



Registration of a Charge

Company name: **GIP III JUPITER INVESTOR TOPCO LIMITED**

Company number: **11383051**



X7J3XKX5

Received for Electronic Filing: **20/11/2018**

Details of Charge

Date of creation: **15/11/2018**

Charge code: **1138 3051 0001**

Persons entitled: **NATIONAL WESTMINSTER BANK PLC**

Brief description: **N/A**

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **EXCEPT FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006, I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

ALLEN & OVERY LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 11383051

Charge code: 1138 3051 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th November 2018 and created by GIP III JUPITER INVESTOR TOPCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th November 2018 .

Given at Companies House, Cardiff on 22nd November 2018

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

EXECUTION VERSION

TOPCO DEBENTURE

DATED 15 November 2018

BETWEEN

GIP III JUPITER INVESTOR TOPCO LIMITED
as Chargor

and

NATIONAL WESTMINSTER BANK PLC
as Mezzanine Security Trustee

ALLEN & OVERY

Allen & Overy LLP

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THIS DEED is dated 15 November 2018 and is made **BETWEEN**:

- (1) **GIP III JUPITER INVESTOR TOPCO LIMITED**, a limited liability company incorporated in England and Wales (registered number 11383051) and having its registered office at 5th Floor, 6 St Andrew Street, London, EC4A 3AE, England (the **Chargor**); and
- (2) **NATIONAL WESTMINSTER BANK PLC** as security trustee for the Secured Creditors (the **Mezzanine Security Trustee**).

BACKGROUND:

- (A) The Chargor enters into this Deed in connection with the Mezzanine Facility Agreement.
- (B) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

Collateral Regulations means the Financial Collateral Arrangements (No.2) Regulations 2003 (SI 2003 No. 3226).

Fixed Security means any mortgage, fixed charge or assignment expressed to be created by or pursuant to Clause 2 (Creation of Security) of this Deed.

LPA means the Law of Property Act 1925.

Master Definitions Agreement means the master definitions agreement dated on or around the date of this Deed and made between, among others, the Chargor and the Mezzanine Security Trustee.

Mezzanine Borrower means GIP III Jupiter Investor Midco Limited, a limited liability company incorporated in England and Wales (registered number 11382923) and having its registered office at 5th Floor, 6 St Andrew Street, London, EC4A 3AE, England.

Mezzanine Obligor means:

- (a) the Chargor; and
- (b) the Mezzanine Borrower.

Party means a party to this Deed.

Receiver means a receiver or receiver and manager or administrative receiver, in each case, appointed under this Deed.

Related Rights means:

- (a) any dividend or interest paid or payable; and

- (b) any right, money or property accruing or offered at any time by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;

in relation to a Share.

Relevant Document means the Finance Documents.

Secured Creditor means the Mezzanine Secured Creditors.

Secured Liabilities has the meaning given to the term "Secured Obligations" in the Mezzanine Facility Agreement.

Security Assets means any assets of the Chargor which are the subject of any Security created by this Deed.

Security Period means the period beginning on the date of this Deed and ending on the Mezzanine Discharge Date.

Shares means all the shares in the share capital of the Mezzanine Borrower held from time to time by the Chargor.

Company Shareholder TopCo Loan means the principal amount outstanding of each borrowing under any Company Shareholder TopCo Loan Agreement.

Company Shareholder TopCo Loan Agreement means each agreement between the Mezzanine Borrower (as borrower) and the Chargor (as lender) in respect of Company Shareholder TopCo Loans.

1.2 Construction

- (a) Words and expressions defined in the Mezzanine Facility Agreement have, unless expressly defined in this Deed, the same meaning when used in this Deed. If a word or expression is not expressly defined in this Deed and is not defined in the Mezzanine Facility Agreement, it shall have the meaning given to that word or expression in the Master Definitions Agreement.
- (b) The principles of construction set out in part 1.2 (Construction) of the Mezzanine Facility Agreement will apply to this Deed as if they were set out in this Deed.
- (c)
 - (i) The term **Finance Document**, **Mezzanine Facility Agreement**, or any other document or security includes all amendments and supplements including supplements providing for further advances;
 - (ii) the term **financial collateral** has the meaning given to it in the Collateral Regulations; and
 - (iii) the term **this Security** means any Security created by or pursuant to this Deed.
- (d) Any covenant of the Chargor under this Deed (other than a payment obligation which has been irrevocably discharged) remains in force during the Security Period and is given for the benefit of each Secured Creditor.
- (e) If the Mezzanine Security Trustee is instructed, in accordance with the Mezzanine Facility Agreement, that an amount paid to a Secured Creditor under a Relevant Document is capable of being avoided or otherwise set aside on the liquidation or administration of the

payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.

- (f) Unless the context otherwise requires, a reference to a Security Asset includes:
 - (i) any part of that Security Asset;
 - (ii) the proceeds of sale of that Security Asset; and
 - (iii) any present and future asset of that type.
- (g) The absence of or incomplete details of any Security Assets in any schedule shall not affect the validity or enforceability of any Security under this Deed.
- (h) This Deed is subject to the Mezzanine Facility Agreement. In the event of any inconsistency between the terms of this Deed and the terms of the Mezzanine Facility Agreement, the Mezzanine Facility Agreement shall prevail.

1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time, unless such consent is required in accordance with the Mezzanine Facility Agreement.

1.4 Mezzanine Security Trustee as a party

All the provisions of the STID and the Mezzanine Facility Agreement relating to the exercise by the Mezzanine Security Trustee of its powers, trusts, authorities, duties, rights and discretions shall apply, *mutatis mutandis*, to the discharge by the Mezzanine Security Trustee of its powers, trusts, authorities, duties, rights and discretions under this Deed.

1.5 Charges and assignments

Clauses 2.2 (Security over Shares) and 2.2 (Floating charge) shall be construed as creating separate and distinct charges or assignment by way of security (as stated in such clauses) over each relevant asset within any particular class of assets defined under this Deed and the failure to create an effective charge or assignment by way of security (as applicable) (whether arising out of this Deed or any act or omission by any party) on any one asset shall not affect the nature of any mortgage, fixed charge or assignment imposed on any other asset whether within that same class of assets or not.

2. CREATION OF SECURITY

2.1 General

- (a) The Security created under this Deed:
 - (i) is created in favour of the Mezzanine Security Trustee;
 - (ii) is security for the payment of all the Secured Liabilities; and

- (iii) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.¹
- (b) The Mezzanine Security Trustee holds the benefit of this Deed on trust for the Secured Creditors.

2.2 Security over Shares

The Chargor charges by way of a first fixed charge, all of its rights, title, interest and benefit in, to and under the Shares (including all Related Rights) and all warrants, options and other rights to subscribe for, purchase or otherwise acquire any shares.

2.3 Security over Company Shareholder TopCo Loans

- (a) By way of security, the Chargor assigns absolutely, subject to a proviso for re-assignment on redemption, all of its rights, title, claims and interest (including any right to receive payment and any monies and proceeds paid or payable) under or in respect of all Company Shareholder TopCo Loans and each Company Shareholder TopCo Loan Agreement.
- (b) To the extent that they are not effectively assigned under paragraph (a) above, the Chargor charges by way of first fixed charge, all of its rights, title and interest (including any right to receive payment and any monies and proceeds paid or payable) under or in respect of all Company Shareholder TopCo Loans and each Company Shareholder TopCo Loan Agreement.

2.4 Floating charge

- (a) Subject to paragraph (b) below, the Chargor charges by way of a first floating charge all of its assets property, revenues and rights whatsoever and wheresoever situated or any part of them and all rights, title and interests in the foregoing not at any time otherwise effectively mortgaged, charged or assigned by way of mortgage, charge or assignment under this Clause 2.
- (b) Except as provided in paragraph (c) below, the Mezzanine Security Trustee may by notice in writing to the Chargor convert the floating charge created by paragraph (a) of this Clause 2.4 into a fixed charge as regards any of the Chargor's assets subject to the floating charge and specified in that notice, if:

- (i) either:

- (A) an Event of Default has occurred and is continuing; or

- (B) those assets are in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy;

and, in each case, the Mezzanine Security Trustee is instructed to serve such notice in accordance with the Mezzanine Facility Agreement; or

- (ii) such action is necessary in order to protect or preserve the Security created under this Deed and/or the priority of such Security in accordance with the Mezzanine Facility Agreement.

- (c) The floating charge created by this Clause 2.4 may not be converted into a fixed charge solely by reason of:

¹ Paragraphs b and c deleted as shareholder loans should not be subject to any consent / condition

- (i) the obtaining of a moratorium; or
- (ii) anything done with a view to obtaining a moratorium,

under the Insolvency Act 2000.

- (d) The floating charge created under this Clause 2.4 will (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge over all of the Chargor's assets if:
 - (i) an administrator of, or provisional liquidator to, the Chargor is appointed or the Mezzanine Security Trustee receives notice of an intention to appoint an administrator of, or provisional liquidator to, the Chargor;
 - (ii) the Chargor creates or attempts to create any security (other than Security permitted under this Deed) over any of the Security Assets;
 - (iii) a Receiver is appointed over all or any of the Security Assets;
 - (iv) a meeting is convened for the passing of a resolution for the voluntary winding-up of the Chargor;
 - (v) a petition is presented for the compulsory winding-up of the Chargor (save for winding-up petitions which are frivolous or vexatious, or being contested in good faith and is discharged, stayed or dismissed within 21 days of commencement or, if earlier, the date on which it is advertised); or
 - (vi) a resolution is passed or an order is made for the dissolution or reorganisation of the Chargor.
- (e) The floating charge created by this Clause 2.4 is a **qualifying floating charge** for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

3. REPRESENTATIONS AND WARRANTIES

The Chargor makes the following representations and warranties to the Secured Creditors on the date of this Deed:

- (a) the representations and warranties set out in clause 16.25(a) (Legal and beneficial ownership) of the Mezzanine Facility Agreement, provided that such representations and warranties are given only in respect of the Shares held by it;
- (b) the representations and warranties set out in clause 16.25(b) (Legal and beneficial ownership) of the Mezzanine Facility Agreement, provided that the reference to TopCo should be replaced by "the Chargor";
- (c) the representations and warranties set out in clause 16.10 (Insolvency) of the Mezzanine Facility Agreement, provided that such representations and warranties are given in respect of itself only and, for the avoidance of doubt, any reference in that paragraph to any other member of the Company Group shall be disregarded;
- (d) the representations and warranties set out in paragraphs 16.19 (Taxation) of the Mezzanine Facility Agreement, provided that such representations and warranties are given in respect of itself only;

- (e) the representations and warranties set out in paragraph 16.23(b)(ii) (Ranking) of the Mezzanine Facility Agreement, provided that references to “(ii) each Mezzanine Only Security Document” shall be replaced with “this Deed”;
- (f) the representations and warranties set out in paragraph 16.22(a) (Security and Financial Indebtedness) of the Mezzanine Facility Agreement, provided that references to “Mezzanine Obligor” shall be replaced with “Chargor”;
- (g) the representations and warranties set out in paragraph 16.24 (Ownership of Assets) of the Mezzanine Facility Agreement, provided that references to “it, each member of the Company Group and, so far as the Borrower is aware, each other Group Company” shall be replaced with “the Chargor”;
- (h) the representations and warranties set out in paragraph 16.13(a)(i) (No Default) of the Mezzanine Facility Agreement, provided that references to “Mezzanine Obligor or another Group Company” shall be replaced with “Chargor”;
- (i) the representations and warranties set out in paragraph 16.13(b) (No Default) of the Mezzanine Facility Agreement, provided that references to “Mezzanine Obligor or another Group Company” shall be replaced with “the Chargor”;
- (j) the representations and warranties set out in paragraph 16.7(a) (Power and authority) of the Mezzanine Facility Agreement, provided that references to “It and each of the Group Companies” shall be replaced with “Chargor”; and
- (k) the representations and warranties set out in paragraph 16.4 (Non-conflict with other obligations) of the Mezzanine Facility Agreement, provided that references to “it and each of the Group Companies” shall be replaced with “Chargor” and the words “in the case of the Group Companies, to the best knowledge of the Borrower, having made reasonable enquiries” at 16.4(c) shall be deleted.

4. RESTRICTIONS ON DEALINGS

- (a) The Chargor must not at any time during the Security Period:
 - (i) create or permit to subsist any Security over any Security Asset (other than Permitted Security); or
 - (ii) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any Security Asset other than in the ordinary course of business as a holdings company,
 and in each case, other than as expressly permitted by the Finance Documents.
- (b) The Chargor shall not (i) trade, carry on, or have any interest in, any asset, business or activity, or (ii) incur any liabilities, other than:
 - (i) the ownership of the Shares, Subordinated Intragroup Liabilities and other credit balances in bank accounts but only if either those shares and credit balances are subject to Security created under this Deed;
 - (ii) the performance of the Transaction Documents to which it is a party (including sale of power and associated benefits); and

- (iii) administrative activities in the ordinary course of its ordinary business as a Holding Company.

5. SHARES

5.1 Deposit

The Chargor must:

- (a) promptly deposit with the Mezzanine Security Trustee, or as the Mezzanine Security Trustee may direct, all certificates and other documents of title or evidence of ownership in relation to any Share; and
- (b) promptly execute and deliver to the Mezzanine Security Trustee all share transfers and other documents which may be requested by the Mezzanine Security Trustee acting reasonably in order to enable the Mezzanine Security Trustee or its nominees to be registered as the owner or otherwise obtain legal title to any Share upon enforcement.

5.2 Changes to rights

The Chargor shall not take any action or allow the taking of any action on its behalf which may result in the rights attaching to any of the Shares being altered without the prior written consent of the Mezzanine Security Trustee.

5.3 Calls

- (a) The Chargor must pay all calls or other payments due and payable in respect of any Share.
- (b) If the Chargor fails to do so, the Mezzanine Security Trustee may (if so directed in accordance with the Mezzanine Facility Agreement but is not obliged to) pay the calls or other payments in respect of any of the Shares on behalf of the Chargor. The Chargor must immediately on request reimburse the Mezzanine Security Trustee for any payment made by the Mezzanine Security Trustee under this Subclause.

5.4 Other obligations in respect of Shares

- (a) The Chargor must promptly send to the Mezzanine Security Trustee a copy of and comply with all requests for information which is within its knowledge and which are made under any law or regulation or any similar provision contained in any articles of association or other constitutional documents or which are made by any listing or other competent authority, relating to any of the Shares. If it fails to do so, the Mezzanine Security Trustee may elect to provide any information which it may have on behalf of the Chargor, provided that the Mezzanine Security Trustee shall not be liable for any failure or delay in providing such information.
- (b) The Chargor must comply with all other conditions and obligations assumed by it in respect of any Share.
- (c) The Mezzanine Security Trustee is not obliged to:
 - (i) perform any obligation of the Chargor;
 - (ii) make any payment;

- (iii) make any enquiry as to the nature or sufficiency of any payment received by it or the Chargor; or
- (iv) present or file any claim or take any other action to collect or enforce the payment of any amount to which it may be entitled under this Deed,

in respect of any Share.

5.5 Voting rights

- (a) Before this Security becomes enforceable:
 - (i) the Chargor may continue to exercise (or refrain from exercising) the voting rights, powers and other rights in respect of the Shares, provided that it does so for a purpose not inconsistent with the Finance Documents; and
 - (ii) the Mezzanine Security Trustee shall not exercise any of the powers referred to in Clause 8 (Enforcement of Security) and shall not complete, put into effect or utilise any of the items delivered to the Mezzanine Security Trustee pursuant to Clause 5.1 (Deposit).
- (a) Whilst this Security is enforceable, the Mezzanine Security Trustee may exercise (in the name of the Chargor and without any further consent or authority on the part of the Chargor) any voting rights and any powers or rights which may be exercised by the legal or beneficial owner of any Share.

6. CONTRACTS

6.1 Company Shareholder TopCo Loan Agreement

The Chargor must:

- (a) promptly serve a notice of assignment in the form of Part 1 of Schedule 1 (Forms of Letter for a Company Shareholder TopCo Loan), on each counterparty to a Company Shareholder TopCo Loan Agreement; and
- (b) ensure that the counterparty acknowledges that notice in the form of Part 2 of Schedule 1 (Forms of Letter for a Company Shareholder TopCo Loan).

6.2 Preservation

The Chargor may not, without the prior written consent of the Mezzanine Security Trustee:

- (a) amend or waive any term of any Company Shareholder TopCo Loan Agreement if such amendment or waiver would be adverse to the interests of the Secured Creditors (and for the avoidance of doubt, any extension of time for payment or repayment of principal or interest or any other amount by the Mezzanine Borrower under any Company Shareholder TopCo Loan Agreement, and any extension of the availability period of a facility under the Company Shareholder TopCo Loan Agreement, shall not be adverse to the interests of the Secured Creditors for the purpose of this Clause);
- (b) terminate any Company Shareholder TopCo Loan Agreement;
- (c) take any action which might jeopardise the existence or enforceability of any Company Shareholder TopCo Loan Agreement to which it is a party; or

- (d) except as provided in this Deed, novate, transfer or assign any of its rights under any Company Shareholder TopCo Loan Agreement,

other than in accordance with the Finance Documents.

6.3 Other undertaking

The Chargor must:

- (a) notify the Mezzanine Security Trustee of any breach of or default under a Company Shareholder TopCo Loan Agreement to which it is a party by it or its counterparty on becoming aware of the same;
- (b) duly perform its obligations, and pursue its rights under the terms of each Company Shareholder TopCo Loan Agreement to which it is a party; and
- (c) supply the Mezzanine Security Trustee and any Receiver with copies of each Company Shareholder TopCo Loan Agreement to which it is a party and any information and documentation relating to any Company Shareholder TopCo Loan Agreement to which it is a party requested by the Mezzanine Security Trustee or any Receiver.

7. WHEN SECURITY BECOMES ENFORCEABLE

7.1 Event of Default

This Security will become immediately enforceable if an Event of Default has occurred and is continuing and a Mezzanine Enforcement Notice has been served on the Chargor.

7.2 Enforcement

After this Security has become enforceable in accordance with Clause 7.1 (Event of Default), the Mezzanine Security Trustee may enforce all or any part of this Security in any manner as directed in accordance with the STID and the Mezzanine Facility Agreement.

8. ENFORCEMENT OF SECURITY

8.1 General

- (a) The power of sale and any other power conferred on a mortgagee by law (including under section 101 of the LPA and the power to appoint an administrator) will be immediately exercisable at any time after this Security has become enforceable in accordance with Clause 7.1 (Event of Default).
- (b) For the purposes of all powers implied by law, the Secured Liabilities are deemed to have become due and payable for that purpose on the date of this Deed.
- (c) Any restriction on the power of sale (including under section 103 of the LPA) or the right of a mortgagee to consolidate mortgages conferred by law (including under section 93 of the LPA) does not apply to this Security.
- (d) For the purposes of the Collateral Regulations and to the extent that the assets mortgaged or charged under this Deed constitute "financial collateral" (as defined in the Collateral Regulations), after this Security is enforceable the Mezzanine Security Trustee may appropriate all or any part of any financial collateral which is subject to a Security created under or pursuant to this Deed in or towards the satisfaction of the Secured Liabilities and

may exercise such right to appropriate upon giving written notice to the Chargor. Where it does so, the value of the financial collateral so appropriated shall be such amount as the Mezzanine Security Trustee so determines based on a valuation obtained by it from an independent firm of accountants.

8.2 No liability as mortgagee in possession

Neither the Mezzanine Security Trustee nor any Receiver will be liable, by reason of entering into possession of a Security Asset:

- (a) to account as mortgagee in possession or for any loss on realisation; or
- (b) for any default or omission for which a mortgagee in possession might be liable.

8.3 Privileges

Each Receiver and the Mezzanine Security Trustee is entitled to all the rights, powers, privileges and immunities conferred by law (including the LPA) on mortgagees and receivers duly appointed under any law (including the LPA).

8.4 Protection of third parties

No person (including a purchaser) dealing with the Mezzanine Security Trustee or a Receiver or its or his agents will be concerned to enquire:

- (a) whether the Secured Liabilities have become payable;
- (b) whether any power which the Mezzanine Security Trustee or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- (c) whether any money remains due under the Relevant Documents; or
- (d) how any money paid to the Mezzanine Security Trustee or to that Receiver is to be applied.

8.5 Redemption of prior mortgages

- (a) At any time after this Security has become enforceable in accordance with Clause 7.1 (Event of Default), the Mezzanine Security Trustee may:
 - (i) redeem any prior Security against any Security Asset; and/or
 - (ii) procure the transfer of that Security to itself; and/or
 - (iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer (any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor).
- (b) The Chargor must pay to the Mezzanine Security Trustee, on demand, the costs and expenses incurred by the Mezzanine Security Trustee in connection with any such redemption and/or transfer, including the payment of any principal or interest.

9. RECEIVER

9.1 Appointment of Receiver

- (a) Except as provided below, the Mezzanine Security Trustee may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:
 - (i) this Security has become enforceable in accordance with Clause 7.1 (Event of Default); or
 - (ii) the Chargor so requests the Mezzanine Security Trustee in writing at any time.
- (b) Any appointment under paragraph (a) above may be by deed, under seal or in writing.
- (c) Except as provided below, any restriction on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the LPA) does not apply to this Deed.
- (d) The Mezzanine Security Trustee is not entitled to appoint a Receiver solely as a result of obtaining a moratorium (or anything done with a view to obtaining a moratorium) under the Insolvency Act 2000 except with the leave of the court.
- (e) The Mezzanine Security Trustee may not appoint an administrative receiver (as defined in section 29(2) of the Insolvency Act 1986) over the Security Assets of the Chargor if the Mezzanine Security Trustee is prohibited from so doing by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

9.2 Removal

The Mezzanine Security Trustee may by writing (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, (if instructed in accordance with the STID or the Mezzanine Facility Agreement) appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

9.3 Remuneration

The Mezzanine Security Trustee may fix the remuneration of any Receiver appointed by it and any maximum rate imposed by any law (including under section 109(6) of the LPA) will not apply.

9.4 Agent of the Chargor

- (a) A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the LPA. The Chargor alone is responsible for the remuneration, contracts, engagements, acts, omissions, defaults and losses of a Receiver and for Liabilities incurred by a Receiver.
- (b) No Secured Creditor will incur any Liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

9.5 Relationship with Mezzanine Security Trustee

To the fullest extent allowed by law, any right or power conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable in accordance with Clause 7.1 (Event of Default) be exercised by the Mezzanine Security Trustee in relation to any

Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

10. POWERS OF RECEIVER

10.1 General

- (a) A Receiver has all of the rights, powers and discretions set out below in this Clause 10 in addition to those conferred on it by any law, including all the rights, powers and discretions conferred on a receiver under the LPA and a receiver and an administrative receiver under the Insolvency Act 1986 except with leave of the court.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

10.2 Possession

A Receiver may take immediate possession of, get in and realise any Security Asset.

10.3 Carry on business

A Receiver may carry on the business of the Chargor in any manner he thinks fit and enter into contracts in the name of the Chargor without any further consent or authority on the part of the Chargor.

10.4 Employees

- (a) A Receiver may appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit.
- (b) A Receiver may discharge any person appointed by the Chargor.

10.5 Borrow money

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he thinks fit.

10.6 Sale of assets

- (a) A Receiver may sell, transfer, exchange, hire out, lend, licence, exchange, convert into money and realise or otherwise dispose of any Security Asset by public auction, tender or private contract and generally in any manner and on any terms which he thinks fit.
- (b) The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit.

10.7 Leases

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

10.8 Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

10.9 Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit.

10.10 Receipts

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

10.11 Subsidiaries

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

10.12 Delegation

A Receiver may delegate his powers in accordance with this Deed.

10.13 Lending

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

10.14 Protection of assets

A Receiver may effect any insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset as he thinks fit.

10.15 Contracts

A Receiver may enter into any contract or arrangement and perform, rescind, repudiate or vary any contract to which the Chargor is a party.

10.16 Voting rights

A Receiver may exercise (in the name of the Chargor and without any further consent or authority on the part of the Chargor) any voting rights and any powers or rights which may be exercised by the legal or beneficial owner of any investments.

10.17 Other powers

A Receiver may:

- (a) do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
- (b) exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset; and

- (c) use the name of the Chargor for any of the above purposes.

11. APPLICATION OF PROCEEDS

- (a) Any moneys received by the Mezzanine Security Trustee or any Receiver after this Security has become enforceable must be applied in accordance with the Mezzanine Facility Agreement.
- (b) This Clause is subject to the payment of any claims having priority over this Security. This Clause does not prejudice the right of any Secured Creditor to recover any shortfall from a Mezzanine Obligor.

12. EXPENSES AND INDEMNITY

The Chargor must:

- (a) (without double counting) within five Business Days of demand, pay all Liabilities, costs and expenses (including legal fees and any arising from actual or alleged breach by any person of any law or regulation whether relating to the environment or otherwise) incurred in connection with this Deed by any Secured Creditor, Receiver, attorney, manager, agent, accountant, Tax advisor or other person appointed by the Mezzanine Security Trustee as a consequence of any breach by the Chargor of the provisions of this Deed, the exercise or purported exercise of any of the rights and powers conferred on them by this Deed or otherwise relating to the Security Assets; and
- (b) keep each of them indemnified against any failure or delay in paying those Liabilities, costs or expenses.

13. DELEGATION

13.1 Power of Attorney

The Mezzanine Security Trustee or any Receiver may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power or authority (or, in the case of the Receiver only, discretion) exercisable by it under this Deed.

13.2 Terms

Any such delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Mezzanine Security Trustee or that Receiver as the case may be may think fit.

13.3 Liability

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

14. FURTHER ASSURANCES

- (a) The Chargor must, at its own expense, take whatever action the Mezzanine Security Trustee or a Receiver may require for:
 - (i) creating, perfecting or protecting any security intended to be created by this Deed;
 - or

- (ii) facilitating the realisation of any Security Asset, or the exercise of any right or power (or, in the case of the Receiver only, discretion) exercisable, by the Mezzanine Security Trustee or any Receiver or any of its delegates or sub-delegates in respect of any Security Asset.

This includes (without limitation):

- (A) the execution of any legal mortgage, charge, transfer, conveyance, assignment or assurance of any property, whether to the Mezzanine Security Trustee or to its nominee or any other person; or
- (B) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Mezzanine Security Trustee, instructed in accordance with the Mezzanine Facility Agreement, may direct. The Chargor acknowledges that, as at the date of this Deed, the Mezzanine Security Trustee has not required that the Shares be registered in its own or its nominee's name, but that the Mezzanine Security Trustee may, at any time, require this to occur pursuant to paragraphs (A) and/or (B) above if it is necessary to satisfy paragraphs (i) or (ii) above.

15. POWER OF ATTORNEY

The Chargor, by way of security, irrevocably and severally appoints the Mezzanine Security Trustee and any Receiver to be its attorney to take any action which it is obliged to take under this Deed. The Chargor ratifies and confirms whatever any attorney does or purports to do in the exercise or purported exercise of his power under its appointment under this Clause 15.

16. PRESERVATION OF SECURITY

16.1 Continuing security

This Security is continuing and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or discharge in whole or in part.

16.2 Reinstatement

- (a) If any discharge (whether in respect of the obligations of any Mezzanine Obligor or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Chargor under this Deed will continue as if the discharge or arrangement had not occurred.
- (b) Each Secured Creditor may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

16.3 Waiver of defences

Neither the obligations of the Chargor under this Deed nor this Security will be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of those obligations or this Security (whether or not known to the Chargor or any Secured Creditor). This includes:

- (a) any time or waiver granted to, or composition with, any person;

- (b) the release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment (however fundamental) of a Relevant Document or any other document or security;
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Relevant Document or any other document or security; or
- (h) any insolvency or similar proceedings.

16.4 Immediate recourse

The Chargor waives any right it may have of first requiring any Secured Creditor (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Deed.

16.5 Appropriations

Each Secured Creditor (or any trustee or agent on its behalf) may at any time during the Security Period without affecting the liability of the Chargor under this Deed:

- (a)
 - (i) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Creditor (or any trustee or agent on its behalf) in respect of those amounts; or
 - (ii) apply and enforce the same in such manner and order as it sees fit (save in the case of the Mezzanine Security Trustee which shall act as instructed in accordance with the Mezzanine Facility Agreement) (whether against those amounts or otherwise); and
- (b) hold in a suspense account any moneys received from the Chargor or on account of the liability of the Chargor under this Deed.

16.6 Non-competition

Unless:

- (a) the Security Period has expired; or
- (b) the Mezzanine Security Trustee otherwise directs,

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

- (i) be subrogated to any rights, security or moneys held, received or receivable by any Secured Creditor (or any trustee or agent on its behalf);

- (ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Chargor's liability under this Deed;
- (iii) claim, rank, prove or vote as a creditor of any member of the Company Group, or its estate in competition with any Secured Creditor (or any trustee or agent on its behalf); or
- (iv) receive, claim or have the benefit of any payment, distribution or security from or on account of any member of the Company Group, or exercise any right of set-off as against any member of the Company Group.

The Chargor must hold in trust for and promptly pay or transfer to the Mezzanine Security Trustee for the benefit of the Secured Creditors any payment or distribution or benefit of security received by it contrary to this Clause 16 or in accordance with any directions given by the Mezzanine Security Trustee under this Clause 16 to the extent necessary to enable all amounts which may be or become payable to the Secured Creditors by the Mezzanine Obligor under or in connection with the Finance Documents to be repaid in full.

16.7 Additional security

This Security is in addition to and is not in any way prejudiced by any other security now or subsequently held by any Secured Creditor.

17. CHANGES TO THE PARTIES

17.1 The Chargor

The Chargor may not assign or transfer any of its rights or obligations under this Deed without the prior consent of the Mezzanine Security Trustee.

17.2 The Mezzanine Security Trustee

- (a) The Mezzanine Security Trustee may assign or otherwise dispose of all or any of its rights under this Deed in accordance with the terms of the STID and the Mezzanine Facility Agreement.
- (b) References to the Mezzanine Security Trustee in this Deed include any successor Mezzanine Security Trustee appointed under the STID and the Mezzanine Facility Agreement.

18. MISCELLANEOUS

18.1 The Mezzanine Security Trustee

The Parties agree that:

- (a) where in this Deed the Mezzanine Security Trustee is expressed to take or refrain from taking any action or give or refrain from giving any consent, direction or approval or is granted any right or power, the Mezzanine Security Trustee shall act only as directed by the relevant Secured Creditor or Secured Creditors in accordance with, and subject to the terms of the STID and the Mezzanine Facility Agreement. In acting under this Deed, the Mezzanine Security Trustee shall have all of the rights, powers and protections granted to it under the STID and the Mezzanine Facility Agreement; and

- (b) failure by the Mezzanine Security Trustee to effectively execute and deliver this Deed as a deed will not affect the validity or enforceability of the Security created thereunder.

18.2 Covenant to pay

The Chargor must on demand pay or discharge the Secured Liabilities in the manner provided for in the Relevant Documents.

18.3 Tacking

Each Secured Creditor must perform its obligations under the Finance Documents (including any obligation to make available further advances).

18.4 New Accounts

- (a) If any subsequent charge or other interest affects any Security Asset, any Secured Creditor may open a new account with the Chargor.
- (b) If a Secured Creditor does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.
- (c) As from that time all payments made to the Secured Creditor will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

18.5 Set-off

No Security created under this Deed shall prevent or restrict any rights of set off exercisable by the Secured Creditors generally.

19. RELEASE

At the end of the Security Period but not otherwise, the Mezzanine Security Trustee must, at the request and cost of the Chargor, take whatever action is necessary to release the Security Assets from this Security.

20. NOTICES

20.1 Communications in writing

Any communication to be made in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

20.2 Contact details

- (a) The contact details of the Chargor for all notices in connection with this Deed are the same as those set out in the Mezzanine Facility Agreement for the Chargor.
- (b) The contact details of the Mezzanine Security Trustee for all notices in connection with this Deed are the same as those set out in the Mezzanine Facility Agreement for the Mezzanine Security Trustee.
- (c) Any Party may change its contact details by giving not less than five Business Days' notice to the other Party.

- (d) Where a Party nominates a particular department or officer to receive a notice, a notice will not be effective if it fails to specify that department or officer.

20.3 Delivery

- (a) Any communication or document made or delivered by one Party to the other under or in connection with this Deed will be effective:
 - (i) if by way of fax, when received in legible form; and
 - (ii) if by way of letter, when it has been left at the relevant address or five days after being deposited in the post, postage prepaid, in a correctly addressed envelope.
- (b) Any communication or document to be made or delivered to the Mezzanine Security Trustee will be effective only when actually received by the Mezzanine Security Trustee.

20.4 Electronic communication

- (a) Any communication to be made between the Mezzanine Security Trustee and the Chargor under or in connection with this Deed may be made by electronic mail or other electronic means, if the Mezzanine Security Trustee and the Chargor:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between the Chargor and the Mezzanine Security Trustee will be effective only when actually received in readable form.
- (c) Any communication which becomes effective, in accordance with paragraph (b) above or Clause 20.3 (Delivery), after 5:00p.m in the place of receipt will only be deemed to be given on the next Business Day in that place.
- (d) Any reference in this Deed to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 20.4.

21. LANGUAGE

Any notice given in connection with this Deed must be in English.

22. SEVERABILITY

If a term of this Deed is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Deed; or
- (b) the legality, validity or enforceability in any other jurisdiction of that or any other term of this Deed.

23. WAIVERS AND REMEDIES CUMULATIVE

The rights of each Secured Creditor under this Deed:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

24. COUNTERPARTS

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

25. GOVERNING LAW

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

26. ENFORCEMENT

26.1 Jurisdiction

- (a) The English courts have exclusive jurisdiction to settle any dispute including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed.
- (b) The English courts are the most appropriate and convenient courts to settle any such dispute and the Chargor waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Deed.
- (c) This Clause is for the benefit of the Mezzanine Security Trustee only. To the extent allowed by law, the Mezzanine Security Trustee may take:
 - (i) proceedings in any other court with jurisdiction; and
 - (ii) concurrent proceedings in any number of jurisdictions.

26.2 Waiver of immunity

The Chargor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by a Secured Creditor against it in relation to this Deed and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

FORMS OF LETTER FOR A COMPANY SHAREHOLDER TOPCO LOAN AGREEMENT

PART 1

NOTICE TO MEZZANINE BORROWER

To: GIP III JUPITER INVESTOR MIDCO LIMITED

Copy NATIONAL WESTMINSTER BANK PLC as Mezzanine Security Trustee

[Date]

Dear Sirs,

Security Document dated [] between GIP III Jupiter Investor TopCo Limited and National Westminster Bank Plc (the Security Document)

This letter constitutes notice to you that under the Security Document we have assigned by way of security in favour of National Westminster Bank Plc (as trustee for the Secured Creditors, the **Mezzanine Security Trustee**) all our rights in respect of the loan agreement dated [] between GIP III Jupiter Investor MidCo Limited as borrower and GIP III Jupiter Investor TopCo Limited as lender (the **Company Shareholder TopCo Loan Agreement**).

We confirm that:

- (a) we will remain liable under the Company Shareholder TopCo Loan Agreement to perform all the obligations assumed by us under the Company Shareholder TopCo Loan Agreement; and
- (b) none of the Mezzanine Security Trustee, its agents, any receiver or any other person will at any time be under any obligation or liability to you under or in respect of the Company Shareholder TopCo Loan Agreement.

We will also remain entitled to exercise all our rights, powers and discretions under [the] [each] Company Shareholder TopCo Loan Agreement, and you should continue to give notices under [the] [each] Company Shareholder TopCo Loan Agreement to us, unless and until you receive notice from the Mezzanine Security Trustee to the contrary stating that the security has become enforceable in accordance with the Security Document. In this event, all the rights and powers will be exercisable by, and notices must be given to, the Mezzanine Security Trustee or as it directs and all amounts payable to us under the Company Shareholder TopCo Loan Agreement must be paid to the Mezzanine Security Trustee or as it directs.

All moneys payable by you pursuant to, under or in connection with the Company Shareholder TopCo Loan Agreement shall be paid into [*insert details of account*], unless and until you receive notice from the Mezzanine Security Trustee to the contrary stating that the security has become enforceable in accordance with the Security Document, in which event all future payments under or in connection with the Company Shareholder TopCo Loan Agreement shall be paid as directed by the Mezzanine Security Trustee.

Please note that under the terms of the common finance documents we are restricted from amending the Company Shareholder TopCo Loan Agreement.

We irrevocably instruct and authorise you to disclose to the Mezzanine Security Trustee any information relating to the Contract requested from you by the Mezzanine Security Trustee, save that there is no requirement to disclose information on how the Chargor has been put in funds.

The instructions in this letter may not be revoked or amended without the prior written consent of the Mezzanine Security Trustee and you may comply with them without further permission from us or enquiry by you.

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

Please acknowledge receipt of this letter by signing the attached acknowledgement and sending it to the Mezzanine Security Trustee at 4th Floor, 250 Bishopsgate, London EC2M 4AA.

Yours faithfully,

GIP III JUPITER INVESTOR TOPCO LIMITED

(Authorised signatory)

PART 2

ACKNOWLEDGEMENT OF COUNTERPARTY

To: NATIONAL WESTMINSTER BANK PLC as Mezzanine Security Trustee

Copy: GIP III JUPITER INVESTOR TOPCO LIMITED

[Date]

Dear Sirs,

We confirm receipt from GIP III Jupiter Investor TopCo Limited (the **Chargor**) of a notice dated [] of a first fixed charge on the terms of the Security Document dated [] of all the Chargor's rights in respect of the loan agreement dated [] between GIP III Jupiter Investor MidCo Limited as borrower and GIP III Jupiter Investor TopCo Limited as lender (the **Company Shareholder TopCo Loan Agreement**).

We confirm that:

- (c) we consent to the assignment of the Company Shareholder TopCo Loan Agreement to you;
- (d) we have not received notice of the interest of any third party in the Company Shareholder TopCo Loan Agreement;
- (e) we do not have and will not claim or exercise any set-off or counterclaim in respect of [any of] the Company Shareholder TopCo Loan Agreement [s]; and
- (f) we undertake to pay all sums due, and give notices, under the Company Shareholder TopCo Loan Agreement as directed in the notice.

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

This letter has been entered into as a deed on the date stated at the beginning of this Deed.

Yours faithfully,

.....
(Authorised signatory)

GIP III JUPITER INVESTOR MIDCO LIMITED

SIGNATORIES

CHARGOR

**GIP III JUPITER INVESTOR TOPCO
LIMITED as Chargor**

EXECUTED as a deed by **GIP III JUPITER INVESTOR
TOPCO LIMITED**

Signed and delivered as a deed on its behalf by,
duly authorised, in the presence of

Witness's Signature _____

Name:

.....Amy Ryan.....

Clifford Chance

Address:

10 Upper Bank Street

.....London E14 5JJ.....

Nicholas Buddicom
Director

MEZZANINE SECURITY TRUSTEE


**NATIONAL WESTMINSTER
BANK PLC as Mezzanine Security
Trustee**

SIGNED as a **DEED** and delivered by an)
authorised signatory of)

NATIONAL WESTMINSTER BANK PLC)
)

STEPHEN SWANN


Authorised Signatory

Witness signature: 

Name: *Georgina Page*

Address:

ALLEN & OVERY LLP
ONE BISHOPS SQUARE
LONDON E1 6AD
www.allenoverly.com