



**Registration of a Charge**

Company name: **TNA UK MANUFACTURING LIMITED**

Company number: **08062261**



X7GT2D14

Received for Electronic Filing: **18/10/2018**

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**Details of Charge**

Date of creation: **12/10/2018**

Charge code: **0806 2261 0001**

Persons entitled: **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED**

Brief description: **CONTAINS FIXED CHARGE OVER FREEHOLD, LEASEHOLD  
AND IMMOVABLE PROPERTY. CONTAINS FIXED CHARGE OVER  
INTELLECTUAL PROPERTY.**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or  
undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT  
TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC**

**COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION  
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**ROSANNA MUNOZ-BRITTON**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 8062261

Charge code: 0806 2261 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th October 2018 and created by TNA UK MANUFACTURING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th October 2018 .

Given at Companies House, Cardiff on 22nd October 2018

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

## Debenture

Dated

12 October 2018

TNA UK Manufacturing Limited (1)  
Australia and New Zealand Banking Group Limited (2)

Certified as a true copy of the original  
save for material redacted pursuant to  
s.859G of the Companies Act 2006.

Signed



Name of Solicitor R. MUNOZ-BRITTON

Date 18 OCTOBER 2018

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**THIS DEED** is dated 12 October 2018 and made between:

- (1) **TNA UK MANUFACTURING LIMITED** (company number 08062261) whose registered office is at 166 Clapgate Lane, Woodgate Business Park Bartley Green, Birmingham B32 3DE (the "**Chargor**"); and
- (2) **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED** (a company incorporated under the laws of Australia with Australian Business Number 11 005 357 522), whose registered office is at Level 13, 242 Pitt Street, Sydney NSW 2000 or such other office as it may select from time to time (the "**Lender**").

**BACKGROUND:**

The Chargor enters into this Deed in connection with the Corporate Guarantee and Indemnity and Facility Offer Letter (each term as defined below).

**IT IS AGREED** as follows:

**1 Definitions**

In this Deed:

"**Account Bank**" means each bank, financial institution or other person with whom an Account is maintained.

"**Accounts**" means the account(s) details of which are specified in Schedule 3 (Account Details) and all other accounts owned or operated by the Chargor with any Account Bank as renumbered or redesignated from time to time, each replacement account or sub-account relating to any of them, all money from time to time standing to the credit of those accounts, all interest accruing in relation to them and the debt represented by them.

"**Administrator**" means any administrator appointed in respect of the Chargor whether by the Lender, a court or otherwise.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notorisation or registration.

"**Authorised Officer**" means:

- (a) In the case of the Lender:
  - (i) an employee of the Lender, whose title contains the word "director", "chief", "counsel", "executive", "head", "lawyer", "president", "manager" or "officer", or any person purporting to perform the functions of any of them; or
  - (ii) an employee of the Lender who is authorised to take action in connection with this Deed (or whose authority is later confirmed by the Lender) or who is authorised by the Lender to act as its attorney; or
  - (iii) a lawyer or anyone else appointed by the Lender to do something under this Deed; and
- (b) in the case of the Chargor, a director or secretary of the Chargor or any other person specified by the Chargor as an 'Authorised Representative' for the purposes of the Facility Documents.

"**Chattels**" means all plant, machinery, vehicles, tools, computers, equipment, furniture and other chattels (excluding any for the time being forming part of the Chargor's stock in trade or work in

progress) and any renewals or replacements of them together with the benefit of all warranties, guarantees, maintenance contracts, consents and licences relating to them.

**"Contracts"** means each of the contracts described in Schedule 4 (Contracts), all guarantees, warranties and indemnities issued in relation to any Contract and any other agreement designated in writing as a Contract by the Lender and the Chargor.

**"Corporate Guarantee and Indemnity"** means the corporate guarantee and indemnity dated 25 May 2018 by and between the Chargor, Testamatic Limited (company number 02995853) and T.N.A. Europe Limited (company number 02668491) as guarantors in favour of the Lender (as further described and referred to in the Facility Offer Letter).

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Lender and/or any Receiver as appropriate.

**"Details"** has the meaning given to that term in the Corporate Guarantee and Indemnity.

**"Discharge Date"** means the date on which all the Secured Liabilities have been irrevocably discharged in full and no further Secured Liabilities are capable of arising.

**"Dividends"** means all dividends and distributions of any kind, interest and any other income received or receivable in relation to any of the Shares.

**"Enforcement Event"** means the occurrence of a default or an event of default as such term may be further described or defined in any Facility Document.

**"Facility Offer Letter"** means the facility offer letter dated 15 May 2018 between, among others, TNA Australia Pty Limited (ACN 002 937 859), TNA Australia Manufacturing Pty Limited (ACN 611 809 655), TNA Australia Solutions Pty Limited (ACN 611 809 422) and TNA Solutions Pty Limited (ACN 611 810 229) as borrowers, the Chargor as a security provider and the Lender as lender (and which, for the avoidance of doubt, includes any related facility terms, specific terms and/or the Lender's standard terms).

**"Initial Shares"** means those shares, stocks, debentures, bonds, warrants or other securities or investments described in Schedule 2 (Initial Shares).

**"Intellectual Property"** means:

- (a) all patents, trademarks, service marks, designs, business and trade names, copyrights, design rights, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests whether registered or unregistered including those listed in Schedule 6 (Intellectual Property); and
- (b) the benefit of all applications, licences and rights to use or exploit the assets listed in paragraph (a) above.

**"Investments"** means the Shares and Dividends.

**"Lease"** means any lease, sub-lease, licence, tenancy, agreement for lease or any other agreement or right to occupy governing the use or occupation of any of the Real Property (other than any trade fixtures or fittings), whether on a fixed term or periodic basis.

**"Legal Mortgage"** means a charge by way of legal mortgage granted by the Chargor in favour of the Lender and substantially in the form of Schedule 7 (Form of Legal Mortgage) with such amendments as the Lender may approve or reasonably require in respect of all or any part of the Real Property acquired by the Chargor after the date of this Deed.

**"LPA"** means the Law of Property Act 1925.



**"Monetary Claims"** means all book and other debts and monetary claims of any nature and however arising at any time owing to the Chargor or in which it has an interest together with the benefit of all rights, securities and guarantees of any nature enjoyed or held by it in relation to the same.

**"Mortgaged Property"** means any freehold, leasehold or immovable property specified in Schedule 1 (Mortgaged Property) or the schedule to any Legal Mortgage.

**"Obligor"** means:

- (a) the Chargor;
- (b) Testamatic Limited (company number 02995853);
- (c) T.N.A. Europe Limited (company number 02668491);
- (d) TNA Australia Pty Limited (ACN 002 937 859);
- (e) TNA Australia Solutions Pty Limited (ACN 611 809 422);
- (f) TNA Australia Manufacturing Pty Limited (ACN 611 809 655); and
- (g) TNA Solutions Pty Limited (ACN 611 810 229).

**"Party"** means a party to this Deed.

**"Planning Legislation"** means any legislation regulating the development or use of land or the erection or demolition of buildings and other structures on such land and all orders, regulations and permissions made, issued or granted under such legislation.

**"Policies"** means each of the insurance policies described in Schedule 5 (Insurance Policies) and each other insurance policy taken out at any time by or on behalf of the Chargor or in respect of which it has an interest or a right to claim.

**"PSC Notice"** means a request for information made pursuant to section 790 D and 790 E of the Companies Act 2006.

**"PSC Register"** has the meaning given to that term in section 790 (C)(10) of the Companies Act 2006.

**"PSC Restrictions Notice"** means a restrictions notice as defined in paragraph 1(2) of Schedule 1B of the Companies Act 2006.

**"Real Property"** means:

- (a) the Mortgaged Property;
- (b) any other present or future freehold, leasehold or immovable property owned by the Chargor or in which it has an interest;
- (c) any other interest in land

together with all buildings, erections, plant, fittings, fixtures, fixed plant and machinery from time to time on or forming part of that property.

**"Receiver"** means an administrative receiver, receiver and manager or a receiver, in each case appointed under this Deed.

**"Regulations"** means the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226).

**“Related Rights”** means, as regards any asset, all present and future:

- (a) money, proceeds, fees and royalties of any nature paid or payable in relation to the asset, including any sale proceeds, any money paid by way of damages or any award or judgment made in connection with that asset; and
- (b) all rights and assets of any nature attaching to, deriving from or exercisable as a result of the Chargor’s interest in or ownership or operation of the asset, including under any licence, agreement for sale or agreement for lease in respect of that asset; and
- (c) powers, benefits, claims, causes of action, contracts, warranties, remedies, security, indemnities, restrictive covenants, easements and covenants for title in respect of that asset.

**“Relevant Currency”** means, in relation to each of the Secured Liabilities, the currency in which it is from time to time denominated.

**“Secured Assets”** means the rights, interests and assets from time to time subject, or expressed to be subject, to the Security created or expressed to be created by this Deed or any document entered into pursuant or supplemental to this Deed, including any Legal Mortgage.

**“Secured Liabilities”** means all present and future obligations and liabilities of any kind and in any currency (whether actual or contingent and whether owed as principal or surety, jointly or severally or in any other capacity whatsoever and whether owed to the original obligee or any other person as a result of any transfer, amalgamation or acquisition including interest, fees, banking charges, commission and sums due in relation to costs and expenses) due, owing or incurred by any Obligor to the Lender under the Corporate Guarantee and Indemnity or any other Facility Document.

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

**“Shares”** means:

- (a) the Initial Shares and all shares, stocks, debentures, bonds, warrants, coupons, interests in collective investment schemes and all other securities and investments of any kind whatsoever (whether in certificated or uncertificated form and whether or not marketable) at any time owned by the Chargor or in which it has an interest;
- (b) shares, stocks, debentures, bonds, warrants, securities, investments, money or other assets arising by way of conversion, exchange, substitution, rights issue, redemption, bonus, preference, option or otherwise in relation to any of the assets referred to in paragraph (a) above; and
- (c) rights to subscribe for, purchase or otherwise acquire any of the assets referred to in paragraphs (a) or (b) above through options, warrants or otherwise,

in each case, whether held directly by or to the order of the Chargor or by any trustee, nominee, custodian, fiduciary or clearance system on its behalf (including all rights against any such trustee, nominee, custodian, fiduciary or clearance system including, without limitation, any contractual rights or any right to delivery of all or any part of the shares from time to time).

**“Tax”** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

## Interpretation

- (a) Unless defined or construed in this Deed, a term defined or construed in the Facility Offer Letter (including by reference and for the avoidance of doubt, any term that is defined in the "Standard Terms" as such term is defined in the Facility Offer Letter) has the same meaning in this Deed and in any notice given under or in connection with this Deed.
- (b) Unless a contrary indication appears, a reference in this Deed to:
  - (i) the "**Chargor**", the "**Lender**", any "**Party**" or any other person shall 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 Facility Documents;
  - (ii) a document in "**agreed form**" is a document which is previously agreed in writing by the Chargor and the Lender, if not so agreed, is in the form specified by the Lender;
  - (iii) "**certificated**" has the meaning given to it in the Uncertificated Securities Regulations 2001;
  - (iv) "**this Deed**", a "**Facility Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (v) "**clearance system**" means a person whose business is or includes the provision of clearance services or security accounts or any nominee or depositary for that person;
  - (vi) "**Secured Assets**" includes:
    - (A) any part of that asset; and
    - (B) any present and future assets of that type;
  - (vii) "**Secured Liabilities**" is deemed to include a reference to any part of them;
  - (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or any other entity (whether or not having separate legal personality);
  - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (x) a provision of law is a reference to that provision as amended or re-enacted; and
  - (xi) a time of day is a reference to London time.
- (c) Clause and Schedule headings are for ease of reference only.
- (d) The terms of the other Facility Documents and of any side letters between any parties to the Facility Offer Letter in relation to any Facility Document (as the case may be) are incorporated in this Deed to the extent required to ensure that any purported disposition of any freehold or leasehold property contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- (e) The absence of or incomplete details relating to any Secured Asset in any Schedule does not affect the validity or enforceability of any Security under this Deed.

- (f) Clauses 4.2 (Land) to 4.9 (Miscellaneous) of this Deed shall be construed as creating a separate and distinct mortgage, fixed charge or assignment over each relevant asset within any particular class of assets defined under this Deed and the failure to create an effective mortgage or fixed charge (whether arising out of this Deed, or any act or omission by any Party) on any one asset shall not affect the nature of any mortgage or fixed charge imposed on any other asset whether within that same class of assets or not.
- (g) If the Lender considers that an amount paid to it under any Facility Document or in relation to any Secured Liability is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
- (h) This Deed shall take effect as a deed even if it is signed under hand on behalf of the Lender.

### 3 Undertaking to pay

The Chargor covenants with the Lender to pay, discharge and satisfy all the Secured Liabilities when due in accordance with their respective terms (or, if the relevant terms do not specify a time for payment, immediately on demand by the Lender) and to indemnify the Lender against any losses, costs, charges, expenses and liabilities arising from any breach of any Facility Document or failure to pay, discharge and satisfy the Secured Liabilities in accordance with their respective terms.

## 4 Security

### 4.1 General

- (a) All the Security created under this Deed:
  - (i) is created in favour of the Lender;
  - (ii) is security for the payment, discharge and performance of all the Secured Liabilities except for any Secured Liabilities which, if secured by this Deed, would cause such Security to be unlawful or prohibited by any applicable law; and
  - (iii) is granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- (b) Where the grant of a fixed charge, mortgage or assignment by the Chargor of all or any part of its rights under an agreement, lease, licence or agreement for a lease (an “**Affected Agreement**”) under this Deed would, but for this paragraph (b), breach a term of that agreement, lease, licence or agreement for a lease because a condition (including any prohibition or restriction on the creation of any Security over or in respect of any such Affected Agreement and/or the consent of a third party) would not be satisfied or waived:
  - (i) the Chargor shall notify the Lender promptly;
  - (ii) the Chargor undertakes:
    - (A) if the relevant condition is a consent or waiver which is not to be unreasonably withheld, to use all reasonable endeavours to obtain it as soon as possible; and
    - (B) in all other instances, to use all reasonable endeavours to satisfy any relevant conditions or obtain a waiver of the same within 14 days of the date of this Deed or, if the Affected Agreement is entered into after the date of this Deed, within 14 days of its date; and

- (C) to keep the Lender informed of its progress in satisfying such condition or obtaining a waiver of the same;
- (iii) until the condition is satisfied or waived:
  - (A) this Deed will secure all amounts of any nature which the Chargor may now or in future receive under or in connection with that Affected Agreement but exclude rights under such agreement; and
  - (B) the Chargor shall hold the rights under the Affected Agreement on trust for the Lender and each such asset shall constitute a Secured Asset;
- (iv) upon the condition being satisfied or waived:
  - (A) the Affected Agreement shall be mortgaged, charged or assigned (as appropriate) under the relevant paragraph of this Clause 4 and any trust in respect of that asset created under paragraph (iii)(B) above shall immediately terminate; and
  - (B) the Chargor shall promptly supply the Lender with evidence of the satisfaction or waiver of any relevant condition.

#### 4.2 Land

The Chargor charges:

- (a) by way of a first legal mortgage, all of its Mortgaged Property;
- (b) (to the extent that they are not the subject of a mortgage under paragraph (a) above) or any Legal Mortgage by way of first fixed charge, all of its Real Property, all rights under any licence or other agreement or document which gives the Chargor a right to occupy or use that Real Property; and
- (c) all Related Rights in respect of such assets.

#### 4.3 Investments

The Chargor charges by way of a first fixed charge all of its Investments and all Related Rights in respect of each such Investment.

#### 4.4 Chattels

The Chargor charges by way of first fixed charge all its Chattels owned and its interest in any Chattels in its possession and all Related Rights in respect of each such Chattel.

#### 4.5 Monetary Claims

The Chargor charges by way of a first fixed charge all the Monetary Claims and all Related Rights in respect of each such Monetary Claim.

#### 4.6 Contracts

- (a) The Chargor assigns absolutely, by way of security, subject to reassignment by the Lender in accordance with Clause 28 (Release of Security), all its rights in respect of:
  - (i) the Contracts;
  - (ii) any letter of credit issued in its favour; and
  - (iii) any bill of exchange or other negotiable instrument held by it; and
  - (iv) all Related Rights in respect of each such asset.

- (b) To the extent that they are not effectively assigned under paragraph (i) above, the Chargor charges by way of first fixed charge all its rights described in paragraph (i) above the assignment shall instead operate as an assignment of all sums, of any nature, which the Chargor may derive from those rights.

#### 4.7 Insurances

- (a) The Chargor assigns absolutely, by way of security, subject to reassignment by the Lender in accordance with Clause 28 (Release of Security) all amounts payable to it under or in connection with the Policies and all of its rights in connection with those amounts and all Related Rights in respect of each such asset.
- (b) To the extent that they are not effectively assigned under paragraph (a) above, the Chargor charges by way of a first fixed charge the relevant amounts and rights described in paragraph (a) above.

#### 4.8 Intellectual Property

The Chargor charges by way of first fixed charge all its rights in its Intellectual Property and all Related Rights in respect of such Intellectual Property.

#### 4.9 Miscellaneous

The Chargor charges by way of first fixed charge:

- (a) any beneficial interest, claim or entitlement it has in any pension fund;
- (b) all rights to recover any Taxes on any supplies made to it relating to any Secured Asset and any sums so recovered;
- (c) its goodwill and uncalled capital;
- (d) the benefit of any authorisation (statutory or otherwise) held in connection with its use of any Secured Asset and the right to recover and receive compensation payable in relation to any authorisation; and
- (e) all Related Rights in respect of each such asset.

#### 4.10 Floating charge

- (a) The Chargor charges by way of a first floating charge all its business, undertaking and assets whatsoever and wheresoever not at any time otherwise effectively mortgaged, charged or assigned by way of mortgage, fixed charge or assignment under this Clause.
- (b) The floating charge created by paragraph (a) above is a qualifying floating charge for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.
- (c) The floating charge created by paragraph (a) above may not be converted into a fixed charge solely by reason of:
  - (i) the obtaining of a moratorium; or
  - (ii) anything done with a view to obtaining a moratorium, under paragraph 13 in Schedule A1 of the Insolvency Act 1986.

#### 4.11 Crystallisation

- (a) The Lender may at any time by notice in writing to the Chargor convert any floating charge created by the Chargor pursuant to Clause 4.10 (Floating charge) above into a fixed charge with immediate effect as regards any property or assets specified in the notice if:

- (i) the security constituted by this Deed has become enforceable in accordance with Clause 15 (Enforcement of Security); or
  - (ii) the Lender considers any Secured Asset to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or otherwise to be in jeopardy; or
  - (iii) the Lender reasonably considers that it is necessary in order to protect the priority of its Security.
- (b) Notwithstanding paragraph (a) above and without any prejudice to any rule of law which may have a similar effect, the floating charge created by Clause 4.10 (Floating charge) will automatically and immediately (without notice) convert into a fixed charge over all the Chargor's assets if:
- (i) the Chargor creates, or attempts to create, any Security over any of the Secured Assets other than in accordance with the terms of the Facility Offer Letter;
  - (ii) any person levies or attempts to levy any distress, execution or other process against any of the Secured Assets;
  - (iii) an administrator is appointed in respect of the Chargor or a person entitled to appoint an administrator in respect of the Chargor gives notice of its intention to do so or files a notice of appointment with a court; or
  - (iv) any corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments, winding up, dissolution or re-organisation of the Chargor other than a winding-up petition which is stayed within 14 days of commencement.

## 5 **General representations and warranties**

### 5.1 The Chargor represents and warrants to the Lender that:

- (a) it is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation;
- (b) it has the power to own its assets and carry on its business as it is being conducted;
- (c) the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations;
- (d) without limiting the generality of paragraph (c) above, this Deed creates the Security which it purports to create and that Security is valid and effective;
- (e) the entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:
  - (i) any law or regulation applicable to it in a material way;
  - (ii) its constitutional documents (including any constitution, partnership document, book of rules or trust deed, if any); or
  - (iii) any authorisation, licence, agreement or instrument binding upon it or any of its assets;
- (f) 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;

- (g) the descriptions of the assets set out in Schedule 1 (Mortgaged Property), Schedule 2 (Initial Shares), Schedule 3 (Account Details), Schedule 4 (Contracts), Schedule 5 (Insurance Policies) and Schedule 6 (Intellectual Property) constitute complete and accurate descriptions of all of the relevant assets in which it has an interest as at the date of this Deed;
- (h) no limit on its powers will be exceeded as a result of creating any Security or giving any indemnity contemplated by this Deed;
- (i) all Authorisations required or desirable:
  - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
  - (ii) to make this Deed admissible in evidence in England and Wales; and
  - (iii) to enable it to grant the Security constituted, or expressed to be constituted, by this Deed and to ensure that such Security has and will have the priority and ranking which it is expressed to have in this Deed,

have been obtained or effected and are in full force and effect, save for the making of any appropriate registrations of this Deed with the Registrar of Companies and at the Land Registry;
- (j) the choice of governing law of this Deed will be recognised and enforced in England and Wales;
- (k) any judgment obtained in relation to this Deed in England will be recognised and enforced in England and Wales;
- (l) subject to the requirements specified at the end of paragraph (i) above, this Deed creates first ranking Security in favour of the Lender;
- (m) the Chargor is the sole legal and/or beneficial owner of the Secured Assets over which it purports to grant Security and such Secured Assets are free from any claims, third party rights, competing interests, restrictions and onerous covenants;
- (n) it has good and marketable title to all assets over which Security is, or is purported to be, created pursuant to this Deed and such assets are free from any claims, third party rights, competing interests, restrictions and onerous covenants;
- (o) except for the Security constituted by this Deed, no Security exists in respect of any of the Secured Assets other than as permitted by the Facility Offer Letter;
- (p) it is not insolvent and there are no reasonable grounds to suspect that it will become insolvent;
- (q) it has disclosed to the Lender all information (financial or otherwise) relating to it and all other relevant parties which is reasonably likely to be material to an assessment by the Lender of the risks that it assumes by entering into this Deed and that information was true, complete and accurate in all material respects as at the date it was given and is not misleading (including by omission) in any respect;
- (r) to the best of its knowledge and belief, no material litigation, arbitration or administrative proceeding of or before any court, arbitral body or agency has been started or threatened against it;
- (s) unless the Details indicate that it is the trustee of a trust, it is acting on its own behalf in entering into this Deed; and



(t) it benefits by entering into this Deed.

## 5.2 Repetition

Each of the representations and warranties made by the Chargor in this Clause 5, Clause 7.1 (Real Property – representations and warranties), Clause 8.1 (Investments - representations and warranties), Clause 12.1 (Contracts - Representations and warranties), Clause 13.1 (Insurances – representations and warranties) and Clause 14.1 (Intellectual Property - representations and warranties) and elsewhere in this Deed are made on the date of this Deed and are deemed to be repeated by the Chargor by reference to the facts and circumstances then existing on the date of each utilisation request, on each utilisation date under a facility and on the first day of each interest period under the Facility Offer Letter.

## 6 **General undertakings**

The undertakings contained in this Clause 6 and elsewhere in this Deed remain in force from the date of this Deed until the Discharge Date.

### 6.1 Security

The Chargor shall not create or permit to subsist any Security over the Secured Assets other than pursuant to this Deed or as expressly permitted by the Facility Offer Letter.

### 6.2 Disposals

The Chargor shall not (nor agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer, assign or otherwise dispose of any of the Secured Assets, save as expressly permitted by the Facility Offer Letter.

### 6.3 Acquisitions

The Chargor shall not acquire or agree to acquire an interest in any material asset save as permitted by the Facility Offer Letter.

### 6.4 Compliance with laws and other obligations

The Chargor shall comply with all laws and regulations relating to the Secured Assets and with all conditions and obligations assumed by it in any agreement relating to any of the Secured Assets.

### 6.5 Rights relating to Secured Assets

The Chargor shall not take any action (or permit any action to be taken) which results or could result in any of its rights relating to any Secured Asset being impaired.

### 6.6 Authorisations

The Chargor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of,

any Authorisation required under any law or regulation of England and Wales to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence of this Deed.

### 6.7 Security not to be prejudiced

The Chargor shall not do, or permit to be done, anything which could prejudice the Security constituted or expressed to be constituted by this Deed.

## 6.8 Chargor Undertakings:

The Chargor agrees to:

- (a) provide the Lender with such information or documents relating to its business, assets, liabilities, finances, operation and management from time to time of the Chargor or its subsidiaries in such form and by the time as the Lender may reasonably require including all documents dispatched by the Chargor to any stock exchange or its shareholders (or any class of them) or its creditors generally (or any class of them at the same time as they are dispatched;
- (b) notify the Lender of:
  - (i) any change in its directors;
  - (ii) the termination of the appointment of any Authorised Officer; and
  - (iii) the nomination of any new Authorised Officer;
- (c) keep proper books and financial records, and permit the Lender or its representatives on request to examine and take copies of them; and
- (d) notify the Lender at least 14 days before:
  - (i) the Chargor or (if applicable, the trust or the partnership) changes its name as recorded in a public register in its jurisdiction of incorporation or in its constituent documents;
  - (ii) any company number allocated to the Chargor (or any company number allocated to the trust or any partnership) changes, is cancelled or otherwise ceases to apply to it (or if it does not have any such applicable number, one is allocated to it or otherwise starts to apply to it); or
  - (iii) the Chargor becomes a trustee of a trust, or a partner in a partnership, not stated in the Details.

## 7 Real Property

### 7.1 Real Property – representations and warranties

The Chargor represents and warrants to the Lender that from the date of this Deed:

- (a) no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of the Real Property;
- (b) there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter whatsoever adversely affecting the Real Property;
- (c) nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or a registered disposition, over the Real Property;
- (d) all facilities necessary for the enjoyment and use of the Real Property (including those necessary for the carrying on of its business at the Real Property) are enjoyed by the Chargor;
- (e) none of the facilities referred to in paragraph (d) above are enjoyed on terms:
  - (i) entitling any person to terminate or curtail its use of the Real Property; or

- (ii) which conflict with or restrict its use of the Real Property;
- (f) the Chargor has not received notice of any adverse claim by any person in respect of the ownership of the Real Property or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of the Real Property; and
- (g) the Real Property is held by the Chargor free from any lease or licence (other than those entered into in accordance with the Facility Documents).

## 7.2 Title

- (a) The Chargor must exercise its rights and comply in all respects with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting its Real Property.
- (b) The Chargor may not agree to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting its Real Property.

## 7.3 Acquisitions

- (a) If the Chargor acquires any Real Property after the date of this Deed it shall:
  - (i) notify the Lender immediately (if Lender consent prior to such acquisition has not already been obtained pursuant to the terms of the Facility Offer Letter);
  - (ii) immediately on request by the Lender and at the cost of the Chargor, execute and deliver to the Lender a Legal Mortgage of that property in favour of the Lender;
  - (iii) if the title to that freehold, leasehold or commonhold property is registered at the Land Registry or required to be so registered, give the Land Registry written notice of the Legal Mortgage; and
  - (iv) if applicable, ensure that details of the Legal Mortgage are correctly noted in the Register of Title against that title at the Land Registry.
- (b) If the consent of the landlord in whom the reversion of a lease is vested is required for the Chargor to execute a Legal Mortgage over it, the Chargor will not be required to perform that obligation unless and until it has obtained the landlord's consent. The Chargor shall immediately request the relevant landlord's consent and shall use its reasonable endeavours to obtain that consent within 14 days of making the request.

## 7.4 Notices

The Chargor shall:

- (a) within fourteen days of receipt by the Chargor, give to the Lender full particulars with respect to (and, if requested by the Lender, a copy of) any notice, order, directive, designation, resolution or proposal which applies to any of its Real Property or to the area in which it is situate and which is issued:
  - (i) by any planning authority or other public body or authority under or by virtue of any Planning Legislation;
  - (ii) pursuant to any law or regulation relating to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants;
  - (iii) pursuant to section 146 of the LPA; or

- (iv) pursuant to some other power conferred by law;
- (b) without delay and at its own cost, make such objections or representations (or join with the Lender in making such objections or representations) against or in respect of any such notice, order, directive, designation, resolution or proposal as the Lender (acting reasonably) may direct; and
- (c) take all steps necessary to comply with each such notice, order, directive, designation, resolution or proposal.

## 7.5 Leases

- (a) The Chargor shall not grant or agree to grant (whether in exercise, or independently, of any statutory power) any Lease of its Real Property or any licence or consent (whether expressly or by conduct) for assignment, parting with or sharing possession or occupation, underletting, change of use or alterations in relation to any Lease to which any part of its Real Property is subject and nor shall it accept (or agree to accept) any surrender, cancellation, assignment, charge or other disposal of, or agree to vary, any such Lease.
- (b) The Chargor shall:
  - (i) pay the rent reserved by and otherwise perform and observe all covenants, stipulations and obligations on the part of the lessee (and diligently enforce performance of the obligations on the part of the lessor) contained in any Lease constituting part of its Real Property;
  - (ii) promptly notify the Lender if any Lease in respect of which it is the lessee has or may become subject to determination or to the exercise by the lessor of any right of re-entry or forfeiture and, if so required by the Lender acting reasonably, diligently pursue applications for relief from any such rights of re-entry or forfeiture;
  - (iii) if the Lender so requires, serve notice in respect of any fixed charge (as defined in the Landlord and Tenant (Covenants) Act 1995) in the appropriate form on any former tenant under a lease of Real Property or the guarantor of such a tenant;
  - (iv) in respect of any Lease of which it is the lessee refrain from agreeing any change in the rent reserved by any such Lease without the prior written consent of the Lender; and
  - (v) in respect of any Lease of which it is the lessor:
    - (A) implement any provision for the review of any rent reserved by any such Lease and not agree to a change in rent without the prior written consent of the Lender;
    - (B) not agree to any amendment, waiver, renewal or surrender of such Lease;
    - (C) exercise any right of re-entry, exercise any option or power to break or determine or commence forfeiture proceedings against any lessee under any such Lease; and
    - (D) otherwise efficiently manage the premises the subject of each such Lease.

## 7.6 The Land Registry

- (a) The Chargor consents to an application being made to the Land Registry:
  - (i) to enter the following restriction on the Register of Title relating to any Real Property registered at the Land Registry:

“No disposition of the registered estate by the proprietor of the registered estate [or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction] is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of [*insert name of Lender here*] referred to in the charges register”; and
  - (ii) to enter the obligation to make further advances detailed in Clause 24.12 (Tacking) of this Deed on the charges register relating to any Real Property registered at the Land Registry.
- (b) The Chargor shall not, without the Lender's prior written consent, allow any person other than itself to be registered under the Land Registration Act 2002 as proprietor of any of the Real Property and will not, as regards any Real Property, create or permit to arise any overriding interest within the meaning of the Land Registration Act 2002 or the Land Registration Rules 2003.
- (c) The Chargor shall promptly make all applications to and filings with the Land Registry which are necessary or desirable under the Land Registration Rules 2003 to protect the Security created by or pursuant to this Deed.
- (d) The Chargor authorises the Lender and/or any solicitors or other agent acting on behalf of the Lender to complete, execute and deliver on the Chargor's behalf (but at the cost of the Chargor) to the Land Registry any form, document or other information requested by the Land Registry with regard to the applications referred to in this Clause 7.6.

## 7.7 Deposit of title deeds

The Chargor shall procure that all deeds and documents necessary to show good and marketable title to its interest in the Real Property shall be:

- (a) in the possession of the Lender;
- (b) held at the applicable Land Registry to the order of the Lender; or
- (c) held to the order of the Lender by a firm of solicitors approved by the Lender for that purpose.

## 7.8 Maintenance

The Chargor shall:

- (a) from time to time, on request, furnish to the Lender such information in relation to its Real Property and the Leases to which its Real Property are subject as the Lender may reasonably require and permit the Lender, its agents, officers and employees free access at all reasonable times (and, unless an Enforcement Event is continuing, on reasonable notice) to view the state and condition of its Real Property without becoming liable to account as mortgagee in possession;
- (b) keep the Real Property in good and substantial repair and condition and, as appropriate, in good working order; and
- (c) not at any time without the prior written consent of the Lender:

- (i) carry out or permit any demolition, reconstruction or rebuilding of its Real Property or any structural alterations or material change in its use; or
- (ii) sever, unfix or remove any of the fixtures, fittings, plant or machinery (other than its stock in trade and work in progress) on or in its Real Property (except for the purpose and in the course of making necessary repairs to such Real Property or for replacing the same with new or improved models or substitutes).

#### 7.9 Development

The Chargor shall not, without the prior written consent of the Lender, carry out or permit to be carried out any Development (as defined in the Town and Country Planning Act 1990) or change, or permit any change in, the use of any Real Property.

#### 7.10 Compliance

The Chargor shall comply with:

- (a) all laws for the time being in force; and
- (b) all notices, orders, directives, licences, consents and assurances given or made under any law or regulation by any person,

in each case, insofar as the same relate to its Real Property or the occupation and use of its Real Property.

#### 7.11 Access

The Chargor shall permit the Lender and any person nominated by the Lender to enter any part of the Real Property during normal business hours in order to view the state of the Real Property.

#### 7.12 Investigation of title

The Chargor shall grant the Lender or its lawyers on request all facilities within the power of the Chargor to enable the Lender or its lawyers (at the expense of the Chargor) to:

- (a) carry out investigations of title in relation to the Real Property; and
- (b) make such enquiries in relation to any part of the Real Property as a prudent mortgagee might carry out.

#### 7.13 Compensation payments

Subject to the rights and claims of any person having prior rights to such compensation, all monies payable to the Chargor by way of compensation, whether under Section 25 of the Law of Property Act 1969 or under the Landlord and Tenant Acts 1927 to 1954 or otherwise, shall be paid to the Lender (who shall be entitled to give good receipt for such monies) and applied in accordance with Clause 19 (Order of application) as though they were the proceeds of the enforcement of the security constituted by this Deed, and any monies that may be received by the Chargor shall, pending such payment, be held on trust for the Lender.

#### 7.14 Power to remedy

- (a) If the Chargor fails to comply with any of the undertakings contained in this Clause 7 (Real Property), the Chargor shall allow the Lender or its agents and contractors:
  - (i) to enter any part of its Real Property;
  - (ii) to comply with or object to any notice served on the Chargor in respect of its Real Property; and

- (iii) to take any action as the Lender may consider necessary or desirable to prevent or remedy the relevant breach or to comply with or object to any such notice.
- (b) The Chargor shall immediately on request by the Lender pay the costs and expenses of the Lender and its agents and contractors incurred in connection with any action taken under this Clause 7.14;
- (c) The Lender shall not be obliged to account as mortgagee in possession as a result of any action taken under this Clause 7.14.

## 8 **Investments**

### 8.1 Investments - representations and warranties

The Chargor represents and warrants to the Lender that:

- (a) it is the sole legal and beneficial owner of the Shares;
- (b) the Shares are duly authorised, validly issued, fully paid, freely transferable and not subject to any option to purchase or any similar right;
- (c) the constitutional documents of the company(ies) whose Shares are subject to this Deed do not restrict or inhibit any transfer of the Shares on the creation or enforcement of the Security constituted, or expressed to be constituted, by this Deed;
- (d) there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any Shares;
- (e) the PSC Register of any company whose Shares are subject to this Deed is maintained in accordance with law and with applicable statutory and non-statutory guidance issued by any government department; and
- (f) no PSC Restrictions Notice is outstanding in relation to any of the Secured Assets.

### 8.2 Deposit of Title Documents

The Chargor undertakes to deposit with the Lender or the Lender's nominee:

- (a) on or before execution of this Deed, all share certificates or other documents of title relating to the Initial Shares; and
- (b) immediately upon its acquisition of any Investment, all share certificates and other documents of title relating to that Investment; and
- (c) promptly upon the accrual, offer or issue of any stocks, shares, warrants or other securities in respect of or derived from the Investments, all share certificates and other documents of title representing each item,

together with stock transfer forms (or other appropriate transfer instruments) signed by the Chargor (or its nominee, where appropriate) as transferor but with details of the transferee, date and consideration left blank, on the basis that the Lender may hold all those certificates, forms and documents until the Discharge Date. The Lender is entitled at any time after an Enforcement Event to complete the stock transfer forms (or other transfer instruments) on behalf of the Chargor in favour of the Lender or its nominee, using the power of attorney contained in Clause 22 (Power of attorney).

### 8.3 Voting and Dividends

#### (a) Voting and other rights prior to an Enforcement Event

- (i) Prior to an Enforcement Event and subject to paragraph (b) below, the Chargor is entitled to exercise or direct the exercise of the voting and other rights attached to any Investment as it sees fit provided that:
  - (A) it does so for a purpose not inconsistent with its obligations under any Facility Document; and
  - (B) the exercise or failure to exercise those rights does not have an adverse effect on the value of the Investments and does not otherwise prejudice the Lender's interests under this Deed; and
- (ii) the Chargor is entitled to receive all Dividends.

#### (b) Voting and other rights following an Enforcement Event

After an Enforcement Event has occurred:

- (i) the Lender will be entitled to exercise or direct the exercise (or refrain from exercising or refrain from directing the exercise of the voting and other rights attached to any Investment as it sees fit;
- (ii) the Chargor shall comply, or procure compliance with, any directions of the Lender in relation to the exercise of those rights and shall promptly execute and deliver to the Lender all forms of proxy as the Lender may require in connection with the exercise of those rights;
- (iii) all Dividends shall be paid or transferred to the Lender (or to its order) and any Dividends received by the Chargor shall be held by the Chargor on trust for the Lender and immediately paid by it to the Lender or to any nominee designated by the Lender. The Lender will be entitled to apply those Dividends in such manner as it sees fit;
- (iv) the Lender may, in its absolute discretion, and without any consent or authority from the Chargor, by notice to the Chargor elect to give up the right to exercise (or refrain from exercising) all voting rights in respect of the Shares conferred or to be conferred on the Lender pursuant to paragraph (i) above;
- (v) once a notice has been issued by the Lender under paragraph (iv) above, on and from the date of such notice, the Lender shall cease to have the rights to exercise or refrain from exercising voting rights in respect of the Shares conferred or to be conferred on it pursuant to paragraph (i) above or any other provision of this Deed and all such rights shall be exercisable by the Chargor. The Chargor shall be entitled on and from the date of such notice to exercise all voting rights in respect of the Shares subject only to the proviso contained in paragraph (a)(i) above.

### 8.4 Nominee shareholders

If any Investment is not held in the Chargor's name (other than as a result of the operation of this Deed) the Chargor shall procure the prompt delivery to the Lender of an irrevocable power of attorney, expressed to be given by way of security and executed as a deed, by the person in whose name that Investment is held. That power of attorney shall appoint the Lender and every Receiver as the attorney of the holder in relation to that Investment and shall be in a form approved by the Lender.



## 8.5 Circulars

The Chargor shall promptly deliver to the Lender a copy of every circular, notice, report, set of accounts or other documents received by it or its nominee in connection with the Investments and will give a correct and complete response to any PSC Notice it receives regarding the Secured Assets within any timeframe required by law.

## 8.6 Calls

The Chargor shall pay all calls and other payments due in relation to the Investments. If the Chargor fails to do so, the Lender may pay those calls or other payments on the Chargor's behalf and the Chargor shall immediately on demand reimburse the Lender for any such payment.

## 8.7 Restrictions

The Chargor shall not vary or agree to any variation in voting rights attaching to the Shares and shall not cause or permit any of the Shares to be consolidated, sub-divided or converted without the Lender's prior written consent.

# 9 **Chattels**

## 9.1 Maintenance

The Chargor shall:

- (a) keep all its Chattels in good repair, working order and condition;
- (b) give the Lender such information concerning the location, condition, use and operation of its Chattels as the Lender may require;
- (c) permit any persons designated by the Lender to inspect and examine the Chattels and the records relating to the Chattels at all reasonable times; and
- (d) not permit any Chattel to be:
  - (i) used or handled other than by properly qualified and trained persons; or
  - (ii) overloaded or used for any purpose for which it is not designed or reasonably suitable.

## 9.2 Notice of charge

The Chargor shall take any action which the Lender may reasonably require to evidence the grant of security over the Chattels pursuant to this Deed, including by fixing a permanent notice on its Chattels in a prominent position stating that:

- (a) the Chattel is charged in favour of the Lender; and
- (b) the Chattel must not be disposed of without the prior consent of the Lender unless expressly permitted under the Facility Offer Letter.

# 10 **Accounts**

## 10.1 Undertakings

- (a) The Chargor shall:
  - (i) except as regards any Account maintained with the Lender deliver to the Lender details of each Account maintained by the Chargor promptly upon the opening of a new Account, the creation of any sub-account or any redesignation or change in account details affecting any Account;

- (ii) promptly upon request by the Lender, supply the Lender with copies of all mandate letters, bank statements and other agreements relating to the Accounts; and
- (iii) not permit or agree to any variation of the terms and conditions relating to any Account or close any Account.

#### 10.2 Operation of the Account(s)

- (a) Prior to the occurrence of an Enforcement Event, the Chargor shall, in the case of any Account, be entitled to withdraw or transfer any sum standing to the credit of such Account.
- (b) After the occurrence of an Enforcement Event, the Chargor shall not be entitled to make any withdrawals or transfers from any Account without the Lender's prior written consent.

#### 10.3 Notice to Account Bank

The Chargor shall serve a notice of charge substantially in the form of Part 1 of Schedule 8 (Form of Notice and Acknowledgment for Account Bank) on each Account Bank with whom an account is held immediately upon crystallisation of the floating charge pursuant to Clause 4.11(a) (Crystallisation) and use all reasonable endeavours to procure that each Account Bank acknowledges that notice by signing and returning to the Lender a letter of acknowledgement substantially in the form of Part 2 of Schedule 8 (Form of Notice and Acknowledgment for Account Bank) as soon as is practicable and in any event within 14 days of the date of such notice. Any instructions contained in a notice of charge sent by the Chargor pursuant to this Clause may not be revoked or amended without the Lender's prior written consent. The execution of this Deed by the Parties constitutes notice on the same terms as those set out in Part 1 of Schedule 8 (Form of Notice and Acknowledgment for Account Bank) by the Chargor to the Lender of the charge created by this Deed over any Account held by that Chargor with the Lender.

#### 10.4 Time deposits

If the balance of any Account constitutes a time deposit then, subject to any contrary instructions from the Lender, that time deposit shall be successively redeposited for such periods and on such terms as may from time to time be agreed between the Lender and the Chargor in writing (failing which agreement, for such periods and on such terms as the Lender may in its discretion decide).

### 11 **Monetary Claims**

#### 11.1 Collecting Monetary Claims

The Chargor shall promptly get in and realise all Monetary Claims and pay the proceeds of such Monetary Claims into the relevant designated Account in accordance with the terms of the Facility Documents or as the Lender may otherwise direct in writing and pending that payment will hold those proceeds on trust for the Lender.

#### 11.2 Dealing with Monetary Claims

The Chargor shall not, without the prior written consent of the Lender, charge, assign, factor, discount, release, waive, compound or otherwise deal with any of the Monetary Claims or purport to do so or vary any term relating to a Monetary Claim other than as permitted by the terms of the Facility Documents.

#### 11.3 Assignment

The Chargor shall, at the Lender's request, following the occurrence of an Enforcement Event execute a legal assignment of the Monetary Claims in favour of the Lender on such terms as the Lender may agree and will sign and deliver written notice of that assignment, in a form acceptable

to the Lender, to each debtor which owes or may owe a Monetary Claim and will use all reasonable endeavours to procure that the notice is duly acknowledged by the debtors concerned in accordance with the terms of that assignment and that, following the date of such notice, each such debtor pays such Monetary Claims into an account specified by the Lender.

## 12 **Contracts**

### 12.1 Contracts - Representations and warranties

The Chargor represents and warrants to the Lender that:

- (a) each Contract is in full force and effect and constitutes the Chargor's legal, valid, binding and enforceable obligations;
- (b) its execution and performance of the Contracts does not conflict with any law or regulation applicable to it; its constitutional documents or any agreement or instrument binding on it or constitute a default or termination event (however described) under any such agreement or instrument;
- (c) it is not in default, nor, so far as it is aware, is any counterparty to a Contract in default, under any Contract;
- (d) all payments due to it from any party under any Contract can be made without withholding or deduction on account of tax;
- (e) all payments to it by any other party to any of the Contracts are not subject to any right of set-off or similar right; and
- (f) there is no prohibition on assignment in the Contracts.

### 12.2 Notices of assignment

The Chargor shall immediately upon execution of this Deed (or, if later, the date upon which a document is designated as a Contract for the purposes of this Deed) serve a notice, substantially in the form of Part 1 of Schedule 9 (Form of Notice and Acknowledgement for Counterparty), on each counterparty to each Contract and use reasonable endeavours to procure that each such counterparty acknowledges that notice by signing and returning to the Lender a notice substantially in the form of Part 2 of Schedule 9 (Form of Notice and Acknowledgement for Counterparty) as soon as is practicable and in any event within 14 days of the date of this Deed or, if later, the date of the relevant Contract. Any instructions contained in a notice sent to a counterparty pursuant to this Clause may not be revoked or amended without the Lender's prior written consent.

### 12.3 Undertakings

- (a) The Chargor may not, unless permitted by the Facility Offer Letter or otherwise without the Lender's prior written consent:
  - (i) amend, supplement or waive or agree to the amendment, supplement or waiver of any term of any Contract or terminate such Contract or allow such Contract to lapse (other than where a Contract expires in accordance with its terms and not by reason of default) and shall not do or permit anything to be done which may impair the enforceability of any term of any Contract; or
  - (ii) take any action which might jeopardise the existence or enforceability of any Contract.
- (b) The Chargor shall:
  - (i) promptly perform all its obligations under each Contract;

- (ii) diligently enforce its rights under each Contract;
- (iii) inform the Lender immediately if it serves notice of default, or commences any legal proceeding, or receives notice of default or of the initiation of any legal proceeding in relation to any Contract; and
- (iv) supply the Lender with (A) a copy of each Contract, certified as being true and correct by a director of it and (B) any other information and copies of any other documents relating to each Contracts which the Lender or any Receiver, requests.

#### 12.4 Obligations

Notwithstanding the operation of Clause 4.6 (Contracts), the Chargor is and shall remain liable under any Contract to which it is a party to perform all its obligations under that Contract and the Lender shall not be, or be deemed to be, under any obligation or liability under or in connection with any Contract by reason of this Deed or the exercise by the Lender of any rights, powers or remedies under this Deed.

### 13 Insurances

#### 13.1 Insurances – representations and warranties

The Chargor represents and warrants to the Lender that:

- (a) each Policy is in full force and effect and on risk, all premiums payable in relation to the Policies have been paid when due and, so far as the Chargor is aware, there are no grounds on which any Policy may be declared void or voidable in whole or in part.
- (b) its entry into the Policies does not conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding on it.

#### 13.2 Notices of assignment

The Chargor shall immediately upon execution of this Deed (or if later, the date on which an insurance policy is designated as a Policy for the purposes of this Deed) serve a notice, substantially in the form of Part 1 of Schedule 10 (Form of Notice and Acknowledgement for Insurer), on each other party to each Policy and use its reasonable endeavours to procure that each such party acknowledges that notice by signing and returning to the Lender a letter of undertaking substantially in the form of Part 2 of Schedule 10 (Form of Notice and Acknowledgement for Insurer) as soon as is practicable and in any event within 14 days of the date of this Deed or, if later, the date of entry into of the relevant Policy. Any instructions contained in any notice sent by the Chargor pursuant to this Clause may not be revoked or amended without the Lender's prior written consent.

#### 13.3 Preservation and enforcement of rights

The Chargor shall:

- (a) maintain insurances in full force and effect on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business. All such insurances must be maintained with a reputable independent insurance company or underwriter;
- (b) perform all its obligations, pay all premiums and other monies payable and diligently enforce all its rights under the Policies and take all action necessary to keep the Policies in full force and effect (including by way of legal or arbitration proceedings) and otherwise preserve its rights under the Policies;

- (c) inform the Lender immediately if it commences any legal proceedings, or receives notice of the initiation of any legal proceedings, in relation to any Policy or if it becomes aware of any Policy becoming void or voidable in whole or in part;
- (d) supply the Lender with (i) a copy of each Policy and of each certificate of insurance and cover note relating to each Policy, certified as being true and correct copies by a director of the Chargor; and (ii) any other information and copies of any other documents relating to the Policies which the Lender, or any Receiver, requests; and
- (e) if required by the Lender following the occurrence of an Enforcement Event use its best efforts to cause each insurance policy relating to the Secured Assets other than any Policy which has been the subject of a notice of assignment pursuant to Clause 13.2 (Notices of assignment) to contain (in form and substance reasonably satisfactory to the Lender) an endorsement naming the Lender as sole loss payee in respect of all claims.

#### 13.4 Amendments and waivers

The Chargor shall not, without the Lender's prior written consent, amend, supplement or waive or agree to the amendment, supplement or waiver of any term of any Policy or terminate any Policy or allow any Policy to lapse (other than where a Policy expires in accordance with its terms and not by reason of default).

#### 13.5 Non-compliance

If the Chargor defaults in complying with Clause 13.3(a) (Preservation and enforcement of rights), the Lender may effect or renew any such insurance on such terms, in such name(s) and in such amounts as it reasonably considers appropriate.

#### 13.6 Insurance proceeds held on trust

All monies received under any Policies relating to the Secured Assets shall (subject to the rights and claims of any person having prior rights to such monies), prior to the occurrence of an Enforcement Event, be applied in any manner permitted by the Facility Documents and, after the occurrence of an Enforcement Event, be held by the Chargor upon trust for the Lender pending payment to the Lender for application in accordance with Clause 19 (Order of application) and the Chargor waives any right it may have to require that any such monies are applied in reinstatement of any part of the Secured Assets.

### 14 **Intellectual Property**

#### 14.1 Intellectual Property - representations and warranties

The Chargor represents and warrants to the Lender that it:

- (a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all of the Intellectual Property which are useful to the conduct of its business or which is required by it in order to carry on its business as it is being conducted and has taken all formal and procedural actions (including payment of fees) required to maintain such Intellectual Property; and
- (b) does not, in carrying on its business, infringe any Intellectual Property of any third party in any material respect.

#### 14.2 Intellectual Property – positive undertakings

The Chargor shall:

- (a) do all such acts and things as are necessary or desirable to preserve and maintain the existence and validity of its Intellectual Property;

- (b) use reasonable endeavours to prevent any infringement, in any material respect, of its Intellectual Property and immediately after becoming aware of any such action, inform the Lender of such action and (at its own cost and without prejudice to any other steps it may consider appropriate in the circumstances) take such steps as the Lender may from time to time direct;
- (c) make registrations and pay all registration fees and taxes necessary to maintain its Intellectual Property in full force and effect and record its interest in that Intellectual Property and produce to the Lender on demand receipts or other evidence that the same have been paid; and
- (d) notify the Lender promptly if it receives notice or otherwise becomes aware of any actual or threatened:
  - (i) material infringement of any Intellectual Property; or
  - (ii) rescission, revocation, cancellation of or rectification of any registration of Intellectual Property.

#### 14.3 Intellectual Property – negative undertakings

The Chargors shall not, without the consent of the Lender:

- (a) abandon, cancel or allow any of its Intellectual Property to become void, lapse or to become vulnerable to attack, whether for non-use or otherwise;
- (b) apply to amend the specification or drawing of any of the letters patent or registered trade or service marks forming part of its Intellectual Property or enter any conditions, restrictions or disclaimers in relation to any of its registered Intellectual Property;
- (c) use or knowingly permit to be used any of its Intellectual Property in a way (or otherwise do or refrain from doing anything) which may have a material adverse effect on the value of its Intellectual Property
- (d) use or permit its Intellectual Property to be used in a way or take any step or omit to take any step in respect of its Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or impair its right to use such property; or
- (e) discontinue the use of the Intellectual Property.

#### 14.4 Preservation/protection

The Chargor must promptly, if requested to do so by the Lender, sign or procure the signature of, and comply with all instructions of the Lender in respect of, any document required to make entries in any public register of Intellectual Property (including the United Kingdom Registry of Trade Marks, the UK Patent Office and the Office for Harmonisation in the Internal Market (as relevant)) which either record the existence of this Deed or the restrictions imposed by this Deed.

### 15 **Enforcement of Security**

#### 15.1 Timing

The Security created by this Deed will be immediately enforceable at any time on or after:

- (a) the occurrence of an Enforcement Event; or
- (b) a request being made by the Chargor to the Lender that it exercise any of its powers under this Deed.

## 15.2 Enforcement

After the Security created by this Deed has become enforceable, the Lender may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

- (a) enforce all or any part of that 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 Secured Assets;
- (b) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorisations and discretions conferred by the LPA (as varied and extended by this Deed) on mortgagees, by this Deed on any Receiver, or conferred by the Insolvency Act 1986 or any other law on mortgagees and Receivers;
- (c) exercise all its rights, powers and remedies as assignee or chargee in respect of the Accounts and, in particular, the right to:
  - (i) demand and receive any interest or other monies payable in respect of any credit balance on any Account; and
  - (ii) withdraw sums standing to the credit of any Account (or, by notice to the bank with whom such Account is maintained, block the withdrawal of any such sums) and otherwise exercise all rights in relation to each of the Chargor's Accounts as the Chargor may exercise (or, but for this Deed) might exercise; and
- (d) apply, transfer or set-off any or all of the balances from time to time standing to the credit of the Accounts in or towards the payment or other satisfaction of all or part of the Secured Liabilities then due but unpaid in accordance with Clause 19 (Order of application).

## 15.3 Effect of a moratorium

The Lender shall not be entitled to exercise its rights under Clause 15.2 (Enforcement) to the extent that such exercise would be contrary to the provisions of paragraph 13 of Schedule A1 of the Insolvency Act 1986.

## 15.4 Statutory powers

- (a) The statutory power of sale or other right of disposal conferred on the Lender and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under section 101 of the LPA and such power shall arise (and the Secured Liabilities shall be deemed due and payable for that purpose) on execution of this Deed.
- (b)
  - (i) The statutory powers of leasing may be exercised by the Lender at any time on or after this Deed becoming enforceable and such powers are extended by this Deed so as to authorise the Lender to lease, make agreements for lease, accept surrenders of leases and grant options on such terms as the Lender may think fit and without the need to comply with any restrictions imposed by law (including under section 99 or section 100 of the LPA).
  - (ii) For the purposes of sections 99 and 100 of the LPA, the expression "Mortgagor" will include any incumbrancer deriving title under the Chargor and neither sub-section (18) of section 99 nor sub-section (12) of section 100 of the LPA will apply.
  - (iii) The Chargor shall not have, at any time up until the Discharge Date, the power pursuant to section 99 of the LPA to make any Lease in respect of any Real Property without the prior written consent of the Lender unless expressly permitted pursuant to the terms of the Facility Offer Letter.

- (c) The restrictions contained in section 93 and section 103 of the LPA shall not apply to this Deed, to the exercise by the Lender of its rights to consolidate all or any of the Security created by or pursuant to this Deed with any other Security in existence at any time or its power of sale and such powers of consolidation or sale are exercisable by the Lender, without notice to the Chargor, on or at any time after this Deed has become enforceable as herein provided.

## 16 **Receiver**

### 16.1 Appointment of Receiver

- (a) After this Deed has become enforceable the Lender may without prior notice, appoint:
  - (i) any one or more persons to be a Receiver of all or any part of the Secured Assets; or
  - (ii) two or more Receivers of separate parts of the Secured Assets; or
  - (iii) appoint another person(s) as an additional Receiver(s).
- (b) Any appointment under paragraph (a) above may be by deed, under seal or in writing under its hand.
- (c) Any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the LPA) does not apply to this Deed.
- (d) The Lender may not appoint an administrative receiver (as defined in section 29(2) of the Insolvency Act 1986) over the Secured Assets if the Lender is prohibited from so doing by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

### 16.2 Statutory powers of appointment

The powers of appointment of a Receiver pursuant to Clause 16.1 (Appointment of Receiver) shall be in addition to all statutory and other powers of appointment of the Lender under the LPA (as extended by this Deed) or otherwise and such powers shall remain exercisable from time to time by the Lender in respect of any part of the Secured Assets.

### 16.3 Removal

The Lender may from time to time by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver who has been removed for any reason.

### 16.4 Remuneration

The Lender may from time to time fix the remuneration of any Receiver appointed by it and any maximum rate imposed by any law (including under section 109(6) of the LPA) will not apply.

### 16.5 Agent of the Chargor

- (a) A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the LPA. The Chargor is solely responsible for the remuneration, expenses, contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.
- (b) The Lender will not incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.



- (c) No Receiver shall at any time act as agent for the Lender.

## 17 Powers of Receiver

### 17.1 Statutory powers

- (a) A Receiver (subject to any restrictions in the instrument appointing him but notwithstanding any winding up or dissolution of the Chargor) has (to the extent permitted by law) all of the rights, powers and discretions conferred on:
  - (i) an administrative receiver under Schedule 1 of the Insolvency Act 1986, as if such Schedule and all relevant definitions set out in the Insolvency Act 1986 were set out in this Deed; and
  - (ii) otherwise, all the rights, powers and discretions conferred on a mortgagor, a mortgagee in possession and on a Receiver (or a receiver and manager) appointed under the LPA.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually (and to the exclusion of any other Receiver) or together with any other person appointed or substituted as a Receiver.

### 17.2 Additional powers

In addition to those powers, rights and discretions set out in Clause 17.1(a) (Statutory powers), a Receiver shall have the following rights, powers and discretions:

- (a) Employees
  - (i) A Receiver may appoint and discharge managers, directors and secretaries for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit.
  - (ii) A Receiver may discharge any person appointed by the Chargor.
- (b) Sale of assets
  - (i) The consideration for the sale of any Secured Asset may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which the Receiver thinks fit.
  - (ii) Fixtures, other than landlord's fixtures, may be severed and sold separately from the property containing them without the consent of the Chargor.
- (c) Mediation

A Receiver may refer to mediation any question in relation to any Secured Asset that he thinks fit.
- (d) Delegation

A Receiver may delegate his power in accordance with this Deed.
- (e) Lending

A Receiver may lend money or advance credit to any customer of the Chargor.

(f) Protection of assets

A Receiver may:

- (i) effect any repair or improvement of any Secured Asset; and
- (ii) apply for and maintain any planning permission, building regulation, approval or any other authorisation,

in each case as he thinks fit.

(g) Other powers

A Receiver may:

- (i) do all other acts and things which he may consider desirable or necessary for realising any Secured Asset or incidental or conducive to any of the rights, powers, remedies or discretions conferred on the Lender or any Receiver under or by virtue of this Deed or by law;
- (ii) exercise in relation to any Secured Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute owner of that Secured Asset; and
- (iii) use the name of the Chargor for any of the purposes set out in this Clause 17.

18 **Appointment of Administrator**

- (a) Subject to the Insolvency Act 1986, at any time after the Security created by this Deed has become enforceable in accordance with Clause 15.2 (Enforcement), the Lender may appoint one or more qualified persons to be an Administrator of the Chargor, to act individually (and to the exclusion of any other Administrator) or together with any other Administrators so appointed or substituted.
- (b) For the purposes of this Clause 18, a "qualified person" is a person qualified to act as an Administrator under the Insolvency Act 1986.

19 **Order of application**

19.1 Application of proceeds

Unless otherwise determined by the Lender or a Receiver, all amounts received or recovered by the Lender or any Receiver in exercise of their rights under this Deed will, subject to the rights of any creditors having priority, be applied in the order provided in Clause 19.2 (Order of application). This Clause 19 does not prejudice the right of the Lender or any Receiver to recover any shortfall from the Chargor.

19.2 Order of application

The order referred to in Clause 19.1 (Application of proceeds) is:

- (a) in or towards payment of, or the provision for, all the costs, expenses and losses incurred, and payments made, by the Lender and/or any Receiver under or in connection with this Deed and all remuneration due to any Receiver under or in connection with this Deed;
- (b) in or towards the payment or discharge of the Secured Liabilities in accordance with the terms of the Facility Documents; and
- (c) in payment of any surplus to the Chargor or other person entitled to it.

**Protection of purchasers**

- (a) No purchaser or other person dealing with the Lender or a Receiver shall be bound to enquire:
  - (i) whether the Secured Liabilities have become payable;
  - (ii) whether any power which the Lender or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
  - (iii) whether any money remains due under the Facility Documents; or
  - (iv) how any money paid to the Lender or to that Receiver is to be applied.
- (b) The receipt of the Lender or any Receiver shall be conclusive discharge to any purchaser and, in making any sale or disposal of any of the Secured Assets or making any acquisition, the Lender or any Receiver may do for such consideration, in such manner and on such terms as it thinks fit.

**Liability of Lender and Receiver**

## 21.1 Liability

Neither the Lender, any Receiver nor any of their respective Delegates or sub-delegates (whether as mortgagee in possession or otherwise) shall either by reason of:

- (a) taking possession of or realising all or any part of the Secured Assets; or
- (b) taking any action permitted by this Deed,

be liable to the Chargor or any other person for any costs, losses or liabilities relating to any of the Secured Assets or for any act, default, omission or misconduct of the Lender, any Receiver or their respective Delegates and sub-delegates in relation to the Secured Assets or otherwise.

## 21.2 Exoneration

Neither the Lender, any Receiver nor any of their respective Delegates or sub-delegates shall have any duty:

- (a) to perform any of the Chargor's obligations or exercise any rights in relation to any Secured Asset;
- (b) to ensure that any Related Rights are made available or to verify that the correct amount has been received in relation to any Related Right;
- (c) to take up any offer in relation to any Secured Assets;
- (d) to give any notification to anyone in relation to any Secured Asset; or
- (e) to take any action to enforce any other person's obligations as regards any Secured Asset.

**Power of attorney**

- (a) The Chargor, by way of security for the performance of its obligations under this Deed, irrevocably and severally appoints the Lender, each Receiver and each of their respective Delegates and sub-delegates to be its attorney (with full power of substitution and delegation) and in its name, on its behalf and as its act and deed to:
  - (i) execute, deliver and perfect a Legal Mortgage over any Real Property not already the subject of a registrable Legal Mortgage;

- (ii) execute, deliver and perfect all other documents, deeds and agreements and do all such things which the attorney may consider to be required or desirable for:
  - (A) carrying out any obligation imposed on the Chargor by this Deed or any agreement binding on the Chargor to which the Lender is a party (including the execution and delivery of any charges, assignments or other security and any transfers of the Secured Assets and perfecting and/or releasing the Security created or intended to be created in respect of the Secured Assets); and
  - (B) enabling the Lender and any Receiver to exercise any of the rights, powers and authorities conferred on them pursuant to this Deed or by law (including, after the Security constituted by this Deed has become enforceable in accordance with Clause 15.1 (Timing), the exercise of any right of a legal or beneficial owner of the Secured Assets or any part of the Secured Assets).
- (b) The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.
- (c) The Chargor covenants (for the purpose of the irrevocable nature of the power of attorney granted in this Clause 22) with each Receiver appointed under this Deed, to join in and concur with the exercise by such Receiver of any powers of such Receiver to act on behalf of the Chargor.

## 23 **Delegation and discretion**

### 23.1 Delegation

- (a) The Lender and/or any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are conferred and are exercisable by it under this Deed to any person or persons on such terms and conditions as it sees fit.
- (b) No such delegation pursuant to this Clause 23 shall preclude either the subsequent exercise of such power, authority or discretion by the Lender or a Receiver itself or any subsequent delegation or revocation of such power, authority or discretion.
- (c) Neither the Lender nor any Receiver will have any liability to the Chargor or any other person for any loss or liability arising from any act, default, omission or misconduct by the Delegate.

### 23.2 Discretion

Any right or power which may be exercised or any determination which may be made under this Deed by the Lender or any Receiver may be exercised by it in its absolute and unfettered discretion, without any obligation to give reasons.

## 24 **Effectiveness of Security**

### 24.1 Continuing Security

Subject to Clause 28 (Release of Security) the Security constituted by this Deed shall remain in full force and effect as continuing security for the Secured Liabilities until the Discharge Date and shall not be released before then by any intermediate payment, discharge or satisfaction of all or any of the Secured Liabilities or for any other reason.

#### 24.2 Cumulative rights

The Security created by or pursuant to this Deed and the rights, powers and remedies of the Lender under this Deed shall be cumulative and shall be in addition to and independent of every other Security, right, power or remedy which the Lender may at any time have in connection with the Secured Liabilities, including all rights, powers and remedies provided by law, and accordingly, the Lender shall not be obliged before exercising any such rights, powers or remedies:

- (a) to make any demand of, or take any action or obtain any judgment in any court against, the Chargor;
- (b) to make or file any claim or proof in winding-up or dissolution of the Chargor; or
- (c) to enforce or seek to enforce any other Security held by it in respect of the Secured Liabilities.

#### 24.3 No merger of Security

No prior Security held by the Lender over the whole or any other part of the Secured Asset shall merge into the Security constituted by this Deed.

#### 24.4 No prejudice

The Security created by or pursuant to this Deed shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, or the Lender or by any variation of the terms of the trust upon which the Lender holds the Security created by or pursuant to this Deed or by any other thing which might otherwise prejudice that Security.

#### 24.5 Remedies and waivers

- (a) No failure to exercise, nor any delay in exercising, on the part of the Lender, 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 of any right or remedy.
- (b) No election to affirm this Deed on the part of the Lender shall be effective unless in writing.

#### 24.6 Partial invalidity

- (a) If, at any time, any provision of a Facility Document 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.
- (b) If any part of the Security intended to be created by or pursuant to this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security constituted under this Deed.

#### 24.7 Waiver of defences

The obligations of, and the Security created by, the Chargor under this Deed will not be affected by any act, omission or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under, or the Security created by, this Deed and whether or not known to the Chargor or the Lender) including:

- (a) any time, waiver or consent granted or agreed to be granted to, or composition with, the Chargor or any other person;

- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor or the Chargor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or Security over assets of, the Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- (e) any amendment, novation, supplement, extension (whether at maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature, and whether or not onerous) or replacement of a Facility Document or any other document or Security or of the Secured Liabilities (including any change in the purpose of, any extension of, or any variation or increase in any facility or amount made available under any facility or the addition of any new facility under any Facility Document or other documents);
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Facility Document or any other document or security or of the Secured Liabilities; or
- (g) any insolvency or similar proceedings relating to the Chargor or any other person.

#### 24.8 Chargor intent

Without prejudice to the generality of Clause 24.7 (Waiver of defences), the Chargor expressly confirms that it intends that the security created by it under this Deed shall extend from time to time to any variation, increase, extension or addition (in each case however fundamental and of whatsoever nature, and whether or not onerous) of or to any of the Facility Documents and/or any facility or amount made available under any of the Facility Documents for the purposes of or in connection with any of the following:

- (a) 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 may be available from time to time; and
- (i) any fees, costs and/or expenses associated with any of the foregoing.

#### 24.9 Immediate recourse

The Chargor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or provision of this Deed to the contrary.

#### 24.10 Appropriations

Until the occurrence of the Discharge Date, the Lender (or any trustee or agent on its behalf) may refrain from applying or enforcing any other monies, Security or rights held or received by the Lender in relation to the Secured Liabilities, or apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities, or otherwise) and hold in a non-interest bearing suspense account any money received from the Chargor on account of the Secured Liabilities.

#### 24.11 Non-competition

Until the occurrence of the Discharge Date or unless the prior written consent of the Lender is obtained, the Chargor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Deed:

- (a) to be indemnified by any person, including the Chargor;
- (b) to claim any contribution from any other provider of Security or any guarantor of the Secured Liabilities;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any of the Lender's rights under the Facility Documents or of any other guarantee, indemnity or Security taken pursuant to, or in connection with, the Secured Liabilities by the Lender;
- (d) to bring legal or other proceedings for an order requiring the Chargor to make any payment, or perform any obligation, in respect of which the Chargor has given a guarantee, undertaking or indemnity under any Facility Document;
- (e) to exercise any right of set-off against the Chargor; and/or
- (f) to claim rank, prove or vote as a creditor of the Chargor or its estate in competition with the Lender.

If the Chargor receives any benefit, payment or distribution contrary to the terms of this Clause, it shall hold that benefit, payment or distribution (to the extent necessary to enable all amounts which may be or become payable to the Lender in connection with the Secured Liabilities to be repaid in full) on trust for the Lender and shall promptly pay or transfer the same to the Lender or to the Lender's nominee.

#### 24.12 Tacking

The Lender confirms (including for the purposes of section 94(1)(c) of the LPA and section 49(3) of the Land Registration Act 2002) that it will comply with its obligations to make further advances under the Facility Offer Letter, subject to the terms of the Facility Documents.

#### 24.13 Further assurance

- (a) The Chargor shall promptly, at its own cost, enter into, execute and complete a Legal Mortgage over any Real Property in England and Wales not already the subject of a registrable Legal Mortgage.
- (b) The Chargor shall promptly, at its own cost, do whatever the Lender requires:
  - (i) to create, perfect and/or protect the Security created or intended to be created by this Deed;
  - (ii) to create, perfect and/or protect the priority of the Security created or intended to be created by this Deed;

- (iii) to facilitate the exercise of any rights, powers and remedies vested in the Lender or any Receiver (or their respective Delegates) by this Deed and/or by the law; and/or
- (iv) to facilitate the realisation of the Secured Assets.
- (c) In order to satisfy its obligations under paragraphs (a) and (b) above, the Chargor shall immediately, upon the request of the Lender, execute any transfer, conveyance, mortgage, charge, assignment or assurance over all or any of the assets constituting, or intended to constitute, the Secured Assets (whether in favour of the Lender or its nominee or otherwise) and make any registration or notarisation and give any notice, instructions, order or direction in respect of the Secured Assets.

## 25 **Prior Security interests**

- (a) In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Secured Assets or in case of exercise by the Lender or any Receiver of any power of sale under this Deed, the Lender may redeem such prior Security or procure the transfer of such Security to itself.
- (b) The Lender may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Chargor.
- (c) All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Lender on demand together with accrued interest on such sums as well as before judgment at the rate from time to time applicable to unpaid sums specified in the Facility Offer Letter from the time or respective times of the same having been paid or incurred until payment of such sums (as well as after as before judgment).

## 26 **Subsequent Security Interests**

If the Lender at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting the Secured Assets or any part of the Secured Assets which is prohibited by the terms of any Facility Document, all payments made by or on behalf of the Chargor to the Lender after such receipt of notice will (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities at the time that notice was received.

## 27 **Suspense account**

All monies received, recovered or realised by the Lender under this Deed (including the proceeds of any conversion of currency) may in the discretion of the Lender be credited to a non-interest bearing suspense or impersonal account(s) maintained with a bank, building society or financial institution (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Lender's discretion, in or towards the discharge of any of the Secured Liabilities.

## 28 **Release of Security**

Upon the occurrence of the Discharge Date, the Lender shall at the request and cost of the Chargor release and cancel the Security constituted by this Deed and procure the reassignment to the Chargor of the property and assets assigned to the Lender pursuant to this Deed, in each case without recourse to, or any representation or warranty by, the Lender or any of its Delegates.



29      **Preservation of Security**

This Deed is in addition to any other rights or Security, now and in the future, held by the Lender from the Chargor or any other person for the Secured Liabilities and will not merge with or prejudice or be prejudiced by any such rights or Security.

30      **Set-off**

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

31      **Financial collateral**

- (a) To the extent that any of the Secured Assets constitute "financial collateral" and this Deed constitutes a "security financial collateral arrangement" (as those terms are defined in the Regulations), the Lender shall, upon the Security created by this Deed becoming enforceable and to the extent permitted by the Regulations, have the right to appropriate all or any part of those Secured Assets in or towards the discharge of the Secured Liabilities without obtaining any court authorisation and in such order as the Lender may in its absolute discretion determine.
- (b) The Parties agree that the value of any Secured Asset appropriated in accordance with paragraph (a) above shall be:
  - (i) in the case of cash denominated in the currency of denomination of the Secured Liabilities, the amount of such cash plus any accrued but unposted interest attributable to such cash on the date of appropriation;
  - (ii) in the case of any other cash, the amount of the currency of denomination of the Secured Liabilities that the Lender could purchase with the amount of such cash (plus any accrued but unposted interest attributable to such cash) on the date of appropriation in accordance with its usual practice; or
  - (iii) in the case of Shares, shall be the price of those Shares at the time the right of appropriation is exercised as listed on any recognised market index, or as determined by independent valuation or by such other method as the Lender may reasonably select.

The Parties agree that the method of valuation provided for in this Clause 31 is commercially reasonable for the purposes of the Regulations.

32      **Currency**

32.1      **Relevant Currency**

The Chargor's obligation under this Deed is to discharge the Secured Liabilities in the Relevant Currency.

32.2      **Receipt in wrong currency**

If at any time the Lender receives a payment (including by set-off) referable to any of the Secured Liabilities from any source in a currency other than the Relevant Currency, then:

- (a) that payment will take effect as a payment to the Lender of the amount in the Relevant Currency which the Lender is able to purchase (after deduction of any relevant costs) with the amount of the payment so received in accordance with its usual practice; and

- (b) if such payment is treated pursuant to paragraph (a) above as a payment of an amount which falls short of the relevant liability of the Chargor expressed in the Relevant Currency, the Chargor as a separate and independent obligation will on demand from time to time indemnify the Lender against such shortfall.

### 33 **Payments to be made without deduction**

#### 33.1 No deductions

All sums payable by the Chargor under this Deed shall be paid in the Relevant Currency in immediately available funds and shall be paid to the credit of such account as the Lender may designate. All such payments shall be made in full without set-off of any sum owing by the Lender to the Chargor or counterclaim and free and clear of any deductions of or withholding for or on account of any Tax or for any other reason, except to the extent that any such deduction or withholding is required by law.

#### 33.2 Grossing-up

If at any time the Chargor is required by law to make any deduction or withholding from any payment due from the Chargor to the Lender, the Chargor shall simultaneously pay to the Lender whatever additional amount is necessary to ensure that the Lender receives a net sum equal to the payment it would have received had no deduction or withholding been made.

### 34 **Certificates**

A certificate or determination signed by the Lender of a rate or an amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### 35 **Assignment and transfer**

#### 35.1 Chargor's consent to assignment/transfer by Lender

The Chargor consents to the assignment and/or transfer by the Lender of any one or more of its rights and/or obligations under this Deed.

#### 35.2 No assignment/transfer by Chargor

The Chargor may not assign or transfer any one or more of its rights and/or obligations under this Deed.

#### 35.3 Confidentiality

The Lender shall be entitled to disclose such information relating to the Chargor or this Deed as it considers appropriate:

- (a) to any person proposing to take an assignment and/or transfer from the Lender; and
- (b) to enter into contractual relations with such person with respect to this Deed.

### 36 **Indemnity**

The Chargor shall promptly indemnify the Lender and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

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

37 **Costs and expenses**

37.1 Transaction expenses

The Chargor shall promptly on demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender, any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of this Deed, any other documents referred to in this Deed and the Security constituted by this Deed.

37.2 Amendment costs

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

37.3 Enforcement and preservation costs

The Chargor shall, within three days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the enforcement or preservation of any rights under this Deed and with any proceedings instituted by or against the Lender as a consequence of taking or holding the Security constituted by this Deed or enforcing those rights.

38 **Miscellaneous**

38.1 Variations

No variation of the terms of this Deed shall be valid unless such variation is in writing and signed by the Chargor and the Lender.

38.2 Third party rights

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

38.3 Perpetuity period

The trusts created by this Deed have a perpetuity period of 125 years.

38.4 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 this Deed.

39 **Notices and other communications**

39.1 All communications

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if a natural person) or an Authorised Officer of the sender (if not a natural person) and marked for the attention of the person identified below or, if the recipient has notified otherwise, then marked for attention in the way last notified.

39.2 Email communications

Communications sent by email need not be marked for attention in the way stated in Clause 39.1 (All communications). However, the email must state the first and last name of the sender.

### 39.3 Risk of electronic communications

The Chargor acknowledges and agrees that:

- (a) providing a communication by electronic transmission (including by email or fax) is not a secure means of sending such a notice, request or instruction;
- (b) it is aware of the security risk involved in sending electronic transmissions to the Lender, including the risk that an electronic transmission may:
  - (i) be incomplete or inaccurate;
  - (ii) be fraudulently or mistakenly given or altered or not otherwise authorised by the Chargor; or
  - (iii) not be received in whole but may be received in part by the Lender;
- (c) because of the convenience and other efficiency benefits of the Lender accepting and acting on electronic transmissions:
  - (i) the Lender can nevertheless accept and rely on such electronic transmissions in accordance with paragraph (d) below even where they include payment instructions; and
  - (ii) the Chargor accepts the risk to the Chargor of the Lender accepting electronic transmissions that are incomplete, inaccurate, fraudulently or mistakenly given or not otherwise authorised by the Chargor, or not received in whole but in part by the Lender; and
- (d) the Lender may rely on a communication given by electronic transmission (including payment instructions) if:
  - (i) the Lender has no actual knowledge that the electronic transmission is incomplete, inaccurate, fraudulently or mistakenly given or not otherwise authorised by the Chargor or has not been received in whole; and
  - (ii) the electronic transmission complies with any security protocols agreed between the Chargor and the Lender.

### 39.4 Delivery

Communications must be:

- (a) left at the address set out or referred to below; or
- (b) sent by regular ordinary post (airmail, if appropriate) to the address set out or referred to below; or
- (c) sent by fax to the fax number set out or referred to below; or
- (d) unless any applicable law, code of conduct or rule of any court requires a communication to be made in a particular manner, sent by email to the address set out or referred to below; or
- (e) given in any other way permitted by law.

However, if the intended recipient has notified a changed address, fax number or email address, then communications must be to that address or number.

39.5 When effective

Communications take effect from the time they are received or taken to be received under Clause 39.6 (When taken to be received) (whichever happens first) unless a later time is specified.

39.6 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 Business Days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

39.7 Receipt outside business hours

Despite Clauses 39.5 (When effective) and 39.6 (When taken to be received), if communications are received or taken to be received under Clause 39.6(b) or 39.6(c) after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified.

39.8 Communications from partnerships

If the Chargor is a partnership, each partner irrevocably authorises each other partner to give and receive notices on behalf of the partnership. The Lender may rely on any communication from a partner as if it were made by the partnership and the partnership is bound by it.

39.9 English language

- (a) Any notice given under or in connection with this Deed must be in English.
- (b) All other documents provided under or in connection with this Deed must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

39.10 Failure to execute

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

40        **Governing law and jurisdiction**

40.1      Governing law

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

40.2      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 regarding 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)        The Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly agrees that it will not argue to the contrary.
- (c)        This Clause 40.2 is for the benefit of the Lender only. As a result, the Lender will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**This Deed is executed as a deed by the Parties and is delivered and takes effect on the date at the beginning of this Deed.**

SCHEDULE 1

**Mortgaged Property**

**Part 1**

**Registered Land**

None at the date of this Deed.

**Part 2**

**Unregistered Land**

None at the date of this Deed.

## SCHEDULE 2

### **Initial Shares**

None at the date of this Deed.



SCHEDULE 3

**Account Details**

None at the date of this Deed.

#### SCHEDULE 4

##### **Contracts**

None at the date of this Deed.

SCHEDULE 5

**Insurance Policies**

None at the date of this Deed.

SCHEDULE 6

**Intellectual Property**

None at the date of this Deed.

## SCHEDULE 7

### Form of Legal Mortgage

THIS DEED is dated [●] between:

- (1) **TNA UK MANUFACTURING LIMITED** (company number 08062261) whose registered office is at 166 Clapgate Lane, Woodgate Business Park Bartley Green, Birmingham B32 3DE (the "**Chargor**"); and
- (2) **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED** (a company incorporated under the laws of Australia with Australian Business Number 11 005 357 522), whose registered office is at Level 13, 242 Pitt Street, Sydney NSW 2000 or such other office as it may select from time to time (the "**Lender**").

#### BACKGROUND

The Chargor enters into this Deed in connection with the Corporate Guarantee and Indemnity and Facility Offer Letter (each term as defined below).

**IT IS AGREED** as follows:

#### 1 Definitions

In this Deed:

**"Corporate Guarantee and Indemnity"** means the corporate guarantee and indemnity dated 25 May 2018 by and between the Chargor, Testamatic Limited (company number 02995853) and T.N.A. Europe Limited (company number 02668491) as guarantors in favour of the Lender (as further described and referred to in the Facility Offer Letter).

**"Debenture"** means the debenture dated [●] granted by the Chargor in favour of the Lender.

**"Facility Offer Letter"** means the facility offer letter dated 15 May 2018 between, among others, TNA Australia Pty Limited (ACN 002 937 859), TNA Australia Manufacturing Pty Limited (ACN 611 809 655), TNA Australia Solutions Pty Limited (ACN 611 809 422) and TNA Solutions Pty Limited (ACN 611 810 229) as borrowers, the Chargor as a security provider and the Lender as lender (and which, for the avoidance of doubt, includes any related facility terms, specific terms and/or the Lender's standard terms).

**"Mortgaged Property"** means the freehold, leasehold or immovable property specified in Schedule 1.

#### 2 Construction

- 2.1 Unless defined or construed in this Deed, a term defined or construed in the Debenture has the same meaning in this Deed and in any notice given under or in connection with this Deed.
- 2.2 The provisions of clause 2(b) to clause 2(i) (Interpretation) (inclusive), clause 5 (General representations and warranties), clause 6 (General undertakings), clause 7 (Real Property) and clause 15 (Enforcement of Security) to clause 39 (Notices) (inclusive) of the Debenture are incorporated into this Deed as if references in those clauses to the Debenture were also references to this Deed and as if all references in those clauses to Secured Assets were references to the Mortgaged Property.
- 2.3 This Deed shall take effect as a deed even if it is signed under hand on behalf of the Lender.
- 2.4 This Deed is a Facility Document.

### 3 **Undertaking to Pay**

The Chargor covenants with the Lender to pay, discharge and satisfy all the Secured Liabilities when due in accordance with their respective terms (or, if the relevant terms do not specify a time for payment, immediately on demand by the Lender) and to indemnify the Lender against any losses, costs, charges, expenses and liabilities arising from any breach of any Facility Document or failure to pay, discharge and satisfy the Secured Liabilities in accordance with their respective terms.

### 4 **Security**

#### 4.1 All of the Security created under this Deed:

- (a) is created in favour of the Lender;
- (b) is security for the payment, discharge and performance of all the Secured Liabilities except for any Secured Liabilities which, if secured by this Deed, would cause such security to be unlawful or prohibited by any applicable law; and
- (c) is granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

#### 4.2 The Chargor charges by way of a first legal mortgage all of the Mortgaged Property.

### 5 **Governing Law and Jurisdiction**

#### 5.1 Governing law

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

#### 5.2 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) (a "**Dispute**").
- (b) The Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly agrees that it will not argue to the contrary.
- (c) This Clause 5.2 is for the benefit of the Lender only. As a result, the Lender will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**THIS DEED** is executed as a deed by the Parties and is delivered and takes effect on the date stated at the beginning of this Deed.

SCHEDULE 1

**Mortgaged Property**

**Part 1**

**Registered Land**

<b>District and County/ London Borough</b>	<b>Description of Property</b>	<b>Title Number</b>
	[ ]	[ ]

**Part 2**

**Unregistered Land**

The freehold/leasehold property known as [●] and comprised in the following title deed(s) and other documents of title:

<b>Date</b>	<b>Document</b>	<b>Parties</b>

## EXECUTION PAGES TO LEGAL MORTGAGE

### The Chargor

Executed as a deed by **TNA UK MANUFACTURING LIMITED** acting by:

\_\_\_\_\_  
signature of director

\_\_\_\_\_  
print name of director

in the presence of:

\_\_\_\_\_  
signature of witness

\_\_\_\_\_  
print name of witness

Address

\_\_\_\_\_  
Occupation

### Notice details

Address: 166 Clapgate Lane, Woodgate Business Park Bartley Green, Birmingham, B32 3DE  
Fax: +61 2 9748 2970  
Email: Erwin.Mulders@tnasolutions.com  
Attention: Alfred Taylor and Nadia Taylor



## The Lender

**SIGNED, SEALED AND DELIVERED** )  
for **AUSTRALIA AND NEW ZEALAND** )  
**BANKING GROUP LIMITED** by its )  
attorney under registered power of )  
attorney Book 4376 No 410 in the )  
presence of: )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

..... )  
Signature of attorney

..... )  
Name of attorney (block letters)

..... )  
Title of attorney

By executing this Deed the attorney  
states that the attorney has received no  
notice of revocation of the power of  
attorney

## Notice details

Address: Level 13, 242 Pitt Street, Sydney, NSW, 2000

Fax: N/A

Email: [Halie.Pennycuick@anz.com](mailto:Halie.Pennycuick@anz.com)

Attention: Halie Pennycuick

SCHEDULE 8

**Form of Notice and Acknowledgment for Account Bank**

**Part 1**

**Form of Notice to Account Bank**

**[On the letterhead of the Chargor]**

To: [name and address of third party bank]

Attention: [ ]

Copy to: [Lender details]

Date: [ ]

Dear Sirs

**Debenture dated [●] 2018 (the “Debenture”) between TNA UK Manufacturing Limited (the “Chargor”) and Australia and New Zealand Banking Group Limited (the “Lender”)**

- 1 This letter constitutes notice to you that, pursuant to the Debenture, we have charged (by way of first fixed charge) in favour of the Lender all our present and future rights and interest in and to account number [●] in our name with you (the “**Account**”) together with all money from time to time standing to the credit of that Account, all interest accruing in relation to such Account and all Related Rights.
- 2 In this notice, “**Related Rights**” means, in respect of the Account, all present and future:
  - (a) money and proceeds of any nature paid or payable in relation to the Account, including sale proceeds and money paid by way of damages, award or judgment made in connection with that Account; and
  - (b) all rights and assets of any nature attaching to, deriving from or exercisable as a result of an interest in or ownership or operation of the Account.
- 3 We irrevocably instruct and authorise you to:
  - (a) credit to the Account all interest from time to time earned on the sums of money held in the Account;
  - (b) deal only with the Lender in relation to the Account unless you receive written instructions from the Lender to the contrary;
  - (c) hold all sums from time to time standing to the credit of the Account to the order of the Lender;
  - (d) comply with the terms of any written notice or instructions (including payment instructions) relating to the Account or the sums standing to the credit of the Account from time to time which you may receive from the Lender without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instructions;
  - (e) disclose to the Lender, without any reference to or further authority from us and without any enquiry by you as to the justification for such disclosure, such information relating to the Account and the sums in the Account as the Lender may from time to time request; and

(f) send copies of all notices and communications relating to the Account to the Lender as well as to us.

4 Please note that we are and will remain liable to perform all the obligations assumed by us under any mandate or other agreement relating to the Account and that neither the Lender, any Receiver nor any of their agents will at any time have any liability to you regarding the Account.

5 We are not permitted, without the Lender's prior written consent, to:

(a) permit or agree to any variation of the terms and conditions relating to the Account;

(b) create any further security interest over the Account or the Related Rights; or

(c) close the Account.

6 The instructions in this notice may not be revoked or varied without the prior written consent of the Lender.

7 This notice is governed by English law.

8 Please confirm your agreement to the above by sending the attached acknowledgement to the Lender at *[insert address details of Lender]* with a copy to us at the above address.

Yours faithfully

.....  
*[Authorised signatory of Chargor]*

**Part 2**  
**Form of Acknowledgement from Account Bank**  
**[On the letterhead of the Account Bank]**

To: [Lender]

Attention: [ ]

Copy to: [ ]

Date: [ ]

Dear Sirs

**Debenture dated [●] 2018 (the “Debenture”) between TNA UK Manufacturing Limited (the “Chargor”) and Australia and New Zealand Banking Group Limited (the “Lender”)**

We confirm receipt from the Chargor of a notice dated [●] (the “**Notice**”) of the creation of a first fixed charge, pursuant to the terms of the Debenture, of all the Chargor’s present and future rights and interest in and to account number [●] held with us in the name of [*the Chargor*] (the “**Account**”) together with all money from time to time standing to the credit of that Account, all interest accruing in relation to such Account and all Related Rights (as defined in the Notice).

We confirm that:

- 1 the balance on the Account as at today’s date is £[●];
- 2 we accept the instructions and authorisations contained in the Notice and undertake to comply with the terms of the Notice;
- 3 we have not received notice of the creation of any other assignment or security regarding the Account or of the creation of any third-party interest in the Account or in the sums of money held in the Account or the debts represented by those sums and we will notify you promptly should we receive any such notice;
- 4 we do not have and will not in future create, accept or enforce any security interest or right of set-off or combination or other right in respect of the Account, the sums of money held in the Account or the debts represented by those sums; and
- 5 we will not amend the terms or conditions upon which the Blocked Account is operated or close the Account without your prior written consent.

This letter is governed by English law.

Yours faithfully

.....  
for and on behalf of  
[third party bank]

SCHEDULE 9

**Form of Notice and Acknowledgement for Counterparty**

**Part 1**

**Form of Notice to Counterparty**

**[On the letterhead of the Chargor]**

To: [Contract counterparty]

Copy to: [Lender details]

Date: [ ]

Dear Sirs

**Debenture dated [●] 2018 between TNA UK Manufacturing Limited (the “Chargor”) and Australia and New Zealand Banking Group Limited (the “Lender”) (the “Debenture”)**

- 1 This letter constitutes notice to you that pursuant to the Debenture we have assigned to the Lender by way of security all our present and future rights under or in connection with [insert details of Contract] (the “**Contract**”) (including under any guarantee, warranty or indemnity granted in relation to the Contract) and all Related Rights.
- 2 In this notice, “**Related Rights**” means, in respect of the Contract, all present and future:
  - (a) money and proceeds of any nature paid or payable in relation to the Contract, including sale proceeds and money paid by way of damages, award or judgment made in connection with that Contract; and
  - (b) all rights and assets of any nature attaching to, deriving from or exercisable as a result of an interest in or ownership or operation of the Contract.
- 3 We irrevocably authorise and instruct you to:
  - (a) disclose to the Lender without any reference to or further authority from us (and without any enquiry by you as to the justification for such disclosure), such information relating to the Contract as the Lender may at any time request;
  - (b) deal only with the Lender in relation to the Contract unless you receive written instructions from the Lender to the contrary;
  - (c) pay all sums from time to time due and payable by you under the Contract in accordance with any written instructions given to you by the Lender from time to time;
  - (d) comply with the terms of any written notice or instructions relating to the Contract or the debts represented by such Contracts which you receive from the Lender without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction; and
  - (e) send copies of all notices and communications relating to the Contract to the Lender as well as to us.
- 4 We further instruct you that upon receipt of notice from the Lender that an Enforcement Event has occurred:

- (a) all remedies provided for in the Contract or available at law or in equity are exercisable by the Lender (provided that the Lender shall have no greater rights under this notice than we have under the Contract);
- (b) all rights to compel performance of the Contract are exercisable by the Lender although the Chargor shall remain liable to perform all of the obligations assumed by it under the Contract; and
- (c) all rights, interests and benefits whatsoever accruing to or for the benefit of us arising from the Contract belong to the Lender to the exclusion of the Chargor.

5 Please note that we are and will remain liable to perform all the obligations assumed by us under the Contract and that neither the Lender, any Receiver nor any of their agents will at any time have any liability to you under the Contract.

6 We are not permitted to agree any amendment or supplement to, or to waive any term of the Contract, or to terminate the Contract or to allow it to lapse other than where the Contract expires in accordance with its terms and not by reason of default without the prior written consent of the Lender.

7 The instructions in this notice may not be revoked or amended without the prior written consent of the Lender.

8 This notice is governed by English law.

9 Please confirm your agreement to the above by sending the attached acknowledgement to the Lender at *[insert address details of Lender]*, with a copy to us at the above address.

Yours faithfully

.....  
For and on behalf of  
[CHARGOR]

**Part 2**  
**Form of Acknowledgement from Counterparty**  
**[On the letterhead of the Counterparty]**

To: [Lender]  
[Address]

Copy: [Chargor]

Date: [ ]

Dear Sirs

**Debenture dated [●] 2018 between TNA UK Manufacturing Limited (the “Chargor”) and Australia and New Zealand Banking Group Limited (the “Lender”) (the “Debenture”)**

- 1 We confirm receipt from the Chargor of a notice dated [ ] (the “**Notice**”) of an assignment, pursuant to the terms of the Debenture, of all the Chargor’s present and future rights under or in connection with [insert details of Contract] (the “**Contract**”) (including under any guarantee, warranty or indemnity granted in relation to the Contract) and all Related Rights (as defined in the Notice).
- 2 We confirm that:
  - (a) we accept the instructions and authorisations contained in the Notice and we undertake to act in accordance with and comply with the terms of the Notice;
  - (b) we have not received notice of the creation of any other assignment of or security over rights or proceeds arising under the Contract in favour of any third party or the creation of any other third party interest in those rights or proceeds and we will notify you promptly should we receive any such notice;
  - (c) we have not claimed or exercised nor do we have any outstanding right to claim or exercise against the Chargor any right of set-off, counter claim or other right relating to the Contract;
  - (d) we agree that no term of the Contract may be amended, supplemented or waived without your prior written consent; and
  - (e) we agree that the Contract may not be terminated or allowed to lapse other than where the Contract expires in accordance with its terms and not by reason of default without your prior written consent.
- 3 This letter is governed by English law.

Yours faithfully

.....  
For and on behalf of  
[COUNTERPARTY]

SCHEDULE 10

**Form of Notice and Acknowledgement for Insurer**

**Part 1**

**Form of Notice to Insurer**

**[On the letterhead of the Chargor]**

To: [insert name and address of Insurer]

Copy to: [Lender details]

Date: [ ]

Dear Sirs

**Debenture dated [●] 2018 between TNA UK Manufacturing Limited (the “Chargor”) and Australia and New Zealand Banking Group Limited (the “Lender”) (the “Debenture”)**

- 1 This letter constitutes notice to you that, pursuant to the Debenture, we have assigned to the Lender by way of security all amounts payable to us under or in connection with the policies described below (the “**Policies**”), all our rights in connection with those amounts and all Related Rights.
- 2 In this notice, “**Related Rights**” means, in respect of the Policies, all present and future:
  - (a) money and proceeds of any nature paid or payable in relation to the Policies, including sale proceeds and money paid by way of damages, award or judgment made in connection with that Policy; and
  - (b) all rights and assets of any nature attaching to, deriving from or exercisable as a result of an interest in or ownership or operation of the Policies.

**[Describe insurances]**

- 3 We irrevocably authorise and instruct you to:
  - (a) disclose to the Lender without any reference to or further authority from us (and without any enquiry by you as to the justification for such disclosure), such information relating to the Policies as the Lender may at any time request;
  - (b) pay any sums from time to time due and payable by you under the Policies to the Lender in accordance with any written instructions given to you by the Lender from time to time;
  - (c) comply with the terms of any notice or instructions relating to the Policies which you receive from the Lender (without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction);
  - (d) [note on the Policies the Lender’s interest as first priority assignee of (i) all amounts payable under the Policies; and (ii) all rights in connection with those amounts and to identify the Lender as [sole loss payee] and as co-insured in respect of each Policy]; and
  - (e) send copies of all notices issued under the Policies to the Lender as well as to us.
- 4 Please note that we are and will remain liable to perform all the obligations assumed by us under the Policies and that neither the Lender, any Receiver nor any of their agents nor any other person will have any liability to you under the Policies.



- 5 We are not permitted to agree any amendment or supplement to or to waive any term of the Policies or to terminate any Policy without the prior written consent of the Lender.
- 6 The instructions in this notice may not be revoked or amended without the prior written consent of the Lender.
- 7 Please confirm your agreement to the above by sending the attached acknowledgement to the Lender at *[insert address details of Lender]* with a copy to us at the above address.
- 8 This notice is governed by English law.

Yours faithfully

.....

For and on behalf of  
[CHARGOR]

**Part 2**  
**Form of Acknowledgement from Insurer**  
**[On the letterhead of the Insurer]**

To: [Lender]  
[Address]  
Copy: [Chargor]  
Date: [ ]

Dear Sirs

**Debenture dated [●] 2018 between TNA UK Manufacturing Limited (the “Chargor”) and Australia and New Zealand Banking Group Limited (the “Lender”) (the “Debenture”)**

- 1 We acknowledge receipt from the Chargor of a notice dated [ ] (the “**Notice**”) of an assignment, pursuant to the terms of the Debenture, of (i) all amounts payable to the Chargor under or in connection with the Policies; (ii) all the Chargor’s rights in connection with those amounts; and (iii) all Related Rights, as defined in the Debenture (as defined in the Notice).
- 2 We confirm that:
  - (a) we accept the instructions and authorisations contained in the Notice and undertake to act in accordance with and comply with the terms of the Notice;
  - (b) [we [will note/have noted] your interest as first priority assignee of the amounts and rights referred to above and have identified you as co-insured and sole loss payee on the Policies;]
  - (c) we will not terminate or otherwise allow any of the Policies to lapse without giving you at least 14 days’ prior written notice;
  - (d) we have not received notice of the creation of any other assignment of or any security over rights or proceeds arising under the Policies in favour of any third party or the creation of any other third party interest in those rights or proceeds;
  - (e) we will notify you, the Lender, at least 14 days before the Policy is due to expire, if we have not received the Chargor’s renewal instructions in relation to such Policy;
  - (f) we agree that no term of the Policies may be amended, supplemented or waived without your prior written consent;
  - (g) we agree to notify you if the Chargor breaches the terms of any Policy or otherwise gives us grounds to declare any Policy void or voidable and, where the breach is capable of being remedied, to allow you or your agents to remedy the relevant breach; and
  - (h) we have not claimed or exercised, and have no outstanding right to claim or exercise, any right of set-off or counterclaim, or other right, in relation to any sum paid or payable under the Policy.
- 3 All terms used in this letter have the same meaning as in the Notice.
- 4 This letter is governed by English law.

Yours faithfully

.....

For and on behalf of

[Name of insurance company]

**EXECUTION PAGES**


**Chargor**

Executed as a deed by **TNA UK  
MANUFACTURING LIMITED** acting by:

  
signature of director

NADIA TAYLOR  
print name of director

in the presence of:

  
signature of witness

CHRISTOPHER SINCLAR  
print name of witness

Address  


Occupation  
SOLICITOR

**Notice details**

Address: 166 Clapgate Lane, Woodgate Business Park Bartley Green, Birmingham, B32 3DE  
Fax: +61 2 9748 2970  
Email: Erwin.Mulders@tnasolutions.com  
Attention: Alfred Taylor and Nadia Taylor

**The Lender**

SIGNED, SEALED AND DELIVERED )  
for AUSTRALIA AND NEW ZEALAND )  
BANKING GROUP LIMITED by its )  
attorney under registered power of )  
attorney Book 4376 No 410 in the )  
presence of: )

Signature of witness

ANGIE LIONI

Name of witness (block letters)

Signature of attorney

SHAUN BRAILEY

Name of attorney (block letters)

Director - Lending Services

Title of attorney

By executing this Deed the attorney  
states that the attorney has received no  
notice of revocation of the power of  
attorney

**Notice details**

Address: Level 13, 242 Pitt Street, Sydney, NSW, 2000  
Fax: N/A  
Email: [Halie.Pennycuick@anz.com](mailto:Halie.Pennycuick@anz.com)  
Attention: Halie Pennycuick