



Registration of a Charge

Company name: **CHANCERY NOMINEES (DUNALASTAIR DATA 2) LIMITED**

Company number: **07509770**



X3AVP97K

Received for Electronic Filing: **26/06/2014**

Details of Charge

Date of creation: **09/06/2014**

Charge code: **0750 9770 0001**

Persons entitled: **WALLACE CAPITAL INVESTMENTS LIMITED**

Brief description: **RENTAL MONIES (INCLUDING ANY RENTAL INCREASED PURSUANT TO THE PROVISIONS OF THE LEASE AFFECTING THE PROPERTY (DEFINED BELOW) BUT EXCLUDING SUMS RECEIVABLE BY WAY OF INSURANCE CONTRIBUTIONS, SERVICE CHARGE, PAYMENTS TO SINKING FUNDS OR ANY VAT PAYABLE) WHICH ARE RECEIVED OR RECEIVABLE BY THE COMPANY OR ITS AGENTS IN CONNECTION WITH THE LEASE (TOGETHER WITH ANY FURTHER LEASES, SUB-LEASES, LICENCES OR RIGHTS TO OCCUPY GRANTED BY THE COMPANY OF THE PROPERTY OR ANY PART THEREOF, AS SUCH MAY BE AMENDED, VARIED OR SUPPLEMENTED FROM TIME TO TIME) AFFECTING THE ALL AND WHOLE THAT AREA OF GROUND LYING GENERALLY TO THE EAST OF YORK ROAD, CHAPELHALL, AIRDRIE BEING THE WHOLE OF THE SUBJECTS REGISTERED IN THE LAND REGISTER FOR SCOTLAND UNDER TITLE NUMBERS LAN209436 AND LAN209437 (THE "PROPERTY")**

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: **PINSENT MASONS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7509770

Charge code: 0750 9770 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 9th June 2014 and created by CHANCERY NOMINEES (DUNALASTAIR DATA 2) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th June 2014 .

Given at Companies House, Cardiff on 26th June 2014

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

ASSIGNATION OF RENTS

by

**CHANCERY NOMINEES (DUNALASTAIR DATA 2) LIMITED as nominee and trustee for the
MEMBERS OF THE DUNALASTAIR (DATA 2) DEVELOPMENT SYNDICATE**

in favour of

WALLACE CAPITAL INVESTMENTS LIMITED

Property: Dunalastair Data Centre 2, York Road, Chapelhall, Airdrie

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ASSIGNATION OF RENTS

by

- (1) **CHANCERY NOMINEES (DUNALASTAIR DATA 2) LIMITED**, a company incorporated in England and Wales (registered number 07509770) and having its registered office at Valhalla House, 30 Ashby Road, Towcester, NN12 9PG, as nominee and trustee for the **MEMBERS OF THE DUNALASTAIR (DATA 2) DEVELOPMENT SYNDICATE** (hereinafter referred to as the **Borrower**)

in favour of

- (2) **WALLACE CAPITAL INVESTMENTS LIMITED**, a company incorporated in Scotland (registered number SC464909) and having its registered office at Phoenix House, Phoenix Crescent, Strathclyde Business Park, Bellshill, ML4 3NJ as lender (hereinafter referred to as the **Lender**)

CONSIDERING THAT (One) the Borrower is entitled by virtue of the Lease (as hereinafter defined) in respect of the Property (as hereinafter defined) to receive the rents and others payable by the tenant under the Lease; and (Two) the Borrower has agreed to secure its obligations to the Lender by grant to the Lender of (inter alia) an assignment of the rents and others payable by the tenant under the Lease.

NOW IT IS HEREBY PROVIDED AND DECLARED THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Assignment (including its recital and Schedules):-

Expenses means all expenses (on a full indemnity basis) incurred by the Lender at any time in connection with the Property or the Indebtedness or in entering into this Assignment or in preserving, defending or enforcing the security created by this Assignment or in exercising any power under this Assignment or otherwise, with Interest from the date on which they are incurred;

Indebtedness means all sums of principal, Interest and Expenses which are now and which may at any time or in any currency become due to the Lender by the Borrower whether alone or jointly with another person and whether as principal or cautioner;

Interest means interest at the rate charged to the Borrower by the Lender from time to time;

Lease means the lease affecting the Property detailed in Part 3 of the Schedule, together with any further leases, sub-leases, licences or rights to occupy granted by the Borrower of the Property or any part thereof, as such may be amended, varied or supplemented from time to time;

Loan Agreement means the loan facility agreement between the Lender and the Borrower dated 9 June 2014 (as such facility agreement may be amended, varied, restated, extended, renewed, supplemented novated or substituted from time to time);

Property means the subjects more particularly described in Part 2 of the Schedule;

Rental Income means all rental monies which are received or receivable by the Borrower or its agents in connection with the Lease, including any rental increased pursuant to the provisions of the Lease but excluding sums receivable by way of insurance contributions, service charge, payments to sinking funds or any VAT payable;

Schedule means the Schedule in three Parts annexed and executed as relative hereto; and

- 1.2 Unless otherwise stated, terms and expressions defined in the Loan Agreement shall have the same meaning herein.
- 1.3 The expressions "the Borrower" and "the Lender" shall include the successors, assignees and transferees of the Borrower and the Lender.
- 1.4 Unless any provision of this Assignment or the context otherwise requires, any reference herein to any statute or any section of any statute shall be deemed to include a reference to any statutory modification or re-enactment thereof for the time being in force.
- 1.5 In this Assignment the singular includes the plural and vice versa. Clause headings are for convenience of reference only.
- 1.6 Any reference in this Assignment to a document of any kind whatsoever (including this Assignment) is to that document as amended or varied or supplemented or novated or substituted from time to time.

2. **OBLIGATION TO PAY**

The Borrower undertakes to the Lender that it will pay the Indebtedness at the times and in the manner provided for in the Loan Agreement.

3. **LIMITATION OF LIABILITY**

Notwithstanding any other provision of this Assignment, the Borrower will have no obligation to meet any claim or liability for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Assignment of Rents or any realisation, appropriation or application of the Property except to the extent that: (i) it can properly meet that claim or liability from the assets of the trust constituted amongst the parties comprising the Borrower ("**the Trust**"); and (ii) the assets of the Trust are from time to time sufficient for the purpose having regard to the claims of the members of the Borrower personally and other

creditors of the Borrower properly payable from the Trust. The Lender shall be entitled to enforce and pursue the Borrower in respect of the Indebtedness to the extent of the assets within the Trust and to the exclusion of the personal assets of any member of the Borrower.

4. ASSIGNATION IN SECURITY

4.1 In security of the payment and discharge of its obligations hereunder and in respect of the Indebtedness, the Borrower hereby assigns to the Lender free of all liens, charges and other encumbrances, rights of set-off and counter-claim competent to the Borrower, the Borrower's whole right, title, interest and benefit in and to the Rental Income and all rental deposits and guarantees held pursuant or supplemental to the Lease.

4.2 The Borrower undertakes to the Lender to use all reasonable endeavours to procure payment of rent and other sums on the due dates under the Lease and to take all reasonable and proper steps to obtain payment of the same and any interest thereon as soon as possible thereafter.

5. PERFECTION OF SECURITY

5.1 The Borrower binds and obliges itself to take all steps as are within its power as the Lender may request to perfect under any appropriate law the security hereby intended to be granted or any security interest constituted pursuant to this Assignment in respect of all or any of the Rental Income or for the purposes of protecting such security or facilitating the realisation of the Rental Income or the exercise of the Lender's rights hereunder.

5.2 The Borrower shall co-operate with the Lender in procuring that:

5.2.1 intimation is made as soon as reasonably practicable after the execution of this Assignment to the tenant under the Lease of the fact that an assignment of the Borrower's interest in the Rental Income has been made in favour of the Lender, such intimation to be substantially in the form set out in Part 1 of the Schedule; and

5.2.2 the Lender receives an acknowledgement from such tenant of this Assignment in the form contemplated thereby.

5.3 The Borrower further undertakes to grant such further assignments and intimations on the same terms as herein provided as the Lender shall require in relation to any Rental Income payable in respect of any further lease granted by the Borrower in respect of its interest in the Property.

5.4 The Borrower shall (if requested by the Lender) deposit with the Lender, and the Lender during the continuance of this security shall be entitled to hold, all deeds and documents of

title which would otherwise be in the Borrower's custody or control and which relate to the Rental Income.

6. ADDITIONAL SECURITY PROVISIONS

6.1 The Borrower hereby undertakes and warrants to the Lender in respect of the Lease that save as permitted under the Loan Agreement:-

- 6.1.1 it will not, without the Lender's prior written consent (i) agree to any amendment or variation to the Lease which might result in the security hereby contemplated being or becoming ineffective or (ii) terminate the Lease;
- 6.1.2 it will notify the Lender as soon as the Borrower becomes aware of any material breach of the Lease by any other party;
- 6.1.3 it will perform its obligations under the Lease in accordance with their terms;
- 6.1.4 it will do all things which may be reasonably necessary or desirable to cause the Rental Income to become payable and be paid on the due date for payment as contained in the Lease;
- 6.1.5 it will not, without the Lender's prior written consent, grant, agree to grant, vary, agree to vary or accept the renunciation of the Lease or grant consent for the alienation of the tenant's rights under the Lease;
- 6.1.6 it will not, without the Lender's prior written consent, purport the exercise of or exercise any rights of entry or other rights of enforcement or irritancy as landlord under the Lease and, in particular, but without limitation to the foregoing generality, will not without such consent as aforesaid compromise or release any obligation or payment which may from time to time be outstanding or due from the tenant under the Lease;
- 6.1.7 it will not do or cause or permit to be done or omit to do anything which may depreciate, jeopardise or otherwise prejudice the value of or the enforceability of recovery of the Rental Income.

6.2 In the event that the tenant requests the approval or co-operation of the Borrower in order to assign, encumber or otherwise deal with the whole or any part of their interest in the Lease, the Borrower shall as soon as reasonably practicable inform the Lender of such request and save as otherwise permitted under the Loan Agreement, shall not give any such approval or co-operation without the prior written confirmation of the Lender that it is satisfied, in its discretion, that its interests could not be adversely affected thereby.

- 6.3 It is declared for the avoidance of doubt that no obligations be assumed by the Lender under the Lease by virtue of the execution and delivery of this Assignment and no liability shall fall upon the Lender by virtue thereof in consequence of any failure by the Borrower to perform its obligations thereunder.

7. RETROCESSION

Upon irrevocable payment or discharge in full of the Indebtedness, the Lender shall at the request and cost of the Borrower retrocede and re-assign to the Borrower (or as the Borrower directs) the Borrower's whole right, title, interest and benefit in and to the Rental Income.

8. MANDATE AND ATTORNEY

- 8.1 The Borrower subject to Clause 8.2, hereby irrevocably appoints the Lender to be its mandatory and attorney for and on behalf the Borrower and in its name or otherwise and as its act or deed to create or constitute, or to make any alteration or addition or deletion in or to, any documents which the Lender may require for perfecting or protecting the title of the Lender to the Rental Income or for vesting any of the Rental Income in the Lender or its nominees or any purchaser and to re-deliver the same thereafter and otherwise generally to sign, seal and deliver and otherwise perfect any fixed security, floating charge, transfer, disposition, assignment, security and/or assurance or any writing, assurance, document or act which may be required or may be deemed proper by the Lender on or in connection with any sale, lease, disposition, realisation, getting in or other enforcement by the Lender of all or any of the Rental Income.

- 8.2 Such appointment shall take effect immediately, but the powers conferred thereby shall only become exercisable upon the occurrence of an Event of Default.

- 8.3 The Borrower hereby ratifies and confirms and agrees to ratify and confirm whatever any such mandatory or attorney shall lawfully do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 8.

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

9. RECOVERY OF RENTAL INCOME

The Lender shall not be under any obligation to take any steps to recover any rents or other monies and shall not be under any liability by reason of its having abstained from taking such steps.

10. INDEMNITY

The Lender and every attorney, manager, agent or other person appointed by the Lender in connection herewith shall be entitled to be indemnified out of the Rental Income in respect of all liabilities and expenses incurred by them or him in the execution or purported execution of any of the rights, powers, authorities or discretions vested in them or him pursuant hereto and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in anyway relating to the Rental Income, and the Lender may retain and pay all sums in respect of the same out of any moneys received under the powers hereby conferred.

11. SEVERABILITY

Each of the provisions in this Assignment shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

12. NOTICES

All notices, requests, demands and other communications to be given under this Assignment shall be given and/or be deemed to be given in the same manner as notices to be given under the Loan Agreement.

13. FURTHER ASSURANCE

The Borrower shall execute and do all such assurances, acts and things as the Lender may require for perfecting or protecting (by registration or in any other way) the security created or intended to be created by or pursuant to this Assignment over the Rental Income or for facilitating the realisation of all or any part of the Rental Income and the exercise of all powers, authorities and discretions conferred on the Lender pursuant to this Assignment or by law and shall, in particular, execute all fixed securities, floating charges, assignments, securities, transfers, dispositions and assurances of the Rental Income whether to the Lender or to its nominee(s) or otherwise and give all notices, orders and directions which the Lender may acting reasonably think expedient.

14. GOVERNING LAW AND JURISDICTION

- 14.1 This Assignment and any non-contractual obligations arising out of it shall be governed by and construed in accordance with the laws of Scotland.

- 14.2 For the benefit of the Lender, the Court of Session in Scotland (the **Court**) shall have exclusive jurisdiction to settle any claim or dispute arising out of or in connection with this Assignment (whether or not contractual in nature and including a dispute relating to the existence, validity or termination of this Assignment).
- 14.3 The Borrower irrevocably waives any right that it may have to object to an action being brought in the Court, to claim that the action has been brought in an inconvenient forum or to claim that the Court does not have jurisdiction.
- 14.4 Such aforesaid submission to the jurisdiction of the Courts shall not (and shall not be construed as to) limit the right of the Lender to bring legal proceedings in any other court of competent jurisdiction (including, without limitation, the courts having jurisdiction by reason of the Borrower's place of incorporation). Legal proceedings by the Lender in any one or more jurisdictions shall not preclude legal proceedings by them or it in any other jurisdiction, whether by way of substantive action, ancillary relief, enforcement or otherwise.

15. **CONSENT TO REGISTRATION**

A Certificate signed by an authorised officer of the Lender shall, in the absence of manifest error, conclusively determine the Indebtedness at any relevant time and shall constitute a balance and charge against the Borrower, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Borrower hereby consents to the registration of this Assignment and of any such certificate for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding 7 pages together with the Schedule in 3 parts annexed are executed as follows:-

SUBSCRIBED for and on behalf of **CHANCERY NOMINEES (DUNALASTAIR DATA 2) LIMITED** as nominee and trustee for the **MEMBERS OF THE DUNALASTAIR (DATA 2) DEVELOPMENT SYNDICATE**



.....
Director/Secretary/Authorised Signatory

DAVID THOMSON
.....
Print Full Name



.....
Witness Signature

CLAIRE MCARTHUR

.....
Witness Full Name

292 ST VINCENT ST

.....
Witness Address

GLASGOW, G2 5TQ

at GLASGOW

on 9 day of JUNE Two thousand and fourteen

[NB LAST PAGE OF SCHEDULE ALSO TO BE SIGNED]

This is the Schedule referred to in the foregoing Assignment of Rents by Chancery Nominees (Dunalastair Data 2) Limited in favour of Wallace Capital Investments Limited as Lender

PART 1

FORM OF INTIMATION TO TENANTS

To: HFD Management Services Limited
Phoenix House
Phoenix Crescent
Strathclyde Business Park
Bellshill, ML4 3NJ

Dear Sirs

Re: 3,670 square feet of data hall space at Dunalastair Data Centre 2, York Road, Chapelhall (the Premises)

1. We refer to
- 1.1 The lease of the Premises between us, Chancery Nominees (Dunalastair Data 2) Limited and HFD Data Management Services Limited dated on or around the date hereof and to be registered in the Books of Council and Session (the **Lease**).
2. We hereby intimate that we have assigned to Wallace Capital Investments Limited as Lender (the **Lender**) all our right, title and interest in and to the rent receivable by us as landlords in terms of the Lease.
3. We, Chancery Nominees (Dunalastair Data 2) Limited, irrevocably and unconditionally instruct and authorise you (notwithstanding any previous instructions which we may have given to the contrary), until you receive notice from the Lender to the contrary to pay any rent payable by you to us pursuant to, under or in connection with the Lease (to the extent not already assigned pursuant to the Existing Assignment) into such account as shall be directed to you by the Lender) (the **Rental Account**) unless and until you receive written notice from the Lender to the contrary, in which event you should make all future payments as then directed by the Lender. This authority and instruction is irrevocable without the prior written consent of the Lender.
4. Despite the assignment referred to above or the making of any payment by you to the Lender pursuant to it, we shall remain liable to perform all our obligations under the Lease and neither the Lender nor any receiver, delegate or sub-delegate appointed by it shall at any time be under any obligation or liability to you under or in respect of the Lease.

5. Until such time as you receive instructions from the Lender to the contrary, we shall not and you agree that we shall not amend, vary or waive (or agree to amend, vary or waive) any provision of the Lease or exercise any right to rescind, cancel or terminate the Lease without the prior written consent of the Lender and all such rights, powers and discretions under the Lease shall be exercisable by, and notices shall be given to, the Lender or as it directs.
6. This letter is governed by the laws of Scotland.

Please acknowledge receipt of this letter and your acceptance of the contents of this letter by signing the attached form of acknowledgement and forwarding it to the Lender.

Yours faithfully

.....
For and on behalf of Chancery Nominees (Dunalastair Data 2) Limited as nominee and trustee
for the **MEMBERS OF THE DUNALASTAIR (DATA 2) DEVELOPMENT SYNDICATE**

Form of Acknowledgement from Occupational Tenants

Pinsent Masons LLP
141 Bothwell Street
Glasgow
G2 7EQ
FAO Paul Connolly/Alan Cassels

[Date]

Dear Sirs

Re: 3,670 square feet of data hall space at Dunalastair Data Centre 2, York Road, Chapelhall

We acknowledge receipt of a Notice dated [] 2014 and addressed to us by Chancery Nominees (Dunalastair Data 2) Limited (the **Borrower**) regarding the Lease (as defined in the Notice) mentioned in such Notice and we accept the instructions and authorisations contained in such Notice.

We acknowledge and confirm that:-

- (a) We have not, as at the date of this Acknowledgement, received any notice that any third party other than the Lender has or will have any right or interest in, or has made or will be making any claim or demand or taking any action in respect, of the rights of the Borrower under or in respect of the Lease (as defined in the Notice); and
- (b) We shall pay all rent payable by us under the Lease in the Rental Account (as defined in the Notice) and we shall continue to pay those monies into the Rental Account until we receive your written instructions to the contrary.

This letter is governed by the laws of Scotland.

Yours faithfully

.....
For and on behalf of tenant

PART 2

THE PROPERTY

ALL and WHOLE that area of ground lying generally to the east of York Road, Chapelhall, Airdrie being the whole of the subjects registered in the Land Register for Scotland under Title Numbers LAN209436 and LAN209437.

PART 3
THE LEASE

Lease of 3,670 square feet of data hall space at Dunalastair Data Centre 2, York Road, Chapelhall between Chancery Nominees (Dunalastair Data 2) Limited and HFD Data Management Services Limited dated on or around the date hereof and to be registered in the Books of Council and Session.

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'R', 'J', and 'C'.

.....
Director/Secretary/Authorised Signatory