



**Registration of a Charge**

Company Name: **NEWINCCO 1400 LIMITED**

Company Number: **10091271**



XAJSNTE6

Received for filing in Electronic Format on the: **21/12/2021**

**Details of Charge**

Date of creation: **15/12/2021**

Charge code: **1009 1271 0002**

Persons entitled: **HSBC UK BANK PLC AS LENDER**

Brief description: **NOT APPLICABLE.**

**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: **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: **ADDLESHAW GODDARD LLP**



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

Company number: 10091271

Charge code: 1009 1271 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th December 2021 and created by NEWINCCO 1400 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st December 2021 .

Given at Companies House, Cardiff on 23rd December 2021

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



**Companies House**



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



**Dated** 15 December **2021**

**THE COMPANIES SET OUT IN SCHEDULE 1**  
as Chargors

**HSBC UK BANK PLC**  
as Lender

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**SUPPLEMENTAL DEBENTURE**

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This Deed is subject to the terms of an intercreditor deed dated 8 April 2016.

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**This Debenture** is made on

15 December 2021

**Between**

- (1) **Newincco 1400 Limited** (registered in England with number 10091271) (**Parent**);
- (2) **The Subsidiaries of the Parent** listed in schedule 1 (The Chargors) (together with the Parent, the **Original Chargors**); and
- (3) **HSBC UK Bank plc** as lender (**Lender**).

**Whereas**

- (1) By Order of the High Court on 21 May 2018, HSBC Bank plc transferred part of its banking business (including all of its rights and obligations under the Facility Agreement (as defined below) and the Finance Documents) to HSBC UK Bank plc with effect from 1 July 2018. The transfer was effected by a statutory ring fencing transfer schedule under Part VII of the Financial Services and Markets Act 2000.
- (2) The Original Chargors entered into a debenture dated 8 April 2016 in favour of the Lender (as defined therein) whereby such Original Chargors granted first fixed charges over the assets identified in the debenture and a first floating charge over the remainder of the Chargors' undertaking by way of security for the Secured Obligations (as defined therein) (**Original Debenture**).
- (3) This Deed is supplemental to the Original Debenture.
- (4) This Deed is being entered into in connection with the amendment to the Facility Agreement (as defined below) on or about the Restatement Date.

**It is agreed**

**1 Definitions and interpretation**

**1.1 Definitions**

In this Deed:

**Account** has the meaning given to it in clause 3.4(i) (First fixed charges)

**Additional Chargor** means a company which creates Security over its assets in favour of the Lender by executing a Security Deed of Accession

**Blocked Account** means each Mandatory Prepayment Account and each Holding Account

**Chargor** means an Original Chargor or an Additional Chargor

**Chattels** has the meaning given to it in clause 3.4(d) (First fixed charges)

**Debts** has the meaning given to it in clause 3.4(g) (First fixed charges)

**Declared Default** means an Event of Default in respect of which any notice has been issued by the Lender under clause 26.19 (Acceleration) of the Facility Agreement

**Direction** has the meaning given to it in clause 10.1(d) (Planning directions)

**Excluded Leasehold Property** means all leasehold property of a Chargor:

- (a) under a lease which prohibits, either absolutely or conditionally (including requiring the consent of the landlord), that Chargor from assigning its rights under, or creating a charge over its interest in, the lease or that leasehold property or

- (b) with a term of less than 7 years left to run from (i) the date of this Deed, (ii) the date of any Security Deed of Accession, or (iii) the date on which the relevant leasehold property is acquired

**Facility Agreement** means the facility agreement originally dated 8 April 2016 and made between the Parent, the companies listed in schedule 1 thereto as Original Borrowers and Original Guarantors and the Lender under which the Lender agreed to make available to the Borrowers a revolving credit facility as amended on 30 June 2020, 7 July 2020, 23 December 2020 and 28 April 2021 and as amended and restated on the Restatement Date

**Fixtures** means in respect of any Secured Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery now or at any time after the date of this Deed on that Secured Property

**Floating Charge Assets** means all the assets and undertaking from time to time subject to the floating charge created under clause 3.5 (Floating charge)

**Hedge Counterparty** has the meaning given to that term in the Intercreditor Deed

**Insurance Policies** means, in respect of a Chargor, all policies of insurance present and future in which it has an interest (excluding third party liability and public liability insurance and directors' and officers' insurance)

**Intellectual Property** means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, topography rights, domain names, moral rights, inventions, confidential information, knowhow and any other associated or similar intellectual property rights and interests anywhere in the world (which may now or in the future subsist), and in each case whether registered or unregistered and
- (b) the benefit of all applications, rights to apply for and rights to use such assets (including, without limitation, any licences and sub-licences of the same) (which may now or in the future subsist)

**Investments** means any shares, stocks, debenture security, securities, bonds and investments of any type (other than the Subsidiary Shares) whatever, including but not limited to, negotiable instruments, certificates of deposit, eligible debt securities, interests in collective investment schemes, or other investments referred to in section 22 of, and as defined in Part II of Schedule 2 to the Financial Services and Markets Act 2000 and Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, whether certified or uncertified, physical or dematerialised, registered or unregistered, held by the relevant Chargor or by a trustee, clearance system or nominee

**Occupational Lease** means, in respect of a Chargor, a lease of a Secured Property in respect of which it is landlord

**Party** means a party to this Deed

**Planning Acts** means the Town and Country Planning Acts 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 and any regulations or subordinate legislation made under any of the foregoing and any other statute or regulation governing or controlling the use or development of land and buildings

**Premises** means any building on a Secured Property

**Properties** mean the properties listed in schedule 2 (Properties) (if any)

**Receiver** means any receiver, manager or administrative receiver appointed by the Lender in respect of any Chargor or any of the Secured Assets

**Related Rights** means, in respect of any Investment or Subsidiary Share:

- (a) all monies paid or payable in respect of that Investment or Subsidiary Share (whether as income, capital or otherwise)
- (b) all shares, investments or other assets derived from that Investment or Subsidiary Share and
- (c) all rights derived from or incidental to that Investment or Subsidiary Share

**Relevant Agreement** means:

- (a) the Acquisition Agreement
- (b) any Hedging Agreement and
- (c) each other agreement designated as a Relevant Agreement by the Lender and the Parent in writing

**Relevant Policies** means all Insurance Policies (other than policies in respect of third party liability) and each Key-man Policy, in each case together with all monies payable in respect of those policies

**Secured Assets** means, in respect of any Chargor, all of its assets and undertaking the subject of any Security created by, under or supplemental to, this Deed in favour of the Lender

**Secured Obligations** means, in respect of any Chargor, all monies and liabilities now or after the date of this Deed due, owing or incurred by that Chargor to the Secured Parties (or any of them) under or pursuant to the Finance Documents whatsoever, in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by any Secured Party under the Finance Documents, except for any obligation which, if it were so included, would result in this Deed contravening section 678 or 679 of the Companies Act 2006

**Secured Parties** means the Lender, any Affiliate of the Lender, the Hedge Counterparty and any receiver or Delegate and Secured Party means any of them

**Secured Property** means at any time the Properties and all other freehold, leasehold or commonhold property which is subject to any Security created by, under or supplemental to this Deed

**Security Deed of Accession** means a deed in the form set out in schedule 8 (Form of Security Deed of Accession) by which a person will become a party to this Deed as a Chargor

**Security Period** means the period beginning on the date of this Deed and ending on the date on which the Lender is satisfied (acting reasonably) that the Secured Obligations have been irrevocably and unconditionally satisfied in full and all facilities made available by the Lender to the Borrowers (or any of them) have been cancelled

**Subsidiary Shares** means, in respect of a Chargor on the date of this Deed, all shares present and future held by it in its Subsidiaries (including those listed in schedule 3 (Subsidiary Shares) to this Deed)

**Supporting Documents** means the Transaction Security Documents, the Reports and any legal or other opinion or other report held or obtained by the Lender in connection with the Finance Documents

## 1.2 Interpretation

- (a) Unless otherwise defined in this Deed a term defined in the Facility Agreement has the same meaning when used in this Deed or any notices, acknowledgements or other documents issued under or in connection with this Deed.
- (b) In this Deed the term **dispose** includes any sale, lease, licence, transfer or loan.
- (c) Clause 1.2 (Construction) and 1.3 (Currency, symbols and definitions) of the Facility Agreement is incorporated in this Deed as if set out here in full but so that each reference in that clause to **this Agreement** shall be read as a reference to this Deed or a Finance Document.
- (d) Subject to clause 1.2(e), to the extent that there is any inconsistency between the terms of this Deed and the terms of the Facility Agreement, then until such time as all liabilities and obligations of the Obligors under the Facility Agreement are repaid and discharged in full, the terms of the Facility Agreement shall prevail.
- (e) Clause 1.2(d) shall not apply in respect of any right of the Lender to set-off contained in this Deed.

## 1.3 Third party rights

- (a) Unless expressly provided to the contrary in any Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it.
- (b) Unless expressly provided to the contrary in any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Finance Document entered into under or in connection with it.
- (c) Any Receiver or Delegate may enforce and enjoy the benefit of any clause which expressly confers rights on it, subject to clause 1.3(b) and the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 1.4 Supplemental Debenture

Each Chargor acknowledges that this Deed is supplemental and in addition to the Original Debenture.

## 1.5 Administration

- (a) Any reference in this Deed, or any other Finance Document entered into under or in connection with it, to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of a Chargor's assets) or 22 (by a Chargor or the directors of a Chargor) of Schedule B1 to the Insolvency Act 1986 or any steps taken toward such order or appointment.
- (b) Any reference in this Deed or any other Finance Document entered into under or in connection with it, to making an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an administrator under paragraph 14 or 22 of that Schedule, or giving notice under paragraph 15 or 26 of that Schedule of intention to appoint an administrator or any steps taken towards such application or notice.

## 1.6 Incorporated terms

The terms of the Finance Documents and of any other agreement or instrument relating to the Finance Documents and the Secured Obligations are incorporated into this Deed and each



other Finance Document to the extent required to ensure that any purported disposition, or any agreement for the disposition of any Secured Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### 1.7 **Intercreditor deed**

This Deed is subject to the terms of the Intercreditor Deed.

### 1.8 **Present and future assets**

- (a) A reference in this Deed to any Secured Property, Secured Assets or other asset includes, unless the contrary intention appears, present and future Secured Property, Secured Assets and other assets.
- (b) The absence of or incomplete details of any Secured Assets in any Schedule shall not affect the validity or enforceability of any Security under this Deed.

### 1.9 **Fixed security**

Clauses 3.2 (First legal mortgages) to 3.4 (First fixed charges) shall be construed as creating a separate and distinct mortgage, fixed charge or assignment by way of security over each relevant asset within any particular class of assets defined under this Deed and the failure to create an effective mortgage, fixed charge or assignment by way of security (whether arising out of this Deed or any act or omission by any party) on any one asset shall not affect the nature of any mortgage, fixed charge or assignment by way of security imposed on any other asset whether within that same class of assets or not.

## 2 **Covenant to pay**

Each Chargor covenants with the Lender to pay and discharge the Secured Obligations when they become due for payment and discharge in accordance with the terms of the Finance Documents and the relevant statutory requirements and in the manner provided in the Finance Documents.

## 3 **Charging provisions**

### 3.1 **General**

All Security created by a Chargor under clauses 3.2 (First legal mortgages) to 3.5 (Floating charge) inclusive is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;
- (b) granted with full title guarantee;
- (c) granted in respect of all the right, title and interest (if any), present and future, of that Chargor in and to the relevant Secured Asset; and
- (d) granted in favour of the Lender.

### 3.2 **First legal mortgages**

Each Chargor charges by way of first legal mortgage the Properties (other than any Excluded Leasehold Property), and all Premises and Fixtures on each of the Properties (other than any Excluded Leasehold Property).

### 3.3 **Assignments**

- (a) Each Chargor assigns:
  - (i) the Relevant Agreements to which it is a party;

- (ii) the Relevant Policies to which it is a party.
- (b) Each Chargor shall remain liable to perform all its obligations, the Relevant Agreements and the Relevant Policies to which it is a party.
- (c) Notwithstanding the other terms of this clause 3.3, prior to the occurrence of a Declared Default, each Chargor may, subject to the other terms of the Finance Documents, continue to exercise all and any of its rights under and in connection with the Relevant Agreements.

### 3.4 **First fixed charges**

Each Chargor charges by first fixed charge:

- (a) all interests and estates in any freehold, leasehold or commonhold property now or subsequently owned by it (other than any freehold, leasehold or commonhold property effectively charged by way of legal mortgage under clause 3.2 (First legal mortgages)) and, in each case, the Premises and Fixtures on each such property;
- (b) the proceeds of sale of its Secured Property and all licences to enter on or use any Secured Property;
- (c) the benefit of all other agreements, instruments and rights relating to its Secured Property;
- (d) all plant, machinery, vehicles, computers, office and other equipment, all furniture, furnishings, equipment and tools and any removals or replacement of them, (together **Chattels**) present and future and the benefit of all contracts, licences, warranties, maintenance contracts relating to them and any renewals and replacements of them;
- (e) the Subsidiary Shares together with all Related Rights;
- (f) the Investments together with all Related Rights;
- (g) all book and other debts due to the relevant Chargor and their proceeds (both collected and uncollected) (together **Debts**) and all rights, guarantees, security or other collateral in respect of the Debts (or any of them) and the benefit of any judgment or order to pay a sum of money and all rights to enforce the Debts (or any of them);
- (h) all monies from time to time standing to the credit of each Blocked Account;
- (i) all monies from time to time standing to the credit of each account held by the relevant Chargor with any bank, building society, financial institution or other person other than any Blocked Account (each an **Account**);
- (j) all interests and title now or subsequently held in its Intellectual Property (including the Intellectual Property detailed in schedule 4 (Intellectual Property) to this Deed (if any));
- (k) all its goodwill and uncalled capital;
- (l) the benefit of all Authorisations held or utilised by it in connection with its business or the use of any of its assets and the right to recover and receive compensation payable in respect of any of them; and
- (m) to the extent that any assignment in clause 3.3 (Assignments) is ineffective as an assignment, the assets referred to in that clause.

### 3.5 **Floating charge**

- (a) Each Chargor charges by way of first floating charge all its assets and undertaking wherever located both present and future.
- (b) The floating charge created by clause 3.5(a) shall be deferred in point of priority to all fixed Security validly and effectively created by the relevant Chargor under the Finance Documents in favour of the Lender as security for the Secured Obligations.

### 3.6 **Qualifying floating charge**

This Deed contains a qualifying floating charge and paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by or under this Deed.

### 3.7 **Conversion of floating charge to a fixed charge**

The Lender may at any time by notice in writing to any Chargor convert the floating charge created under clause 3.5 (Floating charge) into a fixed charge as regards any Floating Charge Asset as it shall specify in the notice if:

- (a) an Event of Default is continuing; or
- (b) in the reasonable opinion of the Lender that Floating Charge Asset is in danger of being seized or any legal process or execution is being enforced against that Floating Charge Asset.

### 3.8 **Automatic conversion of floating charge to a fixed charge**

If (unless permitted in writing by the Lender or expressly permitted under the terms of any Finance Document):

- (a) a Chargor creates or attempts to create any Security over any of its Floating Charge Assets;
- (b) any person levies or attempts to levy any distress, attachment, execution or other legal process against any Floating Charge Asset; or
- (c) any corporate action, legal proceedings or other procedures or steps are taken for the winding up, dissolution, administration or reorganisation of any Chargor or the appointment of any Receiver or administrator with respect to any Chargor or any Secured Assets (or any analogous procedure or step is taken in any jurisdiction),

the floating charge created by this Deed will automatically and immediately without notice be converted into a fixed charge over the relevant assets or, in the circumstances described in clause 3.8(c), over all of the Floating Charge Assets.

### 3.9 **Moratorium**

- (a) Subject to clause 3.9(b), the floating charge created by clause 3.5 may not be converted into a fixed charge solely by reason of:
  - (i) the obtaining of a moratorium; or
  - (ii) anything done with a view to obtaining a moratorium,

under Part A1 of the Insolvency Act 1986.

- (b) Clause 3.9(a) does not apply in respect of any floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act 1986.

#### **4 Continuing security**

- 4.1 The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by any Chargor or any other person of the whole or any part of the Secured Obligations.

#### **4.2 Recourse**

The Security constituted by this Deed:

- (a) is in addition to any other Security which the Lender may hold at any time for the Secured Obligations (or any of them); and
- (b) may be enforced without first having recourse to any other rights of the Lender.

#### **5 Negative pledge**

- 5.1 No Chargor shall create or permit to subsist any Security over any of its assets during the Security Period, except for the Original Debenture.

- 5.2 No Chargor shall:

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by a Chargor or any other member of the Group;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- 5.3 Clauses 5.1 and 5.2 do not apply to any Security or arrangement which is Permitted Security a Permitted Disposal or a Permitted Transaction.

#### **6 Restrictions on disposals**

- 6.1 No Chargor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any Secured Assets.

- 6.2 Clause 6.1 does not apply to any Permitted Disposal or Permitted Transaction.

#### **7 Further assurance**

- 7.1 Each Chargor shall promptly do all such reasonable acts and execute all such reasonable documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and similar form to this Debenture) in favour of the Lender or its nominee(s) or a Receiver:

- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Lender, or any Receiver provided by or pursuant to this Deed or by law;
- (b) to confer on the Lender Security over any property and assets of that Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or

- (c) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.
- 7.2 Each Chargor shall take all such reasonable action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Lender by or pursuant to this Deed.
- 7.3 Any document required to be executed by a Chargor under this clause 7 will be prepared at the cost of that Chargor.

## **8 Land Registry**

### **8.1 Application for restriction**

- (a) Each Chargor hereby consents to an application being made to the Land Registry to enter the following restriction in the Proprietorship Register of any registered land at any time forming part of the Secured Property:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated ♦ in favour of ♦ referred to in the charges register."

- (b) Each Chargor confirms that so far as any of its Secured Property is unregistered, such land is not affected by any disclosable overriding interests within the meaning of the Land Registration Act 2002 or the Land Registration Rules 2003.

### **8.2 Tacking and further advances**

The Lender is, subject to the terms of the Facility Agreement, under an obligation to make further advances to the Borrowers and this security has been made for securing such further advances. The Lender and each Chargor by this Deed consent to an application being made to the Chief Land Registrar to enter a note of such obligation on the register of title to all present and future registered property of that Chargor (and any unregistered properties subject to compulsory first registration at the date of this Deed).

## **9 Notices of assignments and charges**

### **9.1 Relevant Agreements**

- (a) Save for in respect of any Relevant Agreements assigned pursuant to the Original Debenture, each Chargor which is party to a Relevant Agreement shall give notice in the form specified in part 1 (Form of notice of assignment) of schedule 5 (Relevant Agreements) to the other parties to each Relevant Agreement that the Chargor has assigned to the Lender all its right, title and interest in that Relevant Agreement.
- (b) The relevant Chargor shall give the notices referred to in clause 9.1(a):
  - (i) in the case of any Relevant Agreement in existence as at the date of this Deed, on the date of this Deed; and
  - (ii) in the case of each Relevant Agreement coming into existence or being designated as such after the date of this Deed, on the later of that agreement coming into existence or being designated a Relevant Agreement.
- (c) The relevant Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice in substantially the form specified in part 2 (Form of acknowledgement) of schedule 5 (Relevant Agreements) within 20 Business Days of that notice being given.

## 9.2 Insurance Policies

- (a) Save for in respect of any Insurance Policies assigned pursuant to the Original Debenture, each Chargor which is an insured party under a Relevant Policy shall give notice in the form specified in part 1 (Form of notice of assignment) of schedule 6 (Relevant Policies) to each insurer under each Relevant Policy that the Chargor has assigned to the Lender all its right, title and interest in that Relevant Policy.
- (b) The relevant Chargor shall give the notices referred to in clause 9.2(a):
  - (i) in the case of each Relevant Policy subsisting at the date of this Deed, on the date of this Deed; and
  - (ii) in the case of each Relevant Policy coming into existence after the date of this Deed, on that Relevant Policy being put on risk.
- (c) The relevant Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice in substantially the form specified in part 2 (Form of acknowledgement) of schedule 6 (Relevant Policies) within 20 Business Days of that notice being given.
- (d) If the Lender receives, prior to the occurrence of a Default which is continuing, any sum in respect of a Relevant Policy which represents Excluded Insurance Proceeds because the relevant Chargor is required or otherwise intends to apply such sum towards a purpose specified in the definition of Excluded Insurance Proceeds in clause 10.2 (Disposal, Insurance and Acquisition Proceeds) of the Facility Agreement, the Lender shall, as soon as reasonably practicable following a written request from the relevant Chargor transfer such sum to that Chargor and, at the cost of the relevant Chargor, take any other action reasonably requested by the Chargor in order to allow that Chargor to apply such sum in accordance with the terms of the Facility Agreement.

## 9.3 Charge over accounts

- (a) Save for in respect of any Accounts assigned pursuant to the Original Debenture, each Chargor holding an Account shall give notice in the form specified in part 1 (Form of notice of charge) of schedule 7 (Accounts) to the financial institution at which such Account is held (if such financial institution is not the Lender) that the Chargor has created a fixed charge over the balance standing to the credit of that Account.
- (b) The relevant Chargor will give the notices referred to in clause 9.3(a):
  - (i) in the case of an Account held by that Chargor at the date of this Deed, on the date of this Deed; and
  - (ii) in the case of an Account opened after the date of this Deed, on that Account being opened.
- (c) The relevant Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice substantially in the form specified in part 2 (Form of acknowledgement) of schedule 7 (Accounts) within 20 Business Days of that notice being given.

## 9.4 Register of Trade Marks

On the occurrence of any Event of Default which is continuing, each Chargor as registered proprietor hereby appoints the Lender as its agent to apply for the particulars of this Deed and the Lender's interest in the Intellectual Property and any other or future trade marks or trade mark applications registered or to be registered in the United Kingdom in the name of that Chargor, to be made on the Register of Trade Marks under section 25(1) of the Trade Marks Act 1994. Each Chargor hereby agrees to execute all documents and forms required to enable such particulars to be entered on the Register of Trade Marks.

## 10 Undertakings

Each Chargor undertakes to the Lender in accordance with this clause 10. The undertakings in this clause 10 shall remain in force during the Security Period.

### 10.1 Real property

#### (a) Access

If an Event of Default is continuing or the Lender reasonably suspects an Event of Default is continuing or may occur, each Chargor shall, and the Parent shall ensure that each member of the Group will, permit the Lender and/or accountants or other professional advisers and contractors of the Lender free access at all reasonable times and on reasonable notice at the risk and cost of the relevant Chargor to:

- (i) the premises, assets, books, accounts and records of each member of the Group; and
- (ii) meet and discuss matters with Senior Management.

#### (b) Repair

- (i) It shall keep its Secured Property in good and substantial repair and condition and decorative order (ordinary wear and tear excepted).
- (ii) It shall repair any defect or damage to any of its Secured Property promptly and if it fails to do so following receipt of a written request from the Lender, the Lender may, but shall not be obliged to, do so.

#### (c) Planning

It shall not do or allow or omit to be done anything which may infringe or contravene the Planning Acts affecting its Secured Property, nor make any application for the grant of planning permission within the meaning of the Planning Acts without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed).

#### (d) Planning directions

- (i) Within 5 Business Days of receipt by it of any notice or order (**Direction**) served on or issued to it by any local or other authority (whether under the Planning Acts or otherwise) in respect of any part of its Secured Property, it shall give full particulars of the Direction to the Lender and, if so requested by the Lender, produce the Direction or a copy of it to the Lender.
- (ii) It shall advise the Lender of all steps taken or proposed to be taken by it from time to time to comply with the terms of the Direction.
- (iii) It shall take all necessary steps to comply with the Direction.
- (iv) It shall at the request of the Lender (but at the cost of the Chargor) make or join with the Lender in making such objections, representations against, appealing against or in respect of any proposal contained in the Direction as the Lender shall deem expedient in order to protect the Lender's interests.

#### (e) Development

- (i) It shall not carry out any material development (as defined in the Planning Acts) on any part of its Secured Property without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed).
- (ii) It shall not change the use of any part of its Secured Property without the prior written consent of the Lender.

**(f) Future acquisitions and legal mortgage**

It shall:

- (i) notify the Lender promptly of its intention to acquire any freehold, leasehold or other interest in property including the proposed date of such acquisition (and for the purposes of this clause 10.1(f) the date of exchange of contracts for such an acquisition shall be deemed the date of acquisition);
- (ii) at its cost, execute and deliver to the Lender on demand, a legal mortgage (in form and substance satisfactory to the Lender and in substantially the same terms as this Deed) in favour of the Lender of any freehold or leasehold or other interest in property which becomes vested in it after the date of this Deed;
- (iii) obtain any consents required for the Security referred to in this clause 10.1(f); and
- (iv) if applicable procure that notice of this Deed is noted in the appropriate manner on the title to any property which becomes vested in it after the date of this Deed.

**(g) Deposit of title deeds**

It shall deposit with the Lender all deeds and documents to title relating to its Secured Property.

**(h) Outgoings**

It will punctually pay and indemnify the Lender and any Receiver against all present and future rents, rates, taxes, assessments and outgoings of whatsoever nature imposed on or payable in respect of its Secured Property or any part of it or payable by the owner or occupier of it.

**(i) Investigation of title**

On request by the Lender, it shall grant the Lender or its advisers (at the cost of the Chargor) all facilities within its power to enable the Lender or its advisers or delegates to carry out such investigations of title to and enquiries into its Secured Property or other Secured Assets as may be carried out by a prudent mortgagee or chargee.

**10.2 Leases****(a) Lease and covenant compliance**

It shall:

- (i) perform all the terms on its part contained in any lease or agreement for lease under which it holds an interest in a Secured Property or to which any of its Secured Property is subject;
- (ii) properly perform (and indemnify the Lender and each Receiver for any breach of) any covenants and stipulations of whatsoever nature affecting any of its Secured Property;
- (iii) not make any election or take any other action so as to alter the treatment of any Occupational Lease for the purposes of value added tax;
- (iv) not, without the prior written consent of the Lender, serve notice on any former tenant under any Occupational Lease under section 17(2) of the Landlord and Tenant (Covenants) Act 1995 or on any guarantor of any such former tenant under section 17(3) of that act; and



- (v) immediately notify the Lender of any notice received by it under section 146 of the Law of Property Act 1925 or any proceedings commenced or steps taken against it for the forfeiture of any lease under which it holds an interest in a Secured Property.

(b) **Landlord's consent**

If under the terms of any lease under which it holds an interest in any Secured Property, the Chargor is not permitted to charge its interest in such Secured Property without the consent of the landlord;

- (i) it undertakes promptly to make an application for landlord's consent to the creation of the fixed charge contained in clause 3.4 (First fixed charges) and any charge to be created under clause 7 (Further assurance), shall use all reasonable endeavours to obtain such consent as soon as possible and shall keep the Lender informed of the progress of its negotiations with such landlord;
- (ii) subject to clause 10.2(b)(iii):
  - (A) no breach of clause 22.6 (Validity and admissibility in evidence) of the Facility Agreement nor any other representation in the Finance Documents shall occur by virtue of the Chargor's failure to have obtained such landlord's consent; and
  - (B) if the landlord indicates in writing that it proposes to commence, or commences an action of forfeiture of the lease, the Lender shall release from such fixed charge, the relevant Chargor's interest in the lease;
- (iii) clause 10.2(b)(ii) shall only apply where the relevant Chargor has complied with its obligations under clause 10.2(b)(ii), but the landlord has not given the consent requested of it;
- (iv) upon receipt by the Lender of evidence in writing of the consent of the landlord to the creation and existence of the fixed charge over the Chargor's interest in such lease, clause 10.2(b)(i) shall cease to apply in respect of the relevant Secured Property.

(c) **No variation to lease**

It shall not without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed) materially alter or vary or agree to alter or vary the terms of any lease under which it holds any Secured Property or any lease to which any Secured Property is subject.

(d) **No surrender or termination**

It shall not without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed) surrender or otherwise terminate any lease under which it holds a Secured Property or terminate, forfeit or accept a surrender of any lease to which any Secured Property is subject.

(e) **Compliance by tenants**

It shall use reasonable endeavours to procure that each tenant under an Occupational Lease complies with the terms of that Occupational Lease.

(f) **Lease or right to occupy**

It will not without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed):

- (i) grant any lease or tenancy or exercise any other power of leasing of the whole or part of any Secured Property; or
- (ii) grant any person any contractual licence or the right to occupy any Secured Property or part with possession of it.

(g) **Forfeiture**

It shall not do or permit anything which may render any lease or agreement for lease under which it holds an interest in a Secured Property, or to which the Secured Property is subject, liable to forfeiture or otherwise determinable.

10.3 **Chattels**

- (a) It will keep all Chattels comprised in its Secured Assets in good and substantial repair and in good working order and condition (ordinary wear and tear excepted).
- (b) It shall repair any defect or damage to any of its Chattels promptly and if it fails to do so following receipt of a written request from the Lender, the Lender may, but shall not be obliged to, do so.

10.4 **Subsidiary Shares and Investments**

- (a) On the later of:
  - (i) the date of this Deed; and
  - (ii) the date of acquisition of those Subsidiary Shares, Investments or Related Rights
 it shall:
  - (A) deliver to the Lender all certificates of title and other documents of title or evidence of ownership in respect of its Subsidiary Shares or Investments and the Related Rights, save for any such title or other documents already delivered to the Lender pursuant to the Original Debenture; and
  - (B) deliver to the Lender such transfer documents (with the transferee left blank) or any other documents as the Lender may require or otherwise request in respect of those Subsidiary Shares, Investments and Related Rights, save for any such title or other documents already delivered to the Lender pursuant to the Original Debenture.
- (b) Prior to a Declared Default, the relevant Chargor shall be entitled to receive and retain all dividends, distributions and other monies receivable in respect of its Subsidiary Shares, Investments and Related Rights.
- (c) The relevant Chargor shall be entitled to exercise all voting and other rights in respect of its Subsidiary Shares, Investments and Related Rights provided that it does not exercise those rights in a manner which is likely to be prejudicial to the interests of the Finance Parties.
- (d) The relevant Chargor shall make all payments which may become due and payable in respect of any of its Subsidiary Shares, Investments and Related Rights. If it fails to make any such payments, the Lender may but shall not be obliged to make such payment on behalf of the relevant Chargor. Any sums so paid by the Lender shall be repayable by the relevant Chargor to the Lender on demand and pending such repayment shall constitute part of the Secured Obligations.
- (e) The relevant Chargor shall remain liable to observe and perform all of the conditions and obligations assumed by it in respect of its Subsidiary Shares, Investments and

Related Rights and the Lender shall not be required to perform or fulfil any obligation of any Chargor in respect of any Subsidiary Shares, Investments or Related Rights.

- (f) The relevant Chargor shall comply with any notice served on it under CA 2006 or pursuant to the articles of association or any other constitutional document of any relevant entity in respect of or in connection with the Subsidiary Shares, Investments or Related Rights and will promptly provide to the Lender a copy of that notice upon request.
- (g) The relevant Chargor shall ensure that none of its Subsidiary Shares are converted into uncertificated form without the prior written consent of the Lender.
- (h) Immediately on conversion of any of its Subsidiary Shares, Investment or Related Rights from a certificated to an uncertificated form, and on the acquisition by it of any Subsidiary Shares, Investments or Related Rights in an uncertificated form, the relevant Chargor shall give such instructions or directions and take such other steps and enter into such documentation as the Lender may require in order to protect or preserve the Security intended to be created by this Deed.

#### 10.5 **Insurance**

- (a) It shall comply with clause 25.25 (Insurance) of the Facility Agreement.
- (b) If a Chargor shall be in default of effecting or maintaining insurances or in producing any such policy or receipt to the Lender on demand, the Lender may take out or renew such insurances in any sum which the Lender may think expedient and all monies expended and costs incurred by the Lender under this provision shall be for the account of any such Chargor.

#### 10.6 **Book and other debts**

- (a) It shall collect and realise the Debts in the ordinary course of trading.
- (b) It shall not set off, postpone or release any of the Debts or do or omit to do anything which may delay or prejudice the full recovery of all Debts without the prior written consent of the Lender.

#### 10.7 **General**

It shall not do or cause or permit to be done anything which may in any way materially depreciate, jeopardise or otherwise prejudice the value to the Lender of the Security created by or under this Deed.

### 11 **Power to remedy**

11.1 If a Chargor fails to comply with any of the undertakings set out in clause 10 (Undertakings), then within 15 Business Days of the earlier of:

- (a) request by the Lender to perform such covenant, and
- (b) that Chargor becoming aware of the failure to comply with such covenant,

it shall allow and irrevocably authorises the Lender and/or such persons as it shall nominate to take such action on behalf of that Chargor as shall be necessary to ensure that it complies with those undertakings.

11.2 If any Chargor fails to perform any obligation or other covenant affecting the Secured Property or other Security Asset, then within 10 Business Days of request by the Lender to perform such obligation or covenant, each Chargor shall permit the Lender or its agents and contractors:

- (a) to enter on the Secured Property;

- (b) to comply with or object to any notice served on any Chargor relating to the Secured Property or other Security Asset; and
- (c) to take any action the Lender may reasonably consider expedient to prevent or remedy any breach of any such term or to comply with or object to any such notice.

11.3 Each Chargor shall within 3 Business Days of demand indemnify the Lender against any cost, loss or liability incurred by it in taking any of the steps referred to in this clause 11.

## **12 Security power of attorney**

On the occurrence of any Event of Default which is continuing, each Chargor, by way of security, irrevocably and severally appoints the Lender, each Receiver and any of their delegates or sub-delegates to be its attorney with the full power and authority of such Chargor (in its name and otherwise on its behalf) to:

- (a) execute, deliver and perfect all deeds, instruments and other documents; and
- (b) to do or cause to be done all acts and things,

in each case: which such Chargor ought or has agreed to execute or do under this Deed and which it has failed to do within 3 Business Days following a request from the Lender to undertake such execution or action.

## **13 Enforcement of security**

### **13.1 When security is enforceable**

Following a Declared Default, the Security created by and under this Deed is immediately enforceable.

### **13.2 Acts of enforcement**

The Lender may at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- (b) exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Secured Assets;
- (c) appoint one or more persons to be a Receiver to all or any part of the Secured Assets;
- (d) appoint one or more persons to be an administrator in respect of any Chargor and take any steps to do so;
- (e) exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed); or
- (f) if permitted by law, appoint an administrative receiver in respect of any Chargor.

### **13.3 Right of appropriation**

To the extent that the Security created by this Deed constitutes a "security financial collateral arrangement" and the Secured Assets constitute "financial collateral" for the purpose of the Financial Collateral Arrangements (No 2) Regulations 2003 (**Regulations**), the Lender shall have the right on giving 10 Business Days' prior written notice to the relevant Chargor, when an Event of Default is continuing, to appropriate all or any part of those Secured Assets in or towards discharge of the Secured Obligations. The parties agree that the value of the

appropriated Secured Assets shall be, in the case of cash, the amount of cash appropriated and, in the case of Subsidiary Shares and Investments, determined by the Lender by reference to any available publicly available market price in the absence of which by such other means as the Lender (acting reasonably) may select including, without limitation, an independent valuation. For the purpose of Regulation 18(1) of the Regulations, each Chargor agrees that any such determination by the Lender will constitute a valuation "in a commercially reasonable manner".

#### 13.4 **Statutory powers - general**

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- (c) The statutory powers of leasing conferred on the Lender are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, the Lender and any Receiver is empowered to lease and make agreements for lease at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- (d) Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and receivers duly appointed under the Law of Property Act 1925, except that section 103 of the Law of Property Act 1925 does not apply.

#### 13.5 **Contingencies**

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

#### 13.6 **Mortgagee in possession - no liability**

Neither the Lender, its nominee(s) nor any Receiver will be liable, by reason of entering into possession of a Secured Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

#### 13.7 **Redemption of prior mortgages**

Following a Declared Default, the Lender may, at the sole cost of the Chargors (payable to the Lender on demand):

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

#### 13.8 **Subsidiary Shares and Investments – following a Declared Default**

- (a) Following a Declared Default, each Chargor shall on request by the Lender:
  - (i) deliver to the Lender such pre-stamped stock transfer forms or other transfer documents as the Lender may require to enable the Lender or its nominee or nominees to be registered as the owner of, and to obtain legal and beneficial title to, the Subsidiary Shares, the Investments and/or Related Rights referred to in such request;

- (ii) provide to the Lender certified copies of all resolutions and authorisations approving the execution of such transfer forms and registration of such transfers as the Lender may reasonably require;
  - (iii) procure that each such transfer is promptly registered by the relevant company or other entity;
  - (iv) procure that, promptly on their issue, all share certificates or other documents of title in the appropriate form, in respect of the relevant Subsidiary Shares, Investments and/or Related Rights, are delivered to the Lender in each case showing the registered holder as the Lender or its nominee or nominees (as applicable); and
  - (v) exercise all voting rights in respect of its Subsidiary Shares, Investments and Related Rights only in accordance with the instructions of the Lender.
- (b) Following a Declared Default, the Lender may complete any transfer documents held by it in respect of the Subsidiary Shares, the Investments and/or the Related Rights in favour of itself or such other person or nominee as it shall select.
  - (c) At any time after the Security created by or under this Deed has become enforceable, the Lender and its nominee or nominees may sell all or any of the Subsidiary Shares, Investments or Related Rights of the Chargors (or any of them) in any manner permitted by law and on such terms as the Lender shall in its absolute discretion determine.
  - (d) If any Chargor receives any dividends, distributions or other monies in respect of its Subsidiary Shares, Investments and Related Rights at a time when the Lender has made a request under clause 13.8(a) or taken any steps to enforce the Security created by or under this Deed under clause 13.2 (Acts of enforcement), the relevant Chargor shall upon request promptly pay such sums received directly to the Lender for application in accordance with clause 15.1 (Application of monies) and shall hold all such sums on trust for the Lender pending payment of them to such account as the Lender shall direct.

## **14 Receiver**

### **14.1 Appointment of Receiver**

- (a)
  - (i) Following a Declared Default, the Lender may appoint a Receiver to all or any part of the Secured Assets in accordance with clause 13.2(c) (Acts of enforcement).
  - (ii) At any time, if so requested in writing by any Chargor, without further notice, the Lender may appoint a Receiver to all or any part of the Secured Assets as if the Lender had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.
- (b) Any appointment under clause 14.1(a) may be by deed, under seal or in writing under its hand.
- (c) Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the LPA) does not apply to this Deed.
- (d) Any Receiver appointed under this Deed shall be deemed to be the agent of the relevant Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the LPA. That Chargor alone is responsible for any contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.

- (e) In no circumstances whatsoever shall the Lender be liable (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason nor be in any way responsible for any misconduct, negligence or default of the Receiver.
- (f) The Lender is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under Part A1 of the Insolvency Act 1986 other than in respect of a floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act 1986.
- (g) The Lender may not appoint an administrative receiver (as defined in section 29(2) of the Insolvency Act 1986) over the Secured Assets if the Lender is prohibited from so doing by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

## 14.2 Removal

The Lender may by written notice remove from time to time any Receiver appointed by it (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

## 14.3 Powers of Receiver

### (a) General

- (i) A Receiver has all of the rights, powers and discretions set out below in this clause 14.3 in addition to those conferred on it by the LPA.
- (ii) A Receiver shall have all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the receiver is an administrative receiver).
- (iii) A Receiver may, in the name of any Chargor:
  - (A) do all other acts and things which he may consider expedient for realising any Secured Assets; and
  - (B) exercise in relation to any Secured Assets all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.
- (iv) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.

### (b) Borrow money

A Receiver may raise and borrow money (either unsecured or on the security of any Secured Asset, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

### (c) Carry on business

A Receiver may carry on the business of any relevant Chargor as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such Authorisations as he considers in his absolute discretion appropriate.

**(d) Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of any relevant Chargor or relating in any way to any Secured Asset.

**(e) Delegation**

A Receiver may delegate his powers in accordance with clause 15 (Delegation).

**(c) Lending**

A Receiver may lend money or advance credit to any person.

**(f) Employees**

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

- (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
- (ii) discharge any such persons appointed by the relevant Chargor.

**(g) Leases**

A Receiver may let any Secured Asset for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of any Secured Assets on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

**(h) Legal actions**

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

**(i) Possession**

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

**(j) Protection of assets**

A Receiver may, in each case as he may think fit:

- (i) make and effect all repairs and insurances and do all other acts which the relevant Chargor might do in the ordinary conduct of its business be they for the protection or for the improvement of the Secured Assets;
- (ii) commence and/or complete any building operations on the Secured Property or other Secured Asset; and
- (iii) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

**(k) Receipts**

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



**(l) Sale of assets**

- (i) A Receiver may sell, exchange, convert into monies and realise any Secured Assets by public auction or private contract in any manner and on any terms which he thinks proper.
- (ii) The consideration for any such transaction may consist of cash or non-cash consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit.
- (iii) Fixtures and any plant and machinery annexed to any part of the Secured Property may be severed and sold separately from the property containing them without the consent of the relevant Chargor.

**(m) Subsidiaries**

A Receiver may form a Subsidiary of the relevant Chargor and transfer to that Subsidiary any Secured Asset.

**(n) Deal with Secured Assets**

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Secured Assets without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any of the Secured Assets or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any of the Secured Assets on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

**(o) Voting rights**

A Receiver may exercise all voting and other rights attaching to the Investments, Subsidiary Shares, Related Rights, and stocks, shares and other securities owned by that Chargor and comprised in the Secured Assets in such manner as he may think fit.

**(p) Security**

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

**(q) Acquire land**

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land.

**(r) Development**

A Receiver may implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Secured Property and do all acts and things incidental to the Secured Property.

**(s) Landlord's obligations**

A Receiver may on behalf of a Chargor and without consent of or notice that Chargor exercise all the powers conferred on a landlord or a tenant by the Landlord and Tenants Acts, the Rents Acts and Housing Acts or any other legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Secured Property.

**(t) Uncalled capital**

A Receiver may make calls conditionally or unconditionally on the members of any relevant Chargor in respect of uncalled capital.

**(u) Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Assets and to use the name of the relevant Chargor for all the purposes set out in this clause 14.

**14.4 Remuneration**

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

**15 Delegation**

15.1 Each of the Lender, and any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.

15.2 That such delegation may be made upon such terms and conditions (including the power to sub-delegate) and subject to any restrictions as the Lender, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Lender.

15.3 Neither the Lender, any Receiver nor any Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

**16 Application of monies**

16.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the LPA shall not apply to a Receiver appointed under this Deed.

16.2 All monies from time to time received or recovered by the Lender or any Receiver under this Deed or in connection with the realisation or enforcement of all or part of this Security will be held by the Lender and shall be applied in accordance with the terms of the Intercreditor Deed. This clause 16:

(a) is subject to the payment of any claims having priority over this Security; and

(b) does not prejudice the right of any Secured Party to recover any shortfall from the Chargor.

16.3 The Lender and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

**17 Remedies and waivers**

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

**18 Protection of third parties**

- 18.1 No person (including a purchaser) dealing with the Lender or a Receiver or its or his agents has an obligation to enquire of the Lender, Receiver or others:
- (a) whether the Secured Obligations have become payable;
  - (b) whether any power purported to be exercised has become exercisable;
  - (c) whether any Secured Obligations or other monies remain outstanding;
  - (d) how any monies paid to the Lender or to the Receiver shall be applied; or
  - (e) the status, propriety or validity of the acts of the Receiver or Lender.
- 18.2 The receipt of the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.
- 18.3 In clauses 18.1 and 18.2, **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Secured Assets or any of them.

**19 Additional security**

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

**20 Settlements conditional**

- 20.1 If the Lender (acting reasonably) believes that any amount paid by a Chargor or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.
- 20.2 Any settlement, discharge or release between a Chargor and the Lender shall be conditional upon no Security or payment to or for the Lender by that Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

**21 Subsequent Security**

If the Lender receives notice of any other subsequent Security or other interest affecting all or any of the Secured Assets it may open a new account or accounts for the relevant Chargor in its books. If it does not do so then, unless it gives express written notice to the contrary to the relevant Chargor, as from the time of receipt of such notice by the Lender, all payments made by that Chargor to the Lender shall be treated as having been credited to a new account of that Chargor and not as having been applied in reduction of the Secured Obligations.

**22 Set-off**

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

**23 Notices**

Any communication under this Deed or any other Security or Finance Document created by or under this Deed, shall be made and given in accordance with the terms of clause 33 (Notices) of the Facility Agreement.

**24 Invalidity**

Clause 35 (Partial invalidity) of the Facility Agreement shall apply to this Deed as if set out here in full but so that references to the Finance Documents shall be construed as references to this Deed and any Security created by or under it.

**25 Assignment**

The Lender may assign or otherwise transfer all or any part of its rights under this Deed or any Security created by or under it in accordance with the terms of the Finance Documents.

**26 Releases**

Upon the expiry of the Security Period, the Lender shall, at the request and cost of the Chargors, take whatever action is necessary to release and reassign to each relevant Chargor:

- (a) its rights arising under this Deed;
- (b) the Secured Assets from the Security created by and under this Deed,

and return all documents or deeds of title delivered to it under this Deed.

**27 Currency clauses**

27.1 Clause 31.6 (Currency of account) of the Facility Agreement shall apply to this Deed as if set out here in full but so that references to the Finance Documents shall be construed as references to this Deed and any Security created by or under it and references to the Obligors shall be construed as references to the Chargors.

27.2 If a payment is made to the Lender under this Deed in a currency (**Payment Currency**) other than the currency in which it is expressed to be payable (**Contractual Currency**), the Lender may convert that payment into the Contractual Currency at the rate at which it (acting reasonably and in good faith) is able to purchase the Contractual Currency with the Payment Currency on or around the date of receipt of the payment and to the extent that the converted amount of the payment falls short of the amount due and payable the Chargors will remain liable for such shortfall.

**28 Certificates and determinations**

Clause 34.2 (Certificates and determinations) of the Facility Agreement shall apply to this Deed as if set out here in full but so that references to the Finance Documents shall be construed as references to this Deed and any Security created by or under it.

**29 Indemnity****Obligor's indemnity**

- (a) Each Obligor shall promptly indemnify the Lender within 3 Business Days of demand and every Receiver and Delegate (each an Indemnified Person) against any cost, loss or liability together with any associated VAT incurred by any of them as a result of:
  - (i) the taking, holding, protection or enforcement of any Transaction Security Document;
  - (ii) the exercise of any of the rights, powers, discretions and remedies vested in the Lender and each Receiver and Delegate by the Finance Documents, the Supporting Documents or by law; and
  - (iii) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.
- (b) Each Obligor shall indemnify the Lender against any and all costs, losses, liabilities or expenses together with any associated VAT incurred by each Lender arising (directly or indirectly) out of or in connection with:
  - (i) any breach or potential breach of or liability (whether civil and/or criminal) under any Environmental Law;
  - (ii) any responsibility on the part of the Lender in respect of any clean-up, repair or other corrective action; or
  - (iii) the business or any real property of any Obligor.
- (c) The Lender may indemnify itself out in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause and shall have a lien on the Transaction Security Documents and the proceeds of the enforcement of the Transaction Security Documents for all monies payable to it.

### **30 Exclusion of liability**

#### **30.1 No liability**

- (a) The Lender will not be liable for any action taken by it (or any omission to take action) under or in connection with any Supporting Document unless directly caused by its gross negligence or wilful misconduct.
- (b) Neither the Lender nor any Receiver shall be liable in respect of all or any part of the Secured Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers unless such loss or damage is caused by its gross negligence or wilful acts of default and recklessness.

#### **30.2 Officers and agents**

No Obligor may take proceedings against any officer, employee or agent of the Lender in respect of any claim it might have against the Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Supporting Document and any officer, employee or agent of the Lender may rely on this clause.

### **31 Fees, costs and expenses**

#### **31.1 Transaction expenses**

The Parent shall promptly on demand pay the Lender the amount of all costs, fees and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing, execution and perfection of this Deed and each other Finance Documents and the Supporting Documents.

**31.2 Amendment costs**

If an Obligor requests an amendment, waiver or consent of this Deed or any other Finance Documents and the Supporting Documents, the Parent shall, within 3 Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) together with any associated VAT reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with the request or requirement.

**31.3 Enforcement and preservation costs**

The Parent shall, within 3 Business Days of demand, pay to the Lender the amount of all costs, fees and expenses (including legal fees) together with any associated VAT incurred by the Lender in connection with the enforcement of or the preservation of any rights under any Finance Documents and the Supporting Documents and proceedings instituted by or against the Lender as a consequence of taking or holding the Transaction Security Document or enforcing these rights.

**31.4 Interest on late payments**

- (a) If an Obligor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at the rate of interest provided for in clause 12.4 (Default interest) of the Facility Agreement. Any interest accruing under this clause 31.4 shall be immediately payable by the Obligor on demand by the Lender.
- (b) Default interest (if unpaid) arising on Unpaid Sums will be compounded with the overdue amount at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable by the Obligor on demand by the Lender.

**32 Counterparts**

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

**33 Governing law**

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

**34 Enforcement****34.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (**Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 34 is for the benefit of the Lender. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**34.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under this Deed, each Chargor (not being incorporated in England and Wales):
  - (i) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed (and the Parent by its execution of this Deed, accepts that appointment); and
  - (ii) agrees that failure by an agent for service of process to notify the relevant Chargor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, each Chargor must immediately (and in any event within 10 Business Days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.

The Parent expressly agrees and consents to the provisions of this clause 34.2 and clause 33 (Governing law).

**This Deed** has been signed on behalf of the Lender and executed as a deed by each Chargor and is delivered on the date given at the beginning of this Deed. It is intended by the parties to this Deed that this Deed will take effect as a deed notwithstanding that the Lender may only execute it under hand.

**Schedule 1****The Chargors**

Newincco 1399 Limited	10094124 in England and Wales
Newincco 1400 Limited	10091271 in England and Wales
Direct Ferries Limited	03865405 in England and Wales
Direct Ferries (Group) Limited	08881538 in England and Wales
Direct Ferries (Holdings) Limited	06222367 in England and Wales



**Schedule 2**

**Properties**

**Registered Land**

None as at the date of this Deed.

**Unregistered Land**

None as at the date of this Deed.

**Schedule 3****Subsidiary Shares****Part 1**

<b>Chargor</b>	<b>Name and registered number of Subsidiary</b>	<b>Number and class of shares</b>
Newincco 1400 Limited	Newincco 1399 Limited	2000 ordinary shares of £0.001
Newincco 1400 Limited	Newincco 1399 Limited	1 ordinary share of £1.00
Newincco 1399 Limited	Direct Ferries (Group) Limited	100 ordinary shares of £1.00
Direct Ferries (Group) Limited	Direct Ferries (Holdings) Ltd	100 ordinary shares of £1.00
Direct Ferries (Holdings) Ltd	Direct Ferries Limited	56100 ordinary shares of £1.00

**Schedule 4**

**Intellectual Property**

**Trade Marks**

Chargor	Trade Mark	Territory	Application/ Registration No.	Status	Application/ Registration Date	Class
Direct Ferries Limited	DIRECT FERRIES	United Kingdom	2622093	REGISTERED	24/05/2012 02/08/2013	16 35 36 38 39
Direct Ferries Limited	DIRECTFERRIES.CO.UK directferries.co.uk	United Kingdom	2564559	REGISTERED	17/11/2010 11/05/2012	16 35 36 38 39
Direct Ferries Limited	DIRECT FERRIES	Community Trademarks	12191491	REGISTERED	02/10/2013 05/03/2014	16 35 36 38 39
Direct Ferries Limited	the one stop ferry shop 	Community Trademarks	7368319	REGISTERED	19/12/2008 28/06/2010	16 35 36 38 39
Direct Ferries Limited	ferriessupermarket.com ferriessupermarket.com	Community Trademarks	7164668	REGISTERED	19/11/2008 10/01/2010	16 35 36 38 39
Direct Ferries Limited	directcamping.com directcamping.com	Community Trademarks	7164551	REGISTERED	22/09/2008 22/03/2013	16 35 36 38 39
Direct Ferries Limited	Campingdirect campingdirect	Community Trademarks	7164635	REGISTERED	22/09/2008 21/06/2009	16 35 36 38 39
Direct Ferries Limited	directcamping.com 	Community Trademarks	7164511	REGISTERED	22/09/2008 29/03/2010	16 35 36 38 39
Direct Ferries Limited	direct ferries.com 	Community Trademarks	4767364	REGISTERED	29/11/2005 15/12/2006	16 25 39
Direct Ferries Limited	DIRECT FERRIES	International Register designating the US & Australia	1214882	REGISTERED	26/03/2014 26/03/2014	16 35 36 38 39
Direct Ferries Limited	DIRECT FERRIES	Australian designation of IR No. 1214882	App. 1644894	UNPUBLISHED APPLICATION (PENDING)	26/03/2014	16 35 36 38 39
Direct Ferries Limited	DIRECT FERRIES	US designation of IR No. 1214882	Ap. 79151582 Reg. 4701987	REGISTERED	26/03/2014 17/03/2015	16 35 36 38 39
Direct Ferries Limited	DIRECT FERRIES	Canada	1749894	REGISTERED	09/10/2015 15/10/2015	16 18 35 36 37 38 39 42 43

## Domain Names

DOMAIN	REGISTRANT
americasferries.com	DF Limited
cheapferry.at	DF Limited
cheapferry.be	DF Limited
cheapferry.ch	DF Limited
cheapferry.co.uk	DF Limited
cheap-ferry.co.uk	DF Limited
cheapferry.cz	DF Limited
cheapferry.de	DF Limited
cheapferry.fr	DF Limited
cheapferry.it	DF Limited
cheapferry.pl	DF Limited
cheapferry.uk	DF Limited
cubaferries.co.uk	DF Limited
cubaferries.com	DF Limited
directacom.com	DF Limited
directaccommodation.co.uk	DF Limited
directaccommodation.com	DF Limited
directcamping.be	DF Limited
directcamping.ch	DF Limited
directcamping.com	DF Limited
directcamping.de	DF Limited
directcamping.dk	DF Limited
directcamping.es	DF Limited

DOMAIN	REGISTRANT
directcamping.fr	DF Limited
directcamping.it	DF Limited
directcamping.pl	DF Limited
directcamping.se	DF Limited
directcharters.fr	DF Limited
directcruises.com	DF Limited
directferries.ae	DF Limited
directferries.asia	DF Limited
directferries.at	DF Limited
directferries.be	DF Limited
directferries.ch	DF Limited
directferries.cn	DF Limited
directferries.co	DF Limited
directferries.co.kr	DF Limited
directferries.co.uk	DF Limited
direct-ferries.co.uk	DF Limited
directferries.com	DF Limited
directferries.com.tr	DF Limited
directferries.com.ua	DF Limited
directferries.cz	DF Limited
directferries.de	DF Limited
directferries.dk	DF Limited
directferries.es	DF Limited
directferries.fi	DF Limited

DOMAIN	REGISTRANT
directferries.fr	DF Limited
directferries.gr	DF Limited
directferries.in	DF Limited
directferries.info	DF Limited
directferries.it	DF Limited
directferries.jp	DF Limited
directferries.kr	DF Limited
directferries.lu	DF Limited
directferries.me	DF Limited
directferries.net	DF Limited
directferries.nl	DF Limited
directferries.no	DF Limited
directferries.org	DF Limited
directferries.pl	DF Limited
directferries.pt	DF Limited
directferries.ro	DF Limited
directferries.rs	DF Limited
directferries.ru	DF Limited
directferries.se	DF Limited
directferries.sk	DF Limited
directferries.sl	DF Limited <i>[NB. Re-directs to .co.uk website]</i>
directferries.uk	DF Limited
directferries.us	DF Limited

DOMAIN	REGISTRANT
directferriesco.uk	DF Limited
directferriesfreight.co.uk	DF Limited
directferriesfreight.com	DF Limited
directferry.com	DF Limited
directferry.info	DF Limited
directferry.net	DF Limited
directfreightferries.co.uk	DF Limited
directfreightferries.com	DF Limited
directhirecars.co.uk	DF Limited
directhirecars.com	DF Limited
directrail.at	DF Limited
directrail.be	DF Limited
directrail.ch	DF Limited
directrail.co.uk	DF Limited
directrail.com	DF Limited
directrail.cz	DF Limited
directrail.de	DF Limited
directrail.dk	DF Limited
directrail.es	DF Limited
directrail.it	DF Limited
directrail.nl	DF Limited
directrail.pl	DF Limited
directrail.se	DF Limited
directrail.uk	DF Limited

DOMAIN	REGISTRANT
directtrains.at	DF Limited
directtrains.be	DF Limited
directtrains.ch	DF Limited
directtrains.co.uk	DF Limited
directtrains.de	DF Limited
directtrains.es	DF Limited
directtrains.fr	DF Limited
directtrains.it	DF Limited
directtrains.nl	DF Limited
directtrains.pl	DF Limited
directtrains.uk	DF Limited
directtravel.ie	DF Limited
directtravelcover.co.uk	DF Limited
dovercalaisferries.co.uk	DF Limited
dover-calais-ferries.co.uk	DF Limited
dover-calais-ferries.com	DF Limited
dover-calais-ferry.co.uk	DF Limited
dover-calais-ferry.com	DF Limited
faehren.de	DF Limited
faehrreisen.de	DF Limited
ferries.es	DF Limited
ferries.no	DF Limited
ferriesdirect.com	DF Limited
ferriespol.pl	DF Limited



DOMAIN	REGISTRANT
ferryboeken.nl	DF Limited
freightferries.co.uk	DF Limited
freight-ferries.co.uk	DF Limited
freightferries.com	DF Limited
freight-ferries.com	DF Limited
freightferries.uk	DF Limited
holidaybyferry.co.uk	DF Limited
holidaybyferry.com	DF Limited
onestopferryshop.co.uk	DF Limited
onestopferryshop.com	DF Limited
usacubaferries.com	DF Limited
uscubaferries.com	DF Limited
veerbootovertocht.nl	DF Limited
wwwdirectferries.com	DF Limited

## Schedule 5

### Relevant Agreements

#### Part 1 - Form of notice of assignment

To: ♦

Dated: ♦

Dear Sirs

#### **The agreement described in the attached schedule (Agreement)**

We hereby notify you that we have assigned to HSBC UK Bank plc (**Lender**) all our right, title and interest in and to the Agreement.

We hereby irrevocably and unconditionally authorise and instruct you:

- 1 without notice or reference to, or further authority from us and without enquiring as to the justification or the validity of those instructions, to comply only with any instructions from time to time received by you from the Lender relating to the Agreement and any rights under or in connection with the Agreement; and
- 2 to pay all sums payable by you under the Agreement directly to the Lender at:

Bank: ♦

Account number: ♦

Sort code: ♦

or such other account as the Lender may specify from time to time.

Please sign and return the acknowledgement attached to one enclosed copy of this notice to the Lender and the other copy to us.

The provisions of this notice (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

Yours faithfully

.....

for and on behalf of

♦ **Limited**

### Schedule

Date	Parties	Description
♦	♦	♦

*[Attach form of acknowledgment]*

## Part 2 - Form of acknowledgement

To: [name of Lender]  
[address]

To: [name of Chargor] (**Chargor**)  
[address]

Dated: ♦

We acknowledge receipt of the notice of assignment (**Notice**) of which the above is a duplicate. Terms defined in the Notice shall have the same meaning when used in this acknowledgement. We confirm that:

- (a) there has been no amendment, waiver or release of any rights or interests in the Agreement since the date of the Agreement;
- (b) we will not agree to any amendment, waiver or release of any provision of the Agreement without the prior written consent of the Lender;
- (c) we shall act in accordance with the Notice;
- (d) as at the date of this acknowledgement we have not received any notice of assignment or charge of the Chargor's interest in the Agreement in favour of any other person;
- (e) as at the date of this acknowledgement, we are not aware of any breach by the Chargor of the terms of the Agreement; and
- (f) we do not have and have not claimed or exercised any right or claim against the Chargor or exercised or attempted to exercise any right of set-off, counterclaim or other right relating to the Agreement.

The provisions of this acknowledgement (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

For and on behalf of

♦

## Schedule 6

### Relevant Policies

#### Part 1 - Form of notice of assignment

To: [insurer]

Dated: ♦

Dear Sirs

#### **The insurance policies described in the attached schedule (Relevant Policies)**

We hereby notify you that we have assigned to HSBC UK Bank plc (**Lender**) all our right, title and interest in and to the Relevant Policies.

We hereby irrevocably and unconditionally authorise and instruct you:

- 1 without notice or reference to or further authority from us and without enquiring as to the justification or the validity of those instructions, to comply only with any instructions from time to time received by you from the Lender relating to the Relevant Policies (or any of them); and
- 2 to pay all sums payable by you under the Relevant Policies (or any of them) directly to the Lender at:

Bank: ♦

Account number: ♦

Sort code: ♦

or such other account as the Lender may specify from time to time.

Please sign and return the acknowledgement attached to one enclosed copy of this notice to the Lender and the other copy to us.

The provisions of this notice (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

Yours faithfully

.....

for and on behalf of

♦ **Limited**

### Schedule

Date of policy	Insured	Policy type	Policy number
♦	♦	♦	♦

*[Attach form of acknowledgment]*

## Part 2 - Form of acknowledgement

To: [name of Lender]  
[address]

To: [name of Chargor] (**Chargor**)  
[address]

Dated: ♦

We acknowledge receipt of the notice of assignment (**Notice**) of which the above is a duplicate. Terms defined in the Notice shall have the same meaning when used in this acknowledgement. We confirm that:

- (a) there has been no amendment, waiver or release of any rights or interests in any Relevant Policy since the date of such policy;
- (b) we have noted the Lender's interest as mortgagee and first loss payee on each Relevant Policy;
- (c) we will not agree to any amendment, waiver or release of any provision of any Relevant Policy without the prior written consent of the Lender;
- (d) we shall act in accordance with the Notice;
- (e) as at the date of this acknowledgement we have not received any notice of assignment or charge of the Chargor's interest in any Relevant Policy or the proceeds of any Relevant Policy in favour of any other person; and
- (f) we do not have and have not claimed or exercised any right or claim against the Chargor or exercised or attempted to exercise any right of set-off, counterclaim or other right relating to any Relevant Policy.

The provisions of this acknowledgement (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

For and on behalf of

[insurance company]

## Schedule 7

### Accounts

#### Part 1 - Form of notice of charge

To: [insert name and address of account holding institution]

**Account number:**        ♦                                (Account)

**Sort code:**                ♦

**Account holder:**        ♦ Limited

We hereby notify you that we have charged by way of first fixed charge to HSBC UK Bank plc (**Lender**) as security trustee for itself and certain financial institutions all our right, title and interest in and to the monies from time to time standing to the credit of the Account.

We hereby irrevocably and unconditionally authorise and instruct you:

- 1        to hold all monies from time to time standing to the credit of the Account to the order of the Lender and accordingly to pay all or any part of those monies to the Lender (or as it may direct) promptly following receipt of written instructions from the Lender to that effect; and
- 2        to disclose to the Lender such information relating to us and the Account as the Lender may from time to time request you to provide.

By countersigning this notice, the Lender authorises you to permit us to withdraw and otherwise deal with funds standing to the credit of the Account until:

- (a)        you receive a notice in writing to the contrary from the Lender;
- (a)        a petition is presented for a winding up order in respect of us or an application is made for an administration order in respect of us,

(whichever occurs first).

Please sign and return the acknowledgement attached to one enclosed copy of this notice to the Lender and the other copy to us.

The provisions of this notice (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

Yours faithfully

.....

for and on behalf of ♦ Limited

Countersigned for and on behalf of

the Lender: .....

[Attach form of acknowledgment]



## Part 2 - Form of acknowledgement

To: [name of Lender]  
[address]

To: [name of Chargor] (**Chargor**)  
[address]

Dated: ♦

We acknowledge receipt of the notice of charge (**Notice**) of which the above is a duplicate. Terms defined in the Notice shall have the same meaning when used in this acknowledgement.

We confirm that:

- 1 we shall act in accordance with the Notice;
- 2 as at the date of this acknowledgement we have not received any notice of assignment or charge or other security over the Chargor's interest in the Account in favour of any other person; and
- 3 we will not exercise any right of combination of accounts, set-off or lien over any monies standing to the credit of the Account.

The provisions of this acknowledgement (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

For and on behalf of  
[account holding institution]

## Schedule 8

### Form of Security Deed of Accession

**This Deed** is made on ♦

#### **Between**

- (1) ♦ (registered in England with number ♦) for itself and for the Chargors (**Parent**);
- (2) ♦ (registered in England with number ♦) (**Acceding Chargor**); and
- (3) ♦ the Lender (registered in England with number ♦) (**Lender**).

#### **Whereas**

- (A) This Deed is supplemental to a debenture dated ♦ between, inter alia, the Parent, the Chargors and the Lender (**Debenture**).
- (B) [The Acceding Chargor has also entered into an Accession Deed to the Facility Agreement on or about the date of this Security Deed of Accession and by doing so appoints the Parent as its agent on the terms set out in the Accession Deed].

#### **It is agreed**

### **1 Definitions and interpretation**

#### **1.1 Definitions**

- (a) Save to the extent otherwise defined in this Deed, terms defined in the Debenture have the same meaning when used in this Deed.
- (b) In this Deed, **Subsidiary Shares** means all shares present and future held by the Acceding Chargor or its Subsidiaries including those listed in schedule 3 (Subsidiary Shares) to this Deed.

#### **1.2 Interpretation**

Clauses 1.2 (Interpretation), 1.3 (Third party rights), 1.4 (Administration), 1.6 (Incorporated terms) and 0 (Intercreditor deed) of the Debenture are incorporated in this Deed as if they were set out in full in this Deed, but so that references in those clauses to **this Deed** shall be construed as references to this Security Deed of Accession.

### **2 Accession of Acceding Chargor**

#### **2.1 Accession**

The Acceding Chargor agrees to be a Chargor for the purposes of the Debenture with immediate effect and agrees to be bound by all of the terms of the Debenture as if it had originally been a party to it.

#### **2.2 Covenant to pay**

The Acceding Chargor covenants with the Lender that it will pay and discharge the Secured Obligations when they become due for payment and discharge.

#### **2.3 Charging provisions**

All security created by a Chargor under clauses 2.4 (First legal mortgages) to 2.7 (Floating charge) inclusive is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;

- (b) granted with full title guarantee;
- (c) granted in respect of all the right, title and interest (if any), present and future of the Acceding Chargor in and to the relevant Secured Asset; and
- (d) in favour of the Lender.

#### 2.4 **First legal mortgages**

The Acceding Chargor charges by way of first legal mortgage the properties described in schedule 1 (Properties) to this Deed and, in each case, all Premises and Fixtures on each of the Properties.

#### 2.5 **Assignments**

- (a) The Acceding Chargor assigns:
  - (i) the agreements described in schedule 4 (Relevant Agreements) to this Deed; and
  - (ii) its Relevant Policies.
- (b) The Acceding Chargor shall remain liable to perform all its obligations under the Relevant Agreements, and the Relevant Policies.
- (c) Notwithstanding the other terms of this clause 2.5, prior to the occurrence of a Declared Default, each Chargor may, subject to the other terms of the Finance Documents, continue to exercise all and any of its rights under and in connection with the Relevant Agreement.

#### 2.6 **First fixed charges**

The Acceding Chargor charges by way of first fixed charge:

- (a) all interests and estate in any freehold, leasehold or commonhold property now or subsequently owned by it (other than any freehold, leasehold or commonhold property effectively charged by way of legal mortgage under clause 2.4 (First legal mortgages), and in each case, the Premises and Fixtures on each such property;
- (b) the proceeds of sale of its Secured Property and all licences to enter on or use any Secured Property;
- (c) the benefit of all other agreements, instruments and rights relating to its Secured Property;
- (d) all plant, machinery, vehicles, computers, office and other equipment, all furniture, furnishings, equipment and tools and any removals or replacement of them, (together the **Chattels**) present and future and the benefit of all contracts, licences, warranties, maintenance contracts relating to them and any renewals and replacements of them;
- (e) the Subsidiary Shares together with all Related Rights;
- (f) the Investments together with all Related Rights;
- (g) all book and other debts due to the Acceding Chargor and their proceeds (both collected and uncollected) (together **Debts**) and all rights, guarantees, security or other collateral in respect of the Debts or any of them) and the benefit of any judgment or order to pay a sum of money and all rights to enforce the Debts (or any of them);
- (h) all monies from time to time standing to the credit of each Blocked Account;

- (i) all monies from time to time standing to the credit of each account held by the Acceding Chargor with any bank, building society, financial institution or other person other than any Blocked Account (each an **Account**);
- (j) all its Intellectual Property;
- (k) all its goodwill and uncalled capital;
- (l) the benefit of all Authorisations held or utilised by it in connection with its business or the use of any of its assets and the right to recover and receive compensation payable in respect of any of them;
- (m) to the extent that any assignment in clause 2.5 (Assignments) is ineffective as an assignment, the assets referred to in that clause.

## 2.7 **Floating charge**

The Acceding Chargor charges by way of first floating charge all its assets and undertaking wherever located both present and future other than any assets effectively charged by way of legal mortgage or fixed charge or assigned under clauses 2.4 (First legal mortgages), 2.5 (Assignments) or 2.6 (First fixed charges).

## 2.8 **Qualifying floating charge**

This Deed contains a qualifying floating charge and paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by or under this Deed.

## 3 **Consent of existing charging companies**

The Chargors agree to the terms of this Deed and agree that its execution will in no way prejudice or affect any Security granted by any of them by or under the Debenture.

## 4 **Security power of attorney**

The Acceding Chargor, by way of security, irrevocably and severally appoints the Lender, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Acceding Chargor is obliged to take under this Deed or the Debenture. The Acceding Chargor ratifies and confirms whatever any attorney does or prompts to do pursuant to its appointment under this clause 4.

## 5 **Notices**

The Acceding Chargor confirms that its address details for notices in relation to clause 23 (Notices) of the Debenture are as follows:

Address:           ♦  
 Facsimile:       ♦  
 Attention:       ♦

## 6 **Counterparts**

This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

## 7 **Governing law and jurisdiction**

Clause 33 (Governing law) of the Debenture shall be incorporated in this Deed as if set out here in full but so that references to the Debenture shall be construed as references to this Deed.

**This Deed** has been signed on behalf of the Lender and executed as a deed by each Chargor and is delivered on the date given at the beginning of this Deed. It is intended by the parties to this Deed that this Deed will take effect as a deed notwithstanding that the Lender may only execute it under hand.

**Schedule 1**

**Properties**

**Schedule 2**

**Subsidiary Shares**

**Schedule 3**

**Key-man Policies**

**Schedule 4**

**Relevant Agreements**

## SIGNATURES TO THE SECURITY DEED OF ACCESSION

### Parent

Executed as a deed by ) .....  
♦ **Limited** ) Director  
acting by two directors or by a director and its ) .....  
secretary ) Director/Secretary

### OR

Executed as a deed by ) .....  
♦ **Limited/plc** ) .....  
acting by a director in the presence of ) Director

.....  
Signature of witness

Name .....

Address .....

.....

### Acceding Chargor

Executed as a deed by ) .....  
♦ **Limited** ) Director  
acting by two directors or by a director and its ) .....  
secretary ) Director/Secretary

### OR

Executed as a deed by ) .....  
♦ **Limited/plc** ) .....  
acting by a director in the presence of ) Director

.....  
Signature of witness

Name .....

Address .....

.....

**Lender**

Signed by \_\_\_\_\_ )

as duly authorised attorney )

for and on behalf of )

**HSBC UK Bank plc**

.....

Authorised attorney



SIGNATURES TO THE DEBENTURE

Parent

Executed as a deed by

Newincco 1400 Limited

acting by two directors or by a director and its secretary

)

)

) Director

)

)

)

)

Chargors

Executed as a deed by

Newincco 1400 Limited

acting by two directors or by a director and its secretary

)

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) Director

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Executed as a deed by

Newincco 1399 Limited

acting by two directors or by a director and its secretary

)

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) Director

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Executed as a deed by

Direct Ferries Limited

acting by two directors or by a director and its secretary

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) Director

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Executed as a deed by

Direct Ferries (Group) Limited

acting by two directors or by a director and its secretary

)

)

) Director

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)

)

)

Executed as a deed by  
**Direct Ferries (Holdings) Limited**  
acting by two directors or by a director and its  
secretary

)  
)  
) .....  
) Director  
)  
) .....  
) Director/Secretary  
)

**Lender**

Signed by \_\_\_\_\_ )  
as duly authorised attorney )  
for and on behalf of )  
HSBC UK Bank plc )

Rick Bodhani

.....  
**Authorised attorney**