



**Registration of a Charge**

Company name: **MDA SPACE AND ROBOTICS LIMITED**

Company number: **05495455**

Received for Electronic Filing: **08/04/2020**



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**Details of Charge**

Date of creation: **08/04/2020**

Charge code: **0549 5455 0001**

Persons entitled: **THE BANK OF NOVA SCOTIA**

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:

**FASKEN MARTINEAU LLP**



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

Company number: 5495455

Charge code: 0549 5455 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th April 2020 and created by MDA SPACE AND ROBOTICS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th April 2020 .

Given at Companies House, Cardiff on 9th April 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

**DATED**

8 April

**2020**

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(1) MDA SPACE AND ROBOTICS LIMITED

(2) THE BANK OF NOVA SCOTIA

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**DEBENTURE**

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**Fasken Martineau LLP**

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**THIS DEBENTURE** (this **Deed**) is made on 8 April 2020

- (1) **MDA SPACE AND ROBOTICS LIMITED** a company incorporated and registered in England and Wales with company number 05495455 whose registered office is at C/O DAC Beachcroft LLP, Portwall Place, Portwall Lane, Bristol, United Kingdom, BS1 9HS, United Kingdom (the **Chargor**); and
- (2) **THE BANK OF NOVA SCOTIA** a Canadian chartered bank, in its capacity as administrative agent and trustee for itself and each of the other Creditors (as defined below) (the **Administrative Agent**).

## **RECITALS**

- (A) The Chargor enters into this Deed in connection with the Credit Agreement (as defined below).
- (B) It is a requirement of the Credit Agreement that the Chargor enter into this Deed.
- (C) This Deed shall be considered a **Security Document** (and by extension a **Loan Document** and a **Credit Document**) under, and for all purposes of, the Credit Agreement.
- (D) It is intended that this document takes effect as a deed notwithstanding the fact that a Party may only execute it under hand.
- (E) The Administrative Agent holds the benefit of this Deed on trust for the Creditors on the terms of this Deed and the other Credit Documents.

## **THE PARTIES AGREE AS FOLLOWS:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Deed (including the recitals hereto):

**Assigned Agreements** means, subject to and without prejudice to Clause 4.2, all agreements directly related to the Fixed Charged Assets under which the Chargor has now, or in the future, an interest which is capable of being freely (without restriction) assigned.

**Bank Accounts** means all current, deposit and other accounts with any bank or financial institution in which the Chargor now, or in the future, has an interest and (to the extent of such interest) all balances now or in the future standing to the credit of, or accrued or accruing on, those accounts.

**Book Debts** means all book and other debts of any nature, and all rights to receive money (excluding Bank Accounts) now or in the future due, owing or payable to the Chargor and the benefit of negotiable instruments, security, guarantees or indemnities of any kind and other rights of any nature enjoyed or held by the Chargor in relation to any of them.

**Credit Agreement** means the Credit Agreement dated on or about the date of this Deed, entered into by, among others, Neptune Acquisition Inc., as borrower, the Lenders party thereto and the Administrative Agent.

**Credit Facilities Termination Date** means the date on which all Secured Obligations of the Borrower under or in connection with each Credit Facility have been permanently paid in full and the Lenders have no commitment to provide credit to the Borrower under or in connection with either Credit Facility.

**Equipment** means all plant, machinery, computers, office and other equipment, furnishing and vehicles, installations and apparatus and other tangible moveable property for the time being owned by the Chargor, including any part of it, together with any spare parts, replacements or modifications and the benefit of all contracts, licences, and warranties relating thereto, in each case now or in the future owned by it (at law or equity) or (to the extent of such interest) in which it now, or in the future, has an interest.

**Event of Default** means:

- (a) until the Credit Facility Termination Date, an Event of Default (for the purposes of this paragraph (a) only, as defined in the Credit Agreement); and
- (b) at any time thereafter, an event of default or termination event under any Capital Market Agreement or any Cash Management Agreement.

**Fixed Charge Assets** has the meaning given in Clause 3.1 (*Fixed Charges*).

**Insolvency Act** means the Insolvency Act 1986.

**Insurances** means:

- (a) all policies of insurance of the Chargor; and
- (b) all proceeds of such policies of insurance.

**Intellectual Property** means:

- (a) any know-how, patents, trademarks, service marks, trade names, domain names, logos, design rights, software rights, utility models, database rights, copyrights and any associated or similar rights;
- (b) any rights in or to inventions, formulae, confidential or secret processes and information, know-how and similar rights and any other rights and assets of a similar nature; and
- (c) any other right to use, or application to register, protect, renew or extend and rights to claim priority from any of the items listed in paragraphs (a) and (b) above,

in each case now or in the future owned (at law or in equity) by the Chargor (in law or equity) or (to the extent of its interest) in which it now or in the future has an interest, in each case whether registered or not.

**Investments** means:

- (a) securities and investments of any kind (including shares, stock, loan capital, securities, bonds and investments (whether or not marketable));
- (b) warrants, options or other rights to subscribe for, purchase or otherwise acquire securities or investments; and
- (c) all rights, money, shares or property accruing, offered, issued or incidental to any investments described in paragraph (a) or paragraph (b) above by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise,

in each case now or in the future owned (at law or in equity) by the Chargor or (to the extent of such interest) in which it now or in the future has an interest.

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

**Parties** means the parties to this Deed.

**Receiver** means a receiver, manager or receiver and manager of any or all of the Security Assets appointed by the Administrative Agent pursuant to the terms of this Deed.

**Security Assets** means all the Secured Assets of the Chargor subject to the Security created under this Deed (and references to Security Assets shall include reference to any part of them) and at all times excluding the Excluded Property.

**Security Period** means the period starting on the date of this Deed and ending on the Secured Obligations Termination Date.

## 1.2 Construction

- 1.2.1 Capitalised terms defined in the Credit Agreement have, unless expressly defined in this Deed, the same meaning in this Deed.
- 1.2.2 The provisions of Sections 1.2 to 1.5, 1.7 to 1.11 and 1.13 to 1.21 of the Credit Agreement apply to this Deed as though they were set out in full in this Deed, except that references in such Sections to "**this Agreement**" (meaning the Credit Agreement) shall be construed as references to this Deed.
- 1.2.3 The term **Credit Document** includes all amendments and supplements including supplements providing for further advances.
- 1.2.4 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly).
- 1.2.5 The term **this Security** means any Security created by this Deed.
- 1.2.6 Unless the context otherwise requires, a reference to a Security Asset includes the proceeds of sale of that Security Asset.

### **1.3 Clawback**

If the Administrative Agent considers that an amount paid to a Creditor in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### **1.4 Third-party rights**

A third party (being any person other than the Chargor, the Creditors and their permitted successors and assigns and any Receiver) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Deed.

### **1.5 Perpetuity period**

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

### **1.6 Paramountcy**

- (a) In the event of any conflict, inconsistency, ambiguity or difference between any provision of this Deed and any provision of the Credit Agreement, the provisions of the Credit Agreement shall govern and prevail, and such provision of this Deed shall be deemed to be amended to the extent only to eliminate any such conflict, inconsistency, ambiguity or difference. If, strictly in connection with the interpretation of this Deed, there is any conflict or inconsistency between the provisions of this Deed and the Credit Agreement and the provisions of the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall govern and prevail, and such provision of this Deed shall be deemed to be amended to the extent only to eliminate any such conflict, inconsistency, ambiguity or difference. Any right or remedy in this Deed which may be in addition to the rights and remedies contained in the Credit Agreement or in the Intercreditor Agreement shall not constitute a conflict, inconsistency, ambiguity or difference.
- (b) Notwithstanding anything herein to the contrary, the Lien and security interest granted to the Administrative Agent pursuant to this Deed and the exercise of any right or remedy by the Administrative Agent hereunder are subject to the provisions of the Intercreditor Agreement. If there is a conflict between the terms of the Intercreditor Agreement and this Deed, the terms of the Intercreditor Agreement will control.

## **2. COVENANT TO PAY**

Chargor shall pay the Secured Obligations when due for payment.

### **3. FIXED CHARGES**

3.1 As a continuing security for the payment and discharge of the Secured Obligations, the Chargor, with full title guarantee, charges to the Administrative Agent the following assets by way of first fixed charge:

- 3.1.1 the Book Debts;
- 3.1.2 the Bank Accounts;
- 3.1.3 the Investments;
- 3.1.4 the Intellectual Property;
- 3.1.5 the Equipment;
- 3.1.6 the Insurances, including all claims and all returns of premium in connection with the Insurances, to the extent not effectively assigned under Clause 4 (*Assignment*);
- 3.1.7 the benefit of the Chargor's present and future licences, consents and authorisations (statutory or otherwise) held or required by it in connection with the Chargor's business or the used of any of its Security Assets, and all rights in connection with them; and
- 3.1.8 its present and future goodwill and uncalled capital,

(together, the "**Fixed Charge Assets**").

3.2 Notwithstanding any term to the contrary herein, Excluded Property is not subject to the Security created under this Deed.

### **4. ASSIGNMENT**

#### **4.1 Equitable Assignment**

Subject to and without prejudice to Clause 4.2, as a continuing security for the payment and discharge of the Secured Obligations, the Chargor, with full title guarantee, assigns in favour of the Administrative Agent:

- 4.1.1 the Insurances; and
- 4.1.2 the Assigned Agreements.

#### **4.2 Exception for Contractual Rights**

The assignment created pursuant to Clause 4.1.2 above does not and shall not extend to, and the Fixed Charge Assets shall not include, any agreement, contract, right or licence (the "**Contractual Rights**") of the Chargor, including any right of the Chargor as security holder, shareholder or holder of a partnership interest, if pursuant to the terms of such Contractual Right, or pursuant to the terms of any agreement affecting such Contractual Right, the Contractual Right would automatically terminate if it were part of the Security Assets, or would be terminable at the option of the other

party or of the grantor, or would be subject to disposition, alteration or amendment at the option of another party including another security holder, shareholder or holder of a partnership interest or would result in the Chargor being in default or breach of its obligations thereunder. The Chargor shall use its reasonable endeavours to obtain the consent of the other parties to the assignment of such Contractual Rights and until such consent has been obtained, shall hold its interest in the Contractual Rights in trust for the Administrative Agent. The Security Interest granted by this Deed hereby shall automatically extend to such Contractual Rights once the appropriate consents of the other parties to such Contractual Rights are obtained.

## **5. FLOATING CHARGE**

### **5.1 Creation**

As a continuing security for the payment and discharge of the Secured Obligations, the Chargor, with full title guarantee, charges in favour of the Administrative Agent, by way of first floating charge all the undertaking, assets and rights of the Chargor, both present and future at any time not effectively mortgaged, charged or assigned pursuant to Clause 3 (*Fixed Charges*) and Clause 4 (*Assignment*) above, other than Excluded Property.

### **5.2 Qualifying Floating Charge**

The floating charge created pursuant to Clause 5.1 above is a **qualifying floating charge** for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act.

### **5.3 Conversion of Floating Charge**

The Administrative Agent may, in its sole discretion, at any time and by written notice to the Chargor, specifying the relevant Security Assets, convert the floating charge created under this Deed into a fixed charge with immediate effect if:

- 5.3.1 the Enforcement Date has occurred; or
- 5.3.2 it is necessary to do so in order to protect or preserve the security over those Security Assets and/or the priority of such security.

### **5.4 Automatic Conversion of Floating Charge**

The floating charge over the relevant Security Assets shall automatically and immediately be converted into a fixed charge in the event that:

- 5.4.1 an administrator is appointed or the Administrative Agent receives notice of an intention to appoint an administrator;
- 5.4.2 save as permitted by Clause 9.1 (*Negative Pledge*), the Chargor creates (or purports to create) Security or a trust in favour of another person over all or any part of its Security Assets (other than pursuant to this Deed);
- 5.4.3 the Chargor disposes, or attempts to dispose of, all or any part of its Security Assets (other than as permitted by this Deed and in respect of

Security Assets that are only subject to the floating charge while it remains uncrystallised);

5.4.4 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor; or

5.4.5 any person takes or attempts to take any step to effect any expropriation, attachment, distress, sequestration, execution or any other similar process against all or any part of those Security Assets.

## **5.5 Assets acquired after any Floating Charge has crystallised**

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

## **6. LIABILITY OF THE CHARGOR**

### **6.1 Liability not discharged**

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

6.1.1 any Security, guarantee, indemnity, remedy or other right held by, or available to, the Creditors that is or becomes wholly or partially illegal, void or unenforceable on any ground;

6.1.2 the Creditors renewing, determining, varying or increasing any facility or other transactions in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

6.1.3 any other act or omission, which but for this Clause 6.1 might have discharged, or otherwise prejudiced or affected the liability of the Chargor.

### **6.2 Immediate recourse**

The Chargor waives any right it may have to require the Administrative Agent to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Chargor. The provisions of this Clause 6.2 apply irrespective of any applicable law or any provision of any Credit Document to the contrary.

## **7. CONTINUING SECURITY**

The Security contemplated by this Deed shall remain in full force and effect as a continuing security for the Secured Obligations and will extend until the Secured Obligations Termination Date, regardless of any settlement of account, intermediate payment or discharge in whole or in part, or other matter or thing, unless and until the Administrative Agent discharges this Deed in writing.

## **8. FURTHER ASSURANCE**

### **8.1 General**

The Chargor shall, at its own expense, promptly following request by the Administrative Agent, take whatever action the Administrative Agent or any Receiver may reasonably require for:

- 8.1.1 creating, perfecting or protecting this Security;
- 8.1.2 facilitating the realisation of all or any of the Security Assets; and/or
- 8.1.3 facilitating the exercise of any rights, powers, authority or discretions conferred on the Administrative Agent or the Receiver in respect of any of Security Assets,

including the giving of any necessary notice, order or direction and the making of any necessary registrations.

## **9. GENERAL UNDERTAKINGS**

### **9.1 Negative pledge**

Except as herein provided (including pursuant to Clause 9.7 (*Permitted Sales*)) or as permitted pursuant to the terms of the Credit Documents, the Chargor shall not, without the prior written consent of the Administrative Agent:

- 9.1.1 sell, transfer, lease, licence, transfer, assign or otherwise dispose of all or any part of the Fixed Charge Assets;
- 9.1.2 sell, transfer, lease, licence, transfer, assign or otherwise dispose of all or any part of the Assigned Agreements or the Insurances; or
- 9.1.3 create or grant (or purport to create or grant) any interest in the Security Assets in favour of a third party.

### **9.2 Preservation of Security Assets**

The Chargor shall conduct its business in such a manner so as to preserve and protect the Security Assets as would a prudent owner, the Security created by this Deed and the business and undertaking of such Chargor, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

### **9.3 Documents to be provided**

The Chargor shall, on the execution of this Deed (or, if later, the date of acquisition of the relevant Security Asset), deposit with the Administrative Agent and the Administrative Agent shall, during the Security Period be entitled to hold:

- 9.3.1 all deeds and documents of title relating to the Security Assets (if any) that are in the possession or control of the Chargor (and if these are not within the possession or control of the Chargor, the Chargor undertakes to obtain

possession of all these deeds and documents of title (if any)) as the Administrative Agent may specify from time to time; and

- 9.3.2 all deeds and documents of title (if any) relating to the Book Debts of the Chargor as the Administrative Agent may specify from time to time.

#### 9.4 **Compliance with laws and regulations**

9.4.1 The Chargor shall:

- (a) conduct its business in a manner so as to comply in all material respects with the requirements of Applicable Laws relating to or affecting its Security Assets or the use of them or any part of them;
- (b) obtain, and promptly renew from time to time, and comply in all material respects with the terms of all authorisations that are necessary in connection with its Security Assets or their use or that are necessary to preserve, maintain or renew any Security Asset, except where failure to do so could not reasonably be expected to have a Material Adverse Effect; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any Applicable Law to be effected on or in connection with its Security Assets, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### 9.5 **Enforcement of rights**

The Chargor shall, after the Enforcement Date, use its reasonable endeavours to enforce any rights and institute, continue or defend any proceedings relating to any of the Security Assets which the Administrative Agent may require from time to time.

#### 9.6 **Notice of misrepresentation and breaches**

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

- 9.6.1 any representation or warranty set out in Clause 10 (*General Representations*) which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 9.6.2 any breach of any covenant set out in this Deed.

#### 9.7 **Permitted Sales**

Notwithstanding anything to the contrary herein, the Chargor may, at any time, without the consent of the Administrative Agent:

- 9.7.1 lease, sell, license, consign or otherwise deal with the Fixed Charge Assets in the ordinary course of its business so that the purchaser thereof takes title clear of the Security created by this Deed but (i) all rights of the Chargor as vendor, lessor, licensor or consignor shall be subject to the

Security created by this Deed; and (ii) if such sale, lease or other dealing with results in Book Debts, such Book Debts shall be subject to the Security created by this Deed;

- 9.7.2 sell or otherwise dispose of such part of its Equipment which is not necessary to or useful in connection with its business and undertaking, or which has become worn out or damaged or otherwise unsuitable for its purpose;
- 9.7.3 continue to collect, at its own expense, all amounts due or to become due to the Chargor under the Book Debts; and in connection with such collections, take (and, at the Administrative Agent's direction, acting reasonably, shall take) such action as the Chargor or the Administrative Agent may deem necessary or advisable to enforce collection of the Book Debts; provided, however, that the Administrative Agent shall have the right at any time after the Enforcement Date to notify the account debtors or obligors under any Book Debts of the assignment of such Book Debts to the Administrative Agent and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Chargor thereunder directly to the Administrative Agent and to give valid and binding receipts and discharges therefor and in respect thereof and, upon such notification and at the expense of the Chargor, to enforce collection of any such Book Debts, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Chargor might have done; and
- 9.7.4 conduct any other sale or disposition specifically permitted in the Credit Agreement, including any such sale or disposition for which requisite Lender consent has been obtained.

The Chargor is not authorised to sell or otherwise dispose of the Fixed Charge Assets except as set forth above or as otherwise provided in the Credit Agreement and, notwithstanding any course of dealing between the Chargor and the Administrative Agent or other conduct of the Administrative Agent, no authorisation to sell or otherwise dispose of the Fixed Charge Assets except as provided above or otherwise in the Credit Agreement shall be binding upon the Administrative Agent unless evidenced in writing and signed by the Administrative Agent.

## **10. GENERAL REPRESENTATIONS**

### **10.1 General**

The Chargor makes the representations and warranties set out in this Clause 10 to the Administrative Agent (for the benefit of itself and the other Creditors).

### **10.2 Representations and Warranties**

Each of its representations and warranties which are contained in the other Credit Documents, to the extent they relate to the Chargor or to its Security Assets, are true and correct in all material respects.

### **10.3 Avoidance of security**

Subject to any applicable bankruptcy, liquidation, insolvency, administration, reorganisation, moratoria and other laws relating to or affecting the enforcement of Security, this Security is not liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

#### **10.4 Payment Obligations *pari passu***

The Chargor's payment obligations under the Credit Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by applicable laws applying to companies generally.

#### **10.5 Time for Making Representations and Warranties**

The representations and warranties in Clause 10.2 to Clause 10.4 (inclusive) are made by the Chargor on the date of this Deed and are deemed to be repeated on the Closing Date, as at the date of each extension of credit under the Credit Agreement and as of the last day of each Fiscal Quarter.

### **11. EQUIPMENT**

The Chargor shall maintain its Equipment in good and serviceable condition (except for expected fair wear and tear) and permit the Administrative Agent and its representatives to enter and view their state and condition upon giving reasonable notice to the Chargor.

### **12. INSURANCE**

12.1 The Chargor shall insure the Fixed Charge Assets, as applicable, in accordance with the terms of the Credit Agreement.

12.2 All moneys received or receivable under any insurance in respect of the Fixed Charge Assets, as applicable, shall be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, on or after the Enforcement Date and if the Administrative Agent so directs, in or towards discharge or reduction of the Secured Obligations.

12.3 The Chargor shall, as reasonably requested by the Administrative Agent from time to time, give notice to each insurer of any policy of Insurance in such form as the Administrative Agent may require, and use its reasonable efforts to procure that the relevant insurer promptly provides to the Administrative Agent an acknowledgement to such notice in the form required by the Administrative Agent.

### **13. INTELLECTUAL PROPERTY**

13.1 Unless agreed otherwise with the Administrative Agent, the Chargor shall:

13.1.1 make such registrations and pay such fees, registration taxes and similar amounts as are necessary to keep its present and future Intellectual Property in force; and

- 13.1.2 take all other steps which are reasonably practicable to maintain and preserve its interests in its present and future Intellectual Property.
- 13.2 Prior to the Enforcement Date, the grant of the Security in Intellectual Property pursuant to this Deed shall not affect in any way the Chargor's rights to commercially exploit any Intellectual Property, defend it, enforce the Chargor's rights in it or, as concerns any third parties in any court or claim, be entitled to receive any damages with respect to infringement of it.

## **14. INVESTMENTS**

### **14.1 Investments**

The Chargor makes the following representations and warranties set out in this Clause 14 to the Administrative Agent (for the benefit of itself and the other Creditors):

- 14.1.1 to the extent applicable, its Investments, are fully paid; and
- 14.1.2 it is the sole legal and beneficial owner of its Investments.

The representations and warranties set out in this Clause 14.1 are made on the Closing Date, as at the date of each extension of credit under the Credit Agreement, as of the last day of each Fiscal Quarter and with respect to any other Investments on the date on which such Investments becomes Investments for the purposes of this Deed, by reference to the facts and circumstances existing at that date.

### **14.2 Deposit**

The Chargor shall:

- 14.2.1 as soon as practicable deposit with the Administrative Agent, or as the Administrative Agent may direct, all certificates and other documents of title or evidence of ownership in relation to any of its Investments as the Administrative Agent may request from time to time;
- 14.2.2 as soon as reasonably practical after the purchase or acquisition by it of Investments after the date of this Deed, deposit with the Administrative Agent, or as the Administrative Agent may direct, all stock or share certificates and other documents of title or evidence of ownership relating to those Investments; and
- 14.2.3 at the same time as depositing documents with the Administrative Agent, or as the Administrative Agent may direct, in accordance with Clause 14.2.1, the Chargor shall also deposit with the Administrative Agent, or as the Administrative Agent may direct:
- (a) all stock transfer forms (or equivalent) relating to the relevant Investments (duly completed and executed by or on behalf of the Chargor, but with the name of the transferee, the consideration and the date left blank); and

- (b) any other documents (in each case duly completed and executed by or on behalf of the Chargor) that the Administrative Agent may request to enable the Administrative Agent, or its nominee(s), or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments,

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

### **14.3 Changes to rights**

The Chargor may not take or allow the taking of any action on its behalf which may result in the rights attaching to any of its Investment being altered, except as permitted by the Credit Agreement.

### **14.4 Calls and other obligations**

- 14.4.1 The Chargor shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any part of the Investments.
- 14.4.2 If the Chargor fails to do so, the Administrative Agent may, at its discretion but without obligation, pay the calls, instalments or other payments on behalf of the Chargor.
- 14.4.3 The Chargor shall, promptly on request by the Administrative Agent, reimburse the Administrative Agent for any payment made by it under this Clause 14.4.
- 14.4.4 The Chargor shall comply with, and shall remain liable to perform, all of the other conditions and obligations assumed by it in respect of all or any part of the Investments.

### **14.5 Voting rights and dividends**

- 14.5.1 Prior to the Enforcement Date, the Chargor:
  - (a) may exercise all the voting rights, powers and other rights in respect of its Investments;
  - (b) all dividends and other income paid or payable in relation to any of its Investments must be paid directly to the Chargor; and
  - (c) shall indemnify the Administrative Agent against any loss or liability incurred by the Administrative Agent (or its nominee) as a consequence of the Administrative Agent (or its nominee) acting in respect of the Investments of the Chargor on the direction of the Chargor, subject to the provisions of Section 8.5 of the Credit Agreement, which shall apply, *mutatis mutandis*, in all respects to

the Chargor and the Administrative Agent, as though the Chargor were the Borrower.

14.5.2 The Administrative Agent shall not, by exercising or not exercising any voting rights or otherwise under this Clause 14.5, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Administrative Agent considers prejudicial to, or impairing the value of, this Security.

14.5.3 After the Enforcement Date:

- (a) all dividends and other distributions paid in respect of the Investments and received by the Chargor shall be held by the Chargor on trust for the Administrative Agent and immediately paid to the Administrative Agent or, if received by the Administrative Agent, shall be retained by the Administrative Agent; and
- (b) the Administrative Agent may exercise (in the name of the Chargor and without any further consent or authority on the part of the Chargor) any voting rights and any powers or rights which may be exercised by the legal or beneficial owner of any Investment, any person who is the holder of any Investment or otherwise, and the Chargor shall, and shall procure that its nominees shall, comply with any directions the Administrative Agent may give, in its absolute discretion, concerning the exercise of those rights and powers.

#### **14.6 Nominations**

14.6.1 The Chargor shall terminate with immediate effect all nominations it may have made (including any nomination made under sections 145 or 146 of the Companies Act 2006) in respect of any of its Investments and, pending such termination, procure that any person so nominated:

- (a) does not exercise any rights in respect of any Investments without the prior written approval of the Administrative Agent; and
- (b) immediately upon receipt by it, forward to the Administrative Agent all communications and other information received by it in respect of any Investments for which it has been so nominated.

14.6.2 The Chargor shall not, at any time during the Security Period, exercise any rights (including any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of its Investments other than the Administrative Agent to enjoy or exercise any right relating to any of its Investments.

#### **14.7 Compliance with requests for information**

The Chargor shall promptly copy to the Administrative Agent and comply with all requests for information which are made under the Companies Act 2006 (including

under sections 790D, 790E and 793 of the Companies Act 2006) relating to all or any part of the Investments. If it fails to do so, the Administrative Agent may elect to provide such information as it may have on behalf of such Chargor.

## **15. BOOK DEBTS**

- 15.1 The Chargor shall promptly collect all of its Book Debts and, on and after the Enforcement Date shall hold the proceeds in trust for the Administrative Agent.
- 15.2 On and after the Enforcement Date, all proceeds so received in trust for the Administrative Agent shall be segregated from other funds of the Chargor and shall be promptly paid over to the Administrative Agent in the same form as so received (with any necessary endorsement) to be applied as provided by Clause 23.1 (*Application of Proceeds*).
- 15.3 The Chargor shall not (except as provided by this Clause 15 or with the prior written consent of the Administrative Agent) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of its Book Debts, except as may be required in the ordinary course of business.

## **16. BANK ACCOUNTS**

- 16.1 The Chargor shall not have Bank Accounts other than as permitted under the Credit Agreement.
- 16.2 The Chargor shall not make any withdrawals from any Bank Account except withdrawals in the ordinary course of business, or transfers from one Bank Account to another Bank Account.
- 16.3 If required by the Credit Agreement, the Chargor shall as soon as practicable following the execution of this Deed and as so reasonably requested by the Administrative Agent from time to time:
  - 16.3.1 give notice to each bank, financial institution or other person (other than the Administrative Agent) with which the Chargor holds a Bank Account in the form set out in Schedule 1 (*Form of Notice to Account Banks*); and
  - 16.3.2 use its reasonable efforts to procure that each such bank, financial institution or other person promptly provides to the Administrative Agent an acknowledgement in the form set out in Schedule 1 (*Form of Notice to Account Banks*).

## **17. ASSIGNED AGREEMENTS**

- 17.1 The Chargor shall not, without the prior written consent of the Administrative Agent, terminate, amend, waive rights under or otherwise materially alter any of its Assigned Agreements.
- 17.2 The Chargor shall, promptly upon becoming aware, inform the Administrative Agent of the intention of any other party to terminate, rescind or release any of its Assigned Agreements.

- 17.3 No Chargor shall assign, by way of security or otherwise, any of its Assigned Agreements without the prior written consent of the Administrative Agent, other than pursuant to this Deed or the Credit Agreement.

## **18. POWER OF ATTORNEY**

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

18.1.1 the Chargor is required to execute and do under this Deed; and/or

18.1.2 any attorney deems proper or advisable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by any Applicable Law on the Administrative Agent or any Receiver.

- 18.2 The power of attorney contained in this Clause 18 is only exercisable after the Enforcement Date.

- 18.3 The Chargor ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in this Clause 18.

## **19. WHEN SECURITY BECOMES ENFORCEABLE**

### **19.1 Enforcement**

This Security shall become immediately enforceable on or after the Enforcement Date.

### **19.2 Discretion**

On and after this Security has become enforceable, the Administrative Agent may, in its absolute discretion, enforce all or any part of this Security at the times in the manner and on the terms it thinks fit.

### **19.3 Statutory Restrictions**

Sections 93 and 103 of the LPA 1925 shall not apply to this Deed.

### **19.4 Enforcement Powers**

The power of sale and other powers conferred by section 101 of the LPA 1925 and all other enforcement powers conferred by this Deed shall be immediately exercisable at any time on or after the Enforcement Date.

### **19.5 Access on enforcement**

19.5.1 At any time on or after the Enforcement Date:

- (a) the Chargor will allow the Administrative Agent or any Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any of the Security Assets and for that purpose to enter on any premises where any of the Security Assets are situated (or where the Administrative Agent or a Receiver reasonably believes a Security Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry; and
- (b) the Chargor must use its reasonable endeavours to allow the Administrative Agent or any Receiver access to any premises for the purpose of this Clause 19.5.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

## **19.6 Prior Liens**

19.6.1 At any time on or after the Enforcement Date, or after any powers conferred by any Liens having priority to this Security shall have become exercisable, the Administrative Agent may:

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

19.6.2 The settlement and passing of any such account passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor. All monies paid by the Administrative Agent to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Administrative Agent, be due from the Chargor to the Administrative Agent on current account and shall bear interest at the default rate specified in Section 7.4(e) (*General Interest Rules*) of the Credit Agreement and be secured as part of the Secured Obligations.

## **20. STATUS, APPOINTMENT, REMOVAL AND REMUNERATION OF RECEIVER**

### **20.1 Appointment**

At any time on or after the Enforcement Date, or at the request of the Chargor, the Administrative Agent may, without further notice, appoint by way of deed, or otherwise in writing, any one or more person or persons to be a receiver, or a receiver and manager, of all or any part of the Security Assets.

### **20.2 Removal**

The Administrative Agent may, without further notice (subject to section 45 of the Insolvency Act in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may,

whenever it thinks fit after the Enforcement Date, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **20.3 Remuneration**

The Administrative Agent may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, which shall be due and payable immediately on its being paid by the Administrative Agent.

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

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

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

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

### **20.6 Agent of the Chargor**

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

## **21. POWERS OF RECEIVER**

### **21.1 General**

21.1.1 Any Receiver will have the following powers in respect of the Security Assets:

- (a) the powers given to an administrative receiver by the Insolvency Act;
- (b) the powers given to a mortgagee or a receiver by the LPA 1925; and
- (c) the power to do, or omit to do, on behalf of the Chargor, anything which the Chargor itself could have done, or omitted to do, if the Security Assets were not the subject of any Lien and the Chargor were not in insolvency proceedings.

21.1.2 Except to the extent provided by law, none of the powers described in this Clause 21 will be affected by any insolvency proceedings in relation to the Chargor.

21.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

21.1.4 Any exercise by a Receiver of any of the powers given by this Clause 21 may be on behalf of the Chargor, the directors of the Chargor or himself.

## **22. ADMINISTRATIVE AGENT'S RIGHTS**

### **22.1 Same rights as Receiver**

To the extent permitted by Applicable Law, any right, power or discretion conferred by this Deed on a Receiver may, after this Security has become enforceable, be exercised by the Administrative Agent (acting on behalf of the Creditors) in relation to any of the Security Assets whether or not it has taken possession of any Security Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **22.2 Power to dispose of chattels**

22.2.1 At any time on or after the Enforcement Date, the Administrative Agent or any Receiver may, as agent for the Chargor, dispose of any chattels.

22.2.2 Without prejudice to any obligation to account for the proceeds of any disposal made under Clause 22.2.1, the Chargor shall indemnify the Administrative Agent and any Receiver against any liability arising from any disposal made under Clause 22.2.1.

### **22.3 Delegation**

The Administrative Agent may delegate any of its rights, duties and obligations under this Deed, subject to the provisions of Clause 14.13 of the Credit Agreement, which shall apply *mutatis mutandis* to this Deed.

### **22.4 Indulgence**

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

### **22.5 Financial collateral arrangement**

22.5.1 To the extent that the assets mortgaged or charged under this Deed constitute "financial collateral" ("**Financial Collateral**") and this Deed and the obligations of the Chargor under this Deed constitute a "security financial collateral arrangement" (as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003/3226) (the "**Regulations**")) the Administrative Agent shall have the right, on or after

the Enforcement Date, to appropriate any Security Asset which constitutes Financial Collateral in or towards satisfaction of the Secured Obligations in accordance with the Regulations.

**22.5.2 Where any Financial Collateral is appropriated:**

- (a) if the Financial Collateral is listed or traded on a recognised exchange, its value will be taken as value at which it could have been sold on the exchange on the date of appropriation;
- (b) in the case of cash, by reference to its face value received by the Administrative Agent;
- (c) in the case of credit claims, by reference to the amount actually recovered by the Administrative Agent; and
- (d) in any other case, the value of the Financial Collateral will be such amount as the Administrative Agent reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it,

and each Creditor will give credit for the proportion of the value of the Financial Collateral appropriated to its use.

**22.5.3 The Chargor agrees that the methods of valuation provided for in this Clause 22.5 are commercially reasonable for the purposes of the Regulations.**

**22.6 Conversion of currency**

22.6.1 For the purpose of, or pending the discharge of, any of the Secured Obligations, any Creditor may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this Clause 22.6) from their existing currencies of denomination into such other currencies of denomination as that Creditor may think fit.

22.6.2 Any such conversion shall be effected in accordance with the provisions of Clause 15.9 of the Credit Agreement, which provisions shall apply *mutatis mutandis* to this Clause 22.6.

22.6.3 Each reference in this Clause 22.6 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

**22.7 Appointment of an administrator**

22.7.1 The Administrative Agent may, without notice to the Chargor, appoint any one or more persons to be an administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 at any time on or after the Enforcement Date.

22.7.2 Any appointment under this Clause 22.7 shall:

- (a) be in writing signed by a duly authorised signatory of the Administrative Agent; and
- (b) take effect in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

22.7.3 The Administrative Agent may apply to the court for an order removing an administrator from office and may by notice in writing in accordance with this Clause 22.7 appoint a replacement for any administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

## **23. ORDER OF DISTRIBUTIONS**

### **23.1 Application of proceeds**

All amounts received or recovered by the Administrative Agent or a Receiver pursuant to this Deed shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied pursuant to Section 14.22 (*Application of Cash Proceeds*) of the Credit Agreement.

### **23.2 Appropriation**

None of the Administrative Agent or any Receiver shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Obligations.

## **24. LIABILITY OF ADMINISTRATIVE AGENT AND RECEIVERS**

### **24.1 Possession**

Without prejudice to Clause 24.2 (*Administrative Agent's liability*), the Administrative Agent shall not be liable as a mortgagee in possession by reason of viewing or repairing any of the present or future assets of the Chargor.

### **24.2 Administrative Agent's liability**

None of the Administrative Agent or any Receiver shall (either by reason of taking possession of the Security Assets or for any other reason) be liable to account as mortgagee in possession in respect of all or any of the Security Assets, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

## **25. PROTECTION OF THIRD PARTIES**

### **25.1 No Obligation to Enquire**

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

- 25.1.1 the right of the Administrative Agent 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;
- 25.1.2 how any money paid to the Administrative Agent or any Receiver is to be applied; or
- 25.1.3 any of the Secured Obligations have become due or payable, or remain unpaid or undischarged.

## **26. SAVING PROVISIONS**

### **26.1 Reinstatement**

If any payment by the Chargor or any discharge given by a Creditor is avoided or reduced as a result of insolvency, liquidation, receivership, administration or any similar event:

- 26.1.1 the liability of the Chargor and this Security shall continue as if the payment, discharge, avoidance or reduction had not occurred;
- 26.1.2 the Administrative Agent or its nominee may retain this Deed and the Security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Security Assets, for such period as the Administrative Agent deems necessary to provide the Administrative Agent with Security against any such avoidance, reduction or order for refund; and
- 26.1.3 the Administrative Agent may recover the value or amount of such security or payment from the Chargor subsequently as if such release, discharge or settlement had not occurred.

### **26.2 Liability not discharged**

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

- 26.2.1 any Lien, guarantee, indemnity, remedy or other right held by, or available to, the Administrative Agent that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 26.2.2 the Administrative Agent renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

- 26.2.3 any other act or omission that, but for this Clause 26.1.2, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

### **26.3 Waiver of defences**

Neither the obligations of the Chargor under this Deed nor this Security will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Credit Documents of any of this Security (without limitation and whether or not known to it or any Creditor) including:

- 26.3.1 a waiver or consent granted to, or composition with, the Chargor any other person;
- 26.3.2 the release of the Chargor or any other person under the terms of any composition or arrangements with any creditor;
- 26.3.3 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, the Chargor 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;
- 26.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- 26.3.5 any amendment (however fundamental) or replacement of a Credit Document or any other document or security;
- 26.3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Credit Document or any other document or security;
- 26.3.7 any insolvency or similar proceedings; or
- 26.3.8 any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Chargor or other person under any Credit Document resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order.

### **26.4 Appropriations**

- 26.4.1 Until the expiry of the Security Period, each Creditor (or any trustee or agent on its behalf) may:
- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Creditor (or any trustee or agent on its behalf) 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 the Chargor shall not be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.

26.4.2 If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Creditors by the Chargor under or in connection with the Credit Documents to be repaid in full on trust for the Creditors and shall promptly pay or transfer the same to the Administrative Agent or as the Administrative Agent may direct for application in accordance with Clause 23 (*Order of Distributions*).

## **26.5 Deferral of Chargor's rights**

Until the expiry of the Security Period and unless the Administrative Agent otherwise directs, the Chargor shall not exercise any rights which it may have by reason of performance by it of its obligations under the Credit Documents:

- 26.5.1 to be indemnified by any other provider of Security or any other Obligor;
- 26.5.2 to claim any contribution from any other provider of Security for or any other guarantor of any other Obligor's obligations under the Credit Documents; and/or
- 26.5.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Creditors under the Credit Documents or of any guarantee or other security taken pursuant to, or in connection with, the Credit Documents by any Creditor.

The Chargor shall hold on trust and must immediately pay or transfer to the Administrative Agent for the Creditors any payment or distribution or benefit of security received by it contrary to this Clause or in accordance with any directions given by the Administrative Agent under this Clause.

## **26.6 Additional Security**

This Security is in addition to and is not in any way prejudiced by any other guarantees or security now or subsequently held by any Creditor.

## **26.7 Tacking**

Each Creditor shall comply with its obligations under the Credit Documents (including any obligation to make further advances).

## **27. THE ADMINISTRATIVE AGENT AS TRUSTEE**

27.1 The undertakings and representations made in this Clause 27 are supplemental to Article 14 (*The Administrative Agent*) of the Credit Agreement but only apply in respect of this Deed:

27.1.1 the Administrative Agent declares that it holds this Security on trust for the Creditors on the terms contained in this Deed;

27.1.2 if the Administrative Agent determines that (i) all of the Secured Obligations secured by this Deed have been fully and finally discharged and (ii) no Creditor or (without duplication) the Administrative Agent is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Credit Documents, then the trusts set out in this Deed shall be wound up and the Administrative Agent shall release, without recourse or warranty, all of this Security and the rights of the Administrative Agent arising under this Deed;

27.1.3 the rights, powers, authorities and discretions given to the Administrative Agent under or in connection with this Deed shall be supplemental to the Trustee Act 1925 (United Kingdom) and the Trustee Act 2000 (United Kingdom) and in addition to any which may be vested in the Administrative Agent by any applicable law or otherwise; and

27.1.4 section 1 of the Trustee Act 2000 shall not apply to the duties of the Administrative Agent in relation to the trusts constituted by this Deed. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Deed, the provisions of this Deed shall, to the extent permitted by law prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Deed shall constitute a restriction or exclusion for purposes of that Act.

## **28. DISCHARGE OF SECURITY**

### **28.1 Final redemption**

Subject to Clause 28.2 (*Discharge Conditional*), upon the expiry of the Security Period (but not otherwise), the Administrative Agent shall, at the request and cost of the Chargor, release or discharge, or procure the release or discharge of, this Security.

### **28.2 Discharge Conditional**

Any release, discharge or settlement between the Chargor and the Administrative Agent (acting on behalf of the Creditors) shall be deemed conditional on no payment or security received by the Administrative Agent in respect of the Secured Obligations being avoided, reduced or ordered to be refunded pursuant to any Applicable Law relating to insolvency, bankruptcy, winding up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

28.2.1 the Administrative Agent or its nominee may retain this Deed and the Security created by or pursuant to it, including all certificates and

documents relating to the whole or any part of the Security Assets, for such period as the Administrative Agent deems necessary to provide the Administrative Agent with Security against any such avoidance, reduction or order for refund; and

- 28.2.2 the Administrative Agent may recover the value or amount of such security or payment from the Chargor subsequently as if such release, discharge or settlement had not occurred.

## **29. ENFORCEMENT EXPENSES**

### **29.1 Costs**

The Chargor shall pay to, or reimburse, the Administrative Agent and any Receiver on demand, on a full indemnity basis, all reasonable and documented costs, charges, expenses, taxes and liabilities of any kind (including legal, printing and out-of-pocket expenses) incurred by the Administrative Agent or any Receiver in connection with:

- 29.1.1 this Deed or the Security Assets (provided such costs are reasonable and documented);

- 29.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Administrative Agent's or a Receiver's rights under this Deed; or

- 29.1.3 taking proceedings for, or recovering, any of the Secured Obligations,

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

### **29.2 Indemnity**

The Chargor shall indemnify the Administrative Agent and each Receiver, and their respective employees and agents, on a full indemnity basis against any reasonable and documented cost, charge, expense, loss, liability or damage suffered or incurred by any of them (otherwise than as a result of gross negligence or wilful misconduct of any of them) arising as a result of or in connection with:

- 29.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by any Applicable Law in respect of the Security Assets; or

- 29.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) this Security.

subject to the provisions of Section 8.5 of the Credit Agreement, which shall apply, *mutatis mutandis*, in all respects to the Chargor and the Administrative Agent, as though the Chargor were the Borrower.

### **30. PAYMENTS**

- 30.1 All payments by the Chargor under this Deed (including damages for its breach) shall be made in accordance with Clause 23 (*Order of Distributions*).
- 30.2 If a Creditor receives, or is deemed to have received, notice of any subsequent Security, or other interest affecting all or part of the Security Assets, any Creditor may open a new account with the Chargor. Without prejudice to a Creditor's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Obligations.
- 30.3 If the relevant Creditor does not open a new account immediately on receipt of the notice, or deemed notice, under Clause 30.2, then, unless the Creditor gives express written notice to the contrary to the Chargor, all payments made by the Chargor to such Creditor shall nevertheless be treated as being credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations, as from the time of receipt or deemed receipt of the relevant notice by such Creditor.

### **31. NOTICES**

31.1.1 All notices or other communications provided for herein shall be given or delivered in accordance with Section 15.2 of the Credit Agreement which shall apply hereto *mutatis mutandis*.

31.1.2 Each notice or other communication required to be given in connection with this Deed shall be sent:

(a) to the Chargor at:

9445 Airport Road  
Brampton  
Ontario  
Canada  
L6S 0B6

Attention: Chief Financial Officer

Email: [compliance@npcapital.com](mailto:compliance@npcapital.com)

With a copy to:

DAC Beachcroft LLP  
Portwall Place, Portwall Lane,  
Bristol  
United Kingdom  
BS1 9HS

Attention: Georgina Purt

(b) to the Administrative Agent at:

Corporate Banking - Loan Syndications  
40 King Street West, 62nd Floor  
Toronto, Ontario M5W 2X6  
Canada

Attention: Head, Agency Services

Fax: +1 (416) 866-3329

Email: [agency.services@scotiabank.com](mailto:agency.services@scotiabank.com)

or to such other address or addresses, or fax number or numbers as is notified in writing by a Party to the others from time to time.

## **32. FURTHER PROVISIONS**

### **32.1 Amendments**

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each Party (or its authorised representative).

### **32.2 Partial invalidity**

If any provision (or part of a provision) of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this Clause shall not affect the legality, validity and enforceability of the rest of this Deed.

### **32.3 Variations and waivers**

32.3.1 Any waiver or variation of any right or remedy (whether arising under this Deed or by law), or any consent given under this Deed, will only be effective if it is in writing and signed by the waiving, varying or consenting party, and applies only in the circumstances for which it was given, and shall not prevent the party giving it from subsequently relying on the relevant provision.

32.3.2 A failure or delay by a Party to exercise any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Administrative Agent (acting on behalf of the Creditors) shall be effective unless it is in writing.

### **32.4 Rights cumulative**

The rights and remedies of the Administrative Agent conferred by this Deed are cumulative, may be exercised as often as the Administrative Agent (acting on behalf

of the Creditors) considers appropriate, and are in addition to, and not exclusive of, its rights and remedies provided by Applicable Law.

### **32.5 Further exercise of rights**

No act or course of conduct or negotiation by or on behalf of the Administrative Agent (acting on behalf of the Creditors) shall, in any way, preclude the Administrative Agent from exercising any right or remedy under this Deed or constitute a suspension or variation of any such right or remedy.

### **32.6 Determinations**

Any certification or determination by any Creditor or any Receiver under any Credit Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **32.7 Set-Off Rights**

32.7.1 If a Creditor has more than one account for the Chargor in its books, any such Creditor may at any time on or after the Enforcement Date set off any liability of the Chargor to such Creditor against any liability of such Creditor to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed, provided that such set-off rights are at all times subject to the provisions of the Credit Documents and after making any such transfer, such Creditor shall notify the Chargor of that transfer.

32.7.2 If the liabilities to be set off are expressed in different currencies, the relevant Creditor may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by a Creditor of its rights under this Clause 32.7 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.

32.7.3 A Creditor is not obliged to exercise its rights under this Clause 32.7.

### **32.8 Unliquidated Claims**

If the relevant obligation or liability is unliquidated or unascertained, any Creditor 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.

## **33. COUNTERPARTS**

This Deed may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

## **34. ASSIGNMENT AND TRANSFER**

### **34.1 Assignment by Administrative Agent**

34.1.1 At any time, without the consent of the Chargor, the Administrative Agent may assign or transfer the whole or any part of the Administrative Agent's

rights and/or obligations under this Deed to any person in accordance with the Credit Agreement.

- 34.1.2 The Administrative Agent may disclose to any actual or proposed assignee or transferee such information about the Chargor, the Security Assets and this Deed as the Administrative Agent considers appropriate.

**34.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its obligations under this Deed or enter into any transaction that would result in any of those rights or obligations passing to another person without the prior consent of the Administrative Agent (acting on behalf of all of the Lenders).

**35. GOVERNING LAW AND JURISDICTION**

**35.1 Governing law**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**35.2 Jurisdiction**

The parties to this Deed irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this Clause shall limit the right of the Administrative Agent to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction

In witness whereof this Deed has been duly delivered on the date stated at the beginning of this Deed.

## SCHEDULE 1

### FORM OF NOTICE TO ACCOUNT BANKS

To: [insert name and address of bank where accounts are held (the "**Account Bank**")]

Dated:

Dear Sirs

Re: [here identify the relevant bank accounts (the "**Subject Accounts**") held with the Account Bank].

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We notify you that under the Debenture dated [●] 2020, a copy of which is attached, MDA Space and Robotics Limited (the "**Chargor**") has assigned to The Bank of Nova Scotia (the "**Administrative Agent**") all moneys standing from time to time to the credit of the Subject Accounts, together with all other rights and benefits accruing to or arising in connection with the Subject Accounts (including entitlements to interest).

We irrevocably instruct and authorise you to:

- (1) disclose to the Administrative Agent any information relating to the Subject Accounts requested from you by the Administrative Agent;
- (2) upon notice from the Administrative Agent confirming that the Enforcement Date has occurred:
  - (i) comply with the terms of any written notice or instructions relating to the Subject Accounts given by the Administrative Agent;
  - (ii) hold all sums from time to time standing to the credit of the Subject Accounts to the order of the Administrative Agent; and
  - (iii) pay or release any or all monies standing to the credit of the Subject Accounts in accordance with the written instructions of the Administrative Agent.

The provisions of this notice may only be revoked with the written consent of the Administrative Agent.

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

- (a) you agree to the terms set out in this notice and you agree to act in accordance with its provisions; and
- (b) you have not received notice of the interest of any third party in the Subject Accounts.

This notice, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

.....  
for and on behalf of  
[Chargor]

[On acknowledgement copy]

To:           Administrative Agent  
Copy to:   Chargor

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

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

Dated: [●]

## SIGNATORIES TO THE DEBENTURE

### The Chargor

Executed as a deed by **MDA SPACE AND  
ROBOTICS LIMITED** acting by

Hiten Makin, a director, in the  
presence of:

)

)

)

Director

Witness signature

Gopal Makin

Witness name

62 Wingate Cres

Witness address

Pharmacist

Witness occupation

## **The Administrative Agent**

Executed as a deed by

**THE BANK OF NOVA SCOTIA**

acting by two authorised signatories

By: \_\_\_\_\_

Name: Clement Yu

Title: Director

By: \_\_\_\_\_

Name: Venita Ramjattan

Title: Analyst