



**Registration of a Charge**

Company name: **CLOUDPAY UNITED KINGDOM LIMITED**

Company number: **03579805**

Received for Electronic Filing: **16/04/2018**



X73ZBABV

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**Details of Charge**

Date of creation: **10/04/2018**

Charge code: **0357 9805 0010**

Persons entitled: **HERCULES CAPITAL, INC.**

Brief description: **NOT APPLICABLE**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**MEDHA VIKRAM**



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

Company number: 3579805

Charge code: 0357 9805 0010

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th April 2018 and created by CLOUDPAY UNITED KINGDOM LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th April 2018 .

Given at Companies House, Cardiff on 18th April 2018

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



**Companies House**



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

Date: 10 April 2018

## The Chargors

**Hercules Capital, Inc.**

as Agent

## Debenture

this document is registrable at the UK Companies Registry

I certify that, save for material redacted pursuant to section 859G of the Companies Act 2006, the enclosed copy of the security instrument delivered as part of this application for registration under section 859A of the Companies Act 2006 is a true and correct copy of the original security instrument.

Signature: Liam D. Wetherill / [Signature]

Date: 12/4/18

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**THIS DEBENTURE** is made by way of deed the 10th day of April 2018

**BETWEEN:**

- (1) **THE COMPANIES** listed in Schedule 1 (*The Chargors*) (each a "**Chargor**" and together the "**Chargors**"); and
- (2) **HERCULES CAPITAL, INC.**, as agent for itself and the other Secured Parties (the "**Agent**")

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

**1.1 Definitions**

In this Debenture:

"**Act**" means the Law of Property Act 1925;

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

"**Business Day**" means any day other than Saturday, Sunday and any other day on which banking institutions in the State of California and the City of London, United Kingdom are closed for business;

"**Charged Intellectual Property**" means the intellectual property rights charged by this Debenture as more particularly referred to in Clause 3.10 (*Intellectual Property*);

"**Collateral**" means the assets of the Chargors for the time being mortgaged, or charged (whether by way of fixed or floating charge) to the Agent or subject to any other security in favour of the Agent by or pursuant to this Debenture (which for the avoidance of doubt excludes the Excluded Accounts);

"**Contracts**" means the contracts, deeds, undertakings, agreements, rights, warranties, securities, covenants, guarantees, bonds and indemnities charged to the Agent pursuant to Clause 3.6 (*Contracts*);

"**Default Rate**" means the rate of interest payable (or which would be payable) pursuant to Section 2.4 (*Default Interest*) of the Loan and Security Agreement upon the occurrence of an Event of Default;

"**Excluded Accounts**" means (i) any Deposit Account that is used solely as a payroll account for the employees of any Loan Party or any of its Subsidiaries or the funds which consist solely of funds held in trust for any director, officer or employee of such Loan Party or Subsidiary or any employee benefit plan maintained by such Loan Party or Subsidiary or funds representing deferred compensation for the directors and employees of such Loan Party or Subsidiary, collectively not to exceed the amount to be paid in the ordinary course of business in the then-next payroll cycle, and (ii) any Deposit Account that holds cash deposits on behalf of a Loan Party's customers (provided, however, that a Loan Party may hold no more than \$10,000 of cash deposits at any given time belonging to a Loan Party in such Deposit Account).

**"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

**"Event of Default"** means the events specified as such in Section 9 (*Events of Default*) of the Loan and Security Agreement and an Event of Default is **"continuing"** if it has not been specifically waived in writing by the Agent;

**"Excluded Contracts"** means any contracts entered into by the Chargor with customers relating to the provision of payroll services and salary payments, and any contracts with financial service providers in respect of the same;

**"Fixed Charge Assets"** means the assets of the Chargors charged by way of fixed charge or mortgage or subject to any other security in favour of the Agent by or pursuant to Clauses 3.2 (*Plant and Machinery*) to 3.14 (*U.S. credit balances*) (inclusive) of this Debenture;

**"Floating Charge Assets"** means the assets of the Chargors charged by way of floating charge to the Agent pursuant to Clause 3.15 (*Floating charge*);

**"Full Title Guarantee"** has the meaning ascribed by the Law of Property (Miscellaneous Provisions) Act 1994 but with all covenants implied therein being subject to and qualified by reference to any Permitted Liens;

**"Intellectual Property"** means any present or future patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered, together with the benefit of all applications and rights to use such assets;

**"Loan and Security Agreement"** means the loan and security agreement dated on or about the date of this Debenture between, among others, the Agent and the Chargors;

**"Loan Documents"** is defined in the Loan and Security Agreement;

**"Material Adverse Effect"** is defined in the Loan and Security Agreement;

**"Operating Accounts"** means the accounts specified as "Operating Accounts" listed in Schedule 4 (*Details of Accounts*) and any other accounts of the Chargor from time to time designated as such by the Agent

**"Permitted Liens"** is defined in the Loan and Security Agreement;

**"Receiver"** means a receiver or receiver and manager appointed by the Agent under this Debenture;

**"Secured Obligations"** means each Loan Party's obligations under the Loan and Security Agreement and any Loan Document, including any obligation to pay any amount now owing or later arising.

**"Securities"** means all present or future shares, stocks, warrants, debentures, bonds, loan capital and other securities and investments (certificated or uncertificated) or units in any account or balance owned by the Chargors or held by any nominee on its behalf or rights against any operator of or participant in any system or facility (wherever established) providing means for the deposit of and clearance of transactions in any such securities and all income, rights or property derived from or attaching to the same;



**"Secured Parties"** means the Agent and the Lenders;

**"Security Period"** means the period commencing on the date of this Debenture and ending on the date upon which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full;

**"State"** means a state of the U.S.;

**"U.S."** means the United States of America; and

**"VAT"** means Value Added Tax as provided for in the Value Added Tax Act 1994 or any other tax of a similar nature.

## 1.2 Terms defined in the Loan and Security Agreement

Words or expressions defined in the Loan and Security Agreement shall unless otherwise defined in this Debenture or unless the context otherwise requires, have the same meaning when used in this Debenture.

## 1.3 Interpretation

Unless a contrary indication appears, any reference in this Debenture to:

- (a) **"assets"** includes present and future properties, revenues and rights of every description;
- (b) the Agent or the Chargors or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (c) the **"Charged Intellectual Property"**, the **"Collateral"** or the **"Secured Obligations"** includes a reference to any part of them or it;
- (d) Clause and Schedule headings are for ease of reference only;
- (e) this **"Debenture"** or any other agreement or instrument is a reference to this Debenture or that other agreement or instrument as amended, novated, supplemented, extended or restated;
- (f) freehold, leasehold or other immovable property includes all buildings, fixtures, fittings, fixed plant or machinery from time to time on or forming part of that freehold, leasehold or other immovable property and the proceeds of sale of that property;
- (g) the masculine gender includes the feminine and neuter genders and the singular includes the plural and vice versa;
- (h) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (i) a provision of law is a reference to that provision as amended or re-enacted;
- (j) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or

supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

- (k) "**security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect; and
- (l) the terms of any contract or agreement giving rise to or concerning or securing the Secured Obligations and of any side agreement between the parties to this Debenture are incorporated in this Debenture to the extent required to ensure that any purported disposition of or purported agreement to dispose of any freehold, leasehold or other immovable property contained in this Debenture is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

#### 1.4 Effect as a Deed

It is intended that this Debenture take effect as a deed notwithstanding the fact that (if executed by the Agent) the Agent may only execute this document under hand.

### 2. **Covenant to Pay**

Each Chargor as primary obligor covenants with the Agent (for the benefit of itself and the other Secured Parties) that it will pay and discharge to the Agent the Secured Obligations as and when the same fall due and otherwise in all respects in the manner provided in the Loan Documents.

### 3. **Mortgages and Charges**

#### 3.1 General

All the security created under this Debenture is created with Full Title Guarantee in favour of the Agent as continuing security for the payment or discharge of the Secured Obligations.

#### 3.2 Plant and Machinery

Each Chargor charges by way of first fixed charge all plant and machinery (present and future) owned by that Chargor and its interest in any plant and machinery for the time being in its possession.

#### 3.3 Book and Other Debts

- (a) Each Chargor charges by way of first fixed charge:
  - (i) all present and future book debts due or owing or incurred to that Chargor; and
  - (ii) the benefit of all present and future guarantees and securities for such book debts and indemnities in respect of them and all liens, reservations of title, rights of tracing and other rights enabling that Chargor to enforce any such book debts.
- (b) Each Chargor charges by way of first fixed charge:
  - (i) all other present and future debts and monetary claims due or owing or incurred to that Chargor; and

- (ii) the benefit of all guarantees and securities for them and indemnities in respect of such debts and claims and all liens, reservations of title, rights of tracing and other rights enabling that Chargor to enforce any such debts or claims.

### 3.4 Credit Balances

- (a) With the exception of the Excluded Accounts, each Chargor charges by way of first fixed charge all present and future accounts with banks (including, but without limitation, any right, title and interest in the Operating Accounts) and the monies deposited in them and interest accruing and arrears and claims arising in respect of any such accounts.
- (b) In relation to the bank accounts of the Chargors which are charged under this Clause 3.4, before the security created by this Debenture has become enforceable the Chargors may withdraw monies standing to the credit of such accounts without the consent of the Agent or the other Secured Parties.

### 3.5 Insurances

Each Chargor charges by way of first fixed charge the benefit of all present and future insurance policies and contracts of insurance (other than third party liability insurance policies) relating to the Collateral and all monies payable under any such policies and contracts and all VAT payable on them.

### 3.6 Contracts

Each Chargor charges by way of first fixed charge the benefit of all contracts, deeds, undertakings, agreements, rights, warranties, securities, covenants, guarantees, bonds and indemnities of any nature now or at any time entered into by or enjoyed by or held by that Chargor (including but without limitation any deposit or other sum paid by way of security or paid under any contract for the sale of the Collateral or under any option contract relating to the Collateral (whether or not such deposit is forfeited), insofar as the same are capable of being charged, and all compensation paid in relation to the Collateral) and all VAT payable on it.

### 3.7 Securities

Each Chargor charges by way of first fixed charge the Securities, together with all present and future dividends, interest and other income and all other rights deriving from or incidental to the Securities.

### 3.8 Goodwill and Uncalled Capital

Each Chargor charges by way of first fixed charge the present and future goodwill of that Chargor and its uncalled capital for the time being.

### 3.9 Chattels

Each Chargor charges by way of first fixed charge all chattels (other than any charged by Clause 3.3 (*Plant and machinery*)), present or future, owned, hired, leased or rented by that Chargor to any other person together in each case with the benefit of the related hiring, leasing or rental contract and any guarantee, indemnity or other security for the performance of the obligations of any person under or in respect of such contract insofar as the same are capable of being charged.

### 3.10 Intellectual Property

Each Chargor charges by way of first fixed charge:

- (a) the patents and trade marks and other intellectual property rights (if any) specified in Schedule 3 (*Details of Registered Intellectual Property*);
- (b) all of the other Intellectual Property presently belonging to it; and
- (c) all the Intellectual Property that may be acquired by or belong to it in the future.

### 3.11 Hedging Arrangements

Each Chargor charges by way of first fixed charge the benefit of any interest rate swap, currency swap, cap or collar arrangement, future, option, forward rate agreement or other derivative instrument (however described) or any other agreement with the Agent or any third party for protecting or hedging any of the Secured Obligations at any time and the benefit of all rights, securities or guarantees in respect of them.

### 3.12 Pension Funds

Each Chargor charges by way of first fixed charge any beneficial interest, claim or entitlement of that Chargor (present or future) in any pension fund.

### 3.13 Licences

Each Chargor charges by way of first fixed charge the benefit of all Authorisations (present or future) held or utilised by it in connection with its business from time to time or any of its present or future assets, and the right to recover or receive compensation which might become payable to it in respect of any such Authorisation.

### 3.14 U.S. Credit Balances

Without prejudice to Clause 3.4 (*Credit balances*) and with the exception of the Excluded Accounts, each Chargor grants a security interest in all present and future accounts held in the U.S. (including, but not limited to, deposit accounts) with the Agent or other banks or financial institutions and such security interest shall be a perfected first priority security interest under the laws of the State ("Relevant State") where any and all such accounts are held and the security interest, together with its perfection and priority shall be determined in accordance with the laws of the Relevant State.

### 3.15 Floating Charge

- (a) With the exception of the Excluded Accounts, each Chargor charges by way of first floating charge all the present and future undertaking and assets of that Chargor not at any time otherwise effectively mortgaged, charged, assigned or otherwise secured by way of fixed mortgage, charge, assignment or other security interest under this Clause 3 (*Mortgages and charges*) (including, for the avoidance of doubt, the Operating Accounts).
- (b) Subject to paragraph (c) below, the Agent may by notice to any of the Chargors convert the floating charge created by this Clause 3.15 (*Floating charge*) (in this clause the "**floating charge**") into a fixed charge as regards all or any of the Chargors' assets specified in the notice at any time after the security created by this Debenture has

become enforceable, or if the Agent has reasonable grounds for considering that assets of any of the Chargors with a value of over £1,000 (in aggregate) are in danger of being seized or sold under any form of distress, attachment, execution or other legal process and the floating charge will in any event be converted to a fixed charge immediately if any subsequent floating charge is converted to a fixed charge or if an administrator is appointed in relation to any of the Chargors or the Agent receives notice of an intention to appoint an administrator in relation to any of the Chargors.

- (c) The floating charge may not be converted to a fixed charge solely by reason of the occurrence of any event specified in paragraph 43 of Schedule A1 to the Insolvency Act 1986 (void provisions in floating charge documents).
- (d) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to any floating charge created by this Debenture, and such floating charge shall become enforceable for the purposes of paragraph 16 of that Schedule when the security created by this Debenture becomes enforceable.

### 3.16 Continuing Security

The security from time to time created by or pursuant to this Debenture shall:

- (a) be in addition to and independent of every bill, note, guarantee, or other security which the Agent may at any time hold for the Secured Obligations and no prior or other security held by the Agent over the Collateral shall merge in the security created by or pursuant to this Debenture; and
- (b) remain in full force and effect as a continuing security until the end of the Security Period.

### 3.17 Contracts or Documents

If the rights of any of the Chargors under any contract or document cannot be secured without the consent of a party to that contract or document:

- (a) the Chargor must promptly notify the Agent;
- (b) the security created by this Debenture will include all amounts which the Chargor may receive or has received under that contract or document but, to the extent that contract or document cannot be secured, will exclude the contract or document itself; and
- (c) the Chargor must use reasonable endeavours to obtain the consent of the relevant person to that contract or document being secured under this Debenture.

## 4. Restrictions on Dealing

### 4.1 Negative Pledge

Each Chargor shall not at any time during the Security Period without the prior written consent of the Agent (and to the intent that any purported dealing in contravention of this Clause shall be void and of no effect) unless expressly permitted under the terms of the Loan Documents:

- (a) with the exception of the Excluded Accounts, create, or purport to create, extend or permit to subsist any security over any of its undertaking or assets, whether in any such case ranking in priority to or pari passu with or after the security created by the

Chargors under this Debenture or any other security of the Agent created pursuant to this Debenture other than the Permitted Liens (including, for the avoidance of doubt, the Operating Accounts); or

- (b) sell, transfer, lease, lend or otherwise dispose of whether by means of one or a number of transactions related or not and whether at one time or over a period of time, the whole or any part of the Collateral or enter into an agreement for sale, transfer, lease, loan or other disposal of the whole or any such part of the Collateral other than (i) as permitted by the Loan and Security Agreement or (ii) a sale, transfer, lease or other disposal on arm's length terms in the ordinary course of trading of a Chargor of any Floating Charge Assets; or
- (c) subject to Clause 8.16(c) (*Intellectual Property*) and with the exception of the Excluded Contracts, deal with any of the Fixed Charge Assets or vary any deed, document, agreement, instrument or arrangement under which any Fixed Charge Asset is held and/or vary or terminate any Contract in a manner that would have a Material Adverse Effect.

## **5. Perfection of the Agent's Security**

### **5.1 Further Assurance**

- (a) Each Chargor shall from time to time during the Security Period, whenever reasonably requested by the Agent and at the Chargors' cost, execute in favour of the Agent, or as it may direct, such further or other legal assignments, transfers, mortgages, legal or other charges or securities as in each such case the Agent shall reasonably stipulate over any of the Chargor's estate or interest in any property or assets of whatever nature or tenure and wherever situate and forming part of the Collateral for the purpose of perfecting the security intended to be created by this Debenture and for facilitating the realisation of the Collateral created or intended to be created under this Debenture.
- (b) Without prejudice to the generality of paragraph (a) above, such assignments, transfers, mortgages, legal or other charges, or securities shall be in such form as shall be prepared in reasonable terms on behalf of the Agent and may contain provisions such as those contained in this Debenture or provisions to similar effect and/or such other provisions as the Agent shall reasonably consider requisite for the perfection of the security created or intended to be created by or pursuant to this Debenture.
- (c) The obligations of each of the Chargors under this Clause shall be in addition to and not in substitution for the covenants for further assurance deemed to be included in this Debenture by virtue of the Law of Property (Miscellaneous Provisions) Act 1994.

### **5.2 Deposit of Documents**

Each Chargor shall promptly upon the execution of this Debenture (or upon becoming possessed of them at any time after the date of this Debenture) deposit with the Agent all deeds, certificates and other documents constituting or evidencing title to the Collateral, all certificates of registration or constituting or evidencing any of the Chargor's interest from time to time in any Securities and Intellectual Property and such other documents relating to the Collateral as the Agent may from time to time reasonably require.

### **5.3 Affixing of Notices**

Each Chargor shall during the Security Period, whenever reasonably requested by the Agent and at the Chargor's cost, affix to such items of the Collateral or register, endorse or cause to be registered or endorsed on such documents as are referred to in Clause 5.2 as the Agent shall in each case stipulate, labels, signs or memoranda in such form as the Agent shall reasonably require referring or drawing attention to the security created by or pursuant to this Debenture.

#### 5.4 Notices to Third Parties

Each Chargor shall deliver any notices to any third party having rights or liabilities in or to any of the Collateral within 5 Business Days of the date of this Debenture in the forms set out in Schedule 6 (*Form of Insurance Notice*) and Schedule 7 (*Form of Account Notice*). For the avoidance of doubt, notices to any third party having rights or liabilities in or to any of the Collateral on the date of this Debenture in the form set out in Schedule 5 (*Form of Counterparty Notice*) shall only be delivered upon the occurrence of an Event of Default which is continuing. Each Chargor shall use reasonable endeavours to procure the issue by such third party of acknowledgements required by the Agent.

### 6. Insurance

#### 6.1 Required Cover

Each Chargor shall at all times during the Security Period comply with Section 6 (*Insurance, Indemnification*) of the Loan and Security Agreement.

#### 6.2 Proceeds of Insurance

All claims and monies received or receivable under any insurance taken out by or on behalf of any of the Chargors shall be applied by that Chargor in repairing, replacing, restoring or rebuilding the assets damaged or destroyed, except upon the occurrence of an Event of Default which is continuing when such claims and monies so received or receivable shall be held by that Chargor in trust for the Agent and shall be applied by that Chargor in repaying or reducing the Secured Obligations.

#### 6.3 No Avoidance of Insurance

Each Chargor shall not do any act or commit any default by which any policy of insurance may become void or voidable.

### 7. Representations and Warranties

#### 7.1 Securities

It is the legal and beneficial owner of the Securities including those identified against its name in Schedule 3 (*Details of Securities*) and all of those Securities are fully paid.

#### 7.2 Bank Accounts

It is the legal and beneficial owner of the accounts that constitute Collateral. It has full power to establish and maintain the accounts which constitute Collateral and to enter into and deliver and to create the security constituted by this Deed.

#### 7.3 PSC Register

- (a) It has not issued and does not intend to issue any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 in respect of any shares which constitute Collateral.
- (b) It has not received any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 in respect of any shares which constitute Collateral.

## **8. Undertakings by the Chargors**

Each Chargor shall at all times during the Security Period comply with the undertakings contained in this Clause.

### **8.1 Information**

Each Chargor shall provide the Agent, its employees, professional advisers and agents with all such information respecting that Chargor's business and affairs as the Agent may reasonably from time to time require subject always to the Agent adhering to its duty of confidentiality (including, without limitation, pursuant to Clause 11.13 (*Confidentiality*) of the Loan and Security Agreement) in respect of such information.

### **8.2 Pay Outgoings**

Each Chargor shall punctually pay or cause to be paid all rents, rates, taxes, duties, assessments and other outgoings payable in respect of the Collateral.

### **8.3 Indemnity Against Outgoings**

Each Chargor shall indemnify the Agent (and as a separate covenant any Receiver or administrator appointed by it) against all existing and future rents, taxes, duties, fees, renewal fees, charges, assessments, impositions and outgoings whatsoever (whether imposed by deed or statute or otherwise and whether in the nature of capital or revenue and even though of a wholly novel character) which now or at any time during the Security Period are payable in respect of the Collateral or by the owner or occupier of the Collateral. If any such sums as are referred to in this Clause shall be paid by the Agent (or any such Receiver or administrator) the same shall be repaid by the Chargors on demand with interest from the time or respective times of the same having been paid at the Default Rate.

### **8.4 VAT**

Each Chargor shall not without the prior written consent of the Agent exercise any option to waive exemption from VAT in relation to the Collateral and shall give to the Agent promptly following demand (and in any event within three Business Days) all such details of its registration for VAT purposes as the Agent shall require.

### **8.5 Supply Details of Notices Received**

Each Chargor shall give full particulars to the Agent of any notice or order or proposal for a notice or order made, given or issued to it under or by virtue of any statute including (without limitation) planning laws, within fourteen days of receipt of such notice, order or proposal by that Chargor and, if so required by the Agent, shall produce such notice, order or proposal to the Agent or its agents and also as soon as practicable take all reasonable and necessary steps to comply with any such notice, order or proposal or (if required to do so by the Agent) to join with the Agent at the cost of the Chargors in making such representation or appeals as the Agent



may deem fit in respect of any such notice, order or proposal and (without limitation) at all times during the Security Period to give to the Agent or its agents such information as they shall reasonably require as to all matters relating to the Collateral.

#### 8.6 Notify Material Matters

Each Chargor shall notify the Agent of any matters materially affecting the value, enforceability or collectability of the Collateral and of all material disputes, counterclaims, returns and rejections by or of customers of the Chargors.

#### 8.7 Intellectual Property

- (a) Subject to Clause 8.7 (c) below, the Chargors shall maintain, protect and preserve the Charged Intellectual Property and all necessary certificates, licences, permits and authorisations from time to time required in relation to the Charged Intellectual Property and otherwise comply with the provisions of Clause 7.20 (*Intellectual Property*) of the Loan and Security Agreement.
- (b) Any Chargor shall if so requested by the Agent at any time that an Event of Default is continuing, make entries in any public register of any Intellectual Property rights (of any nature) comprised in the Collateral which either record the existence of this Debenture or the restrictions on disposal imposed by this Debenture.
- (c) Nothing in this Debenture or the Loan and Security Agreement shall prevent any of the Chargors from improving and developing the Intellectual Property without having to seek the consent of the Agent.

#### 8.8 Securities

- (a) Each Chargor shall:
  - (i) pay all calls and other payments due or payable in respect of the Securities and comply with all other conditions and obligations assumed by it in relation to the Securities;
  - (ii) not take or allow the taking of any action on its behalf which may result in the rights attaching to any of the Securities being altered; and
  - (iii) copy to the Agent all notices, reports, accounts, circulars and other documents relating to the Securities promptly after they are received.
- (b) Until the security created by this Debenture becomes enforceable, each Chargor has the right to exercise (or, as the case may be, instruct the Agent or its nominee to exercise) all voting and other rights relating to its Securities provided that such exercise does not adversely affect the value of its Securities.
- (c) After the security created by this Debenture has become enforceable:
  - (i) the Agent may exercise (in the name of the Chargors or otherwise) all voting and other rights in relation to the Securities for the purpose of preserving their value or realising them; and
  - (ii) the Agent will be entitled to receive and retain all dividends, interest and other distributions paid in respect of the Securities.

- (d) Each Chargor shall promptly upon the execution of this Debenture, or if later, on the date of acquisition of any Securities, deposit with the Agent or as the Agent may direct, all certificates or other documents of title or evidence of ownership in relation to any of the Securities and such duly executed instruments of transfer (with the name of the transferee, date and consideration left blank) as the Agent may require to perfect the title of the Agent or its nominee to such Securities and/or to enable the Agent to vest such Securities in any purchaser upon exercise of the Agent's power of sale.
- (e) Each Chargor agrees that neither the Agent nor the Agent's nominee will have any liability for (i) failing to present any coupon or other document relating to any of the Securities for payment or redemption; (ii) failing to accept any offer relating to the Securities; (iii) failing to attend or vote at any meetings relating to the Securities; (iv) failing to notify the Chargors of any matters mentioned in this Clause 8.8(*Securities*) or of any communication received by the Agent in relation to the Securities; (v) any loss arising out of or in connection with the exercise or non-exercise of any rights or powers attaching or accruing to the Securities or which may be exercised by the Agent or any nominee for the Agent under this Debenture.

#### 8.9 Not to Jeopardise the Collateral

Each Chargor shall not do or cause or permit to be done anything which may materially depreciate, jeopardise or otherwise prejudice the value to the Agent of the Collateral.

#### 8.10 COMI

Each Chargor shall maintain its centre of main interest (COMI) for the purposes of the EU Regulation on Insolvency Proceedings 2000, in the United Kingdom.

#### 8.11 PSC Register

- (a) In respect of any shares which constitute Collateral, the relevant Chargor shall promptly:
  - (i) notify the Agent of its intention to issue, or its receipt of, any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 and provide to the Agent a copy of any such warning notice or restrictions notice;
  - (ii) respond to that notice within the prescribed timeframe; and
  - (iii) provide to the Agent a copy of the response sent/received in respect of such notice.
- (b) For the purposes of withdrawing any restrictions notice or for any application to the court under Schedule 1B of the Companies Act 2006, the relevant Chargor shall (and shall ensure that the relevant members of the Group will) provide such assistance as the Agent may reasonably request in respect of any shares which constitute Collateral and provide the Agent with all information, documents and evidence that it may reasonably request in connection with the same.

### 9. Extension and Variation of the Act

#### 9.1 When Security Becomes Enforceable

The security created by this Debenture shall, for all purposes, become immediately enforceable following an Event of Default that is continuing.

## 9.2 Power of Sale

Section 103 of the Act shall not restrict the exercise by the Agent of the statutory power of sale conferred on it by section 101 of the Act, which power shall arise and may be exercised by the Agent immediately upon the security created by this Debenture becoming enforceable and at any time thereafter, and the provisions of the Act relating to and regulating the exercise of the statutory power of sale shall, so far as they relate to the security created by or pursuant to this Debenture, be varied and extended accordingly.

## 9.3 Statutory Powers of Leasing

- (a) The statutory powers of leasing, letting, entering into agreements for leases or lettings and accepting and agreeing to accept surrenders of leases conferred by sections 99 and 100 of the Act shall not be exercisable by any of the Chargors in relation to the Collateral without the prior written consent of the Agent, but the foregoing shall not be construed as a limitation of the powers of any Receiver.
- (b) Such statutory powers shall be exercisable by the Agent upon the security created by this Debenture becoming enforceable and at any time thereafter, and whether or not the Agent shall then be in possession of the premises proposed to be leased, so as to authorise the Agent to make a lease or agreement for lease at a premium and for any length of term and generally without any restriction on the kinds of leases and agreements for lease that the Agent may make and generally without the necessity for the Agent to comply with any restrictions imposed by or the other provisions of sections 99 and 100 of the Act.
- (c) The Agent may delegate such powers to any person and no such delegation shall preclude the subsequent exercise of such powers by the Agent itself or preclude the Agent from making a subsequent delegation of such powers to some other person, and any such delegation may be revoked by the Agent.

## 9.4 Other Powers of Agent

In addition to any other power conferred on the Agent by this Debenture, at any time after the security created by this Debenture has become enforceable, any right, power or discretion conferred or which may be conferred on a Receiver by or pursuant to this Deed may be exercised by the Agent in relation to any of the Collateral without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## 9.5 Consolidation of Mortgages

The restriction on the right of consolidating mortgage securities contained in section 93 of the Act shall not apply to this Debenture.

## **10. Appointment of Receiver or Administrator**

### **10.1 Timing of Appointment**

At any time after having been requested so to do by the Chargors or upon the security created by this Debenture becoming enforceable or at any time thereafter the Agent may exercise all the powers conferred by the Insolvency Act 1986 on the holder of a qualifying floating charge (as defined in that Act) and the Agent may appoint one or more persons to be a Receiver or Receivers of the whole or any part of the Collateral or an administrator or administrators of the Chargors, in each case in accordance with and to the extent permitted by applicable laws. The Agent may:

- (a) remove any Receiver previously appointed; and
- (b) appoint another person or other persons as Receiver or Receivers, either in the place of a Receiver so removed or who has otherwise ceased to act or to act jointly with a Receiver or Receivers previously appointed.

### **10.2 Joint Receivers**

If at any time and by virtue of any such appointment(s) any two or more persons shall hold office as Receivers of the same assets or income, each one of such Receivers shall be entitled (unless the contrary shall be stated in any deed or other instrument appointing them) to exercise all powers and discretions conferred by this Debenture or by law on Receivers individually and to the exclusion of the other or others of them.

### **10.3 Form of Appointment and Removal**

Every such appointment or removal, and every delegation, appointment or removal by the Agent in the exercise of any right to delegate its power or to remove delegates contained in this Debenture, may be made either by deed or by instrument in writing under the hand of any officer of the Agent or any person authorised in writing by any such officer or, in the case of an administrator or administrators by notice of appointment in the prescribed form, or by any other effective means.

### **10.4 Powers of Receiver – Statutory**

Every Receiver for the time being holding office by virtue of an appointment made by the Agent under this Debenture shall (subject to any limitations or restrictions expressed in the deed or other instrument appointing him but notwithstanding any winding-up or dissolution of any of the Chargor) have, in relation to the Collateral, or as the case may be, that part of the Collateral in respect of which he was appointed:

- (a) all the powers (as varied and extended by this Debenture) conferred by the Act on mortgagors and on mortgagees in possession and receivers appointed under the Act; and
- (b) power in the name or on behalf and at the cost of the relevant Chargor to exercise all powers and rights of an absolute owner and do or omit to do anything which the Chargor itself could do.

## 10.5 Powers of Receiver – Specific

In addition and without prejudice to the generality of the foregoing or any other provision of this Debenture, every Receiver shall (notwithstanding any winding-up or dissolution of any of the Chargors) have the following powers:

(a) Take possession

power to take possession of, collect and get in all or any part of the Collateral and for that purpose to make, or to require the directors of any of the Chargor to make, calls upon the holders of that Chargor's share capital in respect of any such capital of that Chargor which remains uncalled and to enforce payment of calls so made and any previous unpaid calls by taking proceedings in the name of that Chargor or by his own name;

(b) Carry on business

power to carry on, manage, develop, amalgamate, reconstruct or diversify the whole or any part of the Chargors' business, including the power where the any Chargor has one or more subsidiaries of supervising, controlling and financing such subsidiary or subsidiaries (inclusive of any bodies corporate as are referred to in paragraph (d) below) and its or their business or businesses and the conduct of such business or businesses;

(c) Sell assets

power to sell or assign the Collateral in such manner and generally upon such terms and conditions as he thinks fit and to convey or transfer the same in the name of any of the Chargors;

(d) Form subsidiaries

power to promote, or subscribe for or otherwise acquire the share capital of any body corporate with a view to such body corporate becoming a subsidiary of that Chargor and purchasing, leasing or otherwise acquiring an interest in the Collateral or carrying on any business in succession to that Chargor or any subsidiary of that Chargor;

(e) Severance

power to sever and sell separately from the Collateral all or any fixed plant and machinery and other fixtures and fittings comprised in the Collateral;

(f) Improve, develop or repair

power to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification), of any project in which the Chargor was concerned or interested prior to his appointment being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land;

- (g) No statutory restriction on sale etc.  
  
power to sell, lease or otherwise dispose of or concur in selling, leasing, accepting surrenders or otherwise disposing of the Collateral without the restriction imposed by section 103 of the Act or the need to observe any of the restrictions or other provisions of sections 99 or 100 of the Act and upon such terms as he shall think fit;
- (h) Method of sale or disposal  
  
power to carry any sale, lease or other disposal of any land or buildings and other property and assets into effect by conveying, transferring, assigning or leasing in the name of the Chargor and for that purpose to enter into covenants and other contractual obligations in the name of and so as to bind the Chargor;
- (i) Consents and licences  
  
power to apply for and obtain any appropriate Authorisation in relation to the Collateral, its use or development;
- (j) Additional land and easements  
  
power to acquire additional land or any interest in land and/or easements for the benefit of any of the Collateral and power to grant easements or rights over the Collateral;
- (k) Chargor's name  
  
power to use the Chargor's name for registration and to effect any necessary election for tax or other purposes;
- (l) Compromise  
  
power to make any arrangement or compromise or settlement of claims or enter into any contracts or arrangements as he shall think fit;
- (m) Insurances  
  
power to effect and renew insurances;
- (n) Proceedings  
  
power to take or defend proceedings in the name of the Chargor including proceedings for the compulsory winding-up of the Chargor and proceedings for directions under section 35(1) of the Insolvency Act 1986 and power to settle and compromise any proceedings;
- (o) Employees  
  
power to employ, engage and appoint such managers, agents, servants and other employees and professional advisers on such terms as he shall think fit including without limitation power to engage his own firm in the conduct of the receivership;

(p) Borrow money

power to raise or borrow money from the Agent or any other person to rank for payment in priority to the security created by or pursuant to this Debenture and with or without a mortgage or mortgage debenture on the Collateral;

(q) Protection of assets

power to make and effect all repairs and insurances and do all other acts which the Chargor might do in the ordinary conduct of its business as well for the protection as for the improvement of the Collateral and to commence and/or complete any building operations on the Collateral and to apply for and maintain any planning permissions, building regulation approvals and any other permissions, consents or licences, in each case as he may in his absolute discretion think fit;

(r) Leases

power to let the Collateral for such term and at such rent (with or without a premium) as he may think proper and to accept a surrender of any lease or tenancy of the Collateral on such terms as he may think fit (including the payment of money to a lessee or tenant on a surrender);

(s) Receipts

power to give valid receipts for all monies and execute all assurances and things which may be proper or desirable for realising the Collateral; and

(t) General powers

power to do all such other things as may seem to the Receiver to be incidental or conducive to any other power vested in him or to be conducive to the realisation of the security created by or pursuant to this Debenture.

## 10.6 Receiver as Agent

Every Receiver shall be deemed at all times and for all purposes to be the agent of the Chargor which shall be solely responsible for his acts and defaults and liable on any contracts or engagements made or entered into by him and for the payment of his remuneration. The Agent shall not be responsible for his misconduct, negligence or default unless the Agent has been grossly negligent or has engaged in wilful misconduct in appointing the Receiver.

## 10.7 Receiver's Remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Agent (or, failing such agreement, to be fixed by the Agent) appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted in accordance with his current practice or the current practice of his firm and without being limited to the maximum rate specified in section 109(6) of the Act. The amount of such remuneration may be debited by the Agent to the Chargor, but shall in any event form part of the Secured Obligations.

## 10.8 Monies Actually Received

Only monies actually paid by the Receiver or administrator to the Agent in satisfaction or discharge of the Secured Obligations and unconditionally and irrevocably retained by the Agent shall be capable of being applied by the Agent in satisfaction of the Secured Obligations.

## 10.9 Receiver's Indemnity

The Chargor agrees to indemnify and hold harmless the Receiver from and against all actions, claims, expenses, demands and liabilities (save where the same is due to gross negligence or wilful misconduct of the Receiver) whether arising out of contract or tort or in any other way incurred or which may at any time be incurred by him or by any manager, agent, servant or other employee for whose debt, default or miscarriage he may be answerable for anything done or omitted to be done in the exercise or purported exercise of his powers under the provisions of, or pursuant to, this Debenture.

# 11. Other Matters Relating to Enforcement

## 11.1 Consideration on Disposal

- (a) In making any sale or other disposal of any of the Collateral in the exercise of their respective powers the Receiver or the Agent may accept, by way of consideration for such sale or other disposal, cash, shares, loan capital or other obligations, including without limitation consideration fluctuating according to or dependent upon profit or turnover and consideration the amount of which is to be determined by a third party.
- (b) Any such consideration may be receivable in a lump sum or by instalments and upon receipt by the Receiver shall automatically be and become charged with the payment of the Secured Obligations.
- (c) Any contract for any such sale or other disposal by the Receiver or the Agent may contain conditions excluding or restricting the personal liability of the Receiver or the Agent.
- (d) Plant, machinery and other fixtures may be severed and sold in the exercise of their respective powers by the Receiver or the Agent separately from the premises to which they are attached without any consent being obtained from the Chargor.

## 11.2 Application of Proceeds

All monies received by the Agent or any Receiver or administrator appointed under this Debenture shall (subject to the rights and claims of any person having a security ranking in priority to the security created by or pursuant to this Debenture, or as otherwise required by law) be applied in the following order:

- 11.3 in the payment of or provision for all costs, charges and expenses incurred and payments made by the Agent and in the payment of all costs, charges and expenses of and incidental to the Receiver's or (as the case may be) administrator's appointment and the payment of his remuneration;
  - (a) in the payment and discharge of any liabilities incurred by the Receiver or administrator on the Chargor's behalf in the exercise of any of the powers of the Receiver or administrator;



- (b) in providing for the matters (other than the remuneration of the Receiver or administrator) specified in the first three paragraphs of section 109(8) of the Act;
- (c) in or towards payment of any debts or claims which are by statute payable in preference to the Secured Obligations but only to the extent to which such debts or claims have such preference;
- (d) in or towards the satisfaction of the Secured Obligations,

and any surplus shall be paid to the Chargor or other person entitled to it.

#### 11.4 Section 109 of the Act

The provisions of Clause 11.2 (*Application of proceeds*) and of Clause 10.7 (*Receiver's remuneration*) shall take effect as and by way of variation and extension to the provisions of section 109 of the Act, which provisions as so varied and extended shall be deemed incorporated in this Debenture.

#### 11.5 Right of Appropriation

To the extent that the Collateral constitutes "financial collateral" and this Debenture and the obligations of the Chargor under it constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No.2) Regulations 2003 (SI 2003 No. 3226)), the Agent and each Receiver shall have the right at any time after this Debenture has become enforceable to appropriate all or any part of such financial collateral in or towards satisfaction of the Secured Obligations. For the purposes of this Clause the value of the financial collateral appropriated shall be such amount as the Agent or the Receiver determines (in a commercially reasonable manner) having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.

### 12. No Liability as Mortgagee in Possession

The Agent shall not, nor shall any Receiver, by reason of it or such Receiver entering into possession of the Collateral be liable to account as mortgagee in possession or be liable for any loss on realisation or for any default or omission which a mortgagee in possession might be liable except for its gross negligence or wilful misconduct.

### 13. Expenses

#### 13.1 Expenses of Preservation and Enforcement

All costs, charges and expenses incurred and all payments made by the Agent or any Receiver or administrator appointed under this Debenture in the preservation of any rights under this Debenture or in the lawful exercise of the rights or powers conferred by this Debenture or by law or in the enforcement of any guarantee in respect of the Secured Obligations, whether or not occasioned by any act, neglect or default of the Chargor, shall carry interest (both before and after judgment) at the Default Rate from the date incurred until the date the same are unconditionally and irrevocably paid and discharged in full.

#### 13.2 Interest

The amount of such costs, charges, expenses and payments and interest referred to in Clause 13.1 (*Expenses of Preservation and Enforcement*) and all remuneration payable under this

Debenture shall be payable by the Chargor on demand. All such costs, charges, expenses and payments shall be paid and charged as between the Agent and the Chargor on the basis of a full indemnity and not on the basis of party and party or any other kind of taxation.

### 13.3 Indemnity

The Agent and every Receiver, administrator, attorney, manager, agent or other person appointed by the Agent under this Debenture shall be entitled to be indemnified out of the Collateral in respect of all liabilities and expenses properly incurred by them in the execution or purported execution of any of the powers, authorities or discretions vested in them pursuant to this Debenture and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Collateral and the Agent and any such Receiver or administrator may retain and pay all sums in respect of the same out of any monies received under the powers conferred by this Debenture.

### 13.4 Stamp Duties

The Chargor shall pay and, immediately on demand, indemnify the Agent against any liability it incurs in respect of any stamp, registration and similar tax or duty which is or becomes payable in connection with the entry into, performance or enforcement of this Debenture.

## 14. Power of Attorney

### 14.1 Appointment and Powers

The Chargor, by way of security, irrevocably appoints:

- (a) the Agent;
- (b) each and every person whom the Agent shall from time to time nominate in writing under the hand of any officer of the Agent;
- (c) each and any Receiver for the time being holding office as such; and
- (d) each and any administrator appointed by the Agent and for the time being holding office as such,

jointly and also severally its attorney and attorneys for it and in the name of the Chargor and otherwise on its behalf and as its act and deed to sign, seal, execute, deliver, perfect and do all deeds, instruments, acts and things which may be required (or which the Agent or any such Receiver or administrator shall consider requisite) for carrying out any obligation imposed on the Chargor by or pursuant to this Debenture or the Loan and Security Agreement (including but not limited to the obligations of the Chargor under Clause 5.1 (*Further assurance*) and the statutory covenant referred to in such Clause), for carrying any sale, lease or other dealing by the Agent or such Receiver or administrator into effect, for conveying or transferring any legal estate or other interest in land or other property or asset, for getting in the Collateral, to endorse the Chargor's name on cheques and other forms of payment or security, to sign the Chargor's name on any invoice or bill of lading or draft and generally for enabling the Agent and the Receiver or administrator to exercise the respective powers conferred on them by or pursuant to this Debenture or by law.

### 14.2 Delegation

The Agent shall have full power to delegate the power conferred on it by Clause 14.1 (*Appointment and powers*), but no such delegation shall preclude the subsequent exercise of such power by the Agent itself or preclude the Agent from making a subsequent delegation to some other person; and any such delegation may be revoked by the Agent at any time.

14.3 Ratification

The Chargor shall ratify and confirm all transactions entered into by the Agent or such Receiver or administrator or delegate of the Agent in the exercise or purported exercise of their respective powers and all transactions entered into, documents executed and things done by any of them by virtue of the power of attorney given by Clause 14.1 (*Appointment and powers*).

14.4 Expenses

All money properly and reasonably expended by any such attorney shall be deemed to be expenses incurred by the Agent under this Debenture.

**15. Protection of Purchasers**

No purchaser or other person dealing with the Agent or its delegate or any Receiver or administrator appointed under this Debenture shall be bound to see or inquire whether the right of the Agent or such Receiver or administrator to exercise any of its or his powers has arisen or become exercisable or be concerned with notice to the contrary, or be concerned to see whether any such delegation by the Agent shall have lapsed for any reason or been revoked.

**16. Subsequent Charges**

If the Agent receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent security or other interest affecting any Collateral and/or the proceeds of sale of any Collateral, the Agent may open a new account for the Chargor. If the Agent does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice. As from that time all payments made to the Agent will be credited or be treated as having been credited to the new account and will not operate to reduce any amount for which this Debenture is security.

**17. Redemption of Prior Mortgages**

The Agent may, at any time after the security created by this Debenture has become enforceable, redeem any prior security against the Collateral or procure the transfer of such prior security to itself and may settle and pass the accounts of the prior security holder. Any accounts so settled and passed shall be conclusive and binding on the Chargor. All principal monies, interest, costs, charges and expenses of, and incidental to, such redemption and transfer shall be paid by the Chargor to the Agent on demand.

**18. Set-Off****18.1 Consolidation of Accounts**

In addition to any general lien or similar right which it may be entitled to exercise at any time under any contract or arrangement with the Chargor or by operation of law, the Agent shall have the right at any time after this Debenture has become enforceable without notice to the Chargor to combine or consolidate all or any of the Chargor's then existing accounts opened pursuant to this Debenture or otherwise with the Agent with any liabilities of the Chargor to the Agent and to set off or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the liabilities of the Chargor to the Agent on any other such account or in any other respect. The liabilities referred to in this Clause may be actual, contingent, primary, collateral, several or joint liabilities, and the accounts, sums and liabilities referred to in this Clause may be denominated in any currency.

**18.2 Set-Off**

In addition to any right which it may be entitled to exercise at any time under any contract or arrangement with the Chargor or by operation of law, after this Debenture has become enforceable the Agent may set off any Secured Obligations due and payable by the Chargor against any obligation (whether or not matured) owed by the Agent to the Chargor regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, the Agent may convert any obligation in the manner provided in Clause 20 (*Currency*).

**19. Payments****19.1 Manner of Payment**

All payments to be made by the Chargor under this Debenture shall be made in the same currency in which the relevant Secured Obligations are expressed to be payable.

**19.2 Taxes**

For the avoidance of doubt, the tax gross-up and indemnification provisions contained in Sections 2.11(b), (c) and (d) of the Loan and Security Agreement shall apply to this Debenture.

**19.3 Tax Credits**

If the Agent receives the benefit of a tax credit or an allowance resulting from a payment which includes an additional amount paid by the Chargor under Clause 19.2 (*Taxes*), it shall (to the extent that it can do so without prejudice to the retention of such credit or allowance and to the extent that it is not unlawful or contrary to any official directive for it to do so) pay to the Chargor such part of that benefit as is, in the reasonable opinion of the Agent, attributable to the withholding or deduction giving rise to payment of that additional amount, provided that the Agent shall:

- (a) be the sole judge of the amount of any such benefit to be so paid to the Chargor and of the date on which it is received by the Agent;
- (b) have an absolute discretion as to the order and manner in which it employs or claims tax credits and allowances available to it; and

- (c) not be obliged to disclose to the Chargor or any other person any confidential information regarding its tax affairs or tax computations.

#### 19.4 Appropriation of Payments

The Agent shall have an absolute and unfettered right to appropriate any payments received from the Chargor to such indebtedness of the Chargor as the Agent may determine, to the exclusion of any right on the part of the Chargor to make an appropriation in respect of such payments.

### 20. Currency

#### 20.1 Currency Indemnity

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

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

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

#### 20.2 Waiver

The Chargor waives any right it may have in any jurisdiction to pay any amount under this Debenture in a currency other than that in which it is expressed to be payable.

### 21. Suspense Account

For so long as any of Secured Obligations is outstanding, all monies received, recovered or realised by the Agent under this Debenture (including the proceeds of any conversion of currency) may in the discretion of the Agent be credited to an interest bearing suspense or impersonal account and may be held in such account for so long as the Agent may think fit.

### 22. The Agent's Remedies

#### 22.1 Effect of Release

Any receipt, release or discharge of the security provided by, or of any liability arising under, this Debenture shall not release or discharge the Chargor from any liability to the Agent for the same or any other liability which may exist independently of this Debenture.

#### 22.2 Arrangements with Third Parties

The Agent may in its discretion grant time or other indulgence, or make any other arrangement, variation or release with, any person or persons not party to this Debenture (whether or not such

person or persons are jointly liable with the Chargor) in respect of any of the Secured Obligations or of any other security for, or guarantee in respect of, the Secured Obligations, without prejudice either to the security created by or pursuant to this Debenture or to the liability of the Chargor for the Secured Obligations or the exercise by the Agent of any rights, remedies and privileges conferred upon it by this Debenture.

#### 22.3 Rights Cumulative

The rights, powers and remedies provided in this Debenture are cumulative and are not, nor are they to be construed as, exclusive of any rights, powers or remedies provided by law, or under any other document or agreement.

#### 22.4 Waiver

No failure by the Agent to exercise, or delay in exercising, any right or remedy provided by this Debenture or by law, shall operate as a waiver of such right or remedy, nor shall any single or partial waiver of any right or remedy preclude any further or other exercise of that right or remedy or the exercise of any other such right or remedy.

#### 22.5 Costs

All reasonable costs, charges and expenses of the Agent properly incurred in relation to the negotiation, preparation, printing, execution, registration and perfection of this Debenture shall be reimbursed by the Chargor to the Agent within five Business Days of demand on a full indemnity basis.

#### 22.6 Insolvency Relation Back

- (a) Any settlement or discharge between the Agent and the Chargor shall be conditional upon no security of, or payment to, the Agent (whether by the Chargor or otherwise) being avoided or reduced or required to be paid away by virtue of any requirement (whether or not having the force of law) or enactment, whether relating to bankruptcy, insolvency, liquidation, administration or otherwise, at any time in force or by virtue of any obligation to give effect to any preference or priority and the Agent shall be entitled to recover the value or amount of any such security or payment from the Chargor as if such settlement or discharge had not occurred.
- (b) If the Agent reasonably considers that an amount paid by the Chargor (or any other person) to the Agent under any contract or agreement giving rise to, concerning or securing the Secured Obligations is capable of being avoided or set aside on the winding-up or administration of the Chargor or such other person or otherwise then that amount shall not be considered to have been irrevocably paid for the purposes of this Debenture.

### 23. Provisions Severable

Every provision contained in this Debenture shall be severable and distinct from every other provision and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining such provisions shall not in any way be affected.

**24. The Agent's Discretion**

Subject to any provision expressly to the contrary and subject to any duty imposed by general law, any power which may be exercised or any determination which may be made under this Debenture by the Agent may be exercised or made in the absolute and unfettered discretion of the Agent.

**25. Certificates**

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

**26. Assignment**

The Agent shall be entitled at any time to assign all or any of its rights and benefits under this Debenture to any person to whom the rights and benefits of the Agent under the Loan and Security Agreement are assigned or transferred in accordance with its terms and this Debenture shall remain in full force and effect after, and shall continue to secure the Secured Obligations after and resulting from, any such assignment or transfer.

**27. Release**

- (a) Upon the expiry of the Security Period (but not otherwise), the Agent will, at the request and cost of the Chargor, take whatever action is necessary to release and/or reassign the Collateral from the security created by this Debenture.
- (b) Where the Chargor makes a disposal permitted pursuant to the Loan Documents, the Agent shall, at the request and cost of the Chargor, take any action (including the provision of a letter of non-crystallisation) that is necessary to release and/or reassign to the Chargor the assets which are the subject of such disposal.

**28. Third Party Rights**

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

**29. Counterparts**

This Debenture may be executed in any number of counterparts and by the different parties on separate counterparts and this will have the same effect as if the signatures on the counterparts were on a single copy of this Debenture and each such counterpart shall be treated as an original.

**30. Notices**

Any notice or other communication to be made under or in connection with this Debenture or by applicable law shall be made (a) upon the earlier of actual receipt and three Business Days after deposit in the post, first class, with postage prepaid; (b) upon transmission, when sent by electronic mail or fax; (c) one Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, fax number, or email address

indicated below. The Agent or the Chargor may change its mailing or electronic mail address or fax number by giving the other party written notice of such change in accordance with the terms of this Clause 30 (*Notices*).

*If to the Chargors:*

CloudPay United Kingdom Limited

Kingsgate House, Newbury Road, Andover, Hampshire SP10 4DU

Attn: John Leese

Fax: +44 1264 253 111

Electronic mail: [john.leese@cloudpay.net](mailto:john.leese@cloudpay.net) and [legal@cloudpay.net](mailto:legal@cloudpay.net)

*If to the Agent:*

Hercules Capital, Inc.

Legal Department, 400 Hamilton Avenue, Suite 310, Palo Alto, CA 94301

Attn: John Eggbeer (Principal) and Paul Gibson (Managing Director)

Electronic mail: [legal@herculestech.com](mailto:legal@herculestech.com), [jeggbeer@htgc.com](mailto:jeggbeer@htgc.com), [pgibson@htgc.com](mailto:pgibson@htgc.com)

*With a copy to:*

Latham & Watkins LLP

99 Bishopsgate, London, EC2M 3XF, U.K. Attn: Adrian Chiodo / Siobhan Kennedy

Fax: 020 7710 4722

Electronic mail: [adrian.chiodo@lw.com](mailto:adrian.chiodo@lw.com) / [siobhan.kennedy@lw.com](mailto:siobhan.kennedy@lw.com)

Failure to provide any courtesy copy shall not invalidate any notice or other communication otherwise properly given to the designated party set out above. Any party may change its address to another single address by notice given as is provided in this Debenture, except any change of address notice must be actually received in order to be effective. Any notice which the Agent gives only to the Chargor's address shall not be invalid.

## **31. Governing Law and Jurisdiction**

### **31.1 Governing Law**

This Debenture and any non-contractual obligations arising out of or in connection with it shall (save to the extent expressly stated to the contrary) be governed by English law, save for Clause 3.16 (*US credit balances*) which shall be governed by the law of the Relevant State.

### **31.2 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture (including a dispute relating to the existence, validity or termination of this Debenture or any non-contractual obligation arising out of or in connection with this Debenture) (a "**Dispute**").



- (b) The parties to this Debenture agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) This Clause 31.2 is for the benefit of the Agent only. As a result, the Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Agent may take concurrent proceedings in any number of jurisdictions.

**EXECUTED** as a **DEED** and delivered on the date stated at the beginning of this document.

**Schedule 1**

<b>Name of Chargor</b>	<b>Registered Number</b>	<b>Registered Address</b>
<b>Cloudpay Holdings Limited</b>	04909236	Kingsgate House, Newbury Road, Andover, Hampshire, SP10 4DU
<b>Cloudpay Technology Limited</b>	04643831	Kingsgate House, Newbury Road, Andover, Hampshire, SP10 4DU
<b>Cloudpay United Kingdom Limited</b>	03579805	Kingsgate House, Newbury Road, Andover, Hampshire, SP10 4DU





**Schedule 2**



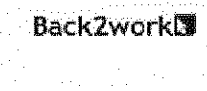

## Details of Securities

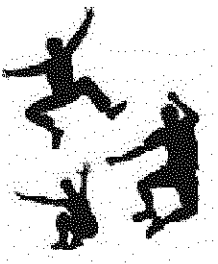


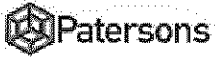
<b>Name of Chargor</b>	<b>Name of Company in which Shares are held</b>	<b>Number of Shares</b>	<b>Type of Shares</b>	<b>Value</b>
Cloudpay Holdings Limited	Cloudpay United Kingdom Limited	2384	Ordinary	GBP 2384
Cloudpay Holdings Limited	Cloudpay Technology Limited	1000	Ordinary	GBP 1000

**Schedule 3**

## Details of Registered Intellectual Property

Trademark	Database	Status	Application Number Application Date	Registration Number Registration Date	Owner
CLOUDPAY 	United Kingdom	Registration (Registered)	3010785 6/20/2013	3010785 9/27/2013	CloudPay Holdings Limited
CLOUDPAY PAYROLL WITH PERSPECTIVE  cloudpay payrol with perspective.	EU trade marks	Registration (Registered)	15452493 5/19/2016	15452493 10/27/2016	CloudPay Holdings Limited
CLOUDPAY  CLOUDPAY	EU trade marks	Registration (Registered)	11441151 12/19/2012	11441151 8/20/2013	CloudPay Holdings Limited
CloudPay  CloudPay	EU trade marks	Registration (Registered)	10281591 9/21/2011	10281591 2/24/2012	CloudPay Holdings Limited

Trademark	Database	Status	Application Number Application Date	Registration Number Registration Date	Owner
Click2freeHR 	EU trade marks	Registration (Registered)	8130825 3/2/2009	8130825 11/11/2009	CloudPay Holdings Limited
making people click 	EU trade marks	Registration (Registered)	8131005 3/2/2009	8131005 11/11/2009	CloudPay Holdings Limited
Back2work 	EU trade marks	Registration (Registered)	8131575 3/2/2009	8131575 11/11/2009	CloudPay Holdings Limited
Design Only 	EU trade marks	Registration (Registered)	8131658 3/2/2009	8131658 11/11/2009	CloudPay Holdings Limited

Trademark	Database	Status	Application Number Application Date	Registration Number Registration Date	Owner
Design Only 	EU trade marks	Registration (Registered)	8131757 3/2/2009	8131757 11/11/2009	CloudPay Holdings Limited
Patersons making people click 	EU trade marks	Registration (Registered)	8131914 3/2/2009	8131914 11/11/2009	CloudPay Holdings Limited
Patersons Global HR & Payroll 	EU trade marks	Registration (Registered)	8131864 3/2/2009	8131864 11/11/2009	CloudPay Holdings Limited
Patersons 	EU trade marks	Registration (Registered)	6677942 2/4/2008	6677942 2/10/2010	CloudPay Holdings Limited

Trademark	Database	Status	Application Number Application Date	Registration Number Registration Date	Owner
PATERSONS	EU trade marks	Registration (Registered)	6647689 1/24/2008	6647689 4/8/2009	CloudPay Holdings Limited
LOGON2	EU trade marks	Registration (Registered)	6647697 1/24/2008	6647697 1/21/2009	CloudPay Holdings Limited
Patersons 	EU trade marks	Registration (Registered)	2114072 2/20/2001	2114072 5/30/2002	CloudPay Holdings Limited
cloudpay payroll with perspective. 	International Register	Registration (Registered)		1356950 11/21/2016	CloudPay Holdings Limited
CloudPay	International Register	Registration (Registered)		1112736 3/13/2012	CloudPay Holdings Limited

Trademark	Database	Status	Application Number Application Date	Registration Number Registration Date	Owner
PATERSONS	International Register	Registration (Registered)		999176 2/26/2009	CloudPay Holdings Limited
cloudpay	International Register	Unpublished Application (Pending)	015452436		CloudPay Holdings Limited



**Schedule 4**

## Details of Accounts

Account Number	Account Name	Account Type	Currency	Bank	Location	Date Opened
REDACTED	REDACTED	REDACTED	EURO	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	EURO	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	GBP	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	GBP	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	GBP	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	GBP	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	GBP	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	GBP	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	USD	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	USD	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	USD	REDACTED	UK	REDACTED
REDACTED	REDACTED	REDACTED	GBP	REDACTED	UK	REDACTED

## Schedule 5 Form of Counterparty Notice

To: [insert *name and address of counterparty*]

Dated: [●]

Dear Sirs

**Re: [here identify the contracts, licenses, hedging arrangements, pension fund claims] (the "Agreement")**

We notify you that, [insert *name of Chargor*] (the "**Chargor**") has [charged in favour of]/[assigned to] [insert *name of Agent*] (the "**Agent**") for the benefit of itself and certain other banks and financial institutions (the "**Secured Parties**") all its right, title and interest in the Agreement as security for certain obligations owed by the Chargor to the Secured Parties by way of a debenture dated [●].

We further notify you that:

1. the Chargor may not agree to amend or terminate the Agreement without the prior written consent of the Agent;
2. you may continue to deal with the Chargor in relation to the Agreement until you receive written notice to the contrary from the Agent. Thereafter the Chargor will cease to have any right to deal with you in relation to the Agreement and therefore from that time you should deal only with the Agent;
3. you are authorised to disclose information in relation to the Agreement to the Agent on request;
4. after receipt of written notice in accordance with paragraph 2 above, you must pay all monies to which the Chargor is entitled under the Agreement direct to the Agent (and not to the Chargor) unless the Agent otherwise agrees in writing; and
5. the provisions of this notice may only be revoked with the written consent of the Agent.

Please sign and return the enclosed copy of this notice to the Agent (with a copy to the Chargor) by way of confirmation that:

- (a) you agree to the terms set out in this notice and to act in accordance with its provisions;
- (b) you have not received notice that the Chargor has assigned its rights under the agreement to a third party or created any other interest (whether by way of security or otherwise) in the agreement in favour of a third party; and
- (c) you have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Chargor any right of set-off, counter-claim or other right relating to the Agreement.

The provisions of this notice are governed by English law.

Yours faithfully

.....

for and on behalf of  
[insert name of Chargor]

[On acknowledgement copy]

To: [insert name and address of Agent]

Copy to: [insert name and address of Chargor]

We acknowledge receipt of the above notice and confirm the matters set out in paragraphs (a) to (c) above.

.....  
for and on behalf of  
[insert name of Counterparty]

Dated:

## Schedule 6 Form of Insurance Notice

To: [insert name and address of insurance company]

Dated: [●]

Dear Sirs

**Re: [here identify the relevant insurance policy(ies)] (the “Policies”)**

We notify you that, [insert name of Chargor] (the “**Chargor**”) has assigned to [insert name of Agent] (the “**Agent**”) for the benefit of itself and certain other banks and financial institutions (the “**Secured Parties**”) all its right, title and interest in [its proceeds and claims under] the Policies as security for certain obligations owed by the Chargor to the Secured Parties by way of a debenture dated [●].

We further notify you that:

1. the Chargor may not agree to amend or terminate the Policies without the prior written consent of the Agent;
2. you may continue to deal with the Chargor in relation to the Policies until you receive written notice to the contrary from the Agent. Thereafter the Chargor will cease to have any right to deal with you in relation to the Policies and therefore from that time you should deal only with the Agent;
3. you are authorised to disclose information in relation to the Policies to the Agent on request; and
4. the provisions of this notice may only be revoked with the written consent of the Agent.

Please sign and return the enclosed copy of this notice to the Agent (with a copy to the Chargor) by way of confirmation that:

- (a) you agree to act in accordance with the provisions of this notice;
- (b) you [will note/have noted] the Agent’s interest as first chargee on each of the Policies;
- (c) after receipt of written notice in accordance with paragraph 2 above, you will pay all monies to which the Chargor is entitled under the Policies direct to the Agent (and not to the Chargor) unless the Agent otherwise agrees in writing;
- (d) you will not cancel or otherwise allow the Policies to lapse without giving the Agent not less than 14 days written notice;
- (e) you have not received notice that the Chargor has assigned its rights under the Policies to a third party or created any other interest (whether by way of security or otherwise) in the Policies in favour of a third party; and
- (f) you have not claimed or exercised nor do you have any outstanding right to claim or exercise against the Chargor, any right of set-off, counter-claim or other right relating to the Policies.

The provisions of this notice are governed by English law.

Yours faithfully

.....

for and on behalf of  
[insert name of Chargor]

[On acknowledgement copy]

To: [insert name and address of Agent]

Copy to: [insert name and address of Chargor]

We acknowledge receipt of the above notice and confirm the matters set out in paragraphs (a) to (f) above.

.....  
for and on behalf of  
[insert name of insurance company]

Dated: [●]

**Schedule 7 Form of Account Notice**

To: [insert name and address of account bank] (the “Account Bank”)

Dated: [●]

Dear Sirs

**Re: The Cloudpay Group of Companies - Security over Bank Accounts**

We notify you that [insert name of Chargor] (the “Chargor”) and certain other companies identified in the schedule to this notice (together the “Customers”) charged to [insert name of Agent] (the “Agent”) for the benefit of itself and certain other banks and financial institutions all their right, title and interest in and to the monies from time to time standing to the credit of the accounts identified in the schedule to this notice and to any other accounts from time to time maintained with you by the Customers (the “Charged Accounts”) and to all interest (if any) accruing on the Charged Accounts by way of a debenture dated [●].

1. We irrevocably authorise and instruct you:
  - (a) to hold all monies from time to time standing to the credit of the Charged Accounts to the order of the Agent and to pay all or any part of those monies to the Agent (or as it may direct) promptly following receipt of written instructions from the Agent to that effect; and
  - (b) to disclose to the Agent any information relating to the Customers and the Charged Accounts which the Agent may from time to time request you to provide.
2. We also advise you that:
  - (a) by counter-signing this notice the Agent confirms that the Customers may make withdrawals from the Charged Accounts in the schedule below until such time as the Agent shall notify you (with a copy to the Chargor) in writing that their permission is withdrawn. That permission may be withdrawn or modified by the Agent in its absolute discretion at any time; and
  - (b) the provisions of this notice may only be revoked or varied with the prior written consent of the Agent.
3. Please sign and return the enclosed copy of this notice to the Agent (with a copy to the Chargor) by way of your confirmation that:
  - (a) you agree to act in accordance with the provisions of this notice;
  - (b) you have not received notice that any Customer has assigned its rights to the monies standing to the credit of the Charged Accounts or otherwise granted any security or other interest over those monies in favour of any third party;
  - (c) you will not exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Charged Accounts, except for the netting of credit and debit balances pursuant to current account netting arrangements previously approved in writing by the Agent; and

- (d) you have not claimed or exercised, nor do you have outstanding any right to claim or exercise against the Chargor, any right of set-off, counter-claim or other right relating to the Charged Accounts.

The provisions of this notice are governed by English law.

#### **Schedule**

<b>Customer</b>	<b>Account Number</b>	<b>Sort Code</b>
[•]	[•]	[•]

Yours faithfully,

.....  
for and on behalf of  
[Insert name of Chargor]  
as agent for and on behalf of  
all of the Customers

Counter-signed by

.....  
for and on behalf of  
[Insert name of Agent]

[On acknowledgement copy]

To: [Insert name and address of Agent]

Copy to: [Insert name of Chargor] (on behalf of all the Customers)

We acknowledge receipt of the above notice and confirm the matters set out in paragraphs (a) to (d) above.

.....  
for and on behalf of  
[Insert name of Account Bank]

Dated: [●]



**Chargors**

**EXECUTED** as a **DEED** by **CLOUDPAY UNITED KINGDOM LIMITED** acting by a director in the presence of:

**REDACTED**

Signature of director

**REDACTED**

Signature of witness .....

Print name ..... **MARK WILSON** .....

Address ..... **REDACTED** .....

**REDACTED**

**REDACTED**

Occupation ..... **ACCOUNTANT** .....

**Chargors**

**EXECUTED** as a **DEED** by **CLOUDPAY HOLDINGS LIMITED**  
acting by a director in the presence of:

**REDACTED**

Signature of director

**REDACTED**

Signature of witness .....

Print name ..... **MARK WILSON** .....

Address ..... **REDACTED** .....

..... **REDACTED** .....

..... **REDACTED** .....

Occupation ..... **ACCOUNTANT** .....

**Chargors**

**EXECUTED** as a **DEED** by **CLOUDPAY TECHNOLOGIES LIMITED** acting by a director in the presence of:

**REDACTED**

.....  
Signature of director

**REDACTED**

Signature of witness .....

Print name ..... MARK WILSON .....

Address ..... **REDACTED** .....

..... **REDACTED** .....

..... **REDACTED** .....

Occupation ..... ACCOUNTANT .....

**The Agent**

**EXECUTED** as a **DEED** on behalf of **HERCULES CAPITAL, INC.** a Maryland corporation,  
by.....*Melanie Grace*....., being a person who, in  
accordance with the laws of that territory, is acting under the  
authority of the corporation:

**REDACTED** .Authorised signatory