



Registration of a Charge

Company Name: **4D PHARMA PLC**

Company Number: **08840579**



Received for filing in Electronic Format on the: **11/08/2021**

XAAMRXYO

Details of Charge

Date of creation: **29/07/2021**

Charge code: **0884 0579 0004**

Persons entitled: **OXFORD FINANCE LUXEMBOURG S.A R.L. ACTING IN RESPECT OF ITS
COMPARTMENT 4 AS COLLATERAL AGENT**

Brief description:

Contains floating charge(s) .

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **SHEPHERD AND WEDDERBURN LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8840579

Charge code: 0884 0579 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th July 2021 and created by 4D PHARMA PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th August 2021 .

Given at Companies House, Cardiff on 12th August 2021

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



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**



SHEPHERD+ WEDDERBURN

4D PHARMA PLC (as Chargor)
and
OXFORD FINANCE LUXEMBOURG S.À R.L. acting in
respect of its Compartment 4 (as Collateral Agent)

SCOTTISH SECURITY AGREEMENT
(containing floating charges over Scottish assets & shares)

29 July 2021

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SCOTTISH SECURITY AGREEMENT

By

- (1) **4D PHARMA PLC**, a public limited company registered in England and Wales (company number 08840579) whose registered office is at 9 Bond Court, Leeds, England, LS1 2JZ (the "**Chargor**"); and
- (2) **OXFORD FINANCE LUXEMBOURG S.À R.L.**, a Luxembourg private limited liability company (société à responsabilité limitée) with registered office at 2, route d'Arlon, L-8008 Strassen, Grand Duchy of Luxembourg and registered with the Luxembourg Business Register under number B243395, acting in respect of its compartment 4, as security agent, collateral agent and trustee for the Secured Parties in terms of the English Security Trust (the "**Collateral Agent**").

BACKGROUND

- A. Pursuant to a Loan Agreement (as defined below) the Lender (as defined in the Loan Agreement, as defined below) has agreed to provide the Borrower (as defined below) with loan facilities on the terms of the Loan Agreement (as defined below).
- B. The provision of this Deed is a condition precedent to the obligations of the Lender under the Loan Agreement (as defined below).
- C. This Deed is given by the Chargor as continuing security for the Secured Liabilities (as defined below).

THIS DEED WITNESSES that:

1. Definitions and Interpretation

1.1 Definitions

In this Deed:

"Account"	has the meaning given to that term in the English Security Agreement.
"Administrator"	means any administrator appointed to manage the affairs, business and property of the Chargor under this Deed.
"Book Debts"	means all present and future book and other debts, revenue and monetary claims (and the proceeds of any debt, revenue or claim) now or in the future due, owing or payable to the Chargor and the benefit of all security, guarantees indemnities and other rights of any kind enjoyed or held by the Chargor in relation to any of them together with all Related Rights. In relation to the Chargor, "its Book Debts" means all Book Debts in which it has any rights.
"Borrower"	has the meaning provided for such term in the Loan Agreement.
"Charged Property"	means all the assets, property and undertaking for the time being subject to the security created by this Deed. Any reference to the Charged Property includes all or any part of it.
"Company"	means any company that is a subsidiary of the Chargor whose share capital includes or comprises Investments or which has issued any Investments.
"Default Rate"	has the meaning provided for such term in the Loan Agreement.
"Delegate"	means any delegate, agent, attorney or co-trustee appointed by the Collateral Agent.
"English Security Agreement"	means the debenture governed by English law dated on or around the date of delivery of this Deed between, <i>inter alios</i> , the Chargor and the Collateral Agent.

"English Security Trust"	means the trust referred to in clause 14 of the English Security Agreement.
"Environmental Authorisations"	means any Relevant Authority having judicial, regulatory or administrative authority under Environmental Laws.
"Environmental Law"	means any applicable laws, which relate to Environmental Matters.
"Environmental Matters"	means any matter concerning contamination or pollution of the Environment (as that term is defined in s1(2) Environmental Protection Act 1990) which has affected, or is likely to affect, the Chargor Property in any respect which the Collateral Agent considers material.
"Equipment"	means all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations, apparatus and other tangible moveable property for the time being owned by the Chargor, including any part of it and all spare parts, replacements, modifications and additions and all Related Rights. In relation to the Chargor, "its Equipment" means all Equipment in which it has any rights.
"Event of Default"	has the meaning provided for such term in the Loan Agreement.
"Excluded Agreements"	means the Strategic Collaboration Agreement between (i) The University of Texas M. D. Anderson Cancer Center; and (ii) the Chargor, dated 10 November 2017; and the Research Collaboration and Option to Licence Agreement between (i) Merck Sharp & Dohme Corp; and (ii) the Chargor, dated 7 October 2019.
"Financial Regulations"	Collateral means the Financial Collateral Arrangements (No. 2) Regulations 2003.
"Fixtures"	means in relation to any Real Property all fixtures and fittings (including trade fixtures and fittings) and all fixed plant, machinery and apparatus and other items attached to the relevant Real Property being owned by the Chargor whether or not constituting a fixture at law.
"Indemnified Person"	has the meaning given to such term in clause 17.
"Insolvency"	of a person includes the dissolution, bankruptcy, insolvency, winding-up, sequestration liquidation, administration, examination, amalgamation, reconstruction, reorganisation, arrangement, adjustment, administrative or other receivership or dissolution of that person, the official management of all of its revenues or other assets or the seeking of protection or relief of debtors and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction.
"Insolvency Act"	means the Insolvency Act 1986.
"Instrument"	means any document (including any form of writing) under which any obligation is evidenced or undertaken or any Lien (or right in any Lien) is granted or perfected or purported to be granted or perfected.
"Insurance Policies"	means all contracts, policies of insurance and cover notes of any kind now or in the future taken out by or on behalf of the Chargor or (to the extent of its interest) in which it now or in the future has an interest and all Related Rights. In relation to the Chargor, "its Insurance Policies" means all Insurance Policies in which it has any rights (including as loss payee or additional insured).

"Insurance Proceeds"	means any monies which may from time to time be payable to or received by the Chargor (whether as an insured party, beneficiary or as loss payee) under any Insurance Policy and the proceeds of all claims made by the Chargor under any Insurance Policy.
"Intellectual Property"	means all intellectual property, including the intellectual property listed in part 1 of the Schedule, and including all present or future patents, trademarks, service marks, trade names, domain names, designs, copyrights, moral rights, inventions, topographical or similar rights, rights in databases, trade secrets, confidential information and know-how, and any interest in any of these rights in any part of the world, whether or not registered or registrable, including all applications and rights to apply for registration and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world, and all fees, royalties and other rights derived from, or incidental to, these rights together with all Related Rights. In relation to the Chargor, "its Intellectual Property" means all Intellectual Property in which it has any rights or is held for its benefit.
"Investment" means:	<ul style="list-style-type: none"> a. any present and future stocks, shares (including the Specified Investments), disbursements, securities, certificates of deposit, commercial papers, and other securities and investments of any kind; b. all interests in collective investment schemes; c. all warrants, options and other rights to subscribe or acquire any of the investments described in (a) and (b); and d. all Related Rights in each case whether held directly by or by any agent, nominee(s), fiduciary or clearance system on its behalf and in each case now or in the future owned by it or (to the extent of its interest) in which it now or in the future has an interest.
"Lease"	means any lease, tenancy, licence, sub-lease or other occupational right.
"Legal Reservations"	<ul style="list-style-type: none"> (a) the principle that discretionary remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim; (c) the principle that any provision for the payment of compensation or additional interest which is not a genuine pre-estimate of Loss may be unenforceable on the grounds that it is a penalty and thus void; (d) the principle that an English or Scottish court may refuse to give effect to a provision dealing with the cost of litigation brought before any court where the litigation is unsuccessful or the court itself has made an order for costs; (e) similar principles, rights and defences under the laws of any relevant jurisdiction; and

- (g) any other matters which are set out as qualifications or reservations as to matters of law of general application in the legal opinions delivered to the Collateral Agent with respect to the Chargor.

"Liability"	means any present or future obligation or liability for the payment of money, whether in respect of principal, interest or otherwise, whether actual or contingent, whether owned jointly or severally and whether a principal or surety or in any other capacity and including any amount which would constitute such a liability but for any discharge, non-probability, unenforceability or non-allowability of the same in any insolvency or other proceedings.
"Limitation Acts"	means the Limitation Act 1980, the Foreign Limitation Periods Act 1984 and the Prescription and Limitation (Scotland) Act 1973
"Lien"	has the meaning given to it in the Loan Agreement.
"Loan Agreement"	means the loan and security agreement dated on or around the date of this Deed and entered into between, amongst others, the Chargor and the Collateral Agent (as lender and collateral agent).
"Loan Documents"	has the meaning given to it in the Loan Agreement, and "Loan Document" shall mean any one of them.
"Loan Parties"	means a Borrower or any other borrower, chargor or any other party (other than a Secured Party) to a Loan Document from time to time, and "Loan Party" shall mean any one of them.
"Losses"	means all losses (including loss of profit), claims, demands, actions, proceedings, damages and other payments, costs, charges, expenses and other liabilities of any kind.
"Notice of Charge"	has the meaning given to that term in the English Security Agreement.
"Party"	means a party to this Deed.
"Permitted Lien"	has the meaning given to it in the Loan Agreement.
"Planning Acts"	means the Planning (Scotland) Act 2019, the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) Act 1990, Planning (Consequential Provisions) (Scotland) Act 1997, Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990; the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, and/or any other legislation regulating the use or development of land which is in force and effect from time to time.
"Real Property"	means any heritable, leasehold or immoveable property situated in Scotland from time to time (including without limitation all fixtures from time to time thereon) together with all Related Rights.
"Receiver"	means a Scottish receiver, receiver, receiver and manager or administrative receiver of any or all of the Charged Property appointed by the Collateral Agent under this Deed whether solely, jointly, severally or jointly and severally with any other

person and includes any substitute for any of them appointed from time to time.

"Related Rights"

means in relation to any asset:

- a. the proceeds of sale of any part of that asset;
- b. any income derived from, or monies or proceeds otherwise paid or payable in respect of, that asset (including any milestone payments) or similar;
- c. all rights under any licence, contract of insurance, agreement for sale or agreement for lease in respect of that asset;
all rights, powers, benefits, claims, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of that asset; and
- d. in relation to any Investment, any right against any clearance system and any rights against any institution or under any agreement.

"Relevant Authority"

means any government, government department or governmental, quasi-governmental, supranational, federal, statutory, administrative, regulatory, self-regulatory or investigative body, authority, court, tribunal, stock exchange, trade agency, professional association or institution in any jurisdiction, including the World Bank, European Bank of Reconstruction and Development and other similar international development banks or institutions.

"Restrictions Notice"

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

"Secured Liabilities"

means all present and future Liabilities of the Loan Parties to the Secured Parties under or in relation to any one or more of the Loan Documents (including, without limitation, all Liabilities arising out of any extension, variation, modification, restatement or novation (however fundamental) but excluding any money, obligation or liability which would cause the undertaking set out in clause 2 or the security which would otherwise be constituted by this Deed to be unlawful or prohibited by any applicable law or regulation).

"Secured Parties"

means the Lenders, the Collateral Agent, a Receiver or any Delegate (and a "Secured Party" shall mean any one of them).

"Security Period"

means the period starting on the date of this Deed and ending on:

- a. the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full; and
- b. the date on which the Collateral Agent is satisfied (acting reasonably) that the Lenders (as defined in the Loan Agreement) has ceased to have any commitment, obligation or other liability (whether actual or contingent) to make any credit or provide any other financial accommodation to a Loan Party under any Loan Document or otherwise.

"Specified Investments"

means the shares identified in part 2 of the Schedule and all other shares in the issuing companies named in part 2 of the Schedule now or in the future owned by the Chargor and/or any nominee on its behalf.

"Unpaid Sum"	means any sum due and payable but unpaid by a Loan Party under the Loan Documents.
"VAT"	means the value added tax provided for in the Value Added Tax Act 1994 and any other Tax of a similar nature in any applicable jurisdiction.
"Warning Notice"	means a "warning notice" as defined in paragraph 1(2) of Schedule 1B of the Companies Act 2006.

1.2 Construction

1.2.1 Terms defined in the Loan Agreement but not in this Deed shall have the same meaning in this Deed as in the Loan Agreement.

1.2.2 In addition, in this Deed, any reference to:

- (i) "assets" includes present and future properties, undertakings, revenues, rights and benefits of every description (and any reference to a particular type or category of assets includes any present or future assets of that type or category);
- (ii) an "amendment" includes a supplement, restatement, variation, novation or re-enactment (and "amended" shall be construed accordingly);
- (iii) an "authorisation" includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- (iv) "this Deed" includes the schedule of three parts which form part of this Deed for all purposes;
- (v) a "disposal" includes any lease, licence, transfer, sale or other disposal of any kind (with related words being construed accordingly);
- (vi) any Loan Document, other Instrument or other document is to that Loan Document, other Instrument or other document as supplemented, otherwise amended, replaced or novated from time to time (however fundamental that amendment, novation or replacement may be, even if it involves increased, new, additional and/or replacement facilities or an increase in any other amount or rate);
- (vii) one gender shall include a reference to the other genders and words in the singular shall include the plural (and vice versa);
- (viii) "including" means "including without limitation" (with related words being construed accordingly), "in particular" means "in particular but without limitation" and other general words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of assets, matters or things;
- (ix) a "Party" or other "particular person" includes its successors in title, permitted assignees and permitted transferees in accordance with their respective interests; and this Deed shall be enforceable notwithstanding any change in the constitution of the Collateral Agent, its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person;
- (x) "person" includes any individual, firm, company or other corporation, unincorporated body of persons, government, state or any agency of a person, any association, trust or partnership (whether or not having separate legal personality) or two or more of them;
- (xi) a "right" includes any title, estate, interest, claim, remedy, power, authority, discretion or other right of any kind, both present and future (and any reference to rights in a particular asset or type or category of assets includes any rights in the proceeds of any disposal of that asset or any assets within that type or category);
- (xii) "regulation" includes any regulation, rule, official directive, notice, request, code of practice, guideline, demand or decision (in each case whether or not having the force of law) of any governmental, intergovernmental or

supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

- (xiii) a "statute" or "statutory provision" includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and any former statute or statutory provision which it consolidated or re-enacted before the date of this Deed;
- (xiv) "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);
- (xv) "this security" means the Lien constituted by or purported to be constituted by or pursuant to this Deed;
- (xvi) an Event of Default (as such term is defined in the Loan Agreement) is "continuing" if it has not been waived in writing by the Collateral Agent or remedied to the satisfaction of the Collateral Agent (acting in good faith); and
- (xvii) references to "USD", "\$" or "Dollars" shall be references to the lawful currency of the United States.

1.2.3 The index and clause, schedule and paragraph headings are for ease of reference only and shall not affect the interpretation of this Deed.

1.2.4 If there is any inconsistency between the terms of this Deed and those of the Loan Agreement, the terms of the Loan Agreement shall prevail.

1.3 Secured Liabilities not paid if avoided

If the Collateral Agent considers that an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided, or otherwise set aside, on the Insolvency of the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

1.4 Trust

The Collateral Agent holds the benefit of this Deed and the obligations of the Chargor, including the security created or purported to be created and the rights granted in it to the Collateral Agent or any Secured Party, on trust for the Secured Parties on the terms set out in the English Security Trust.

1.5 Related Rights

For the avoidance of doubt, any Related Rights in respect of Excluded Agreements that are held by the Chargor and to which the Chargor is entitled shall, to the extent of the Chargor's entitlement and unless otherwise excluded pursuant to the provisions of this Deed, form part of the Charged Property for the purposes of this Deed.

1.6 Qualifying floating charge

Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charge created by this Deed and the Collateral Agent may appoint an Administrator of the Chargor pursuant to that paragraph.

2. Payment of Secured Liabilities

2.1 Undertaking to pay

The Chargor covenants with and undertakes to the Collateral Agent to on demand, pay to the Collateral Agent and discharge the Secured Liabilities when they become due.

2.2 Interest

Any amount which is not paid under this Deed when due shall bear interest at the Default Rate (both before and after judgment and payable on demand) from its due date up to the date of a final payment, such interest to accrue at a daily basis.

3. Grant of Security

3.1 Floating charges

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with absolute warrantice HEREBY grants:

3.1.1 a floating charge over, all of its undertaking, property, rights and assets both present and future located in Scotland or otherwise governed by Scots law;

3.1.2 a floating charge over the Specified Investments

but in each case subject to clause 3.3.

3.2 Non-Chargeable Rights

Subject to clause 3.3, the Chargor undertakes to the Collateral Agent that it shall to the extent that any right, title, interest or benefit in or in respect of any asset (or any Related Right in respect of such asset) described in clause 3.1 cannot be or is not effectively secured pursuant to this Deed for whatever reason, the Chargor shall:

- (i) promptly notify the Collateral Agent of the same and the reasons why such asset is not capable being secured (including the nature of any consent or permitted form of security required);
- (ii) hold the benefit of the same on trust for the Collateral Agent as security for the payment and discharge of the Secured Liabilities; and
- (iii) take such steps as the Collateral Agent may (acting reasonably) require to remove such impediment to such security,

and until such impediment has been removed such asset shall not (to the extent of such impediment) be deemed to be subject to the security referred to at clauses 3.1 (as applicable), but for the avoidance of doubt, any Related Rights which do not otherwise fall within the provisions of this clause 3.2 shall remain subject to the security created under this Deed.

3.3 Excluded Agreements

3.3.1 In respect of the Excluded Agreements, the Parties agree that

- (i) any Related Right falling within paragraphs (a) and (b) of that definition and any other Related Rights and/or any other asset of the Chargor (including any Intellectual Property) not otherwise precluded by the terms of that Excluded Agreement from being subject to the security created under this Deed, shall be subject to the security created under this Deed;
- (ii) the Chargor must take any steps required to remove an impediment referred to in clause 3.2 only if so requested by the Collateral Agent following an Event of Default which is continuing,

and until such impediment has been removed, any assets of the Chargor (including any Intellectual Property) which are precluded by the terms of such Excluded Agreement from being subject to the security created under this Deed, shall not form part of the security created under this Deed.

3.3.2 The Chargor must ensure that all income derived from, or monies or proceeds otherwise paid or payable in respect of, an Excluded Agreement (and for the avoidance of doubt, including any milestone payments) are paid into an Account which is subject to the security created under the English Security Agreement and in respect of which the Chargor has delivered a Notice of Charge in accordance with the terms of the English Security Agreement.

3.4 Further assurance

The Chargor shall promptly (and shall ensure that its nominee(s) shall), at the request of the Collateral Agent and at its own cost, do all acts and things and execute any Instrument or other documents (including any legal or other Security, charges or transfers) in favour of the Collateral Agent in such form as the Collateral Agent may require and otherwise do any acts and things, as the Collateral Agent requires from time to time:

- 3.4.1 for giving effect to, perfecting (including the priority of it), preserving or protecting the Collateral Agent's security over the Charged Property created (or intended to be created) by this Deed; or
- 3.4.2 to facilitate the realisation or enforcement of, or exercise any of the rights and powers conferred on of the Collateral Agent or any other Secured Party or any Receiver in relation to, the security over the Charged Property created (or intended to be created) by this Deed.

4. Representations and Warranties

The Chargor represents and warrants to the Collateral Agent in the terms set out in part 3 of the Schedule.

5. Undertakings

The Chargor undertakes to the Collateral Agent in the terms set out in part 4 of the Schedule.

6. People with Significant Control

- 6.1 The Chargor covenants and agrees with the Collateral Agent that until the end of the Security Period, it shall comply with any notice served on it pursuant to Part 21A of the Companies Act 2006 and within the timeframe specified in the notice.
- 6.2 The Chargor represents and warrants to the Collateral Agent on the date of this Deed that no Warning Notice or Restrictions Notice has been issued to that Chargor in respect of the Investments charged pursuant to this Deed.

7. Enforcement

- 7.1 This security shall become immediately enforceable if an Event of Default occurs and is continuing.
- 7.2 After the security has become enforceable, the Collateral Agent may in its absolute discretion enforce all or any of its rights under this Deed as it thinks fit. In particular, it may without further notice, exercise in relation to the Charged Property:
 - 7.2.1 the power of sale and all other powers conferred on a Scottish receiver or an administrative receiver by the Insolvency Act, in either case as extended or otherwise amended by this Deed;
 - 7.2.2 to the extent that clause 8 applies, the power to appropriate the Charged Property in or towards the payment and discharge of the Secured Liabilities in accordance with clause 8.2; and
 - 7.2.3 (without first appointing a Receiver) any or all of the rights which are conferred by this Deed (whether expressly or by implication) on a Receiver.
- 7.3 **Protection of third parties**
 - 7.3.1 No purchaser, heritable creditors or other person dealing with a Receiver or the Collateral Agent shall be bound to enquire whether its right to exercise any of its rights has arisen or become exercisable, or be concerned as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with that Receiver or the Collateral Agent.
 - 7.3.2 All of the protection to purchasers contained in s42(3) of the Insolvency Act shall apply to any person purchasing from or dealing with a Receiver or the Collateral Agent as if the Secured Liabilities had become due and the statutory powers of sale and the appointment of a Receiver in relation to the Charged Property had arisen on the date of this Deed.
- 7.4 **Privileges**

Each of the Collateral Agent and any Receiver is entitled to all the rights, powers privileges and immunities conferred by law or creditors and receivers duly appointed under any law.
- 7.5 **Delegation**
 - 7.5.1 The Collateral Agent and a Receiver may delegate to any person or persons all or any of the rights which are exercisable by it under this Deed. A delegation under this clause may be made in any manner (including by power of attorney) and on any terms (including power to sub-delegate) which the Collateral Agent or Receiver may think fit.
 - 7.5.2 A delegation under clause 7.5.1 shall not preclude the subsequent exercise of those rights by the Collateral Agent or Receiver itself nor preclude the Collateral Agent or Receiver from making a subsequent delegation of them to another person or from revoking that delegation.

- 7.5.3 Neither the Collateral Agent nor a Receiver shall be liable or responsible to the Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

7.6 No liability

None of the Collateral Agent, any Receiver, any delegate or any Administrator shall be liable as a creditor in possession or otherwise to account in relation to all or any part of the Charged Property for any loss on realisation or for any other action, default or omission for which it or they might be liable.

8. Right of Appropriation

8.1 Application of right of appropriation

This clause 8 applies to the extent the Charged Property constitute "financial collateral" and this Deed constitutes a "financial collateral arrangement" (within the meaning of the Financial Collateral Regulations).

8.2 Exercise of right of appropriation

If and to the extent that this clause 8 applies, the Collateral Agent may appropriate the Charged Property in or towards the Secured Liabilities. If the Collateral Agent exercises its right of appropriation then it shall for these purposes value:

- 8.2.1 any relevant bank account and the amount standing to the credit of that account, together with any accrued interest not credited to the account, at the time of the appropriation; and
- 8.2.2 any other relevant Charged Property by reference to an independent valuation or other procedure determined by the Collateral Agent at the time of the appropriation. The Chargor agrees that any method of valuation provided for in this clause 8.2 is commercially reasonable for the purposes of the Financial Collateral Regulations.

9. Appointment of Receiver

9.1 Appointment of Receiver

Without prejudice to any statutory or other powers of appointment of the Collateral Agent under the Insolvency Act as extended by this Deed or otherwise, at any time after this security has become enforceable or if the Chargor so requests in writing at any time the Collateral Agent may without further notice to the Chargor do any of the following:

- 9.1.1 appoint any one or more persons qualified to act as a Receiver to be a Receiver of all or any part of the Charged Property;
- 9.1.2 either at the time of appointment or any time after that appointment, fix his or their remuneration in accordance with the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018; The Insolvency (Scotland) (Receivership and Winding Up) Rules 2018 and the Insolvency Act;
- 9.1.3 except as otherwise required by statute, remove any Receiver and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated; and
- 9.1.4 any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the Insolvency Act) does not apply to this Deed.

9.2 Powers of Receiver

Every Receiver shall have in relation to the Charged Property (every reference in this clause 9.2 to "Charged Property" being a reference only to all or any part of the Charged Property in respect of which that Receiver was appointed) the powers granted by the Insolvency Act to any administrative receiver and any Scottish receiver, all as varied and extended by this Deed. In addition, but without limiting the preceding sentence, every Receiver shall have power to do the following:

- 9.2.1 **Collection:** enter on, take possession of, collect and get in the Charged Property and collect and get in all rents and other income whether accrued before or after the date of his appointment and for those purposes make any demands and take any actions or other proceedings which may seem to him expedient;

- 9.2.2 **Compliance with Deed:** comply with and perform all or any of the acts, matters, omissions or things undertaken to be done or omitted by the Chargor under this Deed;
- 9.2.3 **Management of business:** carry on, manage, develop, reconstruct, amalgamate or diversify the business of the Chargor or any part of it in such manner as he shall in his discretion think fit;
- 9.2.4 **Dealing with Charged Property:** sell or otherwise dispose of the Charged Property, grant Leases, licences, servitudes, rights or options over or in respect of them and renounce, accept the renunciation or vary any Lease, agreement or arrangement relating to them or otherwise agree to any such dealing. Any disposal or other dealing under this clause 9.2.4 may be effected in the manner and on the terms which they think fit, for consideration consisting of cash, Deeds or other obligations, shares or other valuable consideration and this consideration may be payable in a lump sum or by instalments spread over a period as he may think fit;
- 9.2.5 **Severance of assets:** sever from the premises to which they are annexed and sell separately (in accordance with clause 9.2.4) any plant, machinery or fixtures;
- 9.2.6 **Upkeep of Charged Property:** repair, decorate, furnish, maintain, alter, improve, replace, renew or add to the Charged Property as they shall think fit and effect, maintain, renew or increase indemnity insurance and other insurances and obtain bonds;
- 9.2.7 **Dealing with third parties:** appoint or dismiss officers, employees, contractors or other agents and employ professional advisers and others on such terms (as to remuneration and otherwise) as they may think fit;
- 9.2.8 **Agreements:** perform, repudiate, terminate, amend or enter into any arrangement or compromise any contracts or agreements which he may consider expedient;
- 9.2.9 **Proceedings:** settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes which may arise in connection with the business of the Chargor or the Charged Property and bring, prosecute, defend, enforce, compromise, submit to and discontinue any actions, suits, arbitrations or other proceedings;
- 9.2.10 **Uncalled capital:** make calls on the shareholders of the Chargor in respect of any of its uncalled capital;
- 9.2.11 **Rights in connection with Charged Property:** exercise or permit the Chargor or any nominee of the Chargor to exercise any rights incidental to the ownership of the Charged Property in such manner as they may think fit;
- 9.2.12 **Subsidiaries:** form a subsidiary or subsidiaries of the Chargor and transfer, lease or license to it or them or any other person the Charged Property on such terms as they may think fit;
- 9.2.13 **Assets and rights:** purchase, lease, hire or otherwise acquire any assets or rights of any description which he shall consider necessary or desirable for the carrying on, improvement or realisation of the Charged Property or the business of the Chargor or otherwise for the benefit of the Charged Property;
- 9.2.14 **Landlord and tenant powers:** exercise any rights conferred on a landlord or a tenant by any applicable law or regulation in relation to the Charged Property;
- 9.2.15 **Raising money:** in the exercise of any of the rights conferred on them by this Deed or for any other purpose to raise and borrow money either unsecured or secured and either in priority to, *pari passu* with or subsequent to this security and generally on such terms as they may think fit;
- 9.2.16 **Receipts and discharges:** give valid receipts for all monies and execute all discharges, assurances and other documents which may be proper for realising the Charged Property and redeem, discharge or compromise any Lien whether or not having priority to the security or any part of it;
- 9.2.17 **All other acts:** execute and do all such other acts, things and documents as they may consider necessary for the realisation or preservation of the Charged Property or incidental or conducive to any of the rights conferred on or vested in them under or by virtue of this Deed or otherwise and exercise and do in relation to the Charged Property, and at the cost of the Chargor, all the rights and things which they would be capable of exercising or doing if they were the owner of the same; and

9.2.18 **Name of Chargor:** use the name of the Chargor or its own name to exercise all or any of the rights conferred by this Deed.

9.3 Agent of the Chargor

Any Receiver appointed under this Deed whether acting solely or jointly shall be deemed to be the agent of the Chargor and to be in the same position as a receiver appointed under the Insolvency Act and the Chargor shall be solely responsible for their acts, omissions, defaults, losses and misconduct and for his remuneration and the Collateral Agent shall not be in any way liable or responsible either to the Chargor or to any other person for any Receiver.

9.4 Joint appointment

If at any time two or more persons have been appointed as Receivers of the same Charged Property, each one of those Receivers shall be entitled to exercise individually all of the rights conferred on Receivers under this Deed to the exclusion of the other or others in relation to any of the Charged Property in respect of which he has been appointed unless the Collateral Agent shall state otherwise in the document appointing him.

9.5 Relationship with Collateral Agent

To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or implicitly) or by law on a Receiver may after this security become enforceable be exercised by the Collateral Agent in relation to the Charged Property without first appointing a Receiver or notwithstanding the appointment of a Receiver.

9.6 Personnel

The Collateral Agent may (to the extent it is lawful) remove any Receiver appointed by it and may whenever it thinks fit, appoint a new Receiver in place of any Receiver whose appointment may for any reason have terminated.

10. Appointment of Administrator

10.1 Appointment of Administrator

10.1.1 The Collateral Agent may without notice appoint any one or more persons to be an administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 to the Insolvency Act at any time after this security has become enforceable.

10.1.2 Clause 10.1.1 shall not apply to the Chargor if Paragraph 14 of Schedule B1 to the Insolvency Act does not permit an administrator of the Chargor to be appointed.

10.1.3 Any appointment under clause 10.1.1 shall be in writing signed by a duly authorised officer of the Collateral Agent.

10.2 Replacement of an Administrator

The Collateral Agent may (subject to any necessary approval from the court) end the appointment of any Administrator by notice in writing signed by a duly authorised officer and appoint under clause 10.1 a replacement for any Administrator whose appointment ends for any reason.

11. Application of Proceeds

11.1 Order of priority

Any monies received by the Collateral Agent or any Receiver under this Deed or under the rights conferred by this Deed shall, after the occurrence of an Event of Default which is continuing (subject to payment of any claims having priority to this security) be applied in the following order, but without prejudice to the right of the Collateral Agent to recover any shortfall from the Chargor:

11.1.1 where applicable, in payment of all Losses of and incidental to the appointment of the Receiver and the exercise of all or any of his powers;

11.1.2 where applicable, in payment of the Receiver's remuneration at such rate as may be agreed with the Collateral Agent;

11.1.3 in accordance with the Loan Agreement in or towards discharge of the Secured Liabilities; and

11.1.4 if the Chargor is not under any further actual or contingent liability under any Loan Document, in payment of the surplus (if any) to the person or persons entitled to it.

11.2 Insurance Proceeds

- 11.2.1 All monies received by the Chargor by virtue of any Insurance Policies on the Charged Property, whether or not effected under this Deed:
- (i) shall be deemed part of the Charged Property; and
 - (ii) shall, save with the prior written consent of the Collateral Agent, be paid to the Collateral Agent. This shall apply whether the event pursuant to which those monies became payable occurred before, on or after the date of this Deed.
- 11.2.2 Any monies so paid to the Collateral Agent or otherwise received by the Collateral Agent by virtue of any insurance on the Charged Property shall be applied at the discretion of the Collateral Agent either in reduction of the Secured Liabilities or in or towards making good the loss or damage in respect of which they became payable. The Chargor waives any right it may have to require that those monies be applied in or towards making good the loss or damage in respect of which they became payable.
- 11.2.3 Any monies received by the Chargor by virtue of any Insurance Policies on the Charged Property shall be held on trust for the Collateral Agent until those monies are paid to the Collateral Agent in accordance with this clause 11.2.

12. Effectiveness of Security

12.1 Continuing security

This Deed and the security constituted by this Deed shall be continuing security for the Secured Liabilities, despite any settlement of account or intermediate payment or discharge in whole or in part and shall extend to the ultimate balance due at any time from the Chargor to the Secured Parties under the Loan Documents.

12.2 Additional security

This Deed and the security constituted by or pursuant to this Deed shall be cumulative in addition to, and independent of every, and shall not be prejudiced by any, other Lien, guarantee, indemnity or suretyship which the Collateral Agent or any other Secured Party may, at any time, hold for any of the Secured Liabilities. No prior Lien held by the Collateral Agent or any other Secured Party over the whole or any part of the Charged Property shall, by virtue of the entry into this Deed, merge in the security created by this Deed.

12.3 Waiver of defences

The liabilities and obligations of the Chargor under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by any act, omission, matter or thing which, but for this clause 12.3, would reduce, release or prejudice any of its liabilities and obligations under this Deed, including (whether or not known to it or the Collateral Agent):

- 12.3.1 any time, waiver or consent granted to, or composition with, any Loan Party or any other person;
- 12.3.2 the release of any Loan Party or any other person under the terms of any composition or arrangement with any creditor of any Loan Party;
- 12.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Loan Party or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 12.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Loan Party or any other person;
- 12.3.5 any amendment, novation, supplement, variation, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Loan Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Loan Document or other document or security;
- 12.3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Loan Document or any other document or security;
- 12.3.7 any act, omission or circumstance which but for this clause 12.3, might operate to discharge, release, reliance, extinguish, impair or otherwise affect any of the

obligations of the Chargor under this Deed or any of the rights and remedies of the Collateral Agent or any security; or

12.3.8 any Insolvency of any Loan Party.

12.4 Immediate Recourse

The Chargor waives any right it may have of first requiring the Collateral Agent or any other Secured Party to enforce any Lien or other rights or claim any payment from or otherwise proceed against any other person before enforcing this Deed against the Chargor. This waiver applies irrespective of any applicable law and regulation or any provision of any Loan Document to the contrary.

12.5 Discretion in enforcement

Until the expiry of the Security Period, the Collateral Agent or any Receiver may:

12.5.1 refrain from applying or enforcing any other monies, security or other rights held or received by it in respect of the Secured Liabilities or apply and enforce them in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same; and

12.5.2 hold in a suspense account any monies received from the Chargor or on account of the Secured Liabilities.

12.6 Non-Competition

12.6.1 Unless:

(i) all amounts which may be or become payable by the Loan Parties under or in connection with the Loan Documents have been irrevocably paid in full; or

(ii) the Collateral Agent otherwise directs,

the Chargor shall not, after a claim has been made or by virtue of any payment or performance by it under this Deed:

(ii)(a) be subrogated to any rights, security or moneys held, received or receivable by any Secured Party (or any agent or agent on its behalf);

(ii)(b) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Chargor's liability under this clause;

(ii)(c) claim, rank, prove or vote as a creditor of any Borrower or any of its subsidiaries or its estate in competition with any Secured Party (or any agent or agent on its behalf); or

(ii)(d) receive, claim or have the benefit of any payment, distribution or security from or on account of any Loan Party, or exercise any right of set-off as against any Loan Party.

12.6.2 The Chargor must hold in trust for and must promptly pay or transfer to the Collateral Agent for the Secured Parties any payment or distribution or benefit of security received by it contrary to this clause or in accordance with any directions given by the Collateral Agent under this clause.

12.7 Subsequent Security

At any time following:

12.7.1 the Collateral Agent or any other Secured Party's receipt of notice (either actual or constructive) of any subsequent Lien affecting the Charged Property (other than a Permitted Lien);

12.7.2 the Insolvency of the Chargor; or

12.7.3 any disposal of all or any of the Charged Property in breach of paragraph 2 of Part 4 of the Schedule,

any Secured Party may open a new account or accounts in the name of the Chargor (whether or not it permits any existing account to continue). If a Secured Party does not open such a new account, it shall nevertheless be treated as if it had done so at the time when the notice was received or was deemed to have been received or, as the case may be, the Insolvency commenced or the assignment or transfer occurred and from that time all payments made by the relevant Chargor to, the Secured Party or received by the Secured Party for the account of

the relevant Chargor shall be credited or treated as having been credited to the new account and shall not operate to reduce the amount secured by this Deed at the time when the Secured Party received or was deemed to have received that notice or, as the case may be, the Insolvency commenced or the assignment or transfer occurred.

13. Release of Security

13.1 Release of Security

Subject to clause 13.2, following the expiry of the Security Period and at the request and cost of the Chargor, the Collateral Agent shall, as soon as reasonably practicable after receipt of that request, release and discharge this security and re-assign the assets assigned to the Collateral Agent under this Deed to the Chargor (or as it shall direct), at all times without recourse, representation or warranty and the rights of any person having prior rights over those assets. Any release or discharge of this security or re-assignment shall not release or discharge the Chargor from any liability to the Collateral Agent or any other Secured Party for the Secured Liabilities or any other monies which exists independently of this Deed.

13.2 Reinstatement

13.2.1 Any release, settlement, discharge, re-assignment or arrangement (in this clause 13.2, a "release") made by the Collateral Agent on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided, reduced, clawed back or ordered to be repaid under any law relating to Insolvency.

13.2.2 If any avoidance, reduction or clawback occurs or order is made as referred to in clause 13.2.1 on the release given by the Collateral Agent shall have no effect and shall not prejudice the right of the Collateral Agent to enforce this security in respect of the Secured Liabilities. As between the relevant Chargor and the Collateral Agent, this security shall (notwithstanding the release) be deemed to have remained at all times in effect and held by the Collateral Agent as security for the Secured Liabilities.

13.3 Redemption

The Collateral Agent may at any time:

13.3.1 redeem, or procure the transfer to itself of, any prior Lien over any Charged Property; or

13.3.2 settle and pass the accounts of the holder of any prior Lien. Any accounts so settled and passed shall be conclusive and binding on the Chargor.

13.4 Costs of redemption

All principal monies, interest, costs, expenses and other amounts incurred in and incidental to any redemption or transfer under clause 13.3 shall be paid by the Chargor to the Collateral Agent on demand, in each case together with interest calculated in the manner referred to in clause 16.

14. Power of Attorney

14.1 Appointment

The Chargor irrevocably appoints the Collateral Agent and any Receiver and every delegate referred to in clause 7.5 and each of them jointly and also severally to be its mandatory and attorney (with full powers of substitution and delegation) and in its name or otherwise and on its behalf and as its act and deed to execute, deliver and perfect all Instruments and other documents and do any other acts and things which may be required or which the attorney may consider to be required:

14.1.1 to carry out any obligation imposed on it by this Deed or any other agreement binding on the Chargor to which the Collateral Agent is a Party (including the execution and delivery of any mortgages, deeds, charges, assignments or other transfers of the Charged Property);

14.1.2 to carry into effect any disposal or other dealing by the Collateral Agent or any Receiver;

14.1.3 to convey or transfer any right in land or any other asset;

- 14.1.4 to register or renew registration of the existence of the security or the restrictions on dealing with the Charged Property under this Deed or any other Loan Document or by law or regulation;
- 14.1.5 to get in the Charged Property; and
- 14.1.6 to enable the Collateral Agent and any Receiver to exercise the respective rights, powers and authorities conferred on them by this Deed or by applicable law and regulation,

and the Chargor undertakes to ratify and confirm all acts and things done by an attorney in the exercise or purported exercise of its powers and all monies spent by an attorney shall be deemed to be expenses incurred by the Collateral Agent under this Deed.

14.2 Exercise

The Collateral Agent shall only be permitted to exercise the power of attorney conferred upon it under this Deed:

- 14.3 following an Event of Default which is continuing; or
- 14.4 following the Chargor's failure to do any acts or things required under:
 - (i) the Loan Documents following the expiry of any applicable grace period; or
 - (ii) clause 3.4 of this Deed.

15. Gross-Up and Payments

15.1 Grossing Up

Section 2.6 (*Taxes; Increased Costs*) of the Loan Agreement shall be deemed incorporated into this Deed as if it were set out in full here, *mutatis mutandis*, with reference to the Lenders being deemed to refer to the Collateral Agent and reference to Borrower being deemed to refer to the Chargor.

15.2 Payments without Set-Off

Any payment made by the Chargor under this Deed shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

15.3 Manner of Payment

Each payment made by the Chargor under this Deed shall be paid in the manner required by the Collateral Agent.

16. Costs and Expenses

16.1 Costs and expenses

The Chargor shall promptly pay or reimburse to the Collateral Agent within three Business Days of demand, on a full indemnity basis, for all Losses incurred by the Collateral Agent in relation to:

- 16.1.1 the negotiation, preparation and execution of this Deed;
- 16.1.2 any actual or proposed amendment of or waiver or consent under or in connection with this Deed;
- 16.1.3 any discharge or release of this security;
- 16.1.4 the preservation or exercise (or attempted preservation or exercise) of any rights under or in connection with, and the enforcement (or attempted enforcement) of, this Deed and the perfection or enforcement of any other Lien for or guarantee in respect of the Secured Liabilities;
- 16.1.5 the taking or holding of this security or any proceedings in relation to it or to all or any of the Charged Property; and
- 16.1.6 any advice obtained in relation to any other matter or question arising out of or in connection with this Deed,

together with interest from the date it is incurred or becomes payable up to the date of receipt by the Collateral Agent (both before and after judgment), accruing on a daily basis under the terms of the Loan Agreement as if that amount were an Unpaid Sum,

16.2 Taxes

The Chargor shall pay all stamp, registration and other Taxes to which this Deed, this security or any judgment or order given in connection with this Deed may at any time be subject and shall on demand indemnify the Collateral Agent against any Losses resulting from any failure to pay or delay in paying the same.

16.3 Value Added Tax

The following provisions shall apply:

- 16.3.1 all amounts expressed to be payable under this Deed by the Chargor to a Secured Party shall be exclusive of any VAT;
- 16.3.2 if VAT is chargeable on any supply made by a Secured Party to the Chargor under this Deed (whether that supply is taxable pursuant to the exercise of an option or otherwise), that Chargor shall pay to that Secured Party (in addition to and at the same time as paying that consideration) an amount equal to the amount of the VAT as further consideration;
- 16.3.3 no payment or other consideration to be made or furnished to the Chargor pursuant to or in connection with this Deed may be increased or added to by reference to (or as a result of any increase in the rate of) any VAT which shall be or may become chargeable in respect of any taxable supply; and
- 16.3.4 where this Deed requires the Chargor to reimburse a Secured Party for any costs or expenses, that Chargor shall also pay any amount of those costs or expenses incurred referable to VAT charged thereon.

17. Indemnity

Section 12.2 (*Indemnification*) of the Loan Agreement shall be deemed incorporated into this Deed as if it were set out in full here, *mutatis mutandis*, save that a reference to the Borrower shall be a reference to the Chargor.

18. Assignment and Transfers

18.1 Collateral Agent

The Collateral Agent may assign any or all of its rights and transfer any or all of its obligations under this Deed without the consent of the Chargor being required.

18.2 Chargor

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Deed without the prior written consent of the Collateral Agent.

18.3 Disclosure of information

The Collateral Agent may disclose any information about the Chargor which it shall consider appropriate to any affiliate, any of its professional advisers, any person to whom it is proposing to assign or transfer, or has assigned or transferred, any of its rights and obligations under this Deed or to any person to whom information may be required to be disclosed by any applicable law and regulation.

19. Set-Off

- 19.1 A Secured Party may set-off any matured obligation due from the Chargor under this Deed (to the extent beneficially owned by such Secured Party) against any obligation (whether or not matured) owed by that Secured Party to that Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

19.2 No Obligation

No Secured Party shall be obliged to examine any right given to it under clause 19.1.

20. Notices

The provisions of Section 10 (Notices) of the Loan Agreement shall be deemed incorporated herein as if set out in this Deed, *mutatis mutandis*, save that the addresses and details of the Chargor are as set out below its testing clause, or such other address as the Chargor may notify in writing to the Collateral Agent after the date of this Deed.

21. Calculations and Certificates

Any certificate or determination of the Collateral Agent as to any matter provided for in this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

22. Currency Conversion

22.1 Purchase of sums in other currencies

In order to apply any sum held or received by the Collateral Agent or a Receiver in or towards payment of the Secured Liabilities, the Collateral Agent or such Receiver may purchase an amount in another currency and the rate of exchange to be used shall be that at which, at such time as it considers appropriate, the Collateral Agent or such Receiver is able to effect such purchase.

22.2 Currency Indemnity

If any sum due from the Chargor under this Deed or any order or decree or judgment given or made in relation to this Deed has to be converted from the currency (the "**first currency**") in which the same is payable under this Deed or under such order or judgment into another currency (the "**second currency**") for the purpose of (a) making or filing a claim or proof against the Chargor, (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation to this Deed, the Chargor shall indemnify and hold harmless each Secured Party from and against any loss it suffers or incurs as a result of any discrepancy between (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency; and (ii) the rate or rates of exchange at which such Secured Party may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, decree, judgment, claim or proof.

23. Partial Invalidity

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

24. Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent, any remedy or other right under this Deed shall operate as a waiver, nor shall any single or partial exercise of any remedy or other right prevent any further or other exercise or the exercise of any other right. The remedies and other rights provided in this Deed are cumulative and not exclusive of any remedies and other rights provided by law.

25. Amendments and Waivers

Any term of this Deed may be amended or waived only with the written consent of the Collateral Agent and the Chargor and any such amendment or waiver will be binding on all Parties.

26. Counterparts, Delivery and Effective Date

26.1 This Deed may be executed in any number of counterparts and by each of the parties on separate counterparts.

26.2 Where executed in counterparts:

- 26.2.1 this Deed will not take effect until each of the counterparts has been delivered;
- 26.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;
- 26.2.3 the date of delivery may be inserted in the testing clause in the blank provided for the effective date of this Deed.

27. Governing Law

This Deed and any non-contractual obligations arising out of it are governed by, and construed in accordance with, Scots law.

28. Jurisdiction

- 28.1 The courts of Scotland 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) (a "Dispute").
- 28.2 The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly neither Party will argue to the contrary.
- 28.3 This clause 28 is for the benefit of the Collateral Agent only. As a result, the Collateral Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Collateral Agent may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF these presents consisting of this and the preceding 18 pages and the Schedule are executed in counterpart by the parties undernoted, with an effective date of

29 July 2021

SUBSCRIBED for and on behalf of the said
4D PHARMA PLC (as Chargor)

By

Duncan PETERSON

Director

(Print Full Name)

ALEX STEVENSON

Director

(Print Full Name)

at LEEDS

(place of signing)

Before this witness:

A. Moxley

Witness

(Print Full Name)

[Redacted]

(address of witness)

[Redacted]

Director

(Signature)

[Redacted]

Director

(Signature)

on 23 July 2021

(date of signing)

[Redacted]

Witness

(Signature)

SUBSCRIBED for and on behalf of the said
OXFORD FINANCE LUXEMBOURG S.A. R.L.
 acting in respect of its Compartment 4

By



Authorised signatory **Melanie Florsch**
 (Print Full Name) **Manager**



Authorised signatory **Caroline Kinyua**
 (Signature) **Manager**

Authorised signatory
 (Print Full Name)

2 route d'Arlon
 L-8008 Strassen
 at Luxembourg

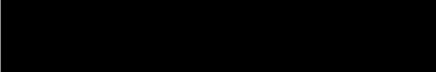
(place of signing)

Authorised signatory
 (Signature)

2 route d'Arlon
 L-8008 Strassen
 on Luxembourg

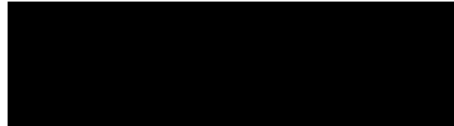
(date of signing)

Before this witness:



Witness **Lu Huang**
 (Print Full Name)

2 route d'Arlon
 L-8008 Strassen
 Luxembourg
 (address of witness)



Witness **Lu Huang**
 (Signature)

2 route d'Arlon
 L-8008 Strassen
 Luxembourg

This is the Schedule referred to in the foregoing Scottish Security Agreement between **4D PHARMA PLC** (as Chargor) and **OXFORD FINANCE LUXEMBOURG S.À R.L.**, acting in respect of its Compartment 4 (as Collateral Agent)

SCHEDULE

Part 1 – INTELLECTUAL PROPERTY

None listed

Part 2 – SPECIFIED INVESTMENTS

Company	Jurisdiction	Number of Shares	Class of Shares
4D Pharma Research Limited	Scotland	108764	£0.01 Ordinary

Part 3 – REPRESENTATIONS AND WARRANTIES

The Chargor represents and warrants to the Collateral Agent and to each Secured Party that:

1. **No Security**
The Charged Property is, or when acquired will be, owned by the Chargor free from any Lien other than:
 - 1.1.1 as created by this Deed; and
 - 1.1.2 as permitted by the Loan Documents (including a Permitted Lien).
2. **No avoidance**
Subject to the Legal Reservations, this Deed creates the security it purports to create and is not liable to be avoided or otherwise set aside on its liquidation or administration or otherwise.
3. **Obligations, legal, valid and binding**
Subject to the Legal Reservations, this Deed creates legal, valid and binding obligations, enforceable against it in accordance with its terms.
4. **Ownership**
Save as permitted by the Loan Documents, the Chargor is the owner of all of its Charged Property.
5. **Real Property**
 - 5.1.1 there is no breach of any law, regulation or covenant that is continuing which affects or would be reasonably likely to affect materially the value, saleability or use of its Real Property;
 - 5.1.2 There are no undertakings, covenants, agreements, stipulations, reservations, conditions, interest, rights, adverse claims or other matters whatsoever affecting its Real Property which conflict with its present use or adversely affect the value, saleability or use of any of the Real Property, in each case to any material extent;
 - 5.1.3 to the best of its knowledge, the Chargor confirms nothing has arisen or has been created or is subsisting which would be an encumbrance (within the meaning of the Land Registration etc. (Scotland) Act 2012) which would be reasonably likely to affect materially its value, saleability or use;
 - 5.1.4 all facilities (including access) necessary for the enjoyment and use of its Real Property (including those necessary for the carrying on of its business at the Real Property) are enjoyed by that Real Property and none of those facilities are on terms entitling any person to terminate or limit its use or on terms which conflict with or restrict its use, where the lack of those facilities would be reasonably likely to affect materially its value, saleability or use; and
 - 5.1.5 its Real Property is free from any Lien, tenancies or any lease or licence which would be reasonably likely to affect materially its value, saleability or use.
6. **Investments**
Its Investments are duly authorised, validly issued and fully paid and are not subject to any option to purchase or similar right.
7. **Times for Making Representations and Warranties**
 - 7.1 The representations and warranties set out in this Deed are made by the Chargor on the date of this Deed (save where a contrary intention is expressed) and are deemed to be repeated thereafter on each day of the Security Period.
 - 7.2 When a representation and warranty is deemed to be repeated, in accordance with paragraph 8.1 of this part 3 of the Schedule, it is deemed to be made by reference to the circumstances existing at the time of repetition.

Part 4 – UNDERTAKINGS
Part 4A - General Undertakings

1. NEGATIVE PLEDGE

The Chargor undertakes that it will not at any time create (or agree to create) or permit to subsist any Lien on or in relation to any of its property or assets (including, for the avoidance of doubt, its Intellectual Property) other than as expressly permitted by the Loan Agreement.

2. NO DISPOSALS

The Chargor undertakes that it will not at any time dispose of (or agree to dispose of) all or any part of the Charged Property save as expressly permitted by the Loan Agreement.

3. PRESERVATION OF CHARGED PROPERTY

Subject to the Loan Documents, the Chargor shall manage its Charged Property in a proper and efficient manner which is commercially reasonable, provided that the Chargor shall not do, or permit to be done, anything which might in any way depreciate, jeopardise or otherwise prejudice or diminish the value of any material part of the Charged Property or the effectiveness of the security created by this Deed and shall immediately inform the Collateral Agent of anything which occurs which might have that effect.

4. ENFORCEMENT OF RIGHTS

The Chargor shall use all commercially reasonable endeavours to:

4.1.1 procure the prompt observance and performance by the relevant party of all material undertakings, covenants and other obligations imposed on the Chargor's counterparties; and

4.1.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property which the Collateral Agent may from time to time reasonably require, in each case, at the Chargor's cost.

5. INFORMATION AND ACCESS

5.1 The Chargor shall deliver to the Collateral Agent from time to time on written request such information about the Charged Property and its compliance with the terms of this Deed as the Collateral Agent may reasonably require.

5.2 Without prejudice to the foregoing of the Loan Agreement, no entry by the Collateral Agent (or anyone else authorised by the Collateral Agent) into any Real Property, shall cause the Collateral Agent (or anyone else authorised by the Collateral Agent) to be liable as a creditor in possession.

6. COVENANTS AND LEGAL OBLIGATIONS

The Chargor shall:

6.1.1 observe, perform and otherwise comply with all material undertakings, covenants and other material obligations and matters (whether or not contained in any Lease, agreement or other document) from time to time affecting any of the Charged Property or their use or enjoyment and if requested in writing by the Collateral Agent (acting reasonably) produce evidence to satisfy the Collateral Agent that it is complying with such covenants, undertakings, obligations and matters;

6.1.2 pay (or procure the payment of) all rents, rates, Taxes, charges, assessments, impositions and other outgoings of any kind which are from time to time payable (whether by the owner or the occupier) in respect of any of the Charged Property and (if requested by the Collateral Agent) produce evidence of payment to satisfy the Collateral Agent.

7. INSURANCE

Section 6.5 (Insurance) of the Loan Agreement shall be deemed incorporated into this Deed, and the Chargor shall comply with it, as if it were set out in full here, *mutatis mutandis*.

Part 4B – Book Debts

1. BOOK DEBTS

1.1 No dealing with Book Debts

Other than permitted under the Loan Agreement, the Chargor shall not create a Lien, dispose, release, exchange, compound, set-off, grant time or indulgence or otherwise deal over, of or with its Book Debts otherwise than by getting in and realising them in the ordinary and proper course of business (and for this purpose the realisation of Book Debts by means of block discounting, factoring or the like shall not be regarded as dealing in the ordinary and proper course of its business).

1.2 Payment of Book Debts

1.2.1 The Chargor shall promptly pay, or procure the prompt payment of, all monies received by it or on its behalf in respect of any of its Book Debts into one of its bank accounts with its principal bankers.

1.2.2 The Chargor shall, at any time after the security constituted or purported to be constituted by this Deed becomes enforceable at the request of the Collateral Agent, execute such security as required by the Collateral Agent of the Book Debts to the Collateral Agent in such terms as the Collateral Agent may require and give notice of that security to the debtors from whom the Book Debts are due, owing or incurred.

Part 4C – Property Undertakings

1. FUTURE ACQUISITIONS

If the Chargor acquires any Real Property after the date of this Deed, it shall:

1.1.1 notify the Collateral Agent promptly, but in any event, within three Business Days following the occurrence of such acquisition;

1.1.2 immediately, if so requested by the Collateral Agent and at the cost of the Chargor, execute and deliver to the Collateral Agent a standard security in favour of the Collateral Agent if that Real Property in any form (consistent with this Deed) which Collateral Agent may require;

1.1.3 ensure that such standard security is correctly noted in the Registers of Scotland.

2. PROPERTY TITLE DOCUMENTS

2.1 The Chargor shall, on the date of this Deed and from time to time, deliver (or procure that there are delivered) to the Collateral Agent (or a nominee specified by the Collateral Agent acting on its behalf) all title documents relating to the Real Property. The Collateral Agent shall be entitled to hold or retain (or have its nominee hold or retain) them.

3. INVESTIGATION OF TITLE

Following the occurrence of an Event of Default which is continuing, the Chargor must grant the Collateral Agent or its lawyers on request all facilities within the power of that Chargor to enable the Collateral Agent or its lawyers (at the expense of the Chargor) after this security has become enforceable to:

3.1.1 carry out investigations of title to the Real Property; and

3.1.2 make such enquiries in relation to any part of the Real Property as a prudent mortgagee might carry out.

4. POWER TO REMEDY

4.1 If following the occurrence of an Event of Default which is continuing, the Chargor fails to perform any title condition, undertaking or stipulation or any term of this Deed affecting its Real Property, that Chargor must allow the Collateral Agent or its agents and contractors:

4.1.1 to enter any part of its Real Property;

4.1.2 to comply with or object to any notice served on that Chargor in respect of its Real Property; and

4.1.3 to take any action as the Collateral Agent may reasonably consider necessary or desirable to prevent or remedy any breach of any such title condition, undertaking or stipulation or term or to comply with or object to any such notice.

4.2 The Chargor shall immediately on request by the Collateral Agent pay the costs and expenses of the Collateral Agent or its agents and contractors incurred in connection with any action taken by it under this paragraph 4.2.

5. POSITIVE UNDERTAKINGS

5.1 Real Property Undertakings

The Chargor shall:

- 5.1.1 keep its Real Property in good and substantial repair and condition;
- 5.1.2 keep its Fixtures in a good state of repair and in good working order and condition;
- 5.1.3 perform all the material terms on its part contained in any lease, agreement for lease, licence or other agreement or document which gives that Chargor a right to occupy or use property comprised in its Real Property; and
- 5.1.4 duly and punctually comply with all material covenants and stipulations affecting the Real Property or the facilities (including access) necessary for the enjoyment and use of the Real Property and indemnify each Secured Party in respect of any breach of those covenants and stipulations.

6. DEVELOPMENT

The Chargor shall not, at any time:

- 6.1 carry out or permit to be carried out on any of the Real Properties any development (within the meaning of that expression in the Planning Acts and being development for which the permission of the local planning authority is required);
- 6.2 otherwise pull down or remove the whole, or any part of, any building forming part of any Real Property;
- 6.3 make any material alterations to any Real Property or sever or unfix or remove any of the fixtures from any of the Real Properties nor remove any of the plant and machinery (other than stock-in-trade or work-in-progress) on any Real Property (except for the purpose and in the course of effecting necessary repairs to that asset or of replacing it with a new or improved model or substitute); and
- 6.4 make (or permit others to make) any application for planning permission in respect of any of the Real Properties.

7. LEASES

The Chargor shall not without the prior written consent of the Collateral Agent:

- 7.1 renounce or terminate or agree to the renounce, terminate or termination of any Lease forming part of the Charged Property; or
- 7.2 agree to any amendment of, or to any waiver of rights under, any Lease forming part of the Charged Property.

8. LOCAL AUTHORITY PROPOSALS

8.1 The Chargor shall:

- 8.1.1 give to the Collateral Agent a copy of any notice or order (or any proposal for a notice or order) given, issued or made by any local or other authority relating to any Charged Property;
- 8.1.2 take all necessary steps to comply with that notice, order or proposal; and
- 8.1.3 make or join in making any representations which the Collateral Agent requests in respect of the notice, order or proposal.

9. NO RESTRICTIVE OBLIGATIONS

The Chargor shall not, without the prior consent of the Collateral Agent, enter into any materially onerous or materially restrictive obligations or title conditions affecting the whole or any part of any Real Property or create or permit to arise any encumbrance, servitude or right in or over the whole or any part of any Real Property.

Part 4D – Investment Undertakings

1. TITLE DOCUMENTS AND REGISTRATIONS

1.1 The Chargor shall:

- 1.1.1 inform the Collateral Agent after acquiring howsoever any Investments after the date of this Deed (and in any event within two Business Days) which relate to a company situated in Scotland or subject to Scots law, or following an Event of Default which is continuing, situated in any jurisdiction or subject to any foreign law; and

1.1.2 within two Business Days of request, deliver (or procure that there are delivered) to the Collateral Agent (or a nominee specified by the Collateral Agent acting on its behalf) all share certificates or other documents of title to or representing its Investments, together with (in each case in form and substance satisfactory to the Collateral Agent):

- (i) if any of the Investments is not in its sole name, a declaration of trust in respect of those Investments in its favour duly executed by each person other than the Chargor in whose name those Investments are registered or held;
- (ii) any instrument of transfer or assignment of such Investments specified by the Collateral Agent duly executed by each person in whose name any of those Investments are registered or held (with the name of the transferee or assignee, the consideration and the date left blank); and
- (iii) any other Instrument, other document or thing which the Collateral Agent may specify to perfect or improve its security over the Chargor's Investments.

1.2 The Collateral Agent shall be entitled to hold or retain (or have its nominee hold or retain) all items delivered pursuant to paragraph 1.1.

1.3 The Collateral Agent may at any time have any of the Investments registered in its name or in the name of a nominee specified by it acting on its behalf.

2. **WAIVERS OF PRE-EMPTION RIGHTS**

The Chargor shall ensure that all shareholders of each Company from time to time enter into waivers in a form satisfactory to the Collateral Agent of all pre-emption rights and restrictions in the Articles of Association of that Company from time to time or otherwise which may in any respect vary, restrict or affect the exercise of any rights which may arise in connection with the enforcement of this security or the transfer of the relevant Investments to the Collateral Agent or such other person as the Collateral Agent may so direct.

3. **NO SHARE ISSUES, ETC.**

The Chargor shall ensure (insofar as it is able by the exercise of all voting rights, powers of control and other means available to it) that, no Company will, without the prior consent of the Collateral Agent:

- 3.1.1 issue or allot (or agree to issue or allot) any shares or other securities or enter (or agree to enter) into or permit any agreement or other arrangement to make, or entitle any person to call for, an issue or allotment of that Company's shares or other securities;
- 3.1.2 in any way modify (or agree to modify) the rights attached to any of the shares in its issued share capital;
- 3.1.3 increase, consolidate, sub-divide or reduce its share capital (or agree to do any of the same);
- 3.1.4 alter (or agree to alter) its memorandum or articles of association;
- 3.1.5 purchase its own shares or reduce its share capital (or agree to do any of the same);
- 3.1.6 take any step to place itself in liquidation or administration or pass any resolution to wind itself up; or
- 3.1.7 refuse to register any transfer of any of its shares which may be lodged for registration by or on behalf of the Collateral Agent or the Chargor in accordance with this Deed.

4. **CALLS AND NOTICES**

4.1 The Chargor shall:

- 4.1.1 duly and punctually pay (or ensure that there are paid) all calls, instalments or other payments which may be made or become due in respect of the Investments as and when the same become due from time to time; and
- 4.1.2 (and shall procure that its nominee(s) shall) provide the Collateral Agent with a copy of any report, accounts, circular, notice or other item sent or provided to it (or to any person on its behalf) in connection with its holding of the Investments or any of them immediately on receipt them.

- 4.2 If the Chargor fails to pay any of the sums referred to in paragraph 4.1, the Collateral Agent may, at its discretion but without obligation, make such payments on behalf of that Chargor.
- 4.3 Any sum paid by the Collateral Agent on behalf of the Chargor under paragraph 4.2:
- 4.3.1 shall be reimbursed by the Chargor on demand by the Collateral Agent on a full indemnity basis;
 - 4.3.2 is, pending reimbursement, secured by this security and may be debited to any account of the Chargor as the Collateral Agent deems fit; and
 - 4.3.3 shall bear interest on a daily basis from the due date up to the date of actual payment (both before and after judgment), at the rate and on the terms from time to time applicable under the relevant Instrument (or, in the absence of an applicable rate and applicable terms, to be calculated and paid under the terms of the Loan Agreement as if it were an Unpaid Sum).

Part 4E – Equipment Undertakings

1. MAINTENANCE

The Chargor shall maintain its Equipment in good and serviceable condition (except fair wear and tear) and if any such Equipment is destroyed, damaged or deteriorates, repair, replace and make good the same provided it makes commercial sense to do so.

Part 4F – Intellectual Property Undertakings

1. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Section 6.7 (*Protection of Intellectual Property Rights*) of the Loan Agreement shall be deemed incorporated into this Deed as if it were set out in full here, *mutatis mutandis*, with reference to the Lenders being deemed to refer to the Collateral Agent, references to Intellectual Property being deemed to include Related Rights and reference to Borrower being deemed to refer to the Chargor, and as varied according to the other provisions of this part 4 of the Schedule.