



Registration of a Charge

Company name: **VIRTUS IMH LIMITED**

Company number: **08035414**

Received for Electronic Filing: **20/04/2020**



Details of Charge

Date of creation: **14/04/2020**

Charge code: **0803 5414 0004**

Persons entitled: **STANDARD CHARTERED BANK (HONG KONG) LIMITED (AS SECURITY AGENT FOR THE SECURED PARTIES)**

Brief description: **N/A**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by:

LUCY JOHNSON



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8035414

Charge code: 0803 5414 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th April 2020 and created by VIRTUS IMH LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th April 2020 .

Given at Companies House, Cardiff on 21st April 2020

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

Subordination Deed

between

The parties listed in Part 1 of Schedule 1
as Subordinated Creditors

Standard Chartered Bank (Hong Kong) Limited
as Security Agent

and

The parties listed in Part 2 of Schedule 1
as Debtors

relating to the financing of a portfolio of Virtus
datacentres

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THIS DEED is dated 14 April 2020 and made

BETWEEN:

- (1) **THE COMPANIES LISTED IN PART 1 OF SCHEDULE 1** as subordinated creditors (each a "Subordinated Creditor" and together the "Subordinated Creditors");
- (2) **THE COMPANIES LISTED IN PART 2 OF SCHEDULE 1**, as debtors (each a "Debtor" and together the "Debtors"); and
- (3) **STANDARD CHARTERED BANK (HONG KONG) LIMITED**, as security agent and security trustee for the Secured Parties, which expression includes its successors and assigns (the "Security Agent").

BACKGROUND:

- (A) Each Finance Party and each Subordinated Creditor has made or is about to, or may in the future, make loans, give credit or provide other financial facilities to the Obligors.
- (B) Each Subordinated Creditor has agreed to subordinate the credit and any other financial facilities provided, or to be provided, by it as provided below.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 **Definitions**

Terms defined in the Facilities Agreement have the same meaning when used in this Deed unless given a different meaning in this Deed, and in this Deed:

"Assigned Assets" means all the rights, interests, causes of action and remedies assigned pursuant to Clause 4 and all rights, interests, causes of action and remedies assigned by the equivalent provisions in any Deed of Accession and Assignment.

"Collateral Instrument" means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, indemnities and other assurances against financial loss and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any Liabilities of the Debtors or any other person liable.

"Deed of Accession and Assignment" means a deed of accession and assignment substantially in the form of Schedule 2.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"Distribution" means any payment by or distribution of assets of a Debtor, whether in cash, property, securities or otherwise and whether on any account, including, without limitations, on account of principal, interest or damages.

"Facilities Agreement" means the facilities agreement dated on or about the date of this Deed between, amongst others, Virtus Slough Limited, Virtus Hayes Limited, Virtus (Enfield) LLP, Virtus London 9 Limited and Virtus London 10 Limited as borrowers and the

Security Agent, as may be amended, restated, supplemented or novated from time to time.

"Finance Document" has the meaning given to it in the Facilities Agreement.

"Hedge Counterparty" has the meaning given to it in the Facilities Agreement.

"Holdco" has the meaning given to it in Part 1 of Schedule 1.

"Insolvency Event" means, in respect of any person, such person:

- (A) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (B) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (C) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (D) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:
 - (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (2) is not dismissed, discharged, stayed or restrained in each case within 14 days of the institution or presentation thereof;
- (E) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (F) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (G) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 14 days thereafter;
- (H) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (A) to (G) (inclusive); or
- (I) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Liabilities" means any obligation for the payment or repayment of money and "Liability" will be construed accordingly.

"LPA" means the Law of Property Act 1925.

"New Subordinated Creditor" means a person which becomes a Subordinated Creditor under this Deed in accordance with Clause 25 (*Accession of a New Subordinated Creditor*).

"Original Jurisdiction" has the meaning given to that term in the Facilities Agreement, except all references to a "Debtor" therein shall be to each "Subordinated Creditor".

"Party" means a party to this Deed.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Assigned Assets.

"Relevant Jurisdiction" has the meaning given to that term in the Facilities Agreement, except all references to a "Debtor" therein shall be to each "Subordinated Creditor".

"Secured Party" means a Finance Party, Hedge Counterparty, a Receiver or any Delegate.

"Security Agreement" means the security agreement dated on or about the date of this Deed and made between Virtus Slough Limited, Virtus Hayes Limited, Virtus (Enfield) LLP, Virtus London 9 Limited, Virtus London 10 Limited, Virtus Enfield (Data Centres) Limited, Enfield DC Service Company Limited, Virtus IMH Limited and Virtus IMH 2 Limited as chargors and the Security Agent.

"Senior Agreement" means:

- (A) each Finance Document;
- (B) any other document designated in writing as such by the Security Agent, the Debtors and the Subordinated Creditors.

"Senior Debt" means all Liabilities owed or incurred by each Debtor to each Secured Party from time to time under any Senior Agreement, however arising:

- (A) whether or not originally owed to a Secured Party;
- (B) whether owed as principal or as surety;
- (C) whether owed jointly or severally or in any other capacity;
- (D) whether present, future, actual or contingent; and
- (E) includes any Liabilities and any other sums arising under any hedging or foreign exchange arrangement,

on any account and in any manner, including anything which would be a Liability but for the fact that it is Unenforceable.

"Senior Discharge Date" means the date on which the Senior Debt has been unconditionally and irrevocably repaid or discharged in full and that all facilities which might give rise to any Senior Debt have been terminated.

"Senior Security" means each Security Document, and any other present or future Security, guarantee or other credit enhancement in favour of any Secured Party in respect

of all or any of the Senior Debt which is designated in writing as such by the Subordinated Creditors and the Security Agent.

"Subordinated Agreement" means any agreement made between any Subordinated Creditor and a Debtor giving rise to any Subordinated Debt from time to time.

"Subordinated Creditor" means each company named in Part 1 of Schedule 1 and (with effect from its accession) each other company which executes a Deed of Accession and Assignment.

"Subordinated Debt" means all Liabilities owed or incurred by a Debtor to a Subordinated Creditor, however arising:

- (A) whether or not originally owed to that Subordinated Creditor;
- (B) whether owed as principal or as surety;
- (C) whether owed jointly or severally or in any other capacity;
- (D) whether present, future, actual or contingent; and
- (E) includes any Liabilities and any other sums arising under any hedging or foreign exchange arrangement,

on any account and in any manner, including anything which would be a Liability but for the fact that it is Unenforceable.

"Unenforceable" means void, voidable, invalid, unenforceable or otherwise irrecoverable (whether or not known to the Security Agent or any Subordinated Creditor) and "Unenforceability" will be construed accordingly.

1.2 Interpretation

- (A) The provisions of clause 1.2 (*Construction*) of the Facilities Agreement shall apply, with any necessary amendments, in this Deed.
- (B) Any reference in this Deed to a "Subordinated Creditor", the "Security Agent", a "Debtor" or any other person will be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Facilities Agreement.
- (C) References to this Deed or to any other document (including any Senior Agreements) include references to this Deed or such other document as varied in any manner from time to time, even if changes are made to the composition of the parties to this Deed or such other document or to the nature or amount of any facilities made available under such other document and, in addition, references to this Deed shall include (with effect from the date on which it comes into force) each Deed of Accession and Assignment executed pursuant to it.

1.3 Conflict

In the event of any conflict between the terms of this Deed and the terms of any Subordinated Agreement, the terms of this Deed shall prevail.

1.4 Third party rights

- (A) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or enjoy the benefit of any term of this Deed.
- (B) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (C) Any Receiver, Delegate, Hedge Counterparty, Secured Party or any officer, employee or agent of such Receiver, Delegate, Hedge Counterparty or Secured Party may, subject to this paragraph and the Third Parties Act, rely on any clause of this Deed which expressly confers rights on it.

1.5 Execution

It is intended that this document takes effect as a deed even though a Party may only execute it under hand.

1.6 Benefit

- (A) The provisions of this Deed are for the benefit of the Security Agent as security trustee for and on behalf of the Secured Parties.
- (B) No Debtor will have any rights under this Deed and none of the undertakings in this Deed by the Security Agent or the Subordinated Creditors are given (or be deemed to have been given) to, or for the benefit of, the Debtors.

1.7 Jersey terms

In this Deed a reference to:

- (A) "winding up", "liquidation", "dissolution" or "administration" includes, without limitation, "bankruptcy" (as that term is interpreted pursuant to Article 8 of the Interpretation (Jersey) Law 1954) and any "procedure" or "process" referred to in Part 21 of the Companies (Jersey) Law 1991;
- (B) a "composition", "compromise", "assignment" or "arrangement with any creditor" includes, without limitation a "compromise" or "arrangement" of the type referred to in Article 125 of the Companies (Jersey) Law 1991; and
- (C) a "liquidator", "receiver", "administrative receiver", or "administrator" includes, without limitation, the Viscount of the Royal Court of Jersey.

2. Subordination

The Subordinated Debt is subordinated to the Senior Debt.

3. Undertakings

3.1 Subordinated Creditors undertakings

- (A) Subject to paragraph 3.1(B) below, until the Senior Discharge Date each Subordinated Creditor undertakes to the Security Agent that, notwithstanding any

provision of any Subordinated Agreement, it will not without the prior written consent of the Security Agent directly or indirectly:

- (1) take, accept or receive any payment, prepayment or repayment, or accept any Distribution in respect of any Subordinated Debt in cash or in kind;
 - (2) permit any person to purchase or acquire any Subordinated Debt;
 - (3) discharge, release or reduce any part of the Subordinated Debt in any manner, including, without limitation, by set-off or any right of contribution (other than any mandatory set-off arising under any law relating to insolvency);
 - (4) take, accept, receive or permit to exist any Security, guarantee and/or indemnity or negotiable instrument for, or in respect of, any Subordinated Agreement or Subordinated Debt other than pursuant to the Finance Documents;
 - (5) enter into any agreement with or receive any credit from a Debtor;
 - (6) permit a Debtor to enter into or grant any guarantee or other Security in respect of the Subordinated Debt or any of its assets;
 - (7) take any action to enforce any Subordinated Agreement or commence any proceedings against a Debtor;
 - (8) take any action or step for or in respect of the recovery of any Subordinated Debt or any part thereof (including, without limitation, any action or step with a view to supporting the insolvency or re-organisation of a Debtor);
 - (9) agree not to take any enforcement action in relation to its rights in respect of the Subordinated Debt nor agree to any arrangement which a Debtor agrees not to taken any enforcement action in respect of its rights under any Subordinated Agreement;
 - (10) amend, vary, waive or release any term of any Subordinated Agreement or any Subordinated Debt;
 - (11) assign, charge, transfer, novate or otherwise dispose of its rights or obligations in respect of any Subordinated Agreement or Subordinated Debt (other than pursuant to the Finance Documents);
 - (12) subordinate any of the Subordinated Debt or any proceeds relating thereto to any sums owing by a Debtor to any person other than to the Security Agent in accordance with this Deed; or
 - (13) take or omit to take any action whereby this Deed might be terminated, impaired or adversely affected.
- (B) Paragraph 3.1(A) above shall not apply to any payments expressly permitted under the Facilities Agreement
- (C) Until the Senior Discharge Date, each Subordinated Creditor undertakes to the Security Agent that, notwithstanding any provision of any Subordinated Agreement, it will:

- (1) take any action required by the Security Agent to facilitate the disposal of assets the subject of the Senior Security. Such action will be taken at the cost of the Subordinated Creditors and regardless of whether or not there will be any funds available to the Subordinated Creditors following the disposal; and
 - (2) promptly notify the Security Agent of any breach of any Subordinated Agreement.
- (D) Holdco will, as of and from the date upon which an Obligor (as defined in the Facilities Agreement) becomes part of the same value added tax group as Holdco ("**Holdco VAT Group**"), indemnify that Obligor against any cost, loss or liability incurred by that Obligor from time to time as a result of it being a member of the Holdco VAT Group.

3.2 Debtor undertakings

- (A) Subject to paragraph 3.2(B) below, until the Senior Discharge Date, each Debtor hereby undertakes with the Security Agent that, notwithstanding any provision of any Subordinated Agreement, it will not without the prior written consent of the Security Agent directly or indirectly:
- (1) pay, prepay or repay, or make any Distribution in respect of, or purchase or acquire, any Subordinated Debt in cash or in kind;
 - (2) permit any person to purchase or acquire any of the Subordinated Debt;
 - (3) discharge, release or reduce any Subordinated Debt in any manner, including, without limitation, by set-off or any right of contribution (other than any mandatory set-off arising under any law relating to insolvency);
 - (4) create or permit to exist any guarantee or Security over or otherwise charge or encumber its assets or any Subordinated Debt;
 - (5) assign, transfer or novate its rights or obligations in respect of the Subordinated Debt;
 - (6) enter into any agreement with or provide credit to any Subordinated Creditor or provide guarantee or Security in respect of any liability of any Subordinated Creditor;
 - (7) take any action to enforce any Subordinated Agreement or commence any proceedings against any Subordinated Creditor;
 - (8) agree to take any enforcement action in relation to its rights in respect of any Subordinated Agreement nor agree to any arrangement which any Subordinated Creditor agrees to take any enforcement action in respect of its rights under the Subordinated Debt;
 - (9) amend, vary, waive or release any term of any Subordinated Agreement or any Subordinated Debt; or
 - (10) take or omit to take any action whereby this Deed might be terminated, impaired or adversely affected.

- (B) Paragraph 3.2(A) above shall not apply to any payments expressly permitted under the Facilities Agreement.

4. **Security**

4.1 **Covenant to pay**

Subject to the provisions of Clause 21.7 (*Application of payments to the Security Agent*), each Subordinated Creditor shall:

- (A) pay the Senior Debt when due or if they do not specify a time, on written demand by the Security Agent; and
- (B) indemnify and keep each Secured Party indemnified from and against all actions, charges, claims, costs, damages, proceedings and other liabilities occasioned by any breach of any covenant or other obligation of any Debtor and each Subordinated Creditor under the Senior Agreements.

The recourse of the Security Agent against each Subordinated Creditor in respect of the Senior Debt is limited to the rights of enforcement and recovery against the Assigned Assets and accordingly the Security Agent agrees that the total amount recoverable against the Subordinated Creditors under this Deed shall be limited to the proceeds received by the Security Agent realising the Assigned Assets in accordance with this Deed.

4.2 **Assignment**

Each Subordinated Creditor assigns to the Security Agent by way of security for the payment and discharge of the Senior Debt with full title guarantee:

- (A) its rights and interests (but not obligations) in respect of each Subordinated Agreement and the Subordinated Debt from time to time; and
- (B) all causes of action and other rights and remedies (but not obligations) relating to such Subordinated Agreement and such Subordinated Debt.

4.3 **Enforcement**

- (A) The assignment contemplated in Clause 4.2 will become immediately enforceable if an Event of Default occurs and is continuing.
- (B) The Security Agent shall be entitled following the occurrence of an Event of Default which is continuing, without prior notice to the Subordinated Creditors or prior authorisation from any court, to sell or otherwise dispose of all or any part of the Assigned Assets (at the times, in the manner and on the terms it thinks fit).
- (C) The statutory powers of sale, of appointing a receiver and the other powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed.
- (D) Section 103 of the LPA (restricting the power of sale) shall not apply to this Deed.
- (E) Section 93 of the LPA (restricting the right of consolidation) shall not apply to this Deed.

- (F) Neither the Security Agent, a Receiver nor any Delegate is:
- (1) liable to account as mortgagee in possession in respect of the Assigned Assets; nor
 - (2) liable for any loss upon realisation or exercise of any power, authority or right of the Security Agent, a Receiver or any Delegate arising under this Deed, nor for any act, default, neglect, or misconduct of any nature whatsoever.
- (G) The Security Agent, each Receiver and each Delegate is entitled to all the rights, powers and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.
- (H) No person dealing with the Security Agent, any Receiver or any Delegate shall be concerned to enquire:
- (1) whether the rights conferred by or pursuant to any Finance Document are exercisable;
 - (2) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
 - (3) otherwise as to the propriety or regularity of acts purporting or intended to exercise any such rights; or
 - (4) as to the application of any money borrowed or raised.
- (I) All the protection to purchasers contained in Sections 104 (relating to a conveyance on sale) and 107 (relating to mortgagee's receipts, discharges etc.) of the LPA, Section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any Receiver or any Delegate.

4.4 Security Agent's and Receiver's powers and rights

- (A) Following the occurrence of an Event of Default which is continuing, whether or not the Security Agent has entered into or taken possession of the whole or any part of the Assigned Assets pursuant to this Deed and subject to any applicable insolvency law:
- (1) the Security Agent may, by writing under the hand of any authorised officer of the Security Agent, appoint a Receiver in relation to the Assigned Assets;
 - (2) subject to the Insolvency Act the Security Agent may, from time to time, in similar manner, remove a Receiver and appoint another in his place;
 - (3) the Security Agent may, either at the time of appointment or at any time thereafter, fix the remuneration of a Receiver; and
 - (4) the Security Agent and any agent or nominee wherever situated may, without further notice, exercise all powers conferred on mortgagees by the LPA as varied or extended by this Deed.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- (B) A Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Deed or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Security Agent shall not be liable for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever.
- (C) The Security Agent (without becoming a mortgagee in possession) and/or any Receiver (without personal liability) shall have the powers to do or abstain from doing anything which a Subordinated Creditor could do or abstain from doing including, without limitation, the powers conferred by Section 109 of the LPA and, in the case of a Receiver who is an administrative receiver the powers conferred by Section 29 of the Insolvency Act 1986 and by Schedule 1 to the Insolvency Act 1986 whether or not the Senior Creditor and/or any Receiver is an administrative receiver. Without limiting the foregoing, Clauses 13.2 (*Possession*), 13.4 (*Dealings with Security Assets*), 13.5 (*Sale of Security Assets*), 13.10 (*Compromise and legal actions*), 13.12 (*Appointments and delegation*), 13.13 (*Receipts*) and 13.15 (*Other*) of the Security Agreement shall be set out in this Deed in full, except all references to a "Chargor", the "Security Assets" and a "Receiver" therein shall be references to each "Subordinated Creditor", the "Assigned Assets" and a "Receiver" (as defined in this Deed), respectively. All powers and rights set out above may be exercised in the name of a Subordinated Creditor and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.

4.5 Receiver as agent

A Receiver is for all purposes the agent of the Subordinated Creditors. Subject to the provisions of the Insolvency Act, the Subordinated Creditors are solely responsible for all of a Receiver's acts, defaults, neglect and misconduct of any nature whatsoever and for his remuneration and costs, to the exclusion of liability on the part of the Security Agent.

4.6 No obligation

No Receiver is obliged to exercise any of the powers set out in this clause.

4.7 Several power

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Security Agent specifies otherwise in the appointment of such Receiver.

4.8 Powers exercisable by the Security Agent

- (A) The Security Agent may exercise all powers granted to a Receiver by this Deed, whether as attorney of the Subordinated Creditors or otherwise.
- (B) The powers of a Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Security Agent and so that, without limitation, such powers are and remain exercisable by the Security Agent in respect of that part of the Assigned Assets in respect of which no appointment of a Receiver by the Security Agent is from time to time subsisting.

4.9 Notice and acknowledgement of assignment

Each Debtor acknowledges that this Deed constitutes notice to it of the assignment of each Subordinated Agreement and the Subordinated Debt and other items pursuant to Clause 4.2.

5. Subordination on insolvency

5.1 Subordinated Creditors actions

Until the Senior Discharge Date, upon an Insolvency Event occurring in respect of a Debtor:

- (A) the claims of each Subordinated Creditor in respect of the Subordinated Debt shall be postponed in all respects to the Senior Debt;
- (B) no Subordinated Creditor shall, unless directed by the Security Agent, claim, prove, rank or vote as a creditor of that Debtor;
- (C) if any Subordinated Creditor is so directed by the Security Agent, it agrees to act in accordance with such directions and shall procure that any resultant Distributions be made to the Security Agent to the extent necessary to repay all the Senior Debt in full; and
- (D) each Subordinated Creditor irrevocably authorises and directs the Security Agent to submit any proof and/or to instruct the relevant liquidator or other person distributing the assets of that Debtor or their proceeds to pay Distributions directly to the Security Agent.

5.2 Actions of the Security Agent

Until the Senior Discharge Date, the Security Agent may, and is irrevocably authorised by and on behalf of the Subordinated Creditors to:

- (A) claim, enforce or prove for any Subordinated Debt;
- (B) file claims and proofs, give receipts, take all such proceedings and do all such actions as the Security Agent sees fit to recover the Subordinated Debt; and
- (C) receive Distributions from such actions for application towards the Senior Debt in accordance with the provisions of this Deed.

5.3 Treatment of non-cash distributions

If the Security Agent receives any distribution otherwise than in cash in respect of the Subordinated Liabilities:

- (A) the Security Agent may realise that distribution as it sees fit;
- (B) the Senior Debt will not be deemed reduced by that distribution until and except to the extent that the proceeds of such realisation are applied towards the Senior Debt; and
- (C) on realisation, the Security Agent will apply the realisation proceeds towards the Senior Debt in accordance with the provisions of this Deed.

5.4 Payments to Security Agent directly

Each Subordinated Creditor:

- (A) directs the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of a Debtor or their proceeds to pay Distributions in respect of the Subordinated Debt direct to the Security Agent until the Senior Discharge Date;
- (B) will give all such notices and do all such things as the Security Agent may request to give effect to paragraph 5.4(A) above.

5.5 Transfer of Distributions

Until the Senior Discharge Date, each Subordinated Creditor will at its own expense do all such things as the Security Agent may require to transfer to the Security Agent all Distributions which must be turned over to or held in trust for the Security Agent (including endorsements and execution of formal transfers).

5.6 Subordinated Creditors action

Each Subordinated Creditor shall, at its own cost, promptly do all such things and take all such actions as directed by the Security Agent to give effect to this clause, including, without limitation, taking action which the Security Agent is not able to take under this clause.

6. Representations

Each Subordinated Creditor makes the representations and warranties set out in this Clause 6 on the date of this Deed:

6.1 Status

- (A) Other than Virtus (Enfield) LLP, it is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (B) Virtus (Enfield) LLP is a limited liability partnership, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (C) It has the power to own its assets and carry on its business as it is being conducted.

6.2 Binding obligations

The obligations expressed to be assumed by it in this Deed are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations and this Deed constitutes a valid security interest over the Assigned Assets.

6.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:

- (A) subject to the Legal Reservations any law or regulation applicable to it;
- (B) its constitutional documents; or

- (C) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

6.4 Power and authority

- (A) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- (B) No limit on its powers will be exceeded as a result of the grant of security or giving of indemnities contemplated by this Deed.

6.5 Validity and admissibility in evidence

- (A) All Authorisations required or desirable:
 - (1) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed; and
 - (2) to make this Deed admissible in evidence in its Relevant Jurisdictions,have been obtained or effected and are in full force and effect.
- (B) All Authorisations necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect where failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

6.6 Registration requirements

Except for the registration of this Deed under the Companies Act 2006, it is not necessary to file, register or record this Deed in any public place or elsewhere or that any stamp, registration or similar tax be paid on or in relation to this Deed or the transactions contemplated by this Deed.

6.7 Information

- (A) All information supplied by it to any Secured Party in connection with this Deed or the Facilities Agreement was true and accurate in all material respects as at the date it was provided or as at the date at which it was stated to be given.
- (B) It has not omitted to supply any information which, if disclosed, would make the information referred to in paragraph (A) untrue or misleading in any respect.
- (C) Nothing has occurred since the date of the information referred to in paragraph (A) which, if disclosed, would make that information untrue or misleading in any respect.

6.8 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, may prevent it from accepting and performing any obligation under this Deed have (to the best of its knowledge and belief) been started or threatened against it.

6.9 Ownership

- (A) It is and will remain legally and beneficially entitled, free of any Security (other than pursuant to or constituted by the Security Documents), option, subordination or other right in favour of any person to the Subordinated Liabilities.
- (B) The Subordinated Liabilities are not subject to any set-off, counterclaim or other defence.

6.10 Insolvency

No Insolvency Event has occurred or, to its knowledge, been threatened or any analogous procedure or step is taken in any jurisdiction including any corporate action, legal proceedings or other procedure or step in respect of being declared "bankrupt" within the meaning of Article 8 of the Interpretation (Jersey) Law 1954.

6.11 Immunity

- (A) The entry into by it of this Deed constitutes private and commercial acts performed for private and commercial purposes.
- (B) It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Deed.

6.12 Jurisdiction/governing law

- (A) The:
 - (1) irrevocable submission under this Deed to the jurisdiction of the courts of England;
 - (2) agreement that this Deed is governed by English law; and
 - (3) agreement not to claim any immunity to which it or its assets may be entitled, is legal, valid and binding under the laws of its jurisdiction of incorporation.
- (B) Any judgment obtained in England will be recognised and be enforceable by the courts of the jurisdiction of its incorporation.

6.13 Deduction of Tax

It is not required to make any deduction for or on account of Tax from any payment it may make under this Deed.

6.14 No default

- (A) No Event of Default is continuing or might reasonably be expected to result from the execution of, or performance of, the transactions contemplated by this Deed.
- (B) No other event or circumstance is outstanding which constitutes (or with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination

event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject.

6.15 Pari passu ranking

Its payment obligations under this Deed rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

6.16 Centre of main interests and establishments

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

6.17 Anti-corruption law

It has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

6.18 Sanctions

Neither it, nor any of its Subsidiaries or joint ventures, nor any of its respective directors, officers or employees or, to its knowledge, any persons acting on its behalf:

- (A) is a Restricted Party; or
- (B) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanctions Authority.

6.19 Repetition

Each of the representations made in this clause are deemed to be made daily by each Subordinated Creditor, by reference to the facts and circumstances then existing.

7. Sanctions and anti-corruption

7.1 Sanctions

No Subordinated Creditor shall, and shall not permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any loan or other transaction(s) contemplated by any Subordinated Agreement to fund any trade, business or other activities:

- (A) involving or for the benefit of any Restricted Party; or
- (B) in any other manner that would reasonably be expected to result in any Subordinated Creditor or any Debtor being in breach of any Sanctions (if and to the extent applicable to either of them) or becoming a Restricted Party.

7.2 Anti-corruption law

- (A) No Subordinated Creditor shall directly or indirectly use the proceeds of any loan or other transaction(s) contemplated by any Subordinated Agreement for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (B) Each Subordinated Creditor shall:
 - (1) conduct its businesses in compliance with applicable anti-corruption laws; and
 - (2) maintain policies and procedures designed to promote and achieve compliance with such laws.

8. Voting

Following the occurrence of an Event of Default which is continuing, each Subordinated Creditor:

- (A) irrevocably authorises the Security Agent to exercise all powers of convening meetings, voting and representation in respect of the Subordinated Debt (provided that this will not entitle the Security Agent to vary the terms of any Subordinated Agreement);
- (B) will provide all forms of proxy and of representation necessary for such exercise; and
- (C) if and to the extent that the Security Agent is not entitled to exercise a power conferred by the above:
 - (1) will exercise that power acting in accordance with the instructions of the Security Agent; and
 - (2) will not exercise them so as to impair the subordination provided for in this Deed.

9. Turnover

9.1 Turnover trust

If at any time before the Senior Discharge Date any Subordinated Creditor receives:

- (A) any benefit, Distribution or security in respect of, or on account of, the Subordinated Debt;
- (B) any Distribution in respect of the purchase or other acquisition of the Subordinated Debt;
- (C) the proceeds of enforcement of any Security or guarantee in relation to the Subordinated Debt; or
- (D) any of the Subordinated Debt are discharged in any manner,

that Subordinated Creditor will hold any such payment or Distribution or an amount equal to the amount discharged on trust for the Security Agent and pay and distribute it as soon as possible to the Security Agent for application in or towards payment and/or discharge of the Senior Debt in accordance with the provisions of this Deed.

9.2 Failure of trust

If the trust referred to in this clause fails or cannot be given effect to, the Subordinated Creditors will pay to the Security Agent an amount equal to the relevant amount and the Security Agent shall apply such receipts in or towards payment and/or discharge of the Senior Debt in accordance with the provisions of this Deed.

9.3 Failure to act

If any Subordinated Creditor fails to perform its obligations under this clause, the Security Agent is irrevocably authorised to effect the same on behalf of that Subordinated Creditor.

9.4 Additional Subordinated Debt

Any Distribution made by each Subordinated Creditor to the Security Agent under this clause shall be added to the Subordinated Debt (to the extent permitted by law).

10. Application of receipts

- (A) Any amount received by the Security Agent under this Deed shall be applied by it in accordance with the provisions of Clause 21.7 (*Application of payments to the Security Agent*).
- (B) Until the Senior Discharge Date:
 - (1) the Security Agent may refrain from applying or enforcing any Senior Security, monies or rights held or received by the Security Agent or apply and enforce the same in such manner and order as the Security Agent sees fit (whether against the Senior Debt or otherwise); and
 - (2) no Subordinated Creditor will be entitled to the benefit of such Senior Security.
- (C) Neither the Subordinated Creditors nor the Debtors will be entitled to direct the application by the Security Agent of any sums received by the Security Agent in connection with this Deed.

11. Continuing obligations

11.1 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Debtor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the Senior Debt will continue or be reinstated as if the discharge, release or arrangement had not occurred.

11.2 Waiver of defences

- (A) The terms of this Deed shall not be affected by any act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any Parties rights and/or obligations under this Deed (and whether or not known to any Secured Party) including, without limitation:
- (1) any time, waiver or consent granted to, or composition with, any Debtor or any other person;
 - (2) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any other person;
 - (3) 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 Debtor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - (4) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or any other person;
 - (5) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental, whether or not more onerous or of whatever nature) or replacement of a Finance Document or any other document or security, including, without limitation, any change in the purpose of, any extension of or any increase in any facilities or the addition of any new facilities under any Finance Document, Subordinated Document or other document or security;
 - (6) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
 - (7) any insolvency or similar proceedings.
- (B) The Secured Creditor acknowledges that:
- (1) the Security Agent is under no obligation to give it notice of the occurrence of any event in paragraph 11.2(A) above;
 - (2) it has no right of consent in relation to any event in paragraph (A) above; and
 - (3) no lack of consent shall impair the provisions of this Deed.

11.3 Continuing obligations

The obligations of each Debtor and each Subordinated Creditor under this Deed are continuing obligations and shall be and remain fully effective until the Senior Discharge Date, notwithstanding:

- (A) that a Debtor may have no liability to the Security Agent at the time of execution of this Deed;
- (B) any intermediate payment, reduction or discharge of the Senior Debt or any part of it; and

- (C) any increase in or variation of the Senior Debt or Subordinated Debt or any variation, extension or supplement to any Senior Agreement or Subordinated Agreement.

11.4 Additional security

This Deed is in addition to, and is not in any way prejudiced by, any Security or other right now or subsequently held by any Secured Party.

11.5 No impairment to existing obligations

- (A) Nothing in this Deed is intended to or shall impair the obligations of:
 - (1) any Debtor to any Secured Party under any Senior Agreement; or
 - (2) any Debtor to any Subordinated Creditor under any Subordinated Agreement.
- (B) No payment made to the Security Agent in relation to the Senior Debt pursuant to this Deed shall be deemed to extinguish the obligations of any Debtor to any Subordinated Creditor pursuant to any Subordinated Agreement.

11.6 No Recourse to other rights

The Security Agent will not be obliged, before making demand or taking any other steps to enforce its rights under this Deed:

- (A) to make any demand for repayment, or take any action to recover any Senior Debt;
- (B) to take any proceedings or exhaust any claim, right or remedy against a Debtor or any other person; or
- (C) to take any action under or enforce any Security held by it.

11.7 Deferral of the Subordinated Creditors' rights

- (A) Until the Senior Debt have been unconditionally and irrevocably paid in full and unless the Security Agent otherwise directs, no Subordinated Creditor will exercise any rights which it may have by reason of performance by it of its obligations under the Senior Agreements or by reason of any amount being payable, or liability arising, under this Deed:
 - (1) to be indemnified by any Debtor or any other person;
 - (2) to claim any contribution from any other guarantor of any Debtor's obligations under the Senior Agreements;
 - (3) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Senior Agreements or of any other guarantee or security taken pursuant to, or in connection with, the Senior Agreements by any Secured Party;
 - (4) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which that Debtor has

given a guarantee, undertaking or indemnity under any other Senior Agreement;

- (5) to exercise any right of set-off against any Debtor or other person; and/or
 - (6) to claim or prove as a creditor of any Debtor or other person in competition with any Secured Party.
- (B) If any Subordinated Creditor receives any benefit, payment or distribution in relation to such rights, it shall hold that benefit, payment or distribution (to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Debtors and the Subordinated Creditors under or in connection with the Senior Agreements to be repaid in full) on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with the Facilities Agreement and the provisions of this Deed.

11.8 Subordinated Creditor's Intent

Without prejudice to the generality of Clause 11.2 (*Waiver of defences*), each Subordinated Creditor expressly confirms that it intends that the security created by this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Senior Agreements and/or any facility or amount made available under any of the Senior Agreements for the purposes of or in connection with any of the following:

- (A) business acquisitions of any nature;
- (B) increasing working capital;
- (C) enabling investor distributions to be made;
- (D) carrying out restructurings;
- (E) refinancing existing facilities;
- (F) refinancing any other indebtedness;
- (G) making facilities available to new borrowers;
- (H) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and/or
- (I) any fees, costs and/or expenses associated with any of the foregoing.

11.9 Further assurance

Clause 22.17 (*Further assurance*) of the Facilities Agreement shall be set out in this Deed in full, except all references to a "Debtor" under that clause shall be references to each "Subordinated Creditor".

12. Subrogation of Subordinated Creditors

If the Senior Debt is discharged in full from any proceeds of the Subordinated Debt, then with effect from the Senior Discharge Date, each Subordinated Creditor will be:

- (A) subrogated to the Senior Debt; and
- (B) entitled to an assignment of the Senior Debt without any recourse to the Security Agent.

13. **Power of attorney**

13.1 **Appointment**

- (A) Each Subordinated Creditor by way of security irrevocably appoints the Security Agent, any Receiver and any Delegate severally as its attorney (with full power of substitution) on its behalf and in its name or otherwise as such time and in such manner as the attorney may think fit: to do anything which that Subordinated Creditor is obliged to do under any Finance Document to which it is party, but, following the expiry of any time period permitted for performance, has failed to do by the date it was obliged to do so; and
- (B) following the occurrence of an Event of Default which is continuing, to exercise any of the rights conferred on the Security Agent, any Receiver or any Delegate in relation to the Assigned Assets or under any Finance Document, the LPA or the Insolvency Act 1986.

13.2 **Ratification**

Each Subordinated Creditor ratifies and confirms and agrees to ratify and confirm whatever any such attorney does or purports to do under its appointment under this clause.

14. **Information**

- (A) Each Subordinated Creditor agrees to notify the Security Agent, upon reasonable request of the amounts from time to time of the Subordinated Debt.
- (B) Each Debtor and each Subordinated Creditor each agree to provide the Security Agent with any document or other information relating to the Subordinated Debt as it may request.
- (C) Each Debtor acknowledges and agrees that each Subordinated Creditor and the Security Agent may give the other and each other Debtor information about any Debtor, whether financial or otherwise.
- (D) The Security Agent will notify the Subordinated Creditors promptly on the occurrence of the full and final discharge of the Senior Debt.

15. **Discharge**

15.1 **Release**

Following the Senior Discharge Date, the Security Agent shall, at the written request and cost of the Subordinated Creditors, promptly take all action reasonably necessary to discharge this Deed and execute and deliver such deeds and documents as the Subordinated Creditors may reasonably require to give effect to this clause.

15.2 Retention

If the Security Agent considers that any amount paid or credited to it under this Deed is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Senior Debt has been irrevocably paid.

16. Partial 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 the remaining provisions under the law of any other jurisdiction will in any way be affected or impaired.

17. Remedies and waivers

- (A) No failure to exercise, nor any delay in exercising, on the part of the Security Agent, 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.
- (B) The rights and remedies provided in this Deed are cumulative and are not exclusive of any right or remedies provided by law.

18. Jersey law customary waivers

- (A) Each Subordinated Creditor irrevocably and unconditionally waives and abandons any and all rights or entitlement which it has or may have under the existing or future laws of the Island of Jersey, whether by virtue of the customary law rights of *droit de discussion* or otherwise, to require that recourse be had to the assets of any other Subordinated Creditor or other person before any claim is enforced against it in respect of its obligations contained herein or in respect of any obligation assumed by it under any other Finance Document.
- (B) Each Subordinated Creditor irrevocably and unconditionally waives and abandons any and all rights or entitlement which it has or may have under the existing or future laws of the Island of Jersey, whether by virtue of the customary law right of *droit de division* or otherwise, to require that any liability under the guarantee contained herein or any liability under any other Finance Document be divided or apportioned with any other person or reduced in any manner.

19. Other Collateral Instruments

Each Subordinated Creditor and each Debtor agrees to be bound by this Deed notwithstanding that any other person intended to execute or to be bound by any Collateral Instrument under or pursuant to any Senior Agreement may not do so or may not be effectually bound and notwithstanding that such other Collateral Instrument may be determined or be or become invalid or unenforceable against any other person, whether or not the deficiency is known to the Security Agent.

20. Changes to the Parties

20.1 Assignment and transfer by a Subordinated Creditor or a Debtor

No Subordinated Creditor or Debtor may assign any of its rights or transfer (whether by novation or otherwise) any of its respective rights or obligations under this Deed.

20.2 Assignment and transfer by the Security Agent

The Security Agent may assign any of its rights or transfer any of its rights or obligations under this Deed to any person to whom it is permitted to assign its rights or transfer any of its rights or obligations to under the terms of the Facilities Agreement.

21. Costs and expenses

21.1 Enforcement expenses

Each Subordinated Creditor shall, within three Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees) incurred by the Security Agent, any Secured Party, any Receiver or any Delegate in connection with the enforcement of, or the preservation of any rights under, this Deed and any proceedings instituted by or against the Security Agent as a consequence of it entering into this Deed or enforcing those rights.

21.2 Transaction expenses

Each Subordinated Creditor shall promptly on demand, pay the Security Agent the amount of all costs and expenses (including legal and other professional fees, VAT and disbursements) reasonably incurred by any of them (or by any Receiver) in connection with the negotiation, preparation, printing, execution, syndication, securitisation and perfection of this Deed.

21.3 Amendment costs

If a Subordinated Creditor requests an amendment, waiver or consent that Subordinated Creditor shall, within three Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Security Agent (or any Receiver) in responding to, evaluating, negotiating or complying with that request or requirement.

21.4 Set-off

- (A) The Security Agent may set off any matured obligation due from the Subordinated Creditors under this Deed (to the extent beneficially owned by the Security Agent) against any matured obligation owed by the Security Agent to the Subordinated Creditors, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (B) All payments to be made by the Subordinated Creditors under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

21.5 Taxes

Each Subordinated Creditor shall pay Tax and VAT in respect of any amount payable by it to the Security Agent, any Receiver, Delegate or Secured Party under this Deed in accordance with the Facilities Agreement.

21.6 Default interest

Any amount due but unpaid by a Subordinated Creditor under this Deed shall incur interest in accordance with default interest provisions of the Facilities Agreement and all references to a "Obligor" and any "Finance Document" under those provisions shall be references to each "Subordinated Creditor" and "this Deed", respectively.

21.7 Application of payments to the Security Agent

The Security Agent shall apply all amounts received or recovered under this Deed in satisfaction of, whether in whole or in part, the Senior Debt in accordance with the Facilities Agreement, provided always that if, at the time when amounts are received or recovered by the Security Agent under this Deed, the Senior Debt have not fallen due for payment in accordance with the Finance Documents, the Security Agent and each Subordinated Creditor agree that:

- (A) all amounts received or recovered under this Deed shall be paid to the Agent who shall then apply such amounts in accordance with clause 7.3A (*Mandatory prepayment on enforcement*) of the Facilities Agreement; and
- (B) such application by the Agent shall constitute payment by the Debtors in compliance with the requirements of clause 6 (*Repayment*) of the Facilities Agreement and any other provision of the Finance Documents under which the Debtors have a payment obligation to any of the Secured Parties.

21.8 Business Days

- (A) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (B) During any extension of the due date for payment of any amount under this Deed, interest is payable on the principal or the then due but unpaid amount at the rate payable on the original due date.

21.9 Currency of account

- (A) Subject to paragraphs (B) and (C) below, sterling is the currency of account and payment for any sum due from the Subordinated Creditors.
- (B) All payments by the Subordinated Creditors under this Deed (including damages for its breach) shall be made in the currency in which the relevant amount is denominated, or if different, is payable and to such account, with such person and such other manner as the Security Agent may direct.
- (C) Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

21.10 Change of currency

- (A) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (1) any reference in this Deed to, and any obligations arising under this Deed in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Security Agent (after consultation with the Subordinated Creditors); and
 - (2) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Security Agent (acting reasonably).
- (B) If a change in any currency of a country occurs, this Deed shall, to the extent the Security Agent (acting reasonably and after consultation with the Subordinated Creditors) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

21.11 Day count convention

Any interest, commission or fee accruing under this Deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

22. Certificates and determinations

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

23. Notices

- (A) Subject to paragraph (B) every notice, request, demand or other communication under this Deed shall be made and delivered in accordance with the Facilities Agreement.
- (B) Notices, demands or other communications to be made or sent to each Subordinated Creditor shall be made and sent to the address identified by its name below.

24. The Finance Documents

Each Subordinated Creditor acknowledges the terms of the Finance Documents, including, without limitation, clause 8.4 (*Default interest*), clause 29 (*Role of the Agent, the Security Agent and the Arranger*) and clause 30 (*Application of Proceeds*) of the Facilities Agreement.

25. **Accession of a New Subordinated Creditor**

- (A) **Method:** Subject to the terms of the Facilities Agreement, any person may at any time, with the prior approval of the Security Agent, become a party to this Deed as a Subordinated Creditor by delivering to the Security Agent in form and substance satisfactory to it a Deed of Accession and Assignment.
- (B) **New Subordinated Creditor bound:** The New Subordinated Creditor shall become a Subordinated Creditor under this Deed with effect from the time when the Deed of Accession and Assignment takes effect, at which point:
 - (1) the New Subordinated Creditor shall become bound by all the terms of this Deed and shall assume the same obligations as "Subordinated Creditor" as if it were an original Party to this Deed; and
 - (2) the other Subordinated Creditors and each Debtor shall assume the same obligations in respect of the New Subordinated Creditor as if it were an original Party to this Deed.

26. **Counterparts**

This Deed 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 the Deed.

27. **Governing Law**

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

28. **Enforcement**

28.1 **Jurisdiction**

- (A) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").
- (B) Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (C) This clause is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

28.2 **Service of Process**

- (A) Without prejudice to any other mode of service allowed under any relevant law, each Debtor and each Subordinated Creditor (other than a Debtor or a Subordinated Creditor incorporated in England and Wales):

- (1) irrevocably appoints Virtus HoldCo Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and
- (2) agrees that failure by a process agent to notify the relevant Debtor or Subordinated Creditor of the process will not invalidate the proceedings concerned,

and Virtus HoldCo Limited by signing this Deed agrees to the appointment above.

- (B) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the relevant Debtor or Subordinated Creditor must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Security Agent. Failing this, the Security Agent may appoint another agent for this purpose

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

SCHEDULE 1

PART 1 : SUBORDINATED CREDITORS

Subordinated Creditor's name	Registration number	Jurisdiction of incorporation	Registered address
Virtus HoldCo Limited ("Holdco")	07670473	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus Data Centres Properties Limited	09840065	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus Slough Limited	07723190	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus Hayes Limited	07670476	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus (Enfield) LLP	OC331357	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus London 9 Limited	10427250	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus London 10 Limited	11619901	England and Wales	Kent House 14-17 Market Place London W1W 8AJ

Virtus Enfield (Data Centres) Limited	07670792	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Enfield DC Service Company Limited	07230521	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
EJH Limited	105514	Jersey	Aztec Group House 11-15 Seaton Place St Helier Jersey JE4 0QH
EJS Limited	105504	Jersey	Aztec Group House 11-15 Seaton Place St Helier Jersey JE4 0QH
Virtus IMH Limited	08035414	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus IMH 2 Limited	09759170	England and Wales	Kent House 14-17 Market Place London W1W 8AJ

PART 2 : DEBTORS

Debtor name	Registration number	Jurisdiction of incorporation	Registered address
Virtus HoldCo Limited	07670473	England and Wales	Kent House 14-17 Market Place London W1W 8AJ

Virtus Data Centres Properties Limited	09840065	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus Slough Limited	07723190	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus Hayes Limited	07670476	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus (Enfield) LLP	OC331357	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus London 9 Limited	10427250	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus London 10 Limited	11619901	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus Enfield (Data Centres) Limited	07670792	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Enfield DC Service Company Limited	07230521	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
EJH Limited	105514	Jersey	Aztec Group House 11-15 Seaton Place St Helier Jersey JE4 0QH

EJS Limited	105504	Jersey	Aztec Group House 11-15 Seaton Place St Helier Jersey JE4 0QH
Virtus IMH Limited	08035414	England and Wales	Kent House 14-17 Market Place London W1W 8AJ
Virtus IMH 2 Limited	09759170	England and Wales	Kent House 14-17 Market Place London W1W 8AJ

SCHEDULE 2

Form of Deed of Accession and Assignment for a New Subordinated Creditor

THIS DEED OF ACCESSION AND ASSIGNMENT is made on

BETWEEN:

- (1) **[***INSERT THE NAME OF THE NEW SUBORDINATED CREDITOR**]** (registered in [England and Wales] under number [***]) (the **"New Subordinated Creditor"**);
- (2) **[***Insert the name of each Subordinated Creditors***]** (registered in [England and Wales] under number [***]) (each a **"Subordinated Creditor"** and together the **"Subordinated Creditors"**);
- (3) **[***Insert the name of each Debtor ***]** (registered in [England and Wales] under number [***]) (each a **"Debtor"** and together the **"Debtors"**); and
- (4) **Standard Chartered Bank (Hong Kong) Limited** (the **"Security Agent"**).

WHEREAS:

- (A) This Deed is supplemental to a subordination deed (the **"Principal Deed"**) dated [***insert date***] between (1) Virtus HoldCo Limited, Virtus Data Centres Properties Limited, Virtus Slough Limited, Virtus Hayes Limited, Virtus (Enfield) LLP, Virtus London 9 Limited, Virtus London 10 Limited, Virtus Enfield (Data Centres) Limited, Enfield DC Service Company Limited, EJS Limited, Virtus IMH Limited and Virtus IMH 2 Limited as subordinated creditors, (2) Virtus HoldCo Limited, Virtus Data Centres Properties Limited, Virtus Slough Limited, Virtus Hayes Limited, Virtus (Enfield) LLP, Virtus London 9 Limited, Virtus London 10 Limited, Virtus Enfield (Data Centres) Limited, Enfield DC Service Company Limited, EJS Limited, Virtus IMH Limited and Virtus IMH 2 Limited as debtors and (3) the Security Agent as security agent and security trustee for the Secured Parties.

[*Note: Set out details of any previous Deed of Accession and Assignment.***]**

- (B) The New Subordinated Creditor has agreed, on the terms contained in the Principal Deed, to assign by way of security in favour of the Security Agent (acting as security agent and security trustee for the Secured Parties), amongst other things, its rights and interests (but not obligations) in respect of each Subordinated Agreement and the Subordinated Debt from time to time to secure the Senior Debt, and to accede to the Principal Deed.

THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Incorporation:** Words or expressions defined in the Principal Deed and principles of interpretation provided for in the Principal Deed shall, unless the context otherwise requires or unless otherwise re-defined below, have the same meaning and shall apply (as the case may be) in this Deed.

1.2 **Additional Definitions:** In this Deed:

"Subordinated Debt" means all Liabilities owed or incurred by a Debtor to the New Subordinated Creditor however arising:

- (A) whether or not originally owed to the New Subordinated Creditor;
- (B) whether owed as principal or as surety;
- (C) whether owed jointly or severally or in any other capacity;
- (D) whether present, future, actual or contingent; and
- (E) includes any Liabilities and any other sums arising under any hedging or foreign exchange arrangement,

on any account and in any manner, including anything which would be a Liability but for the fact that it is Unenforceable.

"Subordinated Agreement" means any agreement made between the New Subordinated Creditor and a Debtor giving rise to any Subordinated Debt from time to time.

2. ACCESSION BY THE NEW SUBORDINATED CREDITOR TO THE PRINCIPAL DEED

- 2.1 **Accession:** The New Subordinated Creditor agrees to be bound by all the terms of the Principal Deed and to perform all obligations of a Subordinated Creditor under, and in accordance with, the Principal Deed with effect from the date of this Deed, as if it had been an original party to the Principal Deed as a Subordinated Creditor.
- 2.2 **Covenant to pay:** Subject to the provisions of Clause 21.7 (*Application of payments to the Security Agent*) of the Principal Deed, the New Subordinated Creditor shall:
 - (A) pay the Senior Debt when due or if they do not specify a time, on written demand by the Security Agent; and
 - (B) indemnify and keep each Secured Party indemnified from and against all actions, charges, claims, costs, damages, proceedings and other liabilities occasioned by any breach of any covenant or other obligation of any Debtor and each Subordinated Creditor under the Senior Agreements.

The recourse of the Security Agent against the New Subordinated Creditor in respect of the Senior Debt is limited to the rights of enforcement and recovery against the Assigned Assets and accordingly the Security Agent agrees that the total amount recoverable against the New Subordinated Creditor under this Deed shall be limited to the proceeds received by the Security Agent realising the Assigned Assets in accordance with this Deed.

- 2.3 **Agreement to the accession:** Each Subordinated Creditor and each Debtor hereby agrees to the New Subordinated Creditor's accession.

3. ASSIGNMENTS

3.1 Assignment

The New Subordinated Creditor assigns (subject to the Security created under the 2018 Subordination Deed) to the Security Agent by way of security for the payment and discharge of the Senior Debt with full title guarantee:

- (A) its rights and interests (but not obligations) in respect of each Subordinated Agreement and the Subordinated Debt from time to time; and
- (B) all causes of action and other rights and remedies (but not obligations) relating to such Subordinated Agreement and such Subordinated Debt.

3.2 Notice and acknowledgement of assignment

Each Debtor acknowledges that this Deed constitutes notice to it of the assignment of each Subordination Agreement and the Subordinated Debt and other items pursuant to Clause 3.1 or pursuant to the equivalent provisions in the Principal Deed.

4. NOTICES

All notices or demands to be given or made pursuant to this Deed shall be given or made in the manner set out in Clause 23 (*Notices*) of the Principal Deed. The New Subordinated Creditor's address for service is set out in Schedule 2.

5. COUNTERPARTS

This Deed 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 the Deed.

6. GOVERNING LAW

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

7. ENFORCEMENT

7.1 Jurisdiction:

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

7.2 **[***Service of process:** Without prejudice to any other mode of service allowed under any relevant law, the New Subordinated Creditor:

- (a) irrevocably appoints [•] as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed and the Principal Deed; and
- (b) agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.***]

8. **FINANCE DOCUMENT**

This Deed is a Finance Document.

THIS DEED OF ACCESSION AND ASSIGNMENT has been executed by the New Subordinated Creditor, each Subordinated Creditor and each Debtor as a deed and signed by the Security Agent and it has been delivered and shall take effect on the date stated at the beginning of this document.

Schedule 1 to Deed of Accession and Assignment

Notice Details

*[***Set out here the notice details for the New Subordinated Creditor***]*

Execution page to Deed of Accession and Assignment

EXECUTION

THE NEW SUBORDINATED CREDITOR

Executed as a)
Deed by ****insert name of New*)
*Subordinated Creditor****)
acting by:) Director

in the presence of:

Signature of witness:

Name of witness:

Address of witness:

THE SUBORDINATED CREDITORS

Executed as a)
Deed by ****insert name of each*)
*Subordinated Creditor****)
acting by:) Director

in the presence of:

Signature of witness:

Name of witness:

Address of witness:

THE DEBTORS

Executed as a

Deed by [****insert name of each Debtor****]

acting by:

)
)
)
)

Director

in the presence of:

Signature of witness:

Name of witness:

Address of witness:

THE SECURITY AGENT

Signed by

for and on behalf of

**Standard Chartered Bank (Hong Kong)
Limited**

)
)
)
)

Authorised Signatory

EXECUTION PAGES

The Subordinated Creditors

EXECUTED as a DEED by Daryl)
Seaton as attorney for)
VIRTUS HOLDCO LIMITED under a)
power of attorney dated 26 March 2020)

[Redacted Signature]

(Signature of Daryl Seaton attorney for
Virtus Holdco Limited)

in the presence of:

[Redacted Signature]

Signature of witness

Name of witness: SUSAN KENDAL

Address: [Redacted]

[Redacted]

Occupation: [Redacted]

EXECUTED as a DEED by)
VIRTUS DATA CENTRES)
PROPERTIES LIMITED)
acting by)
in the presence of:

[Redacted Signature]

(Signature)

[Redacted Signature]

Signature of witness

Name of witness: SUSAN KENDAL

Address: [Redacted]

[Redacted]

Occupation: [Redacted]

EXECUTED as a DEED by
VIRTUS SLOUGH LIMITED
acting by
in the presence of:

)
)
)

(Signature)

Signature of witness

Name of witness:

SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS HAYES LIMITED
acting by
in the presence of:

)
)
)

(Signature)

Signature of witness

Name of witness:

SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS (ENFIELD) LLP
acting by its designated member
EJS Limited in the presence of:

)
)
)
) (Signature)

[Redacted Signature]

[Redacted Signature]
Signature of witness

Name of witness: SUSAN KENDAL

Address: [Redacted Address]

Occupation: [Redacted Occupation]

EXECUTED as a DEED by
VIRTUS LONDON 9 LIMITED
acting by
in the presence of:

)
)
)
) (Signature)

[Redacted Signature]

[Redacted Signature]
Signature of witness

Name of witness: SUSAN KENDAL

Address: [Redacted Address]

Occupation: [Redacted Occupation]

EXECUTED as a DEED by
VIRTUS LONDON 10 LIMITED
acting by
in the presence of:

)
)
)

(Signature)

Signature of witness

Name of witness:

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS ENFIELD (DATA CENTRES)
LIMITED
acting by
in the presence of:

)
)
)
)

(Signature)

Signature of witness

Name of witness:

Address:

Occupation:

EXECUTED as a DEED by)
ENFIELD DC SERVICE COMPANY)
LIMITED)
acting by) (Signature)
in the presence of:

Signature of witness

Name of witness: SUSAN KENNA

Address:

Occupation:

EXECUTED as a DEED by)
EJH LIMITED)
acting by)
in the presence of: (Signature)

Signature of witness

Name of witness: SUSAN KENNA

Address:

Occupation:

EXECUTED as a DEED by
EJS LIMITED
acting by
in the presence of:

)
)
)
(Signature)

Signature of witness

Name of witness:

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS IMH LIMITED
acting by
in the presence of:

)
)
)
(Signature)

Signature of witness

Name of witness:

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS IMH 2 LIMITED
acting by
in the presence of:

.....
(Signature)

.....
Signature of witness

Name of witness: SUSAN KENDAL

Address:

Occupation:

The Debtors

EXECUTED as a DEED by Daryl
Seaton as attorney for
VIRTUS HOLDCO LIMITED under a
power of attorney dated 2020)

.....
(Signature of Daryl Seaton, attorney for
Virtus Holdco Limited)

in the presence of:

.....
Signature of witness

Name of witness: SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS DATA CENTRES
PROPERTIES LIMITED

acting by
in the presence of:

)
)
)
)

(Signature)

Signature of witness

Name of witness:

SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS SLOUGH LIMITED

acting by
in the presence of:

)
)
)

(Signature)

Signature of witness

Name of witness:

SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS HAYES LIMITED
acting by
in the presence of:

)
)
)

(Signature)

Signature of witness

Name of witness:

SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS (ENFIELD) LLP
acting by its designated member
EJS Limited in the presence of:

)
)
)

(Signature)

Signature of witness

Name of witness:

SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS LONDON 9 LIMITED
acting by
in the presence of:

)
)
)

.....
(Signature)

Signature of witness

Name of witness:

SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS LONDON 10 LIMITED
acting by
in the presence of:

)
)
)

.....
(Signature)

Signature of witness

Name of witness:

SUSAN KENDAL

Address:

Occupation:


EXECUTED as a DEED by)
VIRTUS ENFIELD (DATA CENTRES))
LIMITED)

acting by) (Signature)
in the presence of:


Signature of witness

Name of witness: SUSAN KENDAL

Address: 


Occupation: 

EXECUTED as a DEED by)
ENFIELD DC SERVICE COMPANY)
LIMITED)

acting by) (Signature)
in the presence of:


Signature of witness

Name of witness: SUSAN KENDAL

Address: 

Occupation: 

EXECUTED as a DEED by
EJH LIMITED
acting by
in the presence of:

)
)
)

.....
(Signature)

.....
Signature of witness

Name of witness: SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
EJS LIMITED
acting by
in the presence of:

)
)
)

.....
(Signature)

.....
Signature of witness

Name of witness: SUSAN KENDAL

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS IMH LIMITED

acting by

in the presence of:

(Signature)

Signature of witness

Name of witness:

Address:

Occupation:

EXECUTED as a DEED by
VIRTUS IMH 2 LIMITED

acting by

in the presence of:

(Signature)

Signature of witness

Name of witness:

Address:

Occupation:

The Security Agent

Chung Tin Wan
SIGNED by ...**Signing No: HK10763**

Please print name of signatory

for and on behalf of
STANDARD CHARTERED BANK (HONG KONG)
LIMITED

)
)
)
)
)
)



Signature