



**Registration of a Charge**

Company name: **STREAT MARKETS LTD**

Company number: **10200294**



X89FGW6I

Received for Electronic Filing: **10/07/2019**

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**Details of Charge**

Date of creation: **26/06/2019**

Charge code: **1020 0294 0001**

Persons entitled: **MR NATHEE NITHIVASIN  
MR SUPACHOL NITHIVASIN  
MR PICHIT NITHIVASIN  
MR PICHET NITHIVASIN**

Brief description:

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **PINSENT MASONS LLP**



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

Company number: 10200294

Charge code: 1020 0294 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th June 2019 and created by STREAT MARKETS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th July 2019 .

Given at Companies House, Cardiff on 11th July 2019

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

26 June

2019

MR NATHEE NITHIVASIN

MR SUPACHOL NITHIVASIN

MR PICHIT NITHIVASIN

MR PICHET NITHIVASIN

ARCADES GALORE HOLDINGS LTD

STREAT MARKETS LTD

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DEBENTURE

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SIMONS MUIRHEAD & BURTON LLP

87 – 91 Newman Street  
London  
W1T 3EY

THIS DEED is dated

26 June

2019

- 1 **ARCADES GALORE HOLDINGS LTD** incorporated and registered in England and Wales with company number 11904204 whose registered office is at Fifth Floor, 89 New Bond Street, London, W1S 1DA, United Kingdom (**Borrower**)
- 2 **STREAT MARKETS LTD** incorporated and registered in England and Wales with company number 10200294 whose registered office is at 46a Carnaby Street, Top Floor, London, England, W1F 9PS (**Guarantor**)
- 3 **MR NATHEE NITHIVASIN** of 7/27 Suwansawat Road, Tungmahamek, Sathorn, Bangkok 10120, **MR SUPACHOL NITHIVASIN** of 36 Atkrawee 1 Road, Klongton, Klong Toey, Bangkok 10110, **MR PICHIT NITHIVASIN** of 173 Phibhulsongkram Road, Suan Yai, Muang Nonthaburi, Nonthaburi 11000 and **MR PICHET NITHIVASIN** of 89/20-21 Wireless Road, Lumpini, Pathumwan, Bangkok 10330 (**Lender**)

## AGREED TERMS

### 1 DEFINITIONS

The following definitions in this Clause apply in this Deed:

**Accounts** means the accounts of the Borrower and/or the Guarantor with any bank, financial institution or other person and any account or accounts as the Lender may from time to time designate in writing.

**Business Day** means a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market.

**Charged Property** means all the assets of the Borrower and/or Guarantor which from time to time are the subject of the security created or expressed to be created in favour of the Lender by or pursuant to this Deed.

**EU Regulation** means the Council of the European Union Regulation 1346/2000/EC on insolvency proceedings.

**Enforcement Event** means:

- a) the date the Lender demands on or after becoming entitled to demand, repayment of any of the Secured Obligations;
- b) any material breach of a provision of this Deed which is not waived by the Lender or which, if capable of remedy, is not remedied with 10 Business Days following notice from the Lender to the Borrower; or
- c) a request from the Borrower and/or the Guarantor that the security becomes enforceable.

**Floating Charge Property** shall have the meaning given to that term in Clause 3.1.2.

**Insurance Policies** collectively means any policy of insurance and cover note in which the Borrower and/or the Guarantor may from time to time have an interest.

**Intellectual Property Rights** means all present and future patents, trademarks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered; the benefit of all applications and rights to use such assets; and all Related Rights.

**Investments** means any stocks, shares, debentures, bonds, warrants or other securities, whether held directly by or to the order of the Borrower and/or the Guarantor or by any trustee, fiduciary or clearance system on its behalf; and all Related Rights (including all rights against any trustee, fiduciary or clearance system).

**Investment Derivative Rights** means all dividends, interest or distributions and all other rights and benefits of an income nature accruing at any time in respect of any Investment.

**Loan Agreement** means the loan agreement between the Lender as lender and the Borrower as borrower (as amended from time to time) dated on or about the date of this Deed.

**Material Contracts** means any material contract entered into by the Borrower and/or the Guarantor that may from time to time be identified in writing by the Lender as a Material Contract and approved by the Borrower and/or the Guarantor; and all Related Rights.

**Permitted Huakee Transferee:** as defined in the articles of association of the Borrower.

**Permitted Security** means:

- (a) this Deed;
- (b) any other security in favour of the Lender;
- (c) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by the Borrower and/or the Guarantor;
- (d) any normal title retention arrangements included in a supplier's conditions of supply of goods acquired by the Borrower and/or the Guarantor in the ordinary course of trade; and
- (e) any netting or set-off arrangement entered into by the Borrower and/or the Guarantor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances.

**Real Property** means: (a) any freehold, leasehold or other immovable property; (b) any buildings, fixtures, fittings (including any trade fixtures and fittings), fixed plant or machinery at any time situated on or forming part of that property ("**Plant and Machinery**"); (c) any easements, servitudes, rights and agreements at any time relating to that property; (d) the benefit of any covenants for title given at any time in respect of that property and any monies paid or payable in respect of them; (e) any monies paid or payable at any time in respect of or in connection with that property including all rents and proceeds of sale; and (f) all rights under any lease, licence, contract, agreement for sale or agreement for lease in respect of that property or the Borrower's and/or the Guarantor's business carried on at any time at that property.

**Receivables** means all present and future book and other debts and monetary claims owing to the Borrower/and or the Guarantor and all Related Rights.

**Receiver** means a receiver, manager, administrator or administrative receiver appointed pursuant to the provisions of this Deed or any applicable law.

**Related Rights** means, in relation to any asset, the proceeds of sale of any part of that asset; all rights under any licence, agreement for sale or agreement for lease in respect of that asset; all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and any income, moneys and proceeds paid or payable in respect of that asset.

**Secured Obligations** means the obligations owing to the Lender by the Borrower under the Loan Agreement whether present or future, actual or contingent (and whether incurred by the Borrower alone or jointly, and whether as principal or surety or in some other capacity).

**Security Period** means the period beginning on the date of this Deed and ending on the date on which the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full.

## **2 SECURED OBLIGATIONS**

The Borrower covenants that it will on demand pay and discharge the Secured Obligations to the Lender as and when the same are due.

## **3 CHARGE**

3.1 The Borrower and the Guarantor with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 charge in favour of the Lender as continuing security for the payment and discharge of the Secured Obligations:

3.1.1 by way of first fixed charge:

- a) other than those validly and effectively assigned under Clause 3.3:
  - i all rights, interests and claims in the Insurance Policies;
  - ii all present and future Receivables;
  - iii all present and future Investments, all Investment Derivative Rights and where any Investment is held in a system for the deposit and settlement of transactions in investments, all rights against the operator of such system or any participant in respect of such Investment; and
  - iv all rights, interests and claims in the Material Contracts;
- b) all present and future Intellectual Property Rights;
- c) all of its rights in respect of any amount standing to the credit of any Accounts and the debt represented by those Accounts; and all Related Rights;
- d) the goodwill of the Borrower and/or the Guarantor;
- e) the uncalled capital of the Borrower and/or the Guarantor;

- f) the benefits of all agreements, licences, consents and authorisations held in connection with its business or the use of any Charged Property, and the right to any compensation in respect of any of them; and
  - g) all rights, interests and claims in any pension fund now or in the future; and
- 3.1.2 by way of first floating charge, the whole of its undertaking and assets, present and future other than any assets validly and effectively mortgaged, charged or assigned by way of security (whether at law or in equity) by this Deed, including, for the avoidance of doubt, any Real Property (the **Floating Charge Property**).
- 3.2 Paragraph 14 of Schedule B1 of the Insolvency Act 1986 shall apply to any floating charge created by this Deed and the floating charge created under this Deed is a "qualifying floating charge" for these purposes.
- 3.3 The Borrower and the Guarantor with full title guarantee assigns to the Lender absolutely, subject to a proviso for re-assignment on redemption to the Lender as continuing security for the payment and discharge of the Secured Obligations all of its rights, title, interest and benefit from time to time in and to the:
  - 3.3.1 Insurance Policies;
  - 3.3.2 Receivables;
  - 3.3.3 Investments; and
  - 3.3.4 Material Contracts.
- 3.4 To the extent that any right described in Clause 3.3 is not assignable or capable of assignment, the assignment purported to be effected by Clause 3.3 shall operate as an assignment of any damages, compensation, remuneration, profit, rent or income which the Borrower and/or the Guarantor may derive from that right or be entitled to in respect of that right.
- 4 To the extent that any of the Real Property is not chargeable without the prior consent of any third party, the Borrower and the Guarantor will use reasonable endeavours to procure such consent at the request of the Lender.
- 5 NEGATIVE PLEDGE**
- 5.1 The Borrower and the Guarantor shall not create or permit to subsist any security over any of the Charged Property other than Permitted Security.
- 6 CRYSTALLISATION OF FLOATING CHARGE**
- 6.1 The Lender may at any time after an Enforcement Event by notice in writing to the Borrower and/or the Guarantor immediately convert the floating charge created by Clause 3.1.2 into a fixed charge as regards any property or assets specified in the notice.
- 6.2 If, without the prior written consent of the Lender:
  - 6.2.1 any steps are taken for any of the Charged Property to become subject to any security in favour of any other person other than Permitted Security; or
  - 6.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property; or



- 6.2.3 a resolution is passed or an order is made for the winding-up, dissolution, or re-organisation of or any steps are taken for the appointment of a Receiver over all or any of the Floating Charge Property or an administrator in respect of the Borrower and/or the Guarantor,

the floating charge created under Clause 3.1.2 by the Borrower and the Guarantor will automatically be converted (without notice) with immediate effect into a fixed charge in respect of the relevant Floating Charge Property.

## **7 PERFECTION OF SECURITY**

- 7.1 Immediately following the execution of this Deed, the Borrower and the Guarantor shall hold to the order of the Lender:

7.1.1 all deeds and documents of title relating to the Charged Property; and

7.1.2 all Insurance Policies to which the Borrower and/or the Guarantor are entitled to possession.

- 7.2 In respect of any Real Property or part of or interest in any Real Property title to which is registered at the Land Registry (or any unregistered land subject to first registration) and which is charged pursuant to this Deed, the Borrower and/or the Guarantor shall apply or consent to an application being made to the Chief Land Registrar to enter the following restriction on the Register of Title for such Real Property:

*"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of Mr Nathee Nithivasin, Mr Supachol Nithivasin, Mr Pichit Nithivasin and Mr Pichet Nithivasin referred to in the charges register."*

- 7.3 Any obligation on the part of the Lender to make further advances to the Borrower and/or the Guarantor is deemed to be incorporated in this Deed and the Borrower and/or the Guarantor shall apply to the Chief Land Registrar confirming that there is an obligation to make further advances on the security of this Deed and applying for a note to be entered to that effect in the Register of Title of any Real Property the title to which is registered at the Land Registry.

## **8 GUARANTEE AND INDEMNITY**

- 8.1 The Guarantor irrevocably and unconditionally:

8.1.1 guarantees to the Lender punctual performance by the Borrower of all the Borrower's obligations under the Finance Documents;

8.1.2 undertakes with the Lender whenever the Borrower does not pay any amount when due under or in connection with the Finance Documents, the Borrower shall immediately on demand pay that amount as if it was the principal debtor within the grace periods set out in such Finance Documents; and

8.1.3 agrees with the Lender that if for any reason, any amount claimed by the Lender under this Clause 8 (*Guarantee and Indemnity*) is not recoverable on the basis of a guarantee, it will be liable as a principal debtor to indemnify the Lender against any cost, loss or liability it incurs as a result of the Borrower not paying any amount expressed to be payable by it under any Finance Documents on the date when it is expressed to be due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would

have had to pay under this Clause 8 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

## **8.2 Continuing Guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

## **8.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or any Security for those obligations or otherwise) is made by the Lender in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause 8 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

## **8.4 Intent**

Without prejudice to the generality of Clause 8.5 (*Waiver of Defences*), the Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents.

## **8.5 Waiver of defences**

The obligations of the Guarantor under this Clause 8 will not be affected by an act, omission, matter or thing which, but for this Clause 8, would reduce, release or prejudice any of its obligations under this Clause 8 (without limitation and whether or not known to it or the Lender) including:

- 8.5.1 any time, waiver or consent granted to, or composition with, the Borrower or other person;
- 8.5.2 the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of the Borrower;
- 8.5.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 8.5.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- 8.5.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of, or any increase in, any facility or the addition of any new facility under any Finance Document or other document or security;
- 8.5.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

8.5.7 any insolvency or similar proceedings.

## **8.6 Appropriations**

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

8.6.1 refrain from applying or enforcing any other moneys, Security or rights held or received by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

8.6.2 hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause 8 (*Guarantee and Indemnity*).

## **8.7 Deferral of Guarantor's rights**

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 8 (*Guarantee and Indemnity*):

8.7.1 to be indemnified by the Borrower;

8.7.2 to claim any contribution from any other guarantor of the Borrower's obligations under the Finance Documents;

8.7.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;

8.7.4 to bring legal or other proceedings for an order requiring the Borrower to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 8.1 (*Guarantee and Indemnity*);

8.7.5 to exercise any right of set-off against the Borrower; and/or

8.7.6 to claim or prove as a creditor of the Borrower in competition with the Lender.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by the Borrower under or in connection with the Finance Documents to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender in accordance with the Finance Documents.

## **8.8 Additional security**

The Deed contained in this Clause 8 is in addition to and is not in any way prejudiced by any other guarantee or Security now or subsequently held by or on behalf of the Security Trustee or any other beneficiary.

## **9 FURTHER ASSURANCE**

- 9.1 The Borrower and the Guarantor shall, at its own expense, if requested by the Lender, execute all such documents and do all acts that the Lender may reasonably require for:

- 9.1.1 recording the interest of the Lender;
- 9.1.2 creating, perfecting or protecting the security intended to be created by this Deed;
- 9.1.3 facilitating the realisation of any of the Charged Property; or
- 9.1.4 facilitating the exercise of any right, power or discretion exercisable by the Lender or any Receiver (or any delegates or sub-delegates) in respect of any of the Charged Property,

including the execution of any security or other document (provided the terms of such document are consistent with the terms of this Deed), the giving of any notice, order or direction and the making of any registration which the Lender may think expedient.

## **10 REPRESENTATIONS**

The Borrower and the Guarantor each represents and warrants to the Lender, on each date during the Security Period by reference to the facts and circumstances then existing that, as far as the Company is aware, there has been no change since the date of this Deed that would make the statements in clauses 10.1 to 10.11 (inclusive) untrue in relation to the Company. For the avoidance of doubt, the representations and warranties in clauses 10.1 to 10.11 (inclusive) are subject to matters of which the Lender (or any of its respective agents or advisors) has actual knowledge or which could have been discovered (whether by investigation made by the Lender or on its behalf) prior to the date hereof.

- 10.1 it is a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation;
- 10.2 it has the power to own its assets and carry on its business as it is being conducted;
- 10.3 the entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the security created by this Deed do not and will not conflict with: any law or regulation applicable to it; its constitutional documents; or any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;
- 10.4 the Charged Property is legally and beneficially owned by the Borrower and/or the Guarantor free of any security other than security created by or expressly permitted by this Deed;
- 10.5 this Deed creates the security which it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Borrower and/or the Guarantor or otherwise;
- 10.6 this Deed is its legal, valid and binding obligation and, subject to the general principles of law limiting its obligations, is enforceable in accordance with its terms;
- 10.7 it has the power to enter into, perform and deliver and has taken all necessary action to authorise its entry into, performance and delivery of this Deed and the transactions contemplated by this Deed;

- 10.8 all authorisations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed and to make this Deed admissible in evidence in its jurisdiction of incorporation have been obtained or effected and are in full force and effect;
- 10.9 it has a good and marketable title to the Charged Property and it is the legal and beneficial owner of the Real Property free from any security (other than that created or permitted by this Deed) or onerous covenants;
- 10.10 no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of the Charged Property; and
- 10.11 for the purposes of the EU Regulation, its centre of main interests (as that expression is used in Article 3(1) of the EU Regulation, is situated in England and Wales and it has no other "establishment" (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

## **11 BORROWER'S AND GUARANTOR'S OBLIGATIONS**

- 11.1 The obligations of the Borrower and the Guarantor under this Deed shall not be discharged, impaired or otherwise affected by:
  - 11.1.1 any winding-up, dissolution, administration or re-organisation of or other change in the Borrower and/or the Guarantor or any other company, corporation, partnership or other person;
  - 11.1.2 any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;
  - 11.1.3 any time or other indulgence being granted to the Borrower and/or the Guarantor, or any other company, corporation, partnership or other person;
  - 11.1.4 any amendment, variation, waiver or release of any of the Secured Obligations;
  - 11.1.5 any failure to take or failure to release the value of any other collateral in respect of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or
  - 11.1.6 any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect the obligations of the Borrower and/or the Guarantor under the Loan Agreement or this Deed.

## **12 ENFORCEMENT OF SECURITY**

- 12.1 The security created under this Deed shall become immediately enforceable on the occurrence of an Enforcement Event.
- 12.2 At any time after the security created under this Deed becomes enforceable, the Lender may, without notice to the Borrower and/or the Guarantor and whether or not it has appointed a Receiver, exercise:
  - 12.2.1 all or any of the powers, authorities and discretions conferred on mortgagees by the Law of Property Act 1925 (as varied or extended by this Deed);

12.2.2 all of the powers conferred on the holder of a qualifying floating charge (as defined in the Insolvency Act 1986) by the Insolvency Act 1986; and

12.2.3 all or any of the powers conferred by this Deed.

- 12.3 Neither the Lender nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any neglect, default or omission for which a mortgagee in possession might otherwise be liable.

### **13 POWERS OF THE LENDER**

- 13.1 The power of sale conferred on the Lender and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Deed.
- 13.2 Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed.
- 13.3 At any time after the security created under this Deed becomes enforceable, the Lender may lease or make arrangements to lease, at a premium or otherwise, and accept surrenders of leases without any restriction and in particular without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.
- 13.4 Any liberty or power which may be exercised or any determination which may be made hereunder by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.
- 13.5 Each of the Lender and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Lender or the Receiver itself or any subsequent delegation or revocation thereof.
- 13.6 At any time after this Deed has become enforceable, the Lender may initiate an investigation of, and/or instruct any report (accounting, legal, valuation or other) on the business and affairs of the Borrower and/or the Guarantor which it considers necessary to ascertain the financial position of the Borrower and/or the Guarantor. All fees and expenses incurred by the Lender in connection with such investigations shall be payable by the Borrower and/or the Guarantor and each of the Borrower and the Guarantor consents to the provision by the Lender of all information in relation to the Borrower and/or the Guarantor which the Lender provides to any person in relation to the preparation of any such report.
- 13.7 To the extent that all or any part of the Charged Property constitutes "financial collateral", and this Deed and the obligations of the Borrower and/or the Guarantor hereunder constitute a "security financial collateral arrangement" (in each case as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226)), the Lender and any Receiver shall have the right, at any time after the security created under this Deed becomes enforceable, to appropriate all or any of the Charged Property in or towards the payment and/or discharge of the Secured Obligations in such order as the Lender or any Receiver in its absolute discretion may from time to time determine. The value of all or any part of the Charged Property appropriated in accordance with this Clause 13.7 shall be the price of the Charged Property (or any part of it) at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Lender or any Receiver may reasonably select.

Each of the Borrower and the Guarantor agrees that the methods of valuation provided for in this Clause 13.7 are commercially reasonable.

- 13.8 No purchaser, mortgagee or other person dealing with the Lender or any Receiver shall be concerned:

13.8.1 to enquire whether any of the Secured Liabilities have become due or payable or remain unpaid or undischarged, or whether the power the Lender or a Receiver is purporting to exercise has become exercisable; or

13.8.2 to see to the application of any money paid to the Lender or any Receiver.

#### **14 APPOINTMENT OF RECEIVER**

- 14.1 At any time after this Deed has become enforceable, or if requested to do so by the Borrower and/or the Guarantor, the Lender may:

14.1.1 appoint one or more persons jointly or severally to be a Receiver of the whole or any part of the Charged Property;

14.1.2 remove (so far as it is lawfully able) any Receiver so appointed; and

14.1.3 appoint another person(s) as an additional or replacement Receiver.

Where more than one person is appointed Receiver, they will have power to act separately (unless the appointment by the Lender specifies to the contrary).

- 14.2 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 Law of Property Act 1925) does not apply to this Deed.

- 14.3 Each Receiver shall be an agent of the Borrower and/or the Guarantor. The Borrower and/or the Guarantor shall be solely responsible for the Receiver's contracts, engagements, acts, omissions, defaults, losses and liabilities and for the payment of the Receiver's remuneration and such remuneration shall be a debt secured by this Deed.

#### **15 POWERS OF RECEIVER**

- 15.1 Every Receiver shall have all the powers:

15.1.1 conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and receivers appointed under that Act;

15.1.2 set out in Schedule 1 to the Insolvency Act 1986 and, in the case of an administrator, Schedule B1 to the Insolvency Act 1986; and

15.1.3 conferred from time to time on receivers by statute.

- 15.2 In addition to the powers referred to in Clause 15.1, a Receiver shall have the power, at the cost of the Borrower and/or the Guarantor and either in his own name or in the name of the Borrower and/or the Guarantor or (with the written approval of the Lender) in the name of the Lender:

15.2.1 to take possession of, collect and get in all or any part of the Charged Property;

15.2.2 to carry on, manage or concur in carrying on and managing all or any part of the business of the Borrower and/or the Guarantor in any manner he thinks fit;

- 15.2.3 to borrow or raise money and secure the payment of any money in priority to the charges created by this Deed for the purpose of exercising his powers and/or defraying any costs or expenses incurred by him in such exercise;
- 15.2.4 to sell, let, lease or concur in selling, letting or leasing and to vary the terms or determine, surrender and to accept surrenders of leases or tenancies of or grant options or licences over all or any part of the Charged Property in any manner and on such terms as he thinks fit. The consideration for any such transaction may consist of cash or of shares or securities or other obligations (and the amount of such consideration may be dependent on profit or turnover or be determined by a third party) and may be payable in a lump sum or in instalments;
- 15.2.5 to sever any fixtures (including trade and tenants' fixtures) from the property of which they form part, without the consent of the Borrower and/or the Guarantor;
- 15.2.6 to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Property, including, without limitation, all voting and other rights attaching to the Investments;
- 15.2.7 to make and effect all repairs, renewals, improvements, and insurances, commence and/or complete any building operation and/or apply for and maintain any planning permission, building regulation approval or other authorisation in each case as he thinks fit;
- 15.2.8 to redeem any prior security in respect of all or any of the Charged Property and to settle and pass the accounts of the holder of such prior security and any accounts so settled and passed will, in the absence of manifest error, be conclusive and binding on the Borrower and/or the Guarantor. All moneys paid to the holder of such security in accordance with such accounts shall form part of the Secured Obligations;
- 15.2.9 to take such proceedings and to settle, adjust, refer to arbitration, compromise and/or arrange any claim, account or demand which the Lender or the Receiver may think fit;
- 15.2.10 to appoint managers, officers, agents, accountants and workmen at such salaries and for such periods as the Receiver may determine and to discharge any person appointed by the Borrower and/or the Guarantor;
- 15.2.11 to exercise in relation to all or any part of the Charged Property all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Charged Property;
- 15.2.12 to lend money or advance credit to any customer of the Borrower and/or the Guarantor;
- 15.2.13 to give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Charged Property; and
- 15.2.14 to do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise expedient for or incidental or conducive to the preservation, improvement or realisation of the Charged Property.



## **16 APPLICATION OF MONEYS**

- 16.1 All moneys received or recovered by the Lender or any Receiver pursuant to this Deed shall be applied in the following order:
- 16.1.1 first, in satisfaction of, or provision for, all costs, charges and expenses incurred by the Lender or any Receiver and the payment of the remuneration of any Receiver;
  - 16.1.2 second, in or towards satisfaction of the Secured Obligations; and
  - 16.1.3 in payment of the surplus (if any) to the Borrower and/or the Guarantor or other person entitled to it.
- 16.2 If the Lender reasonably considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Borrower and/or the Guarantor under this Deed and the security created under this Deed shall continue and such amount shall not be considered to have been irrevocably paid.
- 16.3 Neither the Lender nor any Receiver shall be bound (whether by virtue of section 109(8) of the Law of Property Act 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order as between any of the Secured Obligations.

## **17 APPOINTMENT OF AN ADMINISTRATOR**

- 17.1 The Lender may without notice to the Borrower and/or the Guarantor appoint any one or more persons to be an administrator of the Borrower and/or the Guarantor pursuant to paragraph 14 Schedule B1 of the Insolvency Act 1986 if this Deed becomes enforceable.
- 17.2 Any appointment under this Clause 17 shall:
- 17.2.1 be in writing signed by a duly authorised signatory of the Lender, and
  - 17.2.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986, when the requirements of paragraph 18 of that Schedule B1 are satisfied.
- 17.3 The Lender may (subject to any necessary approval from the court) end the appointment of an administrator by notice in writing in accordance with this Clause 17 and appoint under this Clause 17 a replacement for any administrator whose appointment ends for any reason.

## **18 POWER OF ATTORNEY**

- 18.1 By way of security, each of the Borrower and the Guarantor irrevocably appoints the Lender, each person to whom the Lender shall from time to time have delegated the exercise of the power of attorney conferred by this Clause 18.1 and any Receiver jointly and severally to be its attorney and in its name and on its behalf to execute, deliver and perfect all documents and to do all things which the attorney may consider to be required or desirable for: carrying out any obligation imposed on the Borrower and/or the Guarantor by this Deed (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property); and enabling the Lender and any Receiver to exercise any of the powers conferred on them by or pursuant to this Deed or by law.

- 18.2 Each of the Borrower and the Guarantor ratifies and confirms to agree to ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## **19 PRESERVATION OF SECURITY**

- 19.1 The security created under this Deed will be a continuing security for the ultimate balance of the Secured Obligations notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations.
- 19.2 The obligations of the Borrower and the Guarantor under this Deed will not be affected by any act, omission or thing which, but for this provision would reduce, release or prejudice any of its obligations under this Deed (whether or not known to it or the Lender). This includes:
- 19.2.1 any time or waiver granted to, or composition with, any person;
  - 19.2.2 any release of any person under the terms of any composition or arrangement;
  - 19.2.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, any person;
  - 19.2.4 any non-presentation, non-observance of any formality or other requirements in respect of any instrument or any failure to realise the full value of any security;
  - 19.2.5 any incapacity, lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
  - 19.2.6 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any document or security;
  - 19.2.7 any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any document or security or the failure by any person to enter into or be bound by any document or security; or
  - 19.2.8 any insolvency or similar proceedings.
- 19.3 Each of the Borrower and the Guarantor waives any rights it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any other person before claiming from the Borrower and/or the Guarantor under this Deed.
- 19.4 Until all amounts which may be or become payable by the Borrower to the Lender have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may without affecting the liability of the Borrower and/or the Guarantor under this Deed:
- 19.4.1 refrain from applying or enforcing any other monies, security or rights held or received by the Lender (or any trustee or agent on its behalf) against those accounts; or apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and

19.4.2 hold in an interest-bearing suspense account any moneys received from the Borrower and/or the Guarantor or on account of the Borrower's and/or the Guarantor's liability under this Deed.

19.5 This Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Lender.

19.6 No prior security held by the Lender (in its capacity as such or otherwise) over any Charged Property will merge into the security created under this Deed.

## **20 SET-OFF**

In addition to any general lien or similar rights to which it may be entitled by operation of law, the Lender may at any time and without notice to the Borrower and/or the Guarantor combine or consolidate all or any of the Borrower and/or the Guarantor's then existing accounts with any liabilities to the Lender and set off or transfer any sum or sums standing to the credit of any one of more of such accounts in or towards satisfaction of the Secured Obligations.

## **21 NEW ACCOUNTS**

21.1 If the Lender at any time receives or is deemed to have received notice of any subsequent security affecting all or any part of the Charged Property it may open a new account or accounts with the Borrower and/or the Guarantor.

21.2 If the Lender does not open a new account or accounts it shall nevertheless be treated as if it had done so as at the time when it received or was deemed to have received such notice.

21.3 As from such time all payments made to the Lender shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount of the Secured Obligations.

## **22 EXPENSES AND INDEMNITY**

22.1 The Borrower and/or the Guarantor shall, from time to time on demand of the Lender, pay or reimburse the Lender and any Receiver on a full indemnity basis for all costs and expenses (including legal fees) together with any VAT or similar taxes thereon incurred by it in connection with the perfection, preservation, enforcement and/or discharge of this Deed. Such costs and expenses shall form part of the Secured Obligations and shall carry interest from the date of such demand until so paid or reimbursed at the rate determined by the Lender.

22.2 The Borrower and/or the Guarantor shall, notwithstanding any release or discharge of all or any part of the security created under this Deed, indemnify the Lender, its agents, attorneys and any Receiver against any action, proceeding, claim, loss, liability and cost which it may sustain: in the exercise (or purported exercise) of any of the rights, powers or discretions vested in them by this Deed (or by law); and/or in connection with or otherwise relating to this Deed or the Charged Property.

## **23 RELEASE**

23.1 On the expiry of the Security Period all the right, title and interest in the Charged Property shall be automatically, unconditionally and irrevocably released and re-assigned to the Company from the security constituted by this Deed.

- 23.2 The Lender shall promptly at the request of the Borrower and/or the Guarantor take whatever action that may be reasonably required to give effect to clause 23.1.

## **24 CONFLICT**

If there is an inconsistency between the terms of this Deed and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall prevail.

## **25 MISCELLANEOUS**

- 25.1 None of the Lender, its delegate(s) nominee(s) or any Receiver shall be liable for any loss by reason of (a) taking any action permitted by this Deed or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in the case of gross negligence or wilful default upon its part.
- 25.2 The Lender will not be required in any manner to perform or fulfil any obligation of the Borrower and/or the Guarantor, make any payment, make any enquiry as to the nature or sufficiency of any payment received by it or present or file any claim or take any action to collect or enforce the payment of any amount.
- 25.3 The Lender shall not be liable either to the Borrower and/or the Guarantor or to any other person by reason of the appointment of a Receiver or for any other reason.
- 25.4 Neither the Lender nor the Receiver will be in any way liable or responsible to the Borrower and/or the Guarantor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.
- 25.5 The Lender may not assign and transfer all or any of its rights and obligations under this Deed without the prior written consent of the Borrower and the Guarantor, save that the Lender may assign any of its rights or transfer any of its rights under this Deed to a Permitted Huakee Transferee without the consent of the other party.
- 25.6 Neither the Borrower nor the Guarantor may assign any of its rights or transfer any of its obligations under this Deed or enter into any transaction, which would result in any of those rights or obligations passing to another person.
- 25.7 At any time after the security created under this Deed becomes enforceable, the Lender may (but shall not be obliged to) deliver a notice to any bank, financial institution or other person at which the Borrower and/or the Guarantor holds an Account notifying such bank, financial institution or other person that the Borrower and/or the Guarantor is prohibited from withdrawing all or any monies from time to time standing to the credit of such Account, unless the prior written consent of the Lender is obtained to any such withdrawal.
- 25.8 A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower and/or the Guarantor shall (in the absence of any manifest error) be conclusive evidence of the amount due.
- 25.9 The rights and powers of the Lender conferred by this Deed are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and powers under the general law.
- 25.10 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be

valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.

- 25.11 Any waiver or variation of any right by the Lender (whether arising under this Deed or under the general law) shall only be effective if it is in writing and signed by the Lender and applies only in the circumstances for which it was given and shall not prevent the Lender from subsequently relying on the relevant provision.
- 25.12 No act or course of conduct or negotiation by or on behalf of the Lender shall in any way preclude the Lender from exercising any right or power under this Deed or constitute a suspension or variation of any such right or power.
- 25.13 No delay or failure to exercise any right or power under this Deed shall operate as a waiver.
- 25.14 No single or partial exercise of any right under this Deed shall prevent any other or further exercise of that or any other such right.

## **26 INTERPRETATION**

### **26.1 In this Deed:**

- 26.1.1 save where expressly defined in this Deed, the definitions and rules of interpretation set out in clause 1 of the Loan Agreement apply in this Deed;
- 26.1.2 clause headings are for convenience of reference only and shall not affect the construction of this Deed;
- 26.1.3 references to "**Clauses**" are references to the clauses of this Deed unless specified otherwise;
- 26.1.4 references to this Deed or any other agreement or instrument shall be construed as references to this Deed, that agreement or instrument as amended, novated, supplemented, extended or restated;
- 26.1.5 references to a person shall be construed to include that person's permitted assigns, permitted transferees or successors in title and shall be construed as including any individual, firm, trust, partnership, joint venture, company, corporation, unincorporated body of persons or any state or agency thereof, whether or not having separate legal personality;
- 26.1.6 references to a provision of law are references to that provision as amended or re-enacted;
- 26.1.7 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 26.1.8 the words "**including**" shall not be construed as limiting the generality of the words preceding it;
- 26.1.9 "**clearance system**" means a person whose business is or includes the provision of clearance services or security accounts or any nominee or depositary for that person; and
- 26.1.10 unless the context otherwise requires, any reference to "**Charged Property**" includes any part of that Charged Property, any proceeds of that Charged Property and any present and future assets of that type.

- 26.2 It is intended that this document takes effect as a deed notwithstanding the fact that a party to it may only execute it under hand.
- 26.3 The terms of the Loan Agreement are incorporated in this Deed to the extent required to ensure that any disposition of Property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 26.4 Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed. Notwithstanding any term of the Deed, no consent of any party who is not a party to this Deed is required to rescind or vary this deed at any time.
- 26.5 If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **27 NOTICES**

Any communication to be made under or in connection with this Deed must be made in writing and, unless otherwise stated, may be made by e-mail or letter.

## **28 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.

## **29 JOINT AND SEVERAL LIABILITY**

When this Deed is executed by more than one party the liability of each of them hereunder to the Lender shall be joint and several and every agreement and undertaking on their part shall take effect accordingly.

## **30 GOVERNING LAW**

This Deed and any non-contractual obligation arising in connection with it are governed by English law.

## **31 JURISDICTION**

- 31.1 The courts of England have exclusive jurisdiction to settle any disputes (**Dispute**) arising out of, or connected with this Deed (including a Dispute regarding the existence, validity or termination of this Deed) or any non-contractual obligation arising out of or in connection with it.
- 31.2 The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly, no party to this Deed will argue to the contrary.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a Deed by )  
**ARCADES GALORE HOLDINGS LTD** ) .....  
acting by a director in the presence of: ) Director  
 ) Print name: .....

Signature of witness .....  
Print name (in BLOCK .....  
CAPITALS): .....  
Address: .....  
.....  
.....  
.....  
Occupation: .....

EXECUTED as a Deed by )  
**STREAT MARKETS LTD** ) .....  
acting by a director in the presence of: ) Director  
 ) Print name: .....

Signature of witness .....  
Print name (in BLOCK .....  
CAPITALS): .....  
Address: .....  
.....  
.....  
.....  
Occupation: .....

EXECUTED as a Deed by

MR PICHET NITHIVASIN for and on  
behalf of

)   
) .....  
) MR PICHET NITHIVASIN

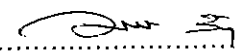
MR NATHEE NITHIVASIN

pursuant to a deed of attorney dated  
19 June 2019 in the presence of:

Signature of witness

Print name (in BLOCK  
CAPITALS):

Address:


  
.....  
MAYAPORN SATJARIYAKUL  
.....  
99/245 Kallapaprueh Rd.,  
Bangkhue, Bangkok 10160  
THAILAND  
.....

Occupation:

Secretary  
.....

EXECUTED as a Deed by

MR PICHET NITHIVASIN for and on  
behalf of

)   
) .....  
) MR PICHET NITHIVASIN

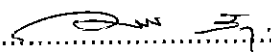
MR SUPACHOL NITHIVASIN

pursuant to a deed of attorney dated  
19 June 2019 in the presence of:

Signature of witness

Print name (in BLOCK  
CAPITALS):

Address:

  
.....  
MAYAPORN SATJARIYAKUL  
.....  
99/245 Kallapaprueh Rd.,  
Bangkhue, Bangkok 10160  
THAILAND  
.....

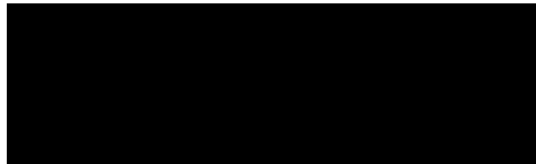
Occupation:

Secretary  
.....



EXECUTED as a Deed by  
MR PICHET NITHIVASIN for and on  
behalf of

)  
)  
)



MR PICHET NITHIVASIN

MR PICHIT NITHIVASIN

pursuant to a deed of attorney dated  
19 June 2019 in the presence of:

Signature of witness

Print name (in BLOCK  
CAPITALS):

Address:

.....  
.....

..... MAYAPORN SATJARIYAKUL .....

.....  
.....  
.....

Occupation:

..... Secretary .....

EXECUTED as a Deed by  
MR PICHET NITHIVASIN  
in the presence of:

)  
)  
)



PICHET NITHIVASIN

Signature of witness

Print name (in BLOCK  
CAPITALS):

Address:

.....  
.....

..... MAYAPORN SATJARIYAKUL .....

.....  
.....  
.....

Occupation:

..... Secretary .....

DATED

26 JUNE

2019

**MR NATHEE NITHIVASIN**

**MR SUPACHOL NITHIVASIN**

**MR PICHIT NITHIVASIN**

**MR PICHET NITHIVASIN**

**ARCADES GALORE HOLDINGS LTD**

**STREAT MARKETS LTD**

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**DEBENTURE**

---

**SIMONS MUIRHEAD & BURTON LLP**

87 – 91 Newman Street  
London  
W1T 3EY

THIS DEED is dated

26 JUNE

2019

- 1 **ARCADES GALORE HOLDINGS LTD** incorporated and registered in England and Wales with company number 11904204 whose registered office is at Fifth Floor, 89 New Bond Street, London, W1S 1DA, United Kingdom (**Borrower**)
- 2 **STREAT MARKETS LTD** incorporated and registered in England and Wales with company number 10200294 whose registered office is at 46a Carnaby Street, Top Floor, London, England, W1F 9PS (**Guarantor**)
- 3 **MR NATHEE NITHIVASIN** of 7/27 Suwansawat Road, Tungmahamek, Sathorn, Bangkok 10120, **MR SUPACHOL NITHIVASIN** of 36 Atkrawee 1 Road, Klongton, Klong Toey, Bangkok 10110, **MR PICHIT NITHIVASIN** of 173 Phibhulsongkram Road, Suan Yai, Muang Nonthaburi, Nonthaburi 11000 and **MR PICHET NITHIVASIN** of 89/20-21 Wireless Road, Lumpini, Pathumwan, Bangkok 10330 (**Lender**)

## AGREED TERMS

### 1 DEFINITIONS

The following definitions in this Clause apply in this Deed:

**Accounts** means the accounts of the Borrower and/or the Guarantor with any bank, financial institution or other person and any account or accounts as the Lender may from time to time designate in writing.

**Business Day** means a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market.

**Charged Property** means all the assets of the Borrower and/or Guarantor which from time to time are the subject of the security created or expressed to be created in favour of the Lender by or pursuant to this Deed.

**EU Regulation** means the Council of the European Union Regulation 1346/2000/EC on insolvency proceedings.

**Enforcement Event** means:

- a) the date the Lender demands on or after becoming entitled to demand, repayment of any of the Secured Obligations;
- b) any material breach of a provision of this Deed which is not waived by the Lender or which, if capable of remedy, is not remedied with 10 Business Days following notice from the Lender to the Borrower; or
- c) a request from the Borrower and/or the Guarantor that the security becomes enforceable.

**Floating Charge Property** shall have the meaning given to that term in Clause 3.1.2.

**Insurance Policies** collectively means any policy of insurance and cover note in which the Borrower and/or the Guarantor may from time to time have an interest.

**Intellectual Property Rights** means all present and future patents, trademarks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered; the benefit of all applications and rights to use such assets; and all Related Rights.

**Investments** means any stocks, shares, debentures, bonds, warrants or other securities, whether held directly by or to the order of the Borrower and/or the Guarantor or by any trustee, fiduciary or clearance system on its behalf; and all Related Rights (including all rights against any trustee, fiduciary or clearance system).

**Investment Derivative Rights** means all dividends, interest or distributions and all other rights and benefits of an income nature accruing at any time in respect of any Investment.

**Loan Agreement** means the loan agreement between the Lender as lender and the Borrower as borrower (as amended from time to time) dated on or about the date of this Deed.

**Material Contracts** means any material contract entered into by the Borrower and/or the Guarantor that may from time to time be identified in writing by the Lender as a Material Contract and approved by the Borrower and/or the Guarantor; and all Related Rights.

**Permitted Huakee Transferee:** as defined in the articles of association of the Borrower.

**Permitted Security** means:

- (a) this Deed;
- (b) any other security in favour of the Lender;
- (c) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by the Borrower and/or the Guarantor;
- (d) any normal title retention arrangements included in a supplier's conditions of supply of goods acquired by the Borrower and/or the Guarantor in the ordinary course of trade; and
- (e) any netting or set-off arrangement entered into by the Borrower and/or the Guarantor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances.

**Real Property** means: (a) any freehold, leasehold or other immovable property; (b) any buildings, fixtures, fittings (including any trade fixtures and fittings), fixed plant or machinery at any time situated on or forming part of that property ("**Plant and Machinery**"); (c) any easements, servitudes, rights and agreements at any time relating to that property; (d) the benefit of any covenants for title given at any time in respect of that property and any monies paid or payable in respect of them; (e) any monies paid or payable at any time in respect of or in connection with that property including all rents and proceeds of sale; and (f) all rights under any lease, licence, contract, agreement for sale or agreement for lease in respect of that property or the Borrower's and/or the Guarantor's business carried on at any time at that property.

**Receivables** means all present and future book and other debts and monetary claims owing to the Borrower/and or the Guarantor and all Related Rights.

**Receiver** means a receiver, manager, administrator or administrative receiver appointed pursuant to the provisions of this Deed or any applicable law.

**Related Rights** means, in relation to any asset, the proceeds of sale of any part of that asset; all rights under any licence, agreement for sale or agreement for lease in respect of that asset; all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and any income, moneys and proceeds paid or payable in respect of that asset.

**Secured Obligations** means the obligations owing to the Lender by the Borrower under the Loan Agreement whether present or future, actual or contingent (and whether incurred by the Borrower alone or jointly, and whether as principal or surety or in some other capacity).

**Security Period** means the period beginning on the date of this Deed and ending on the date on which the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full.

## **2 SECURED OBLIGATIONS**

The Borrower covenants that it will on demand pay and discharge the Secured Obligations to the Lender as and when the same are due.

## **3 CHARGE**

3.1 The Borrower and the Guarantor with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 charge in favour of the Lender as continuing security for the payment and discharge of the Secured Obligations:

3.1.1 by way of first fixed charge:

- a) other than those validly and effectively assigned under Clause 3.3:
  - i all rights, interests and claims in the Insurance Policies;
  - ii all present and future Receivables;
  - iii all present and future Investments, all Investment Derivative Rights and where any Investment is held in a system for the deposit and settlement of transactions in investments, all rights against the operator of such system or any participant in respect of such Investment; and
  - iv all rights, interests and claims in the Material Contracts;
- b) all present and future Intellectual Property Rights;
- c) all of its rights in respect of any amount standing to the credit of any Accounts and the debt represented by those Accounts; and all Related Rights;
- d) the goodwill of the Borrower and/or the Guarantor;
- e) the uncalled capital of the Borrower and/or the Guarantor;

- f) the benefits of all agreements, licences, consents and authorisations held in connection with its business or the use of any Charged Property, and the right to any compensation in respect of any of them; and
  - g) all rights, interests and claims in any pension fund now or in the future; and
- 3.1.2 by way of first floating charge, the whole of its undertaking and assets, present and future other than any assets validly and effectively mortgaged, charged or assigned by way of security (whether at law or in equity) by this Deed, including, for the avoidance of doubt, any Real Property (the **Floating Charge Property**).
- 3.2 Paragraph 14 of Schedule B1 of the Insolvency Act 1986 shall apply to any floating charge created by this Deed and the floating charge created under this Deed is a "qualifying floating charge" for these purposes.
- 3.3 The Borrower and the Guarantor with full title guarantee assigns to the Lender absolutely, subject to a proviso for re-assignment on redemption to the Lender as continuing security for the payment and discharge of the Secured Obligations all of its rights, title, interest and benefit from time to time in and to the:
  - 3.3.1 Insurance Policies;
  - 3.3.2 Receivables;
  - 3.3.3 Investments; and
  - 3.3.4 Material Contracts.
- 3.4 To the extent that any right described in Clause 3.3 is not assignable or capable of assignment, the assignment purported to be effected by Clause 3.3 shall operate as an assignment of any damages, compensation, remuneration, profit, rent or income which the Borrower and/or the Guarantor may derive from that right or be entitled to in respect of that right.
- 4 To the extent that any of the Real Property is not chargeable without the prior consent of any third party, the Borrower and the Guarantor will use reasonable endeavours to procure such consent at the request of the Lender.
- 5 NEGATIVE PLEDGE**
- 5.1 The Borrower and the Guarantor shall not create or permit to subsist any security over any of the Charged Property other than Permitted Security.
- 6 CRYSTALLISATION OF FLOATING CHARGE**
- 6.1 The Lender may at any time after an Enforcement Event by notice in writing to the Borrower and/or the Guarantor immediately convert the floating charge created by Clause 3.1.2 into a fixed charge as regards any property or assets specified in the notice.
- 6.2 If, without the prior written consent of the Lender:
  - 6.2.1 any steps are taken for any of the Charged Property to become subject to any security in favour of any other person other than Permitted Security; or
  - 6.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property; or

- 6.2.3 a resolution is passed or an order is made for the winding-up, dissolution, or re-organisation of or any steps are taken for the appointment of a Receiver over all or any of the Floating Charge Property or an administrator in respect of the Borrower and/or the Guarantor,

the floating charge created under Clause 3.1.2 by the Borrower and the Guarantor will automatically be converted (without notice) with immediate effect into a fixed charge in respect of the relevant Floating Charge Property.

## **7 PERFECTION OF SECURITY**

- 7.1 Immediately following the execution of this Deed, the Borrower and the Guarantor shall hold to the order of the Lender:

7.1.1 all deeds and documents of title relating to the Charged Property; and

7.1.2 all Insurance Policies to which the Borrower and/or the Guarantor are entitled to possession.

- 7.2 In respect of any Real Property or part of or interest in any Real Property title to which is registered at the Land Registry (or any unregistered land subject to first registration) and which is charged pursuant to this Deed, the Borrower and/or the Guarantor shall apply or consent to an application being made to the Chief Land Registrar to enter the following restriction on the Register of Title for such Real Property:

*"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of Mr Nathee Nithivasin, Mr Supachol Nithivasin, Mr Pichit Nithivasin and Mr Pichet Nithivasin referred to in the charges register."*

- 7.3 Any obligation on the part of the Lender to make further advances to the Borrower and/or the Guarantor is deemed to be incorporated in this Deed and the Borrower and/or the Guarantor shall apply to the Chief Land Registrar confirming that there is an obligation to make further advances on the security of this Deed and applying for a note to be entered to that effect in the Register of Title of any Real Property the title to which is registered at the Land Registry.

## **8 GUARANTEE AND INDEMNITY**

- 8.1 The Guarantor irrevocably and unconditionally:

8.1.1 guarantees to the Lender punctual performance by the Borrower of all the Borrower's obligations under the Finance Documents;

8.1.2 undertakes with the Lender whenever the Borrower does not pay any amount when due under or in connection with the Finance Documents, the Borrower shall immediately on demand pay that amount as if it was the principal debtor within the grace periods set out in such Finance Documents; and

8.1.3 agrees with the Lender that if for any reason, any amount claimed by the Lender under this Clause 8 (*Guarantee and Indemnity*) is not recoverable on the basis of a guarantee, it will be liable as a principal debtor to indemnify the Lender against any cost, loss or liability it incurs as a result of the Borrower not paying any amount expressed to be payable by it under any Finance Documents on the date when it is expressed to be due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would

have had to pay under this Clause 8 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

## **8.2 Continuing Guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

## **8.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or any Security for those obligations or otherwise) is made by the Lender in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause 8 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

## **8.4 Intent**

Without prejudice to the generality of Clause 8.5 (*Waiver of Defences*), the Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents.

## **8.5 Waiver of defences**

The obligations of the Guarantor under this Clause 8 will not be affected by an act, omission, matter or thing which, but for this Clause 8, would reduce, release or prejudice any of its obligations under this Clause 8 (without limitation and whether or not known to it or the Lender) including:

- 8.5.1 any time, waiver or consent granted to, or composition with, the Borrower or other person;
- 8.5.2 the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of the Borrower;
- 8.5.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 8.5.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- 8.5.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of, or any increase in, any facility or the addition of any new facility under any Finance Document or other document or security;
- 8.5.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or



8.5.7 any insolvency or similar proceedings.

## **8.6 Appropriations**

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

8.6.1 refrain from applying or enforcing any other moneys, Security or rights held or received by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

8.6.2 hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause 8 (*Guarantee and Indemnity*).

## **8.7 Deferral of Guarantor's rights**

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 8 (*Guarantee and Indemnity*):

8.7.1 to be indemnified by the Borrower;

8.7.2 to claim any contribution from any other guarantor of the Borrower's obligations under the Finance Documents;

8.7.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;

8.7.4 to bring legal or other proceedings for an order requiring the Borrower to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 8.1 (*Guarantee and Indemnity*);

8.7.5 to exercise any right of set-off against the Borrower; and/or

8.7.6 to claim or prove as a creditor of the Borrower in competition with the Lender.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by the Borrower under or in connection with the Finance Documents to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender in accordance with the Finance Documents.

## **8.8 Additional security**

The Deed contained in this Clause 8 is in addition to and is not in any way prejudiced by any other guarantee or Security now or subsequently held by or on behalf of the Security Trustee or any other beneficiary.

## **9 FURTHER ASSURANCE**

9.1 The Borrower and the Guarantor shall, at its own expense, if requested by the Lender, execute all such documents and do all acts that the Lender may reasonably require for:

9.1.1 recording the interest of the Lender;

9.1.2 creating, perfecting or protecting the security intended to be created by this Deed;

9.1.3 facilitating the realisation of any of the Charged Property; or

9.1.4 facilitating the exercise of any right, power or discretion exercisable by the Lender or any Receiver (or any delegates or sub-delegates) in respect of any of the Charged Property,

including the execution of any security or other document (provided the terms of such document are consistent with the terms of this Deed), the giving of any notice, order or direction and the making of any registration which the Lender may think expedient.

## **10 REPRESENTATIONS**

The Borrower and the Guarantor each represents and warrants to the Lender, on each date during the Security Period by reference to the facts and circumstances then existing that, as far as the Company is aware, there has been no change since the date of this Deed that would make the statements in clauses 10.1 to 10.11 (inclusive) untrue in relation to the Company. For the avoidance of doubt, the representations and warranties in clauses 10.1 to 10.11 (inclusive) are subject to matters of which the Lender (or any of its respective agents or advisors) has actual knowledge or which could have been discovered (whether by investigation made by the Lender or on its behalf) prior to the date hereof.

10.1 it is a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation;

10.2 it has the power to own its assets and carry on its business as it is being conducted;

10.3 the entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the security created by this Deed do not and will not conflict with: any law or regulation applicable to it; its constitutional documents; or any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;

10.4 the Charged Property is legally and beneficially owned by the Borrower and/or the Guarantor free of any security other than security created by or expressly permitted by this Deed;

10.5 this Deed creates the security which it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Borrower and/or the Guarantor or otherwise;

10.6 this Deed is its legal, valid and binding obligation and, subject to the general principles of law limiting its obligations, is enforceable in accordance with its terms;

10.7 it has the power to enter into, perform and deliver and has taken all necessary action to authorise its entry into, performance and delivery of this Deed and the transactions contemplated by this Deed;

- 10.8 all authorisations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed and to make this Deed admissible in evidence in its jurisdiction of incorporation have been obtained or effected and are in full force and effect;
- 10.9 it has a good and marketable title to the Charged Property and it is the legal and beneficial owner of the Real Property free from any security (other than that created or permitted by this Deed) or onerous covenants;
- 10.10 no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of the Charged Property; and
- 10.11 for the purposes of the EU Regulation, its centre of main interests (as that expression is used in Article 3(1) of the EU Regulation, is situated in England and Wales and it has no other "establishment" (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

## **11 BORROWER'S AND GUARANTOR'S OBLIGATIONS**

- 11.1 The obligations of the Borrower and the Guarantor under this Deed shall not be discharged, impaired or otherwise affected by:
  - 11.1.1 any winding-up, dissolution, administration or re-organisation of or other change in the Borrower and/or the Guarantor or any other company, corporation, partnership or other person;
  - 11.1.2 any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;
  - 11.1.3 any time or other indulgence being granted to the Borrower and/or the Guarantor, or any other company, corporation, partnership or other person;
  - 11.1.4 any amendment, variation, waiver or release of any of the Secured Obligations;
  - 11.1.5 any failure to take or failure to release the value of any other collateral in respect of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or
  - 11.1.6 any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect the obligations of the Borrower and/or the Guarantor under the Loan Agreement or this Deed.

## **12 ENFORCEMENT OF SECURITY**

- 12.1 The security created under this Deed shall become immediately enforceable on the occurrence of an Enforcement Event.
- 12.2 At any time after the security created under this Deed becomes enforceable, the Lender may, without notice to the Borrower and/or the Guarantor and whether or not it has appointed a Receiver, exercise:
  - 12.2.1 all or any of the powers, authorities and discretions conferred on mortgagees by the Law of Property Act 1925 (as varied or extended by this Deed);

12.2.2 all of the powers conferred on the holder of a qualifying floating charge (as defined in the Insolvency Act 1986) by the Insolvency Act 1986; and

12.2.3 all or any of the powers conferred by this Deed.

- 12.3 Neither the Lender nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any neglect, default or omission for which a mortgagee in possession might otherwise be liable.

### **13 POWERS OF THE LENDER**

- 13.1 The power of sale conferred on the Lender and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Deed.

- 13.2 Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed.

- 13.3 At any time after the security created under this Deed becomes enforceable, the Lender may lease or make arrangements to lease, at a premium or otherwise, and accept surrenders of leases without any restriction and in particular without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.

- 13.4 Any liberty or power which may be exercised or any determination which may be made hereunder by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

- 13.5 Each of the Lender and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Lender or the Receiver itself or any subsequent delegation or revocation thereof.

- 13.6 At any time after this Deed has become enforceable, the Lender may initiate an investigation of, and/or instruct any report (accounting, legal, valuation or other) on the business and affairs of the Borrower and/or the Guarantor which it considers necessary to ascertain the financial position of the Borrower and/or the Guarantor. All fees and expenses incurred by the Lender in connection with such investigations shall be payable by the Borrower and/or the Guarantor and each of the Borrower and the Guarantor consents to the provision by the Lender of all information in relation to the Borrower and/or the Guarantor which the Lender provides to any person in relation to the preparation of any such report.

- 13.7 To the extent that all or any part of the Charged Property constitutes "financial collateral", and this Deed and the obligations of the Borrower and/or the Guarantor hereunder constitute a "security financial collateral arrangement" (in each case as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226)), the Lender and any Receiver shall have the right, at any time after the security created under this Deed becomes enforceable, to appropriate all or any of the Charged Property in or towards the payment and/or discharge of the Secured Obligations in such order as the Lender or any Receiver in its absolute discretion may from time to time determine. The value of all or any part of the Charged Property appropriated in accordance with this Clause 13.7 shall be the price of the Charged Property (or any part of it) at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Lender or any Receiver may reasonably select.

Each of the Borrower and the Guarantor agrees that the methods of valuation provided for in this Clause 13.7 are commercially reasonable.

- 13.8 No purchaser, mortgagee or other person dealing with the Lender or any Receiver shall be concerned:

13.8.1 to enquire whether any of the Secured Liabilities have become due or payable or remain unpaid or undischarged, or whether the power the Lender or a Receiver is purporting to exercise has become exercisable; or

13.8.2 to see to the application of any money paid to the Lender or any Receiver.

#### **14 APPOINTMENT OF RECEIVER**

- 14.1 At any time after this Deed has become enforceable, or if requested to do so by the Borrower and/or the Guarantor, the Lender may:

14.1.1 appoint one or more persons jointly or severally to be a Receiver of the whole or any part of the Charged Property;

14.1.2 remove (so far as it is lawfully able) any Receiver so appointed; and

14.1.3 appoint another person(s) as an additional or replacement Receiver.

Where more than one person is appointed Receiver, they will have power to act separately (unless the appointment by the Lender specifies to the contrary).

- 14.2 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 Law of Property Act 1925) does not apply to this Deed.

- 14.3 Each Receiver shall be an agent of the Borrower and/or the Guarantor. The Borrower and/or the Guarantor shall be solely responsible for the Receiver's contracts, engagements, acts, omissions, defaults, losses and liabilities and for the payment of the Receiver's remuneration and such remuneration shall be a debt secured by this Deed.

#### **15 POWERS OF RECEIVER**

- 15.1 Every Receiver shall have all the powers:

15.1.1 conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and receivers appointed under that Act;

15.1.2 set out in Schedule 1 to the Insolvency Act 1986 and, in the case of an administrator, Schedule B1 to the Insolvency Act 1986; and

15.1.3 conferred from time to time on receivers by statute.

- 15.2 In addition to the powers referred to in Clause 15.1, a Receiver shall have the power, at the cost of the Borrower and/or the Guarantor and either in his own name or in the name of the Borrower and/or the Guarantor or (with the written approval of the Lender) in the name of the Lender:

15.2.1 to take possession of, collect and get in all or any part of the Charged Property;

15.2.2 to carry on, manage or concur in carrying on and managing all or any part of the business of the Borrower and/or the Guarantor in any manner he thinks fit;

- 15.2.3 to borrow or raise money and secure the payment of any money in priority to the charges created by this Deed for the purpose of exercising his powers and/or defraying any costs or expenses incurred by him in such exercise;
- 15.2.4 to sell, let, lease or concur in selling, letting or leasing and to vary the terms or determine, surrender and to accept surrenders of leases or tenancies of or grant options or licences over all or any part of the Charged Property in any manner and on such terms as he thinks fit. The consideration for any such transaction may consist of cash or of shares or securities or other obligations (and the amount of such consideration may be dependent on profit or turnover or be determined by a third party) and may be payable in a lump sum or in instalments;
- 15.2.5 to sever any fixtures (including trade and tenants' fixtures) from the property of which they form part, without the consent of the Borrower and/or the Guarantor;
- 15.2.6 to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Property, including, without limitation, all voting and other rights attaching to the Investments;
- 15.2.7 to make and effect all repairs, renewals, improvements, and insurances, commence and/or complete any building operation and/or apply for and maintain any planning permission, building regulation approval or other authorisation in each case as he thinks fit;
- 15.2.8 to redeem any prior security in respect of all or any of the Charged Property and to settle and pass the accounts of the holder of such prior security and any accounts so settled and passed will, in the absence of manifest error, be conclusive and binding on the Borrower and/or the Guarantor. All moneys paid to the holder of such security in accordance with such accounts shall form part of the Secured Obligations;
- 15.2.9 to take such proceedings and to settle, adjust, refer to arbitration, compromise and/or arrange any claim, account or demand which the Lender or the Receiver may think fit;
- 15.2.10 to appoint managers, officers, agents, accountants and workmen at such salaries and for such periods as the Receiver may determine and to discharge any person appointed by the Borrower and/or the Guarantor;
- 15.2.11 to exercise in relation to all or any part of the Charged Property all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Charged Property;
- 15.2.12 to lend money or advance credit to any customer of the Borrower and/or the Guarantor;
- 15.2.13 to give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Charged Property; and
- 15.2.14 to do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise expedient for or incidental or conducive to the preservation, improvement or realisation of the Charged Property.

## **16 APPLICATION OF MONEYS**

- 16.1 All moneys received or recovered by the Lender or any Receiver pursuant to this Deed shall be applied in the following order:
- 16.1.1 first, in satisfaction of, or provision for, all costs, charges and expenses incurred by the Lender or any Receiver and the payment of the remuneration of any Receiver;
  - 16.1.2 second, in or towards satisfaction of the Secured Obligations; and
  - 16.1.3 in payment of the surplus (if any) to the Borrower and/or the Guarantor or other person entitled to it.
- 16.2 If the Lender reasonably considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Borrower and/or the Guarantor under this Deed and the security created under this Deed shall continue and such amount shall not be considered to have been irrevocably paid.
- 16.3 Neither the Lender nor any Receiver shall be bound (whether by virtue of section 109(8) of the Law of Property Act 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order as between any of the Secured Obligations.

## **17 APPOINTMENT OF AN ADMINISTRATOR**

- 17.1 The Lender may without notice to the Borrower and/or the Guarantor appoint any one or more persons to be an administrator of the Borrower and/or the Guarantor pursuant to paragraph 14 Schedule B1 of the Insolvency Act 1986 if this Deed becomes enforceable.
- 17.2 Any appointment under this Clause 17 shall:
- 17.2.1 be in writing signed by a duly authorised signatory of the Lender, and
  - 17.2.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986, when the requirements of paragraph 18 of that Schedule B1 are satisfied.
- 17.3 The Lender may (subject to any necessary approval from the court) end the appointment of an administrator by notice in writing in accordance with this Clause 17 and appoint under this Clause 17 a replacement for any administrator whose appointment ends for any reason.

## **18 POWER OF ATTORNEY**

- 18.1 By way of security, each of the Borrower and the Guarantor irrevocably appoints the Lender, each person to whom the Lender shall from time to time have delegated the exercise of the power of attorney conferred by this Clause 18.1 and any Receiver jointly and severally to be its attorney and in its name and on its behalf to execute, deliver and perfect all documents and to do all things which the attorney may consider to be required or desirable for: carrying out any obligation imposed on the Borrower and/or the Guarantor by this Deed (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property); and enabling the Lender and any Receiver to exercise any of the powers conferred on them by or pursuant to this Deed or by law.

- 18.2 Each of the Borrower and the Guarantor ratifies and confirms to agree to ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## **19 PRESERVATION OF SECURITY**

- 19.1 The security created under this Deed will be a continuing security for the ultimate balance of the Secured Obligations notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations.

- 19.2 The obligations of the Borrower and the Guarantor under this Deed will not be affected by any act, omission or thing which, but for this provision would reduce, release or prejudice any of its obligations under this Deed (whether or not known to it or the Lender). This includes:

19.2.1 any time or waiver granted to, or composition with, any person;

19.2.2 any release of any person under the terms of any composition or arrangement;

19.2.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, any person;

19.2.4 any non-presentation, non-observance of any formality or other requirements in respect of any instrument or any failure to realise the full value of any security;

19.2.5 any incapacity, lack of power, authority or legal personality of or dissolution or change in the members or status of any person;

19.2.6 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any document or security;

19.2.7 any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any document or security or the failure by any person to enter into or be bound by any document or security; or

19.2.8 any insolvency or similar proceedings.

- 19.3 Each of the Borrower and the Guarantor waives any rights it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any other person before claiming from the Borrower and/or the Guarantor under this Deed.

- 19.4 Until all amounts which may be or become payable by the Borrower to the Lender have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may without affecting the liability of the Borrower and/or the Guarantor under this Deed:

19.4.1 refrain from applying or enforcing any other monies, security or rights held or received by the Lender (or any trustee or agent on its behalf) against those accounts; or apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and



19.4.2 hold in an interest-bearing suspense account any moneys received from the Borrower and/or the Guarantor or on account of the Borrower's and/or the Guarantor's liability under this Deed.

19.5 This Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Lender.

19.6 No prior security held by the Lender (in its capacity as such or otherwise) over any Charged Property will merge into the security created under this Deed.

## **20 SET-OFF**

In addition to any general lien or similar rights to which it may be entitled by operation of law, the Lender may at any time and without notice to the Borrower and/or the Guarantor combine or consolidate all or any of the Borrower and/or the Guarantor's then existing accounts with any liabilities to the Lender and set off or transfer any sum or sums standing to the credit of any one of more of such accounts in or towards satisfaction of the Secured Obligations.

## **21 NEW ACCOUNTS**

21.1 If the Lender at any time receives or is deemed to have received notice of any subsequent security affecting all or any part of the Charged Property it may open a new account or accounts with the Borrower and/or the Guarantor.

21.2 If the Lender does not open a new account or accounts it shall nevertheless be treated as if it had done so as at the time when it received or was deemed to have received such notice.

21.3 As from such time all payments made to the Lender shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount of the Secured Obligations.

## **22 EXPENSES AND INDEMNITY**

22.1 The Borrower and/or the Guarantor shall, from time to time on demand of the Lender, pay or reimburse the Lender and any Receiver on a full indemnity basis for all costs and expenses (including legal fees) together with any VAT or similar taxes thereon incurred by it in connection with the perfection, preservation, enforcement and/or discharge of this Deed. Such costs and expenses shall form part of the Secured Obligations and shall carry interest from the date of such demand until so paid or reimbursed at the rate determined by the Lender.

22.2 The Borrower and/or the Guarantor shall, notwithstanding any release or discharge of all or any part of the security created under this Deed, indemnify the Lender, its agents, attorneys and any Receiver against any action, proceeding, claim, loss, liability and cost which it may sustain: in the exercise (or purported exercise) of any of the rights, powers or discretions vested in them by this Deed (or by law); and/or in connection with or otherwise relating to this Deed or the Charged Property.

## **23 RELEASE**

23.1 On the expiry of the Security Period all the right, title and interest in the Charged Property shall be automatically, unconditionally and irrevocably released and re-assigned to the Company from the security constituted by this Deed.

- 23.2 The Lender shall promptly at the request of the Borrower and/or the Guarantor take whatever action that may be reasonably required to give effect to clause 23.1.

## **24 CONFLICT**

If there is an inconsistency between the terms of this Deed and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall prevail.

## **25 MISCELLANEOUS**

- 25.1 None of the Lender, its delegate(s) nominee(s) or any Receiver shall be liable for any loss by reason of (a) taking any action permitted by this Deed or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in the case of gross negligence or wilful default upon its part.
- 25.2 The Lender will not be required in any manner to perform or fulfil any obligation of the Borrower and/or the Guarantor, make any payment, make any enquiry as to the nature or sufficiency of any payment received by it or present or file any claim or take any action to collect or enforce the payment of any amount.
- 25.3 The Lender shall not be liable either to the Borrower and/or the Guarantor or to any other person by reason of the appointment of a Receiver or for any other reason.
- 25.4 Neither the Lender nor the Receiver will be in any way liable or responsible to the Borrower and/or the Guarantor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.
- 25.5 The Lender may not assign and transfer all or any of its rights and obligations under this Deed without the prior written consent of the Borrower and the Guarantor, save that the Lender may assign any of its rights or transfer any of its rights under this Deed to a Permitted Huakee Transferee without the consent of the other party.
- 25.6 Neither the Borrower nor the Guarantor may assign any of its rights or transfer any of its obligations under this Deed or enter into any transaction, which would result in any of those rights or obligations passing to another person.
- 25.7 At any time after the security created under this Deed becomes enforceable, the Lender may (but shall not be obliged to) deliver a notice to any bank, financial institution or other person at which the Borrower and/or the Guarantor holds an Account notifying such bank, financial institution or other person that the Borrower and/or the Guarantor is prohibited from withdrawing all or any monies from time to time standing to the credit of such Account, unless the prior written consent of the Lender is obtained to any such withdrawal.
- 25.8 A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower and/or the Guarantor shall (in the absence of any manifest error) be conclusive evidence of the amount due.
- 25.9 The rights and powers of the Lender conferred by this Deed are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and powers under the general law.
- 25.10 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be

valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.

- 25.11 Any waiver or variation of any right by the Lender (whether arising under this Deed or under the general law) shall only be effective if it is in writing and signed by the Lender and applies only in the circumstances for which it was given and shall not prevent the Lender from subsequently relying on the relevant provision.
- 25.12 No act or course of conduct or negotiation by or on behalf of the Lender shall in any way preclude the Lender from exercising any right or power under this Deed or constitute a suspension or variation of any such right or power.
- 25.13 No delay or failure to exercise any right or power under this Deed shall operate as a waiver.
- 25.14 No single or partial exercise of any right under this Deed shall prevent any other or further exercise of that or any other such right.

## 26 INTERPRETATION

### 26.1 In this Deed:

- 26.1.1 save where expressly defined in this Deed, the definitions and rules of interpretation set out in clause 1 of the Loan Agreement apply in this Deed;
- 26.1.2 clause headings are for convenience of reference only and shall not affect the construction of this Deed;
- 26.1.3 references to "**Clauses**" are references to the clauses of this Deed unless specified otherwise;
- 26.1.4 references to this Deed or any other agreement or instrument shall be construed as references to this Deed, that agreement or instrument as amended, novated, supplemented, extended or restated;
- 26.1.5 references to a person shall be construed to include that person's permitted assigns, permitted transferees or successors in title and shall be construed as including any individual, firm, trust, partnership, joint venture, company, corporation, unincorporated body of persons or any state or agency thereof, whether or not having separate legal personality;
- 26.1.6 references to a provision of law are references to that provision as amended or re-enacted;
- 26.1.7 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 26.1.8 the words "**including**" shall not be construed as limiting the generality of the words preceding it;
- 26.1.9 "**clearance system**" means a person whose business is or includes the provision of clearance services or security accounts or any nominee or depositary for that person; and
- 26.1.10 unless the context otherwise requires, any reference to "**Charged Property**" includes any part of that Charged Property, any proceeds of that Charged Property and any present and future assets of that type.

- 26.2 It is intended that this document takes effect as a deed notwithstanding the fact that a party to it may only execute it under hand.
- 26.3 The terms of the Loan Agreement are incorporated in this Deed to the extent required to ensure that any disposition of Property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 26.4 Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed. Notwithstanding any term of the Deed, no consent of any party who is not a party to this Deed is required to rescind or vary this deed at any time.
- 26.5 If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **27 NOTICES**

Any communication to be made under or in connection with this Deed must be made in writing and, unless otherwise stated, may be made by e-mail or letter.

## **28 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.

## **29 JOINT AND SEVERAL LIABILITY**

When this Deed is executed by more than one party the liability of each of them hereunder to the Lender shall be joint and several and every agreement and undertaking on their part shall take effect accordingly.

## **30 GOVERNING LAW**

This Deed and any non-contractual obligation arising in connection with it are governed by English law.

## **31 JURISDICTION**

- 31.1 The courts of England have exclusive jurisdiction to settle any disputes (**Dispute**) arising out of, or connected with this Deed (including a Dispute regarding the existence, validity or termination of this Deed) or any non-contractual obligation arising out of or in connection with it.
- 31.2 The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly, no party to this Deed will argue to the contrary.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a Deed by  
**ARCADES GALORE HOLDINGS LTD**  
acting by a director in the presence of:

)  
)  
) Director  
) Print name:

[Redacted]

*David PAVAN*

Signature of witness  
Print name (in BLOCK  
CAPITALS):

[Redacted]

*DAVID MARTIN*

Address:

Simons Muirhead & Burton  
LLP Solicitors  
87-91 Newman Street  
London  
W1T 3EY

Occupation:

EXECUTED as a Deed by  
**STREAT MARKETS LTD**  
acting by a director in the presence of:

)  
)  
) Director  
) Print name:

[Redacted]

*David PAVAN*

Signature of witness  
Print name (in BLOCK  
CAPITALS):

[Redacted]

*DAVID MARTIN*

Address:

Simons Muirhead & Burton  
LLP Solicitors  
87-91 Newman Street  
London  
W1T 3EY

Occupation: