



**Registration of a Charge**

Company name: **CAMMACK LIMITED**

Company number: **05983385**



X432GDMH

Received for Electronic Filing: **13/03/2015**

---

**Details of Charge**

Date of creation: **11/03/2015**

Charge code: **0598 3385 0001**

Persons entitled: **SANNE FIDUCIARY SERVICES LIMITED AS THE SECURITY AGENT**

Brief description: **NONE.**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

---

**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 THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **CHARLES MURRAY MARTIN**



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

Company number: 5983385

Charge code: 0598 3385 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 11th March 2015 and created by CAMMACK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th March 2015 .

Given at Companies House, Cardiff on 16th March 2015

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 11 March **2015**

**CERTAIN COMPANIES**  
as Chargors

**SANNE FIDUCIARY SERVICES LIMITED**  
as Security Agent

---

**Security Agreement**

---

This Agreement is entered into subject to the terms of the Subordination Deed and clause 30 of the Facility Agreement, in each case referred to in this Agreement.



**Freshfields Bruckhaus Deringer**

Freshfields Bruckhaus Deringer LLP  
65 Fleet Street  
London EC4Y 1HS

LON34856229 164980-0003

## CONTENTS

CLAUSE	PAGE
1. Interpretation .....	1
2. Covenant to Pay.....	6
3. Creation of Security.....	6
4. Conversion of Floating Charge.....	8
5. Release and Reassignment.....	9
6. Provisions relating to Transaction Security.....	9
7. Restriction on Dealings .....	10
8. Representations and Warranties .....	10
9. Real Property .....	12
10. Monetary Claims .....	15
11. Accounts .....	16
12. Investments.....	17
13. Insurance.....	19
14. Assigned Agreements.....	20
15. Intellectual Property .....	21
16. Plant and Machinery.....	21
17. Enforcement of Transaction Security .....	22
18. Administrator.....	24
19. Receiver.....	25
20. Delegation.....	27
21. Preservation of Security.....	28
22. Further Assurances .....	31
23. Power of Attorney .....	31
24. Application of Proceeds.....	32
25. Expenses and Indemnities .....	32
26. Changes to Parties .....	32
27. Miscellaneous.....	33
28. Partial Invalidity .....	34
29. Notices.....	34
30. Counterparts .....	35
31. Governing Law and Enforcement.....	35
Schedule 1 Original Chargors.....	37

Schedule 2 Security Assets.....	38
Schedule 3 Notice for Accounts.....	40
Schedule 4 Notice for Insurance Policies.....	44
Schedule 5 Notice for Assigned Agreements.....	47
Schedule 6 Form of Deed of Accession.....	49

THIS AGREEMENT is made on 11 March 2015

**BETWEEN**

**THE COMPANIES** listed in Schedule 1 as chargors (each an *Original Chargor*); and

**SANNE FIDUCIARY SERVICES LIMITED** for itself and as agent and trustee for each of the other Secured Parties (as defined below) (the *Security Agent*).

**WHEREAS**

- (A) Each Chargor is required to enter into this Agreement as a condition of the Finance Documents.
- (B) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

**IT IS AGREED** as follows:

**1. Interpretation**

**1.1 Definitions**

In this Agreement, unless the context otherwise requires, (a) words and expressions defined in the Facility Agreement shall have the same respective meanings; and (b) the following words and expressions shall have the meanings given to them in this Clause 1:

*Accession Document* means a deed of accession substantially in the form set out in Schedule 6 (*Form of Deed of Accession*) (or such other form as the Security Agent and the Parent may approve).

*Account* means a Collection Account or a Mandatory Prepayment Account and all Related Rights.

*Account Bank* means any bank, building society, financial institution or other person with whom an Account is maintained by a Chargor.

*Additional Chargor* means a person who has acceded to this Agreement as an Additional Chargor by executing an Accession Document.

*Adlington Option* means the option to acquire the landlord's reversion contained in clause 46 of the lease relating to Units 7, 10 and 10A Adlington Business Park, Adlington, Macclesfield, Cheshire dated 10 January 2014 between (1) Peter Brian Kirk, Robert Charles Kirk and Helen Mary Palin, (2) William Kirk Limited and (3) Kinaxia Limited.

*Assigned Agreements* means any present or future:

- (a) Acquisition Documents;
- (b) agreement evidencing any Structural Intra-Group Loan; and

- (c) agreement specified as such in Part D of Schedule 2 (*Security Assets*) and any other agreement designated as an Assigned Agreement by the Security Agent and (in each case) all Related Rights.

**Chargor** means each Original Chargor and each Additional Chargor.

**Collection Account** means, in relation to a Chargor:

- (a) any of its accounts specified as such in Part C of Schedule 2 (*Security Assets*) and all Related Rights; and
- (b) any other account opened or maintained by it (other than a Mandatory Prepayment Account and including any replacement account or subaccount of such account) and all Related Rights.

**Default Rate** means the rate of interest determined in accordance with clause 10.3 (*Default interest*) of the Facility Agreement.

**Discharge Date** has the meaning given to it in the Subordination Deed.

**Enforcement Event** means the occurrence of an Event of Default in respect of which notice has been served by the Facility Agent in accordance with clause [25.21] (*Acceleration*) of the Facility Agreement.

**Ensco** means Ensco 898 Limited, a company incorporated in England and Wales with registered company number 07830878.

**Excluded Shares** means the shares in Ensco.

**Facility Agreement** means the agreement dated on or about the date of this Agreement between, among others, Kinaxia Transport and Warehousing Limited as Borrower and Sanne Fiduciary Services Limited as Facility Agent.

**Group Shares** means, in relation to a Chargor, the shares in any member of the Group owned legally or beneficially by it or held by the Security Agent or any nominee on its behalf other than the Excluded Shares (including the shares identified in respect of that Chargor in Part B of Schedule 2 (*Security Assets*) (if any)) and all Related Rights.

**Insurance Policy** means, in relation to a Chargor, any contract or policy of insurance of any kind (other than in relation to third party liabilities or similar claims) in which that Chargor has an interest from time to time and all Related Rights.

**Intellectual Property** means (i) any patents, trade marks, service marks, designs, logos, trade names, domain names, copyrights (including rights in computer software), database rights, semi-conductor topography rights, utility models, rights in designs, rights in get up, rights in inventions, rights in know-how, moral rights and other intellectual property rights and interests (which may now or in the future subsist), in each case whether registered or unregistered, and (ii) the benefit of all applications and all rights to use such assets (which may now or in the future subsist) and **registered** includes registrations and applications for registration.

**Investments** means, in relation to a Chargor, any stock, share, debenture, loan stock, security, bond, warrant, coupon, interest in any investment fund and any other

investment (whether or not marketable) other than the Excluded Shares, whether held directly by or to the order of that Chargor or by any trustee, fiduciary or clearance system on its behalf (including the Group Shares and any Cash Equivalent Investments) and all Related Rights.

**Land Registry** means H.M. Land Registry.

**Mandatory Prepayment Account** means, in relation to a Chargor:

- (a) any of its accounts specified as such in Part C of Schedule 2 (*Security Assets*) and all Related Rights; and
- (b) any other account so designated by a Chargor and the Security Agent and all Related Rights.

**Monetary Claims** means, in relation to a Chargor, any book and other debts and monetary claims owing to that Chargor (other than in respect of any Account) and all Related Rights.

**Plant and Machinery** means, in relation to a Chargor, any plant and machinery, vehicles, office equipment, computers and other chattels (excluding any forming part of its stock in trade or work in progress) in which that Chargor has an interest and all Related Rights.

**Real Property** means, in relation to a Chargor:

- (a) any freehold, leasehold or other immovable property belonging to that Chargor (including the property identified in respect of that Chargor in Part A of Schedule 2 (*Security Assets*) (if any)) and all Related Rights; and
- (b) any buildings, trade and other fixtures or fittings forming part of such property and all Related Rights.

**Receiver** means a receiver and manager or other receiver appointed under this Agreement in respect of the Security Assets and shall, if allowed by law, include an administrative receiver.

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

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

**Secured Obligations** means all present and future liabilities and obligations due, owing or payable at any time by any Obligor or any Debtor to any Secured Party under or in connection with the Finance Documents (including all monies covenanted to be paid under this Agreement), both actual and contingent and whether incurred



solely or jointly or in any other capacity (including as principal or surety) together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery of a payment or discharge on the grounds of preference,

and any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**Security Assets** means all the assets and undertaking of each Chargor from time to time mortgaged, charged or assigned (or expressed to be mortgaged, charged or assigned) pursuant to this Agreement.

**Short Term Leases** means:

- (a) a lease dated 7 May 2014 made between (1) Cammack Properties Limited and (2) N.C Cammack & Son Limited relating to buildings yard and land at Tyburn Hill, White Colne, Colchester, Essex CO6 2PS;
- (b) a lease dated 30 April 2012 relating to Unit 7, Halifax Way, Earls Colne Business Park, Earls Colne and made between (1) Wilkin & Sons Limited and (2) N C Cammack & Son Limited; and
- (c) a lease dated 10 January 2014 made between (1) Peter Brian Kirk Robert Charles Kirk and Helen Mary Palin and (2) William Kirk Limited and (3) Kinaxia Limited relating to Units 7, 10 and 10A Adlington Business park, Adlington, Cheshire.

**Specified Intellectual Property** means, in relation to a Chargor, the Intellectual Property identified in Part E of Schedule 2 (*Security Assets*) and any other Intellectual Property notified to the Security Agent pursuant to Clause 15.2 (*Other undertakings*) and (in each case) all Related Rights.

**Tameside Reversionary Lease** means a reversionary lease of Tameside Freight Terminal, Tame Street, Stalybridge, Cheshire SK15 1ST for a term expiring in 2026.

## 1.2 Construction

- (a) The provisions of clause 1.2 (*Construction*) of the Facility Agreement shall apply to this Agreement as if set out in full with references to "this Agreement" being treated as references to this Agreement.

- (b) A reference in this Agreement to any stock, share, debenture, loan stock, security, bond, warrant, coupon, interest in any investment fund and any other investment includes:
  - (i) all dividends, interest, coupons and other distributions paid or payable;
  - (ii) all stocks, shares, securities, rights, moneys, allotments, benefits and other assets accruing or offered at any time by way of redemption, substitution, conversion, exchange, bonus or preference, under option rights or otherwise; and
  - (iii) any rights against any clearance system and any right under any custodian or other agreement,
 in relation to that stock, share, debenture, loan stock, security, bond, warrant, coupon, interest in any investment fund or other investment.
- (c) The terms of the other Finance Documents and of any side letters relating to the Finance Documents are incorporated in this Agreement to the extent required for any contract for the purported disposition of any Security Assets contained in this Agreement to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- (d) The fact that the details of any assets in the Schedules are incorrect or incomplete shall not affect the validity or enforceability of this Agreement in respect of the assets of any Chargor.

### **1.3 Trustee Act 1925 and Trustee Act 2000**

- (a) Section 1 of the Trustee Act 2000 shall not apply to any function of the Security Agent. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.
- (b) For the avoidance of doubt:
  - (i) the Security Agent may retain or invest in securities payable to bearer without appointing a person to act as a custodian; and
  - (ii) sections 22 and 23 of the Trustee Act 2000 shall not apply to this Agreement.

### **1.4 Third parties**

- (a) Except as otherwise expressly provided in Clause 17.6(a) (*Protection of third parties*), Clause 25 (*Expenses and Indemnities*) or elsewhere in this Agreement, the terms of this Agreement may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

- (b) Notwithstanding any term of this Agreement, no consent of a third party is required for any termination or amendment of this Agreement.

## **1.5 Distinct Security**

All Transaction Security shall be construed as creating a separate and distinct Security over each relevant asset within any particular class of assets defined or referred to in this Agreement. The failure to create an effective Security, whether arising out of any provision of this Agreement or any act or omission by any person, over any one such asset shall not affect the nature or validity of the Security imposed on any other such asset, whether within that same class of assets or otherwise.

## **1.6 Chargor Intent**

Without prejudice to the generality of any other provision of this Agreement, each Chargor expressly confirms that it intends that this Agreement and the Security conferred, evidenced or intended to be created under or in connection with it shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any present or future facility or amount made available under any of the Finance Documents for the purposes of or in connection with, including without limitation, any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

## **2. Covenant to Pay**

- (a) Each Chargor, as primary obligor and not merely as surety, covenants with the Security Agent that it will pay or discharge promptly on demand all of the Secured Obligations on the date(s) on which such Secured Obligations are expressed to become due and in the manner provided for in the relevant Finance Document.
- (b) Each Chargor acknowledges to the Security Agent that the amount secured by this Agreement and in respect of which this Agreement and the security hereby created is enforceable is the full amount of the Secured Obligations.

## **3. Creation of Security**

### **3.1 Legal mortgages**

Each Chargor charges and agrees to charge in favour of the Security Agent by way of first legal mortgage:

- (a) the Real Property in England or Wales vested in it on the date of this Agreement (save for the Short Lease Interests); and
- (b) the Group Shares and any other shares forming part of the Investments belonging to it on the date of this Agreement.

### **3.2 Fixed charges**

Each Chargor charges and agrees to charge in favour of the Security Agent by way of first fixed charge all its rights, title and interest from time to time in and to:

- (a) the Real Property (to the extent not the subject of a mortgage under Clause 3.1 (*Legal mortgages*) and save for the Short Lease Interests);
- (b) the Investments (to the extent not the subject of a mortgage under Clause 3.1 (*Legal mortgages*));
- (c) the Plant and Machinery;
- (d) the Accounts;
- (e) to the extent not effectively assigned under Clause 3.3 (*Assignments*), the Insurance Policies and the Assigned Agreements to which it is party;
- (f) any goodwill and rights in relation to its uncalled capital;
- (g) the benefit of all consents and agreements held by it in connection with the use of any of its assets;
- (h) the Intellectual Property;
- (i) any beneficial interest, claim or entitlement of it to any assets of any pension fund; and
- (j) the Monetary Claims.

### **3.3 Assignments**

Each Chargor assigns and agrees to assign absolutely (subject to the proviso for reassignment set out in Clause 5 (*Release and Reassignment*)) to the Security Agent all its rights, title and interest from time to time in and to:

- (a) the Insurance Policies; and
- (b) each Assigned Agreement to which it is a party.

### **3.4 Floating charge**

- (a) Each Chargor charges in favour of the Security Agent by way of first floating charge all its present and future undertaking and assets of whatever type and wherever located other than the Excluded Shares.
- (b) The floating charge created by each Chargor pursuant to paragraph (a) of this Clause 3.4 shall be deferred in point of priority to all other Transaction Security.
- (c) The floating charge created by each Chargor pursuant to paragraph (a) of this Clause 3.4 is a "qualifying floating charge" for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986. Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to this Agreement.

#### **4. Conversion of Floating Charge**

##### **4.1 Conversion by notice**

The Security Agent may by notice in writing to a Chargor convert the floating charge created by that Chargor under Clause 3.4(a) (*Floating charge*) with immediate effect into fixed charges as regards all or any of such Chargor's assets, rights and property specified in the notice if:

- (a) an Enforcement Event has occurred; or
- (b) the Security Agent, in its reasonable opinion (or, if so directed by the Lenders or any group of them, in the reasonable opinion of those Lenders), considers any Security Asset subject to such floating charge to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy; or
- (c) the Security Agent, in its reasonable opinion (or, if so directed by the Lenders or any group of them, in the reasonable opinion of those Lenders) considers that such conversion is desirable in order to protect the value of the Security Assets or the priority of the Transaction Security.

##### **4.2 Automatic conversion**

The floating charge created under Clause 3.4(a) (*Floating charge*) shall automatically and immediately be converted into a fixed charge over all of a Chargor's assets, rights and property not already subject to an effective fixed charge:

- (a) if that Chargor, without the Security Agent's prior written consent, takes any step to create any Security in breach of Clause 7 (*Restriction on dealings*) over any of the Security Assets subject to such floating charge;
- (b) if any person takes any step to effect any expropriation, attachment, sequestration, distress or execution against any of the Security Assets subject to such floating charge; or
- (c) on the occurrence of an Event of Default in respect of that Chargor under clause 25.7 (*Insolvency proceedings*) of the Facility Agreement.

##### **4.3 Moratorium**

The floating charge created under Clause 3.4(a) (*Floating charge*) may not be converted into a fixed charge solely by reason of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under the Insolvency Act 2000.

##### **4.4 Reconversion to floating charge**

Any floating charge which has crystallised under Clause 4.1 (*Conversion by notice*) or Clause 4.2 (*Automatic conversion*) may by notice in writing given at any time by the Security Agent (acting on the unanimous instructions of each Secured Party) to the relevant Chargor be reconverted into a floating charge under Clause 3.4(a) (*Floating charge*) in relation to the assets, rights and property specified in such notice.

**5. Release and Reassignment**

Upon the irrevocable payment, discharge and performance of all of the Secured Obligations (but subject to Clause 6(f) (*Provisions relating to Transaction Security*)) and provided that no Event of Default shall have occurred and be continuing (as construed in accordance with paragraph (e) of clause 1.2 (*Construction*) of the Facility Agreement) at the date of the request), the Security Agent shall, at the request and cost of the Parent:

- (a) release and re-assign to the relevant Chargor the rights, title and interest in and to the Security Assets; and
- (b) execute such notices and directions to any persons as the relevant Chargor may reasonably require in order to give effect to such release and re-assignment,

in each case, without recourse to or any representation or warranty by any Secured Party or any other person.

**6. Provisions relating to Transaction Security**

- (a) All Transaction Security:
  - (i) is created in favour of the Security Agent for itself and on behalf of each of the other Secured Parties;
  - (ii) is created over the present and future assets of each Chargor; and
  - (iii) is a continuing security for the payment, discharge and performance of all of the Secured Obligations and will extend to the ultimate balance of all sums payable under the Finance Documents regardless of any intermediate payment or discharge in whole or in part.
- (b) The Transaction Security created pursuant to this Agreement shall be in addition to and not in substitution for or derogation of any other security (whether given by the Chargors or otherwise) now or from time to time hereafter held by the Security Agent or any other Secured Party in respect of or in connection with any or all of the Secured Obligations.
- (c) If a Chargor purports to mortgage, assign or charge (absolutely or by way of first fixed mortgage or charge) an asset under this Agreement and such mortgage, assignment or charge breaches a term of an agreement binding on that Chargor in respect of that asset because the consent of a person (other than a member of the Group or an Investor) has not been obtained:
  - (i) that Chargor shall notify the Security Agent immediately;
  - (ii) subject to paragraph (iv) of this Clause 6(c), the relevant mortgage, assignment or fixed charge hereunder will extend to (to the extent no breach of the relevant agreement would occur) the Related Rights in respect of that asset but will exclude the asset itself;

- (iii) unless the Security Agent otherwise requires, that Chargor shall use reasonable endeavours to obtain the consent of the relevant person and, once obtained, shall promptly provide a copy of that consent to the Security Agent; and
  - (iv) forthwith upon receipt of the relevant consent, the relevant asset shall become subject to the Transaction Security in favour of the Security Agent under Clause 3.1 (*Legal mortgages*), Clause 3.2 (*Fixed charges*) or Clause 3.3 (*Assignments*).
- (d) The Security Agent holds the benefit of this Agreement on trust for itself and each of the other Secured Parties on and subject to the terms of this Agreement and the other Finance Documents.
- (e) The Transaction Security created pursuant to this Agreement by each Chargor is made with full title guarantee under the Law of Property (Miscellaneous Provisions) Act 1994 but in each case so that the covenants implied by the Law of Property (Miscellaneous Provisions) Act 1994 in relation to such mortgage, charge or assignment are construed with the omission of:
  - (i) the words “other than any charges, encumbrances or rights which that person does not and could not reasonably be expected to know about” in section 3(1) of the Law of Property (Miscellaneous Provisions) Act 1994; and
  - (ii) section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994.
- (f) If the Security Agent considers that an amount paid to a Secured Party under a Finance Document is, or is capable of being, avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then the Transaction Security and the liability of each Chargor under this Agreement shall continue and that amount will not be considered to have been irrevocably paid for the purposes of this Agreement.

## **7. Restriction on Dealings**

No Chargor may:

- (a) create or permit to subsist any Security on any of the Security Assets; or
- (b) (whether by a single transaction or a number of related or unrelated transactions and whether at the same time or over a period of time) assign, charge, transfer or dispose of all or any part of its rights, title and interest in and to the Security Assets,

unless expressly permitted to do so under the Facility Agreement.

## **8. Representations and Warranties**

### **8.1 Representations and warranties**

Each Chargor represents and warrants to the Security Agent (for itself and as agent and trustee for each of the other Secured Parties) as follows:

- (a) **Accuracy of information:** As at the date of this Agreement, Schedule 2 (*Security Assets*) identifies:
  - (i) all of the Real Property falling within paragraph (a) of that definition, Group Shares, Assigned Agreements and Accounts in which it has any interest (whether direct or indirect); and
  - (ii) all of the Intellectual Property in which it has any interest that it considers (acting reasonably) is required to conduct its business or any part of it.
- (b) **Investments:**
  - (i) The Investments which it purports to mortgage or charge under this Agreement are duly authorised, validly issued and fully paid.
  - (ii) It has not nominated any person to enjoy or exercise any right relating to the Investments pursuant to Part 9 of the Companies Act 2006 or otherwise.
- (c) **Assigned Agreements:**
  - (i) Its obligations under each Assigned Agreement to which it is a party are valid, legally binding and, subject to the Legal Reservations, enforceable in accordance with their terms.
  - (ii) There is no prohibition on assignment in any Assigned Agreement to which it is party that has not been waived by the other parties to it and the entry into and performance by it of this Agreement does not conflict with any term of any Assigned Agreement to which it is party.
- (d) **Security Assets:**
  - (i) It is the sole legal and beneficial owner of, and absolutely entitled to, the assets it purports to mortgage, charge or assign under this Agreement (save, where relevant, in respect of the legal ownership of any of its Investments registered in the name of its nominee or in the name of the Security Agent (or its nominee) pursuant to this Agreement).
  - (ii) It has not mortgaged, charged or assigned or otherwise encumbered or disposed of any of the assets it purports to mortgage, charge or assign under this Agreement.
  - (iii) The assets it purports to mortgage, charge or assign under this Agreement are free from any Security, Quasi-Security or option to purchase or similar right, in each case other than any Security or Quasi-Security expressly permitted under the Facility Agreement.



## **8.2 Times for making representations and warranties**

The representations and warranties set out in Clause 8.1 (*Representations and warranties*):

- (a) are made by each Chargor on the date of this Agreement; and
- (b) (other than the representations and warranties set out in Clause 8.1(a) (*Accuracy of information*)) are deemed to be repeated by each Chargor on each date prior to the Discharge Date on which any of the representations and warranties set out in clause 21 (*Representations*) of the Facility Agreement are repeated,

in each case by reference to the circumstances existing at that time.

## **9. Real Property**

### **9.1 Documents of title relating to Real Property**

Each Chargor shall, on the date of this Agreement, and thereafter on or after the acquisition by that Chargor of any interest in any Real Property, either deposit all deeds and documents of title relating to its Real Property with the Security Agent (or as it shall direct) or provide an undertaking in connection with the same from a law firm and on terms acceptable to the Security Agent. The Security Agent is entitled to hold and retain all such deeds and documents of title until the Discharge Date or, if earlier, until the Real Property to which such deeds or documents of title relate is released from the Transaction Security in accordance with the Finance Documents.

### **9.2 Land Registry**

Each Chargor undertakes to make or procure that there is made a due application to the Land Registry in respect of any Real Property that is registered land (with the Chargor's consent as proprietor of the relevant registered estate):

- (a) to register the first legal mortgage created by this Agreement in favour of the Security Agent;
- (b) to enter a restriction in the following terms on the relevant register of title:

“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 in the security agreement dated [●] in favour of [●] (as agent and trustee for itself and each of the other Secured Parties referred to in that security agreement) referred to in the charges register or its conveyancer”; and
- (c) to enter an obligation to make further advances on the relevant register of title.

### **9.3 Acquisitions of Real Property**

- (a) Each Chargor shall within five Business Days notify the Security Agent of the acquisition of any Real Property and shall:

- (i) as soon as reasonably practicable (and in any event not more than ten Business Days) following such request by the Security Agent and at the cost of the relevant Chargor, execute and deliver to the Security Agent a legal mortgage of that Real Property (in form and substance satisfactory to the Security Agent) in favour of the Security Agent in any form (consistent with this Agreement and containing terms no more onerous than are contained herein) as the Security Agent may reasonably require;
  - (ii) obtain all necessary third party consents for the acquisition of that Real Property and the grant of any legal mortgage entered into pursuant to paragraph (a)(i) of this Clause 9.3;
  - (iii) if the title to that Real Property is registered at the Land Registry or required to be so registered, make (as applicable) a due application for registration of that Chargor as proprietor of the Real Property and of the Security Agent as proprietor of any legal mortgage entered into pursuant to paragraph (i) of this Clause 9.3; and
  - (iv) in any event take all necessary steps for the noting of the Transaction Security in the relevant register of title at the Land Registry.
- (b) The Security Agent hereby requests for the purposes of paragraph (a) above that if a Chargor acquires Real Property pursuant to either:
- (i) the Tameside Reversionary Lease; or
  - (ii) the Adlington Option,
- that the relevant Chargor shall as soon as reasonably practicable (and in any event not more than ten Business Days) following such acquisition, execute and deliver to the Security Agent a legal mortgage of that Real Property pursuant to paragraph (a)(i) of this Clause 9.3.

#### **9.4 Other undertakings**

- (a) Each Chargor shall:
- (i) keep its Real Property in good and substantial repair and condition;
  - (ii) perform and observe in all material respects all the covenants, conditions and stipulations (whether as landlord or tenant) in any lease, agreement for lease or other right to occupy in respect of any of its Real Property and shall not do or permit to subsist any act or thing as a result of which any such lease, agreement for lease or other right to occupy may be subject to determination or right of re-entry or forfeiture prior to the expiration of its term;
  - (iii) not at any time without the prior written consent of the Security Agent sever or remove any of the fixtures forming part of its Real Property or any of the plant and machinery (other than stock in trade or work in progress) on or in its Real Property if to do so would

reasonably be expected to have a materially adverse effect of the value, saleability or use of the Real Property or the enforceability of the Transaction Security; and

- (iv) comply with all planning laws and regulations and the terms of any authorisation in respect of any such planning laws and regulations, in each case relating to any of its Real Property.
- (b) Each Chargor shall, within 14 Business Days of receipt of any application, requirement, order or notice served or given by any public or local or any other authority with respect to all or any part of its Real Property which would be reasonably likely to have a materially adverse effect on its value, saleability or use, deliver a copy to the Security Agent and inform the Security Agent of the steps taken or proposed to be taken to comply with the requirements of that notice.
- (c) No Chargor shall without the prior written consent of the Security Agent:
  - (i) grant or agree to grant (whether in exercise of or independently of any statutory power) any lease or tenancy;
  - (ii) agree to or enter into any amendment or waiver or surrender of any lease or tenancy;
  - (iii) commence any forfeiture proceedings in respect of any lease or tenancy;
  - (iv) part with possession or confer upon any person any contractual licence or right to occupy;
  - (v) consent to any assignment of any tenant's interest under any lease or tenancy;
  - (vi) agree to any rent review in respect of any lease or tenancy; or
  - (vii) serve any notice on any former tenant under any lease or tenancy (or any guarantor of that former tenant) which would entitle it to a new lease or tenancy,in respect of all or any part of its Real Property.
- (d) No Chargor shall:
  - (i) make or permit others to make any application for planning permission in respect of any part of its Real Property; or
  - (ii) carry out or permit to be carried out on any part of its Real Property any development for which the permission of the local planning authority is required,if it could reasonably be expected to have a materially adverse effect on the value, saleability or use of that Real Property or the enforceability of the Transaction Security.

- (e) Each Chargor shall promptly on request by the Security Agent provide information to the Security Agent regarding the status of:
  - (i) the grant of the Tameside Reversionary Lease; and/or
  - (ii) the exercise of the Adlington Option.
- (f) Each Chargor shall grant the Security Agent and its lawyers on reasonable request all facilities within the power of that Chargor to carry out investigations of title in respect of any Real Property and to make such enquiries in relation to any Real Property as a prudent mortgagee might carry out.
- (g) As soon as reasonably practicable following a written demand by the Security Agent following the occurrence of an Enforcement Event or otherwise if the Lender reasonably believes (acting on advice received by it from its advisers for such purpose) that the value of any Real Property is materially and adversely affected, each Chargor shall supply to the Security Agent a report as to the title of that Chargor in respect of any Property, in substantially the same form as the property reports provided to the Facility Agent pursuant to clause 4.1 (*Initial conditions precedent*) of the Facility Agreement (if any) or otherwise in form and substance satisfactory to the Security Agent.
- (h) If any Chargor fails to comply with any of the undertakings in this Clause 9 (*Real Property*) or in clause 24.17 (*Properties*) of the Facility Agreement, the Security Agent (and its agents and contractors) shall be entitled to do such things as it considers are necessary to remedy such failure. That Chargor shall immediately on request by the Security Agent pay the costs and expenses of the Security Agent (and its agents and contractors) incurred (together with any interest at the Default Rate for the period from and including the date incurred up to and excluding the date reimbursed) in connection with any action taken under this Clause 9 (*Real Property*).

## **10. Monetary Claims**

### **10.1 Undertakings**

Each Chargor shall:

- (a) collect and realise its Monetary Claims in a prudent manner (as agent for the Security Agent) and pay the proceeds of those Monetary Claims into a Collection Account forthwith upon receipt (and such proceeds shall be held upon trust by that Chargor for the Security Agent prior to such payment); and
- (b) not factor, discount or otherwise deal with its Monetary Claims save as provided for in paragraph (a) of this Clause 10.1 (or enter into any agreement for such factoring, discounting or dealing),

in each case save as permitted by the Facility Agreement.

### **10.2 Exercise of rights on Enforcement Event**

- (a) On and after the occurrence of an Enforcement Event, no Chargor shall be entitled to withdraw or otherwise transfer the proceeds of collection or realisation of any Monetary Claims standing to the credit of any Collection Account without the prior written consent of the Security Agent.
- (b) On and after the occurrence of an Enforcement Event, each Chargor shall give notice to the debtors in respect of any Monetary Claims in such form as the Security Agent may reasonably require.

## **11. Accounts**

### **11.1 Notices**

Each Chargor shall, no later than five Business Days after the date of this Agreement or, in relation to any Account opened after the date of this Agreement, no later than five Business Days after the date of opening of such account, give notice to each Account Bank substantially in the form set out in Schedule 3 (*Notice for Accounts*) and shall use reasonable endeavours to procure that the Account Bank delivers to the Security Agent a duly completed acknowledgement of such notice.

### **11.2 Other undertakings**

- (a) Prior to the occurrence of an Enforcement Event, each Chargor shall (subject to the terms of the Facility Agreement) be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Collection Account.
- (b) No Chargor shall be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Mandatory Prepayment Account except with the prior written consent of the Security Agent. In relation to any proposed withdrawal of monies from a Mandatory Prepayment Account prior to the occurrence of an Enforcement Event, each Chargor shall, at least three Business Days before the proposed withdrawal date, notify the Security Agent and certify the purpose for which the relevant funds are to be applied. Any such withdrawal shall only be permitted if the Security Agent acting in good faith is satisfied that the monies to be withdrawn are to be applied in accordance with the provisions of the Facility Agreement and has confirmed to the relevant Account Bank that the proposed withdrawal is permitted.
- (c) Each Chargor shall promptly deliver to the Security Agent details of any Account maintained by it (unless such details are set out in Part C of Schedule 2 (*Security Assets*)).
- (d) No Chargor shall, without the Security Agent's prior written consent, permit or agree to any variation of the rights attaching to any Mandatory Prepayment Account or close any Mandatory Prepayment Account.

### **11.3 Exercise of rights on Enforcement Event**

On and after the occurrence of an Enforcement Event:

- (a) no Chargor shall be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account except with the prior written consent of the Security Agent; and
- (b) the Security Agent shall be entitled without notice to withdraw, apply, transfer or set off any or all of the credit balances from time to time on any Account in or towards payment or other satisfaction of all or part of the Secured Obligations in accordance with Clause 24 (*Application of Proceeds*).

## **12. Investments**

### **12.1 Documents of title relating to Investments**

Each Chargor shall, on the date of this Agreement or, if later, upon becoming entitled to the relevant Investments, deliver to the Security Agent in the agreed form:

- (a) all stock and share certificates and other documents of title relating to its Investments (other than any Cash Equivalent Investments); and
- (b) all stock transfer forms (executed in blank and left undated) and other documents that the Security Agent may request in respect of such Investments (including declarations of trust in relation to any Investments in which that Chargor has an interest that are not held in its sole name).

### **12.2 Voting Power**

- (a) Prior to the occurrence of a Voting Event:
  - (i) each Chargor may continue to exercise the voting rights, powers and other rights in respect of its Investments (subject to paragraph (b) of this Clause 12.2); and
  - (ii) if the Investments of a Chargor have been registered in the name of the Security Agent (or its nominee), the Security Agent (or its nominee) shall exercise the voting rights, powers and other rights in respect of such Investments in such manner as that Chargor may direct in writing from time to time.
- (b) No Chargor shall exercise any of its voting rights, powers and other rights in respect of its Investments (or direct the Security Agent (or its nominee) to exercise such voting rights, powers and other rights) in any manner which varies the rights attaching to or conferred by the Investments in any way which could reasonably be expected to materially adversely affect the interests of the Secured Parties or which could reasonably be expected to prejudice the value of or the ability of the Security Agent to realise the Transaction Security in respect of such Investments.
- (c) Before the occurrence of a Voting Event, voting power (for the purposes of section 435(10) of the Insolvency Act 1986) in respect of its Investments shall remain with the Chargor and shall not pass to the Security Agent or any Secured Party.

- (d) In this Clause 12.2, *Voting Event* in relation to a particular Investment means service of a notice by the Security Agent (either specifying that Investment or generally in relation to all or a designated class of Investments) on the Chargor on or following an Enforcement Event specifying that control over voting rights are to pass to the Security Agent.

### **12.3 Other Undertakings**

- (a) Prior to the occurrence of an Enforcement Event, each Chargor shall be entitled to receive and retain all dividends or other income or distributions paid or payable in relation to its Investments to the extent so permitted under the Finance Documents.
- (b) No Chargor shall nominate any person, other than the Security Agent (or its nominee), to enjoy or exercise any right relating to any of the Investments whether pursuant to Part 9 of the Companies Act 2006 or otherwise.
- (c) At any time when any Investments of a Chargor have been registered in the name of the Security Agent (or its nominee), the Security Agent (or its nominee) will not be under any duty to ensure that any dividends, distributions or other monies payable in respect of such Investments are duly and promptly paid or received by it (or its nominee), or to verify that the correct amounts are paid or received by it (or its nominee), or to take any action in connection with the taking up of any (or any offer of any) stocks, shares, rights, monies or other property paid, distributed, accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise on or in respect of such Investments.
- (d) Prior to the occurrence of an Enforcement Event, the Security Agent shall use its reasonable endeavours to forward to the relevant Chargor all material notices, correspondence and other communication it receives in relation to the Investments.
- (e) Each Chargor shall indemnify the Security Agent (or its nominee) against any loss or liability incurred by the Security Agent (or its nominee) as a consequence of the Security Agent (or its nominee) acting at the direction of a Chargor in respect of its Investments.
- (f) Each Chargor shall pay when due all calls or other payments that may be or become due in respect of any of its Investments. In the case of a default by a Chargor in such payment, the Security Agent may make such payment on behalf of that Chargor in which case any sums paid by the Security Agent shall be reimbursed (together with interest at the Default Rate for the period from and including the date incurred up to and excluding the date reimbursed) by that Chargor to the Security Agent on demand.

### **12.4 Exercise of rights on Voting Event**

- (a) On and after the occurrence of a Voting Event, the Security Agent (or its nominee) may exercise or refrain from exercising any voting rights, powers and other rights in respect of the Investments in each case in the name of a

Chargor, the registered holder or otherwise and without any further consent or authority on the part of any Chargor and irrespective of any direction given by a Chargor.

- (b) Each Chargor irrevocably appoints the Security Agent (or its nominee) as its proxy to exercise all voting rights in respect of the Investments with effect from the occurrence of a Voting Event to the extent that such Investments remain registered in its name.

#### **12.5 Clearance systems**

- (a) Each Chargor shall, if so requested by the Security Agent:
  - (i) instruct or request its nominee or custodian to instruct any clearance system (including without limitation, CREST) to transfer any Investment held by it or its nominee or custodian for that Chargor to an account of the Security Agent or its nominee with that clearance system; and
  - (ii) take whatever action the Security Agent may request for the dematerialisation or rematerialisation of any Investments held in a clearance system.
- (b) The Security Agent may, at the expense of each Chargor, take whatever action the Security Agent considers necessary for the dematerialisation or rematerialisation of the Investments.

#### **12.6 Custodian arrangements**

Each Chargor shall:

- (a) promptly give notice of this Agreement to any custodian of any Investment in any form which the Security Agent may reasonably require; and
- (b) use reasonable endeavours to ensure that the custodian acknowledges that notice in any form which the Security Agent may reasonably require.

#### **12.7 The Acquisitions**

- (a) Kinaxia Transport and Warehousing Limited acknowledges and agrees that, with effect from the Completion of the Gag 57 Acquisition, the Group Shares in respect of which it is Chargor under this Agreement will include the Gag 57 Target Shares.
- (b) Kinaxia Transport and Warehousing Limited acknowledges and agrees that, with effect from the Completion of the Lambert Acquisition, the Group Shares in respect of which it is Chargor under this Agreement will include the Lambert Target Shares.

### **13. Insurance**

#### **13.1 Notices**



Each Chargor shall, no later than five Business Days after the date of this Agreement or, in relation to any Insurance Policy entered into after the date of this Agreement, no later than five Business Days after the date of entry into of such Insurance Policy, give notice to each insurer in the form set out in Schedule 4 (*Notice for Insurance Policies*) and shall use reasonable endeavours to ensure that such insurers deliver to the Security Agent a duly completed acknowledgement of such notice.

### **13.2 Other undertakings**

- (a) Each Chargor will take reasonable and practicable steps to preserve and enforce its rights and remedies under or in respect of its Insurance Policies.
- (b) No Chargor will amend, waive or terminate any term of any Insurance Policy unless permitted by the Facility Agreement.
- (c) Each Chargor shall supply to the Security Agent on request copies of each Insurance Policy together with the current applicable premium receipts.

### **13.3 Exercise of rights on Enforcement Event**

On and after the occurrence of an Enforcement Event, the Security Agent may exercise (without any further consent or authority on the part of any Chargor and irrespective of any direction given by a Chargor) any of a Chargor's rights (including direction of payments to the Security Agent) under any of its Insurance Policies.

## **14. Assigned Agreements**

### **14.1 Notices**

- (a) Each Chargor shall, no later than the date of this Agreement or, in relation to any Assigned Agreement entered into or designated as such after the date of this Agreement, no later than the date of entry into or designation of such Assigned Agreement, give notice to each of the other parties to each Assigned Agreement in the form set out in Schedule 5 (*Notice for Assigned Agreements*) and shall:

- (i) in respect of any Assigned Agreement specified in paragraph (a) and (b) of that definition, procure; and
- (ii) in respect of any other Assigned Agreement, use reasonable endeavours to procure,

that such parties deliver to the Security Agent a duly completed acknowledgement of such notice (A) in respect of any Assigned Agreement specified in paragraph (a) of that definition, on the relevant Closing Date; (B) in respect of any Assigned Agreement specified in paragraph (b) of that definition, on the First Closing Date and (C) in respect of any other Assigned Agreement, as soon as reasonably practicable.

- (b) Prior to the occurrence of an Enforcement Event, each Chargor shall remain entitled to exercise all of its rights and remedies under or in respect of the Assigned Agreements.

#### **14.2 Other undertakings**

- (a) Each Chargor shall take reasonable and practicable steps to preserve and enforce its rights and remedies under or in respect of the Assigned Agreements.
- (b) No Chargor will amend, waive or terminate any term of any Assigned Agreement unless permitted by the Finance Documents.
- (c) Each Chargor shall supply to the Security Agent on request copies of each Assigned Agreement to which it is party and any other information and documentation relating to any Assigned Agreement to which it is party.

#### **14.3 Exercise of rights on Enforcement Event**

On and after the occurrence of an Enforcement Event, the Security Agent may exercise (without any further consent or authority on the part of any Chargor and irrespective of any direction given by a Chargor) any Chargor's rights and remedies (including direction of any payments to the Security Agent) under or in respect of any Assigned Agreement to which it is party.

### **15. Intellectual Property**

#### **15.1 Documents of title and registration**

Each Chargor shall, if requested by the Security Agent:

- (a) deliver all deeds and other documents of title relating to its Intellectual Property (including any licences relating to them and any forms or documents relating to any applications to register any such Intellectual Property in the name of a Chargor); and
- (b) execute all such documents and do all acts that the Security Agent may reasonably require to record the interest of the Security Agent in any registers relating to any registered Intellectual Property.

#### **15.2 Other undertakings**

Each Chargor shall promptly provide details to the Security Agent of any Intellectual Property that such Chargor considers (acting reasonably) is required to conduct its business or any part of it unless such details are set out in Part E of Schedule 2 (*Security Assets*).

### **16. Plant and Machinery**

#### **16.1 Maintenance**

- (a) Each Chargor shall keep its Plant and Machinery in good repair and in good working order and condition (fair wear and tear excepted).
- (b) If any Plant and Machinery is located on leasehold premises, each relevant Chargor shall use reasonable endeavours to obtain as soon as is reasonably practicable written confirmation from the lessor that it waives absolutely all

rights it may have now or at any time in the future over any Plant and Machinery.

#### **16.2 Evidence of Security**

Each Chargor shall take any action which the Security Agent may reasonably require to evidence the Transaction Security created over its Plant and Machinery pursuant to this Agreement, including prominently affixing a nameplate on any of its Plant and Machinery stating that:

- (a) the Plant and Machinery is charged in favour of the Security Agent; and
- (b) the Plant and Machinery must not be disposed of without the prior written consent of the Security Agent unless permitted under the Facility Agreement.

#### **17. Enforcement of Transaction Security**

##### **17.1 Timing and manner of enforcement**

- (a) The Transaction Security shall become enforceable and the powers referred to in paragraph (a) of Clause 17.2 (*General*) shall become exercisable upon the occurrence of each, all or any of the following:
  - (i) an Enforcement Event; or
  - (ii) the Chargor requesting the Security Agent to exercise any of its powers under this Agreement; or
  - (iii) the appointment of a Receiver.
- (b) Without prejudice to any specific provisions contained in this Agreement, immediately after the Transaction Security has become enforceable, the Security Agent may in its absolute discretion (subject to the other provisions of the Finance Documents) enforce all or any part of the Transaction Security in any manner it sees fit or as the Majority Lenders direct.
- (c) No Secured Party shall be liable to any Chargor for any loss arising from the manner in which the Security Agent or any other Secured Party enforces or refrains from enforcing the Transaction Security.

##### **17.2 General**

- (a) The Secured Obligations shall be deemed to have become due and payable on the date of this Agreement for the purposes of section 101 of the Law of Property Act 1925. The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (as varied and extended by this Agreement) and all other powers conferred on a mortgagee by law shall be deemed to arise immediately after execution of this Agreement but the Security Agent shall not exercise such powers until the relevant Security constituted by this Agreement has become enforceable.
- (b) Section 103 of the Law of Property Act 1925 shall not apply to this Agreement.

- (c) The Security Agent may lease, make agreements for leases at a premium or otherwise, surrender, rescind or agree or accept surrenders of leases and grant options on such terms and in such manner as it shall think fit without the need to comply with any of the provisions of sections 99 and 100 of the Law of Property Act 1925.

### **17.3 Contingencies**

If the Transaction Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Security Agent (or a Receiver) may pay the proceeds of any recoveries effected by it into such number of suspense accounts as it considers appropriate.

### **17.4 Exercise of powers**

All or any of the powers conferred on mortgagees by the Law of Property Act 1925 as varied or extended by this Agreement and all or any of the rights and powers conferred by this Agreement on a Receiver (whether express or implied) may be exercised by the Security Agent without further notice to any Chargor at any time after an Enforcement Event has occurred, irrespective of whether the Security Agent has taken possession of the Security Assets or appointed a Receiver.

### **17.5 Restrictions on notices**

The Security Agent shall not be entitled to give any notice or instruction referred to in any notice delivered pursuant to Clauses 11.1 (*Notices*), 13.1 (*Notices*) or 14.1 (*Notices*) until an Enforcement Event has occurred.

### **17.6 Protection of third parties**

- (a) No person (including a purchaser) dealing with the Security Agent or a Receiver or any of its respective agents will be concerned to enquire:
  - (i) whether the Secured Obligations have become payable;
  - (ii) whether any power which the Security Agent or that Receiver may purport to exercise has become exercisable or is being properly exercised;
  - (iii) whether any amount remains due under the Finance Documents; or
  - (iv) how any money paid to the Security Agent or to that Receiver is to be applied.
- (b) The receipt of the Security Agent or any Receiver of any moneys paid to the Security Agent or any Receiver by any person (including a purchaser) shall be an absolute and conclusive discharge and shall relieve any person dealing with the Security Agent or that Receiver of any obligation to see to the application of any moneys paid to or by the direction of the Security Agent or any Receiver.

- (c) In paragraphs (a) and (b) of this Clause 17.6, *purchaser* includes any person acquiring, for money or money's worth, any interest or right whatsoever in relation to the Security Assets.

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

Neither the Security Agent nor any Receiver will be liable by reason of entering into possession of a Security Asset:

- (a) to account as mortgagee in possession for any loss on realisation in respect of such Security Asset; or
- (b) for any default or omission for which a mortgagee in possession might be liable.

#### **17.8 Redemption of prior Security**

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

#### **17.9 Right of appropriation**

To the extent that any of the Security Assets constitute "financial collateral" and this Agreement and the obligations of a Chargor under it 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 No. 3226)), the Security Agent shall have the right to appropriate without notice to the Chargor (either on a single occasion or on multiple occasions) all or any part of such financial collateral in or towards discharge of the Secured Obligations and for this purpose the value of the financial collateral so appropriated shall be:

- (a) in the case of cash, the amount standing to the credit of each Account together with any accrued but unposted interest at the time the right of appropriation is exercised; and
- (b) in the case of the Investments, the market price of such Investments determined by the Security Agent in a commercially reasonable manner (including by reference to a public index or independent valuation).

#### **18. Administrator**

- (a) Subject to the Insolvency Act 1986, the Security Agent may appoint one or more qualified persons to be an administrator of any Chargor (to act together with or independently of any others so appointed):
  - (i) if requested by that Chargor in writing;

- (ii) upon the occurrence of an Enforcement Event or on the appointment of a Receiver; or
  - (iii) on the occurrence of an Event of Default under clause 25.7 (*Insolvency proceedings*) of the Facility Agreement.
- (b) Any such appointment may be made pursuant to an application to court under paragraph 12 of schedule B1 to the Insolvency Act 1986 or by filing the specified documents with the court under paragraphs 14 to 21 of schedule B1 to the Insolvency Act 1986.
- (c) In this Clause 18, **qualified person** means a person who, under the Insolvency Act 1986, is qualified to act as an administrator of any company with respect to which he is appointed.

## 19. Receiver

### 19.1 Appointment of Receivers

- (a) The Security Agent may (without notice) by deed or otherwise in writing signed by any officer or manager of the Security Agent or any person authorised for this purpose by the Security Agent, appoint one or more persons to be a Receiver:
  - (i) if requested by that Chargor in writing;
  - (ii) upon the occurrence of an Enforcement Event (whether or not the Security Agent has taken possession of the Security Assets); or
  - (iii) on the occurrence of an Event of Default under clause 25.7 (*Insolvency proceedings*) of the Facility Agreement.
- (b) The Security Agent may not appoint an administrative receiver over the Security Assets to the extent prohibited by section 72A of the Insolvency Act 1986.
- (c) The Security Agent is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under the Insolvency Act 2000.
- (d) Section 109(1) of the Law of Property Act 1925 shall not apply to this Agreement.
- (e) If the Security Agent appoints more than one person as Receiver, the Security Agent may give those persons power to act either jointly or severally.
- (f) Any Receiver may be appointed Receiver of all of the Security Assets or Receiver of a part of the Security Assets specified in the appointment. In the case of an appointment of a part of the Security Assets, the rights conferred on a Receiver as set out in Clause 19.5 (*Powers of Receivers*) shall have effect as though every reference in Clause 19.5 (*Powers of Receivers*) to any Security Assets were a reference to the part of those assets so specified or any part of those assets.

## **19.2 Removal of Receivers**

The Security Agent may by notice in writing remove any Receiver appointed by it (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receivership) whenever it thinks fit and appoint a new Receiver instead of any Receiver whose appointment has terminated for any reason.

## **19.3 Agent of Chargor**

Any Receiver shall be the agent of each Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Law of Property Act 1925. Each Chargor is solely responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver. No Secured Party will incur any liability (either to a Chargor or any other person) by reason of the appointment of a Receiver or for any other reason.

## **19.4 Remuneration**

The Security Agent may (subject to section 36 of the Insolvency Act 1986) determine the remuneration of any Receiver appointed by it and any maximum rate imposed by any law (including under section 109(6) of the Law of Property Act 1925) shall not apply to this Agreement.

## **19.5 Powers of Receivers**

Any Receiver appointed pursuant to Clause 19.1 (*Appointment of Receivers*) shall have the following rights, powers and discretions (in addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under the Law of Property Act 1925):

- (a) to take immediate possession of, get in and collect any Security Asset and to require payment to it or to the Security Agent of any Monetary Claims or credit balance on any Account;
- (b) to carry on any business of any Chargor in any manner he thinks fit;
- (c) to enter into any contract or arrangement and to perform, repudiate, succeed or vary any contract or arrangement to which any Chargor is party;
- (d) to appoint and discharge any managers, officers, agents, accountants, servants, workmen and others for the purposes of this Agreement upon such terms as to remuneration or otherwise as he thinks fit and to discharge any person appointed by any Chargor;
- (e) to raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Transaction Security or otherwise and generally on any terms and for whatever purpose which he thinks fit;
- (f) to sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner, and on any terms which he thinks fit and for a consideration of any kind (which may be payable in a lump sum or by instalments spread over any period);

- (g) to settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of any Chargor or relating in any way to any Security Asset;
- (h) to bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit;
- (i) to give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset;
- (j) to form a Subsidiary of any Chargor and transfer to that Subsidiary any Security Asset;
- (k) to delegate his powers in accordance with this Agreement;
- (l) to lend money or advance credit to any customer of any Chargor;
- (m) to effect any insurance and do any other act which a Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset in each case as he thinks fit;
- (n) to exercise all the powers described in schedule 1 to the Insolvency Act 1986 whether or not the Receiver is an administrative receiver as defined in the Insolvency Act 1986;
- (o) to purchase or acquire by leasing, hiring, licensing or otherwise (for such consideration and on such terms as he may think fit) any assets which he considers necessary for the carrying on, improvement, realisation or other benefit of any of the Security Assets or the business of any Chargor;
- (p) to exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset;
- (q) to make any payment and incur any expenditure, which the Security Agent is, by this Agreement, expressly or impliedly authorised to make or incur;
- (r) to do all other acts and things which he may consider necessary or reasonably desirable for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Agreement or law; and
- (s) to use the name of any Chargor for any of the purposes set out in paragraphs (a) to (r) (inclusive) of this Clause 19.

## **20. Delegation**

- (a) The Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Agreement. Any such delegation may be made upon such terms (including the power to sub-delegate) and subject to such conditions and regulations as the Security Agent or Receiver may think fit.



- (b) Neither the Security Agent nor any Receiver will be in any way liable or responsible to any Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate except to the extent caused by its or his own gross negligence or wilful misconduct.
- (c) References in this Agreement to the Security Agent or a Receiver shall be deemed to include references to any delegate of the Security Agent or Receiver appointed in accordance with this Clause 20.

## **21. Preservation of Security**

### **21.1 Reinstatement**

- (a) If any payment by a Chargor or any discharge or release given by a Secured Party (whether in respect of the obligations of any person or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
  - (i) the liability of that Chargor and the relevant security shall continue as if the payment, discharge, release, avoidance or reduction had not occurred; and
  - (ii) the relevant Secured Party shall be entitled to recover the value or amount of that security or payment from that Chargor, as if the payment, discharge, avoidance or reduction had not occurred.
- (b) The Security Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

### **21.2 Waiver of defences**

None of the obligations of any Chargor under this Agreement or any Transaction Security will be affected by any act, omission, matter or thing (whether or not known to any Chargor or any Secured Party) which, but for this provision, would reduce, release, prejudice or provide a defence to any of those obligations including:

- (a) any time, waiver, release or consent granted to, or composition with, any Chargor or any other person;
- (b) the release of any Chargor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group or any other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over the assets of, any Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any such rights or security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Chargor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and including any amendment that may increase the liability of a Chargor) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

### **21.3 Immediate recourse**

Each Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from or enforcing against any Chargor under this Agreement. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **21.4 Appropriations**

On and after the occurrence of an Enforcement Event and until all the Secured Obligations have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Chargor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Chargor or on account of any Chargor's liability under this Agreement.

### **21.5 Deferral of Chargors' rights**

- (a) Until all the Secured Obligations have been irrevocably paid in full and unless the Security Agent otherwise directs, no Chargor will exercise any rights which it may have by reason of performance (or a claim for performance) by it of its obligations under the Finance Documents:
  - (i) to be indemnified by an Obligor;
  - (ii) to claim any contribution from any guarantor of any Obligor's obligations under the Finance Documents;
  - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under

the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;

- (iv) to bring legal or other proceedings for an order requiring an Obligor to make any payment, or perform any obligation, in respect of which the relevant Chargor has given a guarantee, undertaking or indemnity under the Finance Documents;
  - (v) to exercise any right of set-off against an Obligor;
  - (vi) to exercise any right of quasi-retainer or other analogous equitable right; and/or
  - (vii) to claim or prove as a creditor of an Obligor in competition with the Secured Parties.
- (b) If any Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by an Obligor under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Secured Parties or as the Secured Parties may direct.

#### **21.6 Security held by Chargor**

No Chargor shall, without the prior consent of the Security Agent, hold or otherwise take the benefit of any Security from any other Obligor in respect of that Chargor's liability under this Agreement. Each Chargor will hold any Security and the proceeds thereof held by it in breach of this provision on trust for the Security Agent.

#### **21.7 Additional security/non-merger**

The Transaction Security is in addition to and shall not be merged into or in any way excluded or prejudiced by any other Security now or hereafter held by or on behalf of any Secured Party in respect of the Secured Obligations or any other amount due by any Chargor to any Secured Party.

#### **21.8 Power of consolidation**

Section 93 of the Law of Property Act 1925 shall not apply to this Agreement or to the Transaction Security.

#### **21.9 New accounts and ruling off**

- (a) Any Secured Party may open a new account in the name of any Chargor at any time after a subsequent Security affects any Security Asset. If a Secured Party does not open a new account in such circumstances it will nevertheless be deemed to have done so upon the occurrence of such circumstances.

- (b) No moneys paid into any account (whether new or continuing) after the occurrence of any circumstances referred to in paragraph (a) of this Clause 21.9 shall reduce or discharge the Secured Obligations.

## **22. Further Assurances**

Each Chargor shall, at its own expense, take whatever action the Security Agent or a Receiver may reasonably require or consider necessary for:

- (a) creating, perfecting or protecting any Security intended to be created by or pursuant to this Agreement;
- (b) facilitating the realisation of any Security Asset;
- (c) creating and perfecting security in favour of the Security Agent over the assets of that Chargor located in any jurisdiction outside England and Wales;
- (d) facilitating the exercise of any right, power or discretion exercisable by the Security Agent or any Receiver in respect of any Security Asset,

including:

- (e) the execution of any legal mortgage, charge, transfer, conveyance, assignment or assurance of any property, whether to the Security Agent (or to its nominee); and
- (f) the transfer of legal and/or equitable title in any existing or future Real Property to a third party (including after the Security Agent has exercised any right of appropriation pursuant to Clause 17.9 (*Right of appropriation*));
- (g) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Security Agent may reasonably require or think necessary.

## **23. Power of Attorney**

### **23.1 Appointment**

- (a) Each Chargor by way of security irrevocably appoints the Security Agent and each Receiver severally as its attorney with full power of substitution, on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:
  - (i) prior to the occurrence of an Enforcement Event, to do anything which that Chargor is obliged to do under this Agreement (but has not done);
  - (ii) on and after the occurrence of an Enforcement Event, to do anything which that Chargor is obliged to do under this Agreement; and
  - (iii) to exercise any of the rights conferred on the Security Agent or any Receiver in relation to the Security Assets or under any Finance

Document, the Law of Property Act 1925 or the Insolvency Act 1986.

- (b) The power of attorney conferred on the Security Agent and each Receiver shall continue notwithstanding the exercise by the Security Agent of any right of appropriation pursuant to Clause 17.9 (*Right of appropriation*).

#### **23.2 Ratification**

Each Chargor ratifies and confirms and agrees to ratify and confirm whatever any attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 23.1 (*Appointment*).

### **24. Application of Proceeds**

#### **24.1 Order of application**

- (a) All amounts received by the Security Agent or any Receiver pursuant to this Agreement or the powers conferred by it shall be applied in accordance with the Finance Documents.
- (b) The order of application referred to in paragraph (a) of this Clause 24.1 shall override any appropriation by any Chargor.

#### **24.2 Receiver's receipts**

Section 109(8) of the Law of Property Act 1925 shall not apply in relation to a Receiver appointed under this Agreement.

### **25. Expenses and Indemnities**

Each Chargor will on demand pay and reimburse each Secured Party, Receiver, attorney, manager, agent or other person (including the officers of such persons) appointed by the Security Agent or a Receiver under this Agreement, on the basis of a full indemnity, in respect of all costs and expenses (including legal fees and other out of pocket expenses and any value added tax or other similar tax thereon) properly incurred by such person in connection with the holding, preservation or enforcement or the attempted preservation or enforcement of any of the Secured Parties' rights under this Agreement or otherwise in connection with the performance of this Agreement or any documents required pursuant to this Agreement including any costs and expenses arising from any actual or alleged breach by any person of any law, agreement or regulation, whether relating to the environment or otherwise (including the investigation of such breach) and will keep each of those persons indemnified against any failure or delay in paying those costs and expenses. Any such person who is not a party to this Agreement may rely on this Clause 25 and enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

### **26. Changes to Parties**

#### **26.1 Transfer by the Security Agent**

The Security Agent may at any time assign or otherwise transfer all or any part of its rights under this Agreement to any successor appointed in accordance with the Finance Documents.

## **26.2 Changes to parties**

Each Chargor agrees to be bound by the terms of clauses 26 (*Changes to the Lenders*) to 28 (*Changes to the Obligors*) (inclusive) of the Facility Agreement and clauses 14 (*Assignment*) to 15 (*Resignation of a Debtor*) of the Subordination Deed and authorises the Security Agent to execute on its behalf any document the Security Agent may reasonably require or consider necessary in relation to the creation, perfection or maintenance of the Transaction Security and any transfer or assignment contemplated by such provisions.

## **26.3 Accession**

- (a) Subject to the terms of the other Finance Documents, a member of the Group:
  - (i) shall become a party to this Agreement in the capacity of a Chargor on the date on which it delivers a duly executed and completed Accession Document to the Security Agent; and
  - (ii) by so delivering a duly executed and completed Accession Document, shall be bound by, and shall comply with, all of the terms of this Deed which are expressed to be binding on a Chargor,in each case, as if it had always been a party to this Agreement as a Chargor.
- (b) Each Chargor consents to members of the Group becoming Chargors as contemplated by the Facility Agreement and irrevocably appoints the Parent as its attorney, with full power of substitution, for the purposes of executing any Accession Document for and on behalf of that Chargor.

## **27. Miscellaneous**

### **27.1 Further advances**

Subject to the terms of the Finance Documents, each Secured Party is under an obligation to make further advances or other financial accommodation to the Borrowers. Such obligation will be deemed incorporated into this Agreement as if set out in it.

### **27.2 Time Deposits**

Without prejudice to any right of set-off any Secured Party may have under any Finance Document or otherwise, if any time deposit matures on any account which any Chargor has with a Secured Party prior to the Discharge Date when:

- (a) the Transaction Security has become enforceable; and
- (b) no amount of the Secured Obligations is due and payable,

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

**27.3 Security Agent's liability**

Neither the Security Agent nor any Receiver shall (either by reason of taking possession of the Security Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to any Chargor or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Security Assets or from any act, default, omission or misconduct of the Security Agent or any Receiver or their respective officers, employees or agents in relation to the Security Assets or in connection with the Finance Documents except to the extent caused by its or his own gross negligence or wilful misconduct.

**27.4 Failure to Execute**

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

**28. Partial Invalidity**

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability of the remaining provisions in that jurisdiction or of that provision in any other jurisdiction.

**29. Notices**

**29.1 Method**

Any notice or other communication to be served under or in connection with this Agreement shall be made in writing and, unless otherwise stated, served in person or by post, fax or any electronic method of communication approved by the Security Agent to the relevant party at its address or fax number shown immediately after its name on the signature page of this Agreement or such other address or number notified by it to the other parties to this Agreement and, in the case of the Security Agent, marked for the attention of the person or department there specified.

**29.2 Deemed Service**

Any notice or other communication served by post will, unless otherwise stated, be effective five Business Days after being deposited in the post (with postage prepaid) in an envelope addressed to it at that address or on delivery if delivered personally or by courier to the relevant address. A notice or other communication sent by fax will, unless otherwise stated, be effective when received in legible form. Any communication or notice to the Security Agent by electronic method will be effective only when actually received in readable form and if addressed in the manner specified by the Security Agent for this purpose.

### **29.3 Proof of Service**

In proving service of any notice or other communication, it will be sufficient to prove:

- (a) in the case of a letter, that such letter was properly stamped or franked, addressed and placed in the post or in the case of personal delivery, was left at the correct address; and
- (b) in the case of a fax transmission, that such fax was duly transmitted to the fax number, as appropriate, of the addressee referred to in Clause 29.1 (*Method*).

### **30. Counterparts**

This Agreement may be executed in any number of counterparts, and by each party hereto on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

### **31. Governing Law and Enforcement**

#### **31.1 Governing law**

This Agreement and any non-contractual obligations arising out of or in relation to this Agreement shall be governed by, and interpreted in accordance with, English law.

#### **31.2 Jurisdiction**

- (a) Subject to paragraphs (b) and (c) below, the English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement (including claims for set-off and counterclaims), including, without limitation, disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement; and (ii) any non-contractual obligations arising out of or in connection with this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.
- (b) The agreement contained in paragraph (a) of this Clause 31.2 is included for the benefit of the Security Agent who shall retain the right to take proceedings in any other courts with jurisdiction and each Chargor irrevocably submits to the jurisdiction of any such court. To the extent permitted by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.
- (c) Each Chargor agrees that a judgment or order of any court referred to in this Clause (c) is conclusive and binding and may be enforced against it in the courts of any other jurisdiction.

#### **31.3 Service of Process**



- (a) Each Chargor hereby irrevocably and unconditionally agrees that:
- (i) failure by any process agent to give notice of process served on it shall not impair the validity of such service or of any judgement based on that service; and
  - (ii) nothing in this Agreement shall affect the right to serve process in any other manner permitted by law.
- (b) Each Chargor shall at all times maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Agreement. Such agent shall be Kinaxia Limited currently of c/o Gateley LLP, Ship Canal House, 98 King Street, Manchester M2 4WU and any claim form, judgment or other notice of legal process shall be sufficiently served on the Chargors if delivered to such agent at its address for the time being. Each Chargor irrevocably undertakes not to revoke the authority of the above agent and if, for any reason, the Security Agent requests the Chargors to do so they shall promptly appoint another such agent with an address in England and advise the Security Agent. If, following such a request, the Chargors fail to appoint another agent, the Security Agent shall be entitled to appoint one on behalf of the Chargors at the expense of the Chargors.

**THIS AGREEMENT** has been executed and delivered as a deed on the date stated at the beginning of this Agreement.

**Schedule 1**  
**Original Chargers**

<b>Name</b>	<b>Registered Number</b>
Kinaxia Limited	07466536
Kinaxia Logistics Limited	09445745
Kinaxia Transport and Warehousing Limited	09447448
Cammack Limited	05983385
N.C.Cammack & Son Limited	00702725
William Kirk Limited	03711044
Bay Freight Limited	01506710

**Schedule 2**  
**Security Assets**

**Part A Real Property**

<b>Chargor</b>	<b>Freehold/leasehold</b>	<b>Description</b>	<b>Title number</b>
Bay Freight Limited	Leasehold	Tameside Freight Terminal, Tame Street, Stalybridge, Cheshire SK15 1ST	MAN195548
N.C. Cammack & Son Limited	Leasehold	Unit 22 and Unit 11 Spitfire Drive, Earls Colne Business Park	EX911557
Foulger Transport Limited	Leasehold	Foulgers Yard, Harling Road, Snetterton, NR16 2JU	
Foulger Transport Limited	Leasehold	Roudham Park Industrial estate, East Harling NR16 2SN	
Foulger Transport Limited	Leasehold	Land and buildings lying to the north of Roudham Road, Harling Road, Norwich	

**Part B Group Shares**

<b>Chargor</b>	<b>Group Member</b>	<b>Number and class of shares</b>	<b>Details of nominees holding legal title</b>
Kinaxia Limited	Kinaxia Logistics Limited	10,000 ordinary shares of £0.01	Kinaxia Limited
Kinaxia Logistics Limited	Kinaxia Transport and Warehousing Limited	10,000 ordinary	Kinaxia Logistics Limited

		shares of £0.01	
Kinaxia Transport and Warehousing Limited	Cammack Limited	100,000 ordinary shares of £1	Kinaxia Transport and Warehousing Limited
Cammack Limited	N.C.Cammack & Son Limited	100,000 ordinary shares of £1	Cammack Limited
Kinaxia Transport and Warehousing Limited	William Kirk Limited	10,000 ordinary shares of £1	Kinaxia Transport and Warehousing Limited
Kinaxia Transport and Warehousing Limited	Bay Freight Limited	50,000 ordinary shares of £1	Kinaxia Transport and Warehousing Limited
William Kirk Limited	Lambert Kirk Limited	50 B ordinary shares of £1	William Kirk Limited

#### Part C Accounts

Chargor	Account Bank	Account Number	Sort Code	Description
Bay Freight Limited	Barclays Bank PLC	43747492	20-55-34	Collection Account
Bay Freight Limited	Barclays Bank PLC	63323064	20-37-63	Collection Account
William Kirk Limited	National Westminster Bank PLC	68277253	01-05-41	Collection Account
N.C. Cammack & Son Limited	Barclays Bank PLC	30237418	20-97-40	Collection Account
Kinaxia Limited	Barclays Bank PLC	43122506	20-55-34	Collection Account

#### Part D Assigned Agreements

Warehousing Agreement relating to Camp Farm, Bridgham, Norwich, Norfolk between Paul Rackham Limited and Foulger Transport Limited dated on or about the First Closing Date.

#### Part E Specified Intellectual Property

None

### Schedule 3

#### Notice for Accounts

To: [Account Bank]

Copy: [●] as Security Agent

Date: [●]

Dear Sirs,

1. We hereby give you notice that we have charged by way of first fixed charge to [●] (the *Security Agent*) on behalf of certain Secured Parties pursuant to a security agreement (the *Security Agreement*) dated [●] entered into by ourselves (as Chargor) (amongst others) in favour of the Security Agent, all of our rights, title and interest in and to all sums of money which may now or in the future be held with you for our account in the accounts identified in the schedule to this notice and to any other accounts from time to time maintained with you by us (the *Accounts*) together with all interest from time to time earned on such sums and the debts represented by such sums and interest.
2. With effect from the date of your receipt of this notice:
  - (a) subject to paragraph (e) below, all sums from time to time standing to the credit of the Accounts should be held to the order of the Security Agent;
  - (b) subject to paragraph (e) below, such sums may only be paid or released in accordance with the written instructions of the Security Agent at any time;
  - (c) the terms and conditions relating to the Accounts designated as "Blocked" may not be amended, varied or waived without the prior written consent of the Security Agent;
  - (d) we are not permitted to withdraw any amount from the Accounts designated as "Blocked" in the schedule to this notice without the prior written consent of the Security Agent; and
  - (e) we are permitted to withdraw or transfer amounts from the Accounts designated as "Not blocked" in the schedule to this notice until such time as the Security Agent provides written notification to you that such permission is withdrawn (and the Security Agent may withdraw or notify this permission in its absolute discretion at any time).
3. You are authorised and instructed, without requiring further approval from us:
  - (a) to pay all monies received by you for the Accounts to (and only to) the credit of the Accounts;
  - (b) to provide the Security Agent with such information relating to the Accounts as it may from time to time request; and

- (c) to comply with the terms of any written notice or instructions in any way relating to, or purporting to relate to, the Security Agreement, the sums standing to the credit of the Accounts from time to time or the debts represented by them which you receive at any time from the Security Agent without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction.
- 4. These instructions may not be revoked without the prior written consent of the Security Agent.
- 5. Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to us) to confirm (by way of undertaking in favour of the Security Agent) that:
  - (a) you agree to the terms of this notice and to act in accordance with its provisions;
  - (b) you have not received notice of the interest of any third party in the accounts; and
  - (c) you have not and will not claim, exercise or enforce any security interest, right of set-off, counterclaim or similar right in respect of the Accounts or the debts represented by them without the prior written consent of the Security Agent [or, in relation to the Accounts designated as "Not blocked" in the schedule to this notice, pursuant to the current account netting arrangements previously approved in writing by the Security Agent].
- 6. This notice and any non-contractual obligations arising out of or in relation to this notice shall be governed by, and interpreted in accordance with, English law.

Yours faithfully,

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

.....  
for and on behalf of  
[●] as Security Agent

**Schedule**

**Account Number**

**Sort Code**

**Status**

[●]

[●]

[Blocked/  
Not blocked<sup>1</sup>]

---

<sup>1</sup> The Mandatory Prepayment Account will be “blocked” accounts. The Collection Account will not be “blocked”.

[On acknowledgement copy]

To: [●] as Security Agent  
[Address]

Copy to: [CHARGOR]

We acknowledge receipt of the above notice and agree to and confirm the matters set out in it.

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

Date: [●]



**Schedule 4**  
**Notice for Insurance Policies**

To: [insurer/insurance broker]

Copy: [●] as Security Agent

Date: [●]

Dear Sirs,

1. We hereby give you notice that we have assigned by way of security to [●] (the *Security Agent*) on behalf of certain Secured Parties pursuant to a security agreement dated [●] entered into by us in favour of the Security Agent, all of our rights, title and interest in and to the insurance policies identified in the schedule to this letter and to any other insurance policies taken out with you by us or on our behalf or under which we have a right to a claim (other than in relation to third party liabilities) (the *Insurance Policies*).
2. We will remain liable under the Insurance Policies to perform all obligations imposed on us under the Insurance Policies and none of the Security Agent, its agents, any receiver, administrator or any other person will at any time be under any obligation or liability to you under or in respect of the Insurance Policies.
3. We will remain entitled to exercise all of our rights under the Insurance Policies and you should continue to give notices under the Insurance Policies to us, until such time as the Security Agent provides written notification to the contrary. Thereafter:
  - (a) all amounts payable under the Insurance Policies should be paid to the Security Agent or as it directs; and
  - (b) all rights in respect of the Insurance Policies will be exercisable by the Security Agent and notices under the Insurance Policies should be given to the Security Agent or as it directs.
4. You are authorised and instructed (without requiring further approval from us) to provide the Security Agent with such information relating to the Insurance Policies as it may from time to time request.
5. These instructions may not be revoked without the prior written consent of the Security Agent.
6. Please note the interest of the Security Agent on the Insurance Policies and show the Security Agent as loss payee and first priority assignee.
7. Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to us) to confirm (by way of undertaking in favour of the Security Agent) that:
  - (a) you agree to the terms of this notice and to act in accordance with its provisions;

- (b) you have not received notice of the interest of any third party in any of the Insurance Policies;
- (c) you have noted the interests of the Security Agent on the Insurance Policies;
- (d) you will not cancel, avoid, release or otherwise allow the Insurance Policies to lapse without giving the Security Agent at least thirty days' prior written notification;
- (e) you have not and will not claim, exercise or enforce any right of set-off, counterclaim or similar right in respect of the Insurance Policies without the consent of the Security Agent;
- (f) you will notify the Security Agent of any breach by us of the terms of any Insurance Policy and will allow the Security Agent or the Secured Parties referred to in this notice to remedy that breach; and
- (g) the Security Agent shall not in any circumstances be liable for the premium in relation to the Insurance Policies (but may elect to pay it).

8. This notice and any non-contractual obligations arising out of or in relation to this notice shall be governed by, and interpreted in accordance with, English law.

Yours faithfully,

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

.....  
for and on behalf of  
[●] as Security Agent

**Schedule**

*[Details of Insurance Policies to be inserted]*

*[On acknowledgement copy]*

To:     [●] as Security Agent  
          [Address]

Copy to:         [CHARGOR]

We acknowledge receipt of the above notice and agree to and confirm the matters set out in it.

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

Date: [●]

**Schedule 5**  
**Notice for Assigned Agreements**

To: [Counterparty to relevant Assigned Agreement]

Copy: [●] as Security Agent

Date: [●]

Dear Sirs,

1. We hereby give you notice that we have assigned by way of security to [●] (the Security Agent) on behalf of certain Secured Parties pursuant to a security agreement dated [●] entered into by us in favour of the Security Agent, all of our rights, title and interest in and to [insert details of relevant Assigned Agreement] (the *Assigned Agreement*).
2. We will remain liable under the Assigned Agreement to perform all obligations imposed on us under the Assigned Agreement and none of the Security Agent, its agents, any receiver, administrator or any other person will at any time be under any obligation or liability to you under or in respect of the Assigned Agreement.
3. We will remain entitled to exercise all of our rights under the Assigned Agreement and you should continue to give notices under the Assigned Agreement to us, until such time as the Security Agent provides written notification to the contrary. Thereafter, all rights in respect of the Assigned Agreement (including the right to direct payments of amounts due thereunder to another account) will be exercisable by the Security Agent and notices under the Assigned Agreement should be given to the Security Agent or as it directs.
4. You are authorised and instructed (without requiring further approval from us) to provide the Security Agent with such information relating to the Assigned Agreement as it may from time to time request;
5. These instructions may not be revoked without the prior written consent of the Security Agent.
6. Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to us) to confirm (by way of undertaking in favour of the Security Agent) that:
  - (a) you agree to the terms of this notice and to act in accordance with its provisions;
  - (b) [you have not and will not claim, exercise or enforce any right of set-off, counterclaim or similar right in respect of the Assigned Agreement without the consent of the Security Agent;]
  - (c) you have not received notice of the interest of any third party in the Assigned Agreement; and

7. [you will notify the Security Agent of any breach by us of the terms of the Assigned Agreement and will allow the Security Agent or the Secured Parties referred to in this notice to remedy that breach].

8. This notice and any non-contractual obligations arising out of or in relation to this notice shall be governed by, and interpreted in accordance with, English law.

Yours faithfully,

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

.....  
for and on behalf of  
[●] as Security Agent

[On acknowledgement copy]

To: [●] as Security Agent  
[Address]

Copy to: [CHARGOR]

We acknowledge receipt of the above notice and agree to and confirm the matters set out in it.

.....  
for and on behalf of  
[Counterparty to relevant Assigned Agreement]

Date: [●]

## **Schedule 6**

### **Form of Deed of Accession**

**THIS DEED** is made on [●]

#### **BETWEEN**

- (1) [COMPANY NAME] (a company incorporated in [England and Wales] with registered number [●]) with its registered office at [●] (the *Additional Chargor*);
- (2) [●] for itself and as attorney for each of the other Chargors under and as defined in the Security Agreement referred to below (the *Parent*); and
- (3) [●] for itself and as agent and trustee for each of the other Secured Parties under and as defined in the Security Agreement referred to below (the *Security Agent*).

#### **WHEREAS**

- (A) [The Additional Chargor is a wholly-owned Subsidiary of the Parent.]
- (B) The Parent has entered into a security agreement dated [●] (the *Security Agreement*) between, among others, the Parent (as an Original Chargor) and the Security Agent. A copy of the Security Agreement has been provided to the Additional Chargor.
- (C) The Additional Chargor has agreed to enter into this Deed and to become a Chargor under the Security Agreement. The Additional Chargor will also, by execution of a separate instrument, become a party to the Facility Agreement (as an Additional Guarantor) and the Subordination Deed (as a debtor and intra-group lender).
- (D) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

**IT IS AGREED** as follows:

#### **1. Interpretation**

Terms defined in the Security Agreement have the same meaning in this Deed (including the recitals) unless given a different meaning in this Deed. This Deed is a Finance Document and a Transaction Security Document.

#### **2. Accession**

With effect from the date of this Deed, the Additional Chargor:

- (a) shall become a party to the Security Agreement in the capacity of a Chargor; and
- (b) shall be bound by, and shall comply with, all of the terms of the Security Agreement which are expressed to be binding on a Chargor,

in each case, as if it had always been a party to the Security Agreement as a Chargor.

### **3. Creation of Security**

#### **3.1 Legal mortgages**

The Additional Chargor charges and agrees to charge in favour of the Security Agent by way of first legal mortgage:

- (a) the Real Property (including, without limitation, the properties referred to in the Schedule (*Security Assets*) of this Deed) in England or Wales vested in it on the date of this Deed; and
- (b) the Group Shares and any other shares forming part of the Investments belonging to it on the date of this Deed (including, without limitation, the shares referred to in the Schedule (*Security Assets*) of this Deed).

#### **3.2 Fixed charges**

The Additional Chargor charges and agrees to charge in favour of the Security Agent by way of first fixed charge all its rights, title and interest from time to time in and to:

- (a) to the extent not the subject of a mortgage under Clause 3.1 (*Legal mortgages*) above, the Real Property (including, without limitation, the properties referred to in the Schedule (*Security Assets*) of this Deed);
- (b) to the extent not the subject of a mortgage under Clause 3.1 (*Legal mortgages*) above, the Investments (including, without limitation, the shares referred to in the Schedule (*Security Assets*) of this Deed);
- (c) the Plant and Machinery;
- (d) the Accounts (including, without limitation, the accounts referred to in the Schedule (*Security Assets*) of this Deed);
- (e) to the extent not effectively assigned under Clause 3.3 (*Assignments*), the Insurance Policies and the Assigned Agreements to which it is party (including, without limitation, the agreements referred to in the Schedule (*Security Assets*) of this Deed);
- (f) any goodwill and rights in relation to its uncalled capital;
- (g) the benefit of all consents and agreements held by it in connection with the use of any of its assets;
- (h) the Intellectual Property (including, without limitation, the intellectual property referred to in the Schedule (*Security Assets*) of this Deed);
- (i) any beneficial interest, claim or entitlement of it to any assets of any pension fund; and
- (j) the Monetary Claims.

#### **3.3 Assignments**

The Additional Chargor assigns and agrees to assign by way of security, absolutely and unconditionally, to the Security Agent all its rights, title and interest from time to time in and to:

- (a) the Insurance Policies; and
- (b) the Assigned Agreements (including, without limitation, any agreements referred to in the Schedule (*Security Assets*) of this Deed) to which it is a party.

**3.4 Floating charge**

- (a) The Additional Chargor charges in favour of the Security Agent by way of first floating charge all its present and future undertaking and assets of whatever type and wherever located.
- (b) The floating charge created by the Additional Chargor pursuant to paragraph (a) of this Clause 3.4 shall be deferred in point of priority to all other Transaction Security.
- (c) The floating charge created by the Additional Chargor pursuant to paragraph (a) of this Clause 3.4 is a “qualifying floating charge” for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986. Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to this Agreement.

**4. Relationship between this Deed and the Security Agreement**

With effect from the date of this Deed:

- (a) the Security Agreement shall be read and construed for all purposes as if the Additional Chargor had been an original party to the Security Agreement in the capacity of Chargor and so that all of the provisions, rights, obligations and liabilities of, under or in connection with, the Security Agreement apply to it in that capacity (but so that the Transaction Security created on this accession shall be created on the date of this Deed);
- (b) the provisions of the Security Agreement which are expressed to apply to the Security Agent, any Secured Party, any Receiver or any other person shall apply to this Deed as if set out in full in it except that references to the Security Agreement shall include this Deed;
- (c) any reference in the Security Agreement to “this Agreement” and similar phrases shall include this Deed and all references in the Security Agreement to any relevant schedule to the Security Agreement (or any part of it) shall include a reference to the Schedule (*Security Assets*) to this Deed (or relevant part of it); and
- (d) the Parent, for itself and as agent for each of the other Chargors under the Security Agreement, agrees to all matters provided for in this Deed.



**5. Governing Law**

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

**THIS DEED has been executed and delivered as a DEED on the date stated at the beginning of this Deed.**

## Schedule Security Assets

### Part A Real Property

Freehold/leasehold	Description	Title number
[•]	[•]	[•]

### Part B Group Shares

Group Member	Number and class of shares	Details of nominees holding legal title
[•]	[•]	[•]

### Part C Accounts

Account Bank	Account Number	Sort Code	Description
[•]	[•]	[•]	[•] <sup>2</sup>

### Part D Assigned Agreements

*[Details to be inserted]*

### Part E Intellectual Property

*[Details to be inserted.]*

---

<sup>2</sup> Specify whether the relevant account is a Collection Account or a Mandatory Prepayment Account.

**Signatories to the Deed of Accession**

**The Additional Chargor**

**EXECUTED as a DEED** )  
by [•] )  
acting by: )

Director

Director/Secretary

**OR**

**EXECUTED as a DEED** )  
by [•] )  
acting by: )

Director:

in the presence of: )  
)

Name of witness:  
Address:

**The Parent**

**EXECUTED as a DEED** )  
by [•] )  
acting by: )

Director

Director/Secretary

**OR**

**EXECUTED as a DEED**

by [•]

acting by:

Director:

in the presence of:

Name of witness:

Address:

**The Security Agent**

[•]

By:

**Signatories to the Security Agreement**

**Original Chargors**

**EXECUTED as a DEED**  
**by KINAXIA LOGISTICS LIMITED**  
**acting by:**

)  
)  
)

*John N. F. L.*

Director:

in the presence of:

*[Signature]*)

Name of witness: **JAMES BENSON**

Address: **Gateley LLP**  
**Ship Canal House**  
**98 King Street**  
**Manchester**  
**M2 4WU**  
**DX 14317 Manchester 1**  
**Tel: 0161 836 7700 Fax: 0161 836 7701**

**EXECUTED as a DEED**  
**by KINAXIA TRANSPORT AND**  
**WAREHOUSING LIMITED**  
**acting by:**

)  
)  
)  
)

*John N. F. L.*

Director:

in the presence of:

*[Signature]*)

Name of witness: **JAMES BENSON**

Address: **Gateley LLP**  
**Ship Canal House**  
**98 King Street**  
**Manchester**  
**M2 4WU**  
**DX 14317 Manchester 1**  
**Tel: 0161 836 7700 Fax: 0161 836 7701**

EXECUTED as a DEED  
by KINAXIA LIMITED  
acting by:

)  
)  
)

*John N. J. L.*

Director:

in the presence of:

*[Signature]*)

Name of witness: *JAMES BENSON*

Address:

Gateley LLP  
Ship Canal House  
98 King Street  
Manchester  
M2 4WU  
DX 14317 Manchester 1  
Tel: 0161 836 7700 Fax: 0161 836 7701

EXECUTED as a DEED  
by CAMMACK LIMITED  
acting by:

)  
)  
)

*John N. J. L.*

Director:

in the presence of:

*[Signature]*)

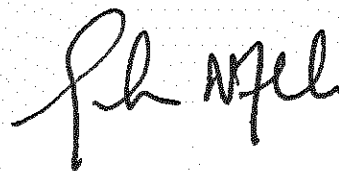
Name of witness: *JAMES BENSON*

Address:

Gateley LLP  
Ship Canal House  
98 King Street  
Manchester  
M2 4WU  
DX 14317 Manchester 1  
Tel: 0161 836 7700 Fax: 0161 836 7701

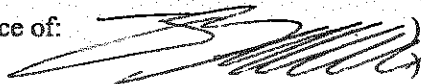
EXECUTED as a DEED  
by N.C.CAMMACK & SON LIMITED  
acting by:

)  
)  
)



Director:

in the presence of:



Name of witness:

JAMES BENSON

Address:

Gateley LLP  
Ship Canal House  
88 King Street  
Manchester  
M2 4WU  
DX 14317 Manchester 1  
Tel: 0161 836 7700 Fax: 0161 836 7701

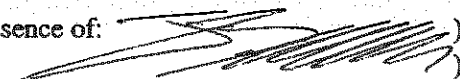
EXECUTED as a DEED  
by WILLIAM KIRK LIMITED  
acting by:

)  
)  
)



Director:

in the presence of:




Name of witness:

JAMES BENSON

Address:


Gateley LLP  
Ship Canal House  
88 King Street  
Manchester  
M2 4WU  
DX 14317 Manchester 1  
Tel: 0161 836 7700 Fax: 0161 836 7701

**EXECUTED as a DEED**  
**by BAY FREIGHT LIMITED**  
acting by:

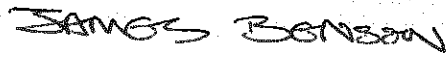
)  
)   
)

Director:

in the presence of:



Name of witness:



Address:

**Gateley LLP**  
Ship Canal House  
98 King Street  
Manchester  
M2 4WU  
DX 14317 Manchester 1  
Tel: 0161 836 7700 Fax: 0161 836 7701



**The Security Agent**

**SANNE FIDUCIARY SERVICES LIMITED**

By:



Address: 13 Castle Street

St Helier

Jersey

JE4 5UT

Fax: +44 (0) 1534 769770

Email: [sanneagency@sannegroup.com](mailto:sanneagency@sannegroup.com)

Attention: Stephen McKenna