



Registration of a Charge

Company Name: **DKH RETAIL LIMITED**

Company Number: **07063508**



XBYAK1WY

Received for filing in Electronic Format on the: **28/02/2023**

Details of Charge

Date of creation: **24/02/2023**

Charge code: **0706 3508 0013**

Persons entitled: **BANTRY BAY CAPITAL LIMITED**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **NORTON ROSE FULBRIGHT LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7063508

Charge code: 0706 3508 0013

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th February 2023 and created by DKH RETAIL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th February 2023 .

Given at Companies House, Cardiff on 1st March 2023

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**

CONFIDENTIAL

Execution Version

Dated 24 February 2023

**DKH Retail Limited
(as Chargor)**

and

**Bantry Bay Capital Limited
(as Security Trustee)**

Book Debts and Accounts Charge

I certify that, save for material redacted pursuant to s.859G of the Companies Act 2006, this copy instrument is a correct copy of the electronic original instrument.

Norton Rose Fulbright LLP

Date: 27 February 2023

 **NORTON ROSE FULBRIGHT**

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Debenture

Dated 24 February 2023

Between

- (1) **DKH Retail Limited**, registered in England with number 07063508 (the **Chargor**); and
- (2) **Bantry Bay Capital Limited**, registered in England with number 11646303, as agent and trustee for the Finance Parties (the **Security Trustee**).

It is agreed:

1 Definitions and Construction

1.1 Definitions

Words and expressions defined in the Facility Agreement have the same meanings in this Deed unless they are expressly defined in it and, in addition, in this Deed:

Act means the Law of Property Act 1925.

Book Debts means (other than in respect of any Non-Vesting Debts or Purchased Receivables):

- (a) each Receivable and all book and other debts (including any sums owed by banks or similar institutions) both actual or contingent, due, owing to or which may become due, owing to or purchased or otherwise acquired by the Chargor; and
- (b) the benefit of all rights relating to the debts referred to in (a) above including any related agreements, documents, rights and remedies (including negotiable or non-negotiable instruments, guarantees, indemnities, legal and equitable charges, reservation of proprietary rights, rights of tracing, unpaid vendor's liens and all similar connected or related rights and assets).

Charged Accounts has the meaning specified in the Debenture.

Collection Accounts means the bank accounts of the Chargor specified in Schedule 1 (*Collection Accounts*) and/or such other bank accounts of the Chargor as the Security Trustee and the Company may designate as Collection Accounts from time to time.

Debenture means the debenture dated 23 December 2022 and entered into between, among others, the Chargor and the Security Trustee.

Declared Default means the occurrence of an Event of Default which is continuing and for which the Agent has served a notice in accordance with clause 23.18 (*Acceleration*) of the Facility Agreement.

Disposal means any transfer or other disposal of an asset or of an interest in an asset, or the creation of any Right over an asset in favour of another person, but not the creation of Security.

Facility Agreement means the facility agreement dated 22 December 2022 between, among others, (1) the Chargor and others (as Borrowers and/or Guarantors), and (2) Bantry Bay Capital Limited (as Arranger, Agent and Security Trustee), as it may from time to time be amended, restated, novated, or replaced (however fundamentally, including by an increase of any size in the amount of the facilities made available under it, the alteration of the nature, purpose or period of those facilities or the change of its parties).

Financial Collateral has the meaning given to it by the Financial Collateral Arrangements (No 2) Regulations 2003.

Insolvency Event, in relation to a person, means:

- (a) the dissolution, liquidation, provisional liquidation, administration, administrative receivership or receivership of that person or the entering into by that person of a voluntary arrangement or scheme of arrangement with creditors;
- (b) any analogous or similar procedure in any jurisdiction other than England; or
- (c) any other form of procedure relating to insolvency, reorganisation or dissolution in any jurisdiction.

Insolvency Legislation means:

- (a) the Insolvency Act 1986 and secondary legislation made under it; and
- (b) any other primary or secondary legislation in England from time to time relating to insolvency or reorganisation.

Non-Vesting Debts means any Receivables which are required or purported to be Purchased Receivables pursuant to the Facility Agreement but which do not, for any reason, vest absolutely and effectively in the Agent (as trustee for the Lenders) from time to time.

Officer, in relation to a person, means any officer, employee or agent of that person.

Other Accounts has the meaning specified in the Debenture.

Receiver means one or more receivers or managers appointed, or to be appointed, under this Deed.

Right means any right, privilege, guarantee, power or immunity, or any interest or remedy, of any kind, whether it is personal or proprietary.

Secured Obligations means all present and future obligations and liabilities, whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever, of each Obligor to the Finance Parties under or pursuant to the Finance Documents.

Security has the meaning given to the term Security Interest in the Facility Agreement.

Security Assets means all assets of the Chargor the subject of any Security created by this Deed.

Security Period means the period during which the liabilities of the Chargor (or any of them) remain in force in accordance with the provisions of clause 12 (*Duration of the Security*).

1.2 Construction

- (a) The principles of construction set out in clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed, insofar as they are relevant to it and subject to any necessary changes as they apply to the Facility Agreement.
- (b) Unless a contrary intention appears, any reference in this Deed to:
 - (i) this **Deed** is a reference to this Deed as amended, varied, novated, supplemented and replaced from time to time;

- (ii) the **Chargor**, the **Security Trustee** or any other **Finance Party** includes any one or more of its assigns, transferees and successors in title (in the case of the Chargor, so far as any such is permitted); and
- (iii) the **Security Trustee** or any other **Finance Party** (except for the references in clause 13 (*Power of Attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.
- (c) Where this Deed imposes an obligation on the Chargor to do something if required or requested by the Security Trustee, it will do so as soon as practicable after it becomes aware of the requirement or request.
- (d) It is intended that this document takes effect as a deed even though the Security Trustee may only execute it under hand.
- (e) This Deed may be executed in any number of counterparts. In addition, if this Deed is to be executed by any party by the signature of more than one person, they may so do on separate counterparts.
- (f) Each category of asset, each asset and each sub-category of asset charged under clause 3 (*Charges*) will be construed separately, as though charged independently and separately of each other.

1.3 Third Party Rights

The Rights conferred on each of the Finance Parties, each Receiver and each Officer of the Secured Trustee or a Receiver under this Deed are enforceable by each of them under the Contracts (Rights of Third Parties) Act 1999. No other term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone who is not a party to this Deed. The parties to this Deed may terminate this Deed or vary any of its terms without the consent of any third party (without prejudice to the terms of the other Finance Documents).

1.4 Contractual recognition of bail-in

The provisions of clause 1.7 (*Contractual recognition of bail-in*) of the Facility Agreement apply to this Deed as if set out in it but with all necessary changes and as if references to Finance Documents referred to this Deed.

1.5 Intercreditor Agreement

The Chargor and the Security Trustee agree that this Deed is the subject of the Intercreditor Agreement and that, in the event of any inconsistency between the terms this Deed and the terms of the Intercreditor Agreement, the terms of the Intercreditor Agreement will prevail.

2 Payment of Secured Obligations

The Chargor covenants with the Security Trustee and the other Finance Parties that it will on demand pay and discharge the Secured Obligations when due.

3 Charges

3.1 Nature of charges

The charges contained in this clause 3 secure the payment and discharge of the Secured Obligations and are given to the Security Trustee as trustee for the Finance Parties with full title guarantee.

3.2 Fixed charge

The Chargor charges by way of first fixed charge all of the Rights which it now has and all of the Rights which it obtains at any time in the future in:

- (a) Collection Accounts and all monies standing to the credit of any of the Collection Accounts and the debts represented by them;
- (b) Book Debts, both uncollected and collected, the proceeds of the same and all monies otherwise due and owing to the Chargor but excluding the Charged Accounts and any amounts standing to the credit of any Charged Account; and
- (c) Non-Vesting Debts, both uncollected and collected, the proceeds of the same and all monies otherwise due and owing to the Chargor,

and any Rights accruing to, derived from or otherwise connected with them.

3.3 Trust

If or to the extent that the charging of any Security Asset is ineffective because of a prohibition on that charging, the Chargor holds it on trust for the Security Trustee.

4 Restrictions

- (a) The Chargor will ensure that the restrictions contained in this clause 4 are complied with unless the Security Trustee agrees to the contrary.
- (b) No Security will exist over, or in relation to, any Security Asset other than Permitted Security Interests.
- (c) There will be no Disposal of any Security Asset except:
 - (i) by way of a Permitted Disposal or a Permitted Transaction; or
 - (ii) with the consent of the Security Trustee.

5 Perfection

5.1 General action

- (a) The Chargor will, at its own expense, create all such Security, execute all such documents, give all such notices, effect all such registrations (whether at the Companies Registry, an asset registry or otherwise), deposit all such documents and do all such other things as the Security Trustee (acting reasonably) may require from time to time in order to:
 - (i) ensure that the Security Trustee has effective first-ranking Security of the type described in clause 3 (*Charges*), subject only to such Permitted Security as the Security Trustee has agreed should rank in priority; and
 - (ii) facilitate the enforcement of the Security created by this Deed, the realisation of the Security Assets or the exercise of any Rights held by the Security Trustee or any Receiver or Administrator under or in connection with this Deed.
- (b) The scope of clause 5.1 is not limited by the specific provisions of the rest of this clause 5 or by any other provision of the Security Documents.

5.2 Collection Accounts

The Chargor will, in respect of each Collection Account held by it as at the date of this Deed, on the date of this Deed, or in respect of any Collection Account opened after the date of this Deed, promptly following the opening of such Collection Account, either:

- (a) serve notice on the bank at which each Collection Account is opened substantially in the form set out in Part I of Schedule 2 (*Forms of Notice to Banks and Acknowledgement*) and procure the relevant bank returns the acknowledgement substantially in the form set out in Part II of Schedule 2 (*Forms of Notice to Banks and Acknowledgement*) or such other form acceptable to the Security Trustee in its absolute discretion; or
- (b) execute and deliver an account control agreement with the relevant account bank on terms acceptable to the Security Trustee and the relevant account bank in their absolute discretion.

5.3 Subsequent Security

If a Finance Party receives notice (actual or otherwise) of any subsequent Security over or affecting all or any of the Security Assets, it will be treated as if it had immediately opened a new account in the name of the Chargor, and all payments received by the relevant Finance Party from the Chargor will be treated as if they had been credited to the new account and will not reduce the amount then due from the Chargor to that Finance Party.

6 Representations

The Chargor makes the representations set out in this clause 6 to the Security Trustee and the Finance Parties on the date of this Deed and on the dates on which representations are to be repeated in accordance with clause 19.27 (*Repetition*) of the Facility Agreement with reference to the facts and circumstances then existing.

6.1 Title

The Chargor is the sole legal and beneficial owner of the Security Assets free of any Security or third party interest of any kind (other than pursuant to or as permitted by the Finance Documents).

7 Undertaking

The Chargor will not be entitled to withdraw the whole or any part of any amount standing to the credit of any Collection Account and the Chargor will not take any action, claim or proceedings against the Security Trustee or any other party for the return or payment to any person of the whole or any part of any amount standing to the credit of any Collection Account.

8 Enforcement

8.1 Time for enforcement

The Security created by the Chargor under this Deed will become enforceable on the occurrence of a Declared Default or if the Chargor so requests.

8.2 Powers on enforcement

At any time after the Security created by the Chargor under this Deed has become enforceable, the Security Trustee may (without prejudice to any other of its rights and remedies and without notice to the Chargor) do all or any of the following:

- (a) exercise all the Rights given to mortgagees by the Act, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the Act;
- (b) to the extent that any Security Asset constitutes Financial Collateral, appropriate it and transfer the title in and to it to the Security Trustee insofar as not already transferred, subject to paragraphs (1) and (2) of Regulation 18;
- (c) subject to clause 9.1 (*Appointment*), appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets; and
- (d) taking any other action it may decide in any jurisdiction other than England.

8.3 Disposal of the Security Assets

In exercising the powers referred to in clause 8.2 (*Powers on enforcement*), the Security Trustee or any Receiver may sell or dispose of all or any of the Security Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

8.4 Application of proceeds

All money received by the Security Trustee or a Receiver under or in connection with the Finance Documents (whether during, or before, enforcement of the Security Documents) will be applied in the following order of priority:

- (a) first, in or towards payment of all amounts payable to the Security Parties, any Receiver or their Officers under clause 12 (*Expenses, liability and indemnity*) and all remuneration due to any Receiver under or in connection with the Security Documents;
- (b) secondly, in or towards payment of the Secured Obligations in such order as is required by the Facility Agreement (and, if any of the Secured Obligations are not then payable, by payment into a suspense account until they become payable); and
- (c) thirdly, in payment of any surplus to the Chargor or other person entitled to it.

9 Appointment and Powers of Receiver

9.1 Appointment

A Receiver must be appointed by an instrument in writing, and otherwise in accordance with the Insolvency Legislation. The appointment of a Receiver may be made subject to such limitations as are specified by the Security Trustee in the appointment. If more than one person is appointed as a Receiver, each person will have power to act independently of any other, except to the extent that the Security Trustee may specify to the contrary in the appointment. Subject to the Insolvency Legislation, the Security Trustee may remove or replace any Receiver.

9.2 Powers

A Receiver will have the powers given to him by the Insolvency Legislation, the powers given to a mortgagee or a receiver by Act, but without the restrictions contained in section 103 of the Act and the power to do, or omit to do, on behalf of the Chargor, anything which the Chargor itself could have done, or omitted to do, if its assets were not the subject of Security and the Chargor were not in insolvency proceedings. Except to the extent provided by law, none of the powers described in this clause 9 will be affected by an Insolvency Event in relation to the Chargor.

9.3 Status and remuneration

- (a) A Receiver will be the agent of the Chargor, which will be solely responsible for his acts and defaults and for the payment of his remuneration.

- (b) The Security Trustee may from time to time determine the remuneration of any Receiver.

9.4 Third parties

A person dealing with the Security Trustee or with a Receiver is entitled to assume, unless it has actual knowledge to the contrary, that:

- (a) those persons have the power to do those things which they are purporting to do; and
- (b) they are exercising their powers properly.

10 Preservation of Security

10.1 Waiver of defences

Neither the Security created by this Deed nor the obligations of the Chargor under this Deed will be affected by an act, omission, matter or thing which, but for this clause 10.1, would reduce, release or prejudice that Security or any of those obligations under this Deed (whether or not known to it or the Security Trustee or any other Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor 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 assets of, any Obligor 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 security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;
- (e) any amendment (however fundamental) or replacement of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

10.2 Immediate recourse

The Chargor waives any right it may have of first requiring the Security Trustee to proceed against or enforce any other rights or security or claim payment from any person before enforcing the security constituted by this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

10.3 Appropriations

Until the expiry of the Security Period, the Security Trustee may:

- (a) refrain from applying or enforcing any other monies, security or rights held or received by the Security Trustee in respect of the Secured Obligations, or apply and enforce the same in such manner and order as it sees fit (whether against the Secured Obligations or otherwise) and the Chargor will not be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any monies received from the Chargor or on account of the Chargor's liability in respect of the Secured Obligations.

10.4 Deferral of Chargor's rights

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

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

11 Duration of the Security

- (a) The liabilities of the Chargor under the Finance Documents and the Security created by the Security Documents will continue until the Secured Obligations have been irrevocably and unconditionally paid or discharged in full, regardless of any intermediate payment or discharge in whole or in part.
- (b) If any payment by the Chargor or any other security provider or any release given by the Security Trustee (whether in respect of the Secured Obligations or any security for them or otherwise) is avoided or reduced as a result of an Insolvency Event or any similar event:
 - (i) the liability of the Chargor under this Deed will continue as if the payment, release, avoidance or reduction had not occurred; and
 - (ii) the Security Trustee will be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, release, avoidance or reduction had not occurred.
- (c) Section 93 of the Act will not apply to the Security Documents.

12 Expenses, liability and indemnity

- (a) The Chargor will, on demand, pay all legal and other costs and expenses (including any stamp duty, registration or other similar taxes) incurred by a Finance Party or by any Receiver in connection with the Security Documents. This includes any costs and expenses relating to the enforcement or preservation of the Security Assets or any of their respective Rights under the Security Documents and any amendment, waiver, consent or release required in connection with the Security Documents.
- (b) Neither the Finance Parties nor a Receiver nor any of their Officers will be in any way liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Security Assets or the Security Documents, except to the extent caused by its own gross negligence or wilful misconduct.
- (c) The Chargor will, on demand, indemnify each of the Finance Parties, a Receiver and their respective Officers in respect of all costs, expenses, losses or liabilities of any kind which it incurs or suffers in connection with:

- (i) anything done or omitted in the exercise of the powers conferred on it by the Security Documents, unless it was caused by its gross negligence or wilful misconduct;
 - (ii) a claim of any kind (whether relating to the environment or otherwise) made against it which would not have arisen if the Security created by the Security Documents had not been granted and which was not caused by its gross negligence or wilful misconduct; or
 - (iii) any breach by the Chargor of the Finance Documents.
- (d) The Finance Parties, any Receiver and their respective Officers will be entitled to be indemnified out of the Security Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in clause 10 (*Expenses, Indemnity and Liability*).

13 Power of Attorney

- (a) The Chargor, by way of security, irrevocably appoints each of the Security Trustee and any Receiver severally to be its attorney to do anything following a Declared Default:
- (i) which the Chargor is obliged to do under the Finance Documents; or
 - (ii) which the attorney may require to exercise any of the Rights conferred on it by the Security Documents or by law.
- (b) The Chargor agrees, on the request of the Security Trustee or any Receiver, to ratify and confirm all such action taken.

14 Remedies

- (a) The Rights created by this Deed are in addition to any other Rights of the Finance Parties against the Chargor or any other security provider under any other documentation, the general law or otherwise. They will not merge with or limit those other Rights, and are not limited by them.
- (b) No failure by a Finance Party to exercise any Right under this Deed will operate as a waiver of that Right. Nor will a single or partial exercise of a Right by a Finance Party preclude its further exercise.
- (c) If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision in any other respect or under the law of any other jurisdiction will be affected or impaired in any way.

15 Notices

Any communications to be made under or in connection with this Deed will be made in accordance with clause 34 (*Notices*) of the Facility Agreement.

16 Other Accounts

At any time before the Security created by this Deed has become enforceable, in the absence of any directions from the Security Trustee to the contrary, any amount permitted by the terms of the Finance Documents to be paid into an Other Account will on payment into such account stand released from the fixed charge created by clause 3.2 (*Fixed charge*) and will stand subject to the floating charge created by clause 3.3(a) (*Floating charge*) of the Debenture, provided that such

release will in no respect prejudice the continuance of any fixed charge created by clause 3.2 (*Fixed charge*) in respect of any other amount.

17 Governing Law and Jurisdiction

17.1 Governing Law

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

17.2 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a **Dispute**).
- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) This clause 17.2 (*Jurisdiction*) is for the benefit of the Finance Parties only. As a result, no Finance Party will be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, a Finance Party may take concurrent proceedings in any number of jurisdictions.

This Deed has been executed as a deed, and it has been delivered on the date stated at the beginning of this Deed.

Schedule 1 Collection Accounts

Chargor	Bank	Branch	Sort Code	Account No.
DKH Retail Limited	HSBC UK Bank Plc	Worthing, West Sussex	██████	██████
DKH Retail Limited	HSBC UK Bank Plc	Worthing, West Sussex	██████	██████
DKH Retail Limited	HSBC UK Bank Plc	Worthing, West Sussex	██████	██████
DKH Retail Limited	HSBC UK Bank Plc	The Cross, Gloucester	██████	██████
DKH Retail Limited	HSBC UK Bank Plc	The Cross, Gloucester	██████	██████
DKH Retail Limited	HSBC UK Bank Plc	Worthing, West Sussex	██████	██████
DKH Retail Limited	HSBC UK Bank Plc	Worthing, West Sussex	██████	██████
DKH Retail Limited	HSBC UK Bank Plc	Worthing, West Sussex	██████	██████

Schedule 2
Forms of Notice to Banks and Acknowledgement

Part I – Collection Account Notice

[On Headed Notepaper of DKH Retail Limited]

[Date]

[Bank]

[Branch]

Attention: []

Dear Sirs,

- 1 We hereby give you notice that by a book debts and account charge dated [●], we have charged to Bantry Bay Capital Limited (the **Security Trustee**) by way of first fixed charge all our rights, title, interest and benefit in and to the following account(s) held with yourselves and all amounts standing to the credit of such account from time to time:

Account No. [●], sort code [●]

Account No. [●], sort code [●]

[Repeat as necessary]

(the **Collection Account(s)**).

- 2 Please acknowledge receipt of this letter by returning a copy of the attached letter on your own headed notepaper with a receipted copy of this notice forthwith, to the Security Trustee at Bantry Bay Capital Limited, 8-12 York Gate, London, United Kingdom, NW1 4QG, Attention: Portfolio Manager – Superdry.

Yours faithfully

.....
for and on behalf of
DKH Retail Limited

Part II – Collection Account Acknowledgement

[On the Headed Notepaper of Bank]

[Date]

Bantry Bay Capital Limited (the **Security Trustee**)
8-12 York Gate
London
United Kingdom
NW1 4QG

Attention: Portfolio Manager – Superdry

Dear Sirs,

DKH Retail Limited (the Company)

- 1 We refer to the notice, received today from the Company with respect to the fixed charge which it has granted to the Security Trustee over the Collection Account(s) (the **Notice**).
- 2 Terms not defined in this letter will have the meanings given to them in the Notice.
- 3 We hereby acknowledge that the Company has charged to the Security Trustee by way of a first fixed charge all of its rights, title, interest and benefit in and to the Collection Account.
- 4 We hereby irrevocably undertake to you that until receipt by us of notice from you confirming that you no longer have any interest in the Collection Account we will:
 - (a) not exercise any right of combination, consolidation, merger or set-off which we may have in respect of, or otherwise exercise any other right which we may have to apply any monies from time to time standing or accruing to the credit of the Collection Account save for fees and charges payable to us for the operation of the Collection Account;
 - (b) promptly notify you of any renewal, renumbering or redesignation of any and all of the Collection Account;
 - (c) promptly send to you copies with respect to all the Collection Account of all statements and, if requested by you, copies of all credits, debits and notices given or made by us in connection with such account;
 - (d) not permit or effect any withdrawal or transfer from the Collection Account by or on behalf of the Company save for withdrawals and transfers requested by you in writing to us pursuant to the terms of this letter;
 - (e) comply with all instructions received by us from you from time to time with respect to the conduct of the Collection Account provided that such instructions are given in accordance with the terms of this letter;
 - (f) comply with all instructions received by us from you from time to time with respect to the movement of funds from the Collection Account provided that:
 - (a) all instructions are received in writing to us at email [●], attention: [●];
 - (b) all instructions must be received by 2pm if they are to be complied with on the same Business Day. Instructions received outside such hours will be complied with on the next Business Day following such receipt. Email instructions will be deemed received at the time of transmission;

- (c) all instructions are given in compliance with the mandate entered into by you stipulating who may give instructions to us; and
 - (d) to the extent that an instruction is given which would in our opinion cause the Collection Account to become overdrawn, transfer the outstanding balance in the account;
 - (g) [(subject to paragraph 4(i) below) effect the following transaction on a daily basis unless we receive written notice to the contrary in accordance with paragraph 4(f) above: the cleared balance of the Collection Account will be transferred into the account at [Bank] account number [●], being an account in your name designated the [the relevant Borrower] Loan Account attn. [●]];]
 - (h) not be obliged to comply with any instructions received from you or undertake the transactions set out in paragraph 4(g)) where:
 - (a) due to circumstances not within our direct control we are unable to comply with such instructions; and
 - (b) that to comply with such instructions will breach a Court Order or be contrary to applicable law,and in each case we will give notice thereof to the Company and the Security Trustee as well as reasons why we cannot comply with such instructions; and
 - (i) not be responsible for any loss caused to you or to the Company in the event that we are unable to comply with any instructions due to circumstances set out in paragraph 4(h), and in any event, we will not be liable for any consequential, special, secondary or indirect loss of or damage to goodwill, profits or anticipated savings (however caused).
- 5 You acknowledge that we are obliged to comply with the terms of this letter and that we have no notice of the particulars of the charge granted to you by the Company other than as set out in the Notice and this letter. You further acknowledge that subject to the terms of this letter we will not be liable to you in any respect if the Company operates the Collection Account in breach of any agreement entered into by the Company with you.
- 6 We note that, for the purposes of this letter, all notices, copy notices, advices and correspondence to be delivered to you will be effectively delivered if sent by email to you at [●] or by post at the address at the top of this letter, in both cases marked for the attention of the Portfolio Manager – Superdry.

This letter is governed by and will be construed in accordance with English law.

Yours faithfully

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

We hereby acknowledge and accept the terms of this letter

.....
for and on behalf of
Bantry Bay Capital Limited

Signatories

The Chargor

Executed as a deed by
DKH RETAIL LIMITED
acting by two directors:

)
)
)
.....
Director

.....
Director

The Security Trustee

BANTRY BAY CAPITAL LIMITED

By:

Name:

Title:

Signatories

The Chargor

Executed as a deed by
DKH RETAIL LIMITED
acting by two directors:

)
)
)
.....
Director

.....
Director

The Security Trustee

BANTRY BAY CAPITAL LIMITED

By: 
Name: Jonathan Levine
Title: Director