



Registration of a Charge

Company name: **CONNECT AIRWAYS LIMITED**

Company number: **11732177**

Received for Electronic Filing: **20/01/2020**



X8X0ZW3D

Details of Charge

Date of creation: **15/01/2020**

Charge code: **1173 2177 0005**

Persons entitled: **GLAS TRUST CORPORATION LIMITED**

Brief description:

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

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

Certified by:

MORGAN, LEWIS & BOCKIUS UK LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 11732177

Charge code: 1173 2177 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th January 2020 and created by CONNECT AIRWAYS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th January 2020 .

Given at Companies House, Cardiff on 21st January 2020

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



Companies House



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

Dated 15 January 2020

CONNECT AIRWAYS LIMITED
as Parent

THE PARTIES LISTED IN SCHEDULE 1
as Chargors and/or Guarantors

GLAS TRUST CORPORATION LIMITED
as Security Trustee

Supplemental First Ranking Guarantee and Debenture

Morgan Lewis

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THIS SUPPLEMENTAL DEED OF GUARANTEE AND DEBENTURE is dated 15 January 2020

BETWEEN:

- (1) **CONNECT AIRWAYS LIMITED** of New Walker Hangar, Exeter International Airport, Exeter, Devon, England EX5 2BA (registered in England and Wales with company number 11732177) (the **Parent**);
- (2) **THE COMPANIES** identified in Part I of Schedule 1 (*The Original Parties*) (together with the Parent and each person which becomes a party to this Deed by executing a Deed of Accession, each a **Chargor** and together the **Chargors**);
- (3) **THE COMPANIES** identified in Part II of Schedule 1 (*The Original Parties*) (together with the Parent and each person which becomes a party to this Deed by executing a Guarantor Accession Letter, each a **Guarantor** and together the **Guarantors**); and
- (4) **GLAS TRUST CORPORATION LIMITED** of 45 Ludgate Hill, London EC4M 7JU, England (registered in England and Wales with company number 07927175) (the **Security Trustee**).

BACKGROUND:

- (A) The Chargors enter into this Deed to secure the repayment and satisfaction of the Secured Obligations.
- (B) The Guarantors enter into this Deed to guarantee the repayment and satisfaction of the Secured Obligations.
- (C) The Chargors and the Security Trustee intend that this document take effect as a deed notwithstanding that it may be executed under hand.

IT IS AGREED:

1. Definitions and Interpretation

1.1 Definitions

In this Deed:

Agent means Global Loan Agency Services Limited of 45 Ludgate Hill, London EC4M 7JU, England (registered in England and Wales with company number 08318601).

Assigned Agreements means each agreement set out in Part I of Schedule 3 (*Notices of Assignment*) and/or in any Deed of Accession and any Contract or Insurance entered into after the date of this Deed or the date of any applicable Deed of Accession.

Authorisation has the meaning set out in the Facility Agreement.

Book Debts means:

- (a) all book and other debts in existence from time to time (including any sums whatsoever owed by banks or similar institutions) both present and future, actual or contingent, due, owing to or which may become due, owing to or purchased or otherwise acquired by any Chargor; and
- (b) the benefit of all rights whatsoever relating to the debts referred to above including any related agreements, documents, rights and remedies (including negotiable or non-negotiable instruments, guarantees, indemnities, legal and equitable charges, reservation of proprietary rights, rights of tracing, unpaid vendor's liens and all similar connected or related rights and assets).

Charged Accounts means any bank accounts of the Chargors from time to time.

Charged Property means the property, assets, undertaking and rights for the time being comprised in or subject to the Security Interests created by this Deed (and including the Mortgaged Property) and references to the Charged Property include references to any part of it.

Contracts means the contracts and/or agreements of a Chargor entered into from time to time (including the IP Licences).

Dangerous Substance means any substance of whatever kind and form and in whatever combination capable of causing harm to any lifeform or the environment.

Deed of Accession means a deed of accession substantially in the form set out in Schedule 7 (*Deed of Accession*).

Environmental Law means:

- (a) all laws, regulations, directives, statutes and any guidance, circular or regulations issued under any of them;
- (b) subordinate legislation, common law, equity;
- (c) international, national and local laws; and
- (d) judgments, orders, instructions or awards of any court or competent authority,

in each case concerning:

- (i) the protection of, or compensation for damage to, human health, the environment or the condition of any work place; and/or
- (ii) the generation, dealing with or disposal of any Dangerous Substance.

Environmental Licence means any consent, approval, authorisation, licence, permission, or registration required by any Environmental Law.

Environmental Proceedings means any civil, judicial, regulatory or administrative proceedings, suit or action or other enforcement process brought or taken under any Environmental Law (including any enforceable and binding written demand or notice requiring the carrying out of any Remedial Works).

Equipment means:

- (a) all present and future plant, machinery, equipment;
- (b) all computers, computer hardware and software (whether owned or licensed), vehicles, tools and furniture; and
- (c) all fixtures and all attachments, all accessories and property (other than Fixtures) now or in the future relating to any property or used in connection with a Chargor's business and replacements and substitutions for any of them wherever located,

in each case save to the extent that any such items form part of the relevant Chargor's stock in trade.

Event of Default has the meaning set out in the Facility Agreement.

Excluded Assets has the meaning set out in Clause 2.2(a) and (b) (*Excluded Assets*).

Excluded Insurances means all policies of insurance entered into by Propius Limited with respect to the following aircrafts:

- (i) ATR72-600 aircraft with manufacturer's serial number 1083;
- (ii) ATR72-600 aircraft with manufacturer's serial number 1129;
- (iii) ATR72-600 aircraft with manufacturer's serial number 1139;
- (iv) ATR72-600 aircraft with manufacturer's serial number 1159;
- (v) ATR72-600 aircraft with manufacturer's serial number 1097;
- (vi) ATR72-600 aircraft with manufacturer's serial number 1105;
- (vii) ATR72-600 aircraft with manufacturer's serial number 1098; and
- (viii) ATR72-600 aircraft with manufacturer's serial number 1122.

Facility Agreement means the first ranking facility agreement between, among others, Connect Airways Limited as parent, Flybe Limited and others as borrowers and/or guarantors, DLP Holdings S.à r.l., Virgin Atlantic Airways Limited and Stobart Aviation Limited as lenders, the Agent and the Security Trustee originally dated 21 February 2019 as amended and restated on or around the date of this Deed and as further amended, restated, novated, modified, supplemented and/or replaced however fundamentally from time to time.

Finance Document has the meaning set out in the Facility Agreement.

First Ranking Guarantee and Debenture has the meaning set out in the Facility Agreement.

Fixtures means all fixtures and fittings (including fixtures and fittings of trade) and fixed plant and machinery on any Mortgaged Property.

Group means the Parent and its Subsidiaries from time to time.

Group Shares means in relation to any Chargor:

- (a) the shares specified as belonging to that Chargor in Schedule 4 (*Group Shares*);
- (b) the shares specified as belonging to that Chargor in Part II of the Schedule to any Deed of Accession; and
- (c) all other stocks, shares, debentures, bonds, warrants, coupons or other securities and investments now or in the future owned by the relevant Chargor from time to time.

Guarantor Accession Letter means a letter substantially in the form set out in Schedule 8 (*Form of Guarantor Accession Letter*).

Insurances means all contracts and policies of insurance taken out by or for a Chargor or in which any Chargor has an interest (to the extent of that interest) including, but not limited to, all contracts and policies of insurance entered into in accordance with clause 20.17 (*Insurance*) of the Facility Agreement, provided always that the Insurances shall not include any Excluded Insurances.

Intellectual Property means any and all subsisting patents and subsisting rights of a similar nature held in any part of the world, applications for patents and such rights, divisions and continuations of such applications for patents, registered and unregistered trade marks (including all rights to sue on or in relation to unregistered marks in any jurisdiction under passing off, unfair competition or similar

rules or otherwise, and all goodwill and other rights that would form the basis for any such claims), registered designs, utility models (in each case for their full period and all extensions and renewals of them), applications for any of them and the right to apply for any of them in any part of the world, rights in inventions, confidential information (including customer lists, market reports and statistics and any other information which a business would normally treat as confidential for the purposes of its business), database rights, rights in Know-how (and all rights in relation to it), business names, trade names, brand names, domain names (and the rights of a registrant therein) copyright and rights in the nature of copyright, design rights and get-up and any similar rights existing in any country and the benefit (subject to the burden) of any and all agreements, arrangements and licences in connection with any of the foregoing including but not limited to the Scheduled Intellectual Property.

Intercreditor Agreement has the meaning set out in the Facility Agreement.

IP Licences means the benefit (subject to the burden) of any and all agreements, arrangements and licences conferring any right under or in relation to any of the Intellectual Property upon any of the Chargors.

Know-how means all the body of knowledge, technical experience, expertise and skills, technical processes, secret processes, formulae and technical information held by any Chargor and relating to its business, which is not in the public domain.

Legal Reservations has the meaning set out in the Facility Agreement.

L/C means a letter of credit, performance bond, guarantee, documentary credit or similar assurance.

Mortgaged Property means the freehold and leasehold property (including any Premises located thereon) brief details of which are set out in Schedule 2 (*Mortgaged Property*).

Obligor has the meaning set out in the Facility Agreement.

Permitted Security Interest has the meaning set out in the Facility Agreement.

Premises means any building, construction, erection or other edifice on the Mortgaged Property or other Charged Property.

Protocol means the Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Aircraft Equipment.

Receiver means any individual or individuals (who may be an employee or employees of the Security Trustee) for the time being and from time to time appointed by the Security Trustee to be a receiver or receivers (and, where more than one individual is appointed jointly, they shall have the power to act severally, unless the Security Trustee shall specify to the contrary in their appointment) under this Deed and, where the context shall admit, any individual or individuals for the time being and from time to time so appointed in substitution, provided always that all such individuals shall be qualified under the Insolvency Act 1986 to act as a receiver of the property of any company with respect to which he is appointed of any such company.

Related Rights means, in relation to the Group Shares, all dividends and other distributions paid or payable after the date of this Deed on all or any of the Group Shares and all stocks, shares, securities (and the dividends or interest on them), rights, money or property accruing or offered at any time by way of redemption, bonus, preference, option rights or otherwise to or in respect of any of the Group Shares or in substitution or exchange for any of the Group Shares.

Relevant Jurisdiction means, in relation to a Chargor or a Guarantor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Security Documents is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

Remedial Works means:

- (a) any investigation, inspection, sampling or monitoring works in respect of any Dangerous Substance or any harm to the environment or human health or pollution of the environment; and/or
- (b) any works, steps or measures to treat, abate, remove, remedy, contain, control, manage or mitigate the presence or actual or potential effect of any Dangerous Substance or any harm to the environment or human health or pollution of the environment.

Scheduled Intellectual Property means the Intellectual Property (if any) specified in Schedule 6 (*Scheduled Intellectual Property*) and in Part IV of the Schedule to any Deed of Accession.

Secured Obligations 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 Obligor to the Finance Parties under the Finance Documents.

Secured Party has the meaning set out in the Facility Agreement.

Security Documents means this Deed and any other document from time to time executed by any person by way of security for the obligations of any Obligor pursuant to the Facility Agreement.

Security Interest means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person, or any arrangement having similar effect.

Security Period means the period beginning on the date of this Deed and ending on the date on which the Secured Obligations have been finally, irrevocably and unconditionally satisfied in full.

Security Shares means the Group Shares and the Related Rights and, in the case of a particular Chargor at any time, means those Group Shares held by that Chargor at the relevant time, together with all Related Rights in respect of such Group Shares.

Specified Equipment means the Equipment (if any) specified in Schedule 5 (*Specified Equipment*) and in Part III of the Schedule to any Deed of Accession.

Subsidiary means a subsidiary within the meaning of section 1159 of the Companies Act 2006 (or its equivalent in any jurisdiction).

1.2 Construction

- (a) Any reference in this Deed to:
 - (i) **assets** includes present and future properties, revenues and rights of every description;

- (ii) an **authorisation** means an authorisation, consent, approval, licence, resolution, filing or registration;
 - (iii) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, restated or novated;
 - (iv) **including** shall be construed without limitation;
 - (v) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vi) a **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
 - (vii) a **receiver** includes any receiver, receiver and manager or administrative receiver;
 - (viii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (ix) a provision of law is a reference to that provision as amended or re-enacted;
 - (x) words importing the singular shall include the plural and vice versa;
 - (xi) a charge or mortgage of any freehold, heritable or leasehold property or of any property held under a lease or sub-lease includes all Premises and Fixtures (excluding tenant's fixtures in relation to property sublet to a third party) on that property, the proceeds of sale of any part of that property, and the benefit of any covenants for title (or any monies paid or payable in respect of them) given or entered into by any predecessor of the Chargor in title in respect of that property; and
 - (xii) any party or person includes any person deriving title from it or any successor, transferee or assignee.
- (b) The provisions of clause 1.2 (*Construction*) of the Facility Agreement shall apply to this Deed as if they were set out in this Deed.
 - (c) Clause and Schedule headings are for ease of reference only.
 - (d) An Event of Default is *continuing* if it has not been waived in writing.
 - (e) Capitalised terms defined in the Facility Agreement have the same meaning when used in this Deed unless the context requires otherwise.
 - (f) If at any time there is only one Chargor the references in this Deed to **Chargors** shall, whilst such circumstance is continuing, be construed accordingly.
 - (g) The terms of the other Finance Documents and of any side letters between the parties to this Deed in relation to the Finance Documents are incorporated in this Deed to the extent required for any actual or purported disposition of the Mortgaged Property in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

- (h) Every disposition effected by this Deed in respect of the Mortgaged Property is made with full title guarantee. The other terms of this Deed do not limit or extend any of the covenants implied by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 but create separate and independent obligations having effect cumulatively with those implied covenants except that the covenants so implied shall be construed with the omission of section 6(2) of that Act.
- (i) Each of the charges in Clause 2 (*Fixed Security*) over each category of the assets, each asset and each sub-category of each asset specified in such clause shall be read and construed separately, as though each such category, asset and sub-category were charged independently and separately of each other and shall apply both to present and future assets.
- (j) If there is a conflict between the provisions of this Deed and the provisions of another Security Document to which a Chargor is party in relation to a specific asset of a Chargor, the Security Document governed by the laws of the jurisdiction in which such asset is located shall prevail. In such circumstances, no Chargor shall be in breach of any representation or undertaking in this Deed if it has complied with the corresponding representation or undertaking in such local law Security Document.
- (k) In the event of any conflict between the provisions of this Deed and the provisions of the Facility Agreement the provisions of this Deed shall prevail.

1.3 Intercreditor Agreement

This Deed is subject to the Intercreditor Agreement.

1.4 Security Trustee provisions

The Security Trustee holds the benefit of this Deed on trust for the Secured Parties in accordance with clause 24.19 (*Trustee provisions*) of the Facility Agreement and the rights, duties and indemnities of the Security Trustee as set out in the Facility Agreement shall apply to this Deed as if they were set out in this Deed.

1.5 Supplemental First Ranking Guarantee and Debenture

This Deed is supplemental to the First Ranking Guarantee and Debenture.

2. Fixed Security

2.1 Each Chargor, as security for the payment and performance of the Secured Obligations:

- (a) charges in favour of the Security Trustee by way of a first legal mortgage the Mortgaged Property and all other interests in any freehold or leasehold property now or in the future belonging to it; and
- (b) charges in favour of the Security Trustee by way of a first fixed charge and grants a Security Interest upon:
 - (i) to the extent they are not within Clause 2.1(a), all interests in any freehold or leasehold property now or in the future belonging to it;
 - (ii) all Equipment now or in the future belonging to it and its interest in any such Equipment in its possession now or in the future and all spare parts and replacements for all modifications and additions to such Equipment (other than any Specified Equipment effectively mortgaged to the Security Trustee by way of a first legal mortgage pursuant to Clause 2.1(c));

- (iii) all of its benefits, claims and returns of premiums in respect of the Insurances;
- (iv) all of its right, title and interest (if any) in and to the Charged Accounts and all monies standing to the credit of any of the Charged Accounts and the debts represented by them;
- (v) its goodwill and its rights in relation to uncalled capital both present and future;
- (vi) its Book Debts, both uncollected and collected, the proceeds of the same and all monies otherwise due and owing to such Chargor;
- (vii) the benefit of all rights, securities and guarantees of whatsoever nature enjoyed or held by it in relation to anything in Clause 2.1(b)(vi);
- (viii) its rights under any hedging arrangements and other Contracts;
- (ix) any of its beneficial interest, claim or entitlement in any pension fund and in relation to any Tax or VAT (whether a claim in respect of a refund or return of Tax or VAT or otherwise);
- (x) the benefit of all permissions and authorisations of whatsoever nature and whether statutory or otherwise held in connection with its business or the use of any Charged Property which is the subject of the charges created by this Clause 2 and the right to recover and receive all compensation which may be payable to it in relation to those permissions and authorisations;
- (xi) the Intellectual Property now or in the future held by it, including any revenues or other income arising thereunder and any claims for damages arising in respect thereto (whether by reason of infringement or otherwise howsoever);
- (xii) all Group Shares held now or in the future by it and/or any nominee on its behalf; and
- (xiii) all the Related Rights accruing to all or any of the Group Shares held now or in the future by it and/or any nominee on its behalf,

PROVIDED THAT:

- (xiv) whilst no Event of Default is continuing, all Related Rights referred to in Clause 2.1(b)(xiii) shall be paid directly to the relevant Chargor (in which case the Security Trustee or its nominee shall execute any necessary dividend mandate) and, if paid directly to the Security Trustee, the Security Trustee shall pay the relevant amount to the relevant Chargor;
- (xv) subject to Clause 5.5(c), until the Agent has exercised its rights under clause 21.19 (*Agent's rights following an Event of Default*) of the Facility Agreement, all voting rights attaching to the relevant Group Shares may be exercised by the relevant Chargor; and
- (xvi) nothing contained in this Deed is intended to grant nor shall be construed so as to grant to the Security Trustee any Security Interest in or to any immovable property situated in the Cayman Islands including freehold and leasehold property, and any other estate in land and immovable property and in each case all buildings and structures upon and all things affixed to such immovable property (including trade and tenant's fixtures); and

- (c) mortgages and charges and agrees to mortgage and charge to the Security Trustee by way of first mortgage all of its right, title and interest in and to:
 - (i) the Specified Equipment; and
 - (ii) all spare parts and replacements for and all modifications and additions to the Specified Equipment.

2.2 Excluded Assets

The Security Trustee agrees that it will upon request of the relevant Chargor release from the Security Interests created by Clause 2.1 (*Fixed Charge*) and Clause 4.1 (*Assignments*) (the **Fixed Charge and Assignments**) and from the operation of Clause 13 (*Further Assurances*) but in each case only to the extent that the prohibition or right referred to below restricts the type of charge purported to be created by Clause 2.1 (*Fixed Charge*) and Clause 4.1 (*Assignments*) (as applicable):

- (a) any asset or undertaking which each Chargor is at any time prohibited from creating a Security Interest on or over by reason of any contract, licence, lease, instrument or other arrangement with a third party, including any asset or undertaking which a Chargor is effectively precluded from creating a Security Interest on or over without the prior consent of a third party, in each case where such third party has refused consent to the Fixed Charge and Assignments; and
- (b) any asset or undertaking which, if subject to any Security Interest or the provisions of this Deed, would give a third party the right to terminate or otherwise adversely amend any rights, benefits and/or obligations of any Chargor in respect of that asset or undertaking or require a Chargor to take any action materially adverse to the interests of the Group or any member thereof,

((a) and (b) together being the **Excluded Assets**).

3. Floating Charge

3.1 Floating Charge

Each Chargor as security for the payment and performance of the Secured Obligations charges in favour of the Security Trustee by way of a floating charge and grants a Security Interest upon:

- (a) all its other assets and undertakings not otherwise effectively mortgaged or charged by way of fixed mortgage or charge by Clause 2.1 (*Fixed Security*);
- (b) whether or not otherwise mortgaged, charged or assigned, all of its undertaking and assets of whatever type (both present and future) located in Scotland or otherwise governed by the laws of Scotland; and
- (c) whether or not otherwise mortgaged, charged or assigned, all of its undertaking and assets of whatever type (both present and future) located outside of England, Wales and Scotland or otherwise governed by the laws of such other jurisdiction,

provided that in each case above, all and any Excluded Insurances shall be excluded from the Security Interest created pursuant to this Clause 3.1.

3.2 Conversion by notice

Subject to Clause 3.4 (*Floating Charge – Excluded Assets*), the Security Trustee may by notice to any Chargor convert the floating charge created by such Chargor under this Deed into a fixed charge in relation to all or any of such Chargor's assets specified in the notice if:

- (a) the Security Trustee has reasonable grounds for considering those assets to be in jeopardy, by legal process or otherwise; or
- (b) an Event of Default has occurred; or
- (c) the Security Trustee becomes aware or has reason to believe that steps have been taken which would, in the reasonable opinion of the Security Trustee, be likely to lead to the presentation of a petition to appoint an administrator in relation to such Chargor (or that such a petition has been presented or such an administrator has been appointed) or to wind up such Chargor (or that such a petition has been presented).

3.3 Automatic conversion

Subject to the Insolvency Act 1986 and Clause 3.6 (*Insolvency Act 1986*), the floating charges created by this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically be converted (without any notice) into fixed charges over the assets, rights and property of any Chargor:

- (a) on a resolution being passed or an order being made for the winding up, dissolution, or administration of such Chargor;
- (b) on the appointment of a liquidator or an administrator (whether out of court or otherwise) to such Chargor;
- (c) on any person levying or attempting to levy any distress, execution or other process against any Charged Property but conversion will only take place in respect of the relevant Charged Property;
- (d) on such Chargor stopping making payments to its creditors generally or giving notice to creditors generally that it intends to stop payment;
- (e) on the holder of any other Security Interest over the Charged Property whether ranking in priority to or *pari passu* with or after the charges and security contained in this Deed or such Chargor appointing, or requesting the appointment of, an administrator or receiver in respect of such Chargor, provided that if a request is made by such holder of any other Security Interest but it is or shall be considered frivolous or vexatious such request shall not give rise to automatic crystallisation as set out in this Clause 3.3(e); or
- (f) any floating charge granted by such Chargor to any third party crystallising for any reason whatsoever.

3.4 Floating Charge – Excluded Assets

- (a) The Security Trustee shall not convert into a fixed charge the floating charges created by this Deed over any Excluded Asset or any Excluded Insurances.
- (b) The floating charges created by this Deed over any Excluded Asset or Excluded Insurances shall rank behind any existing enforceable Security Interest in respect of any such Excluded Asset or Excluded Insurances which was created before the date of this Deed.

3.5 No waiver

The giving by the Security Trustee of a notice pursuant to Clause 3.2 (*Conversion by notice*) in relation to any class of any Chargor's assets, rights and property shall not be construed as a waiver or abandonment of the Security Trustee's rights to give other similar notices in respect of any other class of assets.

3.6 Insolvency Act 1986

- (a) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charges created by Clause 3.1 (*Floating Charge*).
- (b) The floating charges created pursuant to Clause 3.1 (*Floating Charge*) may not be converted into fixed charges solely by reason of:
 - (i) the obtaining of a moratorium; or
 - (ii) anything done with a view to obtaining a moratorium,under the Insolvency Act 1986.

4. Assignments

4.1 Assignments

Each Chargor as continuing security for the payment, discharge and performance of the Secured Obligations assigns and agrees to assign to the Security Trustee absolutely all its rights, title, interest and benefit in and to the Assigned Agreements, provided that until enforcement the relevant Chargor shall be entitled to continue to deal with the relevant Assigned Agreements and the counterparties to each of them on a basis otherwise consistent with the Finance Documents.

4.2 Notice of Assignment

- (a) If requested by the Security Trustee, each Chargor shall promptly:
 - (i) give notice of each such assignment of its right, title and interest (unless waived by the Security Trustee) in and to the Assigned Agreements by sending a notice substantially in the form set out in Part II of Schedule 3 (*Notices of Assignment*) to each of the other parties to such Assigned Agreements promptly after such request, or, if later, the date of entry into any such agreement; and
 - (ii) use all reasonable endeavours to procure that promptly after such request or, if later, the date of entry into any such agreement, each such other party delivers a letter of acknowledgement to the Security Trustee substantially in the form set out in Part II of Schedule 3 (*Notices of Assignment*).
- (b) Any notice required in accordance with Clause 4.2(a) to be given to any person which is also a Chargor and any undertaking required in accordance with Clause 4.2(a) to be given to the Security Trustee by any person which is also a Chargor need not actually be given, but this Deed and the Schedules and the execution of this Deed by the relevant Chargor shall be deemed to constitute such notice or such undertaking (as the case may be) with respect to the relevant Assigned Agreement.

4.3 Alternative Assignments

To the extent that any such right, title and interest described in Clauses 4.1 (*Assignments*) and 4.2 (*Notice of Assignments*) is not assignable or capable of assignment, such assignment purported to be effected by Clause 4.1 (*Assignments*) shall operate as an assignment of any and all damages, compensation, remuneration, profit, rent or income which any Chargor may derive from such Assigned Agreement or be awarded or entitled to in respect of such Assigned Agreements as continuing security for the payment, discharge and performance of the Secured Obligations at any time owed or due to the Security Trustee.

4.4 Exercise of Rights

- (a) Subject to the provisions of the Finance Documents, prior to the occurrence of an Event of Default which is continuing, the Security Trustee shall permit the relevant Chargor to exercise all rights under any Assigned Agreement to which it is a party.
- (b) The Chargors send copies of all notices and other information received under the Assigned Agreements to the Security Trustee as soon as reasonably practicable following receipt of the same.

4.5 Reassignment

The Security Trustee may, upon written notice to the relevant Chargor, re-assign to such Chargor all of the Security Trustee's rights, title and interest in any Assigned Agreement and each relevant Chargor accepts such re-assignment and re-conveyance.

5. Undertakings and Representations

5.1 Duration

The undertakings in this Clause 5 shall remain in force throughout the Security Period and are given by each Chargor to the Security Trustee for and on behalf of itself and each other Secured Party.

5.2 General

- (a) **Covenant to perform:** Each Chargor shall continuously comply with the terms (both express and implied) of this Deed and the Assigned Agreements.
- (b) **Restrictions on dealings:** No Chargor shall:
 - (i) create or permit to subsist any Security Interest of whatsoever nature on any Charged Property other than a Permitted Security Interest; or
 - (ii) sell, transfer, grant, lease or otherwise dispose of any Charged Property, other than any sale, lease, transfer or other disposal permitted by clause 20.10 (*Disposals*) of the Facility Agreement.

5.3 Mortgaged Property

- (a) **Deposit of Title Deeds:** If requested by the Security Trustee, the Chargors shall, promptly following execution of this Deed, deposit and shall procure that all deeds and documents of title relating to its Mortgaged Property and any property comprised within Clause 5.4 (*Future Acquisitions and Legal Mortgage*) are deposited with the Security Trustee or held pursuant to a solicitor's undertaking which is satisfactory to the Security Trustee in its absolute discretion.
- (b) **Environmental matters:** Each Chargor shall:
 - (i) comply with all applicable Environmental Law including the obtaining of, and compliance with, all requisite Environmental Licences (as varied from time to time);
 - (ii) as soon as reasonably practicable inform the Security Trustee:
 - (1) of any actual Environmental Proceedings or, as soon as it becomes aware, of any potential Environmental Proceedings involving it; and
 - (2) upon receipt, of any communication of whatsoever nature, whether specific or general and whether from a third party or competent regulatory

authority, served on it concerning any alleged breach of any Environmental Law or non-compliance with any Environmental Licence which, if determined against it, could have a Material Adverse Effect;

- (iii) immediately inform the Security Trustee if it becomes aware that any of the Mortgaged Property or any other property owned or occupied by any Chargor is likely to be entered on any register relating to land use or to Remedial Works affecting land and waters (including registers held by any competent regulatory authority under section 78R of the Environmental Protection Act 1990 or section 190 of the Water Resources Act 1991);
 - (iv) immediately inform the Security Trustee of the presence of any Dangerous Substance in, on, at or under or migrating onto or from any Mortgaged Property or any other property owned or occupied by any Chargor or of any other circumstance, event or incident which is likely to give rise to any Environmental Proceedings; and
 - (v) as soon as reasonably practicable inform the Security Trustee of any actual or proposed variation, modification or revocation of any requisite Environmental Licence held by such Chargor and of any refusal to grant or transfer to the Chargor any Environmental Licence required by it for the purpose of its business.
- (c) **Lease and covenant compliance:** Each Chargor shall:
 - (i) perform all the terms on its part contained in any lease or agreement for lease comprising a Mortgaged Property or to which the Mortgaged Property is subject;
 - (ii) not do or omit to do anything as a result of which any lease or agreement for lease comprising Mortgaged Property or any Premises or to which the Mortgaged Property or Premises is subject may become forfeit, irritable or otherwise determinable; and
 - (iii) properly perform (and indemnify the Secured Parties for any breach of) any covenants and stipulation of whatsoever nature affecting the Mortgaged Property.
- (d) **Notices:** Within 10 days after the receipt by a Chargor of any application, requirement, order or notice served or given by any public, local or other authority relating to any Mortgaged Property, such Chargor shall:
 - (i) deliver a copy to the Security Trustee; and
 - (ii) inform the Security Trustee of the steps taken or proposed to be taken by way of compliance.
- (e) **Power to Remedy:** In case of default by any Chargor in performing any obligation or other covenant affecting the Mortgaged Property, that Chargor shall permit the Security Trustee or its agents and contractors:
 - (i) to enter the Mortgaged Property;
 - (ii) to comply with or object to any notice served on any Chargor relating to the Mortgaged Property; and/or
 - (iii) to take any action the Security Trustee may reasonably consider expedient to prevent or remedy any breach of any such term or to comply with or object to any such notice.

- (f) **Repair:** Without prejudice to the general obligation set out in clause 20.7 (*Preservation of Assets*) of the Facility Agreement, each of the Chargors shall keep its Mortgaged Property, Premises and Fixtures in good and substantial repair and condition and decorative order.

5.4 Future Acquisitions and Legal Mortgage:

Each Chargor shall:

- (a) notify the Security Trustee immediately on the acquisition by it of any freehold, heritable or leasehold or other interest in property or of any property held under a lease or sub-lease (and for the purposes of this Clause 5.4 the date of exchange of contracts for such an acquisition shall be deemed to be the date of acquisition);
- (b) at its cost execute and deliver to the Security Trustee on demand a legal mortgage or, in the case of property located in Scotland or otherwise governed by Scots law, a standard security and/or an assignation of rents in favour of the Security Trustee of any freehold, heritable or leasehold or other interest in property or of any property held under a lease or sub-lease which becomes vested in it after the date of this Deed; and
- (c) in any event, if applicable, give The Land Registry written notice of this Deed and procure that notice of it be duly noted in the Registers to each such title.

5.5 Security Shares

- (a) If not previously delivered to the Security Trustee pursuant to the First Ranking Guarantee and Debenture, each Chargor shall promptly following execution of this Deed deposit with the Security Trustee, or as the Security Trustee may reasonably direct, all bearer instruments, share certificates and other documents of title or evidence of ownership in relation to the Group Shares owned by it or in which it has or acquires an interest and their Related Rights and shall execute and deliver to the Security Trustee all such share transfers and other documents as the Security Trustee requests in order to enable the Security Trustee or its nominees to be registered as the owner or otherwise to obtain a legal title to the same and, without limiting the generality of the foregoing, shall deliver to the Security Trustee (if not previously delivered to the Security Trustee pursuant to the First Ranking Guarantee and Debenture) promptly following execution of this Deed executed share transfers for all Group Shares in favour of the Security Trustee and/or its nominee(s) as transferees or, if the Security Trustee so directs, with the transferee left blank and shall procure that all such share transfers are at the request of the Security Trustee forthwith registered by the relevant company and that share certificates in the name of the Security Trustee and/or such nominee(s) in respect of all Group Shares are forthwith delivered to the Security Trustee.
- (b) Each Chargor shall provide the Security Trustee with certified copies of all resolutions and authorisations approving the execution of such transfer forms and registration of such transfers as the Security Trustee may reasonably require.
- (c) The Security Trustee and its nominee may at any time following an Event of Default which is continuing exercise or refrain from exercising (in the name of the relevant Chargor, the registered holder or otherwise and without any further consent or authority from each Chargor and irrespective of any direction given by any Chargor) in respect of the Security Shares any voting rights and any powers or rights under the terms of the Security Shares or otherwise which may be exercised by the person or persons in whose name or names the Security Shares are registered or who is the holder thereof, including all the powers given to trustees by the Trustee Act 2000 PROVIDED THAT in the absence of notice from the Security Trustee each Chargor may and shall continue to exercise any and all voting rights with respect to the Group Shares subject always to the terms of this Deed. No Chargor shall without the previous consent in writing of the Security Trustee exercise the voting rights attached to any of the Group Shares in favour of resolutions if such resolution has the effect of changing the

terms of the Group Shares (or any class of them) or any Related Rights or prejudicing the security under this Deed or impairing the value of the Security Shares. Each Chargor hereby irrevocably appoints the Security Trustee or its nominees as proxy to exercise (as provided in or permitted by this Deed) all voting rights so long as the Group Shares belonging to it remain registered in its name.

- (d) Each Chargor during the continuance of this security will make all payments which may become due in respect of any of the Security Shares and, in the event of default in making any such payment, the Security Trustee may if it thinks fit make such payment on behalf of each Chargor. Any sums so paid by the Security Trustee or any other Secured Party shall be repayable by the relevant Chargor to the Security Trustee on demand and pending such repayment shall constitute part of the Secured Obligations.
- (e) It is expressly agreed that, notwithstanding anything to the contrary contained in this Deed, each Chargor shall remain liable to observe and perform all of the conditions and obligations assumed by it in respect of the Security Shares and the Security Trustee shall not be under any obligation or liability by reason of or arising out of the security over the Security Shares conferred by this Deed. The Security Trustee shall not be required in any manner to perform or fulfil any obligation of any Chargor in respect of the Security Shares, or to make any payment, or to receive any enquiry as to the nature or sufficiency of any payment received by them, or to present or file any claim or take any other action to collect or enforce the payment of any amount to which they may have been or to which they may be entitled under this Deed at any time or times.
- (f) Following an Event of Default the Security Trustee shall be entitled to put into force and exercise immediately as and when it may see fit any and every power possessed by the Security Trustee by virtue of the security over the Security Shares conferred by this Deed or available to a secured creditor (so that sections 93 and 103 of the Law of Property Act 1925 shall not apply to this security) and in particular (without limitation):
 - (i) to sell all or any of the Security Shares in any manner permitted by law upon such terms as the Security Trustee shall in its absolute discretion determine;
 - (ii) to collect, recover or compromise and give a good discharge for any monies payable to any Chargor in respect of the Security Shares or in connection therewith; and
 - (iii) to act generally in relation to the Security Shares in such manner as the Security Trustee acting reasonably shall determine.

Each Chargor agrees that the enforceability of the security over the Security Shares conferred by this Deed is not dependent on the performance or non-performance by the Security Trustee of its obligations under any agreement with any Chargor.

- (g) Immediately on conversion of any of the Group Shares from certificated to uncertificated form, and on the creation or conversion of any other securities which are for the time being comprised in the Security Shares in or into uncertificated form, the relevant Chargor shall give such instructions or directions as the Security Trustee may require in order to protect or preserve its security.
- (h) Each Chargor shall, immediately upon receipt of any certificate or other document evidencing any entitlement to further Security Shares, deposit it with the Security Trustee together with such share transfer forms in blank and other documents as the Security Trustee may require.

5.6 Intellectual Property

- (a) Save to the extent permitted by clause 20.8 (*Intellectual Property*) of the Facility Agreement and without prejudice to Clause 13 (*Further Assurances*), each Chargor shall at its own expense promptly execute any document and do all assurances acts and things as the Security Trustee may require to procure that the security created by this Deed over the Intellectual Property specified in Schedule 6 (*Scheduled Intellectual Property*) is recorded as soon as possible by the Security Trustee in each register in each jurisdiction in which any such Intellectual Property is registered.
- (b) Without prejudice to Clause 13 (*Further Assurances*), if after the date of this Deed, any Chargor (i) proposes to register any existing Intellectual Property right in any register in which it is not already identified as being registered in or (ii) proposes to apply to register any Intellectual Property right not existing on the date of this Deed, such Chargor shall notify the Security Trustee and, if the Security Trustee so requires and promptly notifies the Chargor, such Chargor shall ensure that application is made for the security created by this Deed to be recorded, and that any such security is recorded, at the same time as the application or registration (as the case may be) of such Intellectual Property.
- (c) Each Chargor will make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property where failure to do so is reasonably likely to have a Material Adverse Effect.
- (d) Each Chargor will take such steps as are necessary (including the institution of legal proceedings) to police its Intellectual Property in any territories which are material to its business to ensure proper use of them and to prevent third parties infringing them and take such other steps as are reasonably practicable to maintain and preserve its interests in its Intellectual Property including applying to register any interests therein in any relevant register.
- (e) No Chargor will use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any Obligor to use such property where such use, permission to use or omission is reasonably likely to have a Material Adverse Effect.
- (f) No Chargor shall, without the prior written consent of the Security Trustee, permit any of its Intellectual Property which is registered or subject to an application for registration and which is necessary for the operations of the Group to be abandoned or cancelled, to lapse where failure to do so is reasonably likely to have a Material Adverse Effect.
- (g) No Chargor shall, without the prior written consent of the Security Trustee, sell, transfer, license or otherwise dispose of any Intellectual Property save to the extent permitted by clause 20.10 (*Disposals*) of the Facility Agreement.
- (h) Without prejudice to Clause 5.6(b), if any Intellectual Property which a Chargor believed was owned wholly within the Group (other than any Intellectual Property that is owned by a member of the Group that is party to the First Ranking Guarantee and Debenture or the First Ranking Debenture) is not owned only by one or more of the Chargors, the relevant Chargor shall procure that such Intellectual Property is brought within the scope of the security created by this Deed by ensuring that such Intellectual Property is transferred to a Chargor or by requiring the owning entity or entities to enter into a Deed of Accession as provided for in Clause 13.2 (*Further Subsidiaries*).

5.7 Equipment

- (a) If and to the extent required as a condition precedent under the Facility Agreement, promptly after the date of this Deed, each Chargor shall attach to a visible part of each item of Specified Equipment owned by it and with a value in excess of £10,000 in a permanent manner a clear and distinctive label, no smaller than 3 inches by 4 inches in size comprising the following notice: "This piece of Equipment is subject to a first legal mortgage in favour of GLAS Trust Corporation Limited and may not be removed or sold without their prior written consent."
- (b) Each Chargor shall keep its Equipment in good repair, working order and condition and fit for its purpose and shall not permit the same to be handled other than by persons properly qualified and trained or to be overloaded or to be used for any purpose for which the Equipment is not designed or reasonably suitable.
- (c) No Chargor will, without the prior written consent of the Security Trustee, make any modification or permit any modification to be made to the Specified Equipment if the effect of such modification may be to reduce the value of the Specified Equipment.
- (d) No Chargor will permit or procure any Specified Equipment to be taken out of England and Wales without the prior written consent of the Security Trustee and then subject only to such further terms (including the creation of security and provision of a satisfactory legal opinion in relation to that new security) as the Security Trustee may require.
- (e) Subject to clause 20.3 (*Taxation*) and clause 20.17 (*Insurance*) of the Facility Agreement, each Chargor will promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Premises and the Equipment and on demand produce evidence of such payment to the Security Trustee.
- (f) Each Chargor will obtain all authorisations from time to time required for the use and operation of the Equipment and not to do or permit to be done any act or omission whereby the Equipment or the use of it would contravene regulations for the time being in force.
- (g) Each Chargor will forthwith notify the Security Trustee of any loss, theft, damage or destruction to the Specified Equipment.
- (h) Each Chargor will give the Lenders such information concerning the location, condition, use and operation of the Specified Equipment as the Security Trustee may require and to permit any persons designated by the Lenders at all reasonable times to inspect and examine the Specified Equipment and the records maintained in connection with it.
- (i) Each Chargor will ensure that the Premises are suitable for the use or storage of the Specified Equipment, and will keep the Specified Equipment at the Premises.
- (j) Each Chargor will procure in favour of the Security Trustee from any person with a proprietary interest or encumbrance (including any owner, leaseholder or chargee) in any real or personal property to which the Specified Equipment might become affixed, or with which title to the Specified Equipment might merge, an acknowledgement prior to such fixing or merger that their rights and remedies will only be exercised subject to the Security Trustee's rights in the Specified Equipment and, in particular, but without limitation to the generality of the foregoing, the right of the Security Trustee, its delegates or agents to enter upon any such property to remove the Specified Equipment notwithstanding that it might be affixed to, or have merged with, any real or personal property.

5.8 Notice of fixed charge over Tax and VAT to HMRC

If requested by the Security Trustee, each Chargor shall promptly notify HM Revenue and Customs of the fixed charges created pursuant to Clause 2.1(b)(ix).

5.9 People with Significant Control regime

Each Chargor shall (and shall ensure that each other member of the Group will):

- (a) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of Security Interests in favour of the Security Trustee; and
- (b) promptly provide the Security Trustee with a copy of that notice.

5.10 Register of Mortgages and Charges

Any Chargor incorporated or registered in the Cayman Islands shall, promptly upon execution of this Deed, deliver to the Security Trustee a certified copy of its updated register of mortgages and charges to include reference to this Deed and the undertaking at clause 5.2(b) of this Deed.

5.11 Representations

Each Chargor and Guarantor makes the representations and warranties set out in this clause 5.11 (*Representations*) to each Secured Party on the date of this Deed.

(a) Status

- (i) It is a corporation, duly incorporated, validly existing and where applicable, in good standing under the law of its jurisdiction of incorporation.
- (ii) It has the power to own its assets and carry on its business as it is being conducted.

(b) Binding obligations

Subject to the Legal Reservations:

- (i) the obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (ii) (without limiting the generality of paragraph (a) above), each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

(c) Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents and the granting of the Security Interests under the Security Documents do not and will not conflict with:

- (i) any law or regulation applicable to it;
- (ii) its constitutional documents; or
- (iii) any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

(d) Power and authority

- (i) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- (ii) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

(e) Validity and admissibility in evidence

- (i) All Authorisations required or desirable:
 - (A) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
 - (B) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,have been obtained or effected and are in full force and effect except any Authorisation referred to in paragraph (g) (*No filing or stamp taxes*) below which will be promptly obtained, effected, done, fulfilled or performed after the date of this Deed.
- (ii) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Chargors have been obtained or effected and are in full force and effect.

(f) Governing law, enforcement

- (i) The choice of law specified in any Finance Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.
- (ii) Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

(g) No filing or stamp taxes

Under the law of its Relevant Jurisdictions it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

- (i) registration of particulars of this Deed at the Companies Registration Office in England and Wales under section 859A of the Companies Act 2006 and payment of associated fees;
- (ii) registration of particulars of this Deed at the Trade Marks Registry and the Patent Office in England and Wales and payment of associated fees; and
- (iii) the payment of Cayman Islands stamp duty on a Finance Document upon:
 - (A) the execution of such Finance Document in the Cayman Islands; or

- (B) the bringing in of such Finance Document into the Cayman Islands after execution, which duty shall be paid promptly upon such Cayman Islands stamp duty becoming due.

6. When Security Becomes Enforceable

The security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred by section 101 of the Law of Property Act 1925, as varied or amended by this Deed, shall be immediately exercisable upon and at any time after the service of a notice under clause 21.18 (*Acceleration*) of the Facility Agreement. During that period, the Security Trustee may in its absolute discretion enforce all or any part of the security in any manner it sees fit.

7. Enforcement of Security

7.1 General

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due on the date of this Deed.
- (b) Section 103 of the Law of Property Act (restricting the power of sale) and section 93 of the Law of Property Act 1925 (restricting the right of consolidation) do not apply to the security constituted by this Deed.
- (c) The statutory powers of leasing conferred on the Security Trustee are extended so that, without the need to comply with any provision of section 99 or 100 of the Law of Property Act 1925, the Security Trustee is empowered to lease, make agreements for leases, accept surrenders of leases and grant options as the Security Trustee may think fit.

7.2 Agent of the Chargors

For all purposes each Receiver is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Law of Property Act 1925. Every Receiver shall be the agent of the Chargor in respect of which he was appointed unless and until a liquidator shall be appointed of that Chargor, where after such Receiver shall act as principal but shall not become the agent of the Security Trustee. That Chargor alone shall be responsible for the Receiver's contracts, engagements, commissions, omissions, defaults and losses and for liabilities incurred by him save as may arise through the Receiver's gross negligence or wilful misconduct. The Security Trustee shall not incur any liability of whatsoever nature (either to the Chargors or to any other person) by reason of the Security Trustee making his appointment as a Receiver or for any other reason.

7.3 Contingencies

If the Security Trustee enforces the security constituted by this Deed at a time when no amounts are due to any Secured Party under the Finance Documents but at a time when amounts may or will become so due, the Security Trustee (or the Receiver) may pay the proceeds of any recoveries effected by it into a Charged Account.

7.4 Mortgagee in Possession - No Liability

Neither the Security Trustee nor any Receiver will be liable, by reason of entering into possession of any Charged Property, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

7.5 Privileges

Each Receiver and the Security Trustee is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 on mortgagees and receivers when such receivers have been duly appointed under that Act, except that section 103 of that Act does not apply.

7.6 Protection of third parties

No person (including a purchaser) dealing with the Security Trustee or a Receiver or its or his agents need enquire:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power purported to be exercised has become exercisable;
- (c) whether any money remains due; or
- (d) how any money paid to the Security Trustee or to the Receiver is to be applied.

7.7 Redemption of prior Mortgages

At any time after the security constituted by this Deed has become enforceable, the Security Trustee or any Receiver may, in the case of the Security Trustee at the sole cost of the Chargors (payable to the Security Trustee on demand) and in the case of a Receiver as an expense of the Receiver's receivership:

- (a) redeem any interest by way of security for the time being and from time to time ranking in point of security in priority to any of the security constituted by this Deed; and/or
- (b) (in the case of a redemption by the Security Trustee) procure the transfer of that interest by way of security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargors.

8. Receiver

8.1 Appointment of Receiver

At any time after the security constituted by this Deed becomes enforceable, or, at any time if so requested by any Chargor in writing, the Security Trustee may (but shall not be obliged) without further notice from time to time, and notwithstanding that, if such be the case, one or more than one Receiver shall have been appointed in respect of all or any of the Charged Property pursuant to this clause and not removed from such Charged Property, appoint in writing, under the hand of any manager of the Security Trustee, a Receiver of the Charged Property or part of it and, where so requested by a Chargor, whether or not the relevant Charged Property shall belong to that Chargor, but, in the circumstances described in Clause 3.2(a), only over the Charged Property specified in the notice referred to in that clause. The Security Trustee may not exercise the rights conferred by this Clause 8.1 to the extent to which such exercise would be inconsistent with any law or regulation.

8.2 Relationship with the Security Trustee

To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (be it express or implied) upon a Receiver of any Charged Property may, after the security created by this Deed has become enforceable, be exercised by the Security Trustee in relation to any Charged Property either:

- (a) without first appointing a Receiver; or
- (b) notwithstanding the appointment of a Receiver.

8.3 Removal

The Security Trustee may by writing under its hand (subject to section 45 of the Insolvency Act 1986):

- (a) remove any Receiver appointed by it; and
- (b) whenever it deems it necessary or desirable, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

8.4 Remuneration

The Security Trustee may, from time to time, fix the remuneration of any Receiver and direct payment of the same out of monies accruing to him in the exercise of his powers, authorities and discretions by or pursuant to this Deed, but the Chargor in respect of which any Receiver shall have been appointed shall alone be liable for the payment of that remuneration.

9. Powers of Receiver

9.1 General

- (a) In addition to those conferred by the Law of Property Act 1925 on any receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this Deed. The powers, authorities and discretions conferred by or pursuant to this Deed in relation to the Charged Property on the Security Trustee or any Receiver shall be in addition to, and not in substitution for, the powers conferred on mortgagees or receivers under the Law of Property Act 1925, and, where there is any ambiguity or conflict between the powers, authorities and discretions contained in that Act and those conferred by or pursuant to this Deed, the terms of this Deed shall prevail.
- (b) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receivers.
- (c) A Receiver who is an administrative receiver of a Chargor has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.
- (d) A Receiver may, in the name of the relevant Chargor if he so wishes:
 - (i) do all other acts and things which he may consider necessary or desirable for realising any Charged Property or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed; and
 - (ii) do and exercise in relation to any Charged Property all the powers, authorities and things which he would be capable of exercising as if he were its absolute beneficial owner.

9.2 Borrow and Lend Money

A Receiver may raise and borrow money (either unsecured or on the security of any Charged Property, either in priority to, pari passu with, or subsequent to, the security constituted by this Deed or otherwise) and may lend money either with or without security in the case of either borrowing or lending money on any other terms and for whatever purpose which he thinks fit. No person lending

that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

9.3 Carry on Business

A Receiver may carry on, manage or concur in the carrying on or managing of, the business for the time being and from time to time of the relevant Chargor in such manner as he may think fit, including, without limitation, power to perform, repudiate, rescind, compromise, amend or vary any contract, instrument or agreement to which the relevant Chargor shall for the time being and from time to time be a party.

9.4 Compromise

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

9.5 Employees

Either in connection with any exercise by the Receiver of his powers by or pursuant to this Deed or otherwise for any purpose connected with any of the Charged Property, a Receiver may:

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

9.6 Leases

A Receiver may grant, or concur in the grant of, any leases or licences of any Charged Property for any term on any terms which he thinks fit (including at a rent or fee with or without a premium) and may accept a surrender of any lease or licence of any Charged Property on any terms which he thinks fit (including the payment of money to a lessee or licensee on a surrender).

9.7 Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings to the relevant Chargor or its Charged Property as he thinks fit.

9.8 Possession

A Receiver may take immediate possession of, get in, and/or collect the Charged Property of the relevant Chargor and, for that purpose, to enter upon its property or any other premises at which its Charged Property is for the time being and from time to time located and sever, dismantle or remove the same or any fixtures for the time being and from time to time from such Charged Property without being liable for any loss or damage thereby occasioned.

9.9 Protection of Assets

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

- (a) make and effect, and concur in the making and effecting of, all repairs, maintenance, decoration, provision of all services (including lighting, heating and cleansing) structural and other alterations, improvements, additions and development in or to the Charged Property and do anything else in connection with the Charged Property which he may think fit or which he may deem proper for the efficient use or management of the Charged Property, as well as

for the protection as for the improvement of the Charged Property or for the protection of the security hereby constituted;

- (b) commence and/or complete any building operations on the Mortgaged Property, or other Charged Property;
- (c) apply for and maintain any planning permission, building regulation, approval or any other permission, consent or licence in relation to the Charged Property; and
- (d) effect and maintain the Insurances.

9.10 Receipts

A Receiver may give valid receipts for all monies and execute all deeds or documents (with full power to convey any assets sold in the name of the relevant Chargor) as may be necessary or appropriate in the name of, or on behalf of the relevant Chargor for the purpose of exercising any of the powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and to use the name of the relevant Chargor for all or any of such powers, authorities and discretions, for which purpose the relevant Chargor hereby irrevocably appoints every such Receiver to be its attorney.

9.11 Sale of assets

A Receiver may sell, exchange, convert into money and realise any Charged Property by public auction, tender or private treaty in any manner and on any terms and with or without such advertisement and in such lot or lots and together or separately as the Receiver thinks fit. 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 such period as the Receiver thinks fit. Fixtures may be severed and sold separately from the property containing them without the consent of the relevant Chargor.

9.12 Subsidiaries

A Receiver may promote the formation or purchase of, or concur in the promotion of the formation or purchase of, a subsidiary and/or subsidiaries of any Chargor with a view to the same purchasing, leasing, licensing or otherwise acquiring all or any of the assets of that Chargor and the Receiver may sell, lease, license or otherwise dispose all or any of the assets of that Chargor to such subsidiary or subsidiaries on such terms as he shall think fit.

9.13 Exercise of Rights

A Receiver may exercise or permit the relevant Chargor or any nominee of the relevant Chargor to exercise any powers or rights incidental to the ownership of its Charged Property in such manner as the Receiver may think fit and, in particular (as regards any shares, stock or other securities for the time being and from time to time included in its Charged Property), any rights for the time being and from time to time attached thereto.

9.14 Uncalled capital

A Receiver may call up all or any portion of any uncalled capital of a Chargor.

9.15 Professional advice

A Receiver may appoint a solicitor or accountant or other professionally qualified person to advise or assist it in the exercise of any of the powers, authorities and discretions by or pursuant to these presents or otherwise for any purpose connected with its Charged Property, and may discharge any such person.

9.16 Seal

A Receiver may use a Chargor's seal.

9.17 Intellectual Property

- (a) A Receiver may, in addition to the rights and powers conferred in relation to Intellectual Property under Clauses 9.1 to 9.16, in respect of any Intellectual Property:
 - (i) make such registrations and pay such fees, renewal fees, registration taxes and similar amounts as he thinks fit to keep such Intellectual Property in force;
 - (ii) take such steps as he thinks fit (including the institution of legal proceedings and the incurring of advertising expenditure) to police such Intellectual Property in any territory and to prevent third parties infringing it and otherwise to maintain and preserve its value; and
 - (iii) if he thinks fit, abandon or cancel such Intellectual Property or permit its registration (or application for registration) in any jurisdiction to lapse or to permit it to become liable to a claim for abandonment for non-use or otherwise.
- (b) To the extent that applicable law imposes duties on a Receiver to exercise remedies in respect of any Intellectual Property in a commercially reasonable manner (which duties cannot be waived under such law), each Chargor acknowledges and agrees that it is not commercially unreasonable for a Receiver:
 - (i) to fail to incur expenses reasonably deemed significant by the Receiver to prepare Intellectual Property for disposition;
 - (ii) to obtain or, if not required by other law, to fail to obtain consents of any governmental authority or other third party for the collection or disposition of Intellectual Property to be collected or disposed of;
 - (iii) to advertise dispositions of Intellectual Property through publications or media of general circulation;
 - (iv) to contact other persons, whether or not in the same business as Chargors for expressions of interest in acquiring all or any portion of the Intellectual Property;
 - (v) to hire one or more professional auctioneers to assist in the disposition of Intellectual Property, whether or not the Intellectual Property is of a specialised nature;
 - (vi) to dispose of Intellectual Property by utilising Internet sites that provide for the auction of assets of the types included in the Intellectual Property or that have the reasonable capability of doing so, or that match buyers and sellers of assets;
 - (vii) to disclaim disposition warranties;
 - (viii) to purchase insurance or credit enhancements to insure a Receiver against risks of loss, collection or disposition of Intellectual Property or to provide to a Receiver a guaranteed return from the collection or disposition of Intellectual Property;
 - (ix) to the extent deemed appropriate by a Receiver, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist a Receiver in the collection or disposition of any of the Intellectual Property.

- (c) Each Chargor acknowledges that the purpose of this Clause 9.17 is to provide non-exhaustive indications of what actions or omissions by a Receiver would not be commercially unreasonable in a Receiver's exercise of remedies against the Intellectual Property and that other actions or omissions by a Receiver shall not be deemed commercially unreasonable solely on account of not being indicated in this Clause 9.17. Without limitation of the foregoing, nothing contained in this Clause 9.17 shall be construed to grant any rights to any Chargor or to impose any duties on a Receiver that would not have been granted or imposed by this Deed or by applicable law in the absence of this Clause 9.17.

10. Application of Proceeds

Any monies received by the Security Trustee or any Receiver after this Deed has become enforceable shall be applied in the order of priority set out in Clause 15 (*Application of Proceeds*) of the Intercreditor Agreement.

11. Expenses and Indemnity

Each Chargor shall, within three Business Days of demand, pay the amount of all costs and expenses (including legal fees and VAT) incurred in connection with the enforcement of, or the preservation of any rights or discretions, under this Deed by the Security Trustee, or any Receiver, attorney, manager, agent or other person appointed by the Security Trustee under this Deed or by statute, and keep each of them indemnified against any failure or delay in paying the same.

12. Delegation

The Security Trustee and any Receiver may, for the time being and from time to time, delegate by power of attorney or in any other manner (including under the hand of any manager of the Security Trustee) to any person any right, power or discretion exercisable by the Security Trustee or such Receiver (as the case may be) under this Deed. Any such delegation may be made upon the terms (including power to sub-delegate) and subject to any regulations which the Security Trustee or such Receiver (as the case may be) may think fit. Neither the Security Trustee nor any Receiver will be in any way liable or responsible to any Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate who shall be entitled to all the indemnities to which his appointor is entitled under this Deed.

13. Further Assurances

13.1 General

Each Chargor shall, at its own expense, execute and do all such acts, deeds and things (including payment of all stamp duties, stamp duty land tax and registration fees) the Security Trustee or a Receiver may reasonably require for:

- (a) fully and effectively creating, perfecting or better perfecting or protecting or better protecting and/or registering the security intended to be created by this Deed or any standard security (and/or assignation of rents relating to property located in Scotland) over any Charged Property; and
- (b) after the security constituted by this Deed has become enforceable, facilitating the realisation of any Charged Property or the exercise of any right, power or discretion exercisable, by the Security Trustee or any Receiver in respect of any Charged Property, including the execution of any transfer, conveyance, assignment or assurance of any property whether to the Security Trustee or to its nominees, and the giving of any notice, order or direction and the making of any registration, which in any such case, the Security Trustee may think necessary or desirable.

13.2 Further Subsidiaries

- (a) This clause shall only apply if the relevant Subsidiary is not already party to the Facility Agreement as a guarantor or to the First Ranking Debenture as a chargor.
- (b) Each Chargor undertakes to ensure that each company which is required to grant security or a guarantee pursuant to the terms of the Facility Agreement, and which becomes a Subsidiary (whether direct or indirect) of any Chargor after the date of this Deed shall, as soon as reasonably practicable upon being required to do so by the Security Trustee execute a Deed of Accession and/or a Guarantor Accession Letter (and such other security documents in relation to property located in any jurisdiction other than England and Wales required by the Finance Documents or the Security Trustee) and such company shall on the date which such Deed of Accession and/or Guarantor Accession Letter is executed by it become a party to this Deed in the capacity of a Chargor and/or Guarantor and this Deed shall be read and construed for all purposes as if such company had been an original party to this Deed as a Chargor (but for the avoidance of doubt the security created by such company shall be created on the date of the Deed of Accession).
- (c) The Security Trustee may specify any amendments or changes to the form or manner in which any such new Chargor gives such security provided it is no more onerous than the terms hereof or, in the case of property located in Scotland or otherwise governed by Scots law or the laws of any other jurisdiction, the existing agreed form of the applicable security document (including an acceptance of a limit on the liability of such new Chargor) which in the reasonable opinion of the Security Trustee is necessary in order that such security may lawfully be given.
- (d) Each Chargor shall procure that all registrations or other steps necessary to perfect any security created by a Deed of Accession or other applicable security document are completed as soon as is practicable after its execution and in any event within any applicable time limit.
- (e) Each Chargor (other than the Parent) by its execution of this Deed or any Deed of Accession, irrevocably appoints the Parent to execute on its behalf any Deed of Accession without further reference to or the consent of such Chargor and such Chargor shall be bound by any such Deed of Accession as if it had itself executed such Deed of Accession.
- (f) Without limiting the other provisions of this Clause 13.2 (*Further Subsidiaries*), each Chargor and each Guarantor acknowledges that any Subsidiary which executes a Deed of Accession and/or Guarantor Accession Letter will become bound by, and entitled to the benefit of all provisions of this Deed applicable as between the Chargors and the Guarantors themselves.

14. Power of Attorney

Each Chargor, by way of security, irrevocably and severally appoints the Security Trustee, each Receiver and any of their delegates or sub-delegates to be its attorney and on its behalf and in its name or otherwise to execute and do all such acts, deeds and things which such Chargor is obliged to take under this Deed and generally, on its behalf and in its name, to exercise all or any of the powers, authorities and discretions conferred by or pursuant to this Deed on the Security Trustee or any Receiver. Each Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under this clause.

15. Continuing Security

15.1 Additional Security

The security constituted by this Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Security Trustee for any of the Secured Obligations.

15.2 Continuing Security

The security constituted by this Deed is continuing and will extend to the ultimate balance of all the Secured Obligations, regardless of any intermediate payment or discharge in whole or in part.

15.3 Reinstatement

If any payment by a Chargor or any discharge given by the Security Trustee (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Chargor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Security Trustee shall be entitled to recover the value or amount of that security or payment from each Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

15.4 Waiver of defences

The obligations of each Chargor under this Deed will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or the Security Trustee) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor or any other person;
- (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 Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment (however fundamental) or replacement of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

15.5 Immediate recourse

Each Chargor waives any right it may have of first requiring the Security Trustee to proceed against or enforce any other rights or security or claim payment from any person before enforcing the security constituted by this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

15.6 Appropriations

Until all the Secured Obligations have been irrevocably paid in full, the Security Trustee may:

- (a) refrain from applying or enforcing any other monies, security or rights held or received by the Security Trustee in respect the Secured Obligations, or apply and enforce the same in such manner and order as it sees fit (whether against the Secured Obligations or otherwise) and no Chargor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any monies received from any Chargor or on account of any Chargor's liability in respect of the Secured Obligations.

15.7 Deferral of Chargors' rights

Until all the Secured Obligations have been irrevocably paid in full and unless the Security Trustee otherwise directs, no Chargor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents; and/or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any of the Secured Party's or Security Trustee's rights under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Security Trustee or any other Finance Party.

16. Guarantee and Indemnity

16.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Secured Party punctual performance by each Obligor of all the Obligor's obligations under the Finance Documents;
- (b) undertakes with each Secured Party that whenever an Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Secured Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that relevant Secured Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 16 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

16.2 Continuing Guarantee

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

16.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 16 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

16.4 Waiver of defences

The obligations of each Guarantor under this Clause 16 (*Guarantee and Indemnity*) will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 16 (*Guarantee and Indemnity*) (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- (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 Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
- (g) any insolvency or similar proceedings; or
- (h) the exercise of, or refraining from the exercise of, any rights against any Obligor or any Charged Property.

16.5 Guarantor intent

Without prejudice to the generality of Clause 16.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following:

- (a) business acquisitions of any nature;
- (b) increasing working capital;
- (c) enabling investor distributions to be made;

- (d) carrying out restructurings;
- (e) refinancing existing facilities;
- (f) refinancing any other indebtedness;
- (g) making facilities available to new borrowers;
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and
- (i) any fees, costs and/or expenses associated with any of the foregoing.

16.6 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Secured Party (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 that Guarantor under this Clause 16 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

16.7 Appropriations

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 16 (*Guarantee and Indemnity*).

16.8 Deferral of Guarantor's rights

Until all amounts which may be or become payable by each Obligor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Security Trustee otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 16 (*Guarantee and Indemnity*):

- (a) to receive or claim payment from or be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of, or provider of any Security Interest in respect of, any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Secured Parties;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 16 (*Guarantee and Indemnity*) of this Deed;
- (e) to exercise any right of set-off against any Obligor; and/or

- (f) to claim or prove as a creditor of any Obligor in competition with the Secured Parties (or any of them).

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with clause 29 (*Payment Mechanics*) of the Facility Agreement.

16.9 Additional Security

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

17. Miscellaneous

17.1 Covenant to pay

Each Chargor shall pay or discharge the Secured Obligations in the manner provided for in the Facility Agreement and in any other document creating or evidencing the Secured Obligations and/or otherwise as agreed from time to time.

17.2 The Land Registry

In respect of the Mortgaged Property, if required by the Security Trustee, each Chargor undertakes to make or procure that there is made due application to the Chief Land Registrar (at the same time as registering each legal mortgage in Clause 2.1(a)):

- (a) for a restriction in the following terms to be entered on the Register of Title relating to any Mortgaged Property registered at The Land Registry in its name and against which this Deed may be noted:

“No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [] 2020 in favour of GLAS Trust Corporation Limited referred to in the charges register.”; and

- (b) to enter into an obligation to make further advances on the register of title relating to it.

17.3 New Accounts

If the Security Trustee receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent charge or other interest affecting any Charged Property and/or the proceeds of sale of any Charged Property, the Security Trustee may open a new account for any Chargor. If the Security Trustee does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice. As from that time all payments made to the Security Trustee will be credited or be treated as having been credited to the new account and will not operate to reduce any amount for which this Deed is security and, furthermore, the Security Trustee shall be under no obligation to advance any monies or provide or continue to provide any credit facility to any Borrower.

17.4 Tacking

The Security Trustee covenants with each Chargor that it shall perform its obligations under any document creating or evidencing the Secured Obligations (including any obligation to make available further advances).

17.5 Separate Charges

This Deed shall, in relation to each Chargor, be read and construed as if it were a separate Deed relating to such Chargor to the intent that if any Security Interest created by any other Chargor in this Deed shall be invalid or liable to be set aside for any reason, this shall not affect any Security Interest created under this Deed by such first Chargor.

17.6 Invalidity

If, at any time, any provision of this Deed is or becomes invalid, illegal 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.

18. Release

18.1 Expiry of Security Period

Upon the expiry of the Security Period (but not otherwise), the Security Trustee shall, at the request and cost of the Chargors, take whatever action is necessary to release the Charged Property from the security constituted by this Deed and/or reassign the benefit of the Charged Property to the Chargors. If the Security Trustee is of the opinion that any payment made in or towards the discharge of any of the Secured Obligations is capable of being avoided or set aside under any law applicable to liquidation, administration, receivership or insolvency, then the Security Trustee may defer taking the action contemplated by this Clause 18.1 for such period as it may deem appropriate. The Chargors shall, within three Business Days of demand by the Security Trustee, reimburse the Finance Parties for the amount of all costs and expenses (including legal fees) reasonably incurred by any Finance Party in responding to, evaluating, negotiating or complying with that request.

18.2 Charged Accounts

At any time before the security created by this Deed shall have become enforceable, in the absence of any directions from the Security Trustee to the contrary, any amounts permitted by the terms of the Finance Documents to be paid into a Charged Account shall upon payment into such account stand released from the fixed charge over Book Debts created pursuant to Clause 2 (*Fixed Security*) and shall stand subject to the floating charge created by Clause 3.1 (*Floating Charge*), provided that such release shall in no respect prejudice the continuance of the fixed charge created pursuant to Clause 2 (*Fixed Security*) in respect of all other Book Debts.

19. Rights and Remedies

The rights of the Security Trustee under this Deed are cumulative, may be exercised as often as considered appropriate and are in addition to the general law. Such rights (whether arising hereunder or under the general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing and, in particular, any failure to exercise or delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right, any defective or partial exercise of any such rights shall not preclude any other or further exercise of that or any other such right, and no act or course of conduct or negotiation by the Security Trustee or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.

20. Notices

Any notice or other communication to be made or given under this Deed shall be made or given, and shall be deemed to have been received, in accordance with the provisions of clause 32 (*Notices*) of the Facility Agreement.

21. Counterparts

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

22. Governing Law

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

23. Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a **Dispute**).
- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) This Clause 23 is for the benefit of the Security Trustee only. As a result, the Security Trustee 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 Trustee may take concurrent proceedings in any number of jurisdictions.

24. Service of Process

Without prejudice to any other mode of service allowed under any relevant law, each Chargor (other than a Chargor incorporated in England and Wales):

- (a) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and
- (b) agrees that failure by a process agent to notify the relevant Chargor of the process will not invalidate the proceedings concerned.

For the benefit of the Security Trustee the Parent expressly agrees and consents to its irrevocable appointment as process agent pursuant to this Clause 24.

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

SCHEDULE 1
The Original Parties

Part I – The Chargors

| Chargor | Registration number (or equivalent) | Jurisdiction of incorporation |
|-------------------------|--|--------------------------------------|
| Connect Airways Limited | 11732177 | England and Wales |
| Propius Holdings Ltd. | 272996 | Cayman Islands |
| Propius Limited | 273002 | Cayman Islands |

Part II – The Guarantors

| Chargor | Registration number (or equivalent) | Jurisdiction of incorporation |
|-------------------------|--|--------------------------------------|
| Connect Airways Limited | 11732177 | England and Wales |
| Propius Holdings Ltd. | 272996 | Cayman Islands |
| Propius Limited | 273002 | Cayman Islands |

SCHEDULE 2
Mortgaged Property

| Chargor | Address | Title Number |
|--------------------------|---------|--------------|
| Freehold Property | | |
| Intentionally left blank | | |
| Leasehold Property | | |
| Intentionally left blank | | |

SCHEDULE 3
Notices of Assignment

Part I

Assigned Agreements

None as at the date of this Deed.

Part II

Notice of Assignment and Acknowledgement

To: Contract third party/Insurer

Date:

Dear Sirs

We, as Chargor, give notice that by a supplemental first ranking guarantee and debenture dated [•] 2020 between, among others Connect Airways Limited, certain of its subsidiaries and GLAS Trust Corporation Limited (the **Security Trustee**) we have assigned the [Contracts/Insurances] detailed in the annex to this letter and all our interest (including the benefit of all money owing to or to become owing to us and all interest therein) under and in respect of such [Contracts/Insurances].

We authorise you to issue a letter of undertaking, in the form attached, to the Security Trustee and to act on the instructions of the Security Trustee in the manner provided in that letter without any further reference to or authorisation from us.

We shall continue to be responsible to perform our obligations under the [Contracts/Insurances].

Yours faithfully

For and on behalf of
[Chargor]

Annex

[•]

To: GLAS Trust Corporation Limited
45 Ludgate Hill
London
EC4M 7JU

Date:

Dear Sirs

Letter of undertaking

In accordance with an assignment made by [Chargor] (the **Company**) dated [●] 2020 and in consideration of you agreeing to the Company continuing the [contracts/insurances] detailed in the notice of assignment from the Company to us dated [●] 20[●] (the [Contracts/Insurances]) we undertake:

1. [to note your interest as mortgagee and sole loss payee on the Insurances;]
2. to disclose to you without any reference to or further authority from the Company such information relating to the [Contracts/Insurances] as you may at any time request;
3. with effect from the date of your receipt of a notice from you that an Event of Default has occurred and is outstanding:
 - (a) not to [release/terminate] any of the [Contracts/Insurances] on request by the Company without your prior written consent; and
 - (b) [to pay all claims payable under the Insurances to you unless you otherwise agree in writing except as required by law.]
4. We acknowledge and confirm that:
 - (a) you are an assignee of the Chargor and may severally enforce all rights and benefits assigned to you against us and shall not be obliged to join any other person in any action to enforce the same;
 - (b) we have not received notice of any previous assignments or charges of or over any of the rights, interests and benefits in and to the payments under the [Contract/Insurances];
 - (c) we have not claimed or exercised any right of set-off, counterclaim or other right relating to any payments arising under the [Contract/Insurances], have no outstanding right to claim or exercise any right of set-off, counterclaim or any other right relating to any payment arising under the [Contract/Insurances] and hereby waive any such rights which we may have in the future: and
 - (d) no amendment, variation, termination, waiver or release of any rights, interest and benefits in and to any payments arising under the [Contracts/Insurances] shall be effective without your prior written consent.

This letter shall be governed and construed in accordance with English law.

Yours faithfully

For and on behalf of
[Contract third party/Insurer]

SCHEDULE 4
Group Shares

| Subsidiary | Shares | Shareholder(s) |
|---------------------------------|---|-------------------------|
| Flybe Limited | 1,000,000 Ordinary Shares of £1 each | Connect Airways Limited |
| Flybe Group Limited | 216,656,776 Ordinary Shares of £0.01 each | Connect Airways Limited |
| Flybe.com Limited | 1 Ordinary Share of £1 each | Connect Airways Limited |
| Everdeal 2019 Limited | 40,000 A Shares of £1 each | Connect Airways Limited |
| Everdeal Employees 2019 Limited | 1,500 Ordinary Shares of €1.00 each | Connect Airways Limited |
| Propius Holdings Ltd. | 13,404 Ordinary A Shares of US\$1.00 each 13,404 Ordinary B Shares of US\$1.00 each 13,404 Ordinary C Shares of US\$1.00 each | Connect Airways Limited |

SCHEDULE 5
Specified Equipment

Intentionally left blank

SCHEDULE 6
Scheduled Intellectual Property

Intentionally left blank

SCHEDULE 7
Deed of Accession

THIS DEED OF ACCESSION is dated []

BETWEEN:

- (1) [•] **LIMITED** (registered in England and Wales with company number [•]) (the **New Chargor**);
- (2) **CONNECT AIRWAYS LIMITED** (registered in England and Wales with company number 11732177) (the **Parent**) for itself and as agent for and on behalf of each of the other Chargors presently party to the Supplemental First Ranking Guarantee and Debenture (as defined below); and
- (3) **GLAS TRUST CORPORATION LIMITED** of 45 Ludgate Hill, London EC4M 7JU, England (registered in England and Wales with company number 07927175), as security trustee for and on behalf of the Finance Parties (the **Security Trustee**).

BACKGROUND:

- (A) The Parent and others as Chargors entered into a supplemental first ranking guarantee and debenture dated [•] January 2020 (as supplemented and amended from time to time, the **Supplemental First Ranking Guarantee and Debenture**) in favour of the Security Trustee.
- (B) The New Chargor has at the request of the Parent and in consideration of the Lenders continuing to make facilities available under the Facility Agreement and after giving due consideration to the terms and conditions of the Finance Documents and the First Ranking Guarantee and Debenture and satisfying itself that there are reasonable grounds for believing that the entry into this Deed by it will be of benefit to it, decided in good faith and for the purpose of carrying on its business to enter into this Deed and thereby become a Chargor under the First Ranking Guarantee and Debenture.
- (C) The Chargors and the Security Trustee intend that this document take effect as a deed notwithstanding that it may be executed under hand.

IT IS AGREED:

- 1. Terms defined in and definitions incorporated in, the First Ranking Guarantee and Debenture have the same meaning when used in this Deed.
- 2. The New Chargor agrees to become a party to and bound by the terms of the Supplemental First Ranking Guarantee and Debenture as a Chargor with immediate effect and so that the Supplemental First Ranking Guarantee and Debenture shall be read and construed for all purposes as if the New Chargor had been an original party to the Supplemental First Ranking Guarantee and Debenture in the capacity of Chargor (but so that the security created consequent on such accession shall be created on the date of this Deed).
- 3. The New Chargor undertakes to be bound by all of the covenants and agreements in the Supplemental First Ranking Guarantee and Debenture which are expressed to be binding on a Chargor.
- 4. The New Chargor grants to the Security Trustee the assignments, charges, mortgages and other Security Interests described in the Supplemental First Ranking Guarantee and Debenture as being granted, created or made by Chargors under the Supplemental First Ranking Guarantee and Debenture to the intent that its assignments, charges, mortgages and other Security Interests shall be effective and binding upon it and its property and assets and shall not in any way be avoided, discharged or released or otherwise adversely affected by any ineffectiveness or invalidity of the Supplemental First Ranking Guarantee and Debenture or of any other party's execution of the Supplemental First Ranking Guarantee and Debenture or any other Deed of Accession, or by any

avoidance, invalidity, discharge or release of any guarantee, assignment or charge contained in the Supplemental First Ranking Guarantee and Debenture or in any other Deed of Accession.

5. The Supplemental First Ranking Guarantee and Debenture and this Deed shall be read and construed as one to the extent and so that references in the Supplemental First Ranking Guarantee and Debenture to:
 - (a) "this Deed" and similar phrases shall be deemed to include this Deed;
 - (b) "Schedule 2" shall be deemed to include a reference to Part I of the Schedule to this Deed;
 - (c) "Schedule 4" shall be deemed to include a reference to Part II of the Schedule to this Deed;
 - (d) "Schedule 5" shall be deemed to include a reference to Part III of the Schedule to this Deed;
 - (e) "Schedule 6" shall be deemed to include a reference to Part IV of the Schedule to this Deed.
6. The parties agree that the bank accounts of the New Chargor specified in Part V of the Schedule to this Deed shall be designated as Charged Accounts for the purposes of the Supplemental First Ranking Guarantee and Debenture.
7. The Parent, for itself and as agent for and on behalf of the other Chargors under the Supplemental First Ranking Guarantee and Debenture, agrees and consents to all of the matters provided for in this Deed.
8. Without limiting the generality of the other provisions of this Deed and the Supplemental First Ranking Guarantee and Debenture, pursuant to the terms of this Deed and the Supplemental First Ranking Guarantee and Debenture, the New Chargor as security for the payment and performance of the Secured Obligations, and in the manner specified in Clause 1.2(g) of the Supplemental First Ranking Guarantee and Debenture:
 - (a) charges to the Security Trustee by way of first legal mortgage all of the property (if any) now belonging to it brief descriptions of which are specified in Schedule 2 (*Mortgaged Property*) to the Supplemental First Ranking Guarantee and Debenture and/or Part I of the Schedule to this Deed;
 - (b) mortgages and charges and agrees to mortgage and charge to the Security Trustee by way of first mortgage all of the stocks, shares and other securities (if any) brief descriptions of which are specified in Part II of the Schedule to this Deed (which shall from today's date form part of the Group Shares for the purposes of the Supplemental First Ranking Guarantee and Debenture);
 - (c) mortgages and charges and agrees to mortgage and charge to the Security Trustee the same to be a security by way of a first mortgage all of its right, title and interest in and to the Equipment (if any) brief descriptions of which are specified in Part III of the Schedule to this Deed (which shall from today's date form part of the Specified Equipment for the purposes of the Supplemental First Ranking Guarantee and Debenture), the same to be a security by way of a first legal mortgage and all spare parts and replacements for and all modifications and additions to such Specified Equipment;
 - (d) [charges to the Security Trustee by way of a first fixed charge all of its right, title and interest in and to:

- (i) the Charged Account(s) specified in Part V of the Schedule to this Deed; and
 - (ii) all monies standing to the credit of such Charged Account(s) and the debts represented by them; **[INCLUDE IF NEW CHARGOR IS ALSO TO BE A BORROWER]**
- (e) charges to the Security Trustee by way of first fixed charge its Intellectual Property (if any) specified in Part IV of the Schedule to this Deed (which shall from today's date form part of the Scheduled Intellectual Property of the Chargors for the purposes of the Supplemental First Ranking Guarantee and Debenture).

This Deed and all non-contractual obligations arising out of it shall be governed by and construed in accordance with English law.

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

SCHEDULE TO THE DEED OF ACCESSION

Part I (Mortgaged Property)

[•]

Part II (Group Shares)

[•]

Part III (Specified Equipment)

[•]

Part IV (Scheduled Intellectual Property)

[•]

Part V (Charged Accounts)

[•]

SCHEDULE 8
Form of Guarantor Accession Letter

Date: [•]

To:

GLAS Trust Corporation Limited
45 Ludgate Hill
London
EC4M 7JU

Dear Sirs

Supplemental First Ranking Guarantee and Debenture dated [•] (the Deed)

1. We refer to the Deed. This is a Guarantor Accession Letter. Terms defined in the Deed have the same meaning in this Guarantor Accession Letter unless given a different meaning in this Guarantor Accession Letter.
2. [Subsidiary] agrees to become a Guarantor and to be bound by the terms of the Deed as a Guarantor pursuant to clause [here (*Further Subsidiaries*)] of the Deed. [Subsidiary] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
3. [Subsidiary's] administrative details are as follows:

Address:

Fax No:

Attention:

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

[This Accession Letter is entered into by deed.]

[Company]

[Subsidiary]

SIGNATORIES
[to the Deed of Accession]

The New Chargor

Executed as a deed by)
[•] LIMITED)
)
Director

In the presence of:

Signature of witness
Name
Address
Occupation

The Parent

Executed as a deed by)
CONNECT AIRWAYS LIMITED)
for itself and as agent for the other)
Chargors party to the Supplemental)
First Ranking Guarantee and Debenture)
Director

In the presence of:

Signature of witness
Name
Address
Occupation

The Security Trustee

GLAS TRUST CORPORATION LIMITED

By:

SIGNATORIES

The Parent and a Chargor

Executed as a deed by
CONNECT AIRWAYS LIMITED

)
)
)



Director

In the presence of:

Signature of witness



Name

Victoria Thompson

Address

5-10 St Paul's Churchyard, London

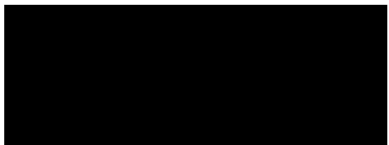
Occupation

Solicitor

The Other Chargors

Executed as a deed by
PROPIUS HOLDINGS LTD.

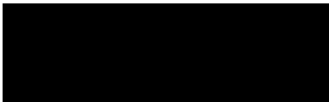
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)
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Director

In the presence of:

Signature of witness



Name

Dani Green

Address



Occupation

PA

Executed as a deed by
PROPIUS LIMITED

)
)
)



Director

In the presence of:

Signature of witness



Name

Dani Green

Address



Occupation

AA

The Security Trustee

GLAS TRUST CORPORATION LIMITED

By:



Juliette Challenger