



Registration of a Charge

Company name: **APOLLO ENDOSURGERY UK LTD**

Company number: **09000573**



X910GLB6

Received for Electronic Filing: **17/03/2020**

Details of Charge

Date of creation: **16/03/2020**

Charge code: **0900 0573 0003**

Persons entitled: **SOLAR CAPITAL LTD. (AS COLLATERAL AGENT)**

Brief description: **VARIOUS EQUIPMENT AS SPECIFIED IN SCHEDULE 1 TO THE SECURITY INSTRUMENT INCLUDING: "SCOPE" BEARING REGISTER NO. 127; "LAB FURNITURE" BEARING REGISTER NO. 178; "32 CHAIRS, SCREENS AND TABLES" WITH REGISTER NO. 181. FOR FURTHER DETAILS AND ADDITIONAL LISTINGS OF EQUIPMENT PLEASE REFER TO SCHEDULE 1 OF THE THE SECURITY INSTRUMENT.**

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **WE 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 PART OF THE CHARGING INSTRUMENT SIGNED BY OR ON BEHALF OF THE CHARGOR, AND A CORRECT COPY OF THE SIGNATURE PAGE TO EACH OTHER PART OF SUCH CHARGING INSTRUMENT.**

Certified by: **MARCUS TOMLINSON**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9000573

Charge code: 0900 0573 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 16th March 2020 and created by APOLLO ENDOSURGERY UK LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th March 2020 .

Given at Companies House, Cardiff on 18th March 2020

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

We 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 part of the charging instrument signed by or on behalf of the chargor, and a correct copy of the signature page to each other part of such charging instrument.

Signature: M2
Name: MADON TOWNSON
Title: ASSOCIATE
Date: 16/03/20

16 March 2020

APOLLO ENDOSURGERY UK LTD

and

SOLAR CAPITAL LTD.

(as Collateral Agent)

SUPPLEMENTAL SECURITY DEED

LATHAM & WATKINS

99 Bishopsgate
London EC2M 3XF

Tel: +44.20.7710.1000

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CONTENTS

Clause	Page
1. INTERPRETATION	2
2. COVENANT TO PAY	3
3. CHARGING PROVISIONS	3
4. NEGATIVE PLEDGE	4
5. INCORPORATION OF TERMS FROM DEBENTURE	5
6. THE DEBENTURE	5
7. DESIGNATION	5
8. ACKNOWLEDGEMENT BY THE COLLATERAL AGENT	5
9. FAILURE TO EXECUTE	6
10. NOTICES	6
11. GOVERNING LAW AND JURISDICTION	6
SCHEDULE 1	0
EQUIPMENT	
SCHEDULE 2	0
INSURANCE POLICIES	

THIS SUPPLEMENTAL SECURITY DEED is made on 16 March 2020.

BETWEEN:

- (1) **APOLLO ENDOSURGERY UK LTD**, a company incorporated in England and Wales with registered number 09000573 (the “**Original Chargor**”) and
- (2) **SOLAR CAPITAL LTD.**, as collateral agent for itself and the other Secured Parties (the “**Collateral Agent**”).

RECITALS:

This deed is supplemental to a debenture dated 4 June 2019 between the Original Chargor and the Collateral Agent (the “**Debenture**”).

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

Unless otherwise defined in this deed, terms defined in the Debenture shall have the same meaning when used in this deed.

In addition, the following definition shall also apply in this deed:

“**Equipment**” means all present and future plant, machinery, computers, office and other equipment, furnishings and vehicles and other chattels together with any spare parts, replacements or modifications and the benefit of all contracts, licences and warranties relating thereto, including but not limited to any assets specified in Schedule 1 (*Equipment*);

“**Insurance Policies**” means all present and future policies of insurance held by, or written in favour of, the Original Chargor or in which it is otherwise interested, and all proceeds of them either now or in the future of which the Original Chargor is a beneficiary to any claim proceeds, including but not limited to the policies of insurance, if any, specified in Schedule 2 (*Insurance Policies*); and

“**Loan and Security Agreement**” means the loan and security agreement dated as of 15 March 2019 under which the Lenders have made available certain facilities to the Parent and certain of its subsidiaries, as amended on 20 June 2019, 7 August 2019, 25 October 2019 and as further amended on or around the date hereof.

1.2 Construction

The provisions of clauses 1.2 (*Construction*) to 1.6 (*Declaration of Trust*) of the Debenture will be deemed to be set out in full in this deed, but as if references in those clauses to the “Debenture” and other similar expressions were references to this deed.

2. COVENANT TO PAY

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

3. CHARGING PROVISIONS

3.1 Specific Security

Each Chargor, as continuing security for the payment of the Secured Obligations, charges in favour of the Collateral Agent as trustee for itself and the other Secured Parties with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 (subject to any security interest created under the Debenture) the following assets, both present and future, from time to time owned by it or in which it has an interest:

- (a) by way of second ranking legal mortgage all Property now belonging to or vested in it; and
- (b) by way of second ranking fixed charge:
 - (i) all other interests (not effectively charged under Clause 3.1(a)) in any Property and the benefit of all other agreements relating to land to the extent held by such Chargor;
 - (ii) all of its rights, title and interest in the Equipment;
 - (iii) all the Investments, Shares and all corresponding Related Rights;
 - (iv) all Trading Receivables and all rights and claims against third parties and against any security in respect of those Trading Receivables;
 - (v) all Other Debts and all rights and claims against third parties against any security in respect of those Other Debts;
 - (vi) all monies from time to time standing to the credit of the Accounts and any other bank accounts which it may have with any bank, financial institution or other person (including any interest and other sums accruing thereon) and all of its rights, title and interest in, and benefits and proceeds deriving from or arising in connection with, the Accounts;
 - (vii) all of its goodwill and uncalled capital; and
 - (viii) if not effectively assigned by Clause 3.2 (*Security Assignment*), all its rights, title and interest in (and proceeds and claims under) the Insurance Policies and the Assigned Agreements,

and includes, in respect of each of the above charged assets (as appropriate), the benefit of all licences, consents and agreements held by any Chargor in connection with the use of the asset, any monies or income paid or payable in

respect of the asset, any proceeds of the sale of the asset and any other property, rights or claims relating to, accruing to or deriving from the asset.

3.2 Security Assignment

As further continuing security for the payment of the Secured Obligations, each Chargor assigns absolutely with full title guarantee (subject to any security interest created under the Debenture) to the Collateral Agent all its rights, title and interest, both present and future, from time to time in as far as such assignment is permitted under such Insurance Policies and the Assigned Agreements:

- (a) the Insurance Policies; and
- (b) the Assigned Agreements,

subject in each case to reassignment by the Collateral Agent to the relevant Chargor of all such rights, title and interest upon payment or discharge in full of the Secured Obligations.

3.3 Floating Charge

- (a) As further continuing security for the payment of the Secured Obligations, each Chargor charges with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 (subject to any security interest created under the Debenture) in favour of the Collateral Agent as trustee for itself and the other Secured Parties by way of second ranking floating charge all its present and future assets, undertakings and rights.
- (b) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created by this deed.

4. NEGATIVE PLEDGE

No Chargor may during the Security Period:

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

except as (i) pursuant to the Debenture, (ii) permitted by the Loan and Security Agreement, or (iii) with the prior consent of the Collateral Agent.

5. INCORPORATION OF TERMS FROM DEBENTURE

- (a) The provisions of Clause 3.4 (*Conversion of Floating Charge*), Clause 3.5 (*Property Restricting Charging*), Clause 4 (*Further Assurance*) and Clause 6 (*Representations and Warranties*) to Clause 26 (*Miscellaneous*) of the Debenture shall be deemed to be incorporated into this deed with all necessary modifications as if they were set out in full in this deed, but as if references in those clauses to:
 - (i) “this Debenture” or “this deed” and other similar expressions were a reference to this deed;
 - (ii) “Chargor” was a reference to each Chargor under this deed; and
 - (iii) “Charged Property” (including references to relevant specific assets within the Charged Property), was a reference to the assets charged under this deed.
- (b) The representations and warranties made in Clause 6 of the Debenture and incorporated by reference into this deed shall be made on the date hereof and on each date any representations are repeated under the Loan and Security Agreement, in each case by reference to the facts and circumstances on such date.
- (c) Notwithstanding any of the other provisions contained within the Debenture or this deed, to the extent that notice in respect of an existing Account has already been served pursuant to clause 7.2(a)(iii) of the Debenture, the Chargor shall not be required serve an Account Notice in accordance with that clause on the relevant bank except upon request by the Collateral Agent following the occurrence of an Event of Default which is continuing or if any of the circumstances in clause 3.4 (*Conversion of Floating Charge*) has arisen.
- (d) Notwithstanding any of the other provisions contained within the Debenture or this deed, to the extent that notice in respect of an existing Insurance Policy or Assigned Agreement has been served pursuant to clause 7.3(a)(i) of the Debenture, the Chargor shall not be required to give notice in accordance with that clause to the other party to each relevant Insurance Policy or Assigned Agreement except upon request by the Collateral Agent following the occurrence of an Event of Default which is continuing.

6. THE DEBENTURE

The Debenture shall remain in full force and effect as supplemented by this deed.

7. DESIGNATION

This deed is designated as a Loan Document.

8. ACKNOWLEDGEMENT BY THE COLLATERAL AGENT

The Collateral Agent acknowledges and confirms that:

- (a) the creation of any Security pursuant to (and the compliance by the relevant Chargor with the terms of) this deed does not and will not constitute a breach of any representation, warranty or undertaking in the Debenture; and
- (b) the performance of, and compliance with, any undertaking, requirement or obligation by the relevant Chargor under this deed constitutes the performance of, and compliance with, the corresponding undertaking, requirement or obligation under the Debenture and further, the performance of, and compliance with, any undertaking, requirement or obligation by the relevant Chargor under the Debenture will be deemed to constitute the performance of, and compliance with, the corresponding undertaking, requirement or obligation by the relevant Chargor under this deed.

9. FAILURE TO EXECUTE

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

10. NOTICES

Each Chargor confirms that its address details for notices are those identified under its respective name below.

11. GOVERNING LAW AND JURISDICTION

- (a) This deed and any non-contractual claims arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) Subject to Clause (c) below, the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed, whether contractual or non-contractual (including a dispute regarding the existence, validity or termination of this deed) (a “**Dispute**”). The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) The Parties agree that, for the benefit of the Secured Parties only, nothing in this deed shall limit the right of the Secured Parties to bring any legal action against any Chargor in any other court of competent jurisdiction.

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

SCHEDULE 1

EQUIPMENT

Register	Name	Details	Invoice	Details	Class	GL code	Type	Office	Location	NBV
127	Scope	Dr Wilfried Muller	EU10011070	Colonoscope	Equipment	Equipment			UK	68.79
130	Scope	Crimo scope			Equipment	Equipment			IT	145.47
134	Scope	Crimo scope			Equipment	Equipment			UK	488.04
141	Olympus CV 160				Equipment	Equipment			UK	1,145.83
94	Olympus scope 2200282				Equipment	Equipment			UK	618.31
142	Olympus scope GIF 2T160				Equipment	Equipment			UK	569.38
145	Olympus light source		01717		Equipment	Equipment			UK	576.64
146	Lenovo Laptop	Dutch			Computer Equipment	Computer Equipment			BE	72.22
148	Olympus scope				Equipment	Equipment			UK	758.33
150	Scopes	Endomedical	02117		Equipment	Equipment			UK	3,193.73
154	Towers				Equipment	Equipment			UK	4,223.69
155	Scope				Equipment	Equipment			DE	1,324.80
156	Dell laptop				Computer Equipment	Computer Equipment			UK	647.76
157	Yoga 460 BE				Computer Equipment	Computer Equipment			BE	233.53
158	FR Yoga 260		102-4071375		Computer Equipment	Computer Equipment			FR	273.33
159	Olympus 2T160				Equipment	Equipment			UK	2,347.77
160	Yoga 370				Computer Equipment	Computer Equipment			IT	322.25
161	New exhibition stands	Context Srl			Equipment	Equipment			UK	7,030.28
162	Dell Latitude		102-4083453		Computer Equipment	Computer Equipment			UK	534.72
163	Dell Latitude		102-4083268		Computer Equipment	Computer Equipment			UK	1,069.44
165	Dell Latitude		102-4088909		Computer Equipment	Computer Equipment			UK	53.08
167	Scope		0572018		Equipment	Equipment			UK	3,130.37
168	Scope		0612018		Equipment	Equipment			UK	2,133.19
169	Scope		0432018		Equipment	Equipment			UK	3,018.57
170	Dell Latitude		102 4103346		Computer Equipment	Computer Equipment			UK	777.78
171	Dell Latitude		102 4103345		Computer Equipment	Computer Equipment			UK	826.39
172	Dell Latitude		102 4103345		Computer Equipment	Computer Equipment			UK	826.39
173	Office furniture		131382		Office furniture	Office furniture			UK	335.53
174	Dell Latitude 7480		102-4107240		Computer Equipment	Computer Equipment			UK	879.50
175	Dell Latitude n 2 8P567QQ2 & JL67QQ2 plus docks		102-4110009		Computer Equipment	Computer Equipment			UK	2,754.48
176	Office Wall		EBINV 00127		Office Equipment	Office Equipment			UK	2,638.89
177	Boardroom furniture		1670		Office Equipment	Office Equipment			UK	2,227.22
178	Lab furniture		7969		Office Equipment	Office Equipment			UK	449.43
179	Dell Package		102-4112632		Computer Equipment	Computer Equipment			UK	923.61
180	Dell Package		102-4112633		Computer Equipment	Computer Equipment			UK	447.48
181	32 chairs, screens and tables		47203		Office furniture	Office furniture			UK	2,689.50
182	Dell Desktops CSS & office move		16392		Computer Equipment	Computer Equipment			UK	1,724.43
183	office furniture		Barclay card sept		Office furniture	Office furniture			UK	2,206.34
184	Dell & 5 monitors		17036		Computer Equipment	Computer Equipment			UK	1,724.43
185	AIL Dell		17310		Computer Equipment	Computer Equipment			UK	1,093.88
186	Laptop		17760		Computer Equipment	Computer Equipment			UK	1,043.61
187	Scope		039/2019		Equipment	Equipment			UK	3,822.19
188	Laptops		17743		Computer Equipment	Computer Equipment			UK	3,251.25
189	laptops		16054		Computer Equipment	Computer Equipment			UK	2,247.78
192	Scope Olympus sln 2501036	Scope Olympus sln 2501036	19212019		Equipment	Equipment			UK	2,589.16
193	laptops		18685		Computer Equipment	Computer Equipment			UK	1,459.17
194	laptops		18685		Computer Equipment	Computer Equipment			UK	1,251.38
195	Various mobile devices		38359		Computer Equipment	Computer Equipment			UK	6,103.33

SCHEDULE 2
INSURANCE POLICIES

Name of Chargor		Insurer		Policy Number	Type of Risk Insured
Apollo UK Ltd	Endosurgery	Federal Company	Insurance	3605-75-61	Commercial General Liability Insurance
Apollo UK Ltd	Endosurgery	Federal Company	Insurance	73608035	Automobile Insurance
Apollo UK Ltd	Endosurgery	Federal Company	Insurance	71770926	Umbrella Liability Insurance
Apollo UK Ltd	Endosurgery	Chubb Insurance Company	Indemnity	71770930	Workers Compensation and Employers' Liability Insurance
Apollo UK Ltd	Endosurgery	Lloyd's		PCOI 1501 20	Product Liability Insurance

SIGNATORIES TO THE SUPPLEMENTAL SECURITY DEED

THE CHARGOR

EXECUTED as a DEED by

APOLLO ENDOSURGERY UK LTD acting by:

Stefanie Lavandugh as Director: **REDACTED**

Witness: Brian Szymczak

Name: **REDACTED**

Address: 1120 S. Cap. Tx Hwy #300, Austin Tx 78710

Occupation: Attorney

Notice Details

Address: 1120 S Capital of Texas Hwy, #300, Austin, Texas 78746

Facsimile: 512-279-5105

Attention: General Counsel.

THE COLLATERAL AGENT

**EXECUTED as a DEED by
SOLAR CAPITAL LTD. acting by:**

REDACTED

as

Authorised

Signatory:

Anthony J. Storino

Notice Details

Address: Solar Capital Ltd
500 Park Avenue, 3rd Floor
New York, NY 10022
Attention: Anthony Storino
Email: Storino@solarcapltd.com

[Signature page to Supplemental Debenture]