



**Registration of a Charge**

Company name: **STELLAR ASSOCIATES 1 LIMITED**

Company number: **10956230**



X6GHF3GP

Received for Electronic Filing: **06/10/2017**

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**Details of Charge**

Date of creation: **02/10/2017**

Charge code: **1095 6230 0001**

Persons entitled: **CLYDESDALE BANK PLC (ALSO TRADING AS YORKSHIRE BANK)**

Brief description:

**Contains fixed charge(s).**

**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: **FREETHS LLP**



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

Company number: 10956230

Charge code: 1095 6230 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 2nd October 2017 and created by STELLAR ASSOCIATES 1 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th October 2017 .

Given at Companies House, Cardiff on 10th October 2017

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**

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# FREETHS

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DATE 2 October 2017

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- (1) STELLAR ASSOCIATES 1 LIMITED
- (2) CLYDESDALE BANK PLC (ALSO TRADING AS  
YORKSHIRE BANK)

Charge over shares in Stellar Finance 1 Limited

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EXECUTION VERSION

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DATE 2 October

2017

**PARTIES**

- (1) **STELLAR ASSOCIATES 1 LIMITED** a company incorporated and registered in England and Wales with registered number 10956230 and whose registered office is at 19 Charlbert Court, Charlbert Street, London NW8 7BX (the "**Chargor**"); and
- (2) **CLYDESDALE BANK PLC (ALSO TRADING AS YORKSHIRE BANK)** a company incorporated and registered in Scotland with registered number SC001111 acting through its branch office at 136-138 New Street, Birmingham B2 4JQ (the "**Chargee**").

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this charge the following definitions will apply:

**Business Day** means any day (other than a Saturday, Sunday or public holiday) during which clearing banks in the City of London are open for normal business;

**Charged Portfolio** means:

(a) the Shares; and

(b) the Related Assets;

**Company** Stellar Finance 1 Limited (registered number 10960873);

**Companies Act** means the Companies Act 2006;

**Default Interest** means any interest accruing in accordance with clause 3 (*Default interest*);

**Default Rate** means the rate at which interest is payable under clause 10.3 (*Default Interest*) of the Facilities Agreement or, if such a rate cannot for any reason be calculated at any time, 6% per annum;

**Delegate** means any delegate, agent, attorney or trustee appointed by the Chargee;

**Event of Default** means has the meaning given to that term in the Facilities Agreement;

**Facilities Agreement** means the facilities agreement dated on or around the date of this charge between (1) the Company as borrower, (2) the Company and Esprit Automation

	Limited as guarantors and (3) the Chargee as lender;
<b>Insolvency Act</b>	means the Insolvency Act 1986;
<b>Intercreditor Agreement</b>	means the intercreditor deed dated on or around the date of this assignment between, amongst others, (1) the Chargee, (2) the Company and Esprit Automation Limited and (3) the Vendors (as defined therein);
<b>LPA</b>	means the Law of Property Act 1925;
<b>Obligors</b>	has the meaning given to that term in the Facilities Agreement;
<b>Party</b>	means a party to this charge;
<b>Receiver</b>	means any receiver, manager or receiver and manager appointed by the Chargee under this charge;
<b>Related Assets</b>	means all dividends, interest and other monies at any time payable in respect of the Shares and all Related Rights, benefits and proceeds in respect of or derived from the Shares (whether by way of redemption, bonus, preference, option, substitution, conversion, compensation or otherwise) held by, to the order or on behalf of any of the Chargor at any time;
<b>Related Rights</b>	means, in relation to any asset: <ul style="list-style-type: none"> <li>(a) the proceeds of sale of any part of that asset;</li> <li>(b) all rights under any agreement for sale in respect of that asset;</li> <li>(c) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that asset; and</li> <li>(d) any monies and proceeds paid or payable in respect of that asset;</li> </ul>
<b>Secured Liabilities</b>	means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or in any other capacity whatsoever) of the Chargor and/or

the Obligors to the Chargee, including any obligations and liabilities of the Chargor and/ or the Obligors to third parties assigned, novated or otherwise vested in the Chargee together with (i) all interest (including Default Interest), fees, costs, charges and expenses which the Chargee may charge or incur; and (ii) any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings;

**Security**

means a mortgage, charge, pledge, trust, assignment by way of security, lien, hypothecation or other encumbrance, arrangement or security interest securing any obligation of any person or any other agreement or arrangement having a similar effect or any title retention rights or set-off rights created by agreement;

**Shares**

means all shares specified in Schedule 1 (*Shares*), and also all other stocks, shares, debentures, bonds, warrants, coupons or other securities now or in the future owned by the Chargor in the Company from time to time or in which it has an interest; and

**Senior Discharge Date**

has the meaning given to that term in the Intercreditor Agreement; and

**Spot Rate of Exchange**

means on a particular day, the spot rate of exchange of the Chargee, for the purchase of the relevant currency in the London foreign exchange market with sterling at or about 10.00am (London time) on such day.

**1.2 In this charge, a reference to:**

- 1.2.1 a clause or a schedule is, unless otherwise stated, a reference to a clause of, or a schedule to, this charge;
- 1.2.2 a paragraph is, unless otherwise stated, a reference to a paragraph of a schedule;
- 1.2.3 a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this charge;

- 1.2.4 any English statutory provision or English legal term for any action, remedy, method of judicial proceeding, document, legal status, court, official or any other legal concept or thing shall, in respect of any person incorporated or resident in any jurisdiction other than England and Wales, be deemed to refer to and include any equivalent or analogous action, remedy, method of judicial proceeding, document, legal status, court, official or other legal concept or thing or what most nearly approximates in that jurisdiction to the relevant English statutory provision or English legal term;
- 1.2.5 a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.6 a "Party", the "Chargor", an "Obligor" or the "Chargee" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.2.7 "disposal" includes any sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly;
- 1.2.8 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.9 writing shall include any mode of reproducing words in a legible and non-transitory form;
- 1.2.10 this charge or any provision of this charge or any other agreement, document or instrument is to this charge, that provision or that agreement, document or instrument as amended, novated, supplemented, extended or restated; and
- 1.2.11 a time of day is a reference to London time.
- 1.3 The schedules form part of this charge and have the same effect as if expressly set out in the body of this charge and shall be interpreted and construed as though they were set out in this charge.
- 1.4 The contents table and headings in this charge are for convenience only and do not affect the interpretation or construction of this charge.
- 1.5 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.6 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.



- 1.7 "£" and "sterling" denotes lawful currency of the United Kingdom.
- 1.8 Unless defined in this assignment, or the context requires otherwise, any term defined in the Facilities Agreement has the same meaning when used in this assignment.

## **2. COVENANT TO PAY**

- 2.1 The Chargor covenants with the Chargee that it will pay or discharge on demand the Secured Liabilities when they fall due **provided that** the aggregate liability of the Chargor under this charge shall not exceed:
- 2.1.1 the proceeds of enforcement of the Charged Portfolio; and
- 2.1.2 amounts payable by the Chargor under clauses 3 (*Default interest*) and 22 (*Costs expenses and indemnities*).

## **3. DEFAULT INTEREST**

- 3.1 Any amount which is not paid under this charge when due shall bear interest both before and after judgment and payable on demand) from the due date (or, in the case of costs, fees or expenses incurred, from the date they are so incurred) until the Senior Discharge Date on a daily basis at the Default Rate.
- 3.2 Default Interest will be calculated on the basis of the actual number of days elapsed and a year of 365 days and will be compounded at monthly intervals.

## **4. CHARGE**

- 4.1 As continuing security for the payment of the Secured Liabilities, the Chargor hereby, with full title guarantee, charges, by way of first fixed charge, all of its rights, title and interest from time to time in the Charged Portfolio.
- 4.2 The Chargor will immediately upon the execution of this charge (and upon its coming into possession of at any time in the future) deposit with the Chargee all certificates and other documents of title to the Shares, and stock transfer forms (executed in blank by or on behalf of the Chargor) in respect of the Shares.
- 4.3 The Chargor shall, promptly upon the accrual, offer or issue of any Related Assets (in the form of stocks, shares, warrants or other securities) in which the Chargor has a beneficial interest, notify the Chargee of that occurrence and procure the delivery to the Chargee of:
- 4.3.1 all certificates and other documents of title representing those Related Assets; and
- 4.3.2 such duly executed blank stock transfer forms or other instruments of transfer in respect of those Related Assets as the Chargee may require.

## **5. VOTING RIGHTS AND DIVIDENDS**

- 5.1 Prior to the occurrence of an Event of Default which is continuing, each Chargor shall:

- 5.1.1 apply all dividends, interest and other monies arising from the Charged Portfolio in accordance with the terms of the Facilities Agreement; and
  - 5.1.2 subject to clause 5.2, be entitled to exercise all voting rights in relation to the Charged Portfolio.
  - 5.2 Upon the occurrence of an Event of Default which is continuing, the Chargee may, at its discretion, (in the name of the Chargor or otherwise and without any further consent or authority from such Chargor):
    - 5.2.1 exercise (or refrain from exercising) any voting rights in respect of the Charged Portfolio;
    - 5.2.2 apply all dividends, interest and other monies arising from the Charged Portfolio as though they were the proceeds of sale under this charge;
    - 5.2.3 transfer the Charged Portfolio into the name of the Chargee or such nominee(s) of the Chargee as it shall require; and
    - 5.2.4 exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Portfolio including the right, in relation to any company whose shares or other securities are included in the Charged Portfolio, to concur or participate in:
      - (a) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
      - (b) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
      - (c) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,
- in each case in the manner and on the terms the Chargee thinks fit, and the proceeds of any such action shall form part of the Charged Portfolio.

## 6. NEGATIVE PLEDGE

- 6.1 The Chargor covenants with the Chargee that, during the continuance of the Security created by this charge, it shall not without the prior written consent of the Chargee:
  - 6.1.1 create, purport to create or permit to subsist any Security upon any of the Charged Portfolio, other than the Security created constituted by this charge; or
  - 6.1.2 sell, transfer, lease, licence, lend, part possession with, grant any interest in, or otherwise dispose of, whether by a single transaction or a

number of transactions and whether related or not, the whole or any part of the Charged Portfolio.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 The Chargor represents and warrants to the Chargee that:

### **7.1.1 Status**

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

### **7.1.2 Binding obligations**

Subject to the Legal Reservations and Perfection Requirements:

- (a) the obligations expressed to be assumed by it in this charge are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a)), the charge creates the security interests which this charge purports to create and those security interests are valid and effective.

### **7.1.3 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this charge and the granting of the Security pursuant to this charge do not and will not conflict with, subject to the Legal Reservations, any law or regulation applicable to it:

- (a) its constitutional documents; or
- (b) 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 in such manner or to the extent that such a conflict would be reasonably likely to have a Material Adverse Effect.

### **7.1.4 Power and authority**

- (a) 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 charge and the transactions contemplated by this charge.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by this charge.

**7.1.5 Validity and admissibility in evidence**

**(a) All Authorisations required:**

- (i) to enable it lawfully to enter into, exercise its rights and comply with its material obligations in this charge; and
- (ii) to make this charge admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except any Authorisation referred to in clause 7.1.7 (*No filing or stamp taxes*), which Authorisations will be promptly obtained or effected after the date of this charge.

- (b)** All Authorisations necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

**7.1.6 Governing law and enforcement**

- (a)** The choice of governing law of this charge will (subject to the Legal Reservations) be recognised and enforced in its Relevant Jurisdictions.
- (b)** Any judgment obtained in relation to this assignment in the jurisdiction of the governing law of this charge will (subject to the Legal Reservations) be recognised and enforced in its Relevant Jurisdictions.

**7.1.7 Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 25.7(a) (*Insolvency proceedings*) of the Facilities Agreement; or
- (b) creditors' process described in Clause 25.8 of the Facilities Agreement (*Creditors' process*),

has been taken or, to the knowledge of the Chargor, threatened in writing in relation to the Chargor and none of the circumstances described in Clause 25.6 (*Insolvency*) of the Facilities Agreement applies to the Chargor.

**7.1.8 Unissued share capital and share options**

it is not under any commitment or obligation to issue any of its unissued share capital and it has not entered into any commitment or arrangement to issue any or all of its authorised and unissued share capital, and no person has any right or option to call for or require the issuance of any share or security convertible into any share in its capital.

**7.1.9 Enforceability**

No part of the Charged Portfolio is void, voidable or otherwise unenforceable and no Security expressed to be created by this charge is liable to be avoided or otherwise set-aside, on the liquidation or administration of the Chargor or otherwise.

**7.1.10 Authority to charge**

It is entitled to enter into and effect this charge and any consents to and approvals of this charge which are required have been obtained prior to the date of this charge.

**7.1.11 No waiver**

It has not granted any waiver of rights nor any allowance of time nor any forbearance or forgiveness in or in respect of any matter or thing concerning any of the Charged Portfolio.

**7.1.12 No Security**

- (a) it is the sole legal and beneficial owner of the Charged Portfolio; and
- (b) the Charged Portfolio is free from any Security, other than the Security created constituted by this charge.

**7.2 Matters represented**

The Chargor makes the representations and warranties set out in clause 7.1 on the date of this charge and, other than that set out in clause 7.1.12(a), they are deemed to be repeated on each day during the continuance of the Security constituted by this charge.

**8. GENERAL COVENANTS OF THE CHARGOR**

8.1 The Chargor hereby covenants with the Chargee that it will:

**8.1.1 Authorisations**

Subject to the Legal Reservations, it shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(b) supply certified copies to the Chargee of,  
any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- (i) enable it to perform its obligations under this charge;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence of this charge; and
- (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

#### **8.1.2 Calls on shares**

pay all calls or other payments when due in respect of any part of the Charged Portfolio. If the Chargor fails to make any such payment the Chargee may make that payment on behalf of the Chargor and any sums so paid by the Chargee shall be reimbursed, on a full indemnity basis, by the Chargor within three Business Days of demand together with interest on those sums. Such interest shall be calculated from the due date up to the actual date of payment (after, as well as before, judgment) in accordance with clause 3 (*Default interest*).

#### **8.1.3 Voting rights**

Not:

- (a) exercise (and shall procure that any nominee acting on its behalf does not exercise) its voting rights and powers in relation to the Charged Portfolio;
- (b) otherwise permit or agree to, or concur or participate in any (i) variation of the rights attaching to or conferred by all or any part of the Charged Portfolio (ii) increase in the issued share capital of any company whose shares are charged pursuant to this Agreement (iii) exercise, renunciation or assignment of any right to subscribe for any shares or securities or (iv) reconstruction, amalgamation, sale or other disposal of any company or any of the assets of any company (including the exchange, conversion or reissue of any shares or securities as a consequence thereof) whose shares are charged under this charge,

in each case in a manner which in the reasonable opinion of the Chargee would prejudice the value of, or the ability of the Chargee to

realise, the Security created by this chargee provided that the proceeds of any such action shall form part of the Charged Portfolio.

**8.1.4 Exercise of rights**

Not at any time exercise any right or power conferred on it (or, by virtue of this charge, on the Chargee) by the Charged Portfolio in any manner other than in accordance with the terms of the Facilities Agreement.

**8.1.5 Preservation of Charged Portfolio**

(a) Not do or permit to be done any act or thing which would or might depreciate, jeopardise or otherwise prejudice the Security held by the Chargee or diminish the value of any part of the Charged Portfolio or the effectiveness of the Security created by this charge.

(b) Not permit any person (other than the Chargee or its nominee) to be registered as holder of the Charged Portfolio.

**8.1.6 Provision of information**

Promptly following request by the Chargee, provide the Chargee with such other information as the Chargee may request in relation to the Charged Portfolio.

**9. ENFORCEMENT OF SECURITY**

9.1 The security constituted by this charge shall become immediately enforceable upon the occurrence of an Event of Default which is continuing and the Chargee may, in its absolute discretion, enforce all or any part of the security constituted by this charge in such manner as it sees fit.

9.2 The power of sale and other powers conferred by section 101 LPA (as varied or extended by this charge) shall arise on and be exercisable without further notice at any time after the execution of this charge, but the Chargee shall not exercise such power of sale or other powers until the security constituted by this charge has become enforceable under clause 9.1. Sections 93 and 103 LPA do not apply to the security constituted by this charge.

**10. REDEMPTION OF PRIOR SECURITY**

10.1 At any time after the Security created under this charge has become enforceable, the Chargee may, at the sole cost of the Chargor (payable to the Chargee on demand) redeem any prior Security over any of the Charged Portfolio and/or procure the transfer of that Security to itself and/or settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor. All money paid by the Chargee to such prior

mortgagee, chargee or encumbrancer in accordance with such accounts shall form part of the Secured Liabilities.

## **11. APPOINTMENT AND POWERS OF RECEIVER**

- 11.1 At any time after the Security constituted by this charge becomes enforceable, or if so requested by the Chargor by written notice at any time, the Chargee (or any Delegate on its behalf) may:
  - 11.1.1 without further notice appoint any person (or persons) to be a Receiver of all or any part of the Charged Portfolio and/or of the income from any part of the Charged Portfolio; and/or
  - 11.1.2 exercise in respect of all or any of the Charged Portfolio all or any of the powers and remedies given to mortgagees by the LPA, including the power to take possession of, receive the benefit of, or sell any of the Charged Portfolio.
- 11.2 The Chargee may remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated for whatever reason.
- 11.3 If at any time and by virtue of any such appointment there is more than one Receiver of all or any part of the Charged Portfolio and/or the income from such Charged Portfolio, such persons shall have power to act individually (unless the contrary shall be stated in the deed(s) or other instrument(s) appointing them).
- 11.4 If the Chargee enforces this charge itself pursuant to clause 11.1.2 it will have the same powers as a Receiver in respect of those Charged Portfolio which are the subject of the enforcement.
- 11.5 Any Receiver shall (in addition to the powers conferred by the LPA and (notwithstanding that he is not an administrative receiver) schedule 1 of the Insolvency Act or any other statute from time to time in force but without any of the restrictions imposed upon the exercise of those powers by such statutes) have the following powers:
  - 11.5.1 the same powers to do, or to omit to do, in the name of and on behalf of the Chargor, anything which the Chargor itself could have done or omitted to do with such Charged Portfolio were they not the subject of this charge and the Chargor were not in insolvency proceedings;
  - 11.5.2 to take possession of, collect and get in all or any part of the Charged Portfolio and/or income in respect of which he was appointed;
  - 11.5.3 to manage the Charged Portfolio and the business of the Chargor;
  - 11.5.4 to redeem any Security and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;



- 11.5.5 to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Chargor is concerned or interested prior to his appointment, being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land;
  - 11.5.6 to sell or concur in selling or otherwise disposing of all or any part of the Charged Portfolio in respect of which he was appointed without the need to observe any restriction imposed by section 103 or 109 LPA;
  - 11.5.7 to carry out any sale, lease or other disposal of all or any part of the v by conveying, transferring, assigning or leasing the same in the name of the Chargor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the Chargor;
  - 11.5.8 to take any such proceedings, in the name of the Chargor or otherwise, as he shall think fit in respect of the Charged Portfolio and/or income in respect of which he was appointed, including proceedings for recovery of monies in arrears at the date of his appointment;
  - 11.5.9 to enter into or make any such agreement, arrangement or compromise as he shall think fit;
  - 11.5.10 to insure, and renew any insurances in respect of, the Charged Portfolio as he shall think fit, or as the Chargee shall direct;
  - 11.5.11 to appoint and employ such managers and officers and engage such professional advisers as he shall think fit, including, without prejudice to the generality of the foregoing power, to employ his partners and firm; and
  - 11.5.12 to do all such other things as may seem to him to be incidental or conducive to any other power vested in him in the realisation of the Security constituted by this charge.
- 11.6 In making any sale or other disposal in the exercise of their respective powers, the Receiver or the Chargee or any Delegate may accept, as and by way of consideration for such sale or other disposal, cash, shares, loan capital or other obligations, including consideration fluctuating according to or dependent upon profit or turnover and consideration the amount of which is to be determined by a third party. Any such consideration may be receivable in a lump sum or by instalments and upon receipt by the Receiver, Chargee or any Delegate shall be and become charged with the payment of the Secured Liabilities. Any contract for any such sale or other disposal by the Receiver or the Chargee or any Delegate may contain conditions excluding or restricting the personal liability of the Receiver, the Chargee and any Delegate.
- 11.7 Any Receiver appointed under this charge shall be the agent of the Chargor the Chargor shall be solely responsible for his acts and defaults and for his remuneration.

- 11.8 Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Chargee (or failing such agreement to be fixed by the Chargee) without the restrictions contained in section 109 LPA.
- 11.9 Only monies actually paid by a Receiver to the Chargee in satisfaction or discharge of the Secured Liabilities shall be capable of being applied by the Chargee in satisfaction of the Secured Liabilities.
- 11.10 Neither the Chargee nor any Receiver or Delegate shall be liable in respect of all or any part of the Charged Portfolio or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless such loss or damage is caused by its or his gross negligence or wilful misconduct.
- 11.11 Without prejudice to the generality of clause 11.10, entry into possession of the Charged Portfolio shall not render the Chargee or the Receiver or any Delegate liable to account as mortgagee in possession and if and whenever the Chargee or any Receiver or Delegate enters into possession of the Charged Portfolio, it shall be entitled, any time at its discretion, to go out of such possession.
- 11.12 All or any of the powers which are conferred by this charge on a Receiver may be exercised by the Chargee or any Delegate without first appointing a Receiver or notwithstanding the appointment of any Receiver.
- 11.13 Except to the extent provided by law, none of the powers described in this clause 11 will be affected by an insolvency event in relation to the Chargor.

## **12. APPLICATION OF PROCEEDS**

- 12.1 All monies received by the Chargee or any Receiver or Delegate appointed under this charge shall (subject to the rights and claims of any person having Security ranking in priority to the Security constituted by this charge) be applied in the following order:
  - 12.1.1 in payment of the costs, charges and expenses of and incidental to the appointment of the Receiver and the payment of his remuneration;
  - 12.1.2 in payment and discharge of any liabilities incurred by the Receiver on behalf of the Chargor in the exercise of any of the powers of the Receiver;
  - 12.1.3 in providing for the matters (other than the remuneration of the Receiver) specified in the first three paragraphs of section 109(8) LPA;
  - 12.1.4 in or towards the satisfaction of the Secured Liabilities; and
  - 12.1.5 any surplus shall be paid to the Chargor or any other person entitled to it.
- 12.2 The provisions of clause 12.1 shall take effect as and by way of variation and extension to the provisions of section 109 LPA, which provisions as so varied and extended shall be deemed incorporated in this charge.

### **13. PROTECTION OF THIRD PARTIES**

- 13.1 No purchaser from or other person dealing with the Chargee or with any Receiver or Delegate shall be obliged or concerned to enquire whether the right of the Chargee to appoint a Receiver or Delegate or the right of the Chargee or any Receiver or Delegate to exercise any of the powers conferred by this charge in relation to the Charged Portfolio or any part of the Charged Portfolio have arisen or become exercisable by the Chargee or by any such Receiver or Delegate, nor be concerned with notice to the contrary, nor with the propriety of the exercise or purported exercise of any such powers and the title of such a purchaser and the position of such a person shall not be impeachable by reference to any of those matters.

### **14. CLAWBACK**

- 14.1 Any release, discharge, reassignment or settlement between the Chargor and the Chargee shall be deemed conditional upon no payment or Security received by the Chargee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration or receivership and, notwithstanding any such release, discharge, reassignment or settlement the Chargee shall be entitled to recover the value or amount of such Security or payment from the Chargor as if such release, discharge or settlement had not occurred.
- 14.2 If any claim of the kind referred to in clause 14.1 is made against the Chargee under insolvency laws, the Chargee may agree the claim or settle it on any terms it chooses without asking for the Chargor's agreement. If the Chargee does agree or settle the claim, the Chargor will be liable under this charge as if a court order had been made containing the terms the Chargee has agreed. The Chargor will be responsible for all costs and expenses the Chargee properly incurs defending such a claim.

### **15. WAIVER OF RIGHTS**

- 15.1 The obligations of the Chargor under this charge will not be affected by:
- 15.1.1 any time, waiver or consent granted to, or composition with the Chargor or any other person;
  - 15.1.2 any incapacity or lack of power, authority or legal personality of or change in the members or status of the Chargor or any other person or any defective or excessive exercise of the Chargor's powers or authority;
  - 15.1.3 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) termination or replacement of the Secured Liabilities or any document, guarantee or Security related to the Secured Liabilities including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility or other document, guarantee or Security;

- 15.1.4 any unenforceability, illegality, invalidity, irregularity or frustration of any obligation (actual or purported) of any person under this charge or any other document, guarantee or Security held in connection with the Secured Liabilities;
- 15.1.5 any insolvency, bankruptcy, liquidation, administration, winding-up, dissolution, limitation, disability, the discharge by operation of law or any similar proceedings in respect of the Chargor or any other person; or
- 15.1.6 any other act, omission or circumstance which but for this provision, might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish its liability under this charge.

## **16. CONTINUING SECURITY AND CHARGEES PROTECTIONS**

- 16.1 This charge shall remain in full force and effect as a continuing security until the Chargee shall have certified in writing that the Secured Liabilities have been discharged in full and the Chargee may make one or more demands under this charge.
- 16.2 This charge shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which the Chargee may at any time hold in respect of any of the Secured Liabilities and this charge may be enforced without the Chargee first having:
  - 16.2.1 recourse to any other right, remedy, guarantee or Security held or available to it;
  - 16.2.2 to take action or obtain judgment in any court against the Chargor or any other person;
  - 16.2.3 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Chargor or any other person; or
  - 16.2.4 to make demand, enforce or seek to enforce any claim, right or remedy against the Chargor or any other person.

## **17. FURTHER ASSURANCE AND POWER OF ATTORNEY**

### **17.1 Further assurance**

- 17.1.1 The Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Chargee may reasonably specify (and in such form as the Chargee may reasonably require in favour of the Chargee or its nominee(s));
- 17.1.2 to perfect the Security created or intended to be created under or evidenced by this charge (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this charge) or for

- the exercise of any rights, powers and remedies of the Chargee provided by or pursuant to this charge or by law;
- 17.1.3 to confer on the Chargee Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this charge; and/or
- 17.1.4 to facilitate the realisation of the assets which are, or are intended to be, the subject of this charge.
- 17.1.5 The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Chargee by or pursuant to this charge.
- 17.1.6 Any security document required to be executed by the Chargor pursuant to clause 17.1.1 will be prepared at the cost of the Chargor.
- 17.1.7 To the extent that any Charged Portfolio have not been validly charged to the Chargee under clause 4, the Chargor shall hold each of the Charged Portfolio on trust for the Assignee and shall comply with the terms of this charge as if such Charged Portfolio had been validly assigned to the Chargee.
- 17.2 **Power of attorney**
- 17.2.1 The Chargor by way of security irrevocably appoints the Chargee and any Receiver or Delegate (in writing under hand signed by an officer of the Chargee or any Receiver or Delegate) severally to be its agents and attorneys in its name and on its behalf to:
- (a) do all things which the Chargor may be required to do under this charge;
  - (b) sign, execute (using the company seal where appropriate), deliver and otherwise perfect any Security required to be signed or executed pursuant to the terms of this charge; and
  - (c) sign, execute (using the company seal where appropriate), deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required by the Chargee or any Receiver or Delegate in the exercise of any of their powers under this charge, or to perfect or vest in the Chargee, any Receiver or Delegate, its nominees or any purchaser, title to any Charged Portfolio or which they may deem expedient in connection with the getting in, disposal, or realisation of any Charged Portfolio.
- 17.2.2 Each agent and attorney may appoint a substitute or delegate his authority. The Chargor ratifies and confirms (and agrees to ratify and

confirm) anything which an attorney does under the power of attorney conferred by clause 17.2.1.

**18. NOTICE OF SUBSEQUENT SECURITY – NEW ACCOUNTS**

- 18.1 If the Chargee receives notice (whether actual or otherwise) of any subsequent Security affecting any part of the Charged Portfolio and/or the proceeds of sale of the Charged Portfolio, it may open a new account or accounts for the Chargor in its books.
- 18.2 If the Chargee does not open a new account immediately on receipt of notice under clause 18.1, then (unless the Chargee gives express written notice to the contrary to the Chargor) all payments made by the Chargor to the Chargee shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Chargee.

**19. CONSOLIDATION OF ACCOUNTS AND SET-OFF**

- 19.1 The Chargee shall be entitled without notice to the Chargor (both before and after demand):
  - 19.1.1 to combine or consolidate all or any sums of money now or hereafter standing to the credit of the then existing accounts of the Chargor with the Chargee with the liabilities to the Chargee of the Chargor; and
  - 19.1.2 to set-off or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the liabilities of the Chargor to the Chargee on any other account or in any other respect.
- 19.2 The liabilities referred to in this clause 19 may be actual, contingent, primary, collateral, several or joint liabilities, and the accounts, sums and liabilities referred to in this clause 19 may be denominated in any currency.
- 19.3 If the amounts concerned are expressed in a different currency then the Chargee may exercise all such rights and is authorised to effect any necessary conversions at the Spot Rate of Exchange.
- 19.4 If the relevant obligation or liability is unliquidated or unascertained the Chargee may set-off the amount it estimates (in good faith) will be the final amount of such obligation or liability once it becomes liquidated or ascertained.

**20. CURRENCY**

- 20.1 All monies received or held by the Chargee or any Receiver or Delegate under this charge may be converted from their existing currency into such other currency as the Chargee considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the Spot Rate of Exchange.

- 20.2 No payment to the Chargee (whether under any judgment or court order or in the liquidation or dissolution of the Chargor or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made, unless and until the Chargee shall have received payment in full in the currency in which the obligation or liability was incurred and, to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency, the Chargee shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security constituted by this charge to recover the amount of the shortfall.
- 20.3 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
- 20.3.1 any reference in this charge to, and any obligations arising under this charge in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Chargee (after consultation with the Chargor); and
- 20.3.2 any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Chargee (acting reasonably).
- 20.4 If a change in any currency of a country occurs, this charge will, to the extent the Chargee (acting reasonably and after consultation with the Chargor) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

## **21. APPROPRIATION AND SUSPENSE ACCOUNT**

- 21.1 Subject to clause 21.2, the Chargee may apply all payments received for the Secured Liabilities to reduce any part of those liabilities as it thinks fit.
- 21.2 All monies received, recovered or realised by the Chargee under this charge may at the discretion of the Chargee be credited to any suspense account for so long as the Chargee determines (with interest accruing thereon at such rate, if any, as the Chargee may determine for the account of the Chargor) without the Chargee having any obligation to apply such monies or any part of them in or towards the discharge of any of the Secured Liabilities.

## **22. PAYMENTS**

- 22.1 Subject to clause 22.2, all payments to be made by the Chargor in respect of this charge, shall be made in immediately available funds to the credit of such account as the Chargee may designate. All such payments shall be made free and clear of, and

without any deduction for, or on account of, any set-off or counterclaim or, except to the extent compelled by law, any deduction on account of any Taxes.

- 22.2 If the Chargor is compelled by law to withhold or deduct any Taxes from any sum payable under this charge to the Chargee, the sum so payable by the Chargor shall be increased so as to result in the receipt by the Chargee of a net amount equal to the full amount expressed to be payable under this charge.
- 22.3 Any demand, notification or certificate given by the Chargee specifying amounts due and payable under or in connection with any of the provisions of this charge shall, in the absence of manifest error, be conclusive and binding on the Chargor.

## **23. COSTS, EXPENSES AND INDEMNITIES**

- 23.1 The Chargor shall reimburse the Chargee, any Receiver and any Delegate in respect of all reasonable expenses, including reasonable legal, valuation, accountancy and consultancy fees (and any value added or similar tax thereon) incurred by the Chargee or any Receiver or Delegate in connection with:
- 23.1.1 the negotiation, preparation, execution and completion of this charge, or any of the documents referred to herein; and
- 23.1.2 any actual or proposed amendment, replacement, restatement or extension of, or any waiver or consent under, this charge.
- 23.2 The Chargor shall reimburse the Chargee, any Receiver and any Delegate for all costs and expenses, including legal fees (and any value added or similar tax thereon) incurred in connection with the enforcement, attempted enforcement or preservation of any of their respective rights under this charge, or any of the documents referred to herein.
- 23.3 The Chargor will on demand indemnify the Chargee and any Receiver or Delegate and any of its and their officers and employees (each an **Indemnified Party**) in respect of all costs, losses (including consequential losses), actions, claims, expenses, demands or liabilities whether in contract, tort, or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against any of them at any time relating to or arising directly or indirectly out of:
- 23.3.1 anything done or omitted to be done in the exercise or purported exercise of the powers contained in this charge;
- 23.3.2 a claim of any kind made or asserted against any Indemnified Party which would not have arisen if this charge had not been executed and/or registered; or
- 23.3.3 a breach by the Chargor of any of its obligations under this charge
- unless, in the case of Clauses 23.3.1 and 23.3.2, it was caused by the negligence or wilful misconduct of the Indemnified Party.
- 23.4 No Indemnified Party shall in any way be liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether



as mortgagee in possession or otherwise) in relation to the Charged Portfolio, except to the extent caused by its own negligence or wilful misconduct.

- 23.5 The Chargor shall pay all present and future stamp, registration and similar taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this charge or any judgment given in connection therewith.

## **24. ASSIGNMENT AND TRANSFER**

- 24.1 The Chargee may assign or transfer all or any part of its rights under this charge in accordance with and subject to the provisions of the Facilities Agreement.
- 24.2 The Chargor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this charge or any of its rights under this charge or purport to do any of the same without the prior written consent of the Chargee.

## **25. THIRD PARTY RIGHTS**

- 25.1 Subject to clauses 25.2 and 25.3, a person who is not a Party shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or rely upon a provision of this charge. No Party may hold itself out as trustee of any rights under this charge for the benefit of any third party unless specifically provided for in this charge. This clause 25.1 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 25.2 Any person to whom the benefit of any provision of this charge is assigned in accordance with the terms of this charge is entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this charge which confers (expressly or impliedly) any benefit on any such person.
- 25.3 Any Receiver or Delegate may, subject to the Contracts (Rights of Third Parties) Act 1999 rely on any clause of this charge which expressly confers rights on it.
- 25.4 Notwithstanding any other provision of this charge the Chargee and the Chargor may, by agreement in writing, rescind, terminate or vary any of the provisions in this charge or waive or settle any right or claim under it in any way without the consent of any third party and, accordingly, section 2(1) of the Contracts (Rights of Third Parties) Act 1999 shall not apply.

## **26. NOTICES**

- 26.1 The provisions of clause 31 (*Notices*) of the Facilities Agreement shall be deemed to be incorporated into this charge, *mutatis mutandis*, as if the same were set out in full herein.

## **27. GENERAL**

- 27.1 No variation to this charge shall be effective unless made in writing and signed by or on behalf of all the parties to this charge. A waiver given or consent granted by the Chargee under this charge will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 27.2 Each provision of this charge is severable and distinct from the others. If at any time any provision of this charge is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it shall to that extent or in those circumstances be deemed not to form part of this charge but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this charge shall not be affected in any way.
- 27.3 If any provision of this charge is found to be illegal, invalid or unenforceable in accordance with clause 27.2 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.
- 27.4 The failure or delay in exercising a right or remedy provided by this charge or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this charge or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.
- 27.5 The Chargee's rights and remedies contained in this charge are cumulative and not exclusive of any rights or remedies provided by law.
- 27.6 This charge may be executed in any number of counterparts each of which when executed and delivered shall be an original. All the counterparts together shall constitute one and the same document.

## **28. GOVERNING LAW**

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

## **29. JURISDICTION**

- 29.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this charge (including a dispute relating to the existence, validity or termination of this charge or any non-contractual obligation arising out of or in connection with this charge) (a **Dispute**).
- 29.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 29.3 This clause 29 is for the benefit of the Chargee only. As a result, the Chargee shall not be prevented from taking proceedings relating to a Dispute in any other courts

with jurisdiction. To the extent allowed by law, the Chargee may take concurrent proceedings in any number of jurisdictions.

**THE CHARGOR** has executed this charge as a deed delivered it on the date first set out above.

## SCHEDULE 1

### Shares

Name of Shareholder			Name of Subsidiary or other company	Number and Class of Shares
Stellar Limited	Associates	1	Stellar Finance 1 Limited	One ordinary share of £0.01

**SIGNATURES**

**CHARGOR**

EXECUTED and DELIVERED as a DEED )  
by STELLAR ASSOCIATES 1 LIMITED )  
acting by a director in the presence of: )

Director

Witness Signature

Witness Name

Address

Bird & Bird LLP  
12 New Fetter Lane  
London EC4A 1JP

Occupation

SOLICITOR

Address:

19 Charlbert Court, Charlbert Street, London NW8 7BX

Fax:

n/a

Attention:

M. Saquib Ansari

**CHARGE**

SIGNED by an authorised signatory of )  
CLYDESDALE BANK PLC (ALSO )  
TRADING AS YORKSIRE BANK)

Authorised signatory

Address:

136-138 New Street, Birmingham B2 4JQ

Fax:

08000 850 570

Attention:

Ian Howey / Ian Mansell

# FREETHS

DATE 2 October 2017

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- (1) STELLAR ASSOCIATES 1 LIMITED
- (2) CLYDESDALE BANK PLC (ALSO TRADING AS  
YORKSHIRE BANK)

**Charge over shares in Stellar Finance 1 Limited**

**EXECUTION VERSION**

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DATE                      2 October                      2017

**PARTIES**

- (1)        **STELLAR ASSOCIATES 1 LIMITED** a company incorporated and registered in England and Wales with registered number 10956230 and whose registered office is at 19 Charlbert Court, Charlbert Street, London NW8 7BX (the "**Chargor**"); and
- (2)        **CLYDESDALE BANK PLC (ALSO TRADING AS YORKSHIRE BANK)** a company incorporated and registered in Scotland with registered number SC001111 acting through its branch office at 136-138 New Street, Birmingham B2 4JQ (the "**Chargee**").

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

1.1        In this charge the following definitions will apply:

<b>Business Day</b>	means any day (other than a Saturday, Sunday or public holiday) during which clearing banks in the City of London are open for normal business;
<b>Charged Portfolio</b>	means: (a)    the Shares; and  (b)    the Related Assets;
<b>Company</b>	Stellar Finance 1 Limited (registered number 10960873);
<b>Companies Act</b>	means the Companies Act 2006;
<b>Default Interest</b>	means any interest accruing in accordance with clause 3 ( <i>Default interest</i> );
<b>Default Rate</b>	means the rate at which interest is payable under clause 10.3 ( <i>Default Interest</i> ) of the Facilities Agreement or, if such a rate cannot for any reason be calculated at any time, 6% per annum;
<b>Delegate</b>	means any delegate, agent, attorney or trustee appointed by the Chargee;
<b>Event of Default</b>	means has the meaning given to that term in the Facilities Agreement;
<b>Facilities Agreement</b>	means the facilities agreement dated on or around the date of this charge between (1) the Company as borrower, (2) the Company and Esprit Automation



	Limited as guarantors and (3) the Chargee as lender;
<b>Insolvency Act</b>	means the Insolvency Act 1986;
<b>Intercreditor Agreement</b>	means the intercreditor deed dated on or around the date of this assignment between, amongst others, (1) the Chargee, (2) the Company and Esprit Automation Limited and (3) the Vendors (as defined therein);
<b>LPA</b>	means the Law of Property Act 1925;
<b>Obligors</b>	has the meaning given to that term in the Facilities Agreement;
<b>Party</b>	means a party to this charge;
<b>Receiver</b>	means any receiver, manager or receiver and manager appointed by the Chargee under this charge;
<b>Related Assets</b>	means all dividends, interest and other monies at any time payable in respect of the Shares and all Related Rights, benefits and proceeds in respect of or derived from the Shares (whether by way of redemption, bonus, preference, option, substitution, conversion, compensation or otherwise) held by, to the order or on behalf of any of the Chargor at any time;
<b>Related Rights</b>	means, in relation to any asset: <ul style="list-style-type: none"> <li>(a) the proceeds of sale of any part of that asset;</li> <li>(b) all rights under any agreement for sale in respect of that asset;</li> <li>(c) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that asset; and</li> <li>(d) any monies and proceeds paid or payable in respect of that asset;</li> </ul>
<b>Secured Liabilities</b>	means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or in any other capacity whatsoever) of the Chargor and/or

	the Obligors to the Chargee, including any obligations and liabilities of the Chargor and/ or the Obligors to third parties assigned, novated or otherwise vested in the Chargee together with (i) all interest (including Default Interest), fees, costs, charges and expenses which the Chargee may charge or incur; and (ii) any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings;
<b>Security</b>	means a mortgage, charge, pledge, trust, assignment by way of security, lien, hypothecation or other encumbrance, arrangement or security interest securing any obligation of any person or any other agreement or arrangement having a similar effect or any title retention rights or set-off rights created by agreement;
<b>Shares</b>	means all shares specified in Schedule 1 ( <i>Shares</i> ), and also all other stocks, shares, debentures, bonds, warrants, coupons or other securities now or in the future owned by the Chargor in the Company from time to time or in which it has an interest; and
<b>Senior Discharge Date</b>	has the meaning given to that term in the Intercreditor Agreement; and
<b>Spot Rate of Exchange</b>	means on a particular day, the spot rate of exchange of the Chargee, for the purchase of the relevant currency in the London foreign exchange market with sterling at or about 10.00am (London time) on such day.

- 1.2 In this charge, a reference to:
- 1.2.1 a clause or a schedule is, unless otherwise stated, a reference to a clause of, or a schedule to, this charge;
  - 1.2.2 a paragraph is, unless otherwise stated, a reference to a paragraph of a schedule;
  - 1.2.3 a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this charge;

- 1.2.4 any English statutory provision or English legal term for any action, remedy, method of judicial proceeding, document, legal status, court, official or any other legal concept or thing shall, in respect of any person incorporated or resident in any jurisdiction other than England and Wales, be deemed to refer to and include any equivalent or analogous action, remedy, method of judicial proceeding, document, legal status, court, official or other legal concept or thing or what most nearly approximates in that jurisdiction to the relevant English statutory provision or English legal term;
- 1.2.5 a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.6 a "Party", the "Chargor", an "Obligor" or the "Chargee" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.2.7 "disposal" includes any sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly;
- 1.2.8 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.9 writing shall include any mode of reproducing words in a legible and non-transitory form;
- 1.2.10 this charge or any provision of this charge or any other agreement, document or instrument is to this charge, that provision or that agreement, document or instrument as amended, novated, supplemented, extended or restated; and
- 1.2.11 a time of day is a reference to London time.
- 1.3 The schedules form part of this charge and have the same effect as if expressly set out in the body of this charge and shall be interpreted and construed as though they were set out in this charge.
- 1.4 The contents table and headings in this charge are for convenience only and do not affect the interpretation or construction of this charge.
- 1.5 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.6 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.

- 1.7 "£" and "sterling" denotes lawful currency of the United Kingdom.
- 1.8 Unless defined in this assignment, or the context requires otherwise, any term defined in the Facilities Agreement has the same meaning when used in this assignment.

## **2. COVENANT TO PAY**

- 2.1 The Chargor covenants with the Chargee that it will pay or discharge on demand the Secured Liabilities when they fall due **provided that** the aggregate liability of the Chargor under this charge shall not exceed:
- 2.1.1 the proceeds of enforcement of the Charged Portfolio; and
- 2.1.2 amounts payable by the Chargor under clauses 3 (*Default interest*) and 22 (*Costs expenses and indemnities*).

## **3. DEFAULT INTEREST**

- 3.1 Any amount which is not paid under this charge when due shall bear interest both before and after judgment and payable on demand) from the due date (or, in the case of costs, fees or expenses incurred, from the date they are so incurred) until the Senior Discharge Date on a daily basis at the Default Rate.
- 3.2 Default Interest will be calculated on the basis of the actual number of days elapsed and a year of 365 days and will be compounded at monthly intervals.

## **4. CHARGE**

- 4.1 As continuing security for the payment of the Secured Liabilities, the Chargor hereby, with full title guarantee, charges, by way of first fixed charge, all of its rights, title and interest from time to time in the Charged Portfolio.
- 4.2 The Chargor will immediately upon the execution of this charge (and upon its coming into possession of at any time in the future) deposit with the Chargee all certificates and other documents of title to the Shares, and stock transfer forms (executed in blank by or on behalf of the Chargor) in respect of the Shares.
- 4.3 The Chargor shall, promptly upon the accrual, offer or issue of any Related Assets (in the form of stocks, shares, warrants or other securities) in which the Chargor has a beneficial interest, notify the Chargee of that occurrence and procure the delivery to the Chargee of:
- 4.3.1 all certificates and other documents of title representing those Related Assets; and
- 4.3.2 such duly executed blank stock transfer forms or other instruments of transfer in respect of those Related Assets as the Chargee may require.

## **5. VOTING RIGHTS AND DIVIDENDS**

- 5.1 Prior to the occurrence of an Event of Default which is continuing, each Chargor shall:

- 5.1.1 apply all dividends, interest and other monies arising from the Charged Portfolio in accordance with the terms of the Facilities Agreement; and
  - 5.1.2 subject to clause 5.2, be entitled to exercise all voting rights in relation to the Charged Portfolio.
- 5.2 Upon the occurrence of an Event of Default which is continuing, the Chargee may, at its discretion, (in the name of the Chargor or otherwise and without any further consent or authority from such Chargor):
- 5.2.1 exercise (or refrain from exercising) any voting rights in respect of the Charged Portfolio;
  - 5.2.2 apply all dividends, interest and other monies arising from the Charged Portfolio as though they were the proceeds of sale under this charge;
  - 5.2.3 transfer the Charged Portfolio into the name of the Chargee or such nominee(s) of the Chargee as it shall require; and
  - 5.2.4 exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Portfolio including the right, in relation to any company whose shares or other securities are included in the Charged Portfolio, to concur or participate in:
    - (a) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
    - (b) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
    - (c) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,in each case in the manner and on the terms the Chargee thinks fit, and the proceeds of any such action shall form part of the Charged Portfolio.

## **6. NEGATIVE PLEDGE**

- 6.1 The Chargor covenants with the Chargee that, during the continuance of the Security created by this charge, it shall not without the prior written consent of the Chargee:
- 6.1.1 create, purport to create or permit to subsist any Security upon any of the Charged Portfolio, other than the Security created constituted by this charge; or
  - 6.1.2 sell, transfer, lease, licence, lend, part possession with, grant any interest in, or otherwise dispose of, whether by a single transaction or a

number of transactions and whether related or not, the whole or any part of the Charged Portfolio.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 The Chargor represents and warrants to the Chargee that:

### **7.1.1 Status**

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

### **7.1.2 Binding obligations**

Subject to the Legal Reservations and Perfection Requirements:

- (a) the obligations expressed to be assumed by it in this charge are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a)), the charge creates the security interests which this charge purports to create and those security interests are valid and effective.

### **7.1.3 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this charge and the granting of the Security pursuant to this charge do not and will not conflict with, subject to the Legal Reservations, any law or regulation applicable to it:

- (a) its constitutional documents; or
- (b) 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 in such manner or to the extent that such a conflict would be reasonably likely to have a Material Adverse Effect.

### **7.1.4 Power and authority**

- (a) 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 charge and the transactions contemplated by this charge.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by this charge.

7.1.5

**Validity and admissibility in evidence**

- (a) All Authorisations required:
- (i) to enable it lawfully to enter into, exercise its rights and comply with its material obligations in this charge; and
  - (ii) to make this charge admissible in evidence in its Relevant Jurisdictions,
- have been obtained or effected and are in full force and effect except any Authorisation referred to in clause 7.1.7 (*No filing or stamp taxes*), which Authorisations will be promptly obtained or effected after the date of this charge.
- (b) All Authorisations necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

7.1.6

**Governing law and enforcement**

- (a) The choice of governing law of this charge will (subject to the Legal Reservations) be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to this assignment in the jurisdiction of the governing law of this charge will (subject to the Legal Reservations) be recognised and enforced in its Relevant Jurisdictions.

7.1.7

**Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 25.7(a) (*Insolvency proceedings*) of the Facilities Agreement; or
- (b) creditors' process described in Clause 25.8 of the Facilities Agreement (*Creditors' process*),

has been taken or, to the knowledge of the Chargor, threatened in writing in relation to the Chargor and none of the circumstances described in Clause 25.6 (*Insolvency*) of the Facilities Agreement applies to the Chargor.

7.1.8

**Unissued share capital and share options**

it is not under any commitment or obligation to issue any of its unissued share capital and it has not entered into any commitment or arrangement to issue any or all of its authorised and unissued share capital, and no person has any right or option to call for or require the issuance of any share or security convertible into any share in its capital.

**7.1.9 Enforceability**

No part of the Charged Portfolio is void, voidable or otherwise unenforceable and no Security expressed to be created by this charge is liable to be avoided or otherwise set-aside, on the liquidation or administration of the Chargor or otherwise.

**7.1.10 Authority to charge**

It is entitled to enter into and effect this charge and any consents to and approvals of this charge which are required have been obtained prior to the date of this charge.

**7.1.11 No waiver**

It has not granted any waiver of rights nor any allowance of time nor any forbearance or forgiveness in or in respect of any matter or thing concerning any of the Charged Portfolio.

**7.1.12 No Security**

- (a) it is the sole legal and beneficial owner of the Charged Portfolio; and
- (b) the Charged Portfolio is free from any Security, other than the Security created constituted by this charge.

**7.2 Matters represented**

The Chargor makes the representations and warranties set out in clause 7.1 on the date of this charge and, other than that set out in clause 7.1.12(a), they are deemed to be repeated on each day during the continuance of the Security constituted by this charge.

**8. GENERAL COVENANTS OF THE CHARGOR**

8.1 The Chargor hereby covenants with the Chargee that it will:

**8.1.1 Authorisations**

Subject to the Legal Reservations, it shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and



(b) supply certified copies to the Chargee of,  
any Authorisation required under any law or regulation of a Relevant  
Jurisdiction to:

- (i) enable it to perform its obligations under this charge;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence of this charge; and
- (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

8.1.2            **Calls on shares**

pay all calls or other payments when due in respect of any part of the Charged Portfolio. If the Chargor fails to make any such payment the Chargee may make that payment on behalf of the Chargor and any sums so paid by the Chargee shall be reimbursed, on a full indemnity basis, by the Chargor within three Business Days of demand together with interest on those sums. Such interest shall be calculated from the due date up to the actual date of payment (after, as well as before, judgment) in accordance with clause 3 (*Default interest*).

8.1.3            **Voting rights**

Not:

- (a) exercise (and shall procure that any nominee acting on its behalf does not exercise) its voting rights and powers in relation to the Charged Portfolio;
- (b) otherwise permit or agree to, or concur or participate in any (i) variation of the rights attaching to or conferred by all or any part of the Charged Portfolio (ii) increase in the issued share capital of any company whose shares are charged pursuant to this Agreement (iii) exercise, renunciation or assignment of any right to subscribe for any shares or securities or (iv) reconstruction, amalgamation, sale or other disposal of any company or any of the assets of any company (including the exchange, conversion or reissue of any shares or securities as a consequence thereof) whose shares are charged under this charge,

in each case in a manner which in the reasonable opinion of the Chargee would prejudice the value of, or the ability of the Chargee to

realise, the Security created by this chargee provided that the proceeds of any such action shall form part of the Charged Portfolio.

**8.1.4 Exercise of rights**

Not at any time exercise any right or power conferred on it (or, by virtue of this charge, on the Chargee) by the Charged Portfolio in any manner other than in accordance with the terms of the Facilities Agreement.

**8.1.5 Preservation of Charged Portfolio**

- (a) Not do or permit to be done any act or thing which would or might depreciate, jeopardise or otherwise prejudice the Security held by the Chargee or diminish the value of any part of the Charged Portfolio or the effectiveness of the Security created by this charge.
- (b) Not permit any person (other than the Chargee or its nominee) to be registered as holder of the Charged Portfolio.

**8.1.6 Provision of information**

Promptly following request by the Chargee, provide the Chargee with such other information as the Chargee may request in relation to the Charged Portfolio.

**9. ENFORCEMENT OF SECURITY**

- 9.1 The security constituted by this charge shall become immediately enforceable upon the occurrence of an Event of Default which is continuing and the Chargee may, in its absolute discretion, enforce all or any part of the security constituted by this charge in such manner as it sees fit.
- 9.2 The power of sale and other powers conferred by section 101 LPA (as varied or extended by this charge) shall arise on and be exercisable without further notice at any time after the execution of this charge, but the Chargee shall not exercise such power of sale or other powers until the security constituted by this charge has become enforceable under clause 9.1. Sections 93 and 103 LPA do not apply to the security constituted by this charge.

**10. REDEMPTION OF PRIOR SECURITY**

- 10.1 At any time after the Security created under this charge has become enforceable, the Chargee may, at the sole cost of the Chargor (payable to the Chargee on demand) redeem any prior Security over any of the Charged Portfolio and/or procure the transfer of that Security to itself and/or settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor. All money paid by the Chargee to such prior

mortgagee, chargee or encumbrancer in accordance with such accounts shall form part of the Secured Liabilities.

## **11. APPOINTMENT AND POWERS OF RECEIVER**

- 11.1 At any time after the Security constituted by this charge becomes enforceable, or if so requested by the Chargor by written notice at any time, the Chargee (or any Delegate on its behalf) may:
  - 11.1.1 without further notice appoint any person (or persons) to be a Receiver of all or any part of the Charged Portfolio and/or of the income from any part of the Charged Portfolio; and/or
  - 11.1.2 exercise in respect of all or any of the Charged Portfolio all or any of the powers and remedies given to mortgagees by the LPA, including the power to take possession of, receive the benefit of, or sell any of the Charged Portfolio.
- 11.2 The Chargee may remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated for whatever reason.
- 11.3 If at any time and by virtue of any such appointment there is more than one Receiver of all or any part of the Charged Portfolio and/or the income from such Charged Portfolio, such persons shall have power to act individually (unless the contrary shall be stated in the deed(s) or other instrument(s) appointing them).
- 11.4 If the Chargee enforces this charge itself pursuant to clause 11.1.2 it will have the same powers as a Receiver in respect of those Charged Portfolio which are the subject of the enforcement.
- 11.5 Any Receiver shall (in addition to the powers conferred by the LPA and (notwithstanding that he is not an administrative receiver) schedule 1 of the Insolvency Act or any other statute from time to time in force but without any of the restrictions imposed upon the exercise of those powers by such statutes) have the following powers:
  - 11.5.1 the same powers to do, or to omit to do, in the name of and on behalf of the Chargor, anything which the Chargor itself could have done or omitted to do with such Charged Portfolio were they not the subject of this charge and the Chargor were not in insolvency proceedings;
  - 11.5.2 to take possession of, collect and get in all or any part of the Charged Portfolio and/or income in respect of which he was appointed;
  - 11.5.3 to manage the Charged Portfolio and the business of the Chargor;
  - 11.5.4 to redeem any Security and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;

- 11.5.5 to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Chargor is concerned or interested prior to his appointment, being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land;
  - 11.5.6 to sell or concur in selling or otherwise disposing of all or any part of the Charged Portfolio in respect of which he was appointed without the need to observe any restriction imposed by section 103 or 109 LPA;
  - 11.5.7 to carry out any sale, lease or other disposal of all or any part of the v by conveying, transferring, assigning or leasing the same in the name of the Chargor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the Chargor;
  - 11.5.8 to take any such proceedings, in the name of the Chargor or otherwise, as he shall think fit in respect of the Charged Portfolio and/or income in respect of which he was appointed, including proceedings for recovery of monies in arrears at the date of his appointment;
  - 11.5.9 to enter into or make any such agreement, arrangement or compromise as he shall think fit;
  - 11.5.10 to insure, and renew any insurances in respect of, the Charged Portfolio as he shall think fit, or as the Chargee shall direct;
  - 11.5.11 to appoint and employ such managers and officers and engage such professional advisers as he shall think fit, including, without prejudice to the generality of the foregoing power, to employ his partners and firm; and
  - 11.5.12 to do all such other things as may seem to him to be incidental or conducive to any other power vested in him in the realisation of the Security constituted by this charge.
- 11.6 In making any sale or other disposal in the exercise of their respective powers, the Receiver or the Chargee or any Delegate may accept, as and by way of consideration for such sale or other disposal, cash, shares, loan capital or other obligations, including consideration fluctuating according to or dependent upon profit or turnover and consideration the amount of which is to be determined by a third party. Any such consideration may be receivable in a lump sum or by instalments and upon receipt by the Receiver, Chargee or any Delegate shall be and become charged with the payment of the Secured Liabilities. Any contract for any such sale or other disposal by the Receiver or the Chargee or any Delegate may contain conditions excluding or restricting the personal liability of the Receiver, the Chargee and any Delegate.
- 11.7 Any Receiver appointed under this charge shall be the agent of the Chargor the Chargor shall be solely responsible for his acts and defaults and for his remuneration.

- 11.8 Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Chargee (or failing such agreement to be fixed by the Chargee) without the restrictions contained in section 109 LPA.
- 11.9 Only monies actually paid by a Receiver to the Chargee in satisfaction or discharge of the Secured Liabilities shall be capable of being applied by the Chargee in satisfaction of the Secured Liabilities.
- 11.10 Neither the Chargee nor any Receiver or Delegate shall be liable in respect of all or any part of the Charged Portfolio or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless such loss or damage is caused by its or his gross negligence or wilful misconduct.
- 11.11 Without prejudice to the generality of clause 11.10, entry into possession of the Charged Portfolio shall not render the Chargee or the Receiver or any Delegate liable to account as mortgagee in possession and if and whenever the Chargee or any Receiver or Delegate enters into possession of the Charged Portfolio, it shall be entitled, any time at its discretion, to go out of such possession.
- 11.12 All or any of the powers which are conferred by this charge on a Receiver may be exercised by the Chargee or any Delegate without first appointing a Receiver or notwithstanding the appointment of any Receiver.
- 11.13 Except to the extent provided by law, none of the powers described in this clause 11 will be affected by an insolvency event in relation to the Chargor.

## **12. APPLICATION OF PROCEEDS**

- 12.1 All monies received by the Chargee or any Receiver or Delegate appointed under this charge shall (subject to the rights and claims of any person having Security ranking in priority to the Security constituted by this charge) be applied in the following order:
  - 12.1.1 in payment of the costs, charges and expenses of and incidental to the appointment of the Receiver and the payment of his remuneration;
  - 12.1.2 in payment and discharge of any liabilities incurred by the Receiver on behalf of the Chargor in the exercise of any of the powers of the Receiver;
  - 12.1.3 in providing for the matters (other than the remuneration of the Receiver) specified in the first three paragraphs of section 109(8) LPA;
  - 12.1.4 in or towards the satisfaction of the Secured Liabilities; and
  - 12.1.5 any surplus shall be paid to the Chargor or any other person entitled to it.
- 12.2 The provisions of clause 12.1 shall take effect as and by way of variation and extension to the provisions of section 109 LPA, which provisions as so varied and extended shall be deemed incorporated in this charge.

### **13. PROTECTION OF THIRD PARTIES**

- 13.1 No purchaser from or other person dealing with the Chargee or with any Receiver or Delegate shall be obliged or concerned to enquire whether the right of the Chargee to appoint a Receiver or Delegate or the right of the Chargee or any Receiver or Delegate to exercise any of the powers conferred by this charge in relation to the Charged Portfolio or any part of the Charged Portfolio have arisen or become exercisable by the Chargee or by any such Receiver or Delegate, nor be concerned with notice to the contrary, nor with the propriety of the exercise or purported exercise of any such powers and the title of such a purchaser and the position of such a person shall not be impeachable by reference to any of those matters.

### **14. CLAWBACK**

- 14.1 Any release, discharge, reassignment or settlement between the Chargor and the Chargee shall be deemed conditional upon no payment or Security received by the Chargee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration or receivership and, notwithstanding any such release, discharge, reassignment or settlement the Chargee shall be entitled to recover the value or amount of such Security or payment from the Chargor as if such release, discharge or settlement had not occurred.
- 14.2 If any claim of the kind referred to in clause 14.1 is made against the Chargee under insolvency laws, the Chargee may agree the claim or settle it on any terms it chooses without asking for the Chargor's agreement. If the Chargee does agree or settle the claim, the Chargor will be liable under this charge as if a court order had been made containing the terms the Chargee has agreed. The Chargor will be responsible for all costs and expenses the Chargee properly incurs defending such a claim.

### **15. WAIVER OF RIGHTS**

- 15.1 The obligations of the Chargor under this charge will not be affected by:
- 15.1.1 any time, waiver or consent granted to, or composition with the Chargor or any other person;
  - 15.1.2 any incapacity or lack of power, authority or legal personality of or change in the members or status of the Chargor or any other person or any defective or excessive exercise of the Chargor's powers or authority;
  - 15.1.3 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) termination or replacement of the Secured Liabilities or any document, guarantee or Security related to the Secured Liabilities including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility or other document, guarantee or Security;

- 15.1.4 any unenforceability, illegality, invalidity, irregularity or frustration of any obligation (actual or purported) of any person under this charge or any other document, guarantee or Security held in connection with the Secured Liabilities;
- 15.1.5 any insolvency, bankruptcy, liquidation, administration, winding-up, dissolution, limitation, disability, the discharge by operation of law or any similar proceedings in respect of the Chargor or any other person; or
- 15.1.6 any other act, omission or circumstance which but for this provision, might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish its liability under this charge.

## **16. CONTINUING SECURITY AND CHARGEES PROTECTIONS**

- 16.1 This charge shall remain in full force and effect as a continuing security until the Chargee shall have certified in writing that the Secured Liabilities have been discharged in full and the Chargee may make one or more demands under this charge.
- 16.2 This charge shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which the Chargee may at any time hold in respect of any of the Secured Liabilities and this charge may be enforced without the Chargee first having:
  - 16.2.1 recourse to any other right, remedy, guarantee or Security held or available to it;
  - 16.2.2 to take action or obtain judgment in any court against the Chargor or any other person;
  - 16.2.3 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Chargor or any other person; or
  - 16.2.4 to make demand, enforce or seek to enforce any claim, right or remedy against the Chargor or any other person.

## **17. FURTHER ASSURANCE AND POWER OF ATTORNEY**

### **17.1 Further assurance**

- 17.1.1 The Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Chargee may reasonably specify (and in such form as the Chargee may reasonably require in favour of the Chargee or its nominee(s)):
- 17.1.2 to perfect the Security created or intended to be created under or evidenced by this charge (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this charge) or for

- the exercise of any rights, powers and remedies of the Chargee provided by or pursuant to this charge or by law;
- 17.1.3 to confer on the Chargee Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this charge; and/or
- 17.1.4 to facilitate the realisation of the assets which are, or are intended to be, the subject of this charge.
- 17.1.5 The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Chargee by or pursuant to this charge.
- 17.1.6 Any security document required to be executed by the Chargor pursuant to clause 17.1.1 will be prepared at the cost of the Chargor.
- 17.1.7 To the extent that any Charged Portfolio have not been validly charged to the Chargee under clause 4, the Chargor shall hold each of the Charged Portfolio on trust for the Assignee and shall comply with the terms of this charge as if such Charged Portfolio had been validly assigned to the Chargee.
- 17.2 **Power of attorney**
- 17.2.1 The Chargor by way of security irrevocably appoints the Chargee and any Receiver or Delegate (in writing under hand signed by an officer of the Chargee or any Receiver or Delegate) severally to be its agents and attorneys in its name and on its behalf to:
- (a) do all things which the Chargor may be required to do under this charge;
  - (b) sign, execute (using the company seal where appropriate), deliver and otherwise perfect any Security required to be signed or executed pursuant to the terms of this charge; and
  - (c) sign, execute (using the company seal where appropriate), deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required by the Chargee or any Receiver or Delegate in the exercise of any of their powers under this charge, or to perfect or vest in the Chargee, any Receiver or Delegate, its nominees or any purchaser, title to any Charged Portfolio or which they may deem expedient in connection with the getting in, disposal, or realisation of any Charged Portfolio.
- 17.2.2 Each agent and attorney may appoint a substitute or delegate his authority. The Chargor ratifies and confirms (and agrees to ratify and



confirm) anything which an attorney does under the power of attorney conferred by clause 17.2.1.

**18. NOTICE OF SUBSEQUENT SECURITY – NEW ACCOUNTS**

- 18.1 If the Chargee receives notice (whether actual or otherwise) of any subsequent Security affecting any part of the Charged Portfolio and/or the proceeds of sale of the Charged Portfolio, it may open a new account or accounts for the Chargor in its books.
- 18.2 If the Chargee does not open a new account immediately on receipt of notice under clause 18.1, then (unless the Chargee gives express written notice to the contrary to the Chargor) all payments made by the Chargor to the Chargee shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Chargee.

**19. CONSOLIDATION OF ACCOUNTS AND SET-OFF**

- 19.1 The Chargee shall be entitled without notice to the Chargor (both before and after demand):
- 19.1.1 to combine or consolidate all or any sums of money now or hereafter standing to the credit of the then existing accounts of the Chargor with the Chargee with the liabilities to the Chargee of the Chargor; and
- 19.1.2 to set-off or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the liabilities of the Chargor to the Chargee on any other account or in any other respect.
- 19.2 The liabilities referred to in this clause 19 may be actual, contingent, primary, collateral, several or joint liabilities, and the accounts, sums and liabilities referred to in this clause 19 may be denominated in any currency.
- 19.3 If the amounts concerned are expressed in a different currency then the Chargee may exercise all such rights and is authorised to effect any necessary conversions at the Spot Rate of Exchange.
- 19.4 If the relevant obligation or liability is unliquidated or unascertained the Chargee may set-off the amount it estimates (in good faith) will be the final amount of such obligation or liability once it becomes liquidated or ascertained.

**20. CURRENCY**

- 20.1 All monies received or held by the Chargee or any Receiver or Delegate under this charge may be converted from their existing currency into such other currency as the Chargee considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the Spot Rate of Exchange.

- 20.2 No payment to the Chargee (whether under any judgment or court order or in the liquidation or dissolution of the Chargor or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made, unless and until the Chargee shall have received payment in full in the currency in which the obligation or liability was incurred and, to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency, the Chargee shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security constituted by this charge to recover the amount of the shortfall.
- 20.3 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
- 20.3.1 any reference in this charge to, and any obligations arising under this charge in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Chargee (after consultation with the Chargor); and
- 20.3.2 any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Chargee (acting reasonably).
- 20.4 If a change in any currency of a country occurs, this charge will, to the extent the Chargee (acting reasonably and after consultation with the Chargor) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

## **21. APPROPRIATION AND SUSPENSE ACCOUNT**

- 21.1 Subject to clause 21.2, the Chargee may apply all payments received for the Secured Liabilities to reduce any part of those liabilities as it thinks fit.
- 21.2 All monies received, recovered or realised by the Chargee under this charge may at the discretion of the Chargee be credited to any suspense account for so long as the Chargee determines (with interest accruing thereon at such rate, if any, as the Chargee may determine for the account of the Chargor) without the Chargee having any obligation to apply such monies or any part of them in or towards the discharge of any of the Secured Liabilities.

## **22. PAYMENTS**

- 22.1 Subject to clause 22.2, all payments to be made by the Chargor in respect of this charge, shall be made in immediately available funds to the credit of such account as the Chargee may designate. All such payments shall be made free and clear of, and

without any deduction for, or on account of, any set-off or counterclaim or, except to the extent compelled by law, any deduction on account of any Taxes.

- 22.2 If the Chargor is compelled by law to withhold or deduct any Taxes from any sum payable under this charge to the Chargee, the sum so payable by the Chargor shall be increased so as to result in the receipt by the Chargee of a net amount equal to the full amount expressed to be payable under this charge.
- 22.3 Any demand, notification or certificate given by the Chargee specifying amounts due and payable under or in connection with any of the provisions of this charge shall, in the absence of manifest error, be conclusive and binding on the Chargor.

### 23. COSTS, EXPENSES AND INDEMNITIES

- 23.1 The Chargor shall reimburse the Chargee, any Receiver and any Delegate in respect of all reasonable expenses, including reasonable legal, valuation, accountancy and consultancy fees (and any value added or similar tax thereon) incurred by the Chargee or any Receiver or Delegate in connection with:
- 23.1.1 the negotiation, preparation, execution and completion of this charge, or any of the documents referred to herein; and
  - 23.1.2 any actual or proposed amendment, replacement, restatement or extension of, or any waiver or consent under, this charge.
- 23.2 The Chargor shall reimburse the Chargee, any Receiver and any Delegate for all costs and expenses, including legal fees (and any value added or similar tax thereon) incurred in connection with the enforcement, attempted enforcement or preservation of any of their respective rights under this charge, or any of the documents referred to herein.
- 23.3 The Chargor will on demand indemnify the Chargee and any Receiver or Delegate and any of its and their officers and employees (each an **Indemnified Party**) in respect of all costs, losses (including consequential losses), actions, claims, expenses, demands or liabilities whether in contract, tort, or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against any of them at any time relating to or arising directly or indirectly out of:
- 23.3.1 anything done or omitted to be done in the exercise or purported exercise of the powers contained in this charge;
  - 23.3.2 a claim of any kind made or asserted against any Indemnified Party which would not have arisen if this charge had not been executed and/or registered; or
  - 23.3.3 a breach by the Chargor of any of its obligations under this charge
- unless, in the case of Clauses 23.3.1 and 23.3.2, it was caused by the negligence or wilful misconduct of the Indemnified Party.
- 23.4 No Indemnified Party shall in any way be liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether

as mortgagee in possession or otherwise) in relation to the Charged Portfolio, except to the extent caused by its own negligence or wilful misconduct.

- 23.5 The Chargor shall pay all present and future stamp, registration and similar taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this charge or any judgment given in connection therewith.

## **24. ASSIGNMENT AND TRANSFER**

- 24.1 The Chargee may assign or transfer all or any part of its rights under this charge in accordance with and subject to the provisions of the Facilities Agreement.
- 24.2 The Chargor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this charge or any of its rights under this charge or purport to do any of the same without the prior written consent of the Chargee.

## **25. THIRD PARTY RIGHTS**

- 25.1 Subject to clauses 25.2 and 25.3, a person who is not a Party shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or rely upon a provision of this charge. No Party may hold itself out as trustee of any rights under this charge for the benefit of any third party unless specifically provided for in this charge. This clause 25.1 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 25.2 Any person to whom the benefit of any provision of this charge is assigned in accordance with the terms of this charge is entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this charge which confers (expressly or impliedly) any benefit on any such person.
- 25.3 Any Receiver or Delegate may, subject to the Contracts (Rights of Third Parties) Act 1999 rely on any clause of this charge which expressly confers rights on it.
- 25.4 Notwithstanding any other provision of this charge the Chargee and the Chargor may, by agreement in writing, rescind, terminate or vary any of the provisions in this charge or waive or settle any right or claim under it in any way without the consent of any third party and, accordingly, section 2(1) of the Contracts (Rights of Third Parties) Act 1999 shall not apply.

## **26. NOTICES**

- 26.1 The provisions of clause 31 (*Notices*) of the Facilities Agreement shall be deemed to be incorporated into this charge, *mutatis mutandis*, as if the same were set out in full herein.

## **27. GENERAL**

- 27.1 No variation to this charge shall be effective unless made in writing and signed by or on behalf of all the parties to this charge. A waiver given or consent granted by the Chargee under this charge will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 27.2 Each provision of this charge is severable and distinct from the others. If at any time any provision of this charge is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it shall to that extent or in those circumstances be deemed not to form part of this charge but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this charge shall not be affected in any way.
- 27.3 If any provision of this charge is found to be illegal, invalid or unenforceable in accordance with clause 27.2 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.
- 27.4 The failure or delay in exercising a right or remedy provided by this charge or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this charge or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.
- 27.5 The Chargee's rights and remedies contained in this charge are cumulative and not exclusive of any rights or remedies provided by law.
- 27.6 This charge may be executed in any number of counterparts each of which when executed and delivered shall be an original. All the counterparts together shall constitute one and the same document.

## **28. GOVERNING LAW**

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

## **29. JURISDICTION**

- 29.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this charge (including a dispute relating to the existence, validity or termination of this charge or any non-contractual obligation arising out of or in connection with this charge) (a **Dispute**).
- 29.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 29.3 This clause 29 is for the benefit of the Chargee only. As a result, the Chargee shall not be prevented from taking proceedings relating to a Dispute in any other courts

with jurisdiction. To the extent allowed by law, the Chargee may take concurrent proceedings in any number of jurisdictions.

**THE CHARGOR** has executed this charge as a deed delivered it on the date first set out above.

## SCHEDULE 1

### Shares

Name of Shareholder			Name of Subsidiary or other company	Number and Class of Shares
Stellar Limited	Associates	1	Stellar Finance 1 Limited	One ordinary share of £0.01

## SIGNATURES

### CHARGOR

**EXECUTED and DELIVERED as a DEED** )  
by **STELLAR ASSOCIATES 1 LIMITED** ) .....  
acting by a director in the presence of: ) Director

Witness Signature

Witness Name

Address


Occupation

Address: 19 Charlbert Court, Charlbert Street, London NW8 7BX

Fax: n/a

Attention: M. Saquib Ansari

### CHARGE

**SIGNED** by an authorised signatory of )  
**CLYDESDALE BANK PLC (ALSO** )  
**TRADING AS YORKSIRE BANK)**  Authorised signatory

Address: 136-138 New Street, Birmingham B2 4JQ

Fax: 08000 850 570

Attention: Ian Howey / Ian Mansell