a) do anything which the Chargor is obliged to do (but has not done within five Business Days of being notified by the Bank of such failure and being requested to comply) in accordance with the terms of this Charge, including to execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document; and
- (b) enable the Bank or any such nominee and/or Receiver to exercise (or to delegate) all or any of the rights conferred on it by this Charge or by statute in relation to this Charge or the Charged Assets charged, or purported to be charged, by it.

12.2 **Ratification:** The Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to his appointment under this clause.

12.3 **Sums recoverable:** All sums expended by the Bank, any nominee and/or any Receiver under this clause 12 (including legal fees and together with any applicable VAT) shall be recoverable from the Chargor under the terms of clause 25 (*Enforcement Cost*).

13. **OTHER POWERS EXERCISABLE BY THE BANK**

13.1 **Receiver's powers:** All powers of a Receiver conferred by this Charge may be exercised by the Bank after this Charge has become enforceable. In that event, paragraph (f) of clause 11 (*Powers of Receiver*) shall be read and construed as if the words "be charged on the Charged Assets" were substituted for the words "be deemed an expense properly incurred by the Receiver".

13.2 **Receipt of debts:** Following the occurrence of a Declared Default, the Bank, its nominee or any manager, officer or agent of the Bank is hereby irrevocably empowered to:

- (a) receive all trade debts and other debts and claims which may be assigned or charged to the Bank pursuant to this Charge;
- (b) on payment give an effectual discharge for them and on non-payment to take and institute (if the Bank in its sole discretion so decides) all steps and proceedings either in the name of the Chargor or in the name of the Bank for their recovery; and
- (c) agree accounts and make allowances and give time to any surety.

The Chargor ratifies and confirms whatever the Bank or any manager or officer of the Bank shall do or purport to do under this clause.

13.3 **Bank's powers:** The Bank shall have no liability or responsibility to the Chargor arising out of the exercise or non-exercise of the powers conferred on it by this clause 13, except for gross negligence or wilful default.

- 13.4 **No duty of enquiry:** The Bank need not enquire as to the sufficiency of any sums received by it in respect of any debt or claim or make any claim or take any other action to collect in or enforce them.
14. **APPLICATION OF MONEY RECEIVED BY THE BANK OR A RECEIVER**
- 14.1 **Order of priority:** All money received or realised under the powers conferred by this Charge or in connection with the realisation or enforcement of all or any part of the Security created by this Charge shall be held by the Bank and paid or applied at such time as the Bank (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:
- (a) in discharging any sum due to any Beneficiary pursuant to clause 25 (*Enforcement Costs*);
 - (b) in discharging any other sum to any Beneficiary under any Finance Document;
 - (c) if the Chargor is under no further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Bank is obliged to pay or distribute in priority to the Chargor; and
 - (d) the balance, if any, in payment or distribution to the Chargor.
- 14.2 **Suspense account:** Until all the Secured Sums have been unconditionally and irrevocably paid and discharged in full, the Bank may place and keep to the credit of a suspense account any money received from or realised in respect of the Chargor's liability under this Charge. The Bank shall have no intermediate obligation to apply such money in or towards the discharge of any of the Secured Sums. Amounts standing to the credit of any such suspense account shall bear interest at a rate considered by the Bank in good faith to be a fair market rate.
- 14.3 **Discretion to apply:** Until all Secured Sums have been unconditionally and irrevocably paid and discharged in full, the Bank may refrain from applying or enforcing any other moneys, security or rights held by it in respect of the Secured Sums 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.
15. **PROTECTION OF THIRD PARTIES**
- 15.1 **No duty to enquire:** No purchaser from, or other person dealing with, the Bank, its nominee or any Receiver or administrator appointed under this Charge shall be concerned to enquire whether any of the powers which the Bank has exercised or purported to exercise has arisen or become exercisable, or whether this Charge has become enforceable, or whether any nominee, Receiver or administrator has been validly appointed, or whether any event or cause has happened to authorise the Bank, any nominee or a Receiver or administrator to act or as to the propriety or validity of the exercise or purported exercise of any such power, and the title of such a purchaser and the position of such a person shall not be impeachable by reference to any of those matters.
- 15.2 **Receipt:** The receipt of the Bank shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any money paid to or by the direction of the Bank.

16. **PROTECTION OF THE BANK, ANY NOMINEE AND RECEIVER**

16.1 **Limitation:** Neither the Bank nor any nominee nor Receiver shall be liable in respect of any Liability which arises out of the exercise or the purported exercise of, or the failure to exercise, any of their respective powers under or by virtue of this Charge, except if and in so far as such Liability results from its own gross negligence or wilful default.

16.2 **Entry into possession:** Without prejudice to the generality of clause 16.1 (*Limitation*), neither the Bank, any nominee nor any Receiver shall be liable to account as mortgagee in possession or otherwise for any sum not actually received by it or him respectively. If and whenever the Bank, or any nominee enters into possession of any Charged Assets, it shall be entitled at any time at its discretion to go out of possession.

17. **INTEREST ON OVERDUE AMOUNTS**

Any amount not paid in accordance with this Charge when due shall carry interest at the rate and in accordance with the terms contained in the Factoring Agreement in relation to overdue sums or at such other rate as may be agreed between the Chargor and the Bank from time to time.

18. **SET-OFF**

After the occurrence of an Event of Default which is continuing, the Bank may (but is not obliged to) retain any money it is holding (in any capacity) standing to the credit of the Chargor in any currency upon any account or otherwise (whether or not in the Chargor's name) as cover for any Secured Sums and/or at any time or times without notice to the Chargor set off all or any of such money against all or such part of the Secured Sums due, owing or incurred by the Chargor as the Bank may select. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

19. **TRANSFER BY A BENEFICIARY**

Any Beneficiary may at any time assign and transfer all or any of its rights in relation to this Charge to any person or otherwise grant an interest in them to any person to the extent that it is permitted to transfer its rights under the terms of the Factoring Agreement.

20. **RELEASE OF SECURITY**

20.1 **Redemption:** Subject to clause 20.2 (*Avoidance of Payments*), if all Secured Sums have been irrevocably paid in full and none of the Beneficiaries is under any further actual or contingent liability to make advance or provide other financial accommodation to any person under any Finance Document, the Bank will (at the request and cost of the Chargor), execute and do all such reasonable acts as may be necessary to release the Charged Assets from the Security constituted by this Charge.

20.2 **Avoidance of Payments:** If the Bank considers in good faith that any amount received in payment or purported payment of the Secured Sums is capable of being avoided or reduced by virtue of any insolvency, bankruptcy, liquidation or other similar laws, the liability of the Chargor under this Charge and the Security constituted by this Charge shall continue and such amount shall not be considered to have been irrevocably paid.

21. **THIRD PARTY RIGHTS**

21.1 **Directly enforceable rights:** Pursuant to the Contracts (Rights of Third Parties) Act 1999:

- (a) the provisions of clause 25 (*Enforcement costs*), clause 19 (*Transfer by a Beneficiary*) and any other provision of this Charge which confers a benefit or entitlement on any Receiver or Delegate shall be directly enforceable by any Receiver or Delegate;
- (b) the provisions of clause 10 (*Appointment of a Receiver or an Administrator*) to clause 16 (*Protection of the Bank, any nominee and Receiver*) inclusive shall be directly enforceable by any nominee or Receiver; and
- (c) the provisions of clause 15 (*Protection of third parties*) shall be directly enforceable by any purchaser.

21.2 **Exclusion of Contracts (Rights of Third Parties) Act 1999:** Save as otherwise expressly provided in clause 21.1 (*Directly enforceable rights*), no person other than a Party shall have any right by virtue of either the Contracts (Rights of Third Parties) Act 1999 or any other provision of English law under which rights might accrue to persons other than a Party, to enforce any term (express or implied) of this Charge.

21.3 **Rights of the Parties to vary:** The Parties may by agreement vary any term of this Charge (including this clause 21) without the necessity of obtaining any consent from any other person including any Receiver or Delegate.

22. **FORBEARANCE, SEVERABILITY, VARIATIONS AND CONSENTS**

22.1 **Delay etc:** All rights, powers and privileges under this Charge shall continue in full force and effect, regardless of the Bank, any nominee or any Receiver exercising, delaying in exercising or omitting to exercise any of them.

22.2 **Severability:** No provision of this Charge shall be avoided or invalidated by reason only of one or more other provisions being invalid or unenforceable.

22.3 **Illegality, invalidity, unenforceability:** Any provision of this Charge which is or becomes illegal, invalid or unenforceable shall be ineffective only to the extent of such illegality, invalidity and unenforceability, without invalidating the remaining provisions of this Charge.

22.4 **Variations:** No variation of this Charge shall be valid and constitute part of this Charge, unless such variation shall have been made in writing and signed by the Bank and the Chargor.

22.5 **Consents:** Save as otherwise expressly specified in this Charge, any consent of the Bank may be given absolutely or on any terms and subject to any conditions as the Bank may determine in its entire discretion.

23. **COUNTERPARTS**

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

24. **NOTICES**

Any communication to be made under or in connection with this Charge shall be made in accordance with the notice provisions of the Factoring Agreement.

25. **ENFORCEMENT COSTS**

The Chargor shall, within three Business Days of demand, pay to each Beneficiary, the amount of all costs and expenses (including legal fees) incurred by that Beneficiary in connection with the enforcement of, or the preservation of any rights under this Charge and any Security constituted or purported to be constituted by this Charge, and any proceedings instituted by or against that Beneficiary as a consequence of taking or holding the Security constituted, or purported to be constituted, by this Charge, or enforcing these rights.

26. **GOVERNING LAW**

This Charge and all non-contractual obligations arising in any way whatsoever out of or in connection with this Charge shall be governed by, construed and take effect in accordance with English law.

27. **ENFORCEMENT**

27.1 **Jurisdiction:**

- (a) The courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise in any way whatsoever out of or in connection with this Charge (including a dispute regarding the existence, validity or termination of this Charge or any claim for set-off) or the legal relationships established by this Charge (a "**Dispute**"), only where such Dispute is the subject of proceedings commenced by the Chargor.
- (b) Where a Dispute is the subject of proceedings commenced by one or more Beneficiaries, the Beneficiaries are entitled to bring such proceedings in any court or courts of competent jurisdiction (including but not limited to the courts of England). If the Chargor raises a counter-claim in the context of proceedings commenced by one or more of the Beneficiaries, the Chargor shall bring such counter-claim before the court seized of the Beneficiary's claim and no other court.
- (c) The commencement of legal proceedings in one or more jurisdictions shall not, to the extent allowed by law, preclude any Beneficiary from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not.
- (d) To the extent allowed by law, the Chargor irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal proceeding, and any claim it may now or hereafter have that any such legal proceeding has been brought in an inappropriate or inconvenient forum.

THIS CHARGE has been executed by the Chargor as a deed and signed by the Bank and it has been delivered and shall take effect on the date stated at the beginning of this document.

Occupation: HEAD OF COMMERCIAL, AOS

)
)
)
)
)
)
)
)
)
)
)
)

) (Sign)..

) (Sign).....

THE BANK

SIGNED by

CRÉDIT AGRICOLE LEASING &

FACTORING S.A.

acting by:

Name:

DAUTHIER Cécile

Title:

Head of International
Steering & Animation

) (Sign).....