



Registration of a Charge

Company Name: **TOPLAND (NO 44) LIMITED**

Company Number: **11531608**



Received for filing in Electronic Format on the: **30/11/2021**

XAID46DU

Details of Charge

Date of creation: **29/11/2021**

Charge code: **1153 1608 0001**

Persons entitled: **LAXFIELD LLP AS SECURITY AGENT**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **OSBORNE CLARKE LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 11531608

Charge code: 1153 1608 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th November 2021 and created by TOPLAND (NO 44) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th November 2021 .

Given at Companies House, Cardiff on 2nd December 2021

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



Companies House

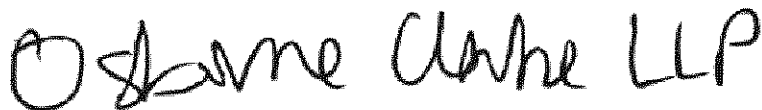


**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

We certify that, save for material redacted pursuant to s. 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Dated this 30 November 2021

Signed

A handwritten signature in black ink that reads "Osborne Clarke LLP". The signature is written in a cursive, flowing style.

Osborne Clarke LLP
One London Wall
London
EC2Y 5EB

Charge over shares and assignment of Subordinated Debt

(1) **Topland (No 44) Limited** and **SJW Investments Limited**
as the Companies

(2) **Laxfield LLP** as Security Agent

Dated 29 November 2021

Osborne Clarke LLP

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This Deed is made on

29 November 2021

Between:

- (1) **Topland (No 44) Limited** (company number: 11531608) whose registered office is at 55 Baker Street, London, United Kingdom, W1U 7EU and **SJW Investments Limited** (company number: 13475396) whose registered office is at Imagestor House 31 Bridge Road, Palace Gates, London, United Kingdom, N22 7SN (together the "**Companies**"); and
- (2) **Laxfield LLP** as security trustee for the Secured Parties (as defined in the Facilities Agreement (defined below)) (the "**Security Agent**").

This Deed witnesses as follows:

1. **Definitions and interpretation**

- 1.1 In this Deed, unless the context otherwise requires, the following words shall apply:

"Borrower" means 1-7 Upper Street Limited (company number: 13412400).

"Charged Investments" means:

- (a) all Shares;
- (b) all Derivative Assets; and
- (c) all Related Rights in respect of paragraphs (a) to (b) (inclusive).

"Collateral Liabilities" in relation to any of the Subordinated Debt means:

- (a) any claim for damages or restitution in the event of rescission of any such liabilities or otherwise in connection with the Subordinated Debt;
- (b) any claim against the Borrower flowing from any recovery by the Borrower of a payment or discharge in respect of the Subordinated Debt on the grounds of preference or otherwise; and
- (c) any amounts (including post-insolvency interest) 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.

"Derivative Asset" means all allotments, rights, benefits and advantages (including all voting rights) at any time accruing, offered or arising in respect of or incidental to the Shares and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect of the Shares.

"Facilities Agreement" means an agreement dated on or around the date of this Deed and made between, among others, the Borrower and the Security Agent under which the Original Lenders have made available certain loan facilities to the Borrower as the same may be amended, novated, supplemented, extended or restated from time to time.

"Finance Documents" means the Finance Documents as defined in the Facilities Agreement and in each case as amended, novated, supplemented, extended or restated from time to time.

"LPA" means the Law of Property Act 1925.

"Party" means a party to this Deed.

"Related Rights" means, where used in relation to an asset, the following:

- (a) the proceeds of sale and/or other realisation of that asset (or any part thereof or interest therein); and
- (b) all Security, Authorisations, options, agreements, rights, benefits, indemnities, guarantees, warranties or covenants for title in respect of such asset.

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under each Finance Document.

"Security Assets" means the Charged Investments and the Subordinated Debt.

"Security Period" means the period from the date of this Deed until the date on which the Security Agent has determined (acting reasonably) that all of the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and that no commitment is outstanding.

"Subordinated Debt" means all present and future sums, liabilities and obligations whatsoever (actual or contingent) payable, owing due or incurred by the Borrower to the Companies (or any of them) together with any Collateral Liabilities relating thereto and any Related Rights in respect of any of the foregoing.

"Shares" means:

- (a) 90 A ordinary shares in the Borrower held by Topland (No 44) Limited;
- (b) 10 ordinary shares in the Borrower held by SJW Investments Limited; and
- (c) all other stocks, shares, warrants or other equity securities issued by the Borrower now or in the future owned by a Company from time to time or any in which it has an interest.

1.2 **Construction**

- (a) Unless a contrary intention appears, sub-clause 1.2 (*Construction*) of the Facilities Agreement applies to this Deed, and shall be deemed to be incorporated into this Deed, mutatis mutandis, as though set out in full in this Deed, with any reference to **"this Agreement"** being deemed to be a reference to **"this Deed"**, subject to any necessary changes.
- (b) Unless the context otherwise requires or as otherwise defined in this Deed, terms defined in the Facilities Agreement mean the same in this Deed as they do in the Facilities Agreement.
- (c) Any references to the Security Agent or any Receiver shall include its Delegate.
- (d) Clauses and schedules are references to clauses of and schedules to this Deed and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear.

1.3 **Implied covenants for title**

The obligations of each Company under this Deed shall be in addition to the covenants for title deemed to be included in this Deed by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

1.4 ***Effect as a deed***

This Deed is intended to take effect as a deed notwithstanding that the Security Agent may have executed it under hand only.

1.5 ***Trusts***

- (a) The Security Agent holds the benefit of this Deed on trust for the Secured Parties in accordance with the terms of clause 27.1 of the Facilities Agreement.
- (b) The perpetuity period for any trusts created by this Deed is 125 years.

1.6 ***Third party rights***

Unless a contrary intention appears, sub-clause 1.4 (*Third party rights*) of the Facilities Agreement applies to this Deed, and shall be deemed to be incorporated into this Deed, mutatis mutandis, as though set out in full in this Deed, with any references to "**this Agreement**" being deemed to be a reference to "**this Deed**", subject to any necessary changes.

1.7 ***Finance documents***

This Deed is a Finance Document.

1.8 ***Liability***

The obligations of each Company under this Deed are several.

2. ***Covenant to pay***

Each Company as a primary obligor covenants with the Security Agent (as trustee of the Secured Parties) that it will on demand pay to the Security Agent the Secured Liabilities when the same fall due for payment.

3. ***Limited Recourse***

Notwithstanding anything else contained in this Deed or any other Finance Document, it is agreed and acknowledged that:

- (a) the sole recourse of the Security Agent to each Company under this Deed is to that Company's interest in the Security Assets; and
- (b) the liability of each Company hereunder shall:
 - (i) be limited in aggregate to the amount recovered as a result of enforcement of this Deed over the Security Assets; and
 - (ii) be satisfied only from the proceeds of sale or disposal on enforcement or realisation of the Security Assets under this Deed,

provided that nothing in this sub-clause shall limit the recourse of the Secured Parties to a Company in respect of any breach by a Company of any obligation (other than clause 2 (*Covenant to pay*)) or representation given by a Company under this Deed.

4. ***Security Assets***

4.1 ***Security***

- (a) Each Company, as security for the payment of the Secured Liabilities, charges, by way of mortgage, in favour of the Security Agent, with full title guarantee, the Charged Investments.
- (b) As security for the payment of the Secured Liabilities, each Company assigns, by way of security, with full title guarantee to the Security Agent all its rights, title and interest in the Subordinated Debt.

5. **Nature of Security**

5.1 ***Continuing security***

- (a) The Security created by this Deed is to be a continuing security notwithstanding any intermediate payment or settlement of all or any part of the Secured Liabilities or any other matter or thing.
- (b) If any purported obligation or liability of any Transaction Obligor to the Secured Parties which if valid would have been the subject of any obligation or charge created by this Deed is or becomes unenforceable, invalid or illegal on any ground whatsoever whether or not known to any Secured Party, the Companies shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Companies were the principal debtor in respect thereof. Each Company hereby agree to keep the Secured Parties fully indemnified against all damages, losses, costs and expenses arising from any failure of any Transaction Obligor to carry out any such purported obligation or liability.
- (c) The obligations and liabilities of each Company under this Deed will not be affected by an act, omission, matter or thing which, but for this paragraph, would reduce, release or prejudice any of its obligations or liabilities under this Deed (without limitation and whether or not known to any Secured Party) including:
 - (i) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
 - (ii) the release of any Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any person;
 - (iii) 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 any assets of any Transaction Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
 - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Transaction Obligor or any other person;
 - (v) any amendment (however fundamental) or replacement of any Finance Document or any other document or Security;
 - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security; or
 - (vii) any insolvency or similar proceedings.
- (d) Until the Security Period has ended and unless the Security Agent otherwise directs, no Company will exercise any rights which it may have by reason of performance by it of its obligations under this Deed:

- (i) to be indemnified by any other Transaction Obligor (including any rights it may have by way of subrogation);
 - (ii) to claim any contribution from any guarantor of any other Transaction Obligor of the obligations under the Finance Documents;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any right of the Security Agent or any of the other Secured Parties under any Finance Document or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents;
 - (iv) to claim, rank, prove or vote as a creditor of any other Transaction Obligor or its estate in competition with the Security Agent or any of the other Secured Parties; and/or
 - (v) receive, claim or have the benefit of any payment, distribution or security from or on account of any other Transaction Obligor, or exercise any right of set-off against any other Transaction Obligor.
- (e) Each Company shall hold on trust for and immediately pay or transfer to the Security Agent any payment or distribution or benefit of Security received by it contrary to this sub-clause.
- (f) Each Company waives any right it may have of first requiring the Security Agent to proceed against or enforce any other rights or Security or claim payment from any person before claiming from a Transaction Obligor under a Finance Document. This waiver applies irrespective of any law or any provision of the Finance Document to the contrary.
- (g) Until the Security Period has ended, the Security Agent may refrain from applying or enforcing any other moneys, Security or rights held or received by the Security Agent in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Company shall be entitled to the benefit of the same.
- (h) Without prejudice to the generality of clause 5.1(b), each Company expressly confirms that it intends that the Security constituted by this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Secured Liabilities as a result of the amendment and/or restatement of the Facilities Agreement and/or any of the other Finance Documents and/or any additional facility or amount which is made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

5.2 ***Non-merger of Security***

The Security created by this Deed is to be in addition to and shall neither be merged with nor in any way exclude or prejudice or be affected by any other Security or other right which the Security Agent may now or after the date of this Deed hold for any of the Secured Liabilities, and this Deed may be enforced against any Company without first having recourse to any other rights of the Security Agent.

6. **Further assurances and protection of priority**

6.1 ***General***

- (a) Each Company shall, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
 - (i) to perfect or protect the Security created or intended to be created under, or evidenced by, this Deed (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 Deed) or for the exercise of any rights, powers and remedies of the Secured Parties provided by or pursuant to this Deed or by law;
 - (ii) to confer on the Security Agent or confer on the Secured Parties, Security over any assets of a Company, located in any jurisdiction, equivalent or similar to the Security intended to be conferred by or pursuant to this Deed and, pending the conferring of such Security, hold such assets upon trust (or in any manner required by the Security Agent) for the Secured Parties; and/or
 - (iii) (once the Security constituted by this Deed has become enforceable) to facilitate the realisation or enforcement of the assets which are, or are intended to be, the subject of the Security created, or intended to be created, by this Deed.
- (b) Each Company shall take all such action (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 Secured Parties by or pursuant to this Deed.

6.2 **Notices**

Each Company shall:

- (a) promptly give notice of the assignment of the Subordinated Debt to the Borrower in the form set out in the Schedule (*Form of notice of assignment*); and
- (b) use all reasonable endeavours to procure that the Borrower executes and delivers to the Security Agent an acknowledgement of that notice in the form set out in the Schedule (*Form of notice of assignment*).

7. **Representations and warranties**

Each Company makes the representations and warranties listed below in favour of each of the Secured Parties.

7.1 **Security Assets**

- (a) Immediately prior to the date of this Deed it was the legal and beneficial owner of the Security Assets with the right to transfer with full title guarantee all or any part of the Security Assets and has good marketable title to the Security Assets.
- (b) Save in respect of any Security Assets legally assigned to the Security Agent pursuant to this Deed, it is the legal and beneficial owner of the Security Assets with the right to transfer with full title guarantee all or any part of the Security Assets and has good marketable title to the Security Assets.
- (c) The Subordinated Debt is not subject to any set-off, counterclaim or other defence.
- (d) The Shares are fully paid and none are subject to any option to purchase or similar rights.

- (e) It has not appointed any nominee to exercise or enjoy all or any of its rights in relation to the Charged Investments.
- (f) The constitutional documents of the Borrower do not and could not restrict or prohibit any transfer of the Shares on creation or on enforcement of that Security.

7.2 Repetition

The representations in this clause are deemed to be made by each Company by reference to the facts and circumstances then existing on the date of this Deed and each day on which the Repeating Representations are deemed to be made under the Facilities Agreement.

8. Undertakings

8.1 Duration of undertakings

Each Company undertakes to the Security Agent in the terms of this clause for the duration of the Security Period.

8.2 General undertakings

(a) Negative pledge and disposal restrictions

It will not:

- (i) create or agree to create or permit to subsist or arise any Security over all or any part of the Security Assets; or
- (ii) dispose of all or any part of the Security Assets or agree or attempt to do the same,

except with the prior written consent of the Security Agent.

(b) Deposit of documents or title deeds

It will deposit with the Security Agent:

- (i) to the extent that the relevant documents have not been deposited with a clearance system, settlement system or custodian acceptable to the Security Agent, all deeds, documents of title (or documents evidencing title or the right to title) and agreements relating to a Security Asset;
- (ii) any stock transfer forms or other instruments of transfer duly completed to the Security Agent's satisfaction; and
- (iii) any other document which the Security Agent may require for the purpose of perfecting the Security created by this Deed.

(c) Calls

It shall duly and promptly pay all calls, instalments or other payments which may be due and payable in respect of any Charged Investments and, for the avoidance of doubt, no Secured Party shall incur any liability in respect of any amounts due from a Company in respect of any Charged Investments.

(d) Compliance with laws

It shall at all times comply with all laws and regulations applicable to it and will obtain and maintain in full force and effect all Authorisations which may at any time be required with respect to any of the Security Assets.

(e) *Information*

It shall supply promptly to the Security Agent:

- (i) such information in relation to the Security Assets as the Security Agent may reasonably request; and
- (ii) all documents dispatched by the Borrower to it in connection with a Security Asset.

8.3 ***Charged investments***

(a) *Exercise of rights*

- (i) Prior to a Default, it may exercise or refrain from exercising (or direct the same) any of the powers or rights conferred upon or exercisable by the legal or beneficial owner of the Charged Investments unless such exercise or refrain from exercising (or direction to do the same):
 - (A) breaches, or might reasonably be expected to breach, any term of the Facilities Agreement; or
 - (B) would, or might reasonably be expected to, have an adverse effect on the value of any of the Security Assets or otherwise prejudice any Transaction Security; or
 - (C) would, or might reasonably be expected to, effect any rights or powers of the relevant Company arising from its legal and/or beneficial ownership of the Charged Investments.
- (ii) On and following a Default, it shall not, without the prior written consent of the Security Agent, exercise or refrain from exercising (or direct the same) any of the powers or rights conferred upon or exercisable by the legal or beneficial owner of the Charged Investments.

(b) *Registration of transfers*

If required by the Security Agent in connection with enforcement hereunder, it shall procure that the Charged Investments which are in registered form are duly registered in the name of the Security Agent or its nominee once a transfer relating to the Charged Investments is presented for that purpose.

(c) *Dividends*

It shall promptly pay all dividends or other monies received by it in respect of the Charged Investments into an account in accordance with the terms of the Facilities Agreement.

(d) *Nominees*

It shall not appoint any nominee to exercise or enjoy all or any of its rights in relation to the Charged Investments.

8.4 ***Power to remedy***

If a Company fails to comply with any covenant set out in sub-clause 8.2 (*General undertakings*) or sub-clause 8.3 (*Charged investments*) (inclusive), it will allow (and irrevocably authorises) the Security Agent or any Receiver to take any action on its behalf which the Security Agent or the Receiver deems necessary or desirable to ensure that those covenants are complied with. Each Company shall reimburse to the Security Agent and/or any Receiver, on demand, all amounts expended by the Security Agent or any Receiver in remedying such failure together with interest in accordance with clause 8.4 (*Default interest*) of the Facilities Agreement from the date of payment by the Security Agent or Receiver (as the case may be) until the date of reimbursement.

9. **Enforcement and powers of the Security Agent**

9.1 **Enforcement**

At any time when an Event of Default is continuing, the Security created pursuant to this Deed shall be immediately enforceable and the Security Agent may in its absolute discretion and without notice to the Companies or any of them or the prior authorisation of any court:

- (a) enforce all or any part of the Security created by this Deed and take possession of or dispose of all or any of the Security Assets in each case at such times and upon such terms as it sees fit; and
- (b) whether or not it has appointed a Receiver, exercise all of the powers, authorities and discretions:
 - (i) conferred from time to time on mortgagees by the LPA (as varied or extended by this Deed) or by law; and
 - (ii) granted to a Receiver by this Deed or from time to time by law.

9.2 **Power of sale**

For the purpose of all rights and powers implied or granted by law, the Secured Liabilities are deemed to have fallen due on the date of this Deed. The power of sale and other powers conferred by section 101 of the LPA and all other enforcement powers conferred by this Deed shall be immediately exercisable at any time after an Event of Default which is continuing.

9.3 **Statutory restrictions**

The restriction on the consolidation of mortgages and on power of sale imposed by sections 93 and 103 respectively of the LPA shall not apply to the Security constituted by this Deed.

9.4 **Appropriation**

- (a) In this deed, "**financial collateral**" has the meaning given to that term in the Financial Collateral Arrangements (No.2) Regulations 2003.
- (b) At any time after an Event of Default which is continuing, the Security Agent may appropriate all or part of the financial collateral in or towards satisfaction of the Secured Liabilities.
- (c) The Parties agree that the value of any such Security Assets appropriated in accordance with sub-clause 9.4(b) shall be the market price of such Security Assets at the time the right of appropriation is exercised as determined by the Security Agent by reference to such method or source of valuation as the Security Agent may reasonably select, including by independent valuation. The Parties agree that the methods or sources of valuation provided for in this sub-clause or selected by the Security Agent in accordance with this sub-clause shall constitute a commercially reasonable manner of valuation for the purposes of the Financial Collateral Arrangements (No.2) Regulations 2003.

- (d) The Security Agent shall notify the relevant Company, as soon as reasonably practicable, of the exercise of its right of appropriation as regards such of the Security Assets as are specified in such notice.

10. Appointment of a Receiver

10.1 Appointment

- (a) At any time on or after the occurrence of an Event of Default which is continuing, or at the request of a Company or its directors, the Security Agent may, without prior notice to the Company or any of them, in writing (under seal, by deed or otherwise under hand) appoint a Receiver in respect of the Security Assets or any part thereof and may in like manner from time to time (and insofar as it is lawfully able to do) remove any Receiver and appoint another in his place.
- (b) Nothing in sub-clause 10.1(a) shall restrict the exercise by the Security Agent of any one or more of the rights of the Security Agent under Schedule B1 to the Insolvency Act 1986 and the rules thereunder or at common law.
- (c) Section 109(1) of the LPA shall not apply to this Deed.

10.2 Several Receivers

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this Deed (unless the document appointing such Receiver states otherwise).

10.3 Remuneration of Receiver

The Security Agent may from time to time fix the remuneration of any Receiver appointed by it from time to time. For the purpose of this sub-clause, the limitation set out in section 109(6) of the LPA shall not apply.

10.4 Liability of Security Agent for actions of a Receiver

Each Receiver shall be the agent of the relevant Company which shall be solely responsible for his acts or defaults, and for his remuneration and expenses, and be liable on any agreements or engagements made or entered into by him. No Secured Party shall be responsible for any misconduct, negligence or default of a Receiver.

11. Powers of a Receiver

A Receiver shall have (and be entitled to exercise) in relation to the Security Assets over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Deed):

- (a) all of the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (b) all of the powers conferred from time to time on receivers, mortgagors and mortgagees in possession by the LPA;
- (c) all of the powers conferred on the Security Agent under this Deed;
- (d) all the powers and rights of a legal and beneficial owner and the power to do or omit to do anything which a Company itself could do or omit to do;
- (e) the power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Deed or upon receivers by statute or law generally (including the

bringing or defending of proceedings in the name of, or on behalf of, a Company; the collection and/or realisation of Security Assets in such manner and on such terms as the Receiver sees fit; and the execution of documents in the name of a Company (whether under hand, or by way of deed or by utilisation of the company seal of a Company.

12. **Application of monies**

12.1 ***Order of application***

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or any part of the Security created by this Deed (for the purposes of this clause, the "**Recoveries**") shall be held by the Security Agent on trust to apply the same at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause), in the following order, after the payment of any preferential debts ranking in priority to the Secured Liabilities:

- (a) in discharging any sums owing to the Security Agent or any Receiver;
- (b) in payment of all costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of the Security created by this Deed;
- (c) in payment of any Secured Liabilities; and
- (d) the balance of any Recoveries, after all amounts due under sub-clauses 12.1(a) to (c) have been paid in full, to the relevant Company.

The provisions of this sub-clause will override any appropriation made by a Transaction Obligor.

12.2 ***Prospective liabilities***

The Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under sub-clause 12.1 (*Order of application*) in respect of:

- (a) any sum to a Secured Party; and
- (b) any part of the Secured Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

12.3 ***Investment of proceeds***

Prior to the application of the proceeds of the Recoveries in accordance with sub-clause 12.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of sub-clause 12.1 (*Order of application*).

12.4 ***Currency conversion***

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.

- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

12.5 ***Permitted deductions***

The Security Agent shall be entitled, in its discretion:

- (a) to set aside by way of reserve, amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Deed; and
- (b) to pay all Taxes which may be assessed against it in respect of any of the Security Assets, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Deed).

12.6 ***Good discharge***

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Agent on behalf of the Finance Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Agent under sub-clause 12.6(a) in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

13. **Protection of third parties**

13.1 ***No obligation to enquire***

No purchaser from, or other person dealing with, a Secured Party shall be obliged or concerned to enquire whether:

- (a) the right of the Secured Party to exercise any of the powers conferred by this Deed has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power; or
- (b) any of the Secured Liabilities remains outstanding or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters.

13.2 ***Receipt conclusive***

The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve such purchaser of any obligation to see to the application of any moneys paid to or by the direction of the Security Agent or any Receiver.

14. **Protection of the Secured Parties**

14.1 ***No liability***

No Secured Party shall be liable in respect of any of the Security Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers.

14.2 **Possession of Security Assets**

Without prejudice to sub-clause 14.1 (*No liability*), if a Secured Party enters into possession of the Security Assets, it will not be liable to account as mortgagee in possession and may at any time at its discretion go out of such possession.

14.3 **No proceedings**

No Party (other than the Security Agent, a Receiver or a Delegate in respect of its own officers, employees or agents) may take any proceedings against any officer, employee or agent of a Finance Party, a Receiver or a Delegate in respect of any claim it might have against a Finance Party, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Asset and any officer, employee or agent of a Finance Party, a Receiver or a Delegate may rely on this clause subject to sub-clause 1.6 (*Third party rights*) and the provisions of the Third Parties Act.

15. **Costs and expenses, indemnities and default interest**

15.1 **Initial expenses**

The Companies shall promptly on demand pay each Secured Party the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and perfection of this Deed and any other documents referred to in this Deed.

15.2 **Amendment costs**

If a Company requests an amendment, waiver or consent in connection with this Deed, the Companies shall, within three Business Days of demand, reimburse each Secured Party for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request.

15.3 **Enforcement expenses**

The Companies shall, within 3 Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation or review of any rights under, this Deed and any other documents referred to in this Deed.

15.4 **Stamp duties, etc.**

The Companies shall pay and, within 3 Business Days of demand, indemnify each Secured Party, from and against any liability for any stamp, documentary, filing and other duties and Taxes (if any) which are or may become payable in connection with this Deed.

15.5 **Currency indemnity**

(a) If any sum due from a Company under this Deed (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against a Company; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

a Company shall as an independent obligation, within three Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A)

the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Company waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency or currency unit other than that in which it is expressed to be payable.

15.6 ***Other indemnity***

The Companies shall, within 3 Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by any of them:

- (a) as a result of:
 - (i) any failure by a Company to comply with its obligations under this Deed;
 - (ii) the taking, holding, protection or enforcement of the Security created by this Deed;
 - (iii) the exercise of any of the rights, powers, discretions and remedies vested in it by this Deed or by law; or
- (b) which otherwise relates to any of the Security Assets or the performance of the terms of this Deed (otherwise than as a result of its gross negligence or wilful misconduct).

15.7 ***Default interest***

- (a) If a Company fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is 2% higher than the rate above the interest cost to the Security Agent (as conclusively determined by the Security Agent) of funding the overdue amount.
- (b) Any interest accruing under this sub-clause shall be immediately payable by the Companies on demand by the Security Agent.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each month but will remain immediately due and payable.
- (d) Any interest accruing under this Deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

16. **Cumulative powers and avoidance of payments**

16.1 ***Cumulative powers***

The powers which this Deed confers on the Security Agent and any Receiver appointed under this Deed are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate. The Security Agent or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever. The respective powers of the Security Agent and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

16.2 ***Amounts avoided***

If any amount paid by a Company in respect of the Secured Liabilities is capable of being avoided or set aside on the liquidation or administration of a Company or otherwise, then for the purposes of this Deed that amount shall not be considered to have been paid.

16.3 ***Discharge conditional***

Any settlement or discharge between a Company and the Security Agent shall be conditional upon no security or payment to the Security Agent by a Company or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency and accordingly (but without limiting the other rights of the Security Agent under this Deed) the Security Agent shall be entitled to recover from each Company the value which the Security Agent has placed on that security or the amount of any such payment as if that settlement or discharge had not occurred.

17. **Ruling-off accounts**

If the Security Agent receives notice of any subsequent Security or other interest affecting any of the Security Assets it may open a new account for the Companies in their books. If it does not do so then (unless it gives written notice to the contrary to the Companies), as from the time it receives that notice, all payments made by the Companies to it (in the absence of any express appropriation to the contrary) shall be treated as having been credited to a new account of the Companies and not as having been applied in reduction of the Secured Liabilities.

18. **Power of attorney**

18.1 Each Company, by way of security, irrevocably and severally appoints each of the Security Agent and any Receiver as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed to execute, seal and deliver (using the company seal where appropriate) and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing which it ought to execute and do under the terms of this Deed, or which may be required or deemed proper in the exercise of any rights or powers conferred on the Security Agent or any Receiver under this Deed or otherwise for any of the purposes of this Deed, and each Company covenant with each of the Security Agent and any Receiver to ratify and confirm all such acts or things made, done or executed by that attorney.

18.2 The power of attorney at Clause 18.1 above shall take effect immediately but the powers conferred shall only become exercisable:

- (a) after the occurrence of an Event of Default which is continuing; or
- (b) prior to the occurrence of an Event of Default which is continuing, if the relevant Company has failed to comply with any term of this Deed within any applicable grace period of the earlier of that Company:
 - (i) becoming aware of that failure; or
 - (ii) being notified of that failure by the Security Agent.

19. **Delegation**

19.1 A Secured Party may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by or pursuant to this Deed.

19.2 That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that that Secured Party may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub delegate.

20. **Redemption of prior charges**

The Security Agent may redeem any prior Security on or relating to any of the Security Assets or procure the transfer of that Security to itself, and may settle and pass the accounts of any

person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Companies. Each Company will on demand pay to the Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

21. Set-off and other rights

21.1 Set-off rights of the Secured Party

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

21.2 Unliquidated claims

If the relevant obligation or liability is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

21.3 No deductions

All payments under this Deed by a Company shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If a Company is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to a Secured Party under this Deed or, if any such withholding or deduction is made in respect of any recovery under this Deed, the relevant Company shall pay such additional amount so as to ensure that the net amount received by that Secured Party shall equal the full amount due to it under the provisions of this Deed (had no such withholding or deduction been made).

22. Notices

22.1 Communications in writing

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

22.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address, fax number or department or officer as any Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

22.3 Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

(i) if by way of fax, when received in legible form; or

- (ii) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under sub-clause 22.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communications or document which becomes effective in accordance with sub-clauses 22.3(a) to (b) after 5:00pm in the place of receipt shall be deemed only to be effective on the following day.

22.4 *Electronic communications*

- (a) Any communication to be made between any two Parties under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) 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
 - (ii) (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 those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with sub-clause 22.4(b), after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

22.5 *English language*

- (a) Any notice given under or in connection with this Deed must be in English.
- (b) All other documents provided under or in connection with this Deed must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

23. *Miscellaneous*

23.1 *Assignment*

No Company may assign any of its rights or transfer any of its rights or obligations under this Deed. The Security Agent may assign and transfer all or any part of its rights and obligations under this Deed in accordance with the Facilities Agreement to any person to whom a Lender transfers its rights and obligations under the Facilities Agreement.

23.2 Certificates conclusive

Any certification or determination by a Secured Party of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

23.3 Invalidity of any provision

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

23.4 Counterparts

- (a) This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
- (b) If any one or more of the Companies is not bound by any or all of the provisions of this Deed (whether by reason of lack of capacity, improper execution, failure to execute or for any other reason whatsoever) the remaining Company shall nonetheless continue to be bound as if such other Company had never been a party.

23.5 Covenant to release

At the end of the Security Period, the Security Agent shall, at the request and cost of the Companies, release the Security Assets from the security constituted by this Deed.

23.6 Disclosure

A Secured Party may disclose to any person to whom it discloses Confidential Information in accordance with clause 39 (*Confidentiality*) of the Facilities Agreement any information about the Borrower, the Companies, the Facilities Agreement or this Deed as that Secured Party shall consider appropriate.

24. Governing law

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

25. Jurisdiction

- 25.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- 25.2 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.
- 25.3 This clause is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

In witness this Deed is executed as a deed on the date appearing at the head of page 1.

Schedule

Form of notice of assignment

To: • *[insert name and address of counterparty]*

Dated: •

Dear Sirs

We notify you that we have assigned, by way of security to • (the "**Security Agent**") all our right, title and interest in the Subordinated Debt (as such term is defined in an assignment of subordinated debt dated • and made between [the Companies] and the Security Agent) as security for certain obligations owed by us to the Security Agent.

We further notify you that:

1. we irrevocably authorise and instruct you to pay to the Security Agent all moneys which may become payable to us pursuant to the Subordinated Debt;
2. you are authorised to disclose information in relation to the Subordinated Debt to the Security Agent on request; and
3. the provisions of this notice may only be revoked or amended with the prior written consent of the Security Agent.

Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to us) by way of confirmation that:

- (a) you agree to the terms set out in this notice and to act in accordance with its provisions;
- (b) you will not, without the consent of the Security Agent:
 - (i) amend in any way or terminate any document evidencing the Subordinated Debt;
 - (ii) waive or release any rights, interest or benefit in relation to the Subordinated Debt;
- (c) you have not received notice that we have assigned or charged our rights pursuant to the Subordinated Debt to a third party or created any other interest in relation to the Subordinated Debt in favour of a third party; and
- (d) you have not claimed or exercised, nor do you have any outstanding right to claim or exercise against us any right of set-off, counter-claim or other right relating to the Subordinated Debt.

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

Yours faithfully

.....

for and on behalf of

• *[insert the name of the relevant Company]*

[On acknowledgement copy]

To: • *[insert name of Security Agent]*

Copy to: • *[insert the name of the relevant Company]*

We acknowledge receipt of the above notice and the notifications therein, agree to abide by its terms and confirm the matters set out in paragraphs (a) to (d) (inclusive) of that notice.

.....

for and on behalf of

• *[insert name of counterparty]*

Dated: [●]

Signatories to this Deed

Companies

Executed as a deed by)
Topland (No 44) Limited)
acting by TERENCE O'BEIRNE)
a director)
in the presence of:)

Signature of director

Signature of witness

Name of witness

CHRISTINA O'BEIRNE

Address of witness

Occupation of witness

ACTOR

Notice Details

Address: Topland (No 44) Limited, c/o Topland Group of Companies, Second Floor, 105
Wigmore Street, London W1U 1QY

Email: cherylm@topland.co.uk with copies to terryob@topland.co.uk and
tomb@topland.co.uk

Attention: Company Secretary

Executed as a deed by)
SJW Investments Limited)
acting by)
a director)
in the presence of:)

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

Notice Details

Address:

Email:

Attention:

Security Agent

Signed by _____)
authorised signatory _____)
for and on behalf of _____)
Laxfield LLP _____)

Notice Details

Address: Third Floor, One New Change, London, EC4M 9AF

Email: Bryan.Hawkins@cbreim.com

Attention: Bryan Hawkins