



**Registration of a Charge**

Company name: **THE WAREHOUSE WINE CO LIMITED**

Company number: **03898259**

Received for Electronic Filing: **26/09/2017**



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**Details of Charge**

Date of creation: **20/09/2017**

Charge code: **0389 8259 0009**

Persons entitled: **SHAWBROOK BANK LIMITED**

Brief description:

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**SQUIRE PATTON BOGGS (UK) LLP**



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

Company number: 3898259

Charge code: 0389 8259 0009

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th September 2017 and created by THE WAREHOUSE WINE CO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th September 2017 .

Given at Companies House, Cardiff on 28th September 2017

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**DATED** 20 September 2017

**(1) SHAWBROOK BANK LIMITED**  
as Shawbrook

- and -

**(2) THE COMPANIES NAMED IN THIS DEED AS SECURITY OBLIGORS**  
as Security Obligors

**COMPOSITE GUARANTEE AND  
DEBENTURE**

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THIS COMPOSITE GUARANTEE AND DEBENTURE is made on 20 September 2017

**BETWEEN**

- (1) **SHAWBROOK BANK LIMITED**, a company incorporated and registered under the laws of England and Wales with limited liability and registered with the number 00388466 with its registered office at Lutea House, The Drive, Warley Hill Business Park, Great Warley, Brentwood, Essex, CM13 3BE ("**Shawbrook**"); and
- (2) **THE COMPANIES LISTED IN SCHEDULE 1 TO THIS DEED** (the "**Security Obligors**").

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed:

- (a) terms defined in, or construed for the purposes of, the Asset Based Lending Agreement (as defined below) have the same meanings when used in this Deed (unless the same are otherwise defined in this Deed); and
- (b) the following terms have the following meanings:

**"ABL Insurances"** means Inventory Insurances, P&M Insurances and Real Property Insurances and **"ABL Insurance"** means any policy of insurance falling within any of the definitions of Inventory Insurances, P&M Insurances and Real Property Insurances;

**"Account"** means any account now or in the future opened or maintained by the Security Obligors with a bank or other financial institution (and any replacement account or subdivision or subaccount of that account), all amounts from time to time standing to the credit of, or accrued or accruing on, such account and all Related Rights;

**"Acknowledgement"** means a duly completed acknowledgement of assignment in the form set out in schedule 4 (*Forms of Notice and Acknowledgement of Assignment*), or in such other form as may be approved by Shawbrook;

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

**"Asset Based Lending Agreement"** means the facility agreement dated on or about the date as this Deed and made between (1) Virgin Wine Online Limited and (2) Shawbrook, pursuant to which Shawbrook has agreed to make certain asset based lending facilities available to the Obligor;

**"Assigned Account"** means the Account identified in part 8 of schedule 3 (*Details of Security Assets*) and any replacement Account designated in writing as an Assigned Account by Shawbrook;

**"Assigned Assets"** means the Security Assets expressed to be assigned pursuant to clause 5.2 (*Security assignments*);

**"Charged Investments"** means the Charged Securities and all present and future Securities Rights accruing to all or any of the Charged Securities;

**"Charged Securities"** means the Securities specified in part 3 of schedule 3 (*Details of Security Assets*);

**"Customer Account"** means the account of Virgin Wine Online Limited with Barclays Bank plc with account number 80463000 and sort code 20-71-03 (or any renewal or redesignation of such account).

**"Customer Monies"** means any amount held on the Customer Account that has been paid into the Customer Account by a Debtor in respect of future orders that remains the property of that Debtor.

**"Default"** has the meaning given to Potential Event of Default in the Asset Based Lending Agreement;

**"Guarantee"** means the guarantee and indemnity contained in clause 2 (*Guarantee and indemnity*) as extended by schedule 2 (*The Guarantee*);

**"Insurances"** means, save for the ABL Insurances, all policies of insurance (and all cover notes) which are at any time held by, or written in favour of, a Security Obligor or in which a Security Obligor from time to time has an interest;

**"Intellectual Property"** means all present and future Intellectual Property Rights;

**"Intellectual Property Rights"** means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Security Obligor;

**"Inventory Insurances"** means those policies of insurance (if any) specified in part 5 of schedule 3 (*Details of Security Assets*) and any other policies of insurance which may replace those policies of insurance;

**"Notice of Assignment"** means a duly completed notice of assignment in the form set out in schedule 4 (*Forms of Notice and Acknowledgement of Assignment*), or in such other form as may be approved by Shawbrook;

**"Other Proceeds"** means all and any monies paid to a Trust Account which are not the proceeds of a Debt;

**"Other Receivables"** means, save for Debts, all present and future book debts and other debts, rentals, royalties, fees, VAT and monetary claims and all other amounts at any time recoverable or receivable by, or due or owing to, any Security Obligor (whether actual or contingent and whether arising under contract or in any other manner whatsoever) together with:

- (a) the benefit of all rights, guarantees, Security Interests and remedies relating to any of the foregoing (including, without limitation, negotiable instruments, indemnities,

reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights); and

(b) all proceeds of any of the foregoing;

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

**"P&M Insurances"** means those policies of insurance (if any) specified in part 6 of schedule 3 (*Details of Security Assets*) and any other policies of insurance which may replace those policies of insurance;

**"Real Property Insurances"** means those policies of insurance (if any) specified in part 7 of schedule 3 (*Details of Security Assets*) and any other policies of insurance which may replace those policies of insurance;

**"Receiver"** means any receiver or receiver and manager appointed by Shawbrook under this Deed;

**"Related Rights"** means, in relation to any asset:

- (a) the proceeds of sale of all or any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, powers, benefits, claims, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of that asset; and
- (d) any monies, proceeds or income paid or payable in respect of that asset.

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of any member of the Group to Shawbrook under or pursuant to any Finance Document (including all monies covenanted to be paid under this Deed);

**"Securities"** means all stocks, shares, debentures, bonds, warrants, coupons, negotiable instruments, certificates of deposit or other securities or "*investments*" (as defined in part II of schedule II to the Financial Services and Markets Act 2000 as in force at the date of this Deed) now or in future owned (legally or beneficially) by a Security Obligor, held by a nominee on its behalf or in which such Security Obligor has an interest at any time;

**"Securities Rights"** means:

- (a) all dividends, distributions and other income paid or payable on the relevant Securities or Charged Securities or on any asset referred to in paragraph (b) of this definition;
- (b) all rights, monies or property accruing or offered at any time in relation to such Securities or Charged Securities whether by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;

**"Security"** means the Security Interests created by or pursuant to this Deed;



**"Security Assets"** means all property and assets from time to time mortgaged, charged or assigned (or expressed to be mortgaged, charged or assigned) by or pursuant to this Deed;

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which:

- (a) all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full;
- (b) the Debt Facility has been terminated according to its terms; and
- (c) Shawbrook has no further commitment, obligation or liability under or pursuant to the Finance Documents;

**"Specified P&M"** means the P&M (if any) specified in part 2 of schedule 3 (*Details of Security Assets*); and

**"Specified Real Property"** means the estates and interests in freehold, leasehold and other immovable property (if any) specified in part 1 of schedule 3 (*Details of Security Assets*), together with:

- (a) all buildings and fixtures (including trade fixtures) and fixed P&M at any time thereon;
- (b) all easements, rights and agreements in respect thereof;
- (c) the benefit of all covenants given in respect thereof; and
- (d) any other Real Property which Shawbrook may designate as **"Specified Real Property"**.

## 1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to:
  - (i) the **"Obligor"**, a **"Security Obligor"** or **"Shawbrook"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) **"this Deed"**, the **"Asset Based Lending Agreement"**, any other **"Finance Document"** or any other agreement or instrument shall be construed as a reference to this Deed, the Asset Based Lending Agreement, such other Finance Document or such other agreement or instrument as varied, amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of any member of the Group or provides for further advances);
  - (iii) **"assets"** includes any present and future properties, revenues and rights of every description and includes uncalled capital;
  - (iv) an Event of Default that is **"continuing"** shall be construed as meaning an Event of Default that has not been waived in writing by Shawbrook, to the satisfaction of Shawbrook, and any waiver given by Shawbrook, shall only

apply to the specific occurrence of the specific event referred to in such waiver;

- (v) **"including" or "includes"** means including or includes without limitation;
- (vi) **"Secured Obligations"** includes obligations and liabilities which would be treated as such but for the liquidation or dissolution of or similar event affecting any member of the Group;
- (vii) a provision of law is a reference to that provision as amended or re-enacted; and
- (viii) the singular includes the plural and vice versa.
- (b) References to clauses, paragraphs and schedules are to be construed, unless otherwise stated, as references to clauses, paragraphs and schedules of and to this Deed and references to this Deed include its schedules.
- (c) Clause and schedule headings are for convenience only and shall not affect the construction of this Deed.
- (d) Each undertaking of any Security Obligor contained in this Deed must be complied with at all times during the Security Period.
- (e) The terms of the other Finance Documents and of any side letters between any of the parties thereto in relation to any Finance Document are incorporated in this Deed to the extent required to ensure that any disposition of the property contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- (f) If Shawbrook reasonably considers that an amount paid by any Security Obligor to Shawbrook under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Security Obligor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.
- (g) The liabilities and obligations of each Security Obligor under this Deed shall be joint and several. Each Security Obligor agrees to be bound by this Deed notwithstanding that any other Security Obligor which was intended to sign or be bound by this Deed did not so sign or is not bound by this Deed.
- (h) The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

### **1.3 Third party rights**

A person who is not a Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

## **2. GUARANTEE AND INDEMNITY**

### **2.1 Guarantee and indemnity**

Each Security Obligor irrevocably and unconditionally:

- (a) guarantees in favour of Shawbrook punctual performance by each member of the Group of all obligations of each member of the Group under the Finance Documents;
- (b) undertakes in favour of Shawbrook that whenever a member of the Group does not pay any amount when due under, or in connection with, any Finance Document, such Security Obligor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) indemnifies Shawbrook immediately on demand against any cost, loss or liability suffered by Shawbrook, if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which Shawbrook would otherwise have been entitled to recover.

### **2.2 Extension of guarantee**

The guarantee set out in this clause 2 is given subject to and with the benefit of the provisions set out in schedule 2 (*The Guarantee*).

## **3. COVENANT TO PAY**

### **3.1 Covenant to pay**

Each Security Obligor, as principal obligor and not merely as surety, covenants in favour of Shawbrook that it will pay and discharge the Secured Obligations from time to time when they fall due.

### **3.2 Default interest**

- (a) Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the rate and in the manner agreed in the Finance Document under which such amount is payable and, in the absence of such agreement, at the Default Rate from time to time.
- (b) Default interest will accrue from day to day and will be compounded monthly in arrears in accordance with clause 13.3 (*Default Rate*) of the Asset Based Lending Agreement.

#### **4. GRANT OF SECURITY**

##### **4.1 Nature of security**

All Security Interests and dispositions created or made by or pursuant to this Deed are created or made:

- (a) in favour of Shawbrook;
- (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994; and
- (c) as continuing security for payment of the Secured Obligations.

##### **4.2 Qualifying floating charge**

Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to this Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986).

#### **5. FIXED SECURITY**

##### **5.1 Fixed charges**

Each Security Obligor charges and agrees to charge all of its present and future right, title and interest in and to the following assets which are at any time owned by it, or in which it from time to time has an interest:

- (a) by way of first legal mortgage the Specified Real Property;
- (b) by way of first fixed charge:
  - (i) all Real Property and all interests in Real Property not charged by clause 5.1(a);
  - (ii) all licences to enter upon or use land and the benefit of all other agreements relating to land; and
  - (iii) the proceeds of sale of all Real Property other than Specified Real Property;
- (c) by way of first fixed charge all Specified P&M;
- (d) by way of first fixed charge the benefit of all contracts, licences and warranties relating to the Specified P&M;
- (e) by way of first fixed charge all P&M (not charged by clauses 5.1(a), 5.1(b) or 5.1(c)) and the benefit of all contracts, licences and warranties relating to the same;
- (f) by way of first fixed charge:
  - (i) all computers, vehicles, office equipment and other equipment (not charged by clause 5.1(c)); and

- (ii) the benefit of all contracts, licences and warranties relating to the same, other than any which are for the time being part of any Security Obligor's Inventory;
- (g) by way of first fixed charge the Charged Securities;
- (h) by way of first fixed charge all Securities Rights from time to time accruing to the Charged Securities;
- (i) by way of first fixed charge all rights which a Security Obligor may have at any time against any clearance or settlement system or any custodian in respect of any Charged Securities;
- (j) by way of first fixed charge all Securities (not charged by clause 5.1(g));
- (k) by way of first fixed charge (A) all Securities Rights from time to time accruing to those Securities and (B) all rights which such Security Obligor may have at any time against any clearance or settlement system or any custodian in respect of any Securities;
- (l) in respect of the Obligor only, by way of first fixed charge all Debts and their proceeds now or in the future owing to the Obligor;
- (m) in respect of the Obligor only, by way of first fixed charge all Related Rights relating to Debts;
- (n) in respect of the Obligor only, by way of first fixed charge all Other Proceeds;
- (o) by way of first fixed charge the Intellectual Property (if any) specified in part 4 of schedule 3 (*Details of Security Assets*);
- (p) by way of first fixed charge all Intellectual Property (if any) not charged by clause 5.1(o);
- (q) to the extent that any Assigned Asset is not effectively assigned under clause 5.2 (*Security assignments*), by way of first fixed charge, such Assigned Asset;
- (r) by way of first fixed charge (to the extent not otherwise charged or assigned in this Deed):
  - (i) the benefit of all licences, consents, agreements and authorisations held or used in connection with the business of such Security Obligor or the use of any of its assets; and
  - (ii) any letter of credit issued in favour of such Security Obligor and all bills of exchange and other negotiable instruments held by it; and
- (s) by way of first fixed charge all of the goodwill and uncalled capital of such Security Obligor.

## **5.2 Security assignments**

Each Security Obligor assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all its present and future right, title and interest in and to:

- (a) the proceeds of the sale of any Specified Real Property;
- (b) the proceeds of the sale of any Specified P&M;
- (c) the proceeds of the sale of any Charged Securities;
- (d) the proceeds of the sale of any Intellectual Property specified in part 4 of schedule 3 (*Details of Security Assets*);
- (e) the Inventory Insurances, all claims under the Inventory Insurances and the proceeds of the Inventory Insurances;
- (f) the P&M Insurances, all claims under the P&M Insurances and the proceeds of the P&M Insurances;
- (g) the Real Property Insurances, all claims under the Real Property Insurances and the proceeds of the Real Property Insurances;
- (h) the Insurances, all claims under the Insurances and all proceeds of the Insurances;
- (i) Other Receivables (not assigned under clauses 5.2(a) to 5.2(h) (inclusive) above); and
- (j) the Assigned Account.

To the extent that any Assigned Asset described in clauses 5.2(a) to 5.2(i) inclusive is not assignable, the assignment which that clause purports to effect shall operate as an assignment of all present and future rights and claims of such Security Obligor to any proceeds of an Assigned Asset.

## **5.3 Assigned Assets**

Shawbrook is not obliged to take any steps necessary to preserve any Assigned Asset, or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Deed.

## **5.4 Non-Assignable Rights - Assigned Accounts**

Each Security Obligor declares that to the extent that any right, title, interest or benefit in or in respect of any asset described in Clause 5.2(j) (*Security assignments*) cannot be or is not effectively assigned pursuant to Clause 5.2(j) (*Security assignments*) for whatever reason, the Obligor shall:

- (a) promptly notify Shawbrook of the same and the reasons therefor;
- (b) hold the benefit of the same on trust for Shawbrook as security for the payment and discharge of the Secured Obligations; and

- (c) take such steps as Shawbrook may reasonably require to remove such impediment to an assignment.

## **5.5 Notice of Assignment in relation to the Assigned Account**

Each Security Obligor shall:

- (a) upon the execution of this Deed and thereafter upon the request of Shawbrook, give notice of the assignments effected pursuant to Clause 5.2(j) (*Security assignments*) by sending a Notice of Assignment to each bank or other financial institution with which the Assigned Account is maintained; and
- (b) use all its reasonable endeavours to procure that within 5 Banking Days of the date of the relevant Notice of Assignment the recipient thereof acknowledges the same in the form of the Acknowledgement.

## **5.6 Customer Monies**

For the avoidance of doubt, Shawbrook confirms that it shall not have or attempt to take any Security or Security Interest over the Customer Monies pursuant to any deed or document and acknowledges that the Customer Monies are expressly excluded from any Security or Security Interest.

## **6. FLOATING CHARGE**

Each Security Obligor charges and agrees to charge by way of first floating charge all of its present and future:

- (a) assets and undertaking (wherever located) which are not effectively charged by way of first fixed mortgage or charge or assigned pursuant to clause 5.1 (*Fixed charges*), clause 5.2 (*Security assignments*) or any other provision of this Deed other than the Customer Monies; and
- (b) (whether or not effectively so charged or assigned) heritable property and all other property and assets in Scotland other than the Customer Monies.

## **7. CONVERSION OF FLOATING CHARGE**

### **7.1 Conversion by notice**

Shawbrook may, by written notice to a Security Obligor, convert the floating charge created under this Deed into a fixed charge as regards all or any of the assets of such Security Obligor specified in the notice if:

- (a) an Event of Default has occurred and is continuing; or
- (b) Shawbrook (acting reasonably) considers any Security Assets (whether or not those specified in the notice) 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.

## **7.2 Small companies**

The floating charge created under this Deed by any Security Obligor shall not convert into a fixed charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of such Security Obligor.

## **7.3 Automatic conversion**

The floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge:

- (a) in relation to any Security Asset which is subject to a floating charge if:
  - (i) such Security Obligor creates (or attempts or purports to create) any Security Interest on or over the relevant Security Asset without the prior written consent of Shawbrook; or
  - (ii) any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such Security Asset; and
- (b) over all Security Assets of a Security Obligor which are subject to a floating charge if an administrator is appointed in respect of such Security Obligor or Shawbrook receives notice of intention to appoint such an administrator.

## **7.4 Partial conversion**

The giving of a notice by Shawbrook pursuant to clause 7.1 (*Conversion by notice*) in relation to any class of assets of any Security Obligor shall not be construed as a waiver or abandonment of the rights of Shawbrook to serve similar notices in respect of any other class of assets or of any other right of Shawbrook.

# **8. CONTINUING SECURITY**

## **8.1 Continuing security**

The Security is continuing and will extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge in whole or in part. This Deed shall remain in full force and effect as a continuing security for the duration of the Security Period.

## **8.2 Additional and separate security**

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security Interest which Shawbrook may at any time hold for any Secured Obligation.

## **8.3 Right to enforce**

This Deed may be enforced against each or any Security Obligor without Shawbrook first having recourse to any other right, remedy, guarantee or Security Interest held by or available to it.



**9. LIABILITY OF SECURITY OBLIGORS RELATING TO SECURITY ASSETS**

Notwithstanding anything contained in this Deed or implied to the contrary, each Security Obligor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Security Assets. Shawbrook is under no obligation to perform or fulfil any such condition or obligation or to make any payment in respect of any such condition or obligation.

**10. ACCOUNTS**

No monies at any time standing to the credit of any account (of any type and however designated) of any Security Obligor with Shawbrook or in which any Security Obligor has an interest (and no rights and benefits relating thereto) shall be capable of being assigned to any third party.

**11. REPRESENTATIONS**

**11.1 General**

Each Security Obligor makes the representations and warranties set out in this clause 11 to Shawbrook.

**11.2 No Security Interests**

Its Security Assets are, or when acquired will be, beneficially owned by such Security Obligor free from any Security Interest other than:

- (a) as created by this Deed; and
- (b) as permitted by the Asset Based Lending Agreement.

**11.3 No avoidance**

This Deed creates the Security Interests which it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of any Security Obligor or otherwise.

**11.4 Ownership of Security Assets**

Each Security Obligor is the sole legal and beneficial owner of all the Security Assets identified against its name in schedule 3 (*Details of Security Assets*) except in respect of those Charged Securities (if any) which are held by a nominee for a Security Obligor, in which case such Security Obligor is the beneficial owner only of such Charged Securities.

**11.5 No proceedings pending or threatened**

Each Security Obligor hereby gives the representation set out at clause 4.8 (*Litigation*) of the Asset Based Lending Agreement as if the same were set out in this Deed, save that the reference to the Obligor is a reference to the relevant Security Obligor.

**11.6 Charged Securities**

- (a) All Securities (including any Charged Securities) are fully paid.

- (b) If any Charged Securities are listed in part 3 of schedule 3 (*Details of Security Assets*) those Charged Securities constitute the entire share capital owned by each Security Obligor in the relevant company.

#### **11.7 Time when representations made**

- (a) All the representations and warranties in this clause 11 are made by each Security Obligor on the date of this Deed and are also deemed to be made by each Security Obligor on the date of each Notification.
- (b) Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

### **12. UNDERTAKINGS BY SECURITY OBLIGORS**

#### **12.1 Asset Based Lending Agreement**

On the Commencement Date, and until the end of the Security Period, each Security Obligor hereby:

- (a) gives the warranties and representations set out at clauses 4.1 to 4.6 inclusive, 4.9, 4.11, 4.12 and 4.15 of clause 4 (*General warranties and representations*) of the Asset Based Lending Agreement;
- (b) gives the covenants set out at clause 5 (*General covenants*) of the Asset Based Lending Agreement; and
- (c) gives the undertakings set out at clauses 6.1 to 6.3 inclusive, 6.6, 6.7 and 6.11 of clause 6 (*General undertakings*) of the Asset Based Lending Agreement,

as if the same were set out in this Deed mutatis mutandis and (save for the reference to "Obligor" in clause 4.6(b)) references in those paragraphs to the "Obligor" are deemed to be references to the relevant Security Obligor and references to "this Deed" are deemed to be references to this Deed.

#### **12.2 Restrictions on dealing**

No Security Obligor shall do or agree to do any of the following without the prior written consent of Shawbrook:

- (a) create or permit to subsist any Security Interest on any Security Assets except a Security Interest which is permitted by the Asset Based Lending Agreement;
- (b) sell, transfer, lease, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not) the whole or any part of its interest in any Security Asset except for the sale at full market value of stock in trade in the usual course of trading as conducted by such Security Obligor at the Commencement Date or as otherwise expressly permitted by the Asset Based Lending Agreement.

### 12.3 Security Assets generally

Each Security Obligor shall:

- (a) permit Shawbrook (or its designated representatives), on reasonable written notice:
- (i) access during normal office hours to any documents and records relating to the Security Assets; and
- (ii) to inspect, take extracts from, and make photocopies of, the same,

and to provide (at the expense of the Obligor), such clerical and other assistance which Shawbrook may reasonably require to do this;

- (b) notify Shawbrook of every notice, order, application, requirement or proposal given or made by any competent authority:
  - (i) in relation to any Security Asset specified in schedule 3 (*Details of Security Assets*), promptly upon receipt; and
  - (ii) within 14 days of receipt of every notice, order, application, requirement or proposal given or made in relation to any Security Assets other than Security Asset specified in schedule 3 (*Details of Security Assets*),

and (if required by Shawbrook) promptly provide it with a copy of the same and either (A) comply with such notice, order, application, requirement or proposal or (B) make such objections to the same as Shawbrook may require or approve **PROVIDED ALWAYS** that notices in respect of limb (a) of the definition of Securities Rights shall be dealt with in accordance with clause 12.3(b)(i) above following the exercise by Shawbrook of its rights in accordance with clause 12.7(b);

- (c) duly and punctually pay all rates, rents, Taxes and other outgoings owed by it in respect of the Security Assets; and
- (d) in addition to any provisions of the Asset Based Lending Agreement or this Deed relating to specific Security Assets:
  - (i) comply in all material respects with all obligations in relation to the Security Assets under any present or future law, regulation, order or instrument or under any bye-laws, regulations or requirements of any competent authority or other approvals, licences or consents;
  - (ii) comply with all material covenants and obligations affecting the Security Assets (or their manner of use);
  - (iii) not, except with the prior written consent of Shawbrook, enter into any onerous or restrictive obligation affecting any Security Asset;
  - (iv) provide Shawbrook with all information which it may reasonably request in relation to the Security Assets; and

- (v) not do, cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any Security Asset (or make any omission which has such an effect).

#### **12.4 Specified P&M**

Each Security Obligor undertakes that it is the owner, with full title guarantee, of the Specified P&M listed by its name in schedule 3 (*Details of Security Assets*).

#### **12.5 Specified Real Property**

Each Security Obligor undertakes that it is the owner, with full title guarantee, of the Specified Real Property listed by its name in schedule 3 (*Details of Security Assets*).

#### **12.6 Charged Securities**

- (a) In relation to any Charged Securities, each Security Obligor shall, immediately upon execution of this Deed or (if later), as soon as is practicable after its acquisition of any such Charged Securities in certificated form, by way of security for the Secured Obligations:
  - (i) deposit with Shawbrook or as Shawbrook may direct, all certificates and other documents of title or evidence of ownership to such Charged Securities and their Securities Rights; and
  - (ii) execute and deliver to Shawbrook pre-stamped instruments of transfer in respect of such Charged Securities (executed in blank and left undated) and/or such other documents as Shawbrook shall require to enable it (or its nominees) to be registered as the owner of or otherwise to acquire a legal title to such Charged Securities and their Securities Rights (or to pass legal title to any purchaser).
- (b) In relation to any Charged Securities, each Security Obligor shall:
  - (i) promptly give notice to any custodian of any agreement with such Security Obligor in respect of any such Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities, in a form Shawbrook may require; and
  - (ii) use its reasonable endeavours to ensure that the custodian acknowledges that notice in a form Shawbrook may require.
- (c) Without prejudice to the rest of this clause 12.6, Shawbrook may, at the expense of the relevant Security Obligor, take whatever action is reasonably required for the dematerialisation or rematerialisation of any Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities.
- (d) Each Security Obligor shall promptly pay all calls or other payments which may become due in respect of Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities.

- (e) Each Security Obligor shall promptly upon a request from Shawbrook comply with the provisions of this clause 12.6 in relation to any Securities other than the Charged Securities and their Securities Rights.

#### **12.7 Rights in respect of Securities, Charged Securities and Securities Rights**

- (a) Until an Event of Default occurs which is continuing, each Security Obligor shall be entitled to:
  - (i) receive and retain all dividends, distributions and other monies paid on or derived from its Securities and its Charged Securities; and
  - (ii) exercise all voting and other rights and powers attaching to its Securities and its Charged Securities, provided that it must not do so in a manner which (A) has the effect of changing the terms of the Securities or the Charged Securities (or any class of them) or of any Securities Rights without the prior written consent of Shawbrook or (B) which is prejudicial to the interests of Shawbrook.
- (b) At any time following the occurrence of an Event of Default which is continuing, Shawbrook may complete the instrument(s) of transfer for all or any Securities or Charged Securities on behalf of any Security Obligor in favour of itself or such other person as it may select.
- (c) At any time when any Securities or Charged Securities are registered in the name of Shawbrook or its nominee, Shawbrook shall be under no duty to:
  - (i) ensure that any dividends, distributions or other monies payable in respect of such Securities or Charged Securities are duly and promptly paid or received by it or its nominee; or
  - (ii) verify that the correct amounts are paid or received; or
- (d) take any action in connection with the taking up of any (or any offer of any) Securities Rights in respect of or in substitution for any such Securities or Charged Securities.

#### **12.8 Dealings with and realisation of Debts and Other Proceeds**

- (a) The Obligor shall only deal with Debts and the proceeds thereof and the Related Rights thereto in accordance with the Asset Based Lending Agreement.
- (b) The Obligor agrees that the Other Proceeds shall be dealt with as if they were the proceeds of Debts assigned or purportedly assigned to Shawbrook in accordance with the terms of the Asset Based Lending Agreement.

#### **12.9 Intellectual Property**

Unless Shawbrook is of the opinion (acting reasonably) that the relevant Intellectual Property is of minor importance to the Group each Security Obligor shall:

- (a) do all acts as are reasonably practicable to maintain, protect and safeguard (including, without limitation, registration with all relevant authorities) its

Intellectual Property and not discontinue the use of any of its Intellectual Property; and

- (b) take all such reasonable steps, including the commencement of legal proceedings, as may be necessary to safeguard and maintain the validity, reputation, integrity, registration or subsistence of its Intellectual Property.

#### **12.10 Proceeds of the sale of certain Charged Securities, Specified P&M, Real Property and Intellectual Property**

The Security Obligors undertake to deal with the proceeds of sale of the Security Assets referred to at clauses 5.2(a) to (d) inclusive in accordance with the terms of the Asset Based Lending Agreement or otherwise, in accordance with the terms of any consent issued by Shawbrook to a Security Obligor in relation to any such Security Asset.

#### **12.11 Insurance**

In relation to any ABL Insurance, the Security Obligor listed in part 5 or part 6 of schedule 3 (*Details of Security Assets*) as holding the relevant ABL Insurance shall at all times comply with paragraphs 6(i) to 6(m) inclusive of schedule 2 (*Inventory Facility terms and conditions*) to the Asset Based Lending Agreement as if the same were set out in this Deed and references to the "Obligor" in those paragraphs and the definitions used in those paragraphs are deemed to be references to the relevant Security Obligor.

#### **12.12 Appropriation of Financial Collateral**

To the extent that the Security Assets constitute "financial collateral" and this Deed constitutes a "security financial collateral arrangement" (as defined in the Financial Collateral Arrangements (No.2) Regulations 2003 (SI 2003 No. 3226) (the "**Financial Collateral Regulations**")), Shawbrook shall have the right, at any time after the Security has become enforceable, to appropriate all or any of those Security Assets in or towards the payment and discharge of the Secured Obligations in any order that Shawbrook, in its absolute discretion, may from time to time determine. The value of any Security Assets appropriated in accordance with this clause 12.12 shall be determined by any method that Shawbrook may select, including independent valuation. The Obligor agrees that the method of valuation provided for in this clause 12.12 is commercially reasonable for the purposes of the Financial Collateral Regulations.

### **13. ACCOUNTS AND RECEIPTS**

#### **13.1 Assigned Account - General**

- (a) Each Security Obligor will:
  - (i) deliver to Shawbrook on the date of this Deed details of its Assigned Account (and, if any change in such detail (including any renewal or redesignation of any Assigned Account) occurs after the date of this Deed or any new Assigned Account is opened, details of such change or new Assigned Account on the date of such change or opening); and
  - (ii) not, without the prior written consent of Shawbrook, permit or agree to any variation of the rights attaching to, or close, the Assigned Account.

- (b) Without prejudice and in addition to Clause 12.1 (*Restrictions on dealing*), the Obligor will not:
  - (i) Save as permitted by the ABLA, assign or charge the benefit of the Assigned Account in whole or in part (other than pursuant to this Deed); and
  - (ii) assign (whether by way of sale or mortgage), charge or otherwise seek to deal with or dispose of all or any part of the Assigned Account without the prior written consent of Shawbrook.

### **13.2 Withdrawals**

Each Security Obligor shall not make any withdrawal from the Assigned Account without the prior written consent of Shawbrook.

## **14. POWER TO REMEDY**

### **14.1 Power to remedy**

If at any time a Security Obligor does not comply with any of its obligations under this Deed, Shawbrook (without prejudice to any other rights arising as a consequence of such non-compliance) shall be entitled (but not bound) to rectify that default. The relevant Security Obligor irrevocably authorises Shawbrook and its employees and agents by way of security to do all things (including entering the property of such Security Obligor) which are necessary or desirable to rectify that default.

### **14.2 Mortgagee in possession**

The exercise of the powers of Shawbrook under this clause 13 shall not render it liable as a mortgagee in possession.

### **14.3 Monies expended**

The relevant Security Obligor shall pay to Shawbrook on demand any monies which are expended by Shawbrook in exercising its powers under this clause 13, together with interest at the Default Rate from the date on which those monies were expended by Shawbrook (both before and after judgment) and otherwise in accordance with clause 3.2 (*Default interest*).

## **15. WHEN SECURITY BECOMES ENFORCEABLE**

### **15.1 When enforceable**

This Security shall become immediately enforceable upon the occurrence of an Event of Default which is continuing and shall remain so for so long as such Event of Default is continuing.

### **15.2 Statutory powers**

The power of sale and other powers conferred by section 101 of the Act (as amended or extended by this Deed) shall be immediately exercisable upon and at any time after the occurrence of any Event of Default which is continuing and for so long as such Event of Default is continuing.

### **15.3 Enforcement**

After this Security has become enforceable, Shawbrook may in its absolute discretion enforce all or any part of the Security in such manner as it sees fit.

## **16. ENFORCEMENT OF SECURITY**

### **16.1 General**

For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed. Sections 93 and 103 of the Act shall not apply to the Security. The statutory powers of leasing conferred on Shawbrook are extended so as to authorise Shawbrook to lease, make agreements for leases, accept surrenders of leases and grant options as Shawbrook may think fit and without the need to comply with section 99 or 100 of the Act.

### **16.2 Powers of Shawbrook**

- (a) At any time after the Security becomes enforceable, Shawbrook may without further notice (unless required by law):
  - (i) (or if so requested by any Security Obligor by written notice at any time may) appoint any person or persons to be a receiver or receiver and manager of all or any part of the Security Assets and/or of the income of the Security Assets; and/or
  - (ii) appoint or apply for the appointment of any person who is appropriately qualified as administrator of a Security Obligor; and/or
  - (iii) exercise all or any of the powers conferred on mortgagees by the Act (as amended or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver; and/or
  - (iv) exercise (in the name of any Security Obligor and without any further consent or authority of such Security Obligor) any voting rights and any powers or rights which may be exercised by the person(s) in whose name the Charged Investments are registered, or who is the holder of any of them.
- (b) Shawbrook is not entitled to appoint a Receiver in respect of any Security Assets of any Security Obligor which are subject to a charge which (as created) was a floating charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of such Security Obligor.

### **16.3 Redemption of prior mortgages**

At any time after the Security has become enforceable, Shawbrook may:

- (a) redeem any prior Security Interest against any Security Asset; and/or
- (b) procure the transfer of that Security Interest to itself; and/or



- (c) settle and pass the accounts of the holder of any prior Security Interest and any accounts so settled and passed shall be conclusive and binding on each Security Obligor.

All principal, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the relevant Security Obligor to Shawbrook on demand.

#### **16.4 Privileges**

Each Receiver and Shawbrook is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply.

#### **16.5 No liability**

- (a) Neither Shawbrook nor any Receiver shall be liable (i) in respect of all or any part of the Security Assets or (ii) for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its or his gross negligence or wilful misconduct).
- (b) Without prejudice to the generality of clause 16.5(a), neither Shawbrook nor any Receiver shall be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

#### **16.6 Protection of third parties**

No person (including a purchaser) dealing with Shawbrook or any Receiver or its or his agents will be concerned to enquire:

- (a) whether the Secured Obligations have become payable; or
- (b) whether any power which Shawbrook or the Receiver is purporting to exercise has become exercisable; or
- (c) whether any money remains due under any Finance Document; or
- (d) how any money paid to Shawbrook or to the Receiver is to be applied.

### **17. RECEIVER**

#### **17.1 Removal and replacement**

Shawbrook may from time to time remove any Receiver appointed by it (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated.

## **17.2 Multiple Receivers**

If at any time there is more than one Receiver of all or any part of the Security Assets and/or the income of the Security Assets, each Receiver shall have power to act individually (unless otherwise stated in the appointment document).

## **17.3 Remuneration**

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and Shawbrook (or, failing such agreement, to be fixed by Shawbrook).

## **17.4 Payment by Receiver**

Only monies actually paid by a Receiver to Shawbrook in relation to the Secured Obligations shall be capable of being applied by Shawbrook in discharge of the Secured Obligations.

## **17.5 Agent of Security Obligors**

Any Receiver shall be the agent of the Security Obligor in respect of which it is appointed. Such Security Obligor shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. Shawbrook shall incur no liability (either to such Security Obligor or to any other person) by reason of the appointment of a Receiver or for any other reason.

# **18. POWERS OF RECEIVER**

## **18.1 General powers**

Any Receiver shall have:

- (a) all the powers which are conferred by the Act on mortgagees in possession and receivers appointed under the Act;
- (b) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 to the Insolvency Act 1986; and
- (c) all powers which are conferred by any other law conferring power on receivers.

## **18.2 Additional powers**

In addition to the powers referred to in clause 18.1 (*General powers*), a Receiver shall have the following powers:

- (a) to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed;
- (b) to manage the Security Assets and the business of any Security Obligor as he thinks fit;
- (c) to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Secured Obligations for the purpose

of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;

- (d) to sell or concur in selling, leasing or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Act. Fixtures may be severed and sold separately from the Real Property containing them, without the consent of any Security Obligor. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party). Any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;
- (e) to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which any Security Obligor was concerned or interested before his appointment (being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land);
- (f) to carry out any sale, lease or other disposal of all or any part of the Security Assets by conveying, transferring, assigning or leasing the same in the name of the relevant Security Obligor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, such Security Obligor;
- (g) to take any such proceedings (in the name of any of the relevant Security Obligors or otherwise) as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment);
- (h) to enter into or make any such agreement, arrangement or compromise as he shall think fit;
- (i) to insure, and to renew any insurances in respect of, the Security Assets as he shall think fit (or as Shawbrook shall direct);
- (j) to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ his partners and firm);
- (k) to form one or more Subsidiaries of any Security Obligor, and to transfer to any such Subsidiary all or any part of the Security Assets;
- (l) to operate any rent review clause in respect of any Real Property in respect of which he was appointed (or any part thereof) and to apply for any new or extended lease; and

- (m) to:
  - (i) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Asset;
  - (ii) exercise in relation to each Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and
  - (iii) use the name of any Security Obligor for any of the above purposes.

## 19. APPLICATION OF PROCEEDS

### 19.1 Application

All monies received by Shawbrook or any Receiver after the Security has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to the Security) be applied in the following order:

- (a) *first*, in satisfaction of, or provision for, all costs, charges and expenses incurred, and payments made by Shawbrook or any Receiver and of all remuneration due to the Receiver in connection with this Deed or the Security Assets;
- (b) *secondly*, in or towards satisfaction of the remaining Secured Obligations; and
- (c) *thirdly*, in payment of any surplus to any Security Obligor or other person entitled to it.

### 19.2 Contingencies

If the Security is enforced at a time when no amounts are due under the Finance Documents (but at a time when amounts may become so due), Shawbrook or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account.

## 20. SET-OFF

### 20.1 Set-off

- (a) Shawbrook may (but shall not be obliged to) set off any obligation (contingent or otherwise under the Finance Documents or which has been assigned to Shawbrook) against any obligation (whether or not matured) owed by Shawbrook to the Security Obligor, regardless of the place of payment, booking branch or currency of either obligation.
- (b) If the obligations are in different currencies, Shawbrook may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (c) If either obligation is unliquidated or unascertained, Shawbrook may set off in an amount estimated by it in good faith to be the amount of that obligation.

## **20.2 Time deposits**

Without prejudice to clause 20.1 (*Set-off*) if any time deposit matures on any account which any Security Obligor has with Shawbrook at a time when:

- (a) this Security has become enforceable; and
- (b) no Secured Obligation is due and payable,

such time deposit shall automatically be renewed for such further maturity as Shawbrook in its absolute discretion considers appropriate unless Shawbrook otherwise agrees in writing.

## **21. DELEGATION**

Each of Shawbrook and any Receiver may delegate, by power of attorney (or in any other manner) to any person, any right, power or discretion exercisable by it under this Deed upon any terms (including power to sub-delegate) which it may think fit. Neither Shawbrook nor any Receiver shall be in any way liable or responsible to any Security Obligor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

## **22. FURTHER ASSURANCES**

### **22.1 Further action**

Each Security Obligor shall, at its own expense, promptly take whatever action Shawbrook or a Receiver may require for:

- (a) creating, perfecting or protecting the Security Interests intended to be created by this Deed; and
- (b) facilitating the realisation of any Security Asset or the exercise of any right, power or discretion exercisable by Shawbrook or any Receiver or any of its or his delegates or sub-delegates in respect of any Security Asset,

including the execution of any transfer, conveyance, assignment or assurance of any property whether to Shawbrook or to its nominees, the giving of any notice, order or direction and the making of any registration which in any such case Shawbrook may think expedient.

### **22.2 Specific security**

Without prejudice to the generality of clause 22.1 (*Further action*), each Security Obligor shall forthwith at the request of Shawbrook execute a legal mortgage, charge, assignment, assignation or other security over any Security Asset which is subject to or intended to be subject to any fixed security created by this Deed in favour of Shawbrook (including any arising or intended to arise pursuant to clause 7 (*Conversion of floating charge*)) in such form as Shawbrook may require.

## **23. POWER OF ATTORNEY**

### **23.1 Power of attorney**

Each Security Obligor, by way of security, irrevocably appoints Shawbrook and each Receiver (which shall have the power to nominate any of its directors, company secretary,

authorised signatories, managers (and Administrators in the event that such are appointed in relation to such Security Obligor) from time to time from the date hereof, to exercise Shawbrook's or that Receiver's powers under this clause 23) as its attorney in its name and on its behalf to take any action which such Obligor is obliged to take under this Deed but which it has failed to do in accordance with this Deed or when requested by Shawbrook and including:

- (a) securing the performance of any of the Security Obligor's obligations pursuant to any Finance Document; or
- (b) conducting any claim or other matter under or pursuant to any insurance policy or policies in relation to all or any Collateral.

## **23.2 Substitutes**

Each Security Obligor agrees that:

- (a) Shawbrook or a Receiver may at any time appoint a substitute to act as its attorney, and may revoke any such appointment without giving a reason;
- (b) the appointment of a substitute is to be in writing signed by Shawbrook (acting through any of its directors, company secretary or authorised signatories) or a Receiver; and
- (c) every substitute appointed under this clause 23.2 shall have full powers as the Security Obligor's attorney as if appointed by the Security Obligor pursuant to clause 23.1, except the power to appoint a substitute.

The power of attorney granted pursuant to this clause is only capable of being exercised upon an Event of Default .

## **24. PAYMENTS**

### **24.1 Payments**

Subject to clause 24.2 (*Gross-up*), all payments to be made by a Security Obligor in respect of this Deed shall be made:

- (a) in immediately available funds to the credit of such account as Shawbrook may designate; and
- (b) without (and free and clear of, and without any deduction for or on account of):
  - (i) any set-off or counterclaim; or
  - (ii) except to the extent compelled by law, any deduction or withholding for or on account of Tax.

### **24.2 Gross-up**

If any Security Obligor is compelled by law to make any deduction or withholding from any sum payable under this Deed to Shawbrook, the sum so payable by such Security Obligor

shall be increased so as to result in the receipt by Shawbrook of a net amount equal to the full amount expressed to be payable under this Deed.

#### **24.3 Asset Based Lending Agreement**

Without prejudice to the provisions of clause 2 (*Guarantee and indemnity*) and each Security Obligor's obligations in accordance with this Deed, Shawbrook may at any time discharge a Security Obligor's obligation to make payment of any sums due by a Security Obligor to Shawbrook by debiting such sum to any account held by Shawbrook in relation to the Obligor.

#### **25. STAMP DUTY**

Each Security Obligor shall:

- (a) pay all present and future stamp, registration and similar Taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this Deed or any judgment given in connection therewith; and
- (b) indemnify Shawbrook and any Receiver on demand against any and all costs, losses or liabilities (including, without limitation, penalties) with respect to, or resulting from, its delay or omission to pay any such stamp, registration and similar Taxes or charges.

#### **26. COSTS AND EXPENSES**

##### **26.1 Transaction and amendment expenses**

Each Security Obligor shall promptly on demand pay to Shawbrook the amount of all reasonable costs, charges and expenses (including, without limitation, reasonable legal fees, valuation, accountancy and consultancy fees (and any VAT or similar Tax thereon)) incurred by Shawbrook in connection with:

- (a) the negotiation, preparation, printing, execution, registration, perfection and completion of this Deed, the Security or any document referred to in this Deed; or
- (b) any actual or proposed amendment or extension of, or any waiver or consent under, this Deed.

##### **26.2 Enforcement and preservation costs**

Each Security Obligor shall promptly on demand pay to Shawbrook and any Receiver the amount of all costs, charges and expenses (including (without limitation) legal fees (and any VAT or similar Tax thereon)) incurred by any of them in connection with the enforcement, exercise or preservation (or the attempted enforcement, exercise or preservation) of any of their respective rights under this Deed or any document referred to in this Deed or the Security (including all remuneration of the Receiver).

## **27. CURRENCIES**

### **27.1 Conversion**

All monies received or held by Shawbrook or any Receiver under this Deed may be converted from their existing currency into such other currency as Shawbrook or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Spot Rate of Exchange. Each Security Obligor shall indemnify Shawbrook against all costs, charges and expenses incurred in relation to such conversion. Neither Shawbrook nor any Receiver shall have any liability to any Security Obligor in respect of any loss resulting from any fluctuation in exchange rates after any such conversion.

### **27.2 Currency indemnity**

No payment to Shawbrook (whether under any judgment or court order or in the liquidation, administration or dissolution of any Security Obligor or otherwise) shall discharge the obligation or liability of any Security Obligor in respect of which it was made, unless and until Shawbrook shall have received payment in full in the currency in which the obligation or liability was incurred and, to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency, Shawbrook shall have a further separate cause of action against any Security Obligor and shall be entitled to enforce the Security to recover the amount of the shortfall.

## **28. INDEMNITY**

Each Security Obligor shall indemnify Shawbrook, any Receiver and any attorney, agent or other person appointed by Shawbrook under this Deed and Shawbrook's officers and employees (each an "**Indemnified Party**") on demand against any cost, loss, liability or expense (however arising) incurred by any Indemnified Party as a result of or in connection with:

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in this Deed;
- (b) the Security Assets or the use or occupation of them by any person (including any Environmental Claim); or
- (c) any breach by any Security Obligor of any of its obligations under this Deed.

## **29. MISCELLANEOUS**

### **29.1 Appropriation and suspense account**

- (a) Shawbrook may apply all payments received in respect of the Secured Obligations in reduction of any part of the Secured Obligations as it thinks fit. Any such appropriation shall override any appropriation by any Security Obligor.
- (b) All monies received, recovered or realised by Shawbrook under, or in connection with, this Deed may at the discretion of Shawbrook be credited to a separate interest bearing suspense account for so long as Shawbrook determines (with interest accruing thereon at such rate, if any, as Shawbrook may determine for the account of the relevant Security Obligor) without



Shawbrook having any obligation to apply such monies and interest or any part thereof in or towards the discharge of any of the Secured Obligations.

**29.2 New accounts**

If Shawbrook receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Security Interest affecting any Security Asset and/or the proceeds of sale of any Security Asset or the Guarantee ceases to continue in force, it may open a new account or accounts for any Security Obligor. If it does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice. As from that time all payments made to Shawbrook will be credited or be treated as having been credited to the new account and will not operate to reduce any amount of the Secured Obligations.

**29.3 Changes to the Parties**

- (a) No Security Obligor may assign any of its rights under this Deed.
- (b) Shawbrook may assign or transfer all or any part of its rights under this Deed. Each Security Obligor shall, promptly upon being requested to do so by Shawbrook, enter into such documents as may be reasonably necessary or desirable to effect such assignment or transfer.

**29.4 Memorandum and articles**

Each Security Obligor certifies that the Security does not contravene any of the provisions of the memorandum or articles of association of that Security Obligor.

**29.5 Amendments and waivers**

Any provision of this Deed may be amended only if Shawbrook and the Security Obligors so agree in writing and any breach of this Deed may be waived before or after it occurs only if Shawbrook so agrees in writing. A waiver given or consent granted by Shawbrook under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

**29.6 Calculations and certificates**

A certificate of Shawbrook specifying the amount of any Secured Obligation due from a Security Obligor (including details of any relevant calculation thereof) shall be prima facie evidence of such amount against each Security Obligor in the absence of manifest error.

**29.7 Waiver, rights and remedies**

No failure to exercise, nor any delay in exercising, on the part of Shawbrook, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

### **30. NOTICES**

#### **30.1 Communications in writing**

The provisions of clauses 23.1 to 23.3 inclusive of the Asset Based Lending Agreement shall apply to this Deed as if the same were set out in this Deed, provided that:

- (a) reference to "**each Party**" shall be deemed to be references to each party to this Deed; and
- (b) references to the "**Obligor**" shall be deemed to be references to each Security Obligor.

#### **30.2 Electronic communications**

No communication to be made under this Deed shall be made electronically.

#### **30.3 Agent for service**

Each Security Obligor (other than the Obligor) by its execution of this Deed irrevocably appoints the Obligor to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (a) the Obligor on its behalf to supply all information concerning itself contemplated by this Deed to Shawbrook and to give all notices and instructions to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Security Obligor notwithstanding that they may affect the Security Obligor, without further reference to or the consent of that Security Obligor; and
- (b) Shawbrook to give any notice, demand or other communication to be given to that Security Obligor pursuant to the Finance Documents to the Obligor,

and in each case the Security Obligor shall be bound as though the Security Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

### **31. PARTIAL INVALIDITY**

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any 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.

### **32. RELEASE**

Upon the expiry of the Security Period (but not otherwise) Shawbrook shall, at the request and cost of the Security Obligors, take whatever action is necessary to release or re-assign (without recourse or warranty) the Security Assets from the Security.

**33. COUNTERPARTS**

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

**34. GOVERNING LAW**

This Deed is governed by English law.

**IN WITNESS** of which this Deed has been duly executed by each Security Obligor as a deed and duly executed by Shawbrook and has been delivered on the first date specified on page 1 of this Deed.

## SCHEDULE 1

### Security Obligors

Company name	Company number
Virgin Wine Online Limited	03800762
Virgin Wines Holding Company Limited	07970057
The Warehouse Wine Co Limited	03898259

## **SCHEDULE 2**

### **The Guarantee**

#### **1. Continuing guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Security Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

#### **2. Reinstatement**

If any payment by a Security Obligor, or any discharge given by Shawbrook (whether in respect of the obligations of any Security Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Security Obligor under this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) Shawbrook shall be entitled to recover the value or amount of that security or payment from each Security Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

#### **3. Waiver of defences**

The obligations of each Security Obligor under this Deed will not be affected by an act, omission, matter or thing which, but for this Deed, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or to Shawbrook) including:

- (a) any time, waiver or consent granted to, or composition with, any Security Obligor or other person;
- (b) the release of any other Security Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Security Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Security Obligor or any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise), restatement or replacement (in each case, however fundamental and of any nature whatsoever including, without limitation, which results in any increase in any amount due or owing under any Finance Document or in the rate of interest or any other sum payable under any Finance Document) of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

- (g) any insolvency, administration or similar proceedings.

**4. Immediate recourse**

Each Security Obligor waives any right it may have of first requiring Shawbrook to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Security Obligor under this schedule 2. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

**5. Appropriations**

Until all amounts which may be or become payable during the Security Period by the Security Obligors under or in connection with the Finance Documents have been irrevocably paid in full, Shawbrook may:

- (a) refrain from applying or enforcing any other monies, security or rights held or received by Shawbrook in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Security Obligor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any monies received from any Security Obligor or on account of any Security Obligor's liability under this schedule 2.

**6. Deferral of guarantors' rights**

Until all amounts which may be or become payable during the Security Period by the Security Obligors under, or in connection with, the Finance Documents have been irrevocably paid in full and unless Shawbrook otherwise directs, no Security Obligor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by a Security Obligor;
- (b) to claim any contribution from any other guarantor of any Security Obligor's obligations under the Finance Documents; and/or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of Shawbrook under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by Shawbrook.

**7. Additional security**

This guarantee is in addition to, and is not in any way prejudiced by, any other guarantee or security at the date of this guarantee or subsequently held by Shawbrook.

### **SCHEDULE 3**

#### **Details of Security Assets**

##### **Part 1 - Specified Real Property**

**None specified as at the date of this Deed**

##### **Part 2 - Specified P&M**

**None specified as at the date of this Deed**

##### **Part 3 - Charged Securities**

<b>Security Obligor</b>	<b>Name of company in which shares are held</b>	<b>Class of shares held</b>	<b>Number of shares held</b>	<b>Issued share capital</b>
Virgin Wines Holding Company Limited	Virgin Wine Online Limited	Ordinary	9533706996	95,337.06996
Virgin Wine Online Limited	The Warehouse Wine Co Limited	Ordinary	178,714	178,714

##### **Part 4 - Intellectual Property**

**None specified as at the date of this Deed**

##### **Part 5 - Inventory Insurances**

<b>Security Obligor</b>	<b>Insurer</b>	<b>Insured risks</b>	<b>Policy number</b>
██████████ ██████	████	██████████	██████████






##### **Part 6 - P&M Insurances**

<b>Security Obligor</b>	<b>Insurer</b>	<b>Insured risks</b>	<b>Policy number</b>
██████████ ██████	████	██████████	██████████

##### **Part 7 - Real Property Insurances**

**None specified as at the date of this Deed**

**Part 8 – Assigned Account**

<b>Security Obligor</b>	<b>Account name</b>	<b>Account number</b>	<b>Sort code</b>	<b>Account maintained with</b>
				



## SCHEDULE 4

### Forms of Notice and Acknowledgment of Assignment

#### Form of Notice to Bank with whom Assigned Account Maintained

To: Barclays Bank plc ("Barclays")  
[Address]

Dear Sirs

- 1 We hereby give you notice that pursuant to a composite guarantee and debenture dated • September 2017 (the "**Debenture**") we have assigned to Shawbrook Bank Limited ("**Shawbrook**") all of our rights, title, interests and benefits in, to or in respect of the following account maintained with you (including any renewal or redesignation thereof) (the "**Account**") and all monies standing to the credit of that Account from time to time:

Account name	Account number	Sort code
████████████████████ ██████	██████	██████

- 2 With effect from the date of your receipt of this notice we hereby instruct you:
- 2.1 that any existing payment instructions affecting the Account are to be terminated and all payments and communications in respect of the Account should be made only to Shawbrook or to its order (with a copy to ourselves);
- 2.2 that (subject to written notice to you from Shawbrook to the contrary) all fees or periodic charges in respect of the operation of the Account may be redirected by you to other Barclays accounts held in our name;
- 2.3 that all rights, interests and benefits whatsoever accruing to or arising from the Account shall be exercisable by and shall belong to Shawbrook;
- 2.4 to comply with instructions given by Shawbrook in relation to the Account, including without limitation the daily transfer of all amounts standing to the credit of the Account to such nominated account(s) as Shawbrook notifies you in writing; and
- 2.5 to disclose to Shawbrook any information relating to the Account requested from you by Shawbrook.

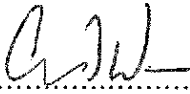
We acknowledge that you may comply with the instructions and authorisations in this notice without further permission from us.

We are not permitted to withdraw any amount from the Account without the prior written consent of Shawbrook.

The instructions in this notice may only be revoked or amended with the prior written consent of Shawbrook.

Please acknowledge receipt of this notice by signing and dating the acknowledgement printed on the enclosed copy of this Notice and returning it to Shawbrook.

Yours faithfully

  
.....

for and on behalf of

Virgin Wine Online Limited

## Form of Acknowledgement of Assignment

*[To be printed only on copy of the Notice of Assignment given]*

To: Shawbrook Bank Limited  
Lutea House The Drive  
Warley Hill Business Park  
Great Warley  
Brentwood  
Essex  
CM13 3BE

Attention:

Dear Sirs

We hereby acknowledge receipt of a notice in the terms set out above from Virgin Wine Online Limited (the "Notice"). Capitalised terms used in this acknowledgment letter have the meanings given to them in the Notice.

We confirm that:

- (a) no fees or periodic charges payable in respect of the operation of the Account shall be redirected to other Barclays accounts held in the name of Virgin Wine Online Limited and that there are no restrictions on (i) the payment of the credit balance on the Account or (ii) the assignment of the Account to Shawbrook or any third party;
- (b) we have not received notice of any other assignment of, charge over or trust or other third party interests in respect of the Account and we will not, without Shawbrook's consent (i) exercise any right of combination, consolidation or set-off which we may have in respect of the Account or (ii) amend or vary any rights attaching to the Account;
- (c) we will not permit any amount to be withdrawn from the Account without your prior written consent; and
- (d) we will act only in accordance with the instructions given by Shawbrook or persons authorised by Shawbrook and we shall send all statements and other notices given by us relating to the Account to Shawbrook.

Barclays shall not be bound to enquire whether the right of Shawbrook to withdraw any monies from the Account has arisen or be concerned with (A) the propriety or regularity of the exercise of that right or (B) notice to the contrary or (C) to be responsible for the application of any monies received by Shawbrook.

Barclays shall have no liability for having acted on instructions from Shawbrook which on their face appear to be genuine, and which comply with the latest bank mandate held by us or relevant electronic banking system procedures in the case of an electronic instruction.

Barclays shall not be deemed to be a trustee for Virgin Wine Online Limited or Shawbrook of the Account.

Yours faithfully

.....

For and on behalf of Barclays Bank Plc

By:

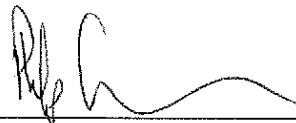

Date:


**EXECUTION PAGE**

**SHAWBROOK BANK LIMITED**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by )  
**SHAWBROOK BANK LIMITED** acting by a )  
duly authorised signatory in the presence of: )

Authorised Signatory

Witness Signature 

Witness Name SAMUEL BRANDON

Address

Shawbrook Bank - 8th Floor  
69 Park Lane  
Croydon  
Surrey

CR0 1JD

Occupation RISK MANAGER

**THE SECURITY OBLIGORS**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by **VIRGIN** )  
**WINE ONLINE LIMITED** acting by a director )  
in the presence of: )

Director

Witness Signature \_\_\_\_\_

Witness Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Occupation \_\_\_\_\_

**EXECUTION PAGE**

**SHAWBROOK BANK LIMITED**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by )  
**SHAWBROOK BANK LIMITED** acting by a )  
duly authorised signatory in the presence of: ) \_\_\_\_\_  
Authorised Signatory

Witness Signature \_\_\_\_\_

Witness Name \_\_\_\_\_

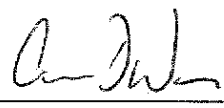
Address \_\_\_\_\_


\_\_\_\_\_

\_\_\_\_\_

Occupation \_\_\_\_\_

**THE SECURITY OBLIGORS**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by **VIRGIN** )  
**WINE ONLINE LIMITED** acting by a director )   
in the presence of: ) Director

Witness Signature  \_\_\_\_\_

Witness Name Kris Peterson

Address 6 Barnister Close  
Preston, PR5 4PD

Occupation IT Support

Executed as a deed, but not delivered until the )  
first date specified on page 1, by **VIRGIN** )  
**WINES HOLDING COMPANY LIMITED** )  
acting by a director in the presence of: )

  
\_\_\_\_\_  
) Director


Witness Signature k Peterson

Witness Name Kris Peterson

Address 6 Bannister Close  
Preston, PR5 4DD

Occupation IT Support

Executed as a deed, but not delivered until the )  
first date specified on page 1, by **THE** )  
**WAREHOUSE WINE CO LIMITED** acting )  
by a director in the presence of: )

  
\_\_\_\_\_  
) Director

Witness Signature k Peterson

Witness Name Kris Peterson

Address 6 Bannister Close  
Preston, PR5 4DD

Occupation IT Support