



Registration of a Charge

Company name: **MESOBLAST UK LIMITED**

Company number: **07596260**

Received for Electronic Filing: **12/03/2018**



X71KQW12

Details of Charge

Date of creation: **06/03/2018**

Charge code: **0759 6260 0001**

Persons entitled: **HERCULES CAPITAL, INC.**

Brief description: **NOT APPLICABLE**

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: **PHILIPP HAGENBUCH**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7596260

Charge code: 0759 6260 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th March 2018 and created by MESOBLAST UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th March 2018 .

Given at Companies House, Cardiff on 14th March 2018

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**

6 March **2018**

THE CHARGORS

and


HERCULES CAPITAL, INC.
(as Agent)

DEBENTURE

LATHAM & WATKINS

99 Bishopsgate
London EC2M 3XF
United Kingdom
Tel: +44.20.7710.1000
www.lw.com

I certify that, save for material redacted pursuant to section 859G of the Companies Act 2006, the enclosed copy of the security instrument delivered as part of this application for registration under section 859A of the Companies Act 2006 is a true and correct copy of the original security instrument.

Signature: 
Date: 12 March 2018

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THIS DEED is made on 6 March 2018

BETWEEN:

- (1) THE COMPANIES listed in Schedule 1 (*The Chargors*) (each a “Chargor” and together the “Chargors”); and
- (2) HERCULES CAPITAL, INC., as agent for itself and the other Secured Parties (the “Agent”).

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this Debenture:

“Account Notice” means a notice substantially in the form set out in Part III of Schedule 3 (*Forms of Notices*);

“Accounts” means all present and future accounts opened or maintained by the Chargors, including but not limited to the accounts set out in Schedule 2 (*Bank Accounts*) (and any renewal or re-designation of such account(s)), in each case, together with the debt or debts represented thereby;

“Charged Property” means all the assets and undertakings of the Chargors which from time to time are subject of the security created or expressed to be created in favour of the Agent by or pursuant to this Debenture;

“Chargors” means Mesoblast UK Limited and Mesoblast International (UK) Limited (set out in Schedule 1 (*The Chargors*));

“Counterparty Notice” means a notice substantially in the form set out in Part I of Schedule 3 (*Forms of Notices*);

“Declared Default” means any Event of Default in respect of which the Agent has accelerated and demanded payment of the Secured Obligations in accordance with Section 10 (*Remedies*) of the Loan Agreement.

“Default Rate” means the rate at which interest is payable under Section 2.4 (*Default Interest*) of the Loan Agreement;

“Equipment” means all present and future plant, machinery, computers, office and other equipment, furnishings and vehicles and other chattels together with any spare parts, replacements or modifications owned by the Chargors and the benefit of all contracts, licences and warranties relating thereto to which each Chargor is a party;

“Event of Default” means an Event of Default as defined in the Loan Agreement;

“Finance Parties” means the Lenders and the Agent;

“Group” means the Parent, each Chargor and its Subsidiaries;

“Hedging Agreements” means any Hedging Agreements as defined in the Loan Agreement;

“Insurance Notice” means a notice substantially in the form set out in Part II of Schedule 3 (*Forms of Notices*);

“Insurance Policies” means all present and future policies of insurance held by, or written in favour of, or in which any Chargor is otherwise interested, and all proceeds of them either now or in the future of which any Chargor is a beneficiary to any claim proceeds;

“Intellectual Property” means all of each Chargor’s Copyrights, Trademarks, Patents and Licenses (as such terms are defined in the Loan Agreement); trade secrets and inventions; mask works; service marks, designs, business names, data base rights, design rights, domain names, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests whether registered or unregistered; each Chargor’s applications therefor and reissues, extensions, or renewals thereof; and each Chargor’s goodwill associated with any of the foregoing, together with each Chargor’s rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith;

“Investment” means all present and future stock, share, debenture, loan stock, securities, bonds, certificates of deposits, options, warrants, interest in any investment fund or investment scheme and any other comparable investment (including all warrants, options and any other rights to subscribe for, convert into or otherwise acquire these investments, and unless the context otherwise requires, the Shares), in each case whether owned directly by or to the order of any Chargor or by any trustee, fiduciary, nominee or clearance system on its behalf and all Related Rights (including all rights against any such trustee, fiduciary, nominee or clearance system);

“Lenders” means the Lender as defined in the Loan Agreement;

“Loan Agreement” means the Loan and Security Agreement dated as of the date of this Debenture, between, amongst others, the Parent and the Agent under which the Lenders have made available a certain facility to the Borrowers (as defined therein);

“Loan Documents” has the meaning given to that term in the Loan Agreement;

“Obligor” means any member of the Group that is a co-borrower or guarantor under the Loan Agreement;

“Other Debts” means all present and future book debts and other debts and monetary claims (other than Trading Receivables) owing to each Chargor and any proceeds of such debts and claims;

“Parent” means Mesoblast Limited, a listed public company incorporated and organized under the laws of Australia.

“Parties” means each of the parties to this Debenture from time to time;

“Permitted Liens” has the meaning given to that term in the Loan Agreement;

“PSC Register” means the “PSC register” within the meaning of section 790C(10) of the Companies Act 2006;

“PSC Registrable Person” means a “registrable person” or “registrable relevant legal entity” within the meaning of section 790C(4) and (8) of the Companies Act 2006;

“Quasi-Security” means a transaction in which a Chargor:

- (a) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by the relevant Chargor or any other member of the Group;
- (b) sells, transfers or otherwise disposes of any of its receivables on recourse terms;
- (c) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enters into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Indebtedness or of financing the acquisition of an asset;

“Receiver” means a receiver, receiver and manager, administrator or administrative receiver in each case appointed under this Debenture;

“Related Rights” means all dividends, distributions and other income paid or payable on a Share or Investment, together with all shares or other property derived from any Share or Investment and all other allotments, accretions, rights, benefits and advantages of all kinds accruing, offered or otherwise derived from or incidental to that Share or Investment (whether by way of conversion, redemption, bonus, preference, option or otherwise);

“Secured Obligations” means all present and future money, obligations or liabilities due, owing or incurred to any Secured Party by each Obligor under any Loan Document, whether actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing thereon and all losses incurred by any Secured Party in connection therewith except for any money, obligation or liability which, if it were so included, would cause the infringement of section 678 of the Companies Act 2006;

“Secured Parties” means the Finance Parties and any Receiver;

“Security” means a mortgage, charge, pledge or lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

“Shares” means all present and future shares owned by each Chargor in its Subsidiaries incorporated in England and Wales;

“Subsidiary” has the meaning given to that term in the Loan Agreement;

“Trading Receivables” means all present and future book and other debts arising in the ordinary course of trading;

“Trust Property” means:

- (a) the Security created or evidenced or expressed to be created or evidenced under or pursuant to any of the Loan Documents governed by English law (being the **“Transaction Security”**), and expressed to be granted in favour of the Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of its liabilities to the Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by an Obligor in favour of the Agent as trustee for the Secured Parties;

- (c) the Agent's interest in any trust fund created pursuant to any turnover of receipt provisions in any Loan Documents; and
- (d) any other amounts or property, whether rights, entitlements, chooses in action or otherwise, actual or contingent, which the Agent is required by the terms of the Loan Documents to hold as trustee on trust for the Secured Parties; and

"UCC Collateral" has the meaning given to that term in the Loan Agreement.

1.2 Construction

In this Debenture, unless a contrary intention appears, a reference to:

- (a) an "**agreement**" includes any legally binding arrangement, concession, contract, deed or franchise (in each case whether oral or written);
- (b) an "**amendment**" includes any amendment, supplement, variation, novation, modification, replacement or restatement and "**amend**", "**amending**" and "**amended**" shall be construed accordingly;
- (c) "**assets**" includes present and future properties, revenues and rights of every description;
- (d) "**including**" means including without limitation and "**includes**" and "**included**" shall be construed accordingly;
- (e) "**losses**" includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including fees) and liabilities and "**loss**" shall be construed accordingly;
- (f) a "**person**" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any two or more of the foregoing;
- (g) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (h) the Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand; and
- (i) all right, title and interest of any Chargor granted pursuant to this Debenture as security for payment of the Secured Obligations shall be without prejudice to the UCC Collateral.

1.3 Other References

- (a) In this Debenture, unless a contrary intention appears, a reference to:
 - (i) any Finance Party, Secured Party, any Chargor or any other person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors in title, permitted assignees and transferees and in the case of the Agent, any person for the time being appointed as Agent or Agents in accordance with the Loan Documents;

- (ii) any Loan Document or other agreement or instrument is to be construed as a reference to that agreement or instrument as amended or novated (howsoever fundamentally and whether or not such amendment results in new and / or more onerous obligations and liabilities), including by way of a change in the purpose of the facilities, or by way of a refinancing, deferral or extension of the facilities or by way of an addition or increase of or other changes to the facilities or other obligations or liabilities under the agreements or accession or retirement of the parties to these agreements but excluding any amendment or novation made contrary to any provision of any Loan Document;
- (iii) any clause or schedule is a reference to, respectively, a clause of and schedule to this Debenture and any reference to this Debenture includes its schedules; and
- (iv) a provision of law is a reference to that provision as amended or re-enacted.
- (b) The index to and the headings in this Debenture are inserted for convenience only and are to be ignored in construing this Debenture.
- (c) Words importing the plural shall include the singular and vice versa.

1.4 Incorporation by reference

Unless the context otherwise requires or unless otherwise defined in this Debenture, words and expressions defined in the Loan Agreement have the same meanings when used in this Debenture.

1.5 Miscellaneous

- (a) The terms of the documents under which the Secured Obligations arise and of any side letters between any Chargor and any Secured Party relating to the Secured Obligations are incorporated in this Debenture to the extent required for any purported disposition of the Charged Property contained in this Debenture to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- (b) Notwithstanding any other provision of this Debenture, the obtaining of a moratorium under section 1A of the Insolvency Act 1986, or anything done with a view to obtaining such a moratorium (including any preliminary decision or investigation), shall not be an event causing any floating charge created by this Debenture to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by any Chargor or a ground for the appointment of a Receiver.
- (c) The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Debenture and no rights or benefits expressly or impliedly conferred by this Debenture shall be enforceable under that Act against the Parties by any other person.
- (d) The parties hereto intend that this document shall take effect as a deed notwithstanding that any party may only execute this document under hand.
- (e) In the event of any inconsistency between the terms of this Debenture and the Loan Documents, the terms of the Loan Documents shall prevail.

1.6 Declaration of trust

- (a) The Agent hereby accepts its appointment as agent and trustee by the Secured Parties and declares (and each Chargor hereby acknowledges) that the Trust Property is held by the Agent as a trustee for and on behalf of the Secured Parties on the basis of the duties, obligations and responsibilities set out in the Loan Agreement.
- (b) Section 1 of the Trustee Act 2000 shall not apply to the duties of the Agent in relation to the trusts created by this Debenture or any other Loan Document. In performing its duties, obligations and responsibilities, the Agent shall be considered to be acting only in a mechanical and administrative capacity or as expressly provided in this Debenture and the other Loan Documents.
- (c) In acting as trustee for the Secured Parties under this Debenture, the Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments. Any information received by some other division or department of the Agent may be treated as confidential and shall not be regarded as having been given to the Agent's trustee division.

2. COVENANT TO PAY

Each Chargor as primary obligor covenants with the Agent (for the benefit of itself and the other Secured Parties) that it will on demand pay the Secured Obligations when they fall due for payment.

3. CHARGING PROVISIONS

3.1 Specific Security

Each Chargor, as continuing security for the payment of the Secured Obligations, charges in favour of the Agent with full title guarantee the following assets, both present and future, from time to time owned by it or in which it has an interest, by way of first fixed charge:

- (a) all of its rights, title and interest in the Equipment;
- (b) all of its rights, title and interest in the Intellectual Property;
- (c) all the Investments, Shares and all corresponding Related Rights;
- (d) all Trading Receivables and all rights and claims against third parties and against any security in respect of those Trading Receivables;
- (e) all Other Debts and all rights and claims against third parties against any security in respect of those Other Debts;
- (f) all monies from time to time standing to the credit of the Accounts and any other bank accounts which it may have with any bank, financial institution or other person (including any interest and other sums accruing thereon) and all of its rights, title and interest in, and benefits and proceeds deriving from or arising in connection with, the Accounts;
- (g) all of its rights, title and interest in the Hedging Agreements;
- (h) all of its goodwill and uncalled capital; and

- (i) if not effectively assigned by Clause 3.2 (*Security Assignment*), all its rights, title and interest in (and proceeds and claims under) the Insurance Policies,

and includes, in respect of each of the above charged assets (as appropriate), the benefit of all licences, consents and agreements held by each Chargor in connection with the use of the asset, any monies or income paid or payable in respect of the asset, any proceeds of the sale of the asset and any other property, rights or claims relating to, accruing to or deriving from the asset.

3.2 Security Assignment

As further continuing security for the payment of the Secured Obligations, each Chargor assigns absolutely with full title guarantee to the Agent all its rights, title and interest, both present and future, from time to time in the Insurance Policies, in as far as such assignment is permitted under such Insurance Policies, subject to reassignment by the Agent to the relevant Chargor of all such rights, title and interest upon payment or discharge in full of the Secured Obligations.

3.3 Floating Charge

- (a) As further continuing security for the payment of the Secured Obligations, each Chargor charges with full title guarantee in favour of the Agent by way of first floating charge all its present and future assets, undertakings and rights.
- (b) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created by this Debenture.

3.4 Conversion of Floating Charge

- (a) The Agent may, by notice to any Chargor, convert the floating charge created under this Debenture into a fixed charge with immediate effect as regards those assets specified in the notice, if:
 - (i) an Event of Default has occurred which is continuing;
 - (ii) the Agent is of the reasonable view that any asset charged under the floating charge created under this Debenture is in real danger of being seized or sold under any form of distress, attachment, execution or other legal process or is otherwise in jeopardy; or
 - (iii) the Agent reasonably considers that it is necessary in order to protect the priority, value or enforceability of the Security created under this Debenture.
- (b) The floating charge created under this Debenture will automatically (without notice) and immediately be converted into a fixed charge over all the assets of a Chargor which are subject to the floating charge created under this Debenture, if:
 - (i) the members of that Chargor convene a meeting for the purposes of passing any resolution for its winding-up, dissolution, or a compromise, assignment or arrangement with any creditor;
 - (ii) any Chargor creates, or purports to create, Security (except as permitted by the Loan Documents or with the prior consent of the Agent) on or over any asset which is subject to the floating charge created under this Debenture;

- (iii) any third party takes any formal step with a view to levying distress, attachment, execution against any such asset;
 - (iv) any person (entitled to do so) gives notice of its intention to appoint an administrator to any Chargor or files such a notice with the court; or
 - (v) if any other floating charge created by any Chargor crystallises for any reason.
- (c) Upon the conversion of any floating charge pursuant to this Clause 3.4, the relevant Chargor shall, at its own expense, immediately upon request by the Agent execute a fixed charge or legal assignment in such form as the Agent may require.

4. FURTHER ASSURANCE

- (a) The covenants set out in Section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in sub-clause 4 (b) and (c) below.
- (b) Each Chargor shall promptly (and at its own expense) do all such acts (including payment of all stamp duties or fees) or execute or re-execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions on terms equivalent or similar to those set out in this Debenture) as the Agent may reasonably specify (and in such form as the Agent may reasonably require):
 - (i) to perfect the Security created or intended to be created under or evidenced by this Debenture (which may include the execution or re-execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this Debenture) or for the exercise of any rights, powers and remedies of the Agent, any Receiver or the other Secured Parties provided by or pursuant to this Debenture or by law;
 - (ii) to confer on the Agent, or on the Secured Parties, Security over any property and assets of the each Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Debenture; and/or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created under this Debenture.
- (c) Each Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Agent or the Secured Parties by or pursuant to this Debenture.

5. NEGATIVE PLEDGE

No Chargor may:

- (a) create or agree to create or permit to subsist any Security or Quasi-Security over all or any part of the Charged Property or its Intellectual Property (other than Permitted Liens); or
- (b) sell, transfer, lease out, lend or otherwise dispose of all or any part of the Charged Property (other than in respect of assets charged under Clause 3.3 (*Floating Charge*) on arm's length terms in the ordinary course of trading), or in each case the right to receive or to be paid the proceeds arising on the disposal of the same, or agree or attempt to do so,

except as permitted by the Loan Agreement or with the prior consent of the Agent.

6. REPRESENTATIONS AND WARRANTIES

6.1 General

Each Chargor represents and warrants to the Agent as set out in this Clause 6 on the date of this Debenture and on each date that any representations are repeated under the Loan Agreement.

6.2 Shares

It is the legal and beneficial owner of the Shares which represent the entire issued share capital of the relevant Subsidiaries and all of those Shares are fully paid.

6.3 Bank Accounts

It is the legal and beneficial owner of the Accounts. It has full power to establish and maintain the Accounts and to enter into and deliver and to create the Security constituted by this Deed.

6.4 PSC Register

- (a) It has not issued and does not intend to issue any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 in respect of any shares which constitute Charged Property.
- (b) It has not received any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 in respect of any shares which constitute Charged Property.

7. PROTECTION OF SECURITY

7.1 Title Documents

- (a) Each Chargor will promptly deposit with the Agent (or as it shall direct):
 - (i) all stock and share certificates and other documents of title relating to the Shares and Investments (to the extent certificated), together with stock transfer forms executed in blank and left undated on the basis that the Agent shall be able to hold such documents of title and stock transfer forms until the Secured Obligations have been irrevocably and unconditionally discharged in full and shall be entitled, at any time following the occurrence of an Event of Default which is continuing to complete, under its power of attorney given in this Debenture, the stock transfer forms on behalf of the relevant Chargor in favour of itself or such other person as it shall select;
 - (ii) following an Event of Default, all documents (including any passbook) relating to the Accounts;
 - (iii) following an Event of Default or upon request of the Agent (acting reasonably), certified copies of all Insurance Policies; and
 - (iv) all other documents relating to the Charged Property which the Agent may from time to time reasonably require.

- (b) The Agent may retain any document delivered to it under this Clause 7.1 or otherwise until the security created under this Debenture is released and, if for any reason it ceases to hold any such document before that time, it may by notice to the relevant Chargor require that the document be redelivered to it and the relevant Chargor shall promptly comply (or procure compliance) with that notice.
- (c) Any document required to be delivered to the Agent under Clause 7.1(a) which is for any reason not so delivered or which is released by the Agent to the relevant Chargor shall be held on trust by the relevant Chargor for the Agent.

7.2 Receivables and Bank Accounts

- (a) Each Chargor shall, where an Account is not maintained with the Agent, serve an Account Notice on the bank with whom the Account is maintained and use all reasonable endeavours to procure that such bank signs and delivers to the Agent an acknowledgement substantially in the form of the schedule to the Account Notice within 21 days of the execution of this Debenture (or, as the case may be, of the date on which such Account is established).
- (b) The Agent shall not be entitled to give any notice referred to in paragraph 2(b) of the Account Notice, withdrawing its consent to the making of withdrawals by the Chargors in respect of the Accounts, unless and until an Event of Default has occurred or any of the circumstances described in Clause 3.4 (*Conversion of Floating Charge*) has arisen which is continuing.

7.3 Insurance Policies and Hedging Agreements

- (a) Each Chargor will:
 - (i) within ten (10) Business Days of the execution of this Debenture (or in respect of any Insurance Policy or Hedging Agreement designated as such after the date of execution of this Debenture, promptly after the date of such designation) give notice to the other party to each Insurance Policy and Hedging Agreement that it has assigned or charged its right under the relevant policy or agreement to the Agent under this Debenture. Such notice will be a Counterparty Notice, except in the case of the Insurance Policies where it will be an Insurance Notice. Each Chargor will use all reasonable endeavours to procure that the relevant counterparty or insurer signs and delivers to the Agent an acknowledgement substantially in the form of that set out in the schedule to the relevant Notice within 21 days of the execution of this Debenture (or, as the case may be, of the entering into of the relevant policy or agreement);
 - (ii) perform all its obligations under the Insurance Policies in a diligent and timely manner; and
 - (iii) not terminate any Insurance Policy except with the prior consent of the Agent or as explicitly permitted by the Loan Agreement.
- (b) The Agent shall not be entitled to give any notice referred to in paragraph 2 of the Counterparty Notice or paragraph 2 of the Insurance Notice, unless and until an Event of Default has occurred and is continuing.

7.4 Registration of Intellectual Property

Each Chargor as registered proprietor appoints the Agent as its agent to apply for the particulars of this Debenture and of the Secured Parties' interest in its existing trademarks and trade mark applications and any future trademarks or trade mark applications registered or to be registered in the United Kingdom in the name of that Chargor, to be made on the Register of Trade Marks under section 25(1) of the Trade Marks Act 1994, and each Chargor agrees to execute all documents and forms required to enable those particulars to be entered on the Register of Trade Marks.

8. UNDERTAKINGS

8.1 General

- (a) Each Chargor undertakes to the Agent in the terms of this Clause 8 from the date of this Debenture and for so long as any of the Secured Obligations are outstanding.
- (b) Each Chargor will observe and perform all material covenants and stipulations from time to time affecting the Charged Property, make all payments, carry out all registrations or renewals and generally take all steps which are necessary to preserve, maintain and renew when necessary all of the Charged Property.
- (c) Each Chargor shall use all reasonable endeavours to keep all Equipment which forms part of the Charged Property in good and substantial repair (fair wear and tear excepted) and, where applicable, in good working order.

8.2 Voting and Distribution Rights

- (a) Prior to the occurrence of an Event of Default:
 - (i) each Chargor shall be entitled to receive and retain all dividends, distributions and other monies paid on or derived from its Shares and Investments; and
 - (ii) each Chargor shall be entitled to exercise all voting and other rights and powers attaching to its Shares and Investments provided that it shall not exercise any such voting rights or powers in a manner which would prejudice the interests of the Secured Parties under this Debenture or adversely affect the validity, enforceability or existence of the Charged Property or the Security created under this Deed.
- (b) At any time after the occurrence of an Event of Default which is continuing, all voting rights in respect of the Shares and Investments shall be exercised by the Chargors as directed by the Agent (in order to preserve and/or realise the value of the security), unless the Agent has notified the Chargors in writing that it wishes to give up this right.
- (c) At any time after the occurrence of an Event of Default which is continuing, the Chargors shall hold any dividends, distributions and other monies paid on or derived from the Investments on trust for the Secured Parties and pay the same to, or as directed by, the Agent.
- (d) If, at any time, any Shares or Investments are registered in the name of the Agent or its nominee, the Agent will not be under any duty to ensure that any dividends, distributions or other monies payable in respect of those Shares or Investments are duly and promptly paid or received by it or its nominee, or to verify that the correct amounts are paid or

received, 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 or in substitution for, any of those Shares or Investments.

8.3 PSC Register

- (a) In respect of any shares which constitute Charged Property, each Chargor shall promptly:
 - (i) notify the Agent of its intention to issue, or its receipt of, any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 and provide to the Agent a copy of any such warning notice or restrictions notice;
 - (ii) respond to that notice within the prescribed timeframe; and
 - (iii) provide to the Agent a copy of the response sent/received in respect of such notice.
- (b) For the purposes of withdrawing any restrictions notice or for any application (or similar) to the court under Schedule 1B of the Companies Act 2006, each Chargor shall (and shall ensure that the relevant members of the Group will) provide such assistance as the Agent may reasonably request in respect of any shares which constitute Charged Property and provide the Agent with all information, documents and evidence that it may reasonably request in connection with the same.

9. IMPLIED COVENANTS FOR TITLE

It shall be implied in respect of Clause 3 (*Charging Provisions*) that each Chargor is disposing of the Charged Property free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

10. AGENT'S POWER TO REMEDY

10.1 Power to Remedy

If any Chargor fails to comply with any obligation set out in Clause 7 (*Protection of Security*) or Clause 8 (*Undertakings*) and that failure is not remedied to the satisfaction of the Agent within 14 days of the Agent giving notice to the relevant Chargor or the relevant Chargor becoming aware of the failure to comply, it will allow (and irrevocably authorises) the Agent or any person which the Agent nominates to take any action on behalf of the relevant Chargor which is necessary to ensure that those obligations are complied with.

10.2 Indemnity

Each Chargor will indemnify the Agent against all losses incurred by the Agent as a result of a breach by any Chargor of its obligations under Clause 7 (*Protection of Security*) or Clause 8 (*Undertakings*) and in connection with the exercise by the Agent (other than if such losses are incurred solely as a result of the gross negligence or wilful misconduct of the Agent as determined by a final judgment of a court of competent jurisdiction) of its rights contained in Clause 10.1 above. All sums the subject of this indemnity will be payable by each Chargor to the Agent on demand and if not so paid will bear interest at the Default Rate. Any unpaid interest will be compounded monthly.

11. CONTINUING SECURITY

11.1 Continuing Security

The Security constituted by this Debenture shall be a continuing security notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations or any other act, matter or thing.

11.2 Other Security

The Security constituted by this Debenture is to be in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other Security or other right which the Agent and/or any other Secured Party may now or after the date of this Debenture hold for any of the Secured Obligations, and this Security may be enforced against each Chargor without first having recourse to any other rights of the Agent or any other Secured Party.

12. ENFORCEMENT OF SECURITY

12.1 Enforcement Powers

For the purpose of all rights and powers implied or granted by statute, the Secured Obligations are deemed to have fallen due on the date of this Debenture. The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 and all other enforcement powers conferred by this Debenture shall be immediately exercisable at any time after an Event of Default has occurred and for so long as it is continuing.

12.2 Statutory Powers

The powers conferred on mortgagees, receivers or administrative receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (as the case may be) shall apply to the Security created under this Debenture, unless they are expressly or impliedly excluded. If there is ambiguity or conflict between the powers contained in those Acts and those contained in this Debenture, those contained in this Debenture shall prevail.

12.3 Exercise of Powers

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

12.4 Disapplication of Statutory Restrictions

The restriction on the consolidation of mortgages and on power of sale imposed by sections 93 and 103 respectively of the Law of Property Act 1925 shall not apply to the security constituted by this Debenture.

12.5 Appropriation under the Financial Collateral Regulations

- (a) To the extent that any of the Charged Property constitutes “financial collateral” and this Deed and the obligations of the Chargors hereunder constitute “security financial collateral arrangement” (in each case as defined in, and for the purposes of, the Financial Collateral

Arrangements (No. 2) Regulations 2003 (as amended) (the “Regulations”)), the Agent shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise that right to appropriate by giving notice to the relevant Chargor at any time after an Event of Default has occurred.

- (b) The Parties agree that the value of any such appropriated financial collateral shall be: (x) in the case of securities, the market price at which such securities can be disposed of by the Agent; and (y) in the case of any other asset, the market value of such financial collateral as determined by the Agent, in each case, in a commercially reasonable manner (including by way of an independent valuation). The Parties agree that the methods of valuation provided for in this paragraph shall constitute commercially reasonable methods of valuation for the purposes of the Regulations.

12.6 Powers of Leasing

The Agent may lease, make agreements for leases at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it thinks fit, without the need to comply with any of the provisions of sections 99 and 100 of the Law of Property Act 1925.

12.7 Fixtures

The Agent may sever any fixtures from the property to which they are attached and sell them separately from that property.

12.8 Bank Accounts

At any time after a Declared Default has occurred and is continuing the Agent may and is hereby irrevocably and unconditionally authorised, without further enquiry and without either giving notice to the Chargors or the Parent or obtaining any consent, to apply the whole or part of all monies standing to the credit of the Accounts in or towards payment of the Secured Obligations.

13. RECEIVERS

13.1 Appointment of Receiver

- (a) Subject to paragraph (c) below, at any time after notice demanding payment of any sum which is then due but unpaid in respect of the Secured Obligations has been given by the Agent to the relevant Chargor, or if so requested by the relevant Chargor, the Agent may by writing under hand signed by any officer or manager of the Agent, appoint any person (or persons) to be a Receiver of all or any part of the Charged Property.
- (b) Section 109(1) of the Law of Property Act 1925 shall not apply to this Debenture.
- (c) The Agent shall be entitled to appoint a Receiver save to the extent prohibited by section 72A Insolvency Act 1986.

13.2 Powers of Receiver

Each Receiver appointed under this Debenture shall have (subject to any limitations or restrictions which the Agent may incorporate in the deed or instrument appointing it) all the powers conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this Debenture), so that the powers set out in schedule 1 to the

Insolvency Act 1986 shall extend to every Receiver, whether or not an administrative receiver. In addition, notwithstanding any liquidation of the relevant Chargor, each Receiver shall have power to:

- (a) manage, develop, reconstruct, amalgamate or diversify any part of the business of the relevant Chargor;
- (b) enter into or cancel any contracts on any terms or conditions;
- (c) incur any liability on any terms, whether secured or unsecured, and whether to rank for payment in priority to this security or not;
- (d) let or lease or concur in letting or leasing, and vary the terms of, determine, surrender leases or tenancies of, or grant options and licences over, or otherwise deal with, all or any of the Charged Property, without being responsible for loss or damage;
- (e) establish subsidiaries to acquire interests in any of the Charged Property and/or arrange for those subsidiaries to trade or cease to trade and acquire any of the Charged Property on any terms and conditions;
- (f) make and effect all repairs, renewals and improvements to any of the Charged Property and maintain, renew, take out or increase insurances;
- (g) exercise all voting and other rights attaching to the Shares or Investments and stocks, shares and other securities owned by the relevant Chargor and comprised in the Charged Property, but only following a written notification from either the Receiver or the Agent to the relevant Chargor stating that the Agent shall exercise all voting rights in respect of the Investments and stocks, shares and other securities owned by the relevant Chargor and comprised in the Charged Property;
- (h) redeem any prior Security on or relating to the Charged Property and settle and pass the accounts of the person entitled to that prior Security, so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the relevant Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver;
- (i) appoint and discharge officers and others for any of the purposes of this Debenture and/or to guard or protect the Charged Property upon terms as to remuneration or otherwise as he may think fit;
- (j) settle any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the relevant Chargor or relating to any of the Charged Property;
- (k) implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on any real property comprised in the Charged Property;
- (l) purchase or acquire any land or any interest in or right over land;
- (m) exercise on behalf of the relevant Chargor all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Property; and

- (n) do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental or conducive to any of the matters or powers in this Clause 13.2, or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property, and use the name of the relevant Chargor for all such purposes,

and in each case may use the name of any Chargor and exercise the relevant power in any manner which he may think fit.

13.3 Receiver as Agent

Each Receiver shall be the agent of the relevant Chargor, which shall be solely responsible for his acts or defaults, and for his remuneration and expenses, and be liable on any agreements or engagements made or entered into by him. The Agent will not be responsible for any misconduct, negligence or default of a Receiver.

13.4 Removal of Receiver

The Agent may by notice remove from time to time any Receiver appointed by it (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receivership) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated, for whatever reason.

13.5 Remuneration of Receiver

The Agent may from time to time fix the remuneration of any Receiver appointed by it.

13.6 Several Receivers

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this Debenture (unless the document appointing such Receiver states otherwise).

14. APPLICATION OF PROCEEDS

14.1 Order of Application

All monies received or recovered by the Agent or any Receiver pursuant to this Debenture shall (subject to the claims of any person having prior rights thereto) be applied in the order and manner specified by the Loan Agreement notwithstanding any purported appropriation by any Chargor.

14.2 Insurance Proceeds

If an Event of Default has occurred and is continuing, all monies received by virtue of any insurance maintained or effected in respect of the Charged Property shall be paid to the Agent (or, if not paid by the insurers directly to the Agent, shall be held on trust for the Agent) and shall, at the option of the Agent, be applied in replacing or reinstating the assets destroyed, damaged or lost (any deficiency being made good by the relevant Chargor) or (except in the case of leasehold premises) in reduction of the Secured Obligations.

14.3 Section 109 Law of Property Act 1925

Sections 109(6) and (8) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Debenture.

14.4 Application against Secured Obligations

Subject to Clause 14.1 above, any monies or other value received or realised by the Agent from a Chargor or a Receiver under this Debenture may be applied by the Agent to any item of account or liability or transaction forming part of the Secured Obligations to which they may be applicable in any order or manner which the Agent may determine.

14.5 Suspense Account

Until the Secured Obligations are paid in full, the Agent or the Receiver (as applicable) may place and keep (for such time as it shall determine) any money received, recovered or realized pursuant to this Debenture or on account of any Chargor's liability in respect of the Secured Obligations in an interest bearing separate suspense account (to the credit of either the relevant Chargor or the Agent or the Receiver as the Agent or the Receiver shall think fit) and the Agent or the Receiver may retain the same for the period which it considers expedient without having any obligation to apply all or any part of that money in or towards discharge of the Secured Obligations.

15. PROTECTION OF AGENT AND RECEIVER

15.1 No Liability

Neither the Agent nor any Receiver shall be liable in respect of any of the Charged Property or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless caused by its or his gross negligence or wilful misconduct under the Loan Documents.

15.2 Possession of Charged Property

Without prejudice to Clause 15.1 above, if the Agent or the Receiver enters into possession of the Charged Property, it will not be liable to account as mortgagee in possession and may at any time at its discretion go out of such possession.

15.3 Primary liability of Chargor

Each Chargor shall be deemed to be a principal debtor and the sole, original and independent obligor for the Secured Obligations and the Charged Property shall be deemed to be a principal security for the Secured Obligations. The liability of each Chargor under this Debenture and the charges contained in this Debenture shall not be impaired by any forbearance, neglect, indulgence, abandonment, extension of time, release, surrender or loss of securities, dealing, variation or arrangement by the Agent or any other Secured Party, or by any other act, event or matter whatsoever whereby the liability of the relevant Chargor (as a surety only) or the charges contained in this Debenture (as secondary or collateral charges only) would, but for this provision, have been discharged.

15.4 Waiver of defences

The obligations of the Chargors under this Debenture will not be affected by an act, omission, matter or thing which, but for this this Debenture, would reduce, release or prejudice any of its

obligations under this this Debenture (without limitation and whether or not known to it or any Secured 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 member of the Group;
- (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 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 an Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Loan 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 Loan Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Loan Document or any other document or security; or
- (g) any insolvency or similar proceedings.

15.5 Agent

The provisions set out in Section 11.18 (*Agency*) of the Loan Agreement shall govern the rights, duties and obligations of the Agent under this Debenture.

15.6 Delegation

The Agent may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by it under this Debenture in accordance with the terms of the Loan Agreement. The Agent will not be liable or responsible to any Chargor or any other person for any losses arising from any act, default, omission or misconduct on the part of any delegate.

15.7 Cumulative Powers

The powers which this Debenture confers on the Agent, the other Secured Parties and any Receiver appointed under this Debenture are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate. The Agent, the other Secured Parties or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever. The respective powers of the Agent, the other Secured Parties and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

16. POWER OF ATTORNEY

Each Chargor, following the occurrence and during the continuance of an Event of Default, by way of security, irrevocably and severally appoints the Agent, each Receiver and any person nominated for the purpose by the Agent or any Receiver (in writing and signed by an officer of the Agent or Receiver) as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed to execute, seal and deliver (using the company seal where appropriate) and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing which it ought to execute and do under the terms of this Debenture and has failed to do so, or which may be required in the exercise of any rights or powers conferred on the Agent or any Receiver under this Debenture or otherwise for any of the purposes of this Debenture, and each Chargor covenants with the Agent and each Receiver to ratify and confirm all such acts or things made, done or executed by that attorney.

17. PROTECTION FOR THIRD PARTIES

17.1 No Obligation to Enquire

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

- (a) the right of the Agent or any Receiver to exercise any of the powers conferred by this Debenture has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power; or
- (b) any of the Secured Obligations remain outstanding and/or are due and payable or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters.

17.2 Receipt Conclusive

The receipt of the Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Agent or any Receiver.

18. COSTS AND EXPENSES

18.1 Initial Expenses

The Chargors shall on demand pay to each of the Agent and any Receiver the amount of all reasonable and documented out-of-pocket costs and expenses (including legal fees) reasonably incurred by any of them in connection with:

- (a) the negotiation, preparation, execution, completion and perfection of this Debenture and any other documents or notices referred to in, or related or incidental to, this Debenture; and
- (b) any amendment, waiver or consent relating to this Debenture (and documents, matters or things referred to in this Debenture).

18.2 Enforcement Expenses

The Chargors shall, within three Business Days of written demand, pay to each of the Agent, any Receiver and each other Secured Party the amount of all reasonable and documented out-of-pocket costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under (and any documents referred to in) this Debenture and any proceedings instituted by or against the Agent and any Secured Party as a consequence of taking or holding the Security created under this Debenture or enforcing these rights.

18.3 Stamp Duties, etc

The Chargors shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of this Debenture.

18.4 Default Interest

If not paid when due, the amounts payable under this Clause 18 shall carry interest compounded monthly at the Default Rate (after as well as before judgment), from the date of demand and shall form part of the Secured Obligations.

19. REINSTATEMENT AND RELEASE

19.1 Amounts Avoided

If any amount paid by a Chargor in respect of the Secured Obligations is capable of being avoided or set aside on the liquidation or administration of the relevant Chargor or otherwise, then for the purposes of this Debenture that amount shall not be considered to have been paid.

19.2 Discharge Conditional

Any settlement or discharge between a Chargor and any Secured Party shall be conditional upon no security or payment to that Secured Party by that Chargor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency and accordingly (but without limiting the other rights of that Secured Party under this Debenture) that Secured Party shall be entitled to recover from that Chargor the value which that Secured Party has placed on that security or the amount of any such payment as if that settlement or discharge had not occurred.

19.3 Covenant To Release

Once all the Secured Obligations have been irrevocably paid or discharged in full (other than inchoate indemnity obligations) and none of the Agent nor any Secured Party has any actual or contingent liability to advance further monies to, or incur liability on behalf of, any Chargor, the Agent and each Secured Party shall:

- (a) release the Charged Property from the Security constituted by this Debenture, without delivery of any instrument or performance of any act by any party, and all rights to the Security granted pursuant to this Deed shall automatically revert to the relevant Chargor; and
- (b) return to the relevant Chargor any title deeds or share certificates deposited with it pursuant to this Debenture (or indemnities dealing with the loss or destruction of the same).

20. CURRENCY CLAUSES

20.1 Conversion

All monies received or held by the Agent or any Receiver under this Debenture may be converted into any other currency which the Agent considers necessary to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at Lloyds Bank plc's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.

20.2 No Discharge

No payment to the Agent (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the relevant Chargor in respect of which it was made unless and until the Agent has received payment in full in the currency in which the obligation or liability is payable or, if the currency of payment is not specified, was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Agent shall have a further separate cause of action against the relevant Chargor and shall be entitled to enforce the Security constituted by this Debenture to recover the amount of the shortfall.

21. SET-OFF

21.1 Set-off rights

The Agent may set off any matured obligation due from a Chargor under the Loan Documents (to the extent beneficially owned by the Agent) against any matured obligation owed by the Agent to that Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

21.2 Different Currencies

The Agent may exercise its rights under Clause 21.1 (*Set-off rights*) notwithstanding that the amounts concerned may be expressed in different currencies and the Agent is authorised to effect any necessary conversions at a market rate of exchange selected by it.

21.3 Unliquidated Claims

If, at any time after notice demanding payment of any sum which is then due but unpaid in respect of the Secured Obligations has been given by the Agent to a Chargor, the relevant obligation or liability is unliquidated or unascertained, the Agent may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

21.4 No Set-off

Each Chargor will pay all amounts payable under this Deed without any set-off, counterclaim or deduction whatsoever unless required by law, in which event the relevant Chargor will pay an additional amount to ensure that the payment recipient receives the amount which would have been payable had no deduction been required to have been made.

22. RULING OFF

If the Agent or any other Secured Party receives notice of any subsequent Security or other interest affecting any of the Charged Property (except as permitted by the Loan Agreement) it may open a new account for the relevant Chargor in its books. If it does not do so then (unless it gives express notice to the contrary to the relevant Chargor), as from the time it receives that notice, all payments made by the relevant Chargor to it (in the absence of any express appropriation to the contrary) shall be treated as having been credited to a new account of the relevant Chargor and not as having been applied in reduction of the Secured Obligations.

23. REDEMPTION OF PRIOR CHARGES

The Agent may, at any time after an Event of Default has occurred and is continuing, redeem any prior Security on or relating to any of the Charged Property 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 Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

24. NOTICES

24.1 Communications in writing

Any communication to be made under or in connection with this Debenture shall be made in writing and, unless otherwise stated, may be made by electronic delivery, fax or letter.

24.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Debenture for any communication or document to be made or delivered under or in connection with this Debenture is:

- (a) as shown immediately after its name on the execution pages of this Debenture (in the case of any person who is a party as at the date of this Debenture);
- (b) in the case of any person who becomes a party after the date of this Debenture, notified in writing to the Agent on or prior to the date on which it becomes a party,

or any substitute address or fax number as the party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

24.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Debenture will only be effective:
 - (i) if by electronic communication or hand delivery, on the day of transmission;
 - (ii) if by way of fax, when received in legible form; or

- (iii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.

25. CHANGES TO PARTIES

25.1 Assignment by the Agent

The Agent may at any time assign or otherwise transfer all or any part of its rights under this Debenture in accordance with the Loan Documents.

25.2 Changes to Parties

Each Chargor authorises and agrees to changes to parties under Section 11.7 (*Successors and Assigns*) of the Loan Agreement and authorises the Agent to execute on its behalf any document required to effect the necessary transfer of rights or obligations contemplated by those provisions.

26. MISCELLANEOUS

26.1 Certificates Conclusive

A certificate or determination of the Agent as to any amount payable under this Debenture will be conclusive and binding on each Chargor, except in the case of manifest error.

26.2 Counterparts

This Debenture may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Debenture.

26.3 Invalidity of any Provision

If any provision of this Debenture is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

26.4 Failure to Execute

Failure by one or more parties ("Non-Signatories") to execute this Deed on the date hereof will not invalidate the provisions of this Deed as between the other Parties who do execute this Deed. Such Non-Signatories may execute this Deed on a subsequent date and will thereupon become bound by its provisions.

27. GOVERNING LAW AND JURISDICTION

- (a) This Debenture and any non-contractual claims arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) Subject to Clause (c) below, the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture, whether contractual or non-contractual (including a dispute regarding the existence, validity or termination of this Debenture) (a "Dispute"). 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) The Parties agree that, for the benefit of the Secured Parties only, nothing in this Debenture shall limit the right of the Secured Parties to bring any legal action against the Chargors in any other court of competent jurisdiction.

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

SCHEDULE 1

THE CHARGORS

Name of Chargor	Registered Number	Registered Address
Mesoblast UK Limited	07596260	5 New Street Square, London, United Kingdom, EC4A 3TW
Mesoblast International (UK) Limited	09630007	5 New Street Square, London, United Kingdom, EC4A 3TW

SCHEDULE 2

BANK ACCOUNTS

Name of Chargor	Name and address of institution at which account is held	Account # (SAP)	Account Number
Mesoblast UK Limited	Mesoblast International Sarl Singapore Branch, 2 Shenton Way SGX Centre #18-01, Singapore	126204-000	I/C POBO MSB Singapore Branch (sub 08)
Mesoblast UK Limited	Mesoblast, Inc., Level 3, 505 Fifth Avenue, New York, New York 10017, United States	126201-000	I/C POBO MSB Inc. (sub 01)
Mesoblast UK Limited	Mesoblast International (UK) Limited, 5 New Street Square, London, United Kingdom, EC4A 3TW	126207-000	I/C POBO MSB International UK Ltd (sub 10)
Mesoblast UK Limited	Mesoblast Limited, Level 38, 55 Collins Street Melbourne VIC 3000, Australia	126299-000	I/C POBO MSB Limited (parent 00)
Mesoblast International (UK) Limited	Mesoblast International Sarl Singapore Branch, 2 Shenton Way SGX Centre #18-01, Singapore	126204-000	I/C POBO MSB Singapore Branch (sub 08)
Mesoblast International (UK) Limited	Mesoblast UK Limited, 5 New Street Square, London, United Kingdom, EC4A 3TW	126206-000	I/C POBO MSB UK Limited (sub 09)

SCHEDULE 3

FORMS OF NOTICES

Part 1

Form of Counterparty Notice

To: [insert name and address of counterparty]

Dated: [●]

Dear Sirs

Re: [here identify the relevant Hedging Agreement] (the “Agreement”)

We notify you that, [insert name of Chargor] (the “Chargor”) has [charged in favour of]/[assigned to] [insert name of Agent] (the “Agent”) for the benefit of itself and certain other banks and financial institutions (the “Secured Parties”) all its right, title and interest in the Agreement as security for certain obligations owed by the Chargor to the Secured Parties by way of a debenture dated [●].

We further notify you that:

1. the Chargor may not agree to amend or terminate the Agreement without the prior written consent of the Agent;
2. you may continue to deal with the Chargor in relation to the Agreement until you receive written notice to the contrary from the Agent. Thereafter the Chargor will cease to have any right to deal with you in relation to the Agreement and therefore from that time you should deal only with the Agent;
3. you are authorised to disclose information in relation to the Agreement to the Agent on request;
4. after receipt of written notice in accordance with paragraph 2 above, you must pay all monies to which the Chargor is entitled under the Agreement direct to the Agent (and not to the Chargor) unless the Agent otherwise agrees in writing; and
5. the provisions of this notice may only be revoked with the written consent of the Agent.

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

- (a) you agree to the terms set out in this notice and to act in accordance with its provisions;
- (b) you have not received notice that the Chargor has assigned its rights under the agreement to a third party or created any other interest (whether by way of security or otherwise) in the agreement in favour of a third party; and
- (c) you have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Chargor any right of set-off, counter-claim or other right relating to the Agreement.

The provisions of this notice are governed by English law.

Yours faithfully

for and on behalf of
[insert name of Chargor]

[On acknowledgement copy]

To: *[insert name and address of Agent]*

Copy to: *[insert name and address of Chargor]*

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

for and on behalf of
[insert name of Counterparty]

Dated:

Part 2
Form of Insurance Notice

To: *[insert name and address of insurance company]*

Dated: [●]

Dear Sirs

Re: *[here identify the relevant insurance policy(ies)]* (the “Policies”)

We notify you that, *[insert name of Chargor]* (the “Chargor”) has assigned to *[insert name of Agent]* (the “Agent”) for the benefit of itself and certain other banks and financial institutions (the “Secured Parties”) all its right, title and interest in the Policies as security for certain obligations owed by the Chargor to the Secured Parties by way of a debenture dated [●].

We further notify you that:

1. the Chargor may not agree to amend or terminate the Policies without the prior written consent of the Agent;
2. you may continue to deal with the Chargor in relation to the Policies until you receive written notice to the contrary from the Agent. Thereafter the Chargor will cease to have any right to deal with you in relation to the Policies and therefore from that time you should deal only with the Agent;
3. you are authorised to disclose information in relation to the Policies to the Agent on request; and
4. the provisions of this notice may only be revoked with the written consent of the Agent.

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

- (a) you agree to act in accordance with the provisions of this notice;
- (b) you [will note/have noted] the Agent’s interest as first chargee on each of the Policies;
- (c) after receipt of written notice in accordance with paragraph 2 above, you will pay all monies to which the Chargor is entitled under the Policies direct to the Agent (and not to the Chargor) unless the Agent otherwise agrees in writing;
- (d) you will not cancel or otherwise allow the Policies to lapse without giving the Agent not less than 14 days written notice;
- (e) you have not received notice that the Chargor has assigned its rights under the Policies to a third party or created any other interest (whether by way of security or otherwise) in the Policies in favour of a third party; and
- (f) you have not claimed or exercised nor do you have any outstanding right to claim or exercise against the Chargor, any right of set-off, counter-claim or other right relating to the Policies.

The provisions of this notice are governed by English law.

Yours faithfully

for and on behalf of
[insert name of Chargor]

[On acknowledgement copy]

To: *[insert name and address of Agent]*

Copy to: *[insert name and address of Chargor]*

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

for and on behalf of
[insert name of insurance company]

Dated: [●]

Part 3
Form of Account Notice

To: *[insert name and address of Account Bank]* (the “Account Bank”)

Dated: [●]

Dear Sirs

Re: The [●] Group of Companies - Security over Bank Accounts

We notify you that *[insert name of Chargor]* (the “Chargor”) and certain other companies identified in the schedule to this notice (together the “Customers”) charged to *[insert name of Agent]* (the “Agent”) for the benefit of itself and certain other banks and financial institutions all their right, title and interest in and to the monies from time to time standing to the credit of the accounts identified in the schedule to this notice and to any other accounts from time to time maintained with you by the Customers (the “Charged Accounts”) and to all interest (if any) accruing on the Charged Accounts by way of a debenture dated [●].

1. We irrevocably authorise and instruct you:
 - (a) to hold all monies from time to time standing to the credit of the Charged Accounts to the order of the Agent and to pay all or any part of those monies to the Agent (or as it may direct) promptly following receipt of written instructions from the Agent to that effect; and
 - (b) to disclose to the Agent any information relating to the Customers and the Charged Accounts which the Agent may from time to time request you to provide.
2. We also advise you that:
 - (a) by counter-signing this notice the Agent confirms that the Customers may make withdrawals from the Charged Accounts set out in the schedule below until such time as the Agent shall notify you (with a copy to the Chargor) in writing that their permission is withdrawn. That permission may be withdrawn or modified by the Agent in its absolute discretion at any time; and
 - (b) the provisions of this notice may only be revoked or varied with the prior written consent of the Agent.
3. Please sign and return the enclosed copy of this notice to the Agent (with a copy to the Chargor) by way of your confirmation that:
 - (a) you agree to act in accordance with the provisions of this notice;
 - (b) you have not received notice that any Customer has assigned its rights to the monies standing to the credit of the Charged Accounts or otherwise granted any security or other interest over those monies in favour of any third party;
 - (c) you will not exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Charged Accounts, except for the netting of credit and debit balances pursuant to current account netting arrangements previously approved in writing by the Agent; and

- (d) you have not claimed or exercised, nor do you have outstanding any right to claim or exercise against the Chargor, any right of set-off, counter-claim or other right relating to the Charged Accounts.

The provisions of this notice are governed by English law.

Schedule

Customer	Account Number	Sort Code
[●]	[●]	[●]

Yours faithfully,

for and on behalf of
[Insert name of Chargor]
as agent for and on behalf of
all of the Customers

Counter-signed by

for and on behalf of
[Insert name of Agent]

[On acknowledgement copy]

To: *[Insert name and address of Agent]*

Copy to: *[Insert name of Chargor]* (on behalf of all the Customers)

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

for and on behalf of
[Insert name of Account Bank]

Dated: [●]

SIGNATORIES TO THE DEBENTURE

THE CHARGORS

EXECUTED as a DEED by
MESOBLAST UK LIMITED acting by:

REDACTED

L.F. WEST as Director:

REDACTED

Witness:

Name:

N.J. HICKLING

Address:

96 SANDHOLM WEST, MITRE HOUSE, 12-14 MITRE STREET, LONDON EC3A 5BU

Occupation:

CHARTERED ACCOUNTANT

Notice Details

Address:

5 New Street Square, London, United Kingdom, EC4A 3TW

Facsimile:

Attention:

EXECUTED as a DEED by
MESOBLAST INTERNATIONAL (UK) LIMITED ^{Acting by:}
L.F. WEST as Director: **REDACTED**

Witness: **REDACTED**

Name: N.J. HICKLING

Address: % SAMSON WEST, 12-14 MARK LANE ST. LONDON EC4A 3BU

Occupation: CHARTERED ACCOUNTANT

Notice Details

Address: 5 New Street Square, London, United Kingdom, EC4A 3TW

Facsimile: _____

Attention: _____

THE AGENT

EXECUTED as a DEED by
HERCULES CAPITAL, INC. acting by: REDACTED

Jennifer Choe as Authorised Signatory: _____

Notice Details	Hercules Capital, Inc.
	400 Hamilton Avenue, Suite 310
Address:	<u>Palo Alto, CA 94301, United States</u>
Facsimile:	_____
Attention:	<u>Legal Department</u>
Email:	<u>legal@htgc.com</u>