



Registration of a Charge

Company name: **HERD HIRE LTD**

Company number: **07640504**



XA0XEC8P

Received for Electronic Filing: **24/03/2021**

Details of Charge

Date of creation: **15/03/2021**

Charge code: **0764 0504 0026**

Persons entitled: **CLOSE BROTHERS LIMITED**

Brief description: **MASTER DEED**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **AMANDA OSBORNE**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7640504

Charge code: 0764 0504 0026

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th March 2021 and created by HERD HIRE LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th March 2021 .

Given at Companies House, Cardiff on 25th March 2021

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

Dated 15/03/2021

Herd Hire
Limited



and

CLOSE BROTHERS LIMITED

MASTER DEED OF ASSIGNMENT

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This Deed is made on 15/03/2021

Between

- (1) Herd Hire **Limited**
(registered in [England]/[Northern Ireland] with number 07640504)
(**Assignor**); and
- (2) Close Brothers Limited, trading as Close Brothers Asset Finance
(registered in England with number 00195626) (**Assignee**).



Whereas

- (A) The Assignee has entered into a hire purchase agreement or finance lease with the Assignor, and may from time to time enter into further such agreements (each an **Agreement**), whereby the Assignee will hire certain goods to the Assignor (**Goods**), subject to and upon the terms contained therein.
- (B) It has been agreed that the Assignor may sub-hire the Goods to Sub-Hirers on the terms set out in the relevant Agreement from time to time. Each sub-hire agreement in respect of any of the Goods (**Sub-Hire Agreement**) shall be the subject of this Deed.
- (C) In consideration of the Assignee agreeing to enter into the Agreements, from time to time, the Assignor has agreed to execute this Deed, whereby the Assignor will assign to the Assignee from time to time its rights (including the right to receive the payments due) under certain Sub-Hire Agreements.

It is agreed

1 Definitions and interpretation

1.1 In this Deed:

Account has the meaning given to it in clause 4.2

Acts mean the CLPA 1881 and the CA 1911

Agreement has the meaning given to it in recital (A)

Assigned Agreement has the meaning given to it in clause 3.4

Assigned Assets has the meaning given to it in clause 3.4

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London or Belfast if the Assignor has its registered office in Northern Ireland

CA 1911 means the Conveyancing Act 1911

Certificate of Assignment has the meaning given to it in clause 3.3

Counterparty means a party to an Assigned Agreement other than the Assignor

CLPA 1881 means the Conveyancing and Law of Property Act 1881

Deed means this master deed of assignment and, where the context so permits, each and every Certificate of Assignment

Default Rate means the highest rate of interest or default interest payable under the Finance Document

Delegate means any delegate, agent, nominee or attorney appointed by the Assignee

Event of Default means:

- (a) if any event occurs which results in the termination of any Agreement, or the hiring thereunder, or which gives the Assignee the right to terminate any Agreement or the hiring thereunder or
- (b) the occurrence of any event which entitles the Assignee to terminate any Finance Document, the letting of any goods and/or the provision of any facility under any Finance Document or to demand early repayment of any sum due from the Assignor or
- (c) any other event or circumstance the occurrence of which is, in the opinion of the Assignee, likely materially to depreciate, jeopardise or otherwise prejudice the value to the Assignee of the Security created or intended to be created by this Deed

Finance Documents means this Deed, each Agreement together with any other agreement entered into from time to time between the Assignor and the Assignee in connection with or any document governing or evidencing the terms of the Secured Obligations, or any of them and any document identified as a Finance Document by the Assignee and the Assignor in writing from time to time

IA 1986 means the Insolvency Act 1986

IO 1989 means the Insolvency (Northern Ireland) Order 1989 (as amended)

LPA 1925 means the Law of Property Act 1925

Party means a party to this Deed

Receiver means any receiver, manager or administrative receiver appointed by the Assignee in respect of the Assignor or any of the Assigned Assets

Secured Obligations means all monies and liabilities now or after the date of this Deed due, owing or incurred by the Assignor to the Assignee whatsoever, in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by the Assignee, except for any obligation which, if it were included here, would constitute unlawful financial assistance, or its equivalent in any other jurisdiction

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

Security Period means the period beginning on the date of this Deed and ending on the date on which the Assignee is satisfied that the Secured Obligations have been irrevocably and unconditionally satisfied in full and all facilities made available by the Assignee under any Agreement have been cancelled

Sub-Hire Agreement has the meaning given to it in recital (B)

Sub-Hirer means a third party which has entered into a Sub-Hire Agreement with the Assignor

Goods has the meaning given to it in recital (A)

1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Deed to:
 - (i) the Assignee, the Assignor or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) the **Assigned Assets** includes present and future revenues and rights of every description (including the right to receive the same);
 - (iii) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally) or replaced with the written approval of the Assignee;
 - (iv) a **person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any other entity or body of any description;
 - (v) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (vi) a provision of law is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Deed;
 - (vii) a time of day is a reference to London time;
 - (viii) **sterling** and **£** shall be construed as a reference to the lawful currency of the United Kingdom; and
 - (ix) **dispose** includes any sale, lease, licence, transfer or loan.
- (b) Clause and schedule headings are for ease of reference only.
- (c) Any word importing the singular shall include the plural and vice versa.
- (d) A term defined in this Deed has the same meaning when used in any notices, acknowledgements or other documents issued under or in connection with this Deed.
- (e) Where there is a conflict between the terms of this Deed and the terms of any other Finance Document, then the terms of the Finance Document shall prevail.

1.3 If the Assignee considers that an amount paid by the Assignor in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the Assignor or otherwise, that amount shall not be considered to have been irrevocably paid or discharged for the purposes of this Deed.

1.4 If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009) or, if the Assignor has its registered office in Northern Ireland, 80 years (as specified by section 1(1) of the Perpetuities Act (Northern Ireland) 1966).

1.5 Third party rights

(a) Unless expressly provided to the contrary in any Finance Document and/or subject to any provision conferring a right on a Receiver or Delegate, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it.

(b) Unless expressly provided to the contrary in any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Finance Document entered into under or in connection with it.

1.6 Incorporated terms

The terms of the Finance Documents and of any side letters relating to the Finance Documents and the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of any Assigned Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989 or, if the Assignor has its registered office in Northern Ireland, in accordance with section 2 of the Statute of Frauds 1695.

2 Covenant to pay

The Assignor covenants with the Assignee to pay and discharge the Secured Obligations when they become due for payment and discharge.

3 Assignment

3.1 All Security created by the Assignor under clause 3 or pursuant to any Certificate of Assignment is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;
- (b) granted with full title guarantee or, if the Assignor has its registered office in Northern Ireland, as legal and beneficial owner; and
- (c) granted in favour of the Assignee.

3.2 The Assignor assigns absolutely to the Assignee:

- (a) the full benefit of each Sub-Hire Agreement entered into by the Assignor from time to time including, without limitation, the right to receive all monies now and hereafter due or to become due to the Assignor under each Sub-Hire Agreement and all claims, rights and remedies of the Assignor arising under or in connection with each Sub-Hire Agreement; and

- (b) the benefit of all guarantees, indemnities, negotiable instruments, securities or warranties taken or received by the Assignor or in respect of which the Assignor has the benefit in connection with each Sub-Hire Agreement entered into by the Assignor from time to time or the associated Goods.
- 3.3 The Assignor agrees that, without prejudice to clause 3.2, the execution of a certificate of assignment in substantially the form set out in the schedule or such other form as the Assignee may accept from time to time (**Certificate of Assignment**) shall constitute an absolute assignment by the Assignor of:
 - (a) the full benefit of each Sub-Hire Agreement specified in the appendix to the Certificate of Assignment including, without limitation, the right to receive all monies now and hereafter due or to become due to the Assignor under each Sub-Hire Agreement specified in the appendix to the Certificate of Assignment and all claims, rights and remedies of the Assignor arising under or in connection with each Sub-Hire Agreement specified in the appendix to the Certificate of Assignment;
 - (b) the benefit of all guarantees, indemnities, negotiable instruments, securities or warranties taken or received by the Assignor or in respect of which the Assignor has the benefit in connection with each Sub-Hire Agreement specified in the appendix to the Certificate of Assignment or the associated Goods.
- 3.4 The Sub-Hire Agreements and other agreements and instruments assigned to the Assignee pursuant to clauses 3.2, 3.3 and/or a Certificate of Assignment shall be the **Assigned Agreements** and the subject matter of each assignment referred to in clauses 3.2, 3.3 and/or a Certificate of Assignment shall be the **Assigned Assets**.
- 3.5 To the extent that any assignment in clause 3.2 or 3.3 or pursuant to a Certificate of Assignment is ineffective as an assignment, the Assignor charges by way of first fixed charge the Assigned Assets.
- 3.6 The Assignor charges by way of first floating charge all the Assigned Assets other than those effectively assigned or charged under clause 3.2, 3.3, 3.5 or a Certificate of Assignment. If (unless permitted in writing by the Assignee or expressly permitted under the terms of any Agreement):
 - (a) the Assignor attempts to create any Security over the assets the subject of clause 3.5;
 - (b) any person levies or attempts to levy any attachment, execution or other legal process over the assets the subject of clause 3.5; or
 - (c) any corporate action, legal proceedings or other procedures or steps are taken for the winding up, dissolution, administration or reorganisation of the Assignor,

the floating charge created by this Deed will automatically and immediately without notice be converted into a fixed charge over the relevant assets the subject of clause 3.5, or, in the case of clause 3.6(c), over all of the assets the subject of clause 3.5.
- 3.7 On the irrevocable and unconditional payment and discharge to the Assignee in full of the Secured Obligations, the Assignee shall at the request of the Assignor assign back to the Assignor such of the Assigned Assets as shall remain after payment and discharge of the Secured Obligations, subject always to the payment of the Assignee's costs associated with such reassignment which shall be paid by the Assignor on demand.

4 Proceeds of Assigned Assets

- 4.1 Until the occurrence of an Event of Default or otherwise directed by the Assignee, the Assignor shall promptly invoice and collect all sums due under the Assigned Agreements, and in so doing shall observe good industry practices including in relation to the collection of unpaid sums and provide certified copies of such invoices to the Assignee on request.
- 4.2 All of the proceeds of the Assigned Assets received by the Assignor shall be deemed to have been received by it for and on behalf of and as trustee for the Assignee and the Assignor shall if requested to do so by the Assignee pay the same into a separate bank account approved by the Assignee (**Account**) into which only the proceeds of the Assigned Assets shall be paid and in respect of which the Assignor shall, at the request of the Assignee, provide Security in the form the Assignee may require.
- 4.3 No payments shall be made out of the Account except in favour of the Assignee in satisfaction of any sum hereby covenanted to be paid by the Assignor or otherwise as the Assignee may direct in writing.
- 4.4 Subject to clause 4.5, monies received by the Assignee under this Deed shall be applied against the Secured Obligations as directed by the Assignee.
- 4.5 All monies received by the Assignee, a Receiver or Delegate pursuant to this Deed in relation to a Sub-Hire Agreement after the Security constituted by this Deed has become enforceable shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925 or, if the Assignor has its registered office in Northern Ireland, the CLPA 1881) be applied in the following order of priority:
- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Assignee (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or connection with this Deed;
 - (b) in or towards payment of or provision for the Secured Obligations due under the Finance Documents (insofar as they relate to that Sub-Hire Agreement); and
 - (c) in payment of the surplus (if any) to the Assignor or any other person entitled to it.
- 4.6 Notwithstanding this Deed, the Assignor shall remain fully liable for the Secured Obligations.

5 Notice of Assignment

The Assignee shall not give notice of assignment of the Assigned Assets to the Sub-Hirers until the occurrence of an Event of Default.

6 Representations and warranties

- 6.1 The Assignor represents and warrants on the date of this Deed and on each day throughout the Security Period (with reference to the facts and circumstances then existing):
- (a) the Assignor is the sole, absolute and unencumbered legal and beneficial owner of the Assigned Assets and has not assigned, charged, pledged or otherwise encumbered any of the Assigned Assets (other than in favour of the Assignee); and

- (b) this Deed constitutes the Assignor's legal, valid, binding and enforceable obligations and is an effective and enforceable Security over the Assigned Assets and every part of them; and
- (c) all actions and authorisations necessary to enable and entitle the Assignor to execute and perform this Deed have been undertaken and obtained and are in full force and effect and will remain in such force and effect at all times during the Security Period;
- (d) the execution and performance of this Deed will not cause the Assignor to be in breach of any agreement to which it is a party or any applicable law or regulation;
- (e) in relation to each Assigned Agreement that it constitutes the valid, binding and enforceable obligations of the parties thereto and is in full force and effect and has not been varied or modified in any way, cancelled or avoided and no party is in default;
- (f) any advance rental shown as paid has been paid as set out in each Assigned Agreement;
- (g) the particulars of the Counterparty to each Assigned Agreement and of the Goods the subject of each Assigned Agreement are correct in every respect and the Goods have been duly delivered to and accepted by the Counterparty to the relevant Assigned Agreement;
- (h) all the requirements of all relevant enactments or regulations for the time being in force have been complied with in relation to the Assigned Agreements and the Goods the subject of the Assigned Agreements;
- (i) no right of action is vested in the Counterparty to each Assigned Agreement in respect of any matter or thing including, but not limited to, any representation, condition, warranty or other express or implied term or relating to the Goods the subject of such Assigned Agreements;
- (j) the Assignor has no knowledge of any fact which would or might prejudice or affect any right, power or ability of the Assignee to enforce any term of an Assigned Agreement;
- (k) each Assigned Agreement is in a form which has been inspected and approved by the Assignee in writing and no other documents evidence the terms of an Assigned Agreement and there are no documents, agreements or arrangements that may affect the operation or enforceability of any Assigned Agreement;
- (l) there has been no variation or termination of an Assigned Agreement or other document, agreement or arrangement comprising the Assigned Assets;
- (m) no Assigned Agreement or other document, agreement or arrangement comprising the Assigned Assets is void, voidable or otherwise enforceable;
- (n) it is not in breach of its obligations under any Assigned Agreement or other document, agreement or arrangement comprising the Assigned Assets:
 - (i) which is, or would (with the giving of notice of passage of time or both) constitute an event of default (however described) under an Assigned Agreement or other document, agreement or arrangement comprising the Assigned Assets; or

- (ii) which would entitle a person to terminate or rescind an Assigned Agreement or other document, agreement or arrangement comprising the Assigned Assets;
 - (o) there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect an Assigned Asset;
 - (p) there is no prohibition on assignment of or granting of Security in any Assigned Agreement; and
 - (q) there are no equities in existence between the parties to each Assigned Agreement which may adversely affect the Assignee.
- 6.2 The Assignor shall, promptly upon becoming aware of any of the same, notify the Assignee in writing of:
- (a) any representation or warranty set out in clause 6.1 which is incorrect or misleading in any material respect when made or deemed to be repeated; and
 - (b) any breach of any covenant set out in this Deed.

7 Undertakings

- 7.1 The Assignor shall not, otherwise than in favour of the Assignee or with the prior written consent of the Assignee and in accordance with and subject to any conditions which the Assignee may attach to such consent:
- (a) create, grant, incur, or permit to subsist any Security over the whole or any part of the Assigned Assets;
 - (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner the whole or any part of or any interest in the Assigned Assets;
 - (c) create or grant (or purport to create or grant) any interest in any Assigned Asset in favour of a third party;
 - (d) or permit or agree to any variation of the rights attaching to the Assigned Assets.
- 7.2 The Assignor covenants with the Assignee that at all times during the Security Period the Assignor shall:
- (a) in a timely manner perform its obligations (including but not limited to obligations as to maintenance) under each Assigned Agreement, any other agreement or arrangement made between the Assignor and each Counterparty to an Assigned Agreement from time to time;
 - (b) not do or refrain from doing anything which may prejudice or adversely affect the Assignee's interest in or to any of the Assigned Assets;
 - (c) not do or permit there to be done any act or thing that might depreciate, jeopardise or otherwise prejudice the Security held by the Assignee or diminish the value of any of the Assigned Assets or the effectiveness of the Security created by this Deed;
 - (d) not, without the prior written consent of the Assignee, make nor agree to any variation, supplement, waiver, release, termination or novation in respect of any of the

Assigned Agreements (or the hiring of the relevant Goods under an Assigned Agreement) or any of the obligations under an Assigned Agreement or in respect of any of the Assigned Assets;

- (e) not abandon, waive, dismiss, release or discharge any action, claim or proceeding against any Counterparty or any other person in connection with an Assigned Asset;
- (f) not grant the Counterparty to any Sub-Hire Agreement the option to purchase the relevant Goods or any item of the relevant Goods without the prior written consent of the Assignee and then only in accordance with the conditions of such consent;
- (g) promptly notify the Assignee in writing of any action, claim, notice or demand made by or against it in connection with all or any part of the Assigned Assets together with the Assignor's proposals for settling liquidating, compounding or contesting any such action, claim or demand and shall at the Assignor's own expense implement the proposals which the Assignor directs and otherwise institute continue or defend all proceedings in connection with the Assigned Assets or any part thereof as the Assignee may reasonably require;
- (h) promptly notify the Assignee of any breach of the terms of a Sub-Hire Agreement and comply with any instructions that the Assignee may provide in relation to enforcing the terms of the relevant Sub-Hire Agreement and/or terminating the relevant Sub-Hire Agreement (or the hiring of the relevant Goods thereunder);
- (i) ensure that each Assigned Agreement is in a form which has been inspected and approved by the Assignee in writing;
- (j) provide a certified copy of each Assigned Agreement to the Assignee within 7 days of execution of the same by the Assignor, and immediately upon request by the Assignee from time to time deposit with the Assignee all original documents, instruments and agreements comprising the Assigned Assets;
- (k) give the Assignee such information concerning the Assigned Assets as the Assignee may require;
- (l) maintain proper accounts in the names of its customers under the Assigned Agreements showing the amounts paid by and due from such customers and shall permit full inspection and audit of such accounts by the Assignee when required and will further permit the Assignee or any person authorised by it to take such copies of the relevant accounts and such extracts as it may require;
- (m) execute and deliver to the Assignee a Certificate of Assignment in favour of the Assignee in respect of any Assigned Agreement entered into by the Assignor from time to time immediately upon being requested to do so by the Assignee;
- (n) comply with the requirements of any law and regulation relating to or affecting the Assigned Assets or the use of them or any part of them; and
- (o) obtain and promptly renew from time to time and comply with the terms of all authorisations that are required in connection with the Assigned Assets or their use or that are necessary to preserve, maintain or renew any Assigned Asset.

7.3 Without prejudice to the generality of clause 7.2(d), the Assignor shall notify the Assignee immediately in writing if any Assigned Agreement is terminated early for any reason. The

Assignor shall pay any termination sum or compensation payment which it receives from the relevant Counterparty to the Assignee immediately on receipt by the Assignor, and shall hold such sum on trust for the Assignee until it has been so paid. The Assignee shall be entitled to retain such sum and to apply it in reduction or satisfaction of the Secured Obligations until the Secured Obligations have been unconditionally and irrevocably paid and discharged in full

7.4 If the Assignor fails to comply with any of the undertakings set out in this clause 7 it shall allow and irrevocably authorises the Assignor and/or such persons as it shall nominate to take such action on behalf of the Assignor as shall be necessary to ensure that it complies with those undertakings.

7.5 The Assignor shall indemnify the Assignee and shall keep the Assignee indemnified on demand against all losses and reasonable costs, charges and expenses properly incurred by the Assignee as a result of or in connection with a breach by the Assignor of its representations, warranties, undertakings or other obligations under this Deed and/or in connection with the exercise by the Assignee of its rights contained in this Deed.

8 Enforcement of Security

8.1 When Security is enforceable

On the occurrence of any Event of Default or at any time after the Assignee shall have demanded payment or discharge of the Secured Obligations, any Security created by and under this Deed is immediately enforceable.

8.2 Rights of Assignee

After the Security constituted by this Deed has become enforceable, the Assignee may, at its absolute discretion, enforce all or any part of the Security at the times, in the manner and on the terms it thinks fit and take possession of and hold or dispose of all or any part of the Assigned Assets and, without prejudice to the generality of the foregoing, shall immediately be entitled to put into force and exercise all the rights powers and remedies possessed by it according to law as assignee of the Assigned Assets and without prejudice to the generality of the foregoing shall have the rights:

- (a) to collect recover compromise settle and give a good discharge for any and all monies and claims for monies for the time being comprised in the Assigned Assets;
- (b) to exercise in relation to the Assigned Assets all such rights as the Assignor then might exercise in relation thereto; and
- (c) to apply any or all of the income from the Assigned Assets in or towards the satisfaction of any sum hereby covenanted to be paid by the Assignor to the Assignee;
- (d) to remedy a breach by the Assignor of any of its obligations under this Deed (in which case any monies expended by the Assignee in connection with the same shall be reimbursed by the Assignor to the Assignee on a full indemnity basis and shall carry interest in accordance with clause 17.1;
- (e) to enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- (f) to exercise its rights and powers conferred upon mortgagees by the LPA 1925 or, if the Assignor has its registered office in Northern Ireland, the Acts, as varied and

extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Assigned Assets;

- (g) to appoint a Receiver to all or any part of the Assigned Assets;

8.3 Exercise of rights

The rights of the Assignee under clause 8.2 are without prejudice to any other rights of the Assignee under this Deed.

8.4 Access on enforcement

- (a) At any time after the Security becomes enforceable, the Assignor will allow the Assignee or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies, in particular (and without limitation), to take possession of any Assigned Asset and for that purpose to enter on any premises where an Assigned Asset is situated (or where the Assignee or a Receiver reasonably believes an Assigned Asset to be situated) without incurring any liability to the Assignor for, or by any reason of, that entry.
- (b) At all times, the Assignor must use its best endeavours to allow the Assignee or its Receiver access to any premises for the purposes of clause 8.4(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

8.5 Right of appropriation

To the extent that the Security created by this Deed constitutes a "security financial collateral arrangement" and the Assigned Assets constitute "financial collateral" for the purpose of the Financial Collateral Arrangements (No 2) Regulations 2003 (**Regulations**), the Assignee shall have the right on giving prior notice to the Assignor, at any time after the Security becomes enforceable, to appropriate all or any part of those Assigned Assets in or towards discharge of the Secured Obligations. The Parties agree that the value of the appropriated Assigned Assets shall be, in the case of cash, the amount of cash appropriated. For the purpose of Regulation 18(1) of the Regulations, the Assignor agrees that any such determination by the Assignee will constitute a valuation "in a commercially reasonable manner".

8.6 Contingencies

If the Assignee enforces the Security constituted by or under this Deed at a time when no amounts are due to the Assignee under the Finance Documents but at a time when amounts may or will become so due, the Assignee (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

8.7 Assignee has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the Security becomes enforceable, be exercised by the Assignee in relation to any of the Assigned Assets whether or not it has taken possession of any Assigned Asset and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

8.8 Mortgagee in possession - no liability

Neither the Assignee nor any Receiver will be liable, by reason of entering into possession of an Assigned Asset, to account as mortgagee in possession or for any loss on realisation, or for any default or omission for which a mortgagee in possession might otherwise be liable.

8.9 Redemption of prior mortgages

At any time after the Security created by or under this Deed has become enforceable, the Assignee may, at the sole cost of the Assignor (payable to the Assignee on demand):

- (a) redeem any prior form of Security over any Assigned Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Assignor.

8.10 Statutory powers - general

- (a) For the purposes of all powers implied by statute, the Secured Obligations shall be deemed to have become due and payable on the date of this Deed.
- (b) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) or, if the Assignor has its registered office in Northern Ireland, section 19 of the CLPA 1881 and the powers incident thereto set out in section 4 of the CA 1911 (as varied or extended by this Deed) shall, as between the Assignee and a purchaser from the Assignee arise on and be exercisable at any time after the execution of this Deed, but the Assignee shall not exercise such power of sale or other powers until the Security constituted by this Deed has become enforceable.
- (c) Section 93 of the LPA 1925 (restricting the right of consolidation) or, if the Assignor has its registered office in Northern Ireland, section 17 of the CLPA 1881 (restricting the right of consolidation) shall not apply to this Deed or the Security constituted by it.
- (d) Section 103 of the LPA 1925 (restricting the power of sale) or, if the Assignor has its registered office in Northern Ireland, section 20 of the CLPA 1881 (restricting the power of sale) shall not apply to this Deed or the Security constituted by it.
- (e) Each Receiver and Delegate and the Assignee is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 and the IA 1986 or, if the Assignor has its registered office in Northern Ireland, conferred by the Acts and the IO 1989, on mortgagees and receivers.
- (f) The power to appoint a receiver conferred by this Deed shall be in addition to all statutory and other powers of the Assignee under the IA 1986, the LPA 1925 or otherwise and if the Assignor has its registered office in Northern Ireland, under the IO 1989, the Acts or otherwise and such statutory and other powers of the Assignee shall be exercisable without any restrictions the application of which have been disapplied by this Deed.

8.11 Protection of third parties

- (a) No purchaser, mortgagee or other person dealing with the Assignee, any Receiver or Delegate shall be concerned to enquire:

- (i) whether any of the Secured Obligations have become due or payable, or remain unpaid or undischarged;
 - (ii) whether any power of the Assignee, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
 - (iii) how any money paid to the Assignee, any Receiver or Delegate is to be applied.
- (b) The receipt of the Assignee or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Assigned Assets or in making any acquisition in the exercise of their respective powers, the Assignee, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

9 Receiver

9.1 Appointment of Receiver

- (a)
- (i) At any time after any Security created by or under this Deed is enforceable the Assignee may appoint a Receiver to all or any part of the Assigned Assets, in accordance with clause 8.2(g) (Rights of Assignee).
 - (ii) At any time, if so requested in writing by the Assignor, without further notice, the Assignee may appoint a Receiver to all or any part of the Assigned Assets as if the Assignee had become entitled under the LPA 1925 to exercise the power of sale conferred under the LPA 1925 or, if the Assignor has its registered office in Northern Ireland, under the CLPA 1881 to exercise the power of sale conferred by section 19 of the CLPA 1881 and the powers incident thereto set out in section 4 of the CA 1911.
 - (iii) The power to appoint a Receiver (whether conferred by this Deed or statute) shall be, and remain, exercisable by the Assignee despite any prior appointment in respect of all or any part of the Assigned Assets.
- (b) Any Receiver appointed under this Deed shall be the agent of the Assignor and the Assignor shall be solely responsible for his acts or defaults and for his remuneration and liable any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Assignee be in any way responsible for any misconduct, negligence or default of the Receiver.
- (c) Where the Assignor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the IA 1986 or, if the Assignor has its registered office in Northern Ireland, Schedule A1 to the IO 1989:
- (i) obtaining a moratorium; or
 - (ii) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 to the IA 1986 or, if the Assignor has its registered office in Northern Ireland, paragraph 53 of Schedule A1 to the IO 1989,

shall not be grounds for appointment of a Receiver.

- (d) Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the LPA 1925 or, if the Assignor has its registered office in Northern Ireland, sections 24(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the CLPA 1881, shall not apply to a Receiver appointed under this Deed.

9.2 Removal

The Assignee may by written notice remove from time to time any Receiver applied by it (subject to the provisions of section 45 of the IA 1986 or, if the Assignor has its registered office in Northern Ireland, article 55 of the IO 1989, in the case of an administrative receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

9.3 Powers of Receiver

(a) General

- (i) In addition to those conferred by the LPA 1925 on any Receiver appointed under that Act or, if the Assignor has its registered office in Northern Ireland, in addition to those conferred by the CLPA 1881 on any Receiver appointed under the CLPA 1881, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 9.3.
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the IA 1986 or, if the Assignor has its registered office in Northern Ireland, under the IO 1989, individually and to the exclusion of any other Receivers.
- (iii) A Receiver may, in the name of the Assignor:
 - (A) do all other acts and things which he may consider expedient for realising any Assigned Asset;
 - (B) exercise in relation to any Assigned Asset all the powers, authorities, and things which he would be capable of exercising if he were its absolute beneficial owner; and
 - (C) do all acts and things that he lawfully may or can do as agent for the Assignor.

(b) Delegation

A Receiver may delegate his powers in accordance with clause 0 (Delegation) and all references to Receiver shall, where appropriate include the Delegate.

(c) Employees

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the Assignor or for itself as Receiver, may:

- (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and

(ii) discharge any such persons appointed by the Assignor.

(d) **Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Assignor in relation to any Assigned Asset as he considers expedient.

(e) **Possession**

A Receiver may take immediate possession of, get in and collect any Assigned Asset.

(f) **Receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising any Assigned Asset.

(g) **Deal with Assigned Assets**

A Receiver may, without restriction, sell or vary the terms of or otherwise dispose of or deal with, all or any part of the Assigned Assets without being responsible for loss and any such sale, variation, disposal or dealing may be made on such terms and for such consideration as the Receiver thinks fit.

(h) **Security**

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Assignor and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

(i) **Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Assigned Assets and to use the name of the Assignor for all the purposes set out in this clause 9.

9.4 Remuneration

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

10 Delegation

10.1 The Assignee and any Receiver 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 the Assignee and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Assignee and Receiver (as appropriate) may think fit.

10.2 The Assignee and any Receiver will not be liable or responsible to the Assignor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any Delegate.

11 Effectiveness of Security

11.1 Immediate recourse

The Assignor waives any right it may have to require the Assignee to enforce any Security or other right or claim any payment from or otherwise proceed against any other person before enforcing this Deed against the Assignor.

11.2 Security

The Security constituted by this Deed:

- (a) shall be in addition to and shall be independent of every other Security which the Assignee may at any time hold for any of the Secured Obligations;
- (b) shall not merge with any prior Security held by the Assignee over the whole or any part of the Assigned Assets; and
- (c) shall remain in full force and effect as a continuing security unless and until the Assignee discharges it in writing.

11.3 Assignor's waiver of set-off

The Assignor waives any present or future right of set-off it may have in respect of the Secured Obligations (including sums payable by the Assignor under this Deed).

11.4 Assignee's rights

The Assignee's rights under this Deed are in addition to and not in substitution for any other Security which the Assignee may now or at any time in the future hold for all or any of the Secured Obligations and may be enforced without the Assignee first having recourse to any such Security and without taking any steps or proceedings against any person.

11.5 No further steps or enquiries

- (a) It shall not be incumbent on the Assignee to take any steps or institute any proceedings for the recovery of the Assigned Assets or any part thereof nor shall the Assignee be answerable for any loss arising from having neglected to take such steps or institute such proceedings.
- (b) The Assignee shall not be obliged to make any enquiry as to the nature or sufficiency of any payment made under an Assigned Agreement or to make any claim or to take any other action to collect any money or enforce any rights or benefits assigned to the Assignee or to which the Assignee may at any time be entitled under or in connection with this Deed.

11.6 Sums paid not recoverable

In the event of any circumstances in which further performance of any Agreement becomes impossible or unlawful or is otherwise frustrated, no sums paid by the Assignor to the Assignee under this Deed shall be recoverable by the Assignor.

11.7 Accounts

- (a) If the Assignee has more than one account for the Assignor in its books, the Assignee may at any time after:

- (i) the Security constituted by this Deed has become enforceable; or
- (ii) the Assignee has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Assigned Assets,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account which may be in debit. After making any such transfer, the Assignee shall notify the Assignor of that transfer.

- (b) The Assignee and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.
- (c) All monies received by the Assignee or any Receiver under this Deed and applied in the discharge of the Secured Obligations shall be applied to the Secured Obligations in such order as the Assignee may determine.

11.8 No prejudice

Nothing contained in this Deed is intended to, or shall operate so as to, prejudice or affect any bill, note, guarantee, mortgage, debenture, pledge, charge or other Security of any kind whatsoever which the Assignee may have for the Secured Obligations or any of them or any right, remedy or privilege of the Assignee under this Deed.

11.9 Preservation of rights

The rights of the Assignee under this Deed, the Security hereby constituted and the Assignor's liability under this Deed shall not be discharged, prejudiced or affected by any act, omission, matter or thing which, but for this provision, might operate to impair, affect or discharge such rights and Security, in whole or in part, including without limitation, and whether or not known to or discoverable by the Assignor, the Assignee or any other person:

- (a) the Assignee renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any person; or
- (b) any Security, guarantee, indemnity, remedy or other right held by or available to the Assignee that is or becomes wholly or partially illegal, void or unenforceable on any ground; or
- (c) any time or waiver granted to or composition with the Assignor or any other person; or
- (d) the taking, variation, compromise, renewal or release of or refusal or neglect to perfect or enforce any rights, remedies or securities against the Assignor or any other person; or
- (e) any legal limitation, disability, incapacity or other circumstances relating to the Assignor or any other person; or

- (f) any amendment or supplement to any Agreement or to any other document or Security; or
- (g) the dissolution, amalgamation, reconstruction or reorganisation of the Assignor or any other person; or
- (h) the unenforceability, invalidity or frustration of any obligations of the Assignor or any other person under an Agreement or under any other document or Security.

12 Notice of second charge

If the Assignee receives notice that the Assignor has assigned, charged or otherwise disposed of any interest in the Assigned Assets or any of them or has attempted to do so, the Assignee shall be entitled to rule off the Account and open new accounts in its books. If, despite being entitled to do so, the Assignee does not open a new account or accounts, it shall nevertheless be deemed to have done so at the time the Assignee received such notice and as from that time all payments made by the Assignor to the Assignee shall, in the absence of any express appropriation by the Assignee, be treated as having been accredited to such new account(s).

13 Power of attorney

13.1 By way of Security the Assignor irrevocably appoints the Assignee, every Receiver and every Delegate separately to be the attorney of the Assignor and in its name, on its behalf and as its act and deed to execute any documents and do any acts and things which:

- (a) the Assignor is required to execute and do under this Deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Assignee, any Receiver or any Delegate.

13.2 The Assignor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers and discretions to in clause 13.1.

13.3 The Assignor shall do or permit there to be done each and every act or thing which the Assignee may from time to time reasonably require to be done for the purposes of enforcing the Assignee's rights under this Deed and shall allow its name to be used as and when required by the Assignee for that purpose.

14 Further assurance

The Assignor shall, at its own expense, take whatever action (including, without limitation, payment of all stamp duties and other registration fees) the Assignee may require for:

- (a) perfecting or protecting the Security intended to be created by this Deed over any Assigned Asset; and
- (b) facilitating the realisation of any Assigned Asset or the exercise of any right, power or discretion exercisable, by the Assignee or any of its or Delegates or sub-delegates in respect of any Assigned Asset, including the execution of any transfer, conveyance, assignment or assurance of any property whether to the Assignee or to its nominees, and the giving of any notice, order or direction and the making of any registration, which in any such case, the Assignee may think expedient.

15 Remedies, time and indulgence

15.1 Remedies etc cumulative

The rights, powers and remedies provided by this Deed are cumulative and are not, nor are they to be construed as, exclusive of any powers and remedies provided by law.

15.2 No waiver

- (a) No failure to exercise, nor any delay in exercising, on the part of the Assignee or any Receiver, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- (b) A waiver given or consent granted by the Assignee under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

16 Invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

17 Expenses and indemnity

17.1 The Assignor shall promptly indemnify the Assignee and every Receiver and Delegate (each an **Indemnified Person**) against any cost, loss or liability together with any associated VAT incurred by any of them as a result of:

- (a) the taking, holding, protection or enforcement of this Deed;
- (b) the exercise of any of the rights, powers, discretions and remedies vested in the Assignee and each Receiver and Delegate by this Deed or by law; and
- (c) any default by the Assignor in the performance of any of the obligations expressed to be assumed by it in this Deed.

17.2 The Assignor shall indemnify each Indemnified Person against any cost, loss or liability together with any associated VAT incurred by any of them as a result of:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Assigned Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the Security constituted by this Deed; or
- (c) any default or delay by the Assignor in performing any of its obligations under this Deed.

Any past or present employee or agent of an Indemnified Person may enforce the terms of this clause 17.1 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

18 Certificates etc

Any certification or determination by the Assignee of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

19 Assignment and transfer

19.1 Assignment by the Assignor

The Assignor may not assign any of its rights or transfer any of its obligations under this Deed or enter into any transaction that would result in any of those rights or obligations passing to another person.

19.2 Assignment by the Assignee

- (a) The Assignee may assign or otherwise transfer all or any part of its rights under this Deed or any Security created by or under it.
- (b) The Assignee may disclose to any actual or proposed assignee or transferee any information about the Assignor, the Assigned Assets and the Finance Documents that the Assignee considers appropriate.

20 Additional security

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by the Assignee.

21 Notices

21.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by email or letter.

21.2 Addresses

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

- (a) in the case of the Assignor, that identified with its name below; and
- (b) in the case of the Assignee, that identified with its name below,

or any substitute address, email address or department or officer as the Party may notify to the others by not less than 5 Business Days' notice.

21.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

- (i) if by way of email, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or 3 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 21.2, if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Assignee will be effective only when actually received by the Assignee and then only if it is expressly marked for the attention of the department or officer identified with the Assignee's signature below (or any substitute department or officer as the Assignee shall specify for this purpose).

22 Counterparts

This Deed or any Finance Document entered into under or in connection with this Deed may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed or any such Finance Document entered into under or in connection with this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

23 Governing law and jurisdiction

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law unless the registered office of the Assignor is in Northern Ireland, in which case, the laws of Northern Ireland will apply.

24 Enforcement

24.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) unless the registered office of the Assignor is in Northern Ireland, in which case, the courts of Northern Ireland shall have exclusive jurisdiction. (Dispute).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary unless the registered office of the Assignor is in Northern Ireland, in which case, the Parties agree that the courts of Northern Ireland are the most appropriate and convenient courts to settle Disputes.
- (c) This clause 24 is for the benefit of the Assignee. As a result, the Assignee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Assignee may take concurrent proceedings in any number of jurisdictions.

24.2 Service of process

- (a) The Civil Procedure Rules will not apply to any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed and if the registered office of the Assignor is in Northern Ireland, the Rules of the Court of Judicature (Northern Ireland) 1980 will not apply.
- (b) Any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed may not be made by way of fax and must be made pursuant to clause 21 (Notices).

This Deed has been entered into as a deed on the date given at the beginning of this Deed.

SIGNATORIES TO THE MASTER DEED OF ASSIGNMENT

The Assignor

Executed as a deed by

Herd Hire

Limited

acting by a director in the presence of

)
)
)

Director

Signature of witness

Name

Address

Address: Ground Floor, Rivermead House, Hamm Moor Lane, Weybridge, KT15 2SF

Email: nigel.schroder@herdhire.co.uk

Attention: Mr Nigel Schroder

The Assignee

Executed as a deed

by a duly authorised attorney

for and on behalf of **Close Brothers**

Limited in the presence of

)
)
)

Signature of witness

Name

Robert Moore

Address

Address: Suite B, 1st Floor, The Maltsters, Wetmore Road, Burton-On-Trent, DE14 1LS

Email: Mark.Wilson@closebrothers.com

Attention: Mark Wilson