



**Registration of a Charge**

Company name: **TOWER TRANSIT LIMITED**

Company number: **04335658**



X8Z60CH7

Received for Electronic Filing: **19/02/2020**

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**Details of Charge**

Date of creation: **19/02/2020**

Charge code: **0433 5658 0003**

Persons entitled: **WESTPAC ADMINISTRATION PTY LIMITED AS SECURITY TRUSTEE**

Brief description: **NONE.**

**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:

**ASHURST LLP**



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

Company number: 4335658

Charge code: 0433 5658 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th February 2020 and created by TOWER TRANSIT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th February 2020 .

Given at Companies House, Cardiff on 20th February 2020

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



Execution version

## Debenture

The companies listed in schedule 1

and

Westpac Administration Pty Limited  
as Security Trustee

19 February 2020

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THIS DEED IS MADE ON 19 FEBRUARY 2020

**BETWEEN:**

- (1) **THE COMPANIES** listed in schedule 1 (Chargors); and
- (2) **WESTPAC ADMINISTRATION PTY LIMITED**, ABN 67 008 617 203 as security trustee for itself and the other Secured Parties (the "**Security Trustee**", which expression shall include any person from time to time appointed as a successor, replacement or additional trustee in relation to the interests created by this deed).

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed:

**"Assigned Agreements"** means each Material Contract listed as Assigned Agreements in schedule 3 (Assigned Agreements);

**"Charged Property"** means the assets mortgaged, charged or assigned to the Security Trustee by this deed;

**"Common Terms Deed"** means the document entitled 'Common Terms Deed Poll' dated 6 January 2020 and executed by the Company and each entity listed as an Original Borrower and an Original Guarantor in that document;

**"Company"** means Sealink Travel Group Limited, a company incorporated under the laws of the Commonwealth of Australia with an Australian Company Number 109 078 257;

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Security Trustee;

**"Equipment"** means all plant, machinery, vehicles, computers, office and Material Equipment;

**"Event of Default"** means an Event of Default under the Common Terms Deed;

**"Excluded Property"** means all property (except the Property as defined in this deed), assets, rights and undertaking of a Chargor in any contracts, agreements, leases, licenses, Authorisations or other documents where consent of a counterparty, Governmental Authority or other authority is required under the terms of such document for the Security to be granted by a Chargor, unless and until such time as consent is obtained, at which time it forms part of the Charged Property (but noting clause 3.7 (*Excluded Property and counterparty consent*));

The exclusion does not extend to any proceeds of the Chargors in respect of any such Excluded Property to the extent the relevant agreement does not restrict a Security being given in respect of those proceeds;

**"Facility Agreement"** means the 'Facility Agreement' as defined in the Common Terms Deed;

**"Finance Documents"** means the Finance Documents as defined in the Common Terms Deed;

**"Finance Parties"** means the Finance Parties as defined in the Common Terms Deed;

**"Floating Charge Asset"** means any Charged Property:

- (a) which is:
  - (i) inventory;
  - (ii) a negotiable instrument;
  - (iii) machinery, plant or equipment which is not inventory and has a value of less than £10,000 (or the equivalent in any other currency);
  - (iv) money (including money withdrawn or transferred from an account with a bank or other financial institution); and
- (b) in relation to which no event under clauses 3.5 (Conversion of Floating Charge) and 3.6 (Automatic Conversion of Floating Charge) has occurred;

**"Insurances"** means the benefits arising from all policies of insurance (including all rights of recovery and all proceeds of them) either now or in the future held by, or written in favour of, a Chargor or in which it is otherwise interested, including those policies (if any) listed in schedule 6 (Insurance Policies) but excluding any third party liability or public liability insurance and any directors' and officers' insurance;

**"Intellectual Property"** means any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests in England and Wales, whether registered or unregistered, the benefit of all applications and rights to use such assets including (if any) as listed in schedule 4 (Intellectual Property);

**"Investment"** means any stock, share, debenture, loan stock, security, interest in any investment fund and any other comparable investment (whether or not marketable) whether owned directly by or to the order of a Chargor or by any trustee, fiduciary or clearance system on its behalf (including the Subsidiary Shares);

**"Lenders"** means the Lenders as defined in the Common Terms Deed;

**"Material Contract"** means 'Material Contract' as defined in the Common Terms Deed;

**"Material Equipment"** means plant, machinery, vehicles, computers, office and other equipment, which has a value equal to or more than £10,000 as listed in schedule 5 (Material Equipment);

**"Material Intellectual Property"** means any Intellectual Property which is material in the context of a Chargor's business and which is required by that Chargor in order to carry on its business as it is being conducted;

**"Property"** means all freehold, heritable and leasehold property and the buildings and fixtures (including trade fixtures) on that property from time to time;

**"Receiver"** means a receiver or receiver and manager in each case appointed under this deed;

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

- (a) the proceeds of sale of that asset or any part of that asset;
- (b) all dividends, distributions, interest and/or other income paid or payable in relation to that asset (including on any Investment), together with all shares or other

property derived from that asset and all other allotments, accretions, rights, benefits and advantages of all kinds accruing, offered or otherwise derived from or incidental to that asset (whether by way of conversion, redemption, bonus, preference, option or otherwise);

- (c) any monies and proceeds paid or payable in relation to that asset;
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of that asset; and
- (e) the benefit of all other rights, powers, claims, consents, contracts, warranties, security, guarantees, indemnities or covenants for title in respect of that asset;

**"Secured Obligations"** means all present and future liabilities and obligations at any time due, owing or incurred by any Obligor to any Secured Party under any Finance Document, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity except for any money or liability which, if it were so included, would cause the infringement of section 678 or 679 of the Companies Act 2006;

**"Secured Parties"** means the Finance Parties and any Receiver or Delegate;

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

**"Security Trust Deed"** means the document entitled 'Security Trust Deed' dated on 6 January 2020 and executed by the Company and each entity listed as an Original Borrower and an Original Guarantor in that document; and

**"Subsidiary Shares"** means all shares owned by the Chargor in its Subsidiaries (excluding in Tower Transit Singapore Pte. Ltd.) including the shares (if any) listed in schedule 2 (Subsidiary Shares).

## 1.2 Construction

- (a) In this deed, unless a contrary intention appears, a reference to:
  - (i) words and expressions defined in the Common Terms Deed have the same meanings when used in this deed unless otherwise defined in this deed;
  - (ii) the principles of construction contained in clause 1.2 (Construction) of the Common Terms Deed apply equally to the construction of this deed, except that references to the Common Terms Deed will be construed as references to this deed;
  - (iii) **"assets"** includes present and future properties, revenues and rights of every description;
  - (iv) any **"Chargor"**, any **"Secured Party"** or any other person shall be construed so as to include its successors in title, permitted assignees and transferees and, in the case of the Security Trustee, any person for the time being appointed as Security Trustee or Security Trustees in accordance with the Finance Documents;
  - (v) a **"Finance Document"** or any other agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented, extended, restated or replaced;

- (vi) **"including"** means including without limitation and **"includes"** and **"included"** shall be construed accordingly;
  - (vii) **"losses"** includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including fees) and liabilities and **"loss"** shall be construed accordingly;
  - (viii) a **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any two or more of the foregoing;
  - (ix) 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 regulatory, self-regulatory or other authority or organisation;
  - (x) a provision of law is a reference to that provision as amended or re-enacted; and
  - (xi) any clause or schedule is a reference to, respectively, a clause of and schedule to this deed and any reference to this deed includes its schedules.
- (b) Section, clause and schedule heading are for ease of reference only.
  - (c) The terms of the documents under which the Secured Obligations arise and of any side letters between any Chargor and any Secured Party relating to the Secured Obligations are incorporated in this deed to the extent required for any purported disposition of any Property contained in this deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
  - (d) The parties intend that this document shall take effect as a deed, notwithstanding the fact that a party may only execute it under hand.

### 1.3 **Security Trustee's limitation of liability**

The Security Trustee enters into and delivers this deed as trustee of the Security Trust and subject to the limitations of liability and indemnities contained in the Security Trust Deed, including clause 3.13 (Limitations of liability of Security Trustee) and clause 3.15 (Security Trustee's indemnity out of the Security Trust assets).

### 1.4 **Common Terms Deed and Security Trust Deed**

This deed is a "Finance Document" for the purposes of the Common Terms Deed and a "Secured Document" for the purposes of the Security Trust Deed.

### 1.5 **Third Party Rights**

- (a) Any Receiver or Delegate will have the right to enforce the provisions of this deed which are given in its favour however the consent of a Receiver or Delegate is not required for the rescission or variation of this deed.
- (b) Subject to paragraph (a), a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this deed.

## **2. COVENANT TO PAY**

Each Chargor as primary obligor covenants with the Security Trustee (for the benefit of itself and the other Secured Parties) that it will on demand pay the Secured Obligations when they fall due for payment.

## **3. CHARGING CLAUSE**

### **3.1 Fixed Charges**

Each Chargor, as security for the payment and discharge of the Secured Obligations, charges in favour of the Security Trustee with full title guarantee all of its right, title and interest in the following assets, both present and future, from time to time owned by it or in which it has an interest and, in each case, all Related Rights, by way of first fixed charge:

- (a) all Subsidiary Shares;
- (b) all Investments (other than Subsidiary Shares);
- (c) all Material Equipment;
- (d) all Intellectual Property;
- (e) its goodwill and uncalled capital; and
- (f) to the extent not effectively assigned by clause 3.2 (Security Assignment):
  - (i) the Assigned Agreements; and
  - (ii) the Insurances.

### **3.2 Security Assignment**

As further security for the payment and discharge of the Secured Obligations, each Chargor assigns absolutely with full title guarantee in favour of the Security Trustee all its right, title and interest in the following assets, both present and future, and, in each case, all Related Rights:

- (a) the Assigned Agreements; and
- (b) the Insurances,

provided that on payment or discharge in full of the Secured Obligations the Security Trustee will at the request and cost of the relevant Chargor re-assign the relevant rights, title and interest in the assigned assets to that Chargor (or as it shall direct).

### **3.3 Fixed Security**

Clause 3.1 (Fixed Charges) and clause 3.2 (Security Assignment) shall be construed as creating a separate and distinct mortgage, fixed charge or security assignment over each relevant asset within any particular class of assets specified in this deed. Any failure to create effective fixed security (for whatever reason) over an asset shall not affect the fixed nature of the security on any other asset, whether within the same class of assets or not.

### **3.4 Floating Charge**

As further security for the payment and discharge of the Secured Obligations, each Chargor charges with full title guarantee in favour of the Security Trustee by way of first floating charge:

- (a) all its Floating Charge Assets;
- (b) all Property; and
- (c) all its present and future assets not effectively charged by way of fixed charge under clause 3.1 (Fixed Charges) or assigned under clause 3.2 (Security Assignment).

### **3.5 Conversion of Floating Charge**

- (a) Subject to paragraph (b) below, if:
  - (i) an Event of Default has occurred and is continuing; or
  - (ii) the Security Trustee is (acting reasonably) of the view that any legal process or execution is being enforced against any Floating Charge Asset or that any Floating Charge Asset is in danger of being seized or otherwise in jeopardy; or
  - (iii) the Security Trustee considers that it is necessary to protect the priority of the security,

the Security Trustee may, by notice to any Chargor, convert the floating charge created under this deed into a fixed charge as regards those assets which it specifies in the notice.

- (b) The floating charge created under this deed may not be converted into a fixed charge solely by reason of the obtaining of a moratorium under section 1A of the Insolvency Act 1986 in relation to a Chargor, or anything done with a view to obtaining such a moratorium.

### **3.6 Automatic Conversion of Floating Charge**

If:

- (a) any Chargor creates (or purports to create) any Security in breach of clause 6.2 (Negative Pledge) over any Floating Charge Asset; or
- (b) any person levies or attempts to levy any distress, attachment, execution or other legal process against any Floating Charge Asset,

the floating charge created under this deed over the relevant Floating Charge Asset will automatically and immediately be converted into a fixed charge.

### **3.7 Excluded Property and counterparty consent**

- (a) Each relevant Chargor is required to use all reasonable endeavours for a period of no more 180 days after the date of this deed (or, if later, by the date not exceeding 180 days following its entry into or acquisition of such Excluded Property) to obtain consents from the relevant counterparty to grant Security over any Excluded Property.
- (b) The relevant Chargor is deemed to have satisfied the obligation under paragraph (a) above if, after having requested the consent, the counterparty has refused to provide the consent or, if in that Chargor's reasonable opinion, there is no

reasonable prospect that the counterparty will give such consent or that any further attempt to comply would be to its material commercial detriment.

- (c) The Security under clauses 3.1 (Fixed charge), 3.2 (Security Assignment) and 3.4 (Floating Charge) will take effect over any property that is Excluded Property upon the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager, judicial manager or other similar officer in respect of the relevant Chargor or any of its assets.

#### **4. FURTHER ASSURANCE**

- (a) Each Chargor shall promptly (and at its own expense) do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)):
  - (i) to perfect the Security created or intended to be created under or evidenced by this deed or for the exercise of any rights, powers and remedies of the Security Trustee, any Receiver or the Secured Parties provided by or pursuant to this deed or by law;
  - (ii) to confer on the Security Trustee or on the Secured Parties Security over any property and assets of that Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this deed; and/or
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by this deed.
- (b) Each Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee or the Secured Parties by or pursuant to this deed.

#### **5. REPRESENTATIONS AND WARRANTIES**

##### **5.1 Representations in the Common Terms Deed**

Each Chargor makes the Repeating Representations to the Security Trustee.

##### **5.2 Matters Represented**

Each Chargor represents and warrants to the Security Trustee as set out in clauses 5.3 (Property) to clause 5.6 (Insurance) (inclusive) on the date of this deed and on each day on which a Repeating Representation (under the Common Terms Deed) is repeated or deemed to be repeated.

##### **5.3 Scheduled assets**

- (a) Schedule 3 (Subsidiary Shares) sets out accurately the details of all of the Investments (excluding Tower Transit Singapore Pte. Ltd.) in which it has an interest as at the date of this deed.
- (b) Schedule 6 (Insurance Policies) sets out accurately the details of all of the Insurances in which it has an interest as at the date of this deed.

#### **5.4 Subsidiary Shares**

- (a) It is the legal and beneficial owner of the Subsidiary Shares identified against its name in schedule 2 (Subsidiary Shares) (save in relation to those Subsidiary Shares which are held by a nominee for it, in which case it is the beneficial owner only of those Subsidiary Shares).
- (b) All of the Subsidiary Shares are fully paid.
- (c) There are no agreements in force or corporate resolutions passed which call for the issue or allotment of, or grant any person any right (whether conditional or unconditional) to call for the issue or allotment of, any share in any company whose shares are being charged under this deed (including any option or right of pre-emption or conversion).

#### **5.5 Assigned Agreements**

- (a) The Assigned Agreements are in full force and effect, and no default by any Chargor (nor, as far as it is aware on the date of this deed, by any party to an Assigned Agreement) is continuing with respect to any Assigned Agreement.
- (b) It has not assigned or transferred or granted to any third party any rights or interests under or in connection with, any assets over which it purports to grant Security under clause 3.2 (Security Assignment) of this deed or agreed to do any of the same, except in favour of the Security Trustee pursuant to this deed.

#### **5.6 Insurance**

- (a) All premiums and other monies due and owing by each Chargor under or in respect of any Insurance have been duly paid.
- (b) Nothing has been done, has occurred or has not been disclosed with respect to the Insurances which will vitiate any Insurance.
- (c) Each Insurance is valid and in full force and effect and enforceable in accordance with its respective terms against the parties thereto, and are not void or voidable.
- (d) As of the date of this deed, no claim has been made under any Insurance.
- (e) It has not assigned or transferred or granted to any third party any rights or interests under or in connection with, such assets or agreed to do any of the same, except in favour of the Security Trustee pursuant to this deed.

#### **5.7 Intellectual Property**

It has not granted and is not obliged to grant any licences of in respect of or in connection with its Intellectual Property.

### **6. UNDERTAKINGS - GENERAL**

#### **6.1 Duration of Undertakings**

All of the undertakings given in this deed are given from the date of this deed and for so long as any security constituted by this deed remains in force.

#### **6.2 Negative Pledge**

No Chargor may create or agree to create or permit to subsist any Security or Quasi-Security over all or any part of the Charged Property except as permitted by and in accordance with the Common Terms Deed.

**6.3 Disposal Restrictions**

No Chargor may enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of all or any part of the Charged Property except as permitted by and in accordance with the Common Terms Deed.

**6.4 Preservation of Charged Property**

Each Chargor will observe and perform all covenants and stipulations from time to time affecting the Charged Property, make all payments, carry out all registrations or renewals and generally take all steps which are necessary to preserve, maintain and renew when necessary all the Charged Property.

**6.5 Documents Relating to Charged Property**

- (a) Without prejudice to any specific requirements in this deed for the delivery of documents, each Chargor will promptly deliver to the Security Trustee all documents relating to the Charged Property which the Security Trustee from time to time reasonably requires.
- (b) The Security Trustee may retain any document delivered to it under this deed for so long as any security constituted by this deed remains in force over that asset and, if for any reason it returns any document to the relevant Chargor (or its nominee) before that time, it may by notice to the relevant Chargor require that the relevant document be redelivered to it and the relevant Chargor shall promptly comply (or procure compliance) with that notice.

**6.6 Power to Remedy**

If an Event of Default has occurred and is continuing and if a Chargor fails to comply with any undertaking given in this deed and that failure is not remedied to the satisfaction of the Security Trustee within 14 days of the Security Trustee notifying the relevant Chargor that remedy is required, it will allow (and irrevocably authorises) the Security Trustee, or any Delegate, to take any action on behalf of that Chargor which is necessary to ensure that those covenants are complied with.

**7. PROPERTY**

**7.1 Maintenance**

Each Chargor will keep in good and substantial repair all of the Property in which it has an interest.

**7.2 Leases**

Each Chargor shall:

- (a) comply in all material respects with all covenants and conditions applicable to it (whether as lessor, lessee or in any other capacity) contained in any lease, licence or other document relevant to its interest in any Property;
- (b) enforce the due observance and performance of all material covenants given for its benefit in relation to any Property;

- (c) not accept any surrender of any lease of Property in respect of which it is the lessor, except as permitted by the Common Terms Deed or with the prior consent of the Security Trustee; and
- (d) give immediate notice to the Security Trustee if it receives any notice under section 146 of the Law of Property Act 1925 or any proceedings are commenced against it for the forfeiture of any lease of any Property.

## **8. INVESTMENTS**

### **8.1 Investment Acquisitions**

Each Chargor will promptly notify the Security Trustee if it acquires, or enters any agreement to acquire, any interest in an Investment.

### **8.2 Voting and Distribution Rights**

- (a) Until an Event of Default occurs, and until the relevant Chargor receives a notice from the Security Trustee under clause 8.2(b), the relevant Chargor may:
  - (i) receive and retain all dividends, distributions and other monies paid on or derived from the Investments; and
  - (ii) exercise all voting and other rights and powers attaching to the Investments provided that it may not exercise any such voting or other rights or powers in a manner which is inconsistent with any Finance Document or which may be prejudicial to the value of the security given by this deed or the realisation of it.
- (b) If an Event of Default occurs and is continuing:
  - (i) the Security Trustee may give notice to the relevant Chargor requiring the Chargor to promptly pay all dividends, distributions and other monies paid on or derived from the Investments directly to the Security Trustee; and
  - (ii) the Security Trustee may (in its sole discretion) directly or indirectly (by instruction to the relevant legal owner of the relevant Investments) exercise, refrain from exercising or disclaim any right to exercise any voting or other rights and powers attaching to the Investments. Any exercise of such voting rights may only be for the purpose of preserving the value of the security given by this deed or facilitating the realisation of it. The relevant Chargor will promptly comply with any direction given by the Security Trustee in relation to the exercise of voting or other rights and powers. Any such disclaimer will confer on the relevant Chargor the authority to direct the exercise of the disclaimed right, as if an Event of Default had not occurred, in accordance with paragraph (a)(ii) above.
- (c) At any time when any Investments are registered in the name of the Security Trustee or its nominee, the Security Trustee will not be under any duty to ensure that any dividends, distributions or other monies payable in respect of those Investments are duly and promptly paid or received by it or its nominee, or to verify that the correct amounts are paid or received, or to take any action in connection with the taking up of any (or any offer of any) stocks, shares, rights, monies or other property paid, distributed, accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise on or in respect of or in substitution for, any of those Investments.

### 8.3 **Perfection of Investments Security**

Each Chargor will promptly following the execution of this deed or (if later) acquisition of an Investment deposit with the Security Trustee (or as it shall direct) all stock and share certificates and other documents of title relating to the Investments in which it has an interest together with stock transfer forms executed in blank and left undated on the basis that the Security Trustee shall be able to hold such documents of title and stock transfer forms until the Secured Obligations have been irrevocably and unconditionally discharged in full and shall be entitled, at any time, after an Event of Default occurs and is continuing and for so long as it is continuing or if the Security Trustee considers that the security constituted by this deed is in jeopardy to complete, under its power of attorney given by clause 13 (Attorney) below, the stock transfer forms on behalf of the relevant Chargor in favour of itself or its nominee(s).

### 8.4 **Perfection of Uncertificated Investments Security**

Each Chargor will, in respect of the Uncertificated Investments in which it has an interest:

- (a) promptly following the execution of this deed or (if later) acquisition of an Uncertificated Investment, procure that any Uncertificated Investments in which it has an interest are transferred to:

- (i) that Chargor's Escrow Balance; or
  - (ii) (if the Security Trustee requires) a CREST account of the Security Trustee or its nominee; and

in relation to any Uncertificated Investments required to be transferred to its Escrow Balance, deliver an instruction to CREST identifying the Security Trustee (or, if the Security Trustee so requires, its nominee) as its escrow agent in respect of the relevant Escrow Balance; and

- (b) if required by the Security Trustee, promptly procure the conversion of all or the required part (as applicable) of the Uncertificated Investments in which it has an interest into certificated form and will deposit of all certificates and other documents of title in respect of such Uncertificated Investments in accordance with clause 8.3 (Perfection of Investments Security).

In this deed:

**"CREST"** means Euroclear UK & Ireland Limited (as operator of the CREST settlement system) or any successor operator for the time being;

**"Escrow Balance"** means the escrow balance of an account maintained with CREST; and

**"Uncertificated Investments"** means an Investment which is "uncertificated" within the meaning of the Uncertificated Securities Regulations 2001 ([SI 2001/3755](#)).

## 9. **EQUIPMENT**

### 9.1 **Maintenance**

Each Chargor will keep all Equipment in which it has an interest comprised in the Charged Property in good working order.

### 9.2 **Perfection of Material Equipment Security**

Each Chargor will, promptly following the execution of this deed or (if later) acquisition of Material Equipment, securely affix to and maintain on each item of Material Equipment, a

plaque (which is conspicuous in size and place), inscribed as below and not conceal, alter or remove such plaque or its inscription or permit it to be concealed, altered or removed:

**"NOTICE OF CHARGE**

This [specify nature of Material Equipment] and additions and ancillary equipment are subject to a first fixed charge in favour of [name of the Security Trustee (as security trustee)]."

**10. INTELLECTUAL PROPERTY**

**10.1 Material Intellectual Property Acquisitions**

Each Chargor will promptly notify the Security Trustee if it creates, acquires, or enters any agreement to acquire, any interest in Intellectual Property .

**10.2 Perfection of Material Intellectual Property Security**

Each Chargor appoints the Security Trustee as its agent to apply for the Secured Parties' interest in that Chargor's Material Intellectual Property to be recorded on any of the following registers, in the Security Trustee's discretion:

- (a) the relevant Intellectual Property register of the UK Intellectual Property Office;
- (b) the relevant Intellectual Property register of the EU Office of Harmonization for the Internal Market; and
- (c) all other national, regional and international Intellectual Property registers.

**11. ASSIGNED AGREEMENTS**

**11.1 Performance and Maintenance of Agreements**

Each Chargor will:

- (a) duly perform all its obligations under the Assigned Agreements;
- (b) enforce the due observance and performance of all covenants given for its benefit in relation to the Assigned Agreements; and
- (c) not make or agree to make any amendments (except of a non-material and purely administrative nature) to, waive any of its rights under, or exercise any right to terminate any of the Assigned Agreements, except with the prior consent of the Security Trustee.

**11.2 Perfection of Agreements Security**

Each Chargor will, promptly following execution of this deed (or, in respect of any Assigned Agreement designated as such after the date of execution of this deed, promptly thereafter):

- (a) give notice (substantially in the form set out in the relevant part of schedule 6 (Forms of notice to counterparties)) to the other parties to the Assigned Agreements of the security created by this deed over its interest therein and provide evidence satisfactory to the Security Trustee (acting reasonably) of the delivery of that notice; and

- (b) use reasonable endeavours to procure that each counterparty promptly acknowledges that notice by countersigning a copy of it and delivering that copy to the Security Trustee.

## **12. INSURANCES**

### **12.1 Undertakings**

Each Chargor shall ensure that the Insurances in respect of which it is an insured party contain terms providing that they shall not be invalidated so far as the Security Trustee is concerned for failure to pay any premium due without the insurer first giving to the Security Trustee not less than 14 days' written notice.

### **12.2 Perfection of Insurances Security**

Each Chargor will, promptly following execution of this deed (or, in respect of any Insurances entered into after the date of execution of this deed, promptly thereafter):

- (a) give notice (substantially in the form set out in the relevant part of schedule 6 (Forms of notice to counterparties)) to the other parties to the Insurances of the security created by this deed over its interest therein and provide evidence satisfactory to the Security Trustee (acting reasonably) of the delivery of that notice; and
- (b) use reasonable endeavours to procure that each counterparty promptly acknowledges that notice by countersigning a copy of it and delivering that copy to the Security Trustee.

## **13. ATTORNEY**

- (a) Each Chargor, by way of security, irrevocably and severally appoints the Security Trustee, each Receiver and any person nominated for the purpose by the Security Trustee or any Receiver (in writing and signed by an officer of the Security Trustee or Receiver) as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed to execute, deliver and perfect any deed, agreement or other instrument and to do any act or thing:
  - (i) which that Chargor is required to do by the terms of any Finance Document; and/or
  - (ii) which is for the purpose of enabling the exercise of any rights or powers conferred on the Security Trustee or any Receiver by any Finance Document or by law,

and each Chargor covenants with the Security Trustee and each Receiver to ratify and confirm all such acts or things made, done or executed by that attorney.

## **14. ENFORCEMENT**

### **14.1 Exercise of Enforcement Powers**

At any time after an Event of Default has and is continuing occurred or notice demanding payment of any sum which is then due but unpaid in respect of the Secured Obligations has been given by the Security Trustee or any other Secured Party to a Chargor:

- (a) the security created by or pursuant to this deed is immediately enforceable;

- (b) the Security Trustee may enforce all or any part of the security and take possession of and hold, sell or otherwise dispose and/or deal with all or any part of the Charged Property; and
- (c) the Security Trustee may exercise the power of sale and all other rights and powers conferred by this deed or by statute (as varied or extended by this deed) on the Security Trustee or on a Receiver, irrespective of whether the Security Trustee has taken possession or appointed a Receiver of the Charged Property.

#### 14.2 Appointment of Receiver or Administrator

- (a) Subject to paragraph (d) and (e) below, if:
  - (i) an Event of Default has occurred and is continuing;
  - (ii) notice demanding payment of any sum which is then due but unpaid in respect of the Secured Obligations has been given by the Security Trustee or any other Secured Party to any Chargor; or
  - (iii) so requested by the relevant Chargor,
 the Security Trustee may by writing under hand appoint any person (or persons) to be a Receiver of all or any part of the Charged Property.
- (b) Section 109(1) of the Law of Property Act 1925 shall not apply to this deed.
- (c) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created by this deed.
- (d) The Security Trustee shall be entitled to appoint a Receiver save to the extent prohibited by section 72A of the Insolvency Act 1986.
- (e) A Receiver may not be appointed solely by reason of the obtaining of a moratorium under section 1A of the Insolvency Act 1986 in relation to a Chargor, or anything done with a view to obtaining such a moratorium.

#### 14.3 Appropriation

- (a) In this deed, **"financial collateral"** has the meaning given to that term in the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226).
- (b) If:
  - (i) an Event of Default has occurred and is continuing; or
  - (ii) notice demanding payment of any sum which is due but unpaid in respect of the Secured Obligations has been given by the Security Trustee or any other Secured Party to any Chargor,
 the Security Trustee may appropriate all or part of the financial collateral in or towards satisfaction of the Secured Obligations.
- (c) The Security Trustee must attribute a value to the appropriated financial collateral in a commercially reasonable manner.
- (d) Where the Security Trustee exercises its rights of appropriation and the value of the financial collateral appropriated differs from the amount of the Secured Obligations, as the case may be, either:

- (i) the Security Trustee must account to the relevant Chargor for the amount by which the value of the appropriated financial collateral exceeds the Secured Obligations; or

the Chargors will remain liable to the Secured Parties for any amount whereby the value of the appropriated financial collateral is less than the Secured Obligations.

## **15. EXTENSION AND VARIATION OF STATUTORY POWERS**

### **15.1 Statutory Powers**

The powers conferred on mortgagees, receivers or administrative receivers by statute shall apply to the security created by this deed, unless they are expressly or impliedly excluded. If there is ambiguity or conflict between the powers conferred by statute and those contained in this deed, those contained in this deed shall prevail.

### **15.2 Section 101 LPA Powers**

The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 shall arise on the date of this deed and for that purpose the Secured Obligations are deemed to have fallen due on the date of this deed.

### **15.3 Powers of Leasing**

The Security Trustee may lease, make agreements for leases at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it thinks fit, without the need to comply with any of the provisions of sections 99 and 100 of the Law of Property Act 1925.

### **15.4 Restrictions Disapplied**

The restrictions on the consolidation of mortgages and on exercise of the power of sale imposed by sections 93 and 103 respectively of the Law of Property Act 1925 shall not apply to the security constituted by this deed.

## **16. STATUS, POWERS, REMOVAL AND REMUNERATION OF RECEIVER**

### **16.1 Receiver as Agent**

Each Receiver shall be the agent of the relevant Chargor which shall be solely responsible for his or her acts or defaults, and for his or her remuneration and expenses, and be liable on any agreements or engagements made or entered into by him or her. The Security Trustee will not be responsible for any misconduct, negligence or default of a Receiver.

### **16.2 Powers of Receiver**

Each Receiver appointed under this deed shall have all the powers conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this deed), so that the powers set out in schedule 1 to the Insolvency Act 1986 shall extend to every Receiver, whether or not an administrative receiver. In addition, notwithstanding any liquidation of the relevant Chargor, each Receiver shall have power to:

- (a) **(manage, possession, control)** manage, take possession of, or take control of, collect and get in the Charged Property and for that purpose to take proceedings (in the name of the relevant Chargor or otherwise);
- (b) **(give up possession)** give up possession of the Charged Property;

- (c) **(exercise Security Trustee's rights)**
  - (i) exercise all or any of the Security Trustee's powers, rights, discretions and remedies under this document in respect of the Charged Property; and
  - (ii) comply with the directions given by the Security Trustee;
- (d) **(carry on business)**
  - (i) carry on or agree to carry on the business of the relevant Chargor in and with the Charged Property and to stop doing so; and
  - (ii) effect all repairs, purchases and Insurances, and generally to do everything that the relevant Chargor might do in the ordinary conduct of its business to:
    - (A) protect or improve the Charged Property; or
    - (B) obtain income or returns from the Charged Property and to conduct the relevant Chargor's business,
 without being responsible for any loss;
- (e) **(borrow)**
  - (i) borrow from a financial institution or (with the consent of the Security Trustee) any other person any money that may be required for any of the purposes mentioned in clause 16.2(d) (carry on business) above; and
  - (ii) (in the name of the relevant Chargor or otherwise) secure any money borrowed by granting Security in the Charged Property so that the Security may rank in priority to, equally with or after the Security granted in clause 3 (Charging Clause),
 

without the Security Trustee being bound to enquire whether the borrowing is necessary or proper or responsible for the misapplication or non-application of any money borrowed;
- (f) **(hire out, lease or license)** hire out, lease or license the Charged Property (including in the name of the relevant Chargor) for any term at the rent or licence fee and on terms that seem desirable to the Receiver (with or without a purchase option and whether or not the Receiver has taken possession);
- (g) **(exercise rights)** exercise all or any powers, rights, discretions and remedies of the relevant Chargor or in connection with the Charged Property (including rights available under the Companies Act or any other statute or under the rules of any stock exchange);
- (h) **(registration)** do everything necessary to obtain registration of the Charged Property in the Security Trustee's name or in the name of the Security Trustee's nominee;
- (i) **(settle disputes)**
  - (i) settle, arrange and compromise any accounts, claims, questions or disputes that may arise in connection with the relevant Chargor's business or the Charged Property or in any way relating to this document; and

- (ii) execute releases or other discharges in relation to the settlement, arrangement, or compromise;
- (j) **(sell)** sell (whether or not the Receiver has taken possession), exchange or otherwise dispose of (absolutely or conditionally) the Charged Property (or agree to do so):
  - (i) whether or not the relevant Chargor has carried out any work on the Charged Property or otherwise prepared the Charged Property for sale;
  - (ii) with or without other property;
  - (iii) by public auction, private sale or tender for cash or on credit;
  - (iv) whether or not the reserve price for a sale by auction or tender is disclosed;
  - (v) in one lot or in parcels;
  - (vi) with or without special conditions, (such as conditions as to title or time or method of payment of purchase money) including by allowing the purchase money to remain:
    - (A) outstanding on any security over the property sold or over any other property; or
    - (B) owing without any security; and
  - (vii) on other terms the Receiver considers desirable, without being responsible for any loss;
- (k) **(transfer on sale)** execute transfers and assignments of the Charged Property (including in the name of the relevant Chargor), and do everything to complete any sale under clause 16.2(j) (sell) above that the Receiver thinks necessary;
- (l) **(insure)** insure the Charged Property that is of an insurable nature against risks of destruction, loss or damage for the amounts and on the terms that the Receiver thinks appropriate;
- (m) **(sever fixtures)** sever fixtures belonging to the relevant Chargor and sell them apart from any other part of the Charged Property;
- (n) **(employees and agents)** engage employees, agents, consultants, lawyers, advisers and contractors for any of the purposes of this clause on terms that the Receiver thinks appropriate;
- (o) **(give receipts)** give receipts for all money and other property that may come into the hands of the Receiver in exercise of any power given by this document;
- (p) **(enforce contracts)** carry out and enforce or otherwise obtain the benefit of all contracts:
  - (i) entered into or held by the relevant Chargor in connection with the Charged Property; or
  - (ii) entered into in exercise of the powers given by this document;
- (q) **(make debtors bankrupt)** make debtors bankrupt and wind up companies or other applicable entities and do everything in connection with any bankruptcy or

winding up that the Receiver thinks desirable to recover or protect Charged Property;

- (r) **(perform undertakings)** do everything necessary to perform any undertaking of the relevant Chargor in this document;
- (s) **(receive money)** receive all money or other property payable or deliverable to the relevant Chargor from the Charged Property;
- (t) **(desirable or incidental matters)**:
  - (i) do or cause to be done everything that the Receiver thinks desirable in the interests of the Security Trustee; and
  - (ii) do anything incidental to the exercise of any other power;
- (u) **(take legal proceedings)** take proceedings (including in the name of the relevant Chargor) in connection with any of the above; and
- (v) **(delegate)** with the consent of the Security Trustee delegate any of the powers given to the Receiver by this clause to any person.

#### 16.3 **Removal of Receiver**

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

#### 16.4 **Remuneration of Receiver**

The Security Trustee may from time to time fix the remuneration of any Receiver appointed by it. Sections 109(6) and (8) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this deed.

#### 16.5 **Several Receivers**

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this deed (unless the document appointing such Receiver states otherwise).

### 17. **PROTECTION OF THIRD PARTIES**

#### 17.1 **No Obligation to Enquire**

No purchaser from, or other person dealing with, the Security Trustee, any Receiver or Delegate shall be obliged or concerned to enquire whether:

- (a) the right of the Security Trustee or any Receiver to exercise any of the powers conferred by this deed has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power; or
- (b) any of the Secured Obligations remain outstanding or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters.

**17.2 Receipt Conclusive**

The receipt of the Security Trustee or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve him of any obligation to see to the application of any moneys or other consideration paid to or by the direction of the Security Trustee or any Receiver.

**18. PROTECTION OF SECURITY TRUSTEE AND RECEIVER**

**18.1 Role of Security Trustee**

The provisions set out in the Security Trust Deed shall govern the rights, duties and obligations of the Security Trustee under this deed.

**18.2 Delegation**

The Security Trustee may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by it under this deed to any person or persons upon such terms and conditions (including the power to sub-delegate) as it may think fit. The Security Trustee will not be liable or responsible to any Chargor or any other person for any losses arising from any act, default, omission or misconduct on the part of any Delegate.

**18.3 No Liability**

Neither the Security Trustee nor any Receiver or Delegate shall be liable in respect of any of the Charged Property or 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, their respective powers, unless caused by its or his or her fraud, gross negligence or wilful default.

**18.4 Possession of Charged Property**

Without prejudice to clause 18.3 (No Liability), if the Security Trustee or any Delegate enters into possession of the Charged Property, it will not be liable to account as mortgagee in possession and may at any time at its discretion go out of such possession.

**18.5 Indemnity**

- (a) Each Chargor jointly and severally shall promptly indemnify the Security Trustee and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of acting as Security Trustee, Receiver or Delegate (otherwise, in each case, than by reason of the relevant Security Trustee's, Receiver's or Delegate's fraud, gross negligence or wilful misconduct).
- (b) Each Chargor expressly acknowledges and agrees that the continuation of its indemnity obligations under this clause 18.5 will not be prejudiced by any release of security or disposal of any Charged Property.
- (c) The Security Trustee and every Receiver and Delegate may, in priority to any payment to the other Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 18.5.

**19. APPLICATION OF ENFORCEMENT PROCEEDS**

**19.1 Order of Application**

All proceeds of enforcement (whether cash or non-cash) received or recovered by the Security Trustee or any Receiver pursuant to this deed shall (subject to the claims of any

person having prior rights thereto) be applied in the following order notwithstanding any purported appropriation by any Chargor;

- (a) in discharging any sums owing to the Security Trustee, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of the security created by this deed taken in accordance with the terms of this deed; and
- (c) in payment to a Lender for application in accordance with clause 17.3 (Partial Payments) of each Facility Agreement.

#### **19.2 Suspense Account**

- (a) Until the Secured Obligations are paid in full, each Secured Party may place and keep (to the extent possible and for such time as it shall determine) any recoveries or other proceeds of enforcement (whether cash or non-cash) received pursuant to this deed or otherwise on account of any Chargor's liability in respect of the Secured Obligations in an interest bearing separate suspense account, without having any obligation to apply all or any part of the same in or towards discharge of the Secured Obligations.
- (b) If the security created by this deed is enforced at a time when no amount is due under the Finance Documents but at the time when amounts may or will become due, a Secured Party may pay any recoveries or other proceeds of enforcement into a suspense account.

### **20. PROTECTION OF SECURITY**

#### **20.1 Continuing Security**

This security is to be a continuing security until a final irrevocable discharge of the Charged Property is given to the Chargor under clause 26.4 (Covenant to Release) notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations or any other matter or thing.

#### **20.2 Other Security**

- (a) This security is to be in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other security or other right which the Security Trustee or any other Secured Party may now or after the date of this deed hold for any of the Secured Obligations.
- (b) This security may be enforced against each Chargor without first having recourse to any other rights of the Security Trustee or any other Secured Party.

#### **20.3 Cumulative Powers**

- (a) The powers which this deed confers on the Security Trustee, the other Secured Parties and any Receiver appointed under this deed are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate.
- (b) The Security Trustee, the other Secured Parties or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever.

- (c) The respective powers of the Security Trustee, the other Secured Parties and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

#### **20.4 Amounts Avoided**

If any amount paid by a Chargor in respect of the Secured Obligations is capable of being avoided or set aside on the liquidation or administration of the relevant Chargor or otherwise, then for the purposes of this deed that amount shall not be considered to have been paid.

#### **20.5 Discharge Conditional**

If any discharge, release or arrangement (whether in respect of the obligations of any Chargor or in respect of any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Chargor under this deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### **20.6 Waiver of Defences**

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

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement;
- (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 person;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement 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 or similar proceedings.

#### **20.7 Non-competition**

Until all amounts which may be or become payable in respect of the Secured Obligations have been irrevocably paid in full and unless the Security Trustee otherwise directs, no Chargor will exercise any rights which it may have by reason of performance by it of its obligations under this deed or by reason of any amounts being payable, or liability arising under this deed:

- (a) to claim any right of indemnity or contribution in respect of any payment made or other satisfaction of that Chargor's liability under this deed;

- (b) to take the benefit (whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents; and/or
- (c) to claim or prove as a creditor of any Obligor in competition with any Secured Party.

Each Chargor shall hold any benefit, payment or distribution received by it contrary to this clause 22.7 (Non-competition) on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with clause 21 (Application of Enforcement Proceeds).

#### 20.8 **Release of Right of Contribution**

If any Chargor (a "**Retiring Chargor**") ceases to be a Chargor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Chargor, then on the date such Chargor ceases to be a Chargor:

- (a) that Chargor is released by each other Chargor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Chargor arising by reason of the performance by any other Chargor of its obligations under the Finance Documents; and
- (b) each other Chargor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Chargor.

#### 20.9 **Subsequent Security - Ruling-off Accounts**

If the Security Trustee or any other Secured Party receives notice of any subsequent Security or other interest affecting any of the Charged Property it may open a new account for the relevant Chargor in its books. If it does not do so then (unless it gives express notice to the contrary to the relevant Chargor), as from the time it receives that notice, all payments made by the relevant Chargor to it shall (in the absence of any express appropriation to the contrary) be treated as having been credited to a new account of the relevant Chargor and not as having been applied in reduction of the Secured Obligations.

#### 20.10 **Redemption of Prior Charges**

The Security Trustee may, at any time after an Event of Default has occurred, redeem any prior Security on or relating to any of the Charged Property or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on each Chargor. Each Chargor will on demand pay to the Security Trustee all principal monies and interest and all losses incidental to any such redemption or transfer.

#### 21. **SET-OFF**

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

- (b) If the relevant obligation or liability of a Chargor is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

## **22. CHANGES TO PARTIES**

### **22.1 Assignment by the Security Trustee**

The Security Trustee may at any time assign or otherwise transfer all or any part of its rights under this deed in accordance with the Finance Documents.

### **22.2 Changes to Parties**

Each Chargor authorises and agrees to changes to parties under clause 17 (Ceasing to be a Finance Party) and clause 18 (Changes to Obligors) of the Common Terms Deed, and authorises the Security Trustee to execute on its behalf any document required to effect the necessary transfer of rights or obligations contemplated by those provisions.

### **22.3 Consent of Chargors**

Each Chargor consents to the accession to this deed of additional Chargors and agree that any such accession will in no way prejudice the Security granted by it, or affect the covenants given by it, in this deed.

## **23. CURRENCY**

### **23.1 Conversion**

All monies received or held by the Security Trustee or any Receiver under this deed may be converted into any other currency which the Security Trustee considers necessary to discharge any obligations and liabilities comprised in the Secured Obligations in that other currency at a market rate of exchange then prevailing.

### **23.2 No Discharge**

No payment to the Security Trustee (whether under any judgment or court order or otherwise) shall discharge any obligation or liability in respect of which it was made unless and until the Security Trustee has received payment in full in the currency in which the obligation or liability is payable or, if the currency of payment is not specified, was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Security Trustee shall have a further separate cause of action in relation to the shortfall and shall be entitled to enforce the security constituted by this deed to recover that amount.

## **24. MISCELLANEOUS**

### **24.1 Invalidity of any Provision**

If any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

### **24.2 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.

#### 24.3 **Failure to Execute**

Failure by one or more parties ("**Non-Signatories**") to execute this deed on the date hereof will not invalidate the provisions of this deed as between the other parties who do execute this deed. Such Non-Signatories may execute this deed on a subsequent date and will thereupon become bound by its provisions.

#### 24.4 **Covenant to Release**

The Security Trustee must at the request and cost of the Chargor reconvey, surrender or release any Charged Property to the Chargor and the Charged Property will then be discharged from this deed:

- (a) when the Security Trustee is satisfied that:
  - (i) all the Secured Obligations has been irrevocably paid and discharged in full or satisfied in accordance with this deed and (without limiting this) that clause 20.5 (Discharge conditional) will not apply; and
  - (ii) no amount remains contingently payable or may become payable on the security of this deed (including under an indemnity); and
- (b) on payment or retention of all expenses incurred by or payable to the Security Trustee, any Receiver or any Delegate.

Any discharge is subject to clause 20.5 (Discharge conditional).

#### 25. **GOVERNING LAW AND JURISDICTION**

- (a) This deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed or any non-contractual obligation arising out of or in connection with this deed) (a "**Dispute**").
- (c) 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.

**IN WITNESS** whereof this deed has been duly executed and delivered on the above date first above written.

**SCHEDULE 1**

**Chargors**

| <b>Name</b>                             | <b>Registered Number</b> |
|-----------------------------------------|--------------------------|
| Tower Transit Group Limited             | 08451873                 |
| Tower Transit Limited                   | 04335658                 |
| Tower Transit Operations Limited        | 08314506                 |
| Tower Transit Property Holdings Limited | 10199751                 |
| Tower Transit Asset Holdings Limited    | 10738299                 |

## SCHEDULE 2

### Subsidiary Shares

| Chargor               | Subsidiary                              | Number and class of shares | Details of nominees (if any) holding legal title to shares |
|-----------------------|-----------------------------------------|----------------------------|------------------------------------------------------------|
| Tower Transit Limited | GroupTower Transit Holdings Limited     | Asset 1 Ordinary Share     | Not Applicable                                             |
| Tower Transit Limited | GroupTower Transit Limited              | 50,000 Shares              | OrdinaryNot Applicable                                     |
| Tower Transit Limited | GroupTower Transit USA Inc.             | 10,000 Shares              | OrdinaryNot Applicable                                     |
| Tower Transit Limited | Tower Transit Property Holdings Limited | 1 Ordinary Share           | Not Applicable                                             |
| Tower Transit Limited | Tower Transit Operations Limited        | 1 Ordinary Share           | Not Applicable                                             |



### **SCHEDULE 3**

#### **Assigned Agreements**

*None as of the date of this deed.*

**SCHEDULE 4**

**Intellectual property**

*None as of the date of this deed.*

**SCHEDULE 5**

**Material Equipment**

*None as of the date of this deed.*

## SCHEDULE 6

### Insurance Policies

| Policy                                      | Policy No.      | Insurer                                 | Insured                                          | Period of Cover                                         |
|---------------------------------------------|-----------------|-----------------------------------------|--------------------------------------------------|---------------------------------------------------------|
| Property & Business Interruption            | Y090776QBE0119A | QBE (Europe) Ltd                        | Tower Transit Group Ltd and subsidiary companies | Period 19/11/19 to 18/11/20                             |
| Excess Property                             | FA805671        | Zurich Insurance Company (U.K.) Limited | Tower Transit Group Ltd and subsidiary companies | Period 19/11/19 to 18/11/20                             |
| Terrorism                                   | FC0250519       | Chaucer Syndicates Ltd                  | Tower Transit Group Ltd and subsidiary companies | Period 19/11/19 to 18/11/20                             |
| Personal Accident & Business Travel         | 100002489GPA    | Aviva plc                               | Tower Transit Group Ltd and subsidiary companies | Period 19/11/19 to 18/11/20                             |
| Management Liability (D&O)                  | UKDRND01730     | Chubb Underwriting Agencies Limited     | Tower Transit Group Ltd                          | Period from renewal (19/11/19) to completion (16/01/20) |
| Management Liability (D&O) - Run off policy | Unknown         | Chubb Underwriting Agencies Limited     | Tower Transit Group Ltd                          | 6 year run-off policy from completion (16/01/20)        |
| Combined Liability (EL & PL)                | BP02527-901     | Barbican Underwriting Limited           | Tower Transit Group Ltd and subsidiary companies | Period 19/11/19 to 18/11/20                             |
| Excess Public Liability                     | Y010607QBE0119A | QBE (Europe) Ltd                        | Tower Transit Group Ltd                          | Period 19/11/19 to 18/11/20                             |
| Special Contingency (Kidnap & Ransom)       | GB00070808SP19A | XL Catlin Insurance Company UK Limited  | Tower Transit Group Ltd                          | Period 19/11/19 to 18/11/20                             |
| Cyber                                       | ESI006112307    | CFC Underwriting Ltd                    | Tower Transit Group Ltd                          | Period 19/11/19 to 18/11/20                             |

## SCHEDULE 7

### Forms of notice to counterparties

#### Part 1

##### Form of notice to counterparties of Assigned Agreements

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

Dated: ●

**Re: [here identify the relevant Assigned Agreement] (the "Agreement")**

We notify you that **[insert name of Chargor]** (the "**Chargor**") has assigned to **[insert name of Security Trustee]** (the "**Security Trustee**") for the benefit of itself and certain other parties (the "**Secured Parties**") all its right, title and interest in the Agreement as security for certain obligations owed by the Chargor and others to the Secured Parties.

We further notify you that:

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

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

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

The provisions of this notice are governed by English law.

Yours faithfully

.....  
**Name:**  
for and on behalf of  
**[insert name of Chargor]**

**[On acknowledgement copy]**

To: **[insert name and address of Security Trustee]**

Copy to: **[insert name and address of Chargor]**

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

.....  
**Name:**  
for and on behalf of  
**[insert name of Counterparty]**

**Dated:** ●

## Part 2

### Form of notice to insurers

To: **[insert name and address of insurance company]**

Dated: ●

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

We notify you that **[insert name of Chargor]** (the "**Chargor**") has assigned to **[insert name of Security Trustee]** (the "**Security Trustee**") for the benefit of itself and certain other parties (the "**Secured Parties**") all its right, title and interest in the benefits arising under the Policies (including rights of recovery and proceeds) as security for certain obligations owed by the Chargor and others to the Secured Parties. The Chargor remains the insured person under the Policies.

We further notify you that:

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

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

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

The provisions of this notice are governed by English law.

Yours faithfully

.....  
**Name:**  
for and on behalf of  
**[insert name of Chargor]**

**[On acknowledgement copy]**

To: **[insert name and address of Security Trustee]**

Copy to: **[insert name and address of Chargor]**

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

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

## SIGNATORIES TO DEBENTURE

### Chargors

Executed as a deed by **TOWER TRANSIT  
GROUP LIMITED:**

)  
)  
)  
)

Director

Name: **ANDREW DAVID MUIR**

Director/Secretary

Name: **PAUL RAYMOND COX**

### Notice Details

Address: **Westbourne Park Garage, Great Western Road, Maida Vale,  
London W9 3NW**

Facsimile:

Attention: **Company Secretary**

Executed as a deed by **TOWER TRANSIT  
LIMITED:**

)  
)  
)  
)

Director

Name: **ANDREW DAVIS MUIR**

Director/Secretary

Name: **PAUL RAYMOND COX**

Executed as a deed by **TOWER TRANSIT  
OPERATIONS LIMITED:**

)  
)  
)  
)

Director

//Name: *ANDREW DAVID MUIR*

Director/Secretary

..  
Name: *PAUL RAYMOND COX*

Executed as a deed by **TOWER TRANSIT  
PROPERTY HOLDINGS LIMITED:**

)  
)  
)  
)

Director

Name: *ANDREW DAVID MUIR*

Director/Secretary

...

Name: *PAUL RAYMOND COX*

Executed as a deed by **TOWER TRANSIT  
ASSET HOLDINGS LIMITED:**

)  
)  
)  
)

Director

Name: *ANDREW DAVID MUIR*

Director/Secretary

.....

Name: *PAUL ~~AND~~ RAYMOND COX*

**Security Trustee**

**Signed sealed and delivered for WESTPAC  
ADMINISTRATION PTY LIMITED** under power  
of attorney in the presence of

Signature of witness

Name of witness (print)

Signature of attorney

Name of attorney (print)

Date of power of attorney