



**Registration of a Charge**

Company Name: **PHARMALEX UK SERVICES LIMITED**

Company Number: **03696586**



Received for filing in Electronic Format on the: **30/07/2021**

XA9TP01V

**Details of Charge**

Date of creation: **30/07/2021**

Charge code: **0369 6586 0006**

Persons entitled: **NORDDEUTSCHE LANDESBANK GIROZENTRALE AS AGENT AND TRUSTEE FOR ITSELF AND EACH OF THE OTHER SECURED PARTIES**

Brief description:

**Contains fixed charge(s).**

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

**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: **WE 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 ELECTRONIC ORIGINAL OF THE INSTRUMENT.**

Certified by: **BURGES SALMON LLP (CH15)**



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

Company number: 3696586

Charge code: 0369 6586 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th July 2021 and created by PHARMALEX UK SERVICES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th July 2021 .

Given at Companies House, Cardiff on 2nd August 2021

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



**Companies House**



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

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## DEBENTURE

PHARMALEX UK SERVICES LIMITED (the **Chargor**) (1)

NORDDEUTSCHE LANDESBANK GIROZENTRALE (the **Security Agent**) (2)

Ref: CH15/RR07  
Burgess Salmon LLP  
[www.burgess-salmon.com](http://www.burgess-salmon.com)  
Tel: +44 (0)117 902 7779  
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THIS DEED is dated

30 July

2021 and made

**BETWEEN:**

- (1) **PHARMALEX UK SERVICES LIMITED** a company incorporated in England and Wales (Registered No. 03696586) whose registered office is at Rödl & Partner Legal Limited, Edmund Street, Birmingham, England, B3 2HB (the "**Chargor**"); and
- (2) **NORDDEUTSCHE LANDESBANK GIROZENTRALE** (with registered number HRA 26247) acting through its office located at Friedrichswall 10, 30159 Hannover, Germany (the "**Security Agent**" as agent and trustee for itself and each of the other Secured Parties (as defined below)).

**BACKGROUND**

- (A) The Borrower and the Original Lenders (inter alios) originally entered into a €8,000,000 facility agreement dated 13 June 2014 (the "**Original Facility Agreement**").
- (B) The Original Facility Agreement was amended by a side letter dated 13 October 2014 and by amendment agreements dated 27 July 2015, 10 September 2015, 1 July 2016, 31 March 2017, 1 December 2017, 26 July 2019, 21 January 2020 and 8 December 2020, pursuant to which the loan amount was increased to €133,500,000 (the Original Facility Agreement, as amended, being the "**Current Facility Agreement**").
- (C) The parties to the Current Facility Agreement entered into a further amendment agreement (the "**Further Amendment Agreement**") dated on or about the date of this Deed, whereby the total commitment (including increase options) of the Lenders (as defined in the Current Facility Agreement) is increased to up to €203,500,000 (the Current Facility Agreement, as amended by the Further Amendment Agreement, being the Facility Agreement (as defined below)).
- (D) Under this Deed, the Chargor provides security to the Security Agent for the loan facility made available under the Facility Agreement.

IT IS AGREED as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this Deed:

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**"Additional Guarantor"** means any person which becomes a guarantor pursuant to the terms of the Facility Agreement.

**"Administrator"** means an administrator appointed to manage the affairs, business and property of the Chargor pursuant to Clause 13.8 (*Appointment of an Administrator*).

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

**"Book Debts"** means all present and future book and other debts, and monetary claims due or owing to the Chargor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them.

**"Borrower"** means **PharmaLex GmbH** a company incorporated in Germany (Registered with the register of commerce at the local court of Hamburg under number HRB 13017) whose registered office is at Bahnstraße 42-46, 61381 Friedrichsdorf, Germany.

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

**"Charged Assets"** means all the assets, property and undertaking of the Chargor for the time being subject to the Security created by, or pursuant to, this Deed (and references to the Charged Assets shall include references to any part of them).

**"Default Rate"** means the rate specified in Clause 13 (*Verzug und Schadensersatz*) of the Facility Agreement.

**"Delegate"** means any person appointed by the Security Agent or any Receiver pursuant to Clause 18 (*Delegation*) and any person appointed as attorney of the Security Agent, Receiver or Delegate.

**"Designated Account"** means any account of the Chargor nominated by the Security Agent as a designated account for the purposes of this Deed.

**"Enforcement Event"** means:

- (a) any event described in clause 10.2 (*Vorzeitige Rückzahlung infolge Kündigung*) of the Facility Agreement; or
- (b) an Event of Default.

**"Environment"** means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other

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natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

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

**"Environmental Law"** means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

**"Environmental Permits"** means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Chargor conducted on or from the properties owned or used by it.

**"Equipment"** means all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Chargor, including any part of it and all spare parts, replacements, modifications and additions.

**"Event of Default"** means any event or circumstance specified in clause 21 of the Facility Agreement (*Kündigungsgünde*) or any other "*wichtiger Grund*", which would under the laws of the Federal Republic of Germany permit the Security Agent to cancel the facility granted pursuant to the terms of the Facility Agreement.

**"Existing Security Documents"** means:

- (a) the debenture dated 19 April 2017 made between the Chargor and the Security Agent;
- (b) the deed of guarantee dated 21 March 2017 made between (1) the Chargor (2) Norddeutsche Landesbank -Girozentrale- and (3) NORD/LB Luxembourg SA Covered Bond Bank;
- (c) the debenture dated 8 December 2017 made between the Chargor and the Security Agent;
- (d) the debenture dated 26 July 2019 made between the Chargor and the Security Agent;

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- (e) the debenture dated 21 January 2020 made between the Chargor and the Security Agent; and
- (f) the debenture dated 8 December 2020 made between the Chargor and the Security Agent.

**"Facility Agreement"** means the facility agreement dated 13 June 2014 as amended from time to time including as most recently amended on or around the date of this Deed between, among others, the Borrower and the Security Agent for the provision of a loan facility.

**"Finance Document"** has the meaning given to the expression *"Darlehensdokumentation"* in the Facility Agreement.

**"Finance Party"** means any Darlehensgeber (lender), Konsortialführer (agent), Arrangeur (arranger), Bank and Sicherheitenpoolführer (security holder) each as defined in the Facility Agreement.

**"Financial Collateral"** shall have the meaning given to that expression in the Financial Collateral Regulations.

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

**"Guarantor"** means the Original Guarantor and any Additional Guarantor.

**"Insurance Policy"** means each contract and policy of insurance effected or maintained by the Chargor from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Properties or the Equipment).

**"Intellectual Property"** means the Chargor's present and future patents, trademarks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights.

**"Investments"** means all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Chargor, and including any:

- (a) dividend, interest or other distribution paid or payable in relation to any of the Investments; and

- (b) right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise

**"Legal Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) the fact that English courts may characterise charges expressed to be fixed charges as being floating charges;
- (d) similar principles, rights and defences under the law of any relevant jurisdiction; and
- (e) any other matters which are set out as qualifications or reservations or elsewhere referred to in any legal opinion as matters of general application in any legal opinion referred to in the Facility Agreement;

**"Limitation Acts"** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984;

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

**"Material Adverse Effect"** means any effect, event, circumstance or change which is, in the opinion of the Security Agent (acting reasonably), materially adverse to:

- (a) the ability of the Chargor to perform any of its payment or other material obligations under this Deed;
- (b) the business assets or financial condition of the Chargor; or
- (c) the validity or enforceability of this Deed or the rights or remedies of the Security Agent or any Secured Party under this Deed.

**"Occupational Leases"** means all leasehold interests and other occupational rights whatsoever (including, without limitation, all licences and agreements for leases) in

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existence from time to time relating to the whole or any part of the Charged Assets (and **"Occupational Lease"** shall be construed accordingly).

**"Original Guarantor"** means PharmaLex Holding GmbH (formerly Yes Beteiligungsgesellschaft mbH), with its registered seat in Friedrichsdorf/Germany and registered with the commercial register of the local court of Bad Homburg v. d. Höhe under HRB 13021.

**"Original Lenders"** means Nord/LB Luxembourg S.A. Covered Bond Bank and Norddeutsche Landesbank Girozentrale.

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

**"Properties"** means all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Chargor, or in which the Chargor holds an interest and **Property** means any of them.

**"Receiver"** means a receiver, receiver and manager or administrative receiver of any or all of the Charged Assets appointed by the Security Agent under Clause 16 (*Receiver*).

**"Relevant Agreement"** means any agreement specified by the Parties as being a relevant agreement.

**"Rent"** means all amounts payable to or for the benefit of the Chargor by way of rent, licence fee, ground rent and rent charge in respect of any part of a Property and other monies payable to or for the benefit of the Chargor in respect of occupation or usage of any part of a Property, including (without limitation) for display of advertisements on licence or otherwise.

**"Rights"** means any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.

**"Secured Liabilities"** means all present and future obligations and liabilities of the Borrower, any Guarantor or the Chargor (whether actual or contingent and whether owed jointly or severally or in any other capacity whatever) which are, or are expressed to be, or may become, due, owing or payable to the Security Agent (whether for its own account or as agent or trustee for the Secured Parties) or to any of the other Secured Parties under or in connection with any of the Finance Documents, together with all costs, charges, losses, liabilities, expenses and other sums and any taxes thereon incurred by the Security Agent or any other Secured Party which are, or are expressed to be, or may

become due, owing or payable by the Borrower, any Guarantor or the Chargor under or in connection with any Finance Document;

**"Secured Parties"** means:

- (a) the Security Agent; and
- (b) each Finance Party.

**"Security"** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest, title retention or other encumbrance of any kind securing, or any right conferring a priority of payment in respect of, any obligation of any person or any other agreement or arrangement have a similar effect.

**"Security Financial Collateral Arrangement"** shall have the meaning given to that expression in the Financial Collateral Regulations.

**"Security Period"** means the period starting on the date of this Deed and ending on the date on which the Security Agent is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**"Security Trust Deed"** means the security trust deed entered into on 19 April 2017 between the Original Lenders.

**"VAT"** means value added tax.

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in the Deed to:
  - (i) the **"Security Agent"**, any **"Finance Party"**, any **"Original Lender"** the **"Borrower"**, the **"Chargor"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) **"assets"** includes present and future properties, revenues and rights of every description;
  - (iii) this **"Deed"**, a **"Finance Document"** or any other agreement or instrument is a reference to, this Deed, that Finance Document or other

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agreement or instrument as amended, novated, supplemented, extended or restated;

- (iv) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (v) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (vi) 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;
  - (vii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (viii) a time of day is a reference to London time.
- (b) Clause and Schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in any notice given under or in connection with this Deed has the same meaning in that notice as in this Deed.
  - (d) an Event of Default is **"continuing"** if it has not been remedied or waived in writing by the Security Agent.

### 1.3 Clawback

If the Security Agent reasonably considers that an amount paid by the Borrower or the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### 1.4 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Facility Agreement and of any side letters between any parties in relation to the Facility Agreement are incorporated into this Deed.

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### **1.5 Perpetuity period**

If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

### **1.6 Schedules**

The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

### **1.7 Effect as a Deed**

This Deed is intended to take effect as a Deed notwithstanding that the Security Agent may have executed it under hand only.

### **1.8 Third party rights**

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

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

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

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

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- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

For the purposes of this Clause 1.9:

**"Article 55 BRRD"** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

**"Bail-In Action"** means the exercise of any Write-down and Conversion Powers.

**"Bail-In Legislation"** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to the United Kingdom, the UK Bail-In Legislation; and
- (c) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

**"EEA Member Country"** means any member state of the European Union, Iceland, Liechtenstein and Norway.

**"EU Bail-In Legislation Schedule"** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

**"Resolution Authority"** means any body which has authority to exercise any Write-down and Conversion Powers.

**"UK Bail-In Legislation"** means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"Write-down and Conversion Powers"** means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;

- (b) in relation to the UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and
- (c) in relation to any other applicable Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that Bail-In Legislation.

## **2 COVENANT TO PAY**

### **2.1 Covenant to pay**

The Chargor will on demand pay or otherwise discharge all Secured Liabilities from time to time, at the times at which, in the manner in which, and in the currencies in which they are expressed to be due and payable or due for discharge under the Finance Documents.

### **2.2 Certain liabilities**

The Secured Liabilities shall, without limitation, include all liabilities arising under this Deed and the Finance Documents, interest (both before and after judgment) from the date such liabilities are due, owing or incurred up to the date of payment at such rates and upon such terms as specified in the Facility Agreement and all legal, administrative

and other costs, charges and expenses on a full and unqualified indemnity basis which may be incurred by the Secured Parties in relation to any such moneys, obligations or liabilities or the release of all or any of the Charged Assets or the enforcement of the security hereby created or generally in respect of the Chargor or otherwise incurred in dealing with any matter in relation to this Deed.

### **2.3 Interest**

The Chargor shall pay interest at the Default Rate on unpaid sums (whether before or after any judgment) in accordance with the terms of Clause 13 (*Verzug und Schadensersatz*) of the Facility Agreement.

## **3 GRANT OF SECURITY**

### **3.1 Legal mortgage**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Security Agent (for the benefit of and as trustee for itself and each of the other Secured Parties), by way of first legal mortgage, each Property.

### **3.2 Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Security Agent (for the benefit of and as trustee for itself and each of the other Secured Parties) by way of first fixed charge:

- (a) all Properties in England and Wales acquired by the Chargor in the future;
- (b) all present and future interests of the Chargor not effectively mortgaged or charged under the preceding provisions of this Clause 3 (*Grant of security*) in, or over, freehold or leasehold property;
- (c) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
- (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Chargor's business or the use of any Charged Asset, and all rights in connection with them;
- (e) all its present and future goodwill, to the extent not effectively assigned under Clause 3.3 (*Assignment*);

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- (f) all its uncalled capital, to the extent not effectively assigned under Clause 3.3 (*Assignment*);
  - (g) all the Equipment;
  - (h) all the Intellectual Property;
  - (i) all the Investments;
  - (j) the Rent and the benefit of any guarantee or security in respect of the Rent to the extent not effectively assigned under Clause 3.3 (*Assignment*);
  - (k) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy, to the extent not effectively assigned under Clause 3.3 (*Assignment*); and
  - (l) all its rights in respect of each Relevant Agreement and all other agreements, instruments and rights relating to the Charged Assets, to the extent not effectively assigned under Clause 3.3 (*Assignment*).

### **3.3 Assignment**

- (a) As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Security Agent (for the benefit of and as trustee for itself and each of the other Secured Parties) absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities;
  - (i) all its present and future goodwill;
  - (ii) all its uncalled capital;
  - (iii) all its Book Debts;
  - (iv) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest);
  - (v) the Rent and the benefit of any guarantee or security in respect of the Rent;

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- (vi) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy;
  - (vii) the benefit of each Relevant Agreement and the benefit of all other agreements, instruments and rights relating to the Charged Assets.
- (b) To the extent that any such right, title and interest as is referred to in paragraph (a) above is not assignable or capable of assignment, the assignment of it purported to be effected by such paragraph shall operate as an assignment of any and all compensation, damages, income, profit or rent which the Chargor may derive from it or be awarded or entitled to in respect of it, in each case as a continuing security for the payment or discharge in full of the Secured Liabilities.
- (c) In respect of each assigned Insurance Policy and Relevant Agreement, neither the Security Agent nor the Security Parties shall have responsibility for the performance of the obligations of the Chargor thereunder, and the Chargor shall continue to observe and perform its obligations under each Insurance Policy and Relevant Agreement.

### **3.4 Floating charge**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Security Agent (for the benefit of and as trustee for itself and each of the other Secured Parties), by way of first floating charge, all the undertaking, property, assets and rights of the Chargor at any time not effectively mortgaged, charged or assigned pursuant to Clause 3.1 (*Legal Mortgage*) to Clause 3.3 (*Assignment*) inclusive.

### **3.5 Qualifying floating charge**

- (a) The floating charge created by the Chargor pursuant to Clause 3.4 (*Floating Charge*) is a qualifying floating charge for the purposes of paragraph 14.2(a) of Schedule B1 of the Insolvency Act 1986.
- (b) Paragraph 14 of Schedule B1 of the Insolvency Act 1986 shall apply to this Deed and the Security Agent may appoint an Administrator of the Chargor pursuant to that paragraph.

### **3.6 Moratorium under 1986 Act**

Notwithstanding anything else contained in this Deed:

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- 
- (a) the floating charge created by this Deed may not be converted into a fixed charge solely by reason of:
    - (i) the obtaining of a moratorium in respect of the Chargor pursuant to Section 1A to the Insolvency Act 1986; or
    - (ii) anything done with a view to obtaining such a moratorium; and
  - (b) the Security Agent is not entitled to appoint a receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) in respect of the Chargor pursuant to Section 1A of Schedule A1 to the Insolvency Act 1986 except with the leave of the court.

### 3.7 Trust

- (a) Subject to part (b) of this Clause 3.7, if or to the extent that the assignment or charging of any Charged Asset is prohibited, the Chargor holds it on trust for the Security Agent (for the benefit of and as trustee for itself and each of the other Secured Parties).
- (b) If the reason referred to in part (a) of this Clause 3.7 is that:
  - (i) a consent or waiver must be obtained;
  - (ii) a condition must be satisfiedthen:
  - (A) subject to part (c) of Clause 3.7, the Chargor shall apply for the consent or waiver; and
  - (B) the Chargor shall use its best endeavours to satisfy the conditionin each case within 30 days of the date of this Debenture or, if the Charged Asset is acquired after that date of this Debenture, within 30 days of the date of the acquisition.
- (c) Where the consent or waiver is not to be unreasonably withheld, the Chargor shall:
  - (i) use its best endeavours to obtain it as soon as possible; and
  - (ii) keep the Security Agent informed of the progress of the negotiations to obtain it.

- 
- (d) On the waiver or consent being obtained, or the condition being satisfied, the Charged Asset shall be mortgaged, charged or assigned (as appropriate) under this Clause 3.7 and, in relation to such Charged Asset, the trust referred to in part (a) of this Clause 3.7 shall terminate.

### **3.8 Automatic crystallisation of floating charge**

The floating charge created by Clause 3.4 (*Floating charge*) shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

- (a) the Chargor:
- (i) creates, or attempts to create, without the prior written consent of the Security Agent, a Security or a trust in favour of another person over all or any part of the Charged Assets (except as expressly permitted by the terms of this Deed or the Facility Agreement); or
  - (ii) disposes, or attempts to dispose of, all or any part of the Charged Assets (other than Charged Assets that are only subject to the floating charge while it remains uncrystallised);
- (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Charged Assets; or
- (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor.

### **3.9 Crystallisation of floating charge by notice**

The Security Agent may, in its sole discretion, by written notice to the Chargor, convert the floating charge created under this Deed into a fixed charge as regards any part of the Charged Assets specified by the Security Agent in that notice if:

- (a) an Event of Default occurs and is continuing; or
- (b) the Security Agent considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

### **3.10 Assets acquired after any floating charge has crystallised**

Any asset acquired by the Chargor after any crystallisation of the floating charge created under this Deed that, but for that crystallisation, would be subject to a floating charge under this Deed, shall (unless the Security Agent confirms otherwise to the Chargor in writing) be charged to the Security Agent by way of first fixed charge.

## **4 CONFIRMATION**

The Chargor confirms that the Existing Security Documents:

- 4.1** rank as a continuing security for the payment and discharge of the Secured Liabilities including, without limitation, all present and future monies, obligations and liabilities owed by the Borrower and any Guarantor to the to the Security Agent (whether for its own account or as agent or trustee for the Secured Parties) or to any of the other Secured Parties whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity, under or in connection with the Facility Agreement; and
- 4.2** shall continue in full force and effect in all respects.

## **5 LIABILITY OF THE CHARGOR AND SECURITY AGENT'S PROTECTIONS**

### **5.1 Liability not discharged**

The Chargor's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
- (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which a Secured Party may now or after the date of this deed have from or against the Borrower, the Chargor or any other person in connection with the Secured Liabilities;
- (c) any act or omission by a Secured Party or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower, the Chargor or any other person;
- (d) any termination, amendment, variation, novation or supplement of or to any of the Secured Liabilities;

- 
- (e) any grant of time, indulgence, waiver or concession to the Borrower, the Chargor or any other person;
  - (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Borrower, the Chargor or any other person;
  - (g) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Borrower, the Chargor or any other person in connection with the Secured Liabilities;
  - (h) any claim or enforcement of payment from the Borrower, the Chargor or any other person; or
  - (i) any other act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish its liability under this deed.

## **5.2 Immediate recourse**

The Chargor waives any right it may have to require a Secured Party:

- (a) to take any action or obtain judgment in any court against the Borrower or any other person;
- (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower or any other person; or
- (c) to make demand, enforce or seek to enforce any claim, right or remedy against the Borrower or any other person

before taking steps to enforce any of its rights or remedies under this deed.

## **5.3 Non-competition**

The Chargor warrants to the Security Agent that it has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Borrower, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Chargor under this deed but:

- (a) if any of the Rights is taken, exercised or received by the Chargor, those Rights and all monies at any time received or held in respect of those Rights shall be

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held by the Chargor on trust for the Security Agent for application in or towards the discharge of the Secured Liabilities under this deed; and

- (b) on demand by the Security Agent, the Chargor shall promptly transfer, assign or pay to the Security Agent all Rights and all monies from time to time held on trust by the Chargor under this Clause 5.3.

## **6 REPRESENTATIONS**

### **6.1 Representations**

The Chargor makes the representations and warranties set out in this Clause 6 (*Representations*) to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties on the date of this Deed.

### **6.2 Binding obligations**

The obligations expressed to be assumed by it in this Deed are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations and this Deed is, and will continue to be, effective security overall and every part of the Charged Assets in accordance with its terms.

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

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

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets.

### **6.4 Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by it.
- (b) No limit on its powers will be exceeded as a result of the grant of security or contemplated by this Deed.

### **6.5 Validity and admissibility in evidence**

All Authorisations required or desirable:

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(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed; and

(b) to make this Deed admissible in evidence in its jurisdiction of incorporation

have been obtained or effected and are in full force and effect.

**6.6 Governing law and enforcement**

(a) The choice of English law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation.

(b) Any judgment obtained in England in relation to this Deed will be recognised and enforced in its jurisdiction of incorporation.

**6.7 Legal and beneficial ownership of Charged Assets**

The Chargor is the sole legal and beneficial owner of the Charged Assets and has good marketable title to each Property.

**6.8 No Security**

The Charged Assets are free from any Security other than the Security created by this Deed and the Existing Security Documents.

**6.9 No adverse claims**

The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Assets or any interest in them.

**6.10 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Charged Assets.

**6.11 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Charged Assets.

**6.12 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged Assets is subject to terms entitling any person to terminate or curtail its use.

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**6.13 No overriding interests**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

**6.14 Avoidance of Security**

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

**6.15 No prohibitions or breaches**

There is no prohibition on the Chargor assigning its rights in any of the Charged Assets referred to in Clause 3.3 (*Assignment*) and the entry into this Deed by the Chargor does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on the Chargor or its assets.

**6.16 Enforceable security**

This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor and is and will continue to be effective security over all and every part of the Charged Assets in accordance with its terms.

**6.17 Investments**

- (a) The Investments are fully paid and are not subject to any option to purchase or similar rights.
- (b) No constitutional document of an issuer of an Investment, nor any other agreement:
  - (i) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this Deed; or
  - (ii) contains any rights of pre-emption in relation to the Investments.

**6.18 Repetition**

The representations and warranties set out in Clause 6.2 (*Ownership of Charged Assets*) to Clause 6.17 (*Investments*) are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

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## **7 INFORMATION UNDERTAKINGS**

The Chargor makes the undertakings set out in this Clause 7 to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties for the continuance of the Security Period.

### **7.1 Information**

The Chargor shall:

- (a) give the Security Agent such information concerning the Charged Assets as the Security Agent may require;
- (b) permit any persons designated by the Security Agent and any Receiver to enter on its premises and inspect and examine any Charged Asset, and the records relating to that Charged Asset, at all reasonable times and on reasonable prior notice; and
- (c) promptly notify the Security Agent in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Charged Asset, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Security Agent's prior approval, implement those proposals at its own expense.

### **7.2 Notification of misrepresentation and breaches**

The Chargor shall, promptly on becoming aware of any of the same, notify the Security Agent in writing of:

- (a) any representation or warranty set out in Clause 6 (*Representations*) which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant or undertaking set out in this Deed.

### **7.3 Property information**

The Chargor shall inform the Security Agent promptly of any acquisition by the Chargor of, or contract made by the Chargor to acquire, any freehold, leasehold or other interest in any Property.

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## **8 GENERAL UNDERTAKINGS**

The Chargor makes the undertakings set out in this Clause 8 to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties for the continuance of the Security Period.

### **8.1 Authorisations**

The Chargor shall:

- (a) comply with the requirements of any law and regulation relating to or affecting the Charged Assets or the use of it or any part of them;
- (b) obtain, and promptly renew from time to time, and comply with the terms of all Authorisations that are required in connection with the Charged Assets or their use or that are necessary to preserve, maintain or renew any Charged Asset; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Charged Assets.

### **8.2 Compliance with laws**

The Chargor shall not without the Security Agent's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.

### **8.3 Negative pledge**

The Chargor shall not at any time, except with the prior written consent of the Security Agent create, purport to create or permit to subsist any Security on, or in relation to, any Charged Asset other than any Security created by this Deed or by the Existing Security Documents.

### **8.4 Disposals**

The Chargor shall not at any time, except with the prior written consent of the Security Agent:

- (a) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Charged Assets (except, in the ordinary course of business, Charged Assets that are only subject to an uncrystallised floating charge); or

- 
- (b) create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party.

#### **8.5 Preservation of Charged Assets**

The Chargor shall not do, or permit to be done, any act or thing that would depreciate, jeopardise or otherwise prejudice the security held by the Security Agent, or materially diminish the value of any of the Charged Assets or the effectiveness of the security created by this Deed.

#### **8.6 Compliance with laws and regulations**

- (a) The Chargor shall not, without the Security Agent's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.
- (b) The Chargor shall:
  - (i) comply with the requirements of any law or regulation relating to or affecting the Charged Assets or the use of it or any part of it;
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Assets or its use or that are necessary to preserve, maintain or renew any Charged Assets; and
  - (iii) promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Assets that are required to be made by it under any law or regulation.

#### **8.7 Chargor's waiver of set-off**

The Chargor waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Chargor under this Deed).

#### **8.8 Enforcement of rights**

The Chargor shall use its best endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Chargor and forming part of the Charged Assets of the covenants and other obligations imposed on such counterparty (including each counterparty in respect of a Relevant Agreement and each insurer in respect of an Insurance Policy); and

- 
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Assets that the Security Agent may require from time to time.

#### **8.9 Payment of outgoings**

The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Charged Assets and, on demand, produce evidence of payment to the Security Agent.

#### **8.10 Appointment of accountants**

- (a) The Chargor shall, following the occurrence of an Event of Default which is continuing:
  - (i) at its own cost, if at any time so required by the Security Agent, appoint an accountant or firm of accountants nominated by the Security Agent to investigate the financial affairs of the Chargor and report to the Security Agent; and
  - (ii) co-operate fully with any accountants so appointed and immediately provide those accountants with all information requested.
- (b) The Chargor authorises the Security Agent to make an appointment under Clause 8.10 as it shall think fit at any time, without further authority from the Chargor. In every case, the Chargor shall pay, or reimburse the Security Agent for, the fees and expenses of those accountants.

#### **8.11 Title documents**

The Chargor shall, as so required by the Security Agent, deposit with the Security Agent and the Security Agent shall, for the duration of this Deed be entitled to hold:

- (a) all deeds and documents of title relating to the Charged Assets that are in the possession or control of the Chargor (and if these are not within the possession or control of the Chargor, the Chargor undertakes to obtain possession of all these deeds and documents of title and deliver to the Security Agent);
- (b) all Insurance Policies and any other insurance policies relating to any of the Charged Assets that the Chargor is entitled to possess;
- (c) all deeds and documents of title (if any) relating to the Book Debts as the Security Agent may specify from time to time; and

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- (d) copies of all the Relevant Agreements, certified to be true copies by either a director of the Chargor or by the Chargor's solicitors.

#### **8.12 Insurance**

- (a) The Chargor shall insure and keep insured the Charged Assets against:
  - (i) loss or damage by fire;
  - (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor; and
  - (iii) any other risk, perils and contingencies as the Security Agent may reasonably require.
- (b) Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Security Agent, and must be for not less than the replacement value of the relevant Charged Assets (meaning in the case of any premises on a Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for demolition and reinstatement) and loss of rents payable by the tenants or other occupiers of that Property for a period of at least three years.
- (c) The Chargor shall, if requested by the Security Agent, produce to the Security Agent each policy, certificate or cover note relating to the insurance required by part (a) of this Clause 8.12.
- (d) The Chargor shall, if requested by the Security Agent, procure that the Security Agent is named as co-insured with the Chargor on each Insurance Policy maintained by it or any person on its behalf in accordance with part (a) of Clause 8.12 (*Insurance*) and the Security Agent is named as first loss payee and that the terms of each such Insurance Policy require the insurer not to invalidate the policy as against the Security Agent by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Security Agent.

#### **8.13 Insurance premiums**

The Chargor shall:

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- (a) promptly pay all premiums in respect of each Insurance Policy maintained by it in accordance with part (a) of Clause 8.12 (*Insurance*) and do all other things necessary to keep that policy in full force and effect; and
  - (b) (if the Security Agent so requires) produce to, or deposit with, the Security Agent the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy maintained by it in accordance with part (a) of Clause 8.12 (*Insurance*).

#### **8.14 No invalidation of Insurance**

The Chargor shall not do or omit to do, or permit to be done or omitted to be done, any act or thing that may invalidate or otherwise prejudice any Insurance Policy maintained by it in accordance with part (a) of Clause 8.12 (*Insurance*).

#### **8.15 Proceeds of Insurance Policies**

All monies received or receivable by the Chargor under any Insurance Policy maintained by it in accordance with part (a) of Clause 8.12 (*Insurance*) (including all monies received or receivable by it under any Insurance Policy) at any time (whether or not the security constituted by this Deed has become enforceable) shall:

- (a) immediately be paid to the Security Agent;
- (b) if they are not paid directly to the Security Agent by the insurers, be held by the Chargor as trustee of the same for the benefit of the Security Agent (and the Chargor shall account for them to the Security Agent); and
- (c) at the option of the Security Agent, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

#### **8.16 Notices to be given by the Chargor**

- (a) Insurance Policies
  - (i) The Chargor shall give notice in the form set out in Part A (*Form of Notice – Insurance Policy*) of Schedule 2 to each insurer under each Insurance Policy that the Chargor has assigned to the Security Agent all its right, title and interest in that Insurance Policy.
  - (ii) The Chargor shall, if required by the Security Agent, give the notices referred to in Clause (i) above:

- 
- (A) in the case of each Insurance Policy subsisting at the date of this Deed, on the date of this Deed; and
- (B) in the case of each Insurance Policy coming into existence after the date of this Deed, on that Insurance Policy being put on risk.
- (iii) The Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice in substantially the form specified in Part B (*Form of Acknowledgement – Insurance Policy*) of Schedule 2.
- (b) Cash
- (i) The Chargor shall give notice in the form set out in Part A (*Form of Notice – Bank Account*) of Schedule 3 to each bank, financial institution or other person (other than the Security Agent) at which an account is held by the Chargor (including each Designated Account) that the Chargor has assigned to the Security Agent all its right, title and interest under and in respect of that account.
- (ii) The Chargor shall give the notices referred to in Clause (i) above:
- (A) in the case of each account held by the Chargor at the date of this Deed, on the date of this Deed; and
- (B) in the case of each account opened by the Chargor after the date of this Deed, on that account being opened.
- (iii) The Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice in substantially the form specified in Part B (*Form of Acknowledgement – Bank Account*) of Schedule 3.
- (c) Relevant Agreements
- (i) The Chargor shall if requested by the Security Agent from time to time give notice to each counterparty to a Relevant Agreement in the form set out in Part A (*Form of Notice – Agreement*) of Schedule 1; and
- (ii) The Chargor shall use reasonable endeavours to procure that each counterparty provides to the Security Agent an acknowledgement of that

notice in substantially the form set out in Part B (*Form of Acknowledgement –Agreement*) of Schedule 1.

(d) Occupational Leases

- (i) The Chargor shall, upon request by the Security Agent, after the date of this Deed deposit with the Security Agent signed undated notices in the form specified in Part A of (*Form of Notice –Agreement*) Schedule 1 in respect of each counterparty to an Occupational Lease.
- (ii) Following the occurrence of an Enforcement Event which is continuing, the Chargor hereby consents to the notices referred to in paragraph (i) above being dated and served on each counterparty to the Occupational Leases by the Security Agent on behalf of the Chargor.

(e) Book Debts, other debts and agreements

- (i) Where there is an Enforcement Event which is continuing, within five Business Days of request by the Security Agent, the Chargor shall give notice in the form specified in Part A of (*Form of Notice –Agreement*) of Schedule 1 to the counterparties in respect of the Charged Assets charged by way of absolute assignment pursuant to Clause 3.3 (*Assignment*) which have not already been given notice pursuant to paragraph (a), (b), (c) and (d) of this Clause 8.16.
- (ii) The Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice in substantially the form specified in Part B (*Form of Acknowledgement –Agreement*) of Schedule 1.

## **9 INVESTMENTS UNDERTAKINGS**

The Chargor makes the undertakings set out in this Clause 9 to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties for the continuance of the Security Period.

### **9.1 Deposit of title documents**

- (a) The Chargor:
  - (i) on the execution of this Deed, deliver to the Security Agent, or as the Security Agent may direct, all stock or share certificates and other

documents of title or evidence of ownership relating to any Investments owned by the Chargor at that time; and

- (ii) on the purchase or acquisition by it of Investments after the date of this Deed, deposit with the Security Agent, or as the Security Agent may direct, all stock or share certificates and other documents of title or evidence of ownership relating to those Investments.
- (b) At the same time as depositing documents with the Security Agent, or as the Security Agent may direct, in accordance with Clause 9.1(a), the Chargor shall also deposit with the Security Agent, or as the Security Agent may direct:
  - (i) all stock transfer forms relating to the relevant Investments duly completed and executed by or on behalf of the Chargor, but with the name of the transferee, the consideration and the date left blank; and
  - (ii) any other documents (in each case duly completed and executed by or on behalf of the Chargor) that the Security Agent may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments

so that the Security Agent may, at any time and without notice to the Chargor, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration.

## **9.2 Nominations**

- (a) The Chargor shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated:
  - (i) does not exercise any rights in respect of any Investments without the prior written approval of the Security Agent; and
  - (ii) immediately on receipt by it, forward to the Security Agent all communications or other information received by it in respect of any Investments for which it has been so nominated.

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- (b) The Chargor shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

### **9.3 Pre-emption rights and restrictions on transfer**

The Chargor shall:

- (a) obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Investments, for the transfer of the Investments to the Security Agent or its nominee, or to a purchaser on enforcement of the security constituted by this Deed; and
- (b) procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer of the Investments in any manner that the Security Agent may require in order to permit the transfer of the Investments to the Security Agent or its nominee, or to a purchaser on enforcement of the security constituted by this Deed.

### **9.4 Dividends and voting rights before enforcement**

- (a) Before the security constituted by this Deed becomes enforceable, the Chargor may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Security Agent or any of its nominees, the Security Agent will hold all those dividends, interest and other monies received by it for the Chargor and will pay them to the Chargor that promptly on request.
- (b) Before the security constituted by this Deed becomes enforceable, the Chargor may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Security Agent or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:
- (i) it shall not do so in any way that would breach any provision of the Facility Agreement or this Deed or for any purpose inconsistent with the Facility Agreement or this Deed; and
- (ii) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Security Agent's opinion, have an

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adverse effect on the value of the Investments or otherwise prejudice the Security Agent's security under this Deed.

(iii) the Chargor shall indemnify the Security Agent against any loss or liability incurred by the Security Agent (or its nominee) as a consequence of the Security Agent (or its nominee) acting in respect of the Investments at the direction of the Chargor.

(c) The Security Agent shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Security Agent considers prejudicial to, or impairing the value of, the security created by this Deed.

#### **9.5 Dividends and voting rights after enforcement**

After the security constituted by this Deed has become enforceable:

(a) all dividends and other distributions paid in respect of the Investments and received by the Chargor shall be held by the Chargor on trust for the Security Agent and immediately paid into a Designated Account or, if received by the Security Agent, shall be retained by the Security Agent; and

(b) all voting and other rights and powers attaching to the Investments shall be exercised by, or at the direction of, the Security Agent and the Chargor shall, and shall procure that its nominees shall, comply with any directions the Security Agent may give, in its absolute discretion, concerning the exercise of those rights and powers.

#### **9.6 Calls on Investments**

Notwithstanding the security created by this Deed, the Chargor shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Chargor acknowledges that the Security Agent shall not be under any liability in respect of any such calls, instalments or other payments.

#### **9.7 No alteration of constitutional documents or rights attaching to Investments**

The Chargor shall not, without the prior written consent of the Security Agent, amend, or agree to the amendment of:

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- (a) the memorandum or articles of association, or any other constitutional documents, of any issuer of the Investments that is not a public company; or
  - (b) the rights or liabilities attaching to, or conferred by, all or any of the Investments.

#### **9.8 Preservation of Investments**

The Chargor shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of the Investments that is not a public company shall not:

- (a) consolidate or subdivide any of the Investments, or re-organise, exchange, repay or reduce its share capital in any way;
- (b) issue any new shares or stock; or
- (c) refuse to register any transfer of any of the Investments that may be lodged with it for registration by, or on behalf of, the Security Agent or the Chargor in accordance with this Deed.

#### **9.9 Investments information**

The Chargor shall, promptly following receipt, send to the Security Agent copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments.

#### **10 BOOK DEBTS UNDERTAKINGS**

The Chargor makes the undertakings set out in this Clause 10 to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties for the continuance of the Security Period.

##### **10.1 Realising Book Debts**

- (a) The Chargor shall as an agent for the Security Agent, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Security Agent;
- (b) Immediately upon an Event of Default occurring, the Chargor shall not, without the prior written consent of the Security Agent, withdraw any amounts standing to the credit of any Designated Account; and
- (c) The Chargor shall, if called on to do so by the Security Agent following the occurrence of an Event of Default, execute a legal assignment of the Book Debts

to the Security Agent on such terms as the Security Agent may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

## **10.2 Preservation of Book Debts**

The Chargor shall not (except as provided by Clause 10.1 (*Realising Book Debts*) or with the prior written consent of the Security Agent) following the occurrence of an Event of Default release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

## **11 RELEVANT AGREEMENTS UNDERTAKINGS**

The Chargor makes the undertakings set out in this Clause 11 to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties for the continuance of the Security Period.

### **11.1 Relevant Agreements**

- (a) The Chargor shall, unless the Security Agent agrees otherwise in writing, comply with the terms of any Relevant Agreement and any other document, agreement or arrangement comprising the Charged Assets (other than the Insurance Policies).
- (b) The Chargor shall not, unless the Security Agent agrees otherwise in writing:
  - (i) amend or vary or agree to any change in, or waive any requirement of;
  - (ii) settle, compromise, terminate, rescind or discharge (except by performance); or
  - (iii) abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty to a Relevant Agreement or other person in connection with

any Relevant Agreement or any other document, agreement or arrangement comprising the Charged Assets (other than the Insurance Policies).

## **12 INTELLECTUAL PROPERTY UNDERTAKINGS**

The Chargor makes the undertakings set out in this Clause 12 to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties for the continuance of the Security Period.

### **12.1 Preservation of rights**

The Chargor shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property necessary or desirable for the conduct of its business including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.

### **12.2 Registration of Intellectual Property**

The Chargor shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Security Agent informed of all matters relating to each such registration.

### **12.3 Register of trade marks**

The Chargor as registered proprietor hereby appoints the Security Agent as its agent to apply for the particulars of this Deed and the interest of the Security Agent in the intellectual property and any other or future trade marks or trade mark applications registered or to be registered in the United Kingdom in the name of the Chargor, to be made on the Register of Trade Marks under section 25(1) of the Trade Marks Act 1994. The Chargor hereby agrees to execute all documents and forms required to enable such particulars to be entered on the Register of Trade Marks.

### **12.4 Maintenance of Intellectual Property**

The Chargor shall not permit any material Intellectual Property to be abandoned, cancelled or to lapse.

## **13 POWERS OF THE SECURITY AGENT**

### **13.1 Power to remedy**

- (a) The Security Agent shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this Deed.
- (b) The Chargor irrevocably authorises the Security Agent and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Security Agent in remedying a breach by the Chargor of its obligations contained in this Deed shall be reimbursed by the Chargor to the Security Agent on a full indemnity basis and shall carry interest in accordance with Clause 20 (*Costs*).

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- (d) In remedying any breach in accordance with this Clause 13.1, the Security Agent, its agents and their respective officers, agents and employees shall be entitled to enter onto any Property and to take any action as the Security Agent may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

### **13.2 Exercise of rights**

- (a) The rights of the Security Agent under Clause 13.1 (*Power to remedy*) are without prejudice to any other rights of the Security Agent under this Deed.
- (b) The exercise of any rights of the Security Agent under this Deed shall not make the Security Agent liable to account as a mortgagee in possession.

### **13.3 Power to dispose of chattels**

- (a) At any time after the security constituted by this Deed has become enforceable, the Security Agent or any Receiver may, as agent for the Chargor, dispose of any chattels or produce found on any Property.
- (b) Without prejudice to any obligation to account for the proceeds of any disposal made under part (a) of this Clause 13.3 the Chargor shall indemnify the Security Agent and any Receiver against any liability arising from any disposal made under part (a) of Clause 13.3.

### **13.4 Security Agent has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Security Agent in relation to any of the Charged Assets whether or not it has taken possession of any Charged Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **13.5 Conversion of currency**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Security Agent may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this Clause 13.5 (*Conversion of currency*)) from their existing currencies of denomination into any other currencies of denomination that the Security Agent may think fit.

- (b) Any such conversion shall be effected at the Security Agent's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this Clause 13.5 (*Conversion of currency*) to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

### **13.6 New accounts**

- (a) If the Security Agent receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Charged Assets, the Security Agent may open a new account for the Chargor in the Security Agent's books. Without prejudice to the Security Agent's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Security Agent does not open a new account immediately on receipt of the notice, or deemed notice, under Clause 13.6(a), then, unless the Security Agent gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Security Agent shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Security Agent.

### **13.7 Indulgence**

The Security Agent may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a Party (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Chargor for the Secured Liabilities.

### **13.8 Appointment of an Administrator**

- (a) The Security Agent may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable.
- (b) Any appointment under this Clause 13.8 (*Appointment of Administrator*) shall:

- (i) be in writing signed by a duly authorised signatory of the Security Agent; and
- (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (iii) The Security Agent may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this Clause 13.8 (*Appointment of Administrator*) appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

## **14 WHEN SECURITY BECOMES ENFORCEABLE**

### **14.1 Security becomes enforceable on Enforcement Event**

The security constituted by this Deed shall become immediately enforceable if an Enforcement Event occurs and is continuing.

### **14.2 Discretion**

After the security constituted by this Deed has become enforceable, the Security Agent may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Assets.

## **15 ENFORCEMENT OF SECURITY**

### **15.1 Enforcement powers**

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall, as between the Security Agent and a purchaser from the Security Agent, arise on and be exercisable at any time after the execution of this Deed, but the Security Agent shall not exercise such power of sale or other powers until the security constituted by this Deed has become enforceable under Clause 14.1 (*Security becomes enforceable on Enforcement Event*).
- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.
- (c) The Security Agent may do anything a Receiver has power to do under this Deed.

## **15.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Security Agent and any Receiver, at any time after the security constituted by this Deed has become enforceable, whether in its own name or in that of the Chargor, to:

- (a) grant a lease or agreement to lease;
- (b) accept surrenders of leases; or
- (c) grant any option of the whole or any part of the Charged Assets with whatever rights relating to other parts of it

whether or not at a premium and containing such covenants on the part of the Chargor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Security Agent or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

## **15.3 Access on enforcement**

- (a) At any time after the Security Agent has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this Deed or the Facility Agreement, the Chargor will allow the Security Agent or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Charged Asset and for that purpose to enter on any premises where a Charged Asset is situated (or where the Security Agent or a Receiver reasonably believes a Charged Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.
- (b) At all times, the Chargor must use its best endeavours to allow the Security Agent or its Receiver access to any premises for the purpose of Clause 15.3(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

## **15.4 Prior Security**

At any time after the security constituted by this Deed has become enforceable, or after any powers conferred by any Security having priority to this Deed shall have become exercisable, the Security Agent may:

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- (a) redeem that or any other prior Security;
  - (b) procure the transfer of that Security to it; and
  - (c) settle and pass any account of the holder of any prior Security.

The settlement and passing of any such account passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor. All monies paid by the Security Agent to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Security Agent, be due from the Chargor to the Security Agent on current account and shall bear interest at the Default Rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

#### **15.5 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Security Agent, any Receiver or Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Security Agent, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Security Agent, any Receiver or any Delegate is to be applied.

#### **15.6 Privileges**

Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

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

Neither the Security Agent, any Receiver, any Delegate nor any Administrator shall be liable, by reason of entering into possession of a Charged Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Charged Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Charged Assets for which a mortgagee in possession might be liable as such.

## **15.8 Relinquishing possession**

If the Security Agent, any Receiver or Delegate enters into or takes possession of the Charged Assets, it or he may at any time relinquish possession.

## **15.9 Conclusive discharge to purchasers**

The receipt of the Security Agent, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Assets or in making any acquisition in the exercise of their respective powers, the Security Agent, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

## **15.10 Right of appropriation**

(a) To the extent that:

- (i) the Charged Assets constitute Financial Collateral; and
- (ii) this Deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement

the Security Agent shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Charged Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Security Agent may, in its absolute discretion, determine.

- (b) The value of any Charged Assets appropriated in accordance with this Clause shall be the price of those Charged Assets at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Security Agent may select (including independent valuation).
- (c) The Chargor agrees that the methods of valuation provided for in this Clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## **16 RECEIVER**

### **16.1 Appointment**

At any time after the security constituted by this Deed has become enforceable, or at the request of the Chargor, the Security Agent may, without further notice, appoint by way of Deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Charged Assets.

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## **16.2 Removal**

The Security Agent may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of Deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

## **16.3 Remuneration**

The Security Agent may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, to the extent not otherwise discharged.

## **16.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Security Agent under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

## **16.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Security Agent despite any prior appointment in respect of all or any part of the Charged Assets.

## **16.6 Agent of the Chargor**

Any Receiver appointed by the Security Agent under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Security Agent.

## **17 POWERS OF RECEIVER**

### **17.1 Powers additional to statutory powers**

- (a) Any Receiver appointed by the Security Agent under this Deed shall, in addition to the powers conferred on him by statute, have the powers set out in Clause 17.3 (*Repair and develop Properties*) to Clause 17.24 (*Incidental powers*).

- 
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.
  - (c) Any exercise by a Receiver of any of the powers given by Clause 17 (*Powers of Receiver*) may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in Clause 17.17 (*Make calls on Chargor members*)) or himself.
  - (d) A Receiver may do anything the Security Agent has power to do under this Deed.

#### **17.2 Insolvency Act powers**

A Receiver may do all the acts and things in Schedule 1 to the Insolvency Act 1986 as if the words "he" and "him" referred to the Receiver and "company" referred to the Chargor.

#### **17.3 Repair and develop Properties**

A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

#### **17.4 Grant or accept surrenders of leases**

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that he thinks fit.

#### **17.5 Employ personnel and advisers**

A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.

#### **17.6 Make and revoke VAT option to tax**

A Receiver may make, exercise or revoke any VAT option to tax as he thinks fit.

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**17.7 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Security Agent may prescribe or agree with him.

**17.8 Realise Charged Assets**

A Receiver may collect and get in the Charged Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Charged Assets with like rights.

**17.9 Manage or reconstruct the Chargor's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor.

**17.10 Dispose of Charged Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Charged Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Charged Assets to be sold.

**17.11 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Chargor.

**17.12 Sell Book Debts**

A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit.

**17.13 Give valid receipts**

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Assets.

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**17.14 Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that he may think expedient.

**17.15 Bring proceedings**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Assets as he thinks fit.

**17.16 Improve the Equipment**

A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient.

**17.17 Make calls on Chargor members**

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Chargor on its directors in respect of calls authorised to be made by them.

**17.18 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in Clause 20 (*Costs and indemnity*), effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this Deed.

**17.19 Powers under the LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

**17.20 Borrow**

A Receiver may, for any of the purposes authorised by this Clause 17 (*Powers of Receiver*), raise money by borrowing from the Security Agent (or from any other person) either unsecured or on the security of all or any of the Charged Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Security Agent consents, terms under which that security ranks in priority to this Deed).

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#### **17.21 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **17.22 Delegation**

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

#### **17.23 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Assets, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Charged Assets or any part of the Charged Assets.

#### **17.24 Incidental powers**

A Receiver may do any other acts and things that he:

- (a) may consider desirable or necessary for realising any of the Charged Assets;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; or
- (c) lawfully may or can do as agent for the Chargor.

### **18 DELEGATION**

#### **18.1 Delegation**

The Security Agent or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under Clause 22.1 (*Appointment of attorneys*)).

#### **18.2 Terms**

The Security Agent and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

### **18.3 Liability**

Neither the Security Agent nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **19 APPLICATION OF PROCEEDS**

### **19.1 Order of application of proceeds**

All monies received by the Security Agent, a Receiver or a Delegate pursuant to this Deed, after the security constituted by this Deed has become enforceable (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied unless otherwise determined by the Security Agent, (or such Receiver or Delegate) in the following order of priority:

- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Security Agent (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed;
- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Security Agent determines; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

### **19.2 Appropriation**

Neither the Security Agent, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### **19.3 Suspense account**

All monies received by the Security Agent, a Receiver or a Delegate under this Deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

- (a) may, at the discretion of the Security Agent, Receiver or Delegate, be credited to any suspense or securities realised account;

- 
- (b) shall bear interest, if any, at the rate agreed in writing between the Security Agent and the Chargor; and
  - (c) may be held in that account for so long as the Security Agent, Receiver or Delegate thinks fit.

## **20 COSTS AND INDEMNITY**

Prior to an Event of Default occurring (but not on or after), the Security Agent shall, without prejudice to the remainder of this Clause 20, use reasonable endeavours to agree any costs, charges or expenses to be recovered under this Clause 20 with the Chargor prior to incurring the same.

### **20.1 Costs**

The Chargor shall, within three Business Days of demand, pay to, or reimburse, the Security Agent and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Security Agent, any Receiver or any Delegate in connection with:

- (a) this Deed or the Charged Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Security Agent's, a Receiver's or a Delegate's rights under this Deed; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Chargor) at the rate and in the manner specified in the Facility Agreement.

### **20.2 Indemnity**

The Chargor shall indemnify the Security Agent, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full

indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Charged Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or
- (c) any default or delay by the Chargor in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this Clause 20.2 (*Indemnity*) subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **21 FURTHER ASSURANCE**

### **21.1 Further assurance**

The Chargor shall, at its own expense, take whatever action the Security Agent or any Receiver may reasonably require for:

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

including, without limitation (if the Security Agent or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Assets (whether to the Security Agent or to its nominee) and the giving of any notice, order or direction and the making of any registration.

### **21.2 Specific security documents required**

Without prejudice to the generality of the provisions of Clause 21.1 (*Further Assurance*), the Chargor shall execute as and when so required by the Security Agent a legal mortgage or legal charge (as specified by the Security Agent) over any freehold, leasehold and heritable properties acquired by it after the date of this Deed (including all

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or any of the Properties as and when the same are conveyed, transferred, or let to it) and over any and all fixtures, trade fixtures and fixed plant and machinery at any time and from time to time situate thereon.

## **22 POWER OF ATTORNEY**

### **22.1 Appointment of attorneys**

By way of security, the Chargor irrevocably appoints the Security Agent, every Receiver and every Delegate separately to be its attorney and, in its name, on its behalf and as its act and Deed, to execute any documents and do any acts and things that:

- (a) the Chargor is required to execute and do under this Deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Security Agent, any Receiver or any Delegate,

provided always that the Security Agent, any Receiver and any Delegate (as applicable) shall only be entitled to exercise its powers under this Clause 22.1 following the occurrence of an Event of Default.

### **22.2 Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in Clause 22.1 above (*Appointment of attorneys*).

## **23 RELEASE**

Subject to Clause 24.3 (*Discharge Conditional*) on the expiry of the Security Period (but not otherwise), the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to:

- (a) release the Charged Assets from the security constituted by this Deed; and
- (b) reassign the Charged Assets to the Chargor.

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## **24 FURTHER PROVISIONS**

### **24.1 Independent security**

The security constituted by this Deed shall be in addition to, and independent of, any other security or guarantee that the Security Agent may hold for any of the Secured Liabilities at any time. No prior security held by the Security Agent over the whole or any part of the Charged Assets shall merge in the security created by this Deed.

### **24.2 Continuing security**

The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Security Agent discharges this Deed in writing.

### **24.3 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Security Agent shall be deemed conditional on no payment or security received by a Secured Party in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Security Agent or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Assets, for any period that the Security Agent deems necessary to provide the Secured Party with security against any such avoidance, reduction or order for refund; and
- (b) a Secured Party may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

### **24.4 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

## **25 SECURITY AGENT**

### **25.1 Declaration of Trust**

Ref: CH15/RR07  
Borges Salmon LLP  
www.borges-salmon.com  
Tel: +44 (0)117 902 7779  
Fax: +44 (0)117 902 4400

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The Security Agent hereby declares itself trustee of the covenants, undertakings, mortgages and charges of the Chargor contained in this Deed and the security and other rights, titles and interests constituted by this Deed and of the Charged Assets and all other moneys, property and assets paid to the Security Agent or held by the Security Agent or received or recovered by the Security Agent pursuant to or in connection with this Deed with effect from the date of this Deed to hold the same on trust for the Secured Parties and itself and to apply the same in accordance with the provisions of Clause 19 (*Application of Proceeds*).

#### **25.2 Appointment**

Each Secured Party has appointed the Security Agent to act as its trustee in connection with this Deed pursuant to the Security Trust Deed.

#### **25.3 Deemed entitlement**

The Security Agent may deem and treat each Secured Party as the person entitled to the benefit of this Deed in respect of the proportion of the Secured Liabilities which, in accordance with the information provided to the Security Agent pursuant to Clause 25.4 (*Directions for realisation*), are owing or incurred by the Chargor to such Secured Party for all purposes of this Deed unless and until a written notice of assignment or transfer of all or part of such Secured Party's share shall have been filed with the Security Agent.

#### **25.4 Directions for realisation**

Each Secured Party shall provide the Security Agent with all necessary directions in writing so as to enable the Security Agent to apply the proceeds of realisation of the security as contemplated by this Deed and such other information as it may reasonably require for the purposes of carrying out its duties and obligations under this Deed.

#### **25.5 Deposit of documents**

The Security Agent shall be entitled to place all deeds, certificates and other documents relating to the Charged Assets deposited with it under or pursuant to this Deed in any safe deposit, safe or receptacle selected by the Security Agent or with any solicitor or firm of solicitors and may make any such arrangements as it thinks fit for allowing the Chargor or its solicitors or auditors access to or possession of such documents when necessary or convenient and the Security Agent shall not be responsible for any loss incurred in connection with any such deposit, access or possession.

#### **25.6 Security Agent's duty of care**

Nothing in this Deed shall in any case where the Security Agent has failed to show the degree of care and diligence required of it as a trustee having regard to the provisions of this Deed exempt the Security Agent from or indemnify it against any liability for breach of trust or any liability which by virtue of any rule of law would otherwise attach to it in respect of any negligence, default, breach of duty or breach of trust of which it may be guilty in relation to its duties under this Deed.

#### **25.7 Additional statutory rights**

In addition to its rights under or by virtue of this Deed and the other Finance Documents, the Security Agent shall have all of the rights conferred on a trustee by the Trustee Act 1925, the Trustee Delegation Act 1999 and the Trustee Act 2000.

#### **25.8 Limit on Security Agent's Responsibility**

The Security Agent shall not have any responsibility to any Secured Party:

- (a) to ascertain whether all deeds and documents which should have been deposited with it under or pursuant to this Deed have been so deposited;
- (b) to investigate or make any enquiry into the title of the Chargor to the Charged Assets or any part thereof;
- (c) for the failure to register this Deed with the Register of Companies;
- (d) for the failure to register this Deed in accordance with the provisions of the documents of title of the Chargor to any of the Charged Assets;
- (e) for the failure to take or require the Chargor to take any steps to render this Deed effective as regards Charged Assets outside England or Wales or to secure the creation of any ancillary charge under the laws of the jurisdiction concerned; or
- (f) for acting (or as the case may be, refraining from acting) in accordance with the directions of any of the Secured Parties given pursuant to Clause 25.4 (Directions for realisation).

### **26 ASSIGNMENT AND TRANSFER**

#### **26.1 Assignment by Security Agent**

- (a) At any time, the Security Agent may assign or transfer (including by way of novation) any of its rights and obligations under this Deed.

- (b) The Security Agent may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Charged Assets and this Deed that the Security Agent considers appropriate in accordance with any restrictions contained in the Facility Agreement.

## **26.2 Assignments and transfer by the Chargor**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this Deed.

## **27 SET-OFF**

### **27.1 Security Agent's right of set-off**

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

### **27.2 Exclusion of Chargor's right of set-off**

All payments made by the Chargor to the Security Agent or a Secured Party under this Deed shall be made without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **28 NOTICES**

### **28.1 Communications in writing**

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

### **28.2 Addresses**

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

#### The Chargor

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Borges Salmon LLP  
www.borges-salmon.com  
Tel: +44 (0)117 902 7779  
Fax: +44 (0)117 902 4400

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Address: PharmaLex UK Services Limited

Wessex House

Marlow Road

Bourne End

Bucks

SL8 5SP

Attention: Chris Colton

The Security Agent

Address: Friedrichswall 10

30159 Hannover

Email: [BMO-Collateral-Management@nordlb.de](mailto:BMO-Collateral-Management@nordlb.de)

Attention: Sebastian Pritsch

**28.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:
- (i) if by way of fax, when received in legible form;
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; or
  - (iii) if by way of email, when actually received in readable form and in the case of any electronic communication made by the Chargor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose;

and, if a particular department or officer is specified as part of its address details provided under Clause 28.2 (*Addresses*), if addressed to that department or officer.

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- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
  - (c) All notices from or to the Chargor shall be sent through the Security Agent and any notice, communication or document made or delivered to the Security Agent from the Chargor will be deemed to have been made or delivered to each of the relevant Finance Parties.
  - (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (b) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

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

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 28.2 (*Addresses*) or changing its own address or fax number, the Chargor shall notify the other parties.

#### **28.5 Electronic communication**

- (a) Any electronic communication which becomes effective, in accordance with Clause 28.3(a)(iii) above, after 5:00 p.m. in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this Deed shall be deemed only to become effective on the following day.
- (b) Any reference in this Deed to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 28.5 (*Electronic communication*).

#### **28.6 English language**

Any notice given under or in connection with this Deed must be in English.

## **29 CALCULATIONS AND CERTIFICATES**

### **29.1 Accounts**

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

### **29.2 Certificates and Determinations**

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

### **29.3 Day count convention**

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

## **30 PARTIAL INVALIDITY**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **31 REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Deed shall operate as a waiver, of any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Security Agent shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided by this Deed are cumulative and not exclusive of any rights or remedies provided by law.

## **32 AMENDMENTS AND WAIVERS**

Any term of this Deed may be amended or waived only with the express written consent of the Security Agent and the Chargor and any such amendment or waiver will be binding on all parties.

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**33 COUNTERPARTS**

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

**34 GOVERNING LAW**

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

**35 JURISDICTION**

**35.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- (b) The parties to this Deed 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 35.1 (*Jurisdiction*) is for the benefit of the Security Agent only. As a result, the Security 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 Security Agent may take concurrent proceedings in any number of jurisdictions.

**THIS DOCUMENT HAS BEEN EXECUTED AS A DEED AND IS DELIVERED AND TAKES EFFECT ON THE DATE STATED AT THE BEGINNING OF IT**

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Notice and acknowledgement – Relevant Agreement

Part A

Form of Notice

To: [Name of counterparty to Agreement]

From: [Name of Chargor] (the "Chargor")

And [●] as **Security Agent** (as agent and trustee for the Secured Parties)

Date: [●]

Dear Sirs

**NOTICE OF ASSIGNMENT**

We refer to the [describe agreement(s)] made between ourselves and you on [date] [for the [provision of [briefly describe agreement if necessary] (the "**Specified Agreement**")].

We hereby give you notice that pursuant to a debenture dated [●], and made between, [amongst others] ourselves and [●] as Security Agent (as agent and trustee for the Secured Parties) (such debenture, as it may from time to time be amended, assigned, novated or supplemented, being below called the "**Debenture**"), we have assigned and charged and agreed to assign and charge, to the Security Agent (as agent and trustee for the Secured Parties), all our rights, title, interest and benefit, present and future, under, to and in the Specified Agreement.

Words and expressions defined in the Debenture shall have the same meaning when used in this Notice.

Please note the following:

- 1 We shall at all times remain solely liable to you for the performance of all of the obligations assumed by us under or in respect of the Specified Agreement. Neither the Security Agent nor any of the Secured Parties will be under any liability or obligation of any kind in the event of any breach or failure by us to perform any obligation under the Specified Agreement;
- 2 We irrevocably and unconditionally instruct you to pay the full amount of any sum which you are (or would, but for the Debenture, be) at any time obliged to pay to us under or in respect of the Specified Agreement as follows:

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Borges Salmon LLP  
www.borges-salmon.com  
Tel: +44 (0)117 902 7779  
Fax: +44 (0)117 902 4400

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- (a) unless and until the Security Agent gives you notice that an Enforcement Event has occurred and is continuing, in accordance with our instructions; and
  - (b) at any time after the Security Agent gives you notice that an Enforcement Event has occurred and is continuing, to such bank account or otherwise as the Security Agent may from time to time direct.

The Security Agent has agreed that, notwithstanding the Debenture, we remain entitled to exercise all of the rights, powers, discretions and remedies which would (but for the Debenture) be vested in us under and in respect of the Specified Agreement unless and except to the extent that the Security Agent gives you notice that an Enforcement Event has occurred and is continuing. Upon and after the giving of any such notice, the Security Agent shall be entitled to exercise and give directions regarding the exercise of all or any of those rights, powers, discretions and remedies (to the exclusion of us and to the exclusion of any directions given at any time by or on behalf of us) to the extent specified in the notice from the Security Agent.

We have irrevocably and unconditionally appointed the Security Agent to be our attorney to do (among other things) all things which we could do in relation to the Specified Agreement.

We confirm to you that:

- 3 in the event of any conflict between communications received from us and from the Security Agent, you shall treat the communication from the Security Agent as prevailing over the communication from us;
- 4 you are and will at all times be permitted to assume and rely upon the correctness of anything communicated to you by the Security Agent including without limitation statements as to the occurrence of an Enforcement Event; and none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Security Agent's specific prior consent.

This notice and any non-contractual obligations arising out of or in connection with this notice shall be governed by and construed in accordance with English law.

Please acknowledge receipt of this notice, and confirm your agreement to it, by executing and returning to the Security Agent an original copy of the Form of Acknowledgement attached to this notice of assignment.

Yours faithfully

---

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Fax: +44 (0)117 902 4400

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Salmon**  
34294.9  
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For and on behalf of [Chargor]

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Acknowledged for and on behalf of [●]

**Security Agent (as agent and trustee for the Secured Parties)**

Part B

Form of Acknowledgement

[LETTERHEAD OF COUNTERPARTY TO SPECIFIED AGREEMENT]

To: [●] (Security Agent) (as agent and trustee for the Secured Parties)

Address: [●]

Attn: [●]

To: [Name of Chargor]

Address: [●]

Attn: [●]

Dear Sirs

We acknowledge receipt of the notice dated [●], a copy of which is attached to this letter (the "Notice"). Words and expressions defined in the Notice have the same meanings in this letter.

We confirm to you:

- 1 We consent to the assignment of the Specified Agreement and have noted, and will act in accordance with, the terms of that notice.
- 2 We have not previously received notice of any other assignment of the Specified Agreement and we are not aware of any interest of any third party in any of the Chargor's rights, benefits, interests or claims under or in respect of the Specified Agreement.
- 3 We irrevocably and unconditionally agree to pay the full amount of any sum which we are (or would, but for the Debenture, be) at any time obliged to pay under or in respect of the Specified Agreement:

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Borges Salmon LLP  
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Tel: +44 (0)117 902 7779  
Fax: +44 (0)117 902 4400

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- (a) unless and until the Security Agent gives us notice that an Enforcement Event has occurred and is continuing, in accordance with the Chargor's instructions; and
  - (b) at any time after the Security Agent gives us notice that an Enforcement Event has occurred and is continuing, to such bank account or otherwise as the Security Agent may from time to time direct.

4 We will comply with the terms of the Notice.

We acknowledge that the Chargor shall at all times remain solely liable to us for the performance of all of the obligations assumed by it under the Specified Agreement, and that neither the Security Agent nor any other Secured Party is or will be under any liability or obligation whatever in the event of any breach or failure by the Chargor to perform its obligations under the Specified Agreement.

This letter and any non-contractual obligations arising out of or in connection with this letter shall be governed by and construed in accordance with English law.

Yours faithfully

For and on behalf of [*counterparty to Specified Agreement*]

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Insurance Policy

Part A

Form of Notice

To: [Name of Insurers]

From: [Name of Chargor] (the "Chargor")

And [●] as Security Agent (as agent and trustee for the Secured Parties)

Date: [●]

Dear Sirs

**NOTICE OF ASSIGNMENT**

We hereby give you notice that pursuant to a debenture dated [●], and made between, [amongst others] ourselves and the Security Agent (as agent and trustee for the Secured Parties) such debenture, as it may be amended, assigned, novated or supplemented from time to time, (the "Debenture"), we have assigned and charged and agreed to assign and charge to the Security Agent (as agent and trustee for itself and for the benefit of the Secured Parties) all [our/our and all our subsidiaries] rights, title, benefits, interests and claims, present and future, in and to the following insurances (the "Insurance Contracts") and all moneys or proceeds of any claims which at any time may be or become due to or received by us under or pursuant to those Insurance Contracts and together with the Insurance Contracts the ("Assigned Property"):

**[insert details of insurance contracts here]**

Words and expressions defined in the Debenture shall, unless otherwise defined herein, have the same meaning in this Notice.

We confirm to you:

We shall at all times remain solely liable to you for the performance of all of the obligations assumed by us under or in respect of the Insurance Contracts (including, without limitation, the payment of all premiums, calls, contributions or other sums from time to time payable in respect of the Insurances).

We irrevocably and unconditionally instruct you to pay all moneys including, without limitation, the proceeds of all claims which at any time may be or would, but for the Debenture, be or become payable by you to us under or in respect of the Insurance Contracts to the Security Agent (or as it shall direct) as follows:

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Tel: +44 (0)117 902 7779  
Fax: +44 (0)117 902 4400

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- 
- 1 unless and until the Security Agent gives you notice that an Enforcement Event has occurred and is continuing, in accordance with the loss payable Clause contained in the relevant policy(ies) of insurance; and
  - 2 at any time after the Security Agent gives you notice that an Enforcement Event has occurred and is continuing, to such bank account or otherwise as the Security Agent may from time to time direct.

The Security Agent has agreed that, notwithstanding the Debenture, we remain entitled to exercise all the rights, powers, discretions and remedies which would (but for the Debenture) be vested in us under and in respect of the Assigned Property and you should continue to give notices under the Insurance Contracts to us unless and except to the extent that the Security Agent gives you notice that an Enforcement Event has occurred and is continuing. Upon and after the giving of any such notice, the Security Agent shall be entitled to exercise and give directions regarding the exercise of all or any of those rights, powers, discretions and remedies (to the exclusion of us and to the exclusion of any directions given at any time by or on behalf of us) to the extent specified in the notice from the Security Agent.

We have irrevocably and unconditionally appointed the Security Agent to be our attorney and to do (among other things) all things which we could do in relation to the Assigned Property.

We confirm to you that:

- 3 in the event of any conflict between communications received from us and from the Security Agent, you shall treat the communication from the Security Agent as prevailing over the communication from us; and
- 4 you are and will at all times be permitted to assume and rely upon the correctness of anything communicated to you by the Security Agent including without limitation statements as to the occurrence of an Enforcement Event; and none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Security Agent's specific prior consent.

This notice and any non-contractual obligations arising out of or in connection with this notice shall be governed by and construed in accordance with English law.

[Please acknowledge receipt of this notice and confirm that you will comply with the other provisions of this notice by executing and returning an original copy of the Form of Acknowledgement attached to this Notice to the Security Agent at [address].]

Yours faithfully

Ref: CH15/RR07  
Borges Salmon LLP  
www.borges-salmon.com  
Tel: +44 (0)117 902 7779  
Fax: +44 (0)117 902 4400

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For and on behalf of [Chargor]

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For and on behalf of [●]

**Security Agent (as agent and trustee for itself and for the benefit of the Secured Parties)**

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Borges Salmon LLP  
www.borges-salmon.com  
Tel: +44 (0)117 902 7779  
Fax: +44 (0)117 902 4400

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Form of acknowledgement

[LETTERHEAD OF UNDERWRITER/INSURANCE COMPANY]

To: [●] (Security Agent) (as agent and trustee for itself and for the benefit of the Secured Parties)

Address: [●]

Attn: [●]

To: [Name of Chargor]

Address: [●]

Attn: [●]

Dear Sirs

We acknowledge receipt of a Notice of Assignment dated [●], (the "Notice"), a copy of which is attached, and agree to be bound by its terms and conditions. Words and expressions defined in the Notice shall have the same meanings in this letter.

In consideration of the Security Agent (acting for itself and the other Secured Parties) approving and continuing to approve the placement of insurances with us from time to time, we undertake and confirm to you:

- 1 We will ensure that the Security Agent (as assignee of the Assigned Property) is named as co-insured under each of the Insurance Contracts (other than for public liability insurances and third party liability insurances) and endorsed on all slips, cover notes, policy documents and other documents relating to the Insurance Contracts.
- 2 We agree to ensure and procure that any and all claims, proceeds or other moneys payable under or in respect of the Assigned Property are paid in accordance with the required loss payable provisions in the relevant policy(ies) or otherwise as directed in the Notice.
- 3 We confirm that we have not, as at the date of this letter, received notice that any other person has or will have any right or interest whatsoever in, or has made or will be making any claim or demand or be taking any action against the Assigned Property or any part thereof, and if, after the date hereof, we receive any such notice, we shall immediately give written notice thereof to the Security Agent.

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Salmon**  
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- 4 We confirm that we will not permit the insurance contracts to lapse or attempt to avoid any Insurance Contract or reduce or restrict any Insurance cover without giving the Security Agent at least [30] days' prior notice.
  - 5 We confirm that as against the Security Agent no Insurance Contract will be rendered void or unenforceable by reason of any act, omission, breach of warranty or non-disclosure by it or any other person.
  - 6 We acknowledge that neither the Security Agent nor any other Secured Party shall at any time be liable for the relevant premiums relating to any Insurance Contract and that the Chargor will remain solely liable for any such premiums.
  - 7 We will comply with the terms of the Notice.

This acknowledgment and any non-contractual obligations arising out of or in connection with this acknowledgment shall be governed by and construed in accordance with English law.

Yours faithfully

For and on behalf of [**Name of broker/underwriter/insurance company**]

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Burgess Salmon LLP  
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Fax: +44 (0)117 902 4400

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**Burgess  
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Notice and acknowledgement – bank account

Part A

Form of notice

To: [Name of Account Bank/Custodian]

From: [Name of Chargor] (the "Chargor")

And [●] as **Security Agent** (as agent and trustee for the Secured Parties)

Date: [●]

Dear Sirs

**NOTICE OF ASSIGNMENT**

We hereby give you notice that pursuant to a debenture dated [●] made between, [amongst others] ourselves and the Security Agent (as agent and trustee for itself and for the benefit of the Secured Parties) (such debenture, as it may from time to time be amended, assigned, novated or supplemented, being called the "**Debenture**") we have assigned and agreed to assign to the Security Agent all our rights, title, benefits and interests, present and future, under and in respect of the Bank Accounts detailed below (together the "**Bank Accounts**"), including (in each case) all moneys from time to time standing to the credit of, all debts from time to time represented by, the Bank Accounts and all other rights from time to time accruing to or arising in connection with any of the Bank Account:

**Bank Account:** [●]

**Bank Account Number:** [●]

**Sort Code:** [●]

*[Give details of each Bank Account]*

Words and expressions defined in the Debenture shall, unless otherwise defined herein, have the same meaning in this Notice.

We and the Security Agent hereby authorise and instruct you as follows:

- 1 to disclose to the Security Agent without any reference or further authority from us and without any enquiry by you as to the justification for such disclosure, such information relating to [the/any] Bank Account[s] and the moneys from time to time deposited in or

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www.borges-salmon.com  
Tel: +44 (0)117 902 7779  
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standing to the credit of such Bank Account[s] as the Security Agent may at any time and from time to time request you to disclose to it;

- 2 to hold all moneys from time to time deposited in or standing to the credit of such Bank Account to the order of the Security Agent and to pay or release all or any part of such moneys in accordance with the written instructions of the Security Agent at any time and from time to time;
- 3 to comply with the terms of any written notice or instructions you receive at any time and from time to time from the Security Agent in any way relating to the Debenture or the Bank Account[s] or any moneys from time to time deposited in or standing to the credit of the Bank Account[s] without any reference or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction.

The Security Agent has agreed that we may withdraw any moneys from any Bank Account without any reference or further authority from the Security Agent except to the extent that the Security Agent gives you notice to the contrary. Upon and after the giving of such notice, we shall cease to be entitled to make any such withdrawals to the extent specified in that notice.

Please also note that these instructions are not to be revoked or varied without the prior written consent of the Security Agent.

We confirm that:

- 1 in the event of any conflict between communications received from us and from the Security Agent you shall treat the communication from the Security Agent as prevailing over the communication from us; and
- 2 you are and will at all times be permitted to assume and rely on the correctness of anything communicated to you by the Security Agent including but not limited to statements as to the occurrence of an Enforcement Event and none of the instructions, authorisations and confirmations in this Notice can be revoked or varied in any way except with the Security Agent's specific prior consent.

Please acknowledge receipt of this notice and confirm your agreement to it, by executing and returning to the Security Agent an original copy of the Form of Acknowledgement attached to this notice of assignment.

This notice and any non-contractual obligations arising out of or in connection with this notice shall be governed by and construed in accordance with English law.

Yours faithfully

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For and on behalf of [Chargor]

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Acknowledged for and on behalf of [●]

**Security Agent (as agent and trustee for the Secured Parties)**

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Form of acknowledgement

[LETTERHEAD OF BANK ACCOUNT BANK/CUSTODIAN]

To: [●] (Security Agent) (as agent and trustee for the Secured Parties)

Address: [●]

Attn: [●]

To: [Name of company]

Address: [●]

Attn: [●]

Dear Sirs

We acknowledge receipt of the notice dated [●], a copy of which is attached to this letter (the "Notice"). Words and expressions defined in the Notice have the same meanings in this letter.

We confirm that:

- 1 we acknowledge and consent to the assignment of the Bank Accounts and have noted, and will act in accordance with, the terms of that notice;
- 2 there does not exist in our favour, and we undertake not to create, assert, claim or exercise, any mortgage, fixed or floating charge, encumbrance, assignment or other security interest of any kind, or any agreement or arrangement having substantially the same economic or financial effect as any of the foregoing (including any rights of counter-claim, rights of set-off or combination of accounts or any "hold back" or "flawed asset" arrangement) over or with respect to any moneys standing to the credit of, or received by us to be credited to, any Bank Account (or any part thereof);
- 3 we have not, as at the date hereof, received any notice that any third party has or will have any right or interest whatsoever in, or has made or will be making any claim or demand or be taking any action whatsoever against the Chargor's rights, benefits, interests or claims under or in respect of the Bank Accounts (or any part thereof), and if, after the date hereof, we receive any such notice, we shall immediately give written notice thereof to the Security Agent; and
- 4 we will comply with the terms of the Notice.

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This acknowledgment and any non-contractual obligations arising out of or in connection with this acknowledgment shall be governed by and construed in accordance with English law.

Yours faithfully

For and on behalf of [*name of Account Bank*]

10/01/07

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EXECUTION PAGE

CHARGOR

Executed as a Deed by )

**PHARMALEX UK SERVICES** )

**LIMITED** acting by Chris Colton )

In the presence of: Director

Witness

Name

Address

Occupation

[Redacted Signature]

[Redacted Signature]

LISA DARLAK

[Redacted Address]

SENIOR COMMERCIAL MANAGER

SECURITY AGENT

Signed by

And

).....

Authorised Signatory

for and on behalf of **NORDDEUTSCHE  
LANDESBANK GIROZENTRALE** by its duly  
authorised signatories

).....

Authorised Signatory

EXECUTION PAGE

CHARGOR

Executed as a Deed by )

PHARMALEX UK SERVICES )

LIMITED acting by Chris Colton )

In the presence of: Director .....

Witness .....

Name .....

Address .....

Occupation .....

SECURITY AGENT

Signed by

And

).....

PRITSCH

Authorised Signatory

for and on behalf of NORDDEUTSCHE  
LANDESBANK GIROZENTRALE by its duly  
authorised signatories

).....

Authorised Signatory

Nockemann

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