



**Registration of a Charge**

Company Name: **DIGITAL RIVER UK LIMITED**

Company Number: **05788465**



XBBN34RF

Received for filing in Electronic Format on the: **01/09/2022**

**Details of Charge**

Date of creation: **26/08/2022**

Charge code: **0578 8465 0004**

Persons entitled: **CERBERUS BUSINESS FINANCE AGENCY, LLC**

Brief description:

**Contains fixed charge(s).**

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

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

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

Certified by: **SQUIRE PATTON BOGGS (UK) LLP**



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

Company number: 5788465

Charge code: 0578 8465 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th August 2022 and created by DIGITAL RIVER UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st September 2022 .

Given at Companies House, Cardiff on 5th September 2022

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 26 August 2022

**THE PERSONS LISTED IN SCHEDULE 1 TO THIS  
DEBENTURE** (1)

and

**CERBERUS BUSINESS FINANCE AGENCY, LLC** (2)

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**SUPPLEMENTAL DEBENTURE**

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**PARTIES**

- (1) **THE PERSONS LISTED IN SCHEDULE 1 TO THIS DEBENTURE** (each a "**Chargor**" and together the "**Chargors**"); and
- (2) **CERBERUS BUSINESS FINANCE AGENCY, LLC** whose registered office is at 875 Third Avenue New York NY10022 as agent and trustee for itself and each of the other Secured Parties (the "**Collateral Agent**").

**INTRODUCTION**

- A Pursuant to a debenture dated 1 June 2021 (the "**Existing Debenture**") between the Chargors and the Collateral Agent, each Chargor created Liens over its assets as a continuing security for the payment and discharge of the Secured Liabilities.
- B The Collateral Agent and Digital River, Inc. among others have entered into a first amendment agreement dated on or about the date of this Debenture (the "**First Amendment Agreement**") which among other things makes certain amendments to the Credit Agreement.
- C Each Chargor and the Collateral Agent consider that the Liens created by each Chargor under the Existing Debenture secure the payment and discharge of the Secured Liabilities (as defined below and including, without limitation, all obligations of the Loan Parties under the Loan Documents (including the Credit Agreement as amended by the First Amendment Agreement, any new Loan Document and any new or amended obligation under any Loan Document)) but enter into this Debenture in case they do not.
- D This Debenture is supplemental to the Existing Debenture and the entry into this Debenture is a condition precedent to the effectiveness of the amendments under the First Amendment Agreement.

**IT IS AGREED THAT:****1 DEFINITIONS, CONSTRUCTION AND THIRD PARTY RIGHTS****1.1 Definitions**

Terms defined in the Credit Agreement shall, unless otherwise defined in this Debenture or unless a contrary intention appears, bear the same meaning when used in this Debenture and the Introduction and the following terms shall have the following meanings in this Debenture and the Introduction:

**"Account Proceeds"** means all amounts (including interest) from time to time standing to the credit of any bank or other account of each Chargor with any bank, building society, financial institution or other person, including the bank accounts specified in Part 5 (*Bank Accounts*) of Schedule 2 (*Details of Certain Assets*), and the debts represented thereby.

**"Administrator"** means a person appointed under Schedule B1 to the Insolvency Act 1986 to manage any Chargor's affairs, business and property.

**"Assigned Agreements"** means any present or future agreement, contract, deed, licence, undertaking, guarantee or other contract to which any Chargor is now or may in the future become a party, specified in Part 3 (*Assigned Agreements*) of Schedule 2 (*Details of Certain Assets*) or otherwise designated in writing between the applicable Chargor and the Collateral Agent from time to time.

**"Business Day"** has the meaning given to such term in the Credit Agreement.

**"Charged Assets"** means the assets mortgaged, charged or assigned pursuant to clauses 3 (*Fixed Security*) and 4.1 (*Creation of Floating Charge*) of this Debenture.

**"Credit Agreement"** means the credit agreement originally dated 1 June 2021 and made between, amongst others, (1) Danube Private Holdings II, LLC as Holdings, (2) Digital River, Inc. as Borrower, (3) the lenders from time to time party thereto as Lenders and (4) Cerberus Business Finance Agency, LLC as Collateral Agent and Administrative Agent, as supplemented, varied, amended and/or restated from time to time, including, without limitation, as amended by the First Amendment Agreement.

**"Debts"** means all of a Chargor's present and future book and other debts, revenues and monetary claims, whether actual or contingent, and whether originally owing to that Chargor or purchased or acquired by it, and all things in action which may give rise to any debt, revenue or monetary claim and the benefit of any related Lien, guarantee or other rights of any nature relating thereto and any proceeds of any of the above.

**"Default Rate"** has the meaning given to such term in the Credit Agreement.

**"Event of Default"** has the meaning given to such term in the Credit Agreement.

**"Existing Debenture"** has the meaning given to that term in recital A of this Debenture.

**"First Amendment Agreement"** has the meaning given to that term in recital B of this Debenture.

**"Insurance Policies"** means all present and future contracts or policies of insurance (including life policies) in which a Chargor has an interest or in which it may from time to time have an interest (whether solely, jointly, as loss payee or otherwise) including but not limited to the policies of insurance, if any, specified in Part 6 (*Insurance Policies*) of Schedule 2 (*Details of Certain Assets*), but excluding any third party liability or public liability insurance and any directors and officers insurance.

**"Insurance Proceeds"** means all monies from time to time payable to any Chargor under or pursuant to the Insurance Policies, including (without limitation) the refund of any premiums.

**"Intellectual Property Rights"** means:

- (a) all of the property specified in Part 2 (*Intellectual Property*) of Schedule 2 (*Details of Certain Assets*) (if any); and
- (b) all other patents, patent applications, trade marks and service marks (whether registered or not), trade mark and/or service mark applications, trade names, registered designs, design rights, copyrights (including software), database

rights, domain names, know-how, trade secrets, inventions and other intellectual property rights and interests (which may now or in the future exist), whether registered or unregistered, and the benefit of all applications and the rights to use such assets (which may now or in the future exist) and all Related Property Rights.

**"Intragroup Debt"** means all present and future sums, liabilities and obligations whatsoever (actual or contingent) payable, owing due or incurred by the Loan Parties (or any of them), or any Subsidiary or Affiliate of any Loan Party, to a Chargor.

**"Intragroup Loan Agreement"** means any present or future agreement to which a Chargor is now or may in the future become a party evidencing or recording the terms of any Intragroup Debt.

**"Investments"** means all of a Chargor's right, title, benefit and interest in all stocks, shares, bonds, notes, warrants and other securities of any kind whatsoever whether in bearer or registered form, and all other interests in any person and all Related Investment Rights whether the same are held directly by or to the order of a Chargor or by any trustee, fiduciary, clearance system (including any depository for any clearance system and any other person whose business is or includes the provision of clearance services or the provision of security accounts or any nominees or depository for any such person), custody system, settlement system (including Euroclear UK & Ireland Limited for the London Stock Exchange plc and the Central Gilts Office Service for transactions in gilt edged stocks and any nominees thereof) or custodian on behalf of a Chargor or whether the same have been delivered to or to the order of the Collateral Agent or its nominee including all Related Investment Rights, all Related Property Rights and all rights against any such trustee, fiduciary, clearance system or other person holding such to the order of a Chargor.

**"IP Licence"** means any written agreement or licence under which any Intellectual Property Right specified in Part 2 (*Intellectual Property*) of Schedule 2 (*Details of Certain Assets*) is licensed to or by any Chargor.

**"Lien"** means any mortgage, pledge, hypothecation, collateral assignment, encumbrance, lien (statutory or other), charge or other security interest or any other security agreement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title thereof, and any capital lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease be deemed to be a Lien.

**"Loans"** has the meaning given to such term in the Credit Agreement.

**"Loan Document"** has the meaning given to such term in the Credit Agreement.

**"Loan Party"** has the meaning given to such term in the Credit Agreement.

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

**"Obligations"** has the meaning given to such term in the Credit Agreement.



**"Rack Rent Leases"** means any leasehold property owned by a Chargor with an unexpired term of 7 years or less at (i) the date of this Debenture; or (ii) the date on which the relevant property is acquired by such Chargor.

**"Real Property"** means:

- (a) all of the freehold and/or leasehold property (if any) of each Chargor specified in Part 1 (*Real Property*) of Schedule 2 (*Details of Certain Assets*);
- (b) all freehold and/or leasehold property or immovable property of each Chargor situate in England and Wales (other than the property referred to in paragraph (a));
- (c) any buildings, fixtures (including trade fixtures), fittings, fixed plant or machinery from time to time on or forming part of the property referred to in paragraphs (a) and (b) above; and
- (d) the Related Property Rights in relation to any of the property, assets or rights referred to in any of paragraph (a) to (c) above.

**"Receiver"** means any person appointed by the Collateral Agent to be a receiver or receiver and manager or administrative receiver of any property subject to the security created by this Debenture.

**"Related Investment Rights"** means all allotments, rights, benefits and advantages (including all voting rights) at any time accruing, offered or arising in respect of or incidental to any Investment and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect of Investments.

**"Related Property Rights"** means, where used in relation to a particular property, asset (or class of assets) or right, the following:

- (a) the proceeds of sale and/or other realisation of that property, asset (or class of assets) or right (or any part thereof or interest therein);
- (b) all Liens, options, agreements, rights, easements, benefits, indemnities, guarantees, warranties or covenants for title in respect of such property, asset (or class of assets) or right; and
- (c) all rights under any lease, licence or agreement for lease, sale or use in respect of such property or asset.

**"Secured Liabilities"** means all monies, obligations and liabilities covenanted to be paid or discharged pursuant to clause 1.7 (*Existing Debenture*)

*Notwithstanding Any Other Provision Of This Debenture, The Parties Acknowledge And Agree That The Chargors Enter Into This Debenture In Addition To, And Without Prejudice To, The Existing Debenture.*

- (d) On The Date Of This Debenture, Each Of The Chargors Confirms That:

- (i) Any Lien Created By It Under The Existing Debenture Extends To The Obligations Of The Loan Parties Under The Loan Documents (Including The Credit Agreement As Amended By The First Amendment Agreement, Any New Loan Document And Any New Or Amended Obligation Under Any Loan Document);
- (ii) The Obligations Of The Loan Parties Arising Under The Credit Agreement As Amended By The First Amendment Agreement And Any New Or Amended Loan Document Are Included In The Secured Liabilities (As Defined In The Existing Debenture); And
- (iii) The Liens Created Under The Existing Debenture Continue In Full Force And Effect.

Covenant To Pay).

**"Secured Party"** has the meaning given to such term in the Credit Agreement.

**"Security Period"** means the period from the date of this Debenture until the date on which all of the Secured Liabilities (whether actual or contingent) have been irrevocably and unconditionally paid and discharged in full.

**"Shares"** means all shares and other equity interests held by a Chargor from time to time in its Subsidiaries incorporated, formed or organised in or under the laws of England and Wales, including (without limitation) those shares listed in Part 4 (*Shares*) of Schedule 2 (*Details of Certain Assets*) in respect of which it is named as **"Chargor shareholder"** together with all Related Investment Rights and all Related Property Rights in respect thereof.

**"Subsidiary"** means a subsidiary incorporated within the meaning of section 1159 of the Companies Act 2006 or any person which falls within the definition of **"Subsidiary"** in the Credit Agreement.

**"VAT"** means United Kingdom Value Added Tax together with all interest and penalties relating thereto.

Unless a contrary intention appears, words defined in the Companies Act 2006 have the same meanings in this Debenture.

## 1.2 Construction and Third Party Rights

- (a) Unless a contrary indication appears, any reference in this Debenture to:
  - (i) the singular includes the plural and vice versa;
  - (ii) any **"Agent"**, **"Administrative Agent"**, **"Collateral Agent"**, any **"Lender"** or any **"Secured Party"** shall be construed so as to include their successors in title, permitted assigns and permitted transferees;
  - (iii) **"assets"** includes present and future properties, revenues and rights of every description;

- (iv) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - (v) 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;
  - (vi) a provision of law is a reference to that provision as amended or re-enacted;
  - (vii) a Clause or a Schedule is a reference to a clause of or schedule to this Debenture;
  - (viii) this Debenture shall be construed as references also to any separate or independent stipulation or agreement contained in it;
  - (ix) another agreement (including the Credit Agreement) shall be construed as a reference to such agreement as the same may have been modified, extended, amended, varied or supplemented or novated from time to time;
  - (x) references to any form of property or asset (including a Charged Asset) shall include a reference to all or any part of that property or asset); and
  - (xi) **"including"** means including without limitation and **"includes"** and **"included"** shall be construed accordingly.
- (b) Clause and Schedule headings are for ease of reference only.
  - (c) The words **"other"**, **"or otherwise"** and **"whatsoever"** shall not be construed *eiusdem generis* or be construed as any limitation upon the generality of any preceding words or matters specifically referred to.
  - (d) For the avoidance of doubt, the term **"continuing"** in relation to an Event of Default shall be construed in the same way as in the Credit Agreement.
  - (e) The terms of this Debenture may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

### 1.3 Implied Covenants for Title

The obligations of each Chargor under this Debenture shall be in addition to the covenants for title deemed to be included in this Debenture by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

### 1.4 Effect as a Deed

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

## **1.5 Law of Property (Miscellaneous Provisions) Act 1989**

To the extent necessary for any agreement for the disposition of the Charged Assets in this Debenture to be a valid agreement under section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the other Loan Documents and of any side letters between the parties to this Debenture are incorporated into this Debenture.

## **1.6 Security Trust Provisions**

The Collateral Agent holds the benefit of this Debenture on trust for the Secured Parties in accordance with the Credit Agreement and the terms of clause 25 (*Collateral Agent as Trustee*).

## **1.7 Existing Debenture**

- (a) Notwithstanding any other provision of this Debenture, the parties acknowledge and agree that the Chargors enter into this Debenture in addition to, and without prejudice to, the Existing Debenture.
- (b) On the date of this Debenture, each of the Chargors confirms that:
  - (i) any Lien created by it under the Existing Debenture extends to the obligations of the Loan Parties under the Loan Documents (including the Credit Agreement as amended by the First Amendment Agreement, any new Loan Document and any new or amended obligation under any Loan Document);
  - (ii) the obligations of the Loan Parties arising under the Credit Agreement as amended by the First Amendment Agreement and any new or amended Loan Document are included in the Secured Liabilities (as defined in the Existing Debenture); and
  - (iii) the Liens created under the Existing Debenture continue in full force and effect.

## **2 COVENANT TO PAY**

### **2.1 Covenant to Pay Secured Liabilities**

Each Chargor covenants that it shall on demand pay to the Collateral Agent all monies and discharge all obligations and liabilities (including, without limitation, the Obligations) now or hereafter due, owing or incurred by it or any other Loan Party to any Secured Party under or pursuant to the Loan Documents (or any of them) in each case when the same become due for payment or discharge whether by acceleration or otherwise, and whether such monies, obligations or liabilities are express or implied; present, future or contingent; joint or several; incurred as principal or surety; originally owing to a Secured Party or purchased (whether by assignment or otherwise) or acquired in any other way by a Secured Party; denominated in sterling or any other currency; or incurred on any current or other banking account or in any other manner whatsoever.

## **2.2 Potential Invalidity**

Neither the covenant to pay in clause 2.1 (*Covenant to Pay Secured Liabilities*) nor the obligation to pay interest pursuant to clause 2.3 (*Interest*) nor the security created by this Debenture shall extend to or include any liability or sum which would, but for this clause 2.2, cause such covenant or security to be unlawful under any applicable law.

## **2.3 Interest**

- (a) Each Chargor hereby agrees to pay to the Collateral Agent, in respect of any amount demanded from it in accordance with this Debenture (to the extent that interest on such amount is not otherwise being paid pursuant to any agreement between that Chargor and the relevant Secured Party) interest from first demand by the Collateral Agent of that Chargor at the Default Rate.
- (b) Such interest shall accrue due on a daily basis from the demand by the Collateral Agent until actual payment by the relevant Chargor (both before and after any further demand or judgment or the liquidation of the relevant Chargor).

## **3 FIXED SECURITY**

### **3.1 Creation of Fixed Security**

Each Chargor charges to the Collateral Agent by way of fixed charge (which so far as relates to freehold or leasehold property in England and Wales vested in it at the date of this Debenture shall be a charge by way of legal mortgage) with full title guarantee and as a continuing security for the payment and discharge of the Secured Liabilities all of its rights to and title and interest from time to time in any and each of the following:

- (a) the Real Property (other than any Rack Rent Leases);
- (b) all present and future estates or interests of each Chargor in, or over, any freehold, leasehold or commonhold property (other than: (i) any Rack Rent leases or (ii) any such property effectively mortgaged under clause 3.1(a));
- (c) all plant, machinery, vehicles, computers, office and other equipment and chattels (excluding stock-in-trade or work in progress) and all Related Property Rights;
- (d) (to the extent that the same are not the subject of a fixed charge under clause 3.1(e)) all Debts;
- (e) all Account Proceeds;
- (f) all of its Investments;
- (g) the Shares;
- (h) all of its Intellectual Property Rights;
- (i) all goodwill and uncalled capital;

- (j) (to the extent not effectively assigned under clause 3.2 (*Assignments*)), the Insurance Policies and the Insurance Proceeds;
- (k) (to the extent not effectively assigned under clause 3.2 (*Assignments*)), the Intragroup Loan Agreements and all Related Property Rights;
- (l) (to the extent not effectively assigned under clause 3.2 (*Assignments*)), the Assigned Agreements (other than the Intragroup Loan Agreements) and all Related Property Rights; and
- (m) (to the extent not effectively assigned under clause 3.2 (*Assignments*)), the IP Licences and all Related Property Rights.

### **3.2 Assignments**

Each Chargor assigns to the Collateral Agent with full title guarantee as a continuing security for the payment and discharge of the Secured Liabilities all of its rights to and title and interest from time to time in:

- (a) the Insurance Policies and the Insurance Proceeds and all Related Property Rights;
- (b) the Intragroup Loan Agreements and all Related Property Rights;
- (c) the Assigned Agreements (other than the Intragroup Loan Agreements) and all Related Property Rights; and
- (d) the IP Licences and all Related Property Rights.

### **3.3 Preservation of fixed charge**

Without prejudice to clause 3.1 (*Creation of Fixed Security*) and clause 3.2 (*Assignments*), if a Chargor is entitled to withdraw the proceeds of any book and other debts standing to the credit of any bank account and, as a result, those proceeds are in any way released from the fixed charge created pursuant to clauses 3.1 (*Creation of Fixed Security*) and 3.2 (*Assignments*), the release will in no way derogate from the subsistence and continuance of the fixed charge on all other outstanding book and other debts of that Chargor and the proceeds of those debts.

### **3.4 Excluded Collateral**

- (a) Any fixed charge or mortgage constituted by clause 3.1 (*Creation of Fixed Security*) (other than paragraphs (a), (e) or (g) of clause 3.1), shall not extend to any Chargor's right, title or interest in any assets which are located outside of the United States, the European Union or the United Kingdom provided that for the avoidance of doubt any fixed charge or mortgage constituted by clause 3.1 (*Creation of Fixed Security*) shall extend to all assets located in the United Kingdom.
- (b) Any fixed charge under paragraph (d) of clause 3.1 (*Creation of Fixed Security*) shall not extend to any contract which does not permit the applicable Chargor to grant a fixed charge of its rights and benefits thereunder.

## 4 FLOATING CHARGE

### 4.1 Creation of Floating Charge

- (a) Each Chargor charges to the Collateral Agent by way of first floating charge with full title guarantee and as a continuing security for the payment and discharge of the Secured Liabilities all of its rights to and title and interest from time to time in the whole of its property, assets, rights and revenues, whatsoever and wheresoever, present and future, other than any property, assets, rights and revenues validly and effectively charged or assigned (whether at law or in equity) pursuant to clauses 3.1 (*Creation of Fixed Security*) or 3.2 (*Assignments*).
- (b) The floating charge hereby created by each Chargor is a qualifying floating charge for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

### 4.2 Automatic Crystallisation of Floating Charge

Notwithstanding anything express or implied in this Debenture, and without prejudice to any law which may have similar effect:

- (a) if:
  - (i) a resolution is passed or an order is made for the winding up, dissolution, administration or other reorganisation of any Chargor; or
  - (ii) an Administrator is appointed or any step intended to result in such appointment is taken,

then the floating charge created by clause 4.1 (*Creation of Floating Charge*) will automatically (without notice) be converted into a fixed charge as regards all of the assets subject to the floating charge; and

- (b) if:
  - (i) any Chargor creates or attempts to create any Lien over all or any of the Charged Assets without the prior consent of the Collateral Agent or save as expressly permitted under the Credit Agreement or, in relation to any assets of any Chargor outside of England and Wales, as created under any other Loan Document; or
  - (ii) any person levies or attempts to levy any distress, execution or other process against any of the Charged Assets (any such affected asset, a "**Relevant Charged Asset**") then the floating charge created by clause 4.1 (*Creation of Floating Charge*) will automatically (without notice) be converted into a fixed charge as regards the Relevant Charged Asset(s).

### 4.3 Crystallisation on Notice of Floating Charge

Notwithstanding anything express or implied in this Debenture, the Collateral Agent may at any time:

- (a) following the occurrence of an Event of Default which is continuing;
- (b) if the Collateral Agent considers in good faith that any of the Charged Assets are in danger of being seized or sold as a result of any legal process or are otherwise in jeopardy,

by giving notice in writing to that effect to the relevant Chargor convert the floating charge created by clause 4.1 (*Creation of Floating Charge*) into a fixed charge as regards any assets specified in such notice. The conversion shall take effect immediately upon the giving of the notice.

#### **4.4 Moratorium**

- (a) Subject to paragraph (b) below, the floating charge created under this Debenture by the Chargors shall not convert into a fixed charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of any of the Chargors under Part A1 of the Insolvency Act 1986.
- (b) Paragraph (a) above does not apply in respect of any floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act 1986.

### **5 FURTHER ASSURANCE**

**5.1** Each Chargor must promptly upon request by the Collateral Agent, at the cost of the relevant Chargor, execute (in such form as the Collateral Agent may reasonably require) such documents (including assignments, transfers, mortgages, charges, notices and instructions) in favour of the Collateral Agent or its nominees and do all such assurances and things as the Collateral Agent may reasonably require for:

- (a) perfecting and/or protecting (by registration or in any other way) the security created or intended to be created by this Debenture;
- (b) facilitating, at any time on or after the occurrence and during the continuance of an Event of Default, the realisation of all or any part of the assets of a Chargor; and
- (c) exercising all powers, authorities and discretions conferred on the Collateral Agent or any Receiver pursuant to and in accordance with this Debenture or by law.

**5.2** Following the occurrence of any Event of Default which is continuing, each Chargor shall, at any time, promptly upon request, execute over all or any of the Charged Assets, a charge by way of legal mortgage or legal sub-mortgage or legal assignment, as the case may be, in favour of the Collateral Agent in such form as the Collateral Agent shall require.

**5.3** Each Chargor shall take all such action as may be available to it for the purpose of creating, perfecting or maintaining the security created or intended to be created pursuant to this Debenture including, using its reasonable endeavours to obtain any necessary consent or waiver or amendment or removal of any provision or agreement or condition prohibiting or restricting the grant or perfection of a fixed charge, assignment or other relevant security interest (in form and content satisfactory to the



Collateral Agent, acting reasonably) to enable its material assets (including, without limitation, the Shares, the Account Proceeds and the Assigned Agreements) to be mortgaged, charged or assigned pursuant to this Debenture. Immediately upon obtaining any necessary consent the asset concerned shall become subject to the relevant security created by this Debenture. Each Chargor shall promptly deliver a copy of each such consent, waiver, amendment or removal to the Collateral Agent.

## 6 GENERAL UNDERTAKINGS WITH RESPECT TO CHARGED ASSETS

### 6.1 Each Chargor undertakes to the Collateral Agent with respect to the Charged Assets that:

#### (a) Negative Pledge

it shall not, without the prior consent in writing of the Collateral Agent, create or attempt to create or permit to subsist or arise any Lien on, over or affecting the Charged Assets or any part of them other than as expressly permitted by the Credit Agreement;

#### (b) Disposals

it shall not dispose of the Charged Assets or any part of them or agree to do so except in the case of disposals which are expressly permitted by the Credit Agreement and for these purposes the term "**disposal**" shall include any form of disposal of any interest in any asset including any conveyance, transfer, lease, assignment, sale, right to use or occupy, surrender, declaration of trust, option or right of pre-emption or the creation of any other form of legal or equitable interest in or over any asset or any option in respect of any of the foregoing;

#### (c) Subsequent Charges

it shall procure that any Lien created by a Chargor after the date of this Debenture (otherwise than in favour of the Collateral Agent or any Permitted Liens where "**Permitted Liens**" shall mean any Liens expressly permitted by the Credit Agreement) shall be expressed to be subject to this Debenture;

#### (d) Deposit of Title Documents

without prejudice to clause 9 (*Undertakings as to Investments and Shares*), it shall deposit with the Collateral Agent or its nominee (in form and substance satisfactory to the Collateral Agent) the deeds and documents of title relating to Real Property (other than Rack Rent Leases), Shares and Investments, and if requested by the Collateral Agent (acting reasonably) any other Charged Assets provided that:

- (i) in the case of deeds or documents of title relating to Real Property, it shall ensure that such deeds and documents of title are held either by the Collateral Agent or to the order of the Collateral Agent by a firm of solicitors approved by the Collateral Agent for that purpose; and
- (ii) it shall not be required to deposit any stock or share certificates relating to the Investments to the extent that the relevant documents have been

deposited with a clearance system, settlement system or custodian acceptable to the Collateral Agent); and

(e) Prejudicial Action

it shall not do or cause or permit to be done anything which may in anyway reduce, jeopardise or otherwise prejudice: (i) the validity, enforceability or priority of the Liens granted or purported to be granted by this Debenture; or (ii) any right of the Collateral Agent under any Loan Document.

## 6.2 Notices of Charge and/or Assignment

- (a) Without prejudice to clauses 6.2(c) and 6.2(d) below, each Chargor shall deliver to the Collateral Agent and serve on any counterparty to the applicable contract:
- (i) notices of assignment in respect of any of the assets assigned pursuant to clause 3.2 (*Assignments*) and shall use its reasonable endeavours to procure that each notice is acknowledged by each such counterparty; and
  - (ii) following the occurrence of an Event of Default which is continuing, notices of charge in respect of any of the assets charged pursuant to this Debenture and shall use its reasonable endeavours to procure that each notice is acknowledged by any debtor or other person specified by the Collateral Agent.
- (b) The notices of charge and/or assignment and/or acknowledgement referred to in clause 6.2(a) shall be in a form substantially similar to that contained in Schedule 3 (*Form of Notice*) or such other form as is satisfactory to the Collateral Agent.
- (c) Each Chargor shall promptly following the date of this Debenture in respect of any existing bank account held by it, and as soon as reasonably practicable after the date on which it opens any new bank account after the date of this Debenture, give notice to any account bank of the charge created or purported to be created pursuant to clause 3.1(e) (*Creation of Fixed Security*) by sending a notice in the form set out in Schedule 4 (*Notice to Account Bank*) and use its reasonable endeavours to procure that each such account bank acknowledges such notice to the Collateral Agent in the form set out in Schedule 5 (*Acknowledgement of Account Bank*).
- (d) Each Chargor shall:
- (i) promptly following the date of this Debenture in respect of:
    - (A) any Intragroup Loan Agreement;
    - (B) any IP Licence which is, or in the reasonable opinion of the Collateral Agent is, material to that Chargor's business; or
    - (C) any Insurance Policy,

to which it is party on the date of this Debenture; and

(ii) as soon as reasonably practicable after the date on which it becomes or is party to:

(A) any Intragroup Loan Agreement;

(B) any IP Licence which is, or in the reasonable opinion of the Collateral Agent is, material to that Chargor's business; or

(C) any Insurance Policy,

after the date of this Debenture,

give notice to each counterparty to any such Intragroup Loan Agreement, IP Licence or Insurance Policy substantially in the form set out in Schedule 3 (*Form of Notice*) and procure, in the case of such Intragroup Loan Agreement, and use reasonable endeavours to procure, in the case of any IP Licence or Insurance Policy, that each counterparty acknowledges such notice to the Collateral Agent substantially in the form set out in Schedule 3 (*Form of Notice*).

### **6.3 Intellectual Property Rights**

Each Chargor shall, if requested by the Collateral Agent, execute all such documents and do all such acts as the Collateral Agent may reasonably require to record the interests of the Collateral Agent in: (i) prior to the occurrence of an Event of Default which is continuing, any registers relating to registered Intellectual Property Rights which are, or which the Collateral Agent (in its reasonable opinion) has notified the applicable Chargor are, material to that Chargor's business; and (ii) after the occurrence of an Event of Default which is continuing, any registers relating to registered Intellectual Property Rights.

## **7 REAL PROPERTY UNDERTAKINGS**

### **7.1 Positive Undertakings**

In relation to Real Property, each Chargor agrees that it shall:

(a) promptly notify the Collateral Agent of any contract, conveyance, transfer or other disposition for the acquisition by it of the legal or beneficial interest in any Real Property, other than any Rack Rent Lease; and

(b) at the request of the Collateral Agent, make an application to the Chief Land Registrar on Form RX1 for the registration against the registered titles (if any) specified in Part 1 (*Real Property*) of Schedule 2 (*Details of Certain Assets*) (and any unregistered properties subject to compulsory first registration at the date of this Debenture and any other Real Property from time to time including a registered title, but in each case excluding any Rack Rent Lease) of the following restriction:

*"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written*

*consent signed by the proprietor for the time being of the charge dated [date] in favour of Cerberus Business Finance Agency, LLC referred to in the charges register or their conveyancer."*

## **7.2 Remedy**

If any Chargor fails to comply with any undertaking or obligation contained in this clause 7, the Collateral Agent shall be entitled (either itself, or through any agent, nominee or advisor) to do such things as it reasonably believes are required to remedy such failure. The Chargors shall reimburse to the Collateral Agent within five Business Days of demand all amounts expended by the Collateral Agent in remedying such failure.

## **8 INSURANCE UNDERTAKINGS**

### **8.1 Insurance Obligations**

Each Chargor shall at all times during the Security Period:

- (a) keep all of the Charged Assets of an insurable nature, or procure that the Charged Assets of an insurable nature are kept, insured in accordance with the terms of the Credit Agreement;
- (b) if required by the Collateral Agent after an Event of Default which is continuing, deposit all Insurance Policies relating to Charged Assets with the Collateral Agent;
- (c) procure that there be given to the Collateral Agent such information in connection with the Insurance Policies as the Collateral Agent may reasonably require and notify the Collateral Agent of renewals made and material variations or cancellations of such policies made or, to its knowledge, threatened or pending; and
- (d) not permit anything to be done which may make void or voidable any of the Insurance Policies.

## **9 UNDERTAKINGS AS TO INVESTMENTS AND SHARES**

### **9.1 Deposit of Title Documents**

Each Chargor shall promptly deposit with the Collateral Agent or its nominee:

- (a) (to the extent that the relevant documents have not been deposited with a clearance system, settlement system or custodian acceptable to the Collateral Agent) all stock and share certificates and documents of, or evidencing, title or the right to title relating to the Investments and the Shares;
- (b) stock transfer forms or other instruments of transfer executed in blank by or on behalf of the Chargor and undated; and
- (c) such other documents as the Collateral Agent may require from time to time for the purpose of perfecting its title to the Investments or the Shares or, after the occurrence of an Event of Default which is continuing for the purpose of vesting

the same in itself, its nominee or any purchaser or presenting the same for registration at any time,

provided that in the case of any shares or other equity interests in a company or person not incorporated or formed in the United Kingdom each Chargor shall have a period of 20 Business Days from the date of this Debenture to deposit the documents referred to in clauses 9.1(a) and 9.1(b) above.

## **9.2 Registration of transfers**

If required by the Collateral Agent, while an Event of Default is continuing, each Chargor shall procure that all Investments and Shares which are in registered form are duly registered in the name of the Collateral Agent or its nominee once a transfer relating to those Investments and Shares is presented for that purpose.

## **9.3 Clearance Systems etc.**

Each Chargor shall, if requested by the Collateral Agent while an Event of Default is continuing, instruct any clearance system, settlement system, custodian or similar person to transfer any Investments then held by any such person for the account of that Chargor or its nominee to the account of the Collateral Agent (or its nominee) with such clearance system (or as otherwise required by the Collateral Agent).

## **9.4 Calls**

Each Chargor:

- (a) shall not, without the consent in writing of the Collateral Agent, acquire any Investments or Shares unless they are fully paid; and
- (b) shall duly and promptly pay all calls, instalments or other payments which may be due and payable in respect of any Investments or Shares and, in any case of default by a Chargor in such payment, the Collateral Agent may, if it thinks fit, make such payment on behalf of that Chargor in which case sums paid by the Collateral Agent shall be reimbursed by the Chargors to the Collateral Agent on demand and shall carry interest from the date of payment by the Collateral Agent until reimbursed at the rate and in accordance with clause 2.3 (*Interest*). For the avoidance of doubt, no Secured Party shall incur any liability in respect of any amounts due from any Chargor in respect of any Investments or Shares.

## **9.5 Dividends**

- (a) Prior to the occurrence of an Event of Default which is continuing, the relevant Chargor shall be entitled to receive all dividends, distributions, interest and other monies in respect of and deriving from the Charged Assets. To the extent the Collateral Agent (or its nominee) receives any dividends or other monies in respect of the Investments and the Shares, the Collateral Agent (or its nominee, as applicable) shall hold all such dividends or other monies for the account of the relevant Chargor and, prior to the occurrence of an Event of Default which is continuing, shall pay the same to an account of the relevant Chargor as soon as practicable following receipt of a written request to do so.

- (b) At any time while an Event of Default has occurred and is continuing each Chargor shall hold any dividends, interest and other monies received by it in respect of and deriving from the Charged Assets on trust for the Secured Parties and pay the same immediately to the Collateral Agent or as the Collateral Agent may direct in writing. The Collateral Agent shall be entitled to apply the same as permitted in accordance with the terms of the Loan Documents.

## **9.6 Voting Rights and Other Matters**

- (a) Prior to the occurrence of an Event of Default which is continuing and save as otherwise provided in this clause 9.6, each Chargor shall be entitled to exercise (or direct the Collateral Agent to exercise on its behalf) all voting and other rights and powers in respect of the Investments and the Shares provided that no Chargor shall exercise (or direct the exercise of) any voting rights in any manner which, in the reasonable opinion of the Collateral Agent, may prejudice the validity, enforceability or priority of, or the ability of the Collateral Agent to realise, the security over the Investments and the Shares created pursuant to this Debenture.
- (b) No Chargor shall, without the prior written consent of the Collateral Agent permit or agree to any variation of the rights attaching to or conferred by any of the Investments or the Shares, participate in any rights issue, elect to receive or vote in favour of receiving any dividends or other distributions other than in the form of cash or participate in any vote concerning a members voluntary winding-up or a compromise or arrangement pursuant to sections 895-901 of the Companies Act 2006 to the extent that such variation, participation, vote or election would be expected to be prejudicial to the interests of the Collateral Agent or the Secured Parties.
- (c) At any time after the occurrence of an Event of Default which is continuing, the Collateral Agent may in such manner and on such terms as it sees fit (in the name of a Chargor or otherwise and without the need for further consent from any Chargor):
  - (i) exercise (or refrain from exercising) any voting rights in respect of the Investments and the Shares;
  - (ii) apply all dividends and other monies arising from the Investments and the Shares in accordance with clause 19 (*Application Of Monies Received Under This Debenture*);
  - (iii) without prejudice to any other provision of this Debenture, transfer the Investments and the Shares into the name of a nominee or transferee of the Collateral Agent as the Collateral Agent may require; and/or
  - (iv) exercise (or refrain from exercising) all or any of the powers and rights conferred upon or exercisable by the legal or beneficial owner of the Investments and the Shares.
- (d) The Collateral Agent may, in its absolute discretion and without any consent or authority from the other Secured Parties or the Chargors, at any time, by notice to the Chargors (which notice shall be irrevocable), with a copy to the

Administrative Agent, elect to give up the right to exercise (or refrain from exercising) all or any voting rights and powers in respect of the Shares and Investments conferred or to be conferred on the Collateral Agent pursuant to clause 9.6(c) and the other Secured Parties unconditionally waive any rights they may otherwise have to require the Collateral Agent not to make such election or to require the Collateral Agent to indemnify, compensate or otherwise make them good for any losses, costs or liabilities incurred by any of them in relation to or as a consequence of the Collateral Agent making such election.

- (e) Once a notice has been issued by the Collateral Agent under clause 9.6(d), on and from the date of such notice the Collateral Agent shall cease to have the right to exercise (or refrain from exercising) voting rights and powers conferred or to be conferred on it pursuant to clause 9.6(c) or any other provision of this Debenture in respect of the Shares and Investments specified in that notice and all such rights will be exercisable by the Chargors. The Chargors shall be entitled on and from the date of such notice, to exercise all voting rights and powers in relation to the Shares and Investments specified in that notice subject only to the proviso contained in clause 9.6(a) and to clause 9.6(b).

## **9.7 Liability of Collateral Agent**

Each Chargor agrees with the Collateral Agent that no Secured Party nor any nominee will have any liability for:

- (a) failing to present any coupon or other document relating to any of the Investments or the Shares;
- (b) failing to accept any offer relating to any of the Investments or the Shares;
- (c) failing to attend or vote at any meetings related to any of the Investments or the Shares;
- (d) failing to notify any Chargor of any matters referred to in this clause 9.7 or of any communication received in relation to any of the Investments or the Shares; or
- (e) any loss arising out of or in connection with the exercise or non-exercise of any rights or powers attaching or accruing to the Investments or the Shares or which may be exercised by the Collateral Agent or any nominee of the Collateral Agent under this Debenture (whether or not on sale or other realisation of the Investments a better price could have or might have been obtained by either deferring or advancing the date of sale or realisation or otherwise).

## **9.8 Nominees**

Each Chargor represents and warrants that it has not and undertakes that it shall not appoint any nominee to exercise or enjoy all or any of its rights in relation to the Investments or the Shares.

## **9.9 Register of members**

Each Chargor shall procure that, during the Security Period, no company whose shares are subject to the Liens purported to be created under this Debenture keeps information in respect of its members on the central register kept by the Registrar at Companies House (except in circumstances where to do so would be a breach of the obligations to file a confirmation statement under section 853A of the Companies Act 2006 of the relevant Chargor).

## **10 UNDERTAKINGS AS TO CHARGE OVER BOOK AND OTHER DEBTS**

### **10.1 Realisation of Debts**

During the Security Period, each Chargor undertakes with reference to the Debts:

- (a) to collect the Debts in the ordinary course of its business and (prior to the payment into the account specified in clause 10.1(b)) to hold the proceeds of those Debts on trust for the Collateral Agent; and
- (b) to pay into an account of that Chargor which is secured in favour of the Collateral Agent for the benefit of the Secured Parties, all monies which that Chargor may receive in respect of the Debts.

### **10.2 Debts: Position after an Event of Default**

After the occurrence of an Event of Default which is continuing no Chargor shall, except with the consent of the Collateral Agent and then only at the direction of the Collateral Agent, withdraw or otherwise transfer the proceeds of realisation of any Debts standing to the credit of any account.

## **11 UNDERTAKINGS AS TO ACCOUNT PROCEEDS**

### **11.1 Account Proceeds: Position before an Event of Default**

Before the occurrence of an Event of Default which is continuing, each Chargor shall (subject to any restrictions in the Credit Agreement preventing the withdrawal of the same) be entitled to withdraw any credit amount referred to in the definition of Account Proceeds from any relevant account.

### **11.2 Account Proceeds: Position after an Event of Default**

Following the occurrence of an Event of Default which is continuing the Chargors shall no longer be entitled to be paid, withdraw or otherwise transfer any credit amount referred to in clause 11.1 (*Account Proceeds: Position before an Event of Default*), except with the prior written consent of the Collateral Agent.

## **12 UNDERTAKINGS AS TO INTELLECTUAL PROPERTY RIGHTS**

Each Chargor shall:

- (a) take all necessary action to safeguard and maintain its rights, present and future, in or relating to the Intellectual Property Rights that are necessary for its business (including the payment of all renewal fees and all steps which are



necessary or desirable to maintain any applicable registrations with any appropriate registry or other government authority or body);

- (b) keep the Collateral Agent fully informed as to the registration or requirement to renew the registration of any Intellectual Property Rights that are necessary for its business;
- (c) not use or refrain from using its Intellectual Property Rights that are necessary for its business in a way which could reasonably be expected to adversely affect the value of those Intellectual Property Rights; and
- (d) notify the Collateral Agent promptly of any infringement or suspected infringement or any challenge to the validity or ownership of its Intellectual Property Rights that are necessary for its business and take all steps necessary to prevent or bring an end to any such infringement and to defend any such challenge.

### **13 RIGHTS OF THE COLLATERAL AGENT**

#### **13.1 Enforcement**

At any time on or after the occurrence of an Event of Default which is continuing, the security created pursuant to this Debenture shall be immediately enforceable and the Collateral Agent may in its absolute discretion and without notice to any Chargor or the prior authorisation of any court:

- (a) enforce all or any part of the security created by this Debenture and take possession of or dispose of all or any of the Charged Assets in each case at such times and upon such terms as it sees fit; and
- (b) whether or not it has appointed a Receiver, exercise all of the powers, authorities and discretions:
  - (i) conferred from time to time on mortgagees by the LPA (as varied or extended by this Debenture) or otherwise conferred by law; and
  - (ii) granted to a Receiver by this Debenture or from time to time by law.

#### **13.2 Restrictions on Consolidation of Mortgages**

Section 93 of the LPA shall not apply to this Debenture or to any sale made under it. The Collateral Agent shall have the right to consolidate all or any of the security created by or pursuant to this Debenture with any other security in existence at any time. Such power may be exercised by the Collateral Agent at any time on or after the occurrence of an Event of Default which is continuing. Each Chargor hereby consents to the Collateral Agent making an application to the Chief Land Registrar on Form CC for registration against the registered titles (if any) specified in Part 1 (*Real Property*) of Schedule 2 (*Details of Certain Assets*) (and any other Real Property from time to time) including a registered title of the right to consolidate.

### **13.3 Restrictions on Exercise of Power of Sale**

Section 103 of the LPA shall not apply to this Debenture and the power of sale arising under the LPA shall arise on the date of this Debenture (and the Secured Liabilities shall be deemed to have become due and payable for that purpose). The power of sale and other powers conferred by section 101 of the LPA as varied or extended by this Debenture and those powers conferred (expressly or by reference) on a Receiver shall be immediately exercisable by the Collateral Agent at any time on or after the occurrence of an Event of Default which is continuing.

### **13.4 Leasing Powers**

The restrictions contained in sections 99 to 100 of the LPA shall not apply to restrict the rights of the Collateral Agent or any Receiver under this Debenture. The statutory powers of leasing may be exercised by the Collateral Agent upon and following the occurrence of an Event of Default which is continuing and the Collateral Agent and any Receiver may make any lease or agreement for lease and/or accept any surrenders of leases and/or grant options on such terms as it sees fit without the need to comply with the aforementioned restrictions.

### **13.5 No Prior Notice Needed**

The powers of the Collateral Agent set out in clauses 13.2 (*Restrictions on Consolidation of Mortgages*) to 13.4 (*Leasing Powers*) may be exercised by the Collateral Agent without prior notice any Chargor.

### **13.6 Right of Appropriation**

- (a) Without prejudice to the other provisions of this Debenture, to the extent that any of the Charged Assets constitute "financial collateral", and this Debenture and the obligations of a Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No.2) Regulations 2003 (SI 2003/3226) ("Regulations")), the Collateral Agent shall have the right to appropriate all or any part of those Charged Assets in or towards discharge of the Secured Liabilities. For this purpose, the parties agree that the value of any such Charged Assets so appropriated shall be the market price of such Charged Assets at the time the right of appropriation is exercised as determined by the Collateral Agent by reference to such method or source of valuation as the Collateral Agent may select, including by independent valuation. The parties agree that the methods or sources of valuation provided for in this Clause or selected by the Collateral Agent in accordance with this Clause shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.
- (b) The Collateral Agent shall notify the relevant Chargor as soon as reasonably practicable of the exercise of its right of appropriation as regards such of the Charged Assets as are specified in such notice.

## **14 EXONERATION**

### **14.1 Exoneration**

No Secured Party shall, nor shall any Receiver, by reason of it or the Receiver entering into possession of the Charged Assets, be liable to account as mortgagee in possession or be liable for any loss or realisation or for any default or omission for which a mortgagee in possession might be liable; but every Receiver duly appointed by the Collateral Agent under this Debenture shall for all purposes be deemed to be in the same position as a receiver duly appointed by a mortgagee under the LPA save to the extent that the provisions of that Act are varied by or are inconsistent with the provisions of this Debenture when the provisions of this Debenture shall prevail and every such Receiver and the Collateral Agent shall in any event be entitled to all the rights, powers, privileges and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.

### **14.2 Indemnity**

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

## **15 APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

### **15.1 Appointment**

- (a) At any time on or after the occurrence of an Event of Default which is continuing, or at the request of a Chargor or its directors, the Collateral Agent may, without prior notice to any Chargor, in writing (under seal, by deed or otherwise under hand) appoint:
  - (i) a Receiver in respect of the Charged Assets or any part thereof and may in like manner from time to time (and insofar as it is lawfully able to do) remove any Receiver and appoint another in his stead; or
  - (ii) one or more persons to be an Administrator in accordance with paragraph 14 of Schedule B1 to the Insolvency Act 1986.
- (b) Nothing in clause 15.1(a) shall restrict the exercise by the Collateral Agent of any one or more of the rights of the Collateral Agent under Schedule B1 to the Insolvency Act 1986 and the rules thereunder or at common law.
- (c) The Collateral Agent is not entitled to appoint a Receiver in respect of any Charged Assets of the Chargors which are subject to a charge which (as created) was a floating charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of any of the Chargors under Part A1 of the Insolvency

Act 1986 other than in respect of a floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act 1986.

## **15.2 More than one Receiver**

Where more than one Receiver is appointed, each joint Receiver shall have the power to act severally, independently of any other joint Receiver, except to the extent that the Collateral Agent may specify to the contrary in the appointment.

## **15.3 Receiver as agent**

A Receiver shall be the agent of the relevant Chargor which shall be solely responsible for his acts or defaults and for his remuneration. No Receiver shall at any time act as agent of any Secured Party.

## **15.4 Receiver's Remuneration**

A Receiver shall be entitled to remuneration for his services at a rate to be determined by the Collateral Agent from time to time (and without being limited to any maximum rate specified by any statute or statutory instrument).

## **15.5 Actions of the Administrator**

Save as provided for in statute or as otherwise agreed in writing by that Secured Party, no Secured Party shall have any liability for the acts or omissions of an Administrator.

# **16 RECEIVER'S POWERS**

## **16.1 Powers**

A Receiver shall have (and be entitled to exercise) in relation to the Charged Assets over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Debenture):

- (a) all of the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (b) all of the powers conferred from time to time on receivers, mortgagors and mortgagees in possession by the LPA;
- (c) all the powers and rights of a legal and beneficial owner and the power to do or omit to do anything which a Chargor itself could do or omit to do; and
- (d) the power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Debenture or upon receivers by statute or law generally (including the bringing or defending of proceedings in the name of, or on behalf of, a Chargor; the collection and/or realisation of Charged Assets in such manner and on such terms as the Receiver sees fit; and the execution of documents in the name of a Chargor (whether under hand, or by way of deed or by utilisation of the company seal of a Chargor).

## **16.2 Powers may be Restricted**

The powers granted to a Receiver pursuant to this Debenture may be restricted by the instrument (signed by the Collateral Agent) appointing him but they shall not be restricted by any winding-up or dissolution of a Chargor.

## **17 PROTECTION OF PURCHASERS**

### **17.1 Absence of Enquiry**

No person or persons dealing with the Collateral Agent or any Receiver shall be concerned to enquire whether any event has happened upon which any of the powers in this Debenture are or may be exercisable or otherwise as to the propriety or regularity of any exercise of such powers or of any act purporting or intended to be an exercise of such powers or whether any amount remains secured by this Debenture. All the protections to purchasers and persons dealing with receivers contained in sections 104, 107 and 109(4) of the LPA shall apply to any person purchasing from or dealing with the Collateral Agent or any such Receiver.

### **17.2 Receipt: Conclusive Discharge**

The receipt of the Collateral Agent or any Receiver shall be a conclusive discharge to any purchaser of the Charged Assets.

## **18 POWER OF ATTORNEY AND DELEGATION**

### **18.1 Power of Attorney: General**

Each Chargor hereby irrevocably and by way of security appoints the Collateral Agent and any Receiver severally to be its attorney in its name and on its behalf and as its act and deed:

- (a) after an Event of Default which is continuing, to execute and deliver any documents or instruments which the Collateral Agent or such Receiver may require for perfecting the title of the Collateral Agent to the Charged Assets or for vesting the same in the Collateral Agent, its nominee or any purchaser;
- (b) to: (i) take such action and execute any agreements, instruments or documents the Collateral Agent may require for any of the purposes set out in this Debenture and to perfect such agreements, instruments or documents (including, without limitation, registering them in any appropriate register), in each case to the extent that a Chargor is required to do so in accordance with this Debenture and has not done so within five (5) Business Days of request by the Collateral Agent; and (ii) after an Event of Default which is continuing, to sign, execute, seal and deliver and otherwise perfect any further security document which the Chargors are required to enter into pursuant to this Debenture; and
- (c) after an Event of Default which is continuing, otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Collateral Agent or any Receiver under this Debenture or which it is required to do pursuant to this Debenture or which may

be deemed expedient by the Collateral Agent or a Receiver in connection with any preservation, disposition, realisation or getting in by the Collateral Agent or such Receiver of the Charged Assets or in connection with any other exercise of any other power under this Debenture.

## **18.2 Power of Attorney: Ratification**

Each Chargor ratifies and confirms and agrees to ratify and confirm all acts and things which any attorney mentioned in this clause 18 (*Power Of Attorney And Delegation*) does or purports to do in exercise of the powers granted by this Clause.

## **18.3 Power of Attorney: General Delegation**

The Collateral Agent and any Receiver shall have full power to delegate the powers, authorities and discretions conferred on it or him by this Debenture (including the power of attorney) on such terms and conditions as it or he shall see fit which shall not preclude exercise of those powers, authorities or discretions by it or him or any revocation of the delegation or any subsequent delegation.

## **19 APPLICATION OF MONIES RECEIVED UNDER THIS DEBENTURE**

Any monies received or recovered by the Collateral Agent or any Receiver pursuant to this Debenture or the powers hereby conferred shall, subject to the repayment of any claims having priority to this Debenture and to any applicable statutory requirement as to (i) the payment of preferential debts, or (ii) the payment of unsecured creditors in accordance with section 176A Insolvency Act 1986 and except as otherwise required pursuant to the Credit Agreement, be applied for the following purposes and in the following order of priority:

- (a) in satisfaction of all costs, charges and expenses and payments (including payments made in accordance with paragraphs (i), (ii) and (iii) of section 109(8) of the LPA) made or incurred by the Collateral Agent or the Receiver and of remuneration to the Receiver in such order as the Collateral Agent shall in its absolute discretion decide;
- (b) in or towards satisfaction of the Secured Liabilities which, subject to any provision to the contrary in the Credit Agreement, shall be applied in such order as the Collateral Agent shall in its absolute discretion decide; and
- (c) the surplus, if any, shall be paid to the relevant Chargor or other person or persons entitled to it,

save that the Collateral Agent may credit any monies received under this Debenture to a suspense account for so long and in such manner as the Collateral Agent may from time to time determine and the Receiver may retain the same for such period as he and the Collateral Agent consider appropriate.

## **20 RELEASE OF SECURITY**

### **20.1 Release**

- (a) At the end of the Security Period, the Collateral Agent shall, at the request and cost of the Chargors, execute or procure the execution by its nominee (in each

case in a form acceptable to the Collateral Agent) and do all such deeds, acts and things as are necessary to release and/or reassign the Charged Assets from the security created by or in accordance with this Debenture, in each case without recourse to, or any representation or warranty by, the Collateral Agent or any of its nominees.

- (b) At the time any Charged Asset is disposed of or to be disposed of to any person (other than any other Loan Party) where such disposal is expressly permitted under the Credit Agreement, the Collateral Agent shall, at the request and cost of the Company, execute or procure the execution by its nominee (in each case in a form acceptable to the Collateral Agent (acting reasonably)) and do all such deeds, acts and things as may be necessary to release and/or reassign that Charged Asset from the security created by or in accordance with this Debenture, in each case without recourse to, or any representation or warranty by, the Collateral Agent or any of its nominees provided that such release and/or reassignment shall be of no effect if the disposal of that Charged Asset does not occur or become effective in full.

## **20.2 Avoidance of Payments**

- (a) No amount paid, repaid or credited to a Secured Party shall be deemed to have been irrevocably paid if the Collateral Agent considers (acting reasonably) that the payment or credit of such amount is capable of being avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or any similar laws.
- (b) If any amount paid, repaid or credited to a Secured Party is avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or any similar laws then any release, discharge or settlement between that Secured Party and the relevant Chargor shall be deemed not to have occurred and the Collateral Agent shall be entitled to enforce this Debenture subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

## **21 AMOUNTS PAYABLE**

### **21.1 No Deduction**

All payments to be made by a Chargor under this Debenture shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If a Chargor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to a Secured Party under this Debenture or, if any such withholding or deduction is made in respect of any recovery under this Debenture, that Chargor shall pay such additional amount so as to ensure that the net amount received by that Secured Party shall equal the full amount due to it under the provisions of this Debenture (had no such withholding or deduction been made).

## **21.2 Currency of Payment**

The obligation of each Chargor under this Debenture to make payments in any currency shall not be discharged or satisfied by any tender, or recovery pursuant to any judgment or otherwise, expressed in or converted into any other currency, except to the extent that tender or recovery results in the effective receipt by a Secured Party of the full amount of the currency expressed to be payable under this Debenture.

## **22 POWER OF SEVERANCE**

In the exercise of the powers conferred by this Debenture, the Collateral Agent or any Receiver may sever and sell plant, machinery or other fixtures separately from the property to which they may be annexed and the Collateral Agent or any Receiver may apportion any rent or other amount without the consent of any Chargor.

## **23 REPRESENTATIONS AND WARRANTIES**

### **23.1 Representations**

Each Chargor makes the representations and warranties contained in Section 4 (*Representations and Warranties*) of the Credit Agreement. In addition, each Chargor represents and warrants in favour of each of the Secured Parties:

#### **(a) Status of Assets and Security**

- (i) It is the sole legal and beneficial owner of the Charged Assets free from any Lien (other than this Debenture and in respect of Charged Assets not subject to, or not purported to be subject to, any fixed charge, mortgage or assignment constituted by clause 3.1 (*Creation of Fixed Security*) or 3.2 (*Assignments*), Permitted Liens) and this Debenture confers the security it purports to confer over the Charged Assets situated in England and Wales.
- (ii) The security created under or pursuant to this Debenture is not subject to any prior or pari passu Liens and is not liable to avoidance on liquidation or bankruptcy, composition or any other similar insolvency proceedings.

#### **(b) Real Property**

- (i) Part 1 (*Real Property*) of Schedule 2 (*Details of Certain Assets*) identifies all freehold and leasehold property (if any) situated in England and Wales, which is beneficially owned by it as at the date of this Debenture;
- (ii) the Real Property is free from any Lien or any tenancies or licence save as permitted by the Credit Agreement, this Debenture or as otherwise permitted in writing by the Collateral Agent;
- (iii) each Chargor is the sole legal and beneficial owner of the Real Property and has a good and marketable title to the same, with the right to transfer with full title guarantee all or any part of the Real Property as at the date of this Debenture; and



- (iv) the Real Property is not registered (or subject to any pending application for registration) as a freehold estate in commonhold land under Part 1 of the Commonhold and Leasehold Reform Act 2002.
- (c) Transfer, registration and calls
  - (i) The Shares are: (i) free from any restrictions as to transfer or registration; (ii) are fully paid and not subject to any calls or other liability to pay money; and (iii) are not subject to any option to purchase or similar rights.
  - (ii) No company whose shares are subject to the Liens purported to be created under this Debenture keeps information in respect of its members on the central register kept by the Registrar at Companies House.
- (d) Intellectual Property
  - (i) Apart from the Intellectual Property Rights set out in Schedule 2 (*Details of Certain Assets*), the Chargors do not own any unregistered Intellectual Property Right that is material to their businesses nor any registered Intellectual Property Rights as at the date of this Debenture.
  - (ii) All IP Licences that are material to the businesses of the Chargors are as at the date of this Debenture listed in Part 2 (*Intellectual Property*) of Schedule 2 (*Details of Certain Assets*) and such IP Licences (if any) are free from any restrictions as to assignment, transfer or charge.

## 23.2 Times for Making Representations and Warranties

The representations and warranties set out in this Clause are made on the date of this Debenture and are deemed to be repeated each day prior to the expiry of the Security Period by reference to the facts and circumstances then existing.

## 24 NEW ACCOUNTS

If a Secured Party receives notice of any subsequent charge or other interest affecting any part of the Charged Assets (the date of receipt of such notice being the "**Notice Date**") it may, without prejudice to its rights under this Debenture, open a fresh account or accounts with any Chargor and continue any existing account in the name of any Charger and may appropriate to any such fresh account any monies paid in, received or realised for the credit of any Chargor after that time without being under any obligation to apply the same or any part of them in discharge of any of the Secured Liabilities. If a Secured Party fails to open a fresh account it will be deemed to have done so and any monies received or realised after the Notice Date will not reduce the Secured Liabilities outstanding on the Notice Date.

## 25 COLLATERAL AGENT AS TRUSTEE

This Debenture is a Loan Document. The Collateral Agent is party to this Debenture in its capacity as agent and trustee for and on behalf of itself and the Secured Parties pursuant to the terms of the Credit Agreement and this Debenture. As between the Collateral Agent and the Secured Parties the terms and conditions of the Credit

Agreement which apply to the Collateral Agent under that agreement also apply to it as Collateral Agent under this Debenture.

### **25.1 Declaration of Trust**

The Collateral Agent declares that it shall hold the Charged Assets on trust for those entities which are from time to time Secured Parties, to the extent that such Charged Assets purport to secure the Secured Liabilities.

### **25.2 Rights**

The Collateral Agent may rely on, exercise and be protected by the discretions, protections, powers and rights conferred on trustees, mortgagees or receivers under the Act, the Trustee Acts 1925 and 2000 (the "**Trustee Acts**"), the Trustee Investment Act 1962 and the Insolvency Act 1986.

### **25.3 Duties**

Each of the parties to this Debenture agree that the Collateral Agent shall have only those duties, obligations and responsibilities expressly specified in this Debenture or any other Loan Document (and no others shall be implied).

### **25.4 Conflicts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Collateral Agent in relation to the trusts constituted by this Debenture. Where there are any inconsistencies between the Trustee Acts and the provisions of this Debenture, the provisions of this Debenture shall, to the extent allowed by the law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Debenture shall constitute a restriction or exclusion for the purpose of that Act.

### **25.5 Resignation and Replacement**

Any resignation or replacement of the Collateral Agent or any appointment of a successor to a Collateral Agent shall take effect in accordance with the provisions of the Credit Agreement save that no resignation of the Collateral Agent as trustee hereunder shall take effect unless at least one other trustee has been appointed.

### **25.6 Winding up of the Trust**

If the Collateral Agent, with the approval of the Lenders, determines that (a) all of the Secured Liabilities and all other obligations secured by this Debenture have been fully and finally discharged and (b) none of the Secured Parties are under any commitment, obligations or liability (whether actual or contingent) to make advances or provide other financial accommodation to any Loan Party pursuant to the Loan Documents, the trusts set out in this clause 25 shall be wound up. Without prejudice to clause 20.1 (*Release*), at that time the Collateral Agent shall, at the request of and at the sole cost of the Chargors hereto, release, without recourse or warranty, all of the Charged Assets then held by it and the rights of the Collateral Agent under this Debenture, at which time each of the Collateral Agent, the Secured Parties and the Chargors shall be released from its obligations under this Debenture (save for those which arose prior to such winding up).

## **26 MISCELLANEOUS**

### **26.1 The Chargors**

This Debenture is binding on the successors and assigns of the Chargors.

### **26.2 Assignment and Transfer**

No Chargor may assign any of its rights or transfer any of its rights or obligations under this Debenture except in a transaction permitted by the Credit Agreement. The Collateral Agent may assign and transfer all or any part of its rights and obligations under this Debenture to a replacement collateral agent appointed pursuant to the terms of the Credit Agreement. Such replacement collateral agent will, from the date of such appointment or transfer, be the agent of and trustee of each other Secured Party under this Debenture instead of the previous collateral agent.

### **26.3 Disclosure of Information**

Without prejudice to Section 10.14 (*Confidentiality*) of the Credit Agreement, a Secured Party may disclose to a Receiver, prospective Receiver or Administrator, any information about the Chargors, this Debenture or any other Loan Documents as that Secured Party shall consider appropriate.

### **26.4 Remedies and Waivers Cumulative**

No failure to exercise, or delay in exercising any right, power, privilege or remedy under this Debenture, on the part of any Secured Party shall operate as a waiver, nor shall any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise, or the exercise of any other right, power, privilege or remedy. No waiver by a Secured Party shall be effective unless it is in writing. The rights and remedies of a Secured Party provided in this Debenture are cumulative and not exclusive of any rights or remedies provided by law.

### **26.5 Set-Off**

Upon the occurrence of an Event of Default which is continuing, a Secured Party may set-off any obligation (although such obligation may be contingent or unmatured) of any Chargor to that Secured Party under this Debenture, the Credit Agreement or any of the other Loan Documents against any obligation owed by that Secured Party to any Chargor (although such obligation may be contingent or unmatured), regardless of the place of payment, booking, branch or currency of either obligation and apply any credit balance to which any Chargor is entitled on any account with that Secured Party in accordance with clause 19 (*Application Of Monies Received Under This Debenture*). If the obligations are in different currencies, a Secured Party may, at the cost of the Chargors, convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **26.6 Partial Invalidity**

If, at any time, any provision of this Debenture is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, neither the legality, validity or enforceability of the remaining provisions, nor the legality, validity or

enforceability of such provision under the law of any other jurisdiction, will in any way be affected or impaired.

## **26.7 Property**

This Debenture is and will remain the property of the Collateral Agent.

## **26.8 Continuing Security**

This Debenture shall be a continuing security and shall not be discharged by any intermediate payment or satisfaction of the whole or any part of the Secured Liabilities.

## **26.9 Additional Security**

This Debenture shall be in addition to and not be affected by any other security or guarantee now or hereafter held by a Secured Party for all or any part of the Secured Liabilities nor shall any such other security or guarantee of liability to a Secured Party of or by any person not a party to this Debenture be in any way impaired or discharged by this Debenture nor shall this Debenture in any way impair or discharge such other security or guarantee.

## **26.10 Variation of Security**

This Debenture shall not in any way be affected or prejudiced by a Secured Party at any time dealing with, exchanging, releasing, varying or abstaining from perfecting or enforcing any security or guarantee referred to in clause 26.9 (*Additional Security*) or any rights which a Secured Party may at any time have or giving time for payment or granting any indulgence or compounding with any person whatsoever.

## **26.11 Enforcement of Other Security**

No Secured Party shall be obliged to enforce any other Lien it may hold for the Secured Liabilities before enforcing any of its rights under this Debenture.

## **26.12 Redemption of Prior Incumbrances**

The Collateral Agent may redeem or take a transfer of any prior Lien over the Charged Assets and may agree the accounts of prior incumbrancers. An agreed account shall be conclusive and binding on the Chargors. Any amount paid in connection with such redemption or transfer (including expenses) shall be paid on demand by the Chargors to the Collateral Agent and until such payment shall form part of the Secured Liabilities.

## **26.13 Stamp Taxes**

Each Chargor covenants to pay to each Secured Party and any Receiver, attorney, manager, agent or other person appointed by the Collateral Agent under this Debenture immediately on demand a sum equal to any liability which that Secured Party, Receiver, attorney, manager, agent or other person appointed by the Collateral Agent under this Debenture incurs in respect of stamp duty, registration fees and other taxes which is or becomes payable in connection with the entry into, performance or enforcement of this Debenture (including any interest, penalties, liabilities, costs and expenses resulting from any failure to pay or delay in paying any such duty, fee or tax).

## **26.14 Costs and Expenses**

Each Chargor shall promptly on demand reimburse each Secured Party and any Receiver, attorney, manager, agent or other person appointed by the Collateral Agent under this Debenture for all costs and expenses (including legal fees) incurred by that Secured Party, Receiver, attorney, manager, agent or other person (together with any applicable VAT) in connection with the perfection of the security contemplated by this Debenture and the exercise, preservation and/or enforcement or attempted enforcement of the security created by or contemplated by this Debenture.

## **26.15 Further advances**

- (a) The Secured Parties must perform their obligations under the Credit Agreement (including any obligation to make available further advances).
- (b) Each Chargor hereby consents to the Collateral Agent making an application to the Chief Land Registrar on Form CH2 for the registration against the registered titles (if any) specified in Part 1 (*Real Property*) of Schedule 2 (*Details of Certain Assets*) (and any unregistered properties subject to compulsory first registration at the date of this Debenture and any other Real Property from time to time including a registered title) of the obligation to make further advances.

## **26.16 Obligations Joint and Several**

The obligations of the Chargors under this Debenture are joint and several.

## **27 CALCULATIONS**

Any interest accruing under this Debenture will accrue from day to day and is calculated as set forth in Section 2.16 (*Computations of Interest and Fees*) of the Credit Agreement.

## **28 NOTICES**

### **28.1 Communications in writing, Electronic communication and Delivery**

Any communication to be made under or in connection with this Debenture shall be made in accordance with Section 10.2 (*Notices*) of the Credit Agreement *mutatis mutandis* and as if any reference therein to the Credit Agreement was a reference to this Debenture.

### **28.2 English language**

- (a) Any notice given under or in connection with this Debenture must be in English. All other documents provided under or in connection with this Debenture must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Collateral Agent, accompanied by a certified English translation and, in this case, the English

translation will prevail unless the document is a constitutional, statutory or other official document.

## **29 COUNTERPARTS**

**29.1** This Debenture 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 Debenture. Delivery of an executed counterpart of this Debenture by telecopier or electronic mail (in PDF, JPEG or other agreed format) shall be equally as effective as delivery of an original executed counterpart of this Debenture. Any party delivering an executed counterpart of this Debenture by telecopier or electronic mail (in PDF, JPEG or other agreed format) also shall deliver an original executed counterpart of this Debenture but the failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Debenture.

**29.2** For the purposes of this clause 29, "**Electronic Signature**" means an electronic symbol or process, including the computer typewritten form of a person's name or digital copy of a person's manuscript signature, attached to or logically associated with a document and executed or adopted by a person with the intent to sign or otherwise authenticate such document. The parties to this Debenture agree that this Debenture may be signed by Electronic Signature and that this method of signature is as conclusive of that party's intention to be bound by the terms of this Debenture as if signed by manuscript signature. Each party to this Debenture represents, warrants and undertakes that its execution of this Debenture by Electronic Signature complies with applicable law and is effective in demonstrating that party's agreement to be bound by the terms of this Debenture.

## **30 GOVERNING LAW**

This Debenture and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

## **31 ENFORCEMENT**

### **31.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Debenture or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual dispute or claim) (a "**Dispute**").
- (b) Subject to clause 31.1(c) below, the parties to this Debenture agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Chorgor will:
  - (i) argue to the contrary; or
  - (ii) initiate or pursue any proceedings relating to a Dispute in any jurisdiction other than England.

- (c) This clause 31.1 is for the benefit of each of the Secured Parties only. As a result, a Secured Party shall not be prevented from initiating or pursuing proceedings relating to a Dispute in any other courts with jurisdiction nor from contending that such courts are appropriate and convenient. To the extent allowed by law, a Secured Party may initiate or pursue:
- (i) proceedings in any other court; and
  - (ii) concurrent proceedings in any number of jurisdictions, irrespective of whether proceedings have already been initiated by any party in England. Each Chargor irrevocably waives any right it may have to claim that the action has been brought in an inconvenient forum.

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

## SCHEDULE 1

### Chargors

Name	Company number	Jurisdiction
DIGITAL RIVER UK LIMITED	05788465	England and Wales
DIGITAL RIVER UK HOLDINGS I LTD	09524884	England and Wales
DIGITAL RIVER UK HOLDINGS II LTD	09525376	England and Wales



**SCHEDULE 2**  
**Details of Certain Assets**

**Part 1**  
**Real Property**

None as at the date of this Debenture.

**Part 2**  
**Intellectual Property**

Trademarks

None as at the date of this Debenture.

Trademark Applications

None as at the date of this Debenture.

Patents

None as at the date of this Debenture.

Patent Applications

None as at the date of this Debenture.

**Part 3**  
**Assigned Agreements**

None as at the date of this Debenture.

**Part 4**  
**Shares**

<b>Chargor shareholder</b>	<b>Subsidiary</b>	<b>shareholding</b>	<b>Percentage of shareholding</b>
Digital River UK Holdings I Ltd	Digital River UK Holdings II Ltd	40,114 A ordinary shares of £0.01 each and 2,106 B ordinary shares of £0.01 each	100%

**Part 5**  
**Bank Accounts**

Chargor	Bank	Place	Account No.
Digital River UK Limited	JPMorgan	London	██████████
Digital River UK Limited	JPMorgan	London	██████████

**Part 6**  
**Insurance Policies**

None as at the date of this Debenture.

### SCHEDULE 3

#### Form of Notice

[On letterhead of the relevant Chargor]

To: [debtor (etc)]

[Date]

Dear Sirs

**Debenture dated [• ] between [• ] and Cerberus Business Finance Agency, LLC (the "Debenture")**

We hereby give you notice that under the Debenture we have [charged (by way of first fixed charge)] [OR assigned] in favour of [the Collateral Agent] (the "**Collateral Agent**") all of our rights to and title and interest from time to time in the property described in the Annexure to this Notice (the "**Assigned/Charged Property**").

We hereby irrevocably instruct and authorise you to:

- (a) disclose to the Collateral Agent such information regarding the [Assigned]/[Charged] Property as it may from time to time request;
- (b) send copies of all notices relating to the [Assigned]/[Charged] Property to the Collateral Agent;
- (c) comply with the terms of any written notice or instruction relating to the [Assigned]/[Charged] Property received by you from the Collateral Agent; and
- (d) [make all payments due to us in respect of the [Assigned]/[Charged] Property to the Collateral Agent at such account as the Collateral Agent shall specify to you in writing unless and until the Collateral Agent notifies you otherwise]<sup>1</sup>/[continue to make all payments due to us in respect of the Assigned Property to us unless and until the Collateral Agent notifies you otherwise, in which event you should make all future payments as then directed by the Collateral Agent]<sup>2</sup>

Your acknowledgement will be deemed to confirm in favour of the Collateral Agent that you:

- 1 have not received notice of the interest of any third party relating to the [Assigned]/[Charged] Property;
- 2 are not aware of any dispute between ourselves and yourselves relating to the [Assigned]/[Charged] Property; and
- 3 have neither claimed nor exercised, nor will claim or exercise, any security interest, set off, counter claim or other right in respect of the [Assigned]/[Charged] Property.

We acknowledge that you may comply with the instructions in this letter without any further permission from us.

---

<sup>1</sup> Add in any notice delivered pursuant to clause 6.2(a)

<sup>2</sup> Add in any notice delivered pursuant to clause 6.2(d)

The instructions in this letter may not be revoked or amended without the prior written consent of the Collateral Agent.

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

Please confirm your agreement to the above by sending the attached acknowledgement to the Collateral Agent at 875 Third Avenue, New York, New York 10022, Attention: Daniel Wolf with a copy to us and Schulte Roth & Zabel LLP.

Yours faithfully

.....

(Authorised signatory)  
for and on behalf of  
**[Chargor]**

## **Annexure**

*[insert details of Assigned/Charged Property]*

[On the letterhead of the debtor]

[On copy of Notice]

To: Cerberus Business Finance Agency, LLC

875 Third Avenue, New York, New York 10022

Attention: Daniel Wolf

Copy: [Chargor]

and

Schulte Roth & Zabel LLP 919 Third Avenue New York New York 10022,

Attention: David Arnstein

[Date]

Dear Sirs

**Debenture dated [• ] between [• ] and Cerberus Business Finance Agency, LLC (the "Debenture") [Description of [Assigned]/Charged] Property]**

We acknowledge receipt of the Notice of [Assignment]/[Charge] dated [• ] relating to the Debenture, of which this is a copy.

Yours faithfully

duly authorised signatory for and on  
behalf of **[debtor]**

## SCHEDULE 4

### Notice to Account Bank

[On the letterhead of relevant Chargor]

To: [Account Bank]

Attention: [• ]

[Date]

Dear Sirs

**Debenture dated [• ] between [• ] and Cerberus Business Finance Agency, LLC (the "Debenture")**

We hereby give you notice that under the Debenture we have charged (by way of a first fixed charge) in favour of Cerberus Business Finance Agency, LLC (the "**Collateral Agent**") all our rights in respect of any amount standing to the credit of [any] [the] account maintained by us with you (the "**Account[s]**").

We irrevocably instruct and authorise you to:

- (a) disclose to the Collateral Agent any information relating to [any] [the] Account requested from you by the Collateral Agent;
- (b) comply with the terms of any written notice or instruction relating to [any] [the] Account received by you from the Collateral Agent; and
- (c) following the occurrence of an Event of Default which is continuing and upon notification of the same from the Collateral Agent, pay or release any sum standing to the credit of [any] [the] Account only in accordance with the written instructions of the Collateral Agent.

References in this letter to [any] [the] Account include any replacement account or sub-division of [that] [those] Account[s].

We acknowledge that you may comply with the instructions in this letter without any further permission from us.

The instructions in this letter may not be revoked or amended without the prior written consent of the Collateral Agent.

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

Please confirm your agreement to the above by sending the attached acknowledgement to the Collateral Agent at 875 Third Avenue, New York, New York 10022, Attention: Daniel Wolf with a copy to us and Schulte Roth & Zabel LLP.

Yours faithfully

(Authorised signatory)  
**[Chargor]**

## SCHEDULE 5

### Acknowledgement of Account Bank

[On the letterhead of the Account Bank]

To: Cerberus Business Finance Agency, LLC  
875 Third Avenue, New York, New York 10022

Attention: Daniel Wolf

Copy: [Chargor]  
and  
Schulte Roth & Zabel LLP 919 Third Avenue New York New York 10022,  
Attention: David Arnstein

[Date]

Dear Sirs

Debenture dated [• ] between [• ] and Cerberus Business Finance Agency, LLC  
(the "**Debenture**")

We confirm receipt from [Chargor] (the "**Chargor**") of a notice dated [• ] of a charge upon the terms of the Debenture over all the rights of the Chargor to any amount standing to the credit of [any of] the Chargor's account[s] with us (the "**Account[s]**").

We confirm that we:

- (a) accept the instructions contained in the notice and agree to comply with the notice;
- (b) have not received notice of the interest of any third party in [any] [the] Account;
- (c) have neither claimed nor exercised, nor will claim or exercise, any security interest, set-off, counter-claim or other right in respect of [any] [the] Account; and
- (d) following the occurrence of an Event of Default which is continuing and upon notification of the same from you, will not permit any amount to be withdrawn from [any] [the] Account without your prior written consent.

The Account[s] currently maintained with us [are] [is]:

[Specify account[s] and account number[s]]

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

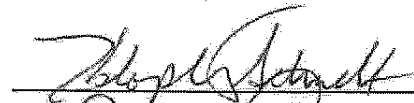

Yours faithfully

(Authorised signatory)

## EXECUTION PAGES


### Chargors

EXECUTED as a DEED  
by **DIGITAL RIVER UK LIMITED** acting by  
a director in the presence of a witness



 Director  
 Witness

Name of Witness: Alejandro Guerrero

Witness' Occupation: 


Witness' Address: 

EXECUTED as a DEED  
by **DIGITAL RIVER UK HOLDINGS I LTD** acting by  
a director in the presence of a witness

 Director  
 Witness

Name of Witness: Alejandro Guerrero

Witness' Occupation: 


Witness' Address: 

EXECUTED as a DEED  
by **DIGITAL RIVER UK HOLDINGS II LTD** acting by  
a director in the presence of a witness

 Director  
 Witness

Name of Witness: Alejandro Guerrero

Witness' Occupation: 

Witness' Address: 



**Collateral Agent**

**CERBERUS BUSINESS FINANCE AGENCY, LLC**



\_\_\_\_\_ Authorised signatory

\_\_\_\_\_ Name

\_\_\_\_\_ Title