



**Registration of a Charge**

Company name: **PAY LATER MIDCO LIMITED**

Company number: **12220291**



X8L05SY0

Received for Electronic Filing: **24/12/2019**

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**Details of Charge**

Date of creation: **19/12/2019**

Charge code: **1222 0291 0002**

Persons entitled: **BCI FINANCE LIMITED AS AGENT AND SECURITY TRUSTEE FOR THE SECURED PARTIES**

Brief description: **NOT APPLICABLE**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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





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

Company number: 12220291

Charge code: 1222 0291 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th December 2019 and created by PAY LATER MIDCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th December 2019 .

Given at Companies House, Cardiff on 27th December 2019

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**EXECUTION VERSION**

Date: 19 December ..... 2019

**PAY LATER MIDCO LIMITED**

as Chargor

**BCI FINANCE LIMITED**

as Security Agent

**Charge Over Shares and Inter-company  
Debt (Mezzanine)**

**THIS DEED IS SUBJECT TO THE INTERCREDITOR AGREEMENT**

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**THIS DEED** is made the 19th day of December 2019

**BETWEEN:**

- (1) **PAY LATER MIDCO LIMITED** (the "**Chargor**") a company registered in England & Wales with registration number 12220291 and whose registered office is at 4<sup>th</sup> Floor, 33 Cannon Street, London, England EC4M 5SB; and
- (2) **BCI FINANCE LIMITED** as agent and security trustee for the Secured Parties (the "**Security Agent**").

**IT IS AGREED** as follows:

**1. Definitions and interpretation**

**1.1 Definitions**

In this Deed:

"**Act**" means the Law of Property Act 1925;

"**Assigned Receivable**" means the total amount owed to the Chargor under each Loan Agreement and includes the principal amount outstanding and all interest, fees and other amounts payable to the Chargor under each Loan Agreement;

"**Company**" means Pay Later Financial Services III Limited registered as a private limited company in England and Wales with registered number 12223238;

"**Default Rate**" means the rate specified in Clause 11.3 (*Default interest*) of the Facility Agreement;

"**Dividends**" means all dividends, interest and other distributions paid or payable on or in respect of the Shares;

"**Event of Default**" has the same meaning as in the Facility Agreement;

"**Facility Agreement**" means the £2,500,000 mezzanine revolving facility agreement with term-out dated on or around the date of this Deed between, amongst others, the Company as borrower, Pay Later Group Limited as topco, the entities listed in Part 1 of Schedule 1 therein as original guarantors and original obligors, BCI Finance Limited as arranger, the financial institution listed in Part 3 of Schedule 1 therein as original lender and the Security Agent as agent and security agent;

"**Intercreditor Agreement**" has the meaning given to it in the Facility Agreement;

"**Loan Agreement**" means:

- (a) the £1,500,000 intercompany loan agreement dated 29<sup>th</sup> November 2019 between the Chargor as lender and the Company as borrower; and
- (b) each agreement, document and other instrument evidencing or recording the terms of the obligations, liabilities of the Company to the Chargor;

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets appointed by the Security Agent under this Deed;

**"Regulations"** means the Financial Collateral Arrangements (No 2) Regulations 2003 (S.I. 2003/3226) (as amended) or (where the context admits) equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements;

**"Secured Obligations"** means all present and future obligations and liabilities of each Transaction Obligor to any Secured Party under or in connection with each Finance Document whether actual or contingent and whether owed or incurred alone or jointly and/or severally and as principal or as surety or in any other capacity or of any nature (and including, for the avoidance of doubt and without limitation, any obligation or liability with respect to any Additional Commitment under and as defined in the Facility Agreement);

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;

**"Security Assets"** means all or any of the assets of the Chargor which are the subject of any Security created or to be created by this Deed;

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and no further Secured Obligations are capable of becoming outstanding;

**"Senior Discharge Date"** has the meaning given to it in the Intercreditor Agreement;

**"Senior Security Agreement"** means the security agreement entered into between the Chargor and Shawbrook Bank Limited (as security agent) (the **"Senior Security Agent"**) dated 29th November 2019;

**"Share Security Assets"** means the Shares, the Dividends and unless the context otherwise requires all other rights related to the Shares; and

**"Shares"** means the shares in the Company specified in Schedule 1 (*Particulars of the Shares*) and any other shares in the Company issued and/or allotted to the Chargor or in which the Chargor has an interest from time to time.

## **1.2 Construction**

(a) Unless a contrary indication appears, any reference in this Deed to:

- (i) **"assets"** includes present and future properties, revenues and rights of every description and includes the proceeds of sale of any such asset;
- (ii) the **"Security Agent"**, the **"Chargor"**, the **"Senior Security Agent"** or any other person includes its respective successors in title, permitted assigns and or permitted transferees;
- (iii) this **"Deed"** or any other agreement or document is a reference to this Deed or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, supplemented or novated, extended or restated, including any change in the purpose of, any extension of or any increase in the amount of a facility or additional facility;



- (iv) the "**Dividends**", the "**Secured Obligations**", the "**Security Assets**", the "**Shares**" or the "**Share Security Assets**" includes a reference to any of them and to any part of them;
  - (v) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having a separate legal personality);
  - (vi) a provision of law is a reference to that provision as amended or re-enacted and includes any subordinate legislation;
  - (vii) 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;
  - (viii) "**this Security**" means any Security created or constituted by this Deed;
  - (ix) the "**winding-up**" of a person includes the amalgamation, reconstruction, reorganisation, dissolution, liquidation, winding-up, merger or consolidation of that person, and any equivalent or analogous procedure under the law of any jurisdiction in which the person is incorporated or resident or carries on a material part of its business or has material assets; and
  - (x) words in the singular include the plural and vice versa and words in one gender include any other gender.
- (b) Headings in this Deed are for ease of reference only.
  - (c) Any covenant or undertaking by the Chargor under this Deed is given to or made in favour of the Security Agent and remains in force during the Security Period.
  - (d) An Event of Default is "**continuing**" if it has not been waived in writing.
  - (e) It is intended that this document take effect as a deed notwithstanding the fact that (if executed by the Security Agent) the Security Agent may only execute this document under hand.
  - (f) This Deed is a Finance Document.
  - (g) Unless expressly defined in this Deed or a contrary indication appears, words and expressions defined in the Facility Agreement have the same meanings when used in this Deed.
  - (h) The Chargor hereby acknowledges and confirms that it has been provided with, and has read, the terms of the Finance Documents.
  - (i) The fact that the details of any assets in the Schedules are incorrect or incomplete shall not affect the validity or enforceability of this Deed in respect of the assets of the Chargor.

### 1.3 Trustee Act 1925 and Trustee Act 2000

- (a) Section 1 of the Trustee Act 2000 shall not apply to any function of the Security Agent. Where there is any inconsistency between the Trustee Act 1925 or the Trustee Act

2000 and the provisions of this Deed, the provisions of this Deed shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Deed shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

- (b) For the avoidance of doubt:
  - (i) the Security Agent may retain or invest in securities payable to bearer without appointing a person to act as a custodian; and
  - (ii) sections 22 and 23 of the Trustee Act 2000 shall not apply to this Deed.

#### **1.4 Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (c) Any Receiver, Delegate, Finance Party or any officer, employee or agent of such Receiver, Delegate or Finance Party may, subject to this sub-clause and the Third Parties Act, rely on any clause of this Deed which expressly confers rights on it.

#### **1.5 Benefit**

The provisions of this Deed are for the benefit of the Security Agent as security trustee for and on behalf of the Secured Parties.

#### **1.6 Intercreditor Agreement / Senior Security Agreement**

- (a) This Deed is subject to the Intercreditor Agreement and in the event of, prior to the Senior Discharge Date, any conflict between the terms of this Deed and the Intercreditor Agreement the terms of the Intercreditor Agreement shall prevail.
- (b) The fact that a provision of this Deed is expressed to be subject to the terms of the Intercreditor Agreement does not mean, and will not be taken to mean, that any other provision of this Deed is not so subject
- (c) Where this Deed imposes an obligation on the Chargor to do something where the Chargor is under an equivalent obligation under the Senior Security Agreement (the "**Senior Obligation**") and it is not possible for the Chargor to comply with both the Senior Obligation and the equivalent obligation in this Deed then, prior to the Senior Discharge Date, it will not be an Event of Default for the purposes of the Facility Agreement as a result of the Chargor's failure to comply with that obligation so long as the Chargor complies with the equivalent Senior Obligation.
- (d) Without limitation to the generality of paragraph (c) above, where this Deed requires any amount in respect of a Security Asset to be paid to the Security Agent after the occurrence of an Event of Default which is continuing or to be otherwise used to discharge the Secured Obligations that obligation shall be construed as an obligation to pay that amount to (as applicable), prior to the Senior Discharge Date, the Senior Security Agent for application in accordance with the Intercreditor Agreement and/or to

discharge the Secured Obligations (under and as defined in the Senior Security Agreement).

- (e) With the exception of the Ixaris Service Agreement Security Assignment, any reference in this Deed (or any other Finance Document) to an obligation to create any Security in favour of the Security Agent shall be an obligation, prior to the Senior Discharge Date, to create Security in the same form (and covering the same assets) as entered into in connection with the Senior Facilities Agreement subject to such Security being subordinated under the terms of the Intercreditor Agreement (and with such amendments as are necessary to give effect to that subordination). For the avoidance of doubt where this Deed requires any such Security to be in form and substance satisfactory to the Security Agent, it will be deemed to be in form and substance satisfactory to the Security Agent where that Security is in the same form (and covers the same assets) as that entered into in connection with the Senior Facilities Agreement (subject to such amendments as are necessary to give effect to the terms of the Intercreditor Agreement).

## **2. Covenant to pay**

### **2.1 Undertaking to pay**

The Chargor shall:

- (a) pay to the Security Agent or discharge all the Secured Obligations when due and otherwise in accordance with the provisions of the Finance Documents; and
- (b) indemnify and keep each Secured Party indemnified from and against all actions, charges, claims, costs, damages, proceedings and other liabilities occasioned by any breach of any covenant or other obligation of the Chargor under the Finance Documents.

### **2.2 Interest**

If the Chargor fails to pay any of the Secured Obligations on the due date for payment of that sum, the Chargor shall on demand pay to the Security Agent interest on all such sums from the due date until the date of payment (both before and after judgment) calculated and payable in accordance with the rate and in the manner specified in the Facility Agreement.

### **2.3 Limited Recourse**

- (a) The total amount recoverable by the Security Agent from the Chargor under this Deed shall be limited to the amount realised or recovered from the Security Assets pursuant to this Deed together with all costs, expenses, interest and other amounts payable by the Chargor under this Deed.
- (b) Nothing in this Clause 2.3 shall affect or limit the liability of the Chargor or release or discharge the Chargor from liability in respect of any representation and warranty made under this Deed that is or becomes false, misleading or incorrect.

### **3. Security**

#### **3.1 Shares and Dividends**

The Chargor with full title guarantee charges to the Security Agent by way of fixed charge as a continuing security for the payment and discharge of the Secured Obligations, all the Chargor's present and future right, title and interest in:

- (a) the Shares; and
- (b) the Dividends.

#### **3.2 Assigned Receivables**

The Chargor with full title guarantee assigns absolutely to the Security Agent, subject to a proviso for re-assignment on redemption, as a continuing security for the payment and discharge of the Secured Obligations, all the Chargor's present and future right, title and interest:

- (a) in respect of the Assigned Receivables; and
- (b) under each Loan Agreement.

### **4. Representations and warranties**

The Chargor makes the representations and warranties set out in this Clause to the Security Agent (for the benefit of each of the Secured Parties).

#### **4.1 Status**

The Chargor is a private limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has power to carry on its business as it is now being conducted and to own property and other assets.

#### **4.2 Powers, authority and non-conflict**

The execution, delivery and performance of this Deed is within the corporate powers of the Chargor, has been duly authorised by all necessary corporate and other action and does not and will not conflict with (a) any law or regulation applicable to it or (b) the Memorandum and Articles of Association or other constitutive documents of the Chargor or (c) any agreement or instrument binding on the Chargor.

#### **4.3 Legal validity**

The obligations and liabilities expressed to be assumed by the Chargor under this Deed are legal, valid, binding and enforceable obligations of the Chargor.

#### **4.4 Authorisations**

All authorisations, consents, approvals, resolutions, licences, exemptions, filings or registrations required or desirable under any applicable law or regulation (a) to enable it lawfully to carry on its business and to enter into, exercise its rights and comply with its obligations in this Deed, and (b) to make this Deed admissible in evidence in its jurisdiction of incorporation (subject, where applicable, to the registration of this Deed with the Registrar of Companies for England and Wales), have been obtained or effected and are in full force and effect.

#### **4.5 Shares**

- (a) The Chargor is absolutely, solely and beneficially entitled to and the registered holder of all the Shares as from the date they or any part of them falls to be charged under this Deed.
- (b) The rights of the Chargor in respect of the Share Security Assets are free from any Security (other than Permitted Security) and any other rights or interests in favour of third parties.
- (c) The Shares are duly authorised, validly issued and fully paid (or credited as fully paid up) and there are no monies or liabilities outstanding in respect of the Shares.
- (d) There are no agreements or arrangements (including, but not limited to, any restrictions on transfer or rights of pre-emption) affecting the Shares in any way or which would or might in any way fetter or otherwise prejudice the rights of the Chargor or any mortgagee or chargee of the Share Security Assets.
- (e) The Shares constitute the entire issued share capital of the Company.
- (f) The Chargor has complied with all notices relating to the Shares received by it pursuant to Part 21A of the Companies Act 2006.
- (g) No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of the Shares.

#### **4.6 Assigned Receivables**

- (a) The Chargor is absolutely, solely and beneficially entitled to the Assigned Receivables.
- (b) The rights of the Chargor in respect of the Assigned Receivables are free from any Security (other than Permitted Security) and any other rights or interests in favour of third parties.
- (c) The principal amount of the Assigned Receivables outstanding at the date of this Deed are the amounts set out in Schedule 2 (*Details of Assigned Receivables*).
- (d) No payments to it by any other party to a Loan Agreement are subject to any right of set-off or similar right.
- (e) Each Loan Agreement is its legally binding, valid, and enforceable obligation.
- (f) Any copy of any Loan Agreement supplied to the Security Agent on or prior to the date of this Deed is true and complete and contains all provisions relating to the relevant Assigned Receivables.
- (g) Neither it nor (so far as it is aware) any other party to a Loan Agreement is on the date of this Deed in default of any of its obligations under that Loan Agreement.
- (h) There is no prohibition on assignment in respect of any of the Assigned Receivables or the Chargor's rights under any Loan Agreement.

#### **4.7 Security**

This Deed creates the Security it purports to create and is not liable to be avoided or otherwise set aside on the winding-up or administration of the Chargor or otherwise.

#### **4.8 No disposals**

The Chargor has not sold or otherwise disposed of or agreed to sell or otherwise dispose of or granted or agreed to grant any option in respect of all or any of the Chargor's right, title and interest in and to the Security Assets.

#### **4.9 No unlawful financial assistance**

Neither the Chargor, the Company, nor any other person has done any act in relation to the acquisition of the Shares by the Chargor which has involved or would involve a breach of section 151 of the Companies Act 1985 or Chapter 2 of Part 18 of the Companies Act 2006.

#### **4.10 Nominations**

The Chargor has not nominated any person to enjoy or exercise any rights relating to the Security Assets pursuant to Part 9 of the Companies Act 2006 or otherwise.

#### **4.11 Centre of main interests and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast), the Chargor's centre of main interest (as that term is used in Article 3(1) of that Regulation) is situated in England and Wales and it has no "establishment" (as that term is used in Article 2(10) of that Regulation) in any other jurisdiction.

#### **4.12 Choice of law**

The choice of English law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation.

#### **4.13 Repetition**

The representations and warranties set out in this Clause 4:

- (a) are made on the date of this Deed; and
- (b) are deemed to be repeated by the Chargor on each date during the Security Period with reference to the facts and circumstances then existing.

### **5. General undertakings by the Chargor**

#### **5.1 Restriction on dealing and negative pledge**

The Chargor shall not without the prior written consent of the Security Agent:

- (a) permit any person other than the Chargor, the Security Agent or the Security Agent's nominee (or, prior to the Senior Discharge Date, the Senior Security Agent or the Senior Security Agent's nominee) to be registered as holder of the Shares; or
- (b) create or permit to subsist any Security (other than Permitted Security) on or over any Security Asset; or

- (c) sell, transfer or otherwise dispose of any Security Asset.

## **5.2 Compliance with laws**

The Chargor shall comply promptly with any notice served on it under the Companies Act 2006 and will comply with any law or regulation of any competent authority in any way related to or affecting the Security Assets and with the conditions of any consent applicable to this Deed.

## **5.3 Preservation of Security Assets**

The Chargor shall not do or cause or permit to be done anything which is a variation or abrogation of the rights attaching to or conferred by the Security Assets or which may in any way depreciate, jeopardise or otherwise prejudice the value to the Security Agent of the Security Assets or this Deed and the Chargor will vote against and cause any director of the Company appointed by the Chargor to vote against any resolution which would have such an effect (if passed).

## **5.4 Information**

The Chargor shall provide a copy of any report, accounts, circular or notice received in respect of or in connection with any of the Security Assets to the Security Agent without delay upon receipt by the Chargor.

## **5.5 People with significant control regime**

The Chargor shall:

- (a) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from the Company; and
- (b) promptly provide the Security Agent with a copy of that notice.

## **5.6 The Company**

The Chargor shall procure that except with the prior written consent of the Security Agent:

- (a) no change is made to the present authorised or issued share capital of the Company nor to the Memorandum and Articles of Association or other constitutive documents of the Company; and
- (b) the Company shall not issue any shares, warrants, or other securities other than to the existing shareholders of the Company in proportion to their present shareholdings in the Company, such securities issued to the Chargor to be held on the terms of this Deed as Security Assets.

## **6. Shares**

### **6.1 Deposit of certificates**

The Chargor shall deposit with the Security Agent:

- (a) by no later than 3 Business Days after the Senior Discharge Date, the certificates or other documents of title to the Shares owned by the Chargor on such date;

- (b) on the date of the acquisition of or subscription for any Share acquired by or subscribed for by the Chargor after the Senior Discharge Date, the certificates or other documents of title to each such Share; and
- (c) by no later than 3 Business Days after the Senior Discharge Date or, in the case of paragraph (b), on the date of acquisition or subscription after the Senior Discharge Date, duly executed undated blank transfers in respect of the Shares and forms of waiver of any pre-emption rights necessary to enable such transfers to be registered.

## **6.2 Custody**

The Security Agent shall be entitled to provide for the safe custody by third parties of all stock and share certificates and documents of title deposited with it or its nominees relating to the Shares and shall not be responsible for any loss or damage to any such certificates or documents.

## **6.3 Completion of transfers**

The Security Agent may complete any transfer of any of the Shares delivered to it under Clause 6.1 (*Deposit of certificates*) at any time in favour of itself or any nominee or, after this Security has become enforceable, in favour of any purchaser of the Shares and may present the same for registration and perfect the title of the Security Agent or its nominee or such purchaser to the Shares.

## **6.4 Calls**

The Chargor shall pay all calls and other payments when due and discharge promptly all other obligations in respect of the Shares (and if the Chargor does not do so, the Security Agent may make such payments on behalf of the Chargor, in which event any sums so paid shall be reimbursed on demand by the Chargor to the Security Agent and shall until repayment bear interest at the Default Rate).

## **6.5 Dividends and votes**

Whether the Shares are registered in the name of the Chargor, the Security Agent or a nominee:

- (a) before this Security has become enforceable, the Chargor may exercise or direct how the votes attaching to the Shares are to be exercised provided that:
  - (i) no vote shall be cast or right exercised or other action taken which:
    - (A) would be inconsistent with or result in any breach of the terms and conditions of this Deed, or might have a material adverse effect on the value of the Shares, or might materially prejudice the interests of any Secured Party in the Security Assets; or
    - (B) relates to a participation in a rights issue or to receiving dividends other than in cash or concerns a merger, consolidation, allotment of shares, change to constitutional documents, transfer of ownership (legal or beneficial), insolvency or matters which would be prohibited under the Finance Documents; and
  - (ii) the Chargor shall not, by the exercise of its voting rights, do or otherwise permit or agree to any variation of the rights attaching to the Shares;



- (b) following this Security having become enforceable after the Senior Discharge Date and following the service of notice by the Security Agent to the Chargor the Security Agent may (at its absolute discretion), for the purpose of preserving the value of or realising this Security, exercise or direct how the voting and other rights attached to the Shares are to be exercised to the exclusion of the Chargor, and the Chargor shall on demand execute or cause to be promptly executed and delivered to the Security Agent all such proxies as the Security Agent may require for the purpose of enabling the Security Agent or such person as the Security Agent may select to exercise the voting or other rights referred to in this paragraph; and
- (c) following the Senior Discharge Date at all times during which an Event of Default has occurred and is continuing all Dividends shall be paid to the Security Agent and may be held by the Security Agent as part of the Security Assets and/or applied by it as though they were proceeds of sale and if any such Dividends shall be received by the Chargor they shall be received and held by the Chargor in trust for the Security Agent until due payment to the Security Agent and shall promptly be paid over to the Security Agent in the same form as so received (with any necessary endorsement).

## **6.6 Terminate nominations**

The Chargor shall terminate all nominations it may have made in respect of the Shares and pending such termination procure that any person so nominated:

- (a) does not exercise any rights in respect of the Shares without the prior written approval of the Security Agent; and
- (b) shall immediately upon receipt, forward to the Security Agent all communications or other information received in respect of the Shares for which it has been so nominated.

## **7. Loan Agreements**

### **7.1 Preservation**

The Chargor shall not, without the prior written consent of the Security Agent, amend or waive any term of any Loan Agreement.

### **7.2 Other undertakings**

The Chargor shall:

- (a) if it receives any payment in respect of a Loan Agreement after the Senior Discharge Date, hold that payment in trust for the Security Agent;
- (b) duly and promptly perform its obligations under each Loan Agreement; and
- (c) supply the Security Agent and any Receiver with copies of each Loan Agreement and any information and documentation relating to any Loan Agreement reasonably requested by the Security Agent or any Receiver.

### **7.3 Rights**

After this Security has become enforceable, the Security Agent may after the Senior Discharge Date exercise, without any further consent or authority on the part of the Chargor and irrespective of any direction given by the Chargor, any of the Chargor's rights under any Loan Agreement.

#### **7.4 Notice**

The Chargor shall, after the Senior Discharge Date, immediately serve a notice of assignment, substantially in the form of Schedule 3 (*Notice to Company*), on the Company and procure the prompt delivery to the Security Agent of a duly completed acknowledgement of such notice.

### **8. When Security becomes enforceable**

#### **8.1 Timing**

This Security shall become immediately enforceable if:

- (a) an Event of Default occurs which is continuing; or
- (b) the Chargor requests the Security Agent to exercise any of its powers under this Deed.

#### **8.2 Enforcement**

After this Security has become enforceable and subject to the Intercreditor Agreement, the Security Agent may in its absolute discretion enforce all or any part of this Security in any manner it sees fit.

### **9. Enforcement of Security**

#### **9.1 Powers of the Security Agent**

- (a) The Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees, except that section 103 of the Act does not apply.
- (b) In addition, to the fullest extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) upon a Receiver of the Security Assets may after this Security has become enforceable be exercised by the Security Agent in relation to any Security Asset without first appointing a Receiver or notwithstanding the appointment of a Receiver.

#### **9.2 Consideration on a disposal**

The consideration for any sale or other disposal of the Security Assets by the Security Agent or any Receiver in the exercise of their respective powers may (in addition to that permitted under the Act on a sale by the Security Agent) consist of cash, shares, securities, debentures or other valuable consideration, may fluctuate according to or dependent upon profit or turnover or be determined by a third party, and may be payable in a lump sum or in instalments (with or without security).

#### **9.3 Liabilities in relation to the Security Assets**

- (a) Neither the Security Agent nor any Receiver shall be liable to account to the Chargor for anything except actual receipts or be liable for any loss on realisation or for any failure to present any coupon, interest or any bond or stock drawn for repayment or for any failure to pay any call or instalment or to accept any offer or notify the Chargor or any such matter or for any failure to ensure that the correct amounts (if any) are paid and received in respect of the Security Assets or for any negligence by its nominees or agents.

- (b) Neither the Security Agent nor its agents, managers, officers, employees, delegates and advisers nor any Receiver shall be liable to any claim, demand, liability, loss, damage, cost or expense incurred or arising in connection with the exercise or purported exercise of any right, power or discretion under this Deed.
- (c) Notwithstanding anything to the contrary in this Deed, the Chargor will remain liable to observe and perform all of the conditions and obligations relating to the Security Assets and neither the Security Agent nor any Receiver will be under any obligation or liability with respect to the Security Assets by reason of or arising out of this Deed. Neither the Security Agent nor any Receiver will be required in any manner to perform or fulfil any obligation of the Chargor in respect of the Security Assets, and shall incur no liability for:
  - (i) ascertaining or taking action in respect of any calls, instalments, conversions, exchanges, maturities, tenders, or other matters in relation to the Shares or the nature or sufficiency of any payment whether or not the Security Agent or Receiver has or is deemed to have knowledge of such matters; or
  - (ii) taking any necessary steps to preserve rights against prior parties or any other rights relating to any Security Assets.

#### **9.4 Protection of third parties**

No person (including, but not limited to, a purchaser) dealing with the Security Agent or a Receiver or its or his agents will be concerned to enquire:

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

#### **9.5 Redemption of prior mortgages**

At any time after this Security has become enforceable, the Security Agent may:

- (a) redeem any prior Security against any Security Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer. Any accounts so settled and passed shall be conclusive and binding on the Chargor.

All principal moneys, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the Chargor to the Security Agent on demand and form part of the Secured Obligations.

#### **9.6 General**

- (a) The power of sale conferred by section 101 of the Act and the other powers conferred on mortgagees and Receivers by this Deed or by law (as varied or extended by this

Deed) shall arise on the execution of this Deed by the Chargor and shall be immediately exercisable at any time after this Security has become enforceable.

- (b) Section 103 of the Act (restricting the power of sale) and section 93 of the Act (restricting the right of consolidation) do not apply to this Security.
- (c) For the purposes of all powers implied by statute or arising by law, the Secured Obligations are deemed to have become due on the date of this Deed.
- (d) The power to appoint a Receiver pursuant to Clause 10.1 (*Appointment*) is in addition to the power to appoint a Receiver under section 101(1)(iii) of the Act. Section 109(1) of the Act does not apply to this Deed.

## **9.7 Financial collateral**

- (a) To the extent that the assets mortgaged or charged under this Deed constitute "financial collateral" and this Deed and the obligations of the Chargor under it constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of the Regulations), the Security Agent shall have the right at any time after this Security has become enforceable to appropriate all or any part of such financial collateral in or towards satisfaction of the Secured Obligations.
- (b) The value of the financial collateral appropriated in accordance with this Clause shall be, in the case of any Shares, such amount as the Security Agent determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it and the Security Agent will give credit for the value of the financial collateral appropriated to its use. The Chargor agrees that the method of valuation provided for in this Clause is commercially reasonable for the purposes of the Regulations.

## **10. Receiver**

### **10.1 Appointment**

- (a) At any time after this Security has become enforceable (but subject to the Intercreditor Agreement), or if the Chargor so requests the Security Agent in writing at any time (but subject to the Intercreditor Agreement), the Security Agent may without further notice appoint by deed or in writing under its hand any one or more persons to be a Receiver of all or any part of the Security Assets.
- (b) If a Receiver is appointed of part of the Security Assets the Security Agent may subsequently extend the appointment to all or any other part of the Security Assets or appoint another Receiver of any other part of the Security Assets.

### **10.2 Removal**

The Security Agent may by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver):

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

### **10.3 Remuneration**

The Security Agent may fix the remuneration of any Receiver appointed by it.

### **10.4 Payments to the Security Agent**

Only monies actually paid by a Receiver to the Security Agent in satisfaction or discharge of the Secured Obligations shall be capable of being applied by the Security Agent for that purpose.

### **10.5 Agent of the Chargor**

Each Receiver is deemed to be the agent of the Chargor for all purposes and accordingly is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone shall be responsible for his remuneration and for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and the Security Agent shall not incur any liability (either to the Chargor or to any other person) by reason of the Security Agent making his appointment as a Receiver or for any other reason.

### **10.6 Receivers of the same assets**

If at any time any two or more persons hold office as Receivers of the same assets or income, each one of such Receivers shall be entitled (unless the contrary is stated in the instrument(s) appointing them) to exercise all powers and discretions conferred on Receivers by this Deed individually and to the exclusion of the other or others of them.

## **11. Powers of Receiver**

### **11.1 General**

Every Receiver has (subject to any limitation or restriction expressed in the instrument appointing him):

- (a) all the rights, powers and discretions conferred on a receiver appointed under the Act and on a receiver or an administrative receiver under the Insolvency Act 1986, or otherwise conferred by any law; and
- (b) all the rights, powers and discretions set out below in this Clause 11 or otherwise conferred by this Deed.

### **11.2 Possession and control**

A Receiver may take possession of, collect and get in the Security Assets, including (but not limited to) all Dividends, and may do anything which the Receiver considers appropriate for any such purpose.

### **11.3 Comply with undertakings**

A Receiver may comply with and perform all of the undertakings and covenants of the Chargor contained in this Deed.

### **11.4 Borrow money**

For the purpose of exercising any of the rights, powers, authorities and discretions conferred on him by or pursuant to this Deed or for any other purpose a Receiver may raise or borrow money from the Security Agent or others either unsecured or on the security of the Security Assets

(either in priority to this Security or otherwise) and generally on such terms as he may think fit. No person lending that money shall be concerned as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

#### **11.5 Power of sale**

A Receiver may sell, transfer, assign, exchange, or otherwise convert into money or realise or dispose of the Security Assets or concur in any of the same, either by public auction or private contract or in any other manner, and generally in such manner and on such terms and conditions and for such consideration as he may think fit.

#### **11.6 Transfers and other disposals**

A Receiver may carry any sale or other disposal into effect by transferring or otherwise making such disposal in the name of the Chargor and for that purpose may give valid receipts for all moneys and enter into covenants and contractual obligations in the name of and so as to bind the Chargor.

#### **11.7 Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to the Security Assets as he may think fit.

#### **11.8 Rights and obligations in relation to the Security Assets**

A Receiver may exercise all rights under the Security Assets, and may enter into, incur, perform, repudiate, rescind, abandon, rectify, vary or novate any right or obligation of the Chargor to any person and do anything (including, but not limited to, making payments) as the Receiver considers may be necessary or incidental to the protection, improvement, preservation or realisation of the Security Assets or this Deed.

#### **11.9 Dividends**

A Receiver may apply all Dividends and the proceeds of Assigned Receivables as if they were proceeds of sale.

#### **11.10 Settle disputes**

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 Chargor or relating in any way to the Security Assets.

#### **11.11 Arrangements or compromises**

A Receiver may make any arrangement or compromise, allow time for payment or enter into, abandon, cancel or disregard any contracts or rights as he may think expedient.

#### **11.12 Prior Security**

A Receiver may redeem any prior Security on such terms as he may think fit.

#### **11.13 Act in the Chargor's name**

A Receiver may do all acts and execute in the name and on behalf of the Chargor, any deed, receipt or other document.

#### **11.14 Other acts**

A Receiver may:

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

### **12. Application of proceeds**

#### **12.1 Order of application**

Subject to any claims having priority to this Security and subject to the terms of the Intercreditor Agreement, all money recovered by the Security Agent or any Receiver as a result of the enforcement of this Deed or otherwise by reason of this Security will be applied as provided in clause 33.6 (*Partial Payments*) of the Facility Agreement with any excess proceeds after application in accordance with that clause being distributed to the Chargor or other person entitled at law to such proceeds.

#### **12.2 Contingent or future liabilities**

If any money is received by the Security Agent or a Receiver as a result of the enforcement of or otherwise by reason of this Security at a time when the Secured Obligations include contingent or future liabilities the Security Agent or any Receiver may hold some or all of such money in an interest bearing suspense account.

### **13. Costs and expenses**

#### **13.1 Transaction expenses**

The Chargor shall, promptly on demand, pay the Security Agent the amount of all reasonable costs and expenses (including legal fees) incurred by the Security Agent, by any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of this Deed and any other documents referred to in this Deed.

#### **13.2 Amendment costs**

If the Chargor requests an amendment, waiver or consent, the Chargor shall within three Business Days of demand, reimburse the Security Agent (and by any Receiver or Delegate) for the amount of all reasonable costs and expenses (including legal fees) incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

#### **13.3 Enforcement and preservation costs**

The Chargor shall, within three Business Days of demand, pay to the Security Agent (and by any Receiver or Delegate) the amount of all costs and expenses (including legal fees) incurred by the Security Agent (and by any Receiver or Delegate) in connection with the enforcement of or the preservation of any rights under this Deed and any proceedings instituted by or against the Security Agent (and by any Receiver or Delegate) as a consequence of taking or holding the Security Assets or enforcing these rights.

#### **13.4 Indemnity**

The Chargor shall indemnify the Security Agent (whether or not acting as mortgagee in possession) and any Receiver against all liabilities, claims and expenses whether arising out of contract or in tort or in any other way which may at any time be incurred by either of them (or by any person for whom they may be liable) in connection with this Deed or for anything done or omitted to be done in the exercise or purported exercise of their powers pursuant to this Deed.

#### **13.5 Stamp duty**

The Chargor shall pay on demand all stamp, documentary, registration and other similar duties and taxes payable in connection with the entry into, performance or enforcement of this Deed and shall indemnify the Security Agent against any liabilities resulting from any delay or failure by the Chargor in making such payment.

#### **13.6 Value Added Tax**

Where this Deed requires the Chargor to reimburse the Security Agent for any costs or expenses the Chargor shall at the same time pay and indemnify the Security Agent against all Value Added Tax (or any tax of a similar nature) incurred by the Security Agent in respect of the costs and expenses to the extent that the Security Agent determines that it is not entitled to credit or repayment of the Value Added Tax (or other tax of a similar nature).

#### **14. Delegation**

The Security Agent and (to the fullest extent permitted by law) any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by the Security Agent or any such Receiver 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 Agent or such Receiver (as the case may be) may think fit. Neither the Security Agent nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

#### **15. Further assurance**

The Chargor will, if so requested by the Security Agent or a Receiver at any time, promptly and at the Chargor's expense, execute and deliver and do all deeds, instruments, transfers, powers of attorney, renunciations, proxies, notices, documents, acts and things in such form as the Security Agent or a Receiver may from time to time require for perfecting or protecting the Security Agent's security over the Security Assets or facilitating or effecting the realisation of the Security Assets (including, in so far as it is able, procuring that any transfer of the Share Security Assets in favour of the Security Agent or its nominee or any purchaser and any subsequent transfer by the Security Agent is duly registered in the books of the Company) or the exercise of any right, power or discretion exercisable by the Security Agent or the Secured Parties or any of its or their delegates or sub-delegates in respect of any Security Asset.

#### **16. Power of attorney**

The Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any Delegate to be its attorney (with full power of substitution) in its name and on its behalf:



- (a) to take any action which the Chargor is or may be obliged to take under or pursuant to this Deed, but has failed to do on the date it was obliged so to do; and
- (b) to take any action which the Security Agent or any Receiver and any Delegate in its or his sole and absolute discretion considers to be requisite, expedient or appropriate in order to carry any sale or other disposal or appropriation into effect or generally to enable the Security Agent or a Receiver or any Delegate to transfer any interest in the Security Assets or to exercise the respective powers and discretions conferred on them by or pursuant to this Deed or by law. The Chargor ratifies and confirms whatever any attorney properly does or purports to do pursuant to its appointment under this Clause.

## **17. Non-release provisions**

### **17.1 Waiver of defences**

The obligations and liabilities of the Chargor under this Deed and this Security will not be affected by an act, omission or thing (whether or not known to it or any Secured Party) which, but for this Clause, would reduce, release or prejudice any of such obligations and liabilities or Security including, without limitation:

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over property of, any person;
- (d) 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;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amalgamation, merger or reconstruction of the Security Agent with any other person or any sale or transfer of the whole or any part of the assets of the Security Agent to any other person;
- (g) the existence of any claim, set-off or other rights which any other person may have at any time against the Security Agent;
- (h) any increase in the amount of the Facilities made available under (and as defined in) the Facility Agreement (including, but not limited to, any increase pursuant to clause 6 (*Establishment of Additional Commitments*) of the Facility Agreement);
- (i) any novation, amendment, supplement, extension or restatement (in each case, however fundamental, whether or not more onerous or of whatever nature) or replacement of any document or Security;
- (j) any obligation of any person under any document or Security being void, voidable, invalid, unenforceable or otherwise irrecoverable; or
- (k) any insolvency or similar proceedings.

## **17.2 Immediate recourse**

The Chargor 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 enforcing this Security. This waiver applies irrespective of any law or any provision of any document to the contrary.

## **17.3 Appropriations**

During the Security Period any Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of the Secured Obligations, or, subject to Clause 12 (*Application of proceeds*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Obligations or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest bearing suspense account any moneys received from the Chargor for or on account of the Secured Obligations.

## **17.4 Deferral of Chargor's rights**

Until the expiry of the Security Period and unless the Security Agent otherwise directs, the Chargor will not exercise any rights which it may have by reason of the enforcement of this Deed:

- (a) to be indemnified or to claim any contribution in respect of any payment made or moneys received on account of the Chargor's liability under this Deed;
- (b) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Parties or of any guarantee or other Security taken by any Secured Party;
- (c) to bring legal or other proceedings for an order requiring any person to make any payment, or perform any obligation, in respect of which the Chargor has given Security under this Deed;
- (d) to exercise any right of set-off against any person;
- (e) to exercise any right of quasi-retainer or other analogous equitable right; and/or
- (f) to claim or prove as a creditor of any person in competition with any Secured Party.

## **17.5 Turnover**

If the Chargor receives any benefit, payment or distribution in relation to the rights referred to in Clause 17.4 (*Deferral of Chargor's rights*) it shall hold that benefit, payment or distribution on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in or towards discharge of the Secured Obligations.

## **18. Payments**

### **18.1 Default Interest**

Any amount due but unpaid by the Chargor under this Deed shall incur interest in accordance with default interest provisions of the Facility Agreement.

### **18.2 Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) Subject to Clause 18.1 (*Default interest*), during any extension of the due date for payment of any amount under this Deed, interest is payable on the principal or the then due but unpaid amount at the rate payable on the original due date.

### **18.3 Currency of Account**

- (a) Subject to paragraphs (b) and (c) below, sterling is the currency of account and payment for any sum due from the Chargor.
- (b) All payments by the Chargor under this Deed (including damages for its breach) shall be made in the currency in which the relevant amount is denominated, or if different, is payable and to such account, with such person and such other manner as the Security Agent may direct.
- (c) Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

### **18.4 Change of Currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in this Deed to, and any obligations arising under this Deed in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Security Agent (after consultation with the Chargor); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank of that country for the conversion of that currency or currency unit into the other, rounded up or down by the Security Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Deed shall, to the extent the Security Agent (acting reasonably and after consultation with the Chargor) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

## **18.5 Day Count Convention**

Any interest, commission fee or other sum accruing under this Deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.

## **19. Release**

### **19.1 Release of Security Assets**

Upon the expiry of the Security Period (but not otherwise), the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to release the Security Assets from this Security.

### **19.2 Releases conditional**

Any settlement, release or discharge under this Deed between a Secured Party and the Chargor will be conditional upon no security or payment to that Secured Party by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, winding-up, administration or insolvency for the time being in force, and if such condition is not satisfied, each Secured Party will be entitled to recover from the Chargor on demand the value of such security or the amount of any such payment as if such settlement or discharge had not occurred and/or to enforce this Security to the full extent of the Secured Obligations.

### **19.3 No other release**

No receipt, release or discharge of the Security provided by, or of any liability arising under, this Deed shall release or discharge the Chargor from any liability to the Security Agent for the same or any other liability which may exist independently of this Deed.

## **20. Benefit of this Deed**

### **20.1 Successors in title**

This Deed shall bind and enure to the benefit of the Chargor and the Security Agent and their respective successors.

### **20.2 Assignment by the Security Agent**

The Security Agent may assign or transfer all or any part of its rights and/or obligations under this Deed to a replacement security trustee appointed pursuant to the terms of the Facility Agreement and who is (or becomes), prior to the Senior Discharge Date, party to the Intercreditor Agreement as Mezzanine Security Agent (as therein defined). Such replacement security trustee will, from the date of such assignment or transfer, be the Security Agent for the Security Parties under this Deed in stead of the previous security trustee. The Chargor shall enter into any documents specified by the Security Agent to be necessary to give effect to such assignment or transfer.

### **20.3 No assignment by the Chargor**

The Chargor may not assign or transfer all or any part of its rights and/or obligations under this Deed.

## **20.4 Disclosure of information**

The Security Agent may disclose such information about the Chargor and the Security Assets as the Security Agent thinks fit to a potential assignee or transferee of all or any part of its rights under this Deed, or to any person who may otherwise enter into contractual relations with the Security Agent in relation to any of the Secured Obligations, or to any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation, or to any person if an Event of Default has occurred or the disclosure is in connection with the protection or enforcement of the Security Agent's rights under this Deed.

## **21. Notices**

### **21.1 Communications in writing**

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

### **21.2 Address**

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

(a) in the case of the Chargor:

Address: 4<sup>th</sup> Floor, 33 Cannon Street, London, England, EC4M 5SB

Fax: N/A

Email: [jamesolanow@flynowpaylater.com](mailto:jamesolanow@flynowpaylater.com) and [mmalik@flynowpaylater.com](mailto:mmalik@flynowpaylater.com)

Attention: James Olanow and Muhammad Malik

(b) in the case of the Security Agent:

Address: One Hammersmith Broadway, London, W6 9DL

Fax: N/A

Email: [guillaume.adjogah@bci-finance.com](mailto:guillaume.adjogah@bci-finance.com), [paul.maurici@bci-finance.com](mailto:paul.maurici@bci-finance.com)

Attention: Guillaume Adjogah

### **21.3 Delivery**

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

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

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

and, if a particular department or officer is specified as part of its address details provided under Clause 21.2 (*Address*), if addressed to that department or officer.

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

#### **21.4 Electronic communication**

- (a) Any communication to be made between the Chargor and the Security Agent under or in connection with this Deed may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
  - (i) notify each other in writing of their electronic mail address (including by identifying their electronic mail address with their name below) and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between the Chargor and the Security Agent may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication (including by identifying their electronic mail address with their name below).
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Deed shall be deemed only to become effective on the following day.

#### **21.5 English language**

- (a) Any notice given under or in connection with this Deed must be in English.
- (b) All other documents provided under or in connection with this Deed must be:

- (i) in English; or
- (ii) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **22. Miscellaneous**

### **22.1 Continuing Security**

This Security 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.

### **22.2 Additional Security**

This Security is in addition to and is not in any way prejudiced by any bill, note, guarantee, or other Security now or subsequently held by any Secured Party for any of the Secured Obligations.

### **22.3 New accounts**

If the Security Agent receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent charge or other interest affecting any Security Asset and/or the proceeds of sale of any Security Asset, any Secured Party may open a new account for the Chargor in its books. If the Secured Party 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 that Secured Party by or on behalf of the Chargor 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.

### **22.4 No deduction or withholding**

All payments made by the Chargor to the Security Agent under this Deed shall (save insofar as required by law to the contrary) be paid in full without set-off or counterclaim and free and clear of and without any deduction or withholding or payment for or on account of any present or future tax, levy, duty, impost or other charge or withholding of a similar nature. If the Chargor shall be required by law to effect any such deduction or withholding or payment the Chargor shall immediately pay to the Security Agent such additional amount as will result in the immediate receipt by the Security Agent of the full amount which would otherwise have been received had no such deduction or withholding or payment been made.

### **22.5 Set-off**

The Security Agent may set off any matured obligation owed by the Chargor under this Deed (to the extent beneficially owned by the Security Agent and/or a Secured Party) against any obligation (whether or not matured) owed by the Security Agent and/or a Secured Party to the Chargor regardless of the place of payment, or currency of either obligation. If the obligations are in different currencies, the Security Agent may convert either obligation at a market rate of exchange for the purpose of the set-off in an amount estimated by it in good faith to be the amount of that obligation.

## **23. Remedies and Waivers**

- (a) No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed.
- (b) No election to affirm this Deed on the part of any Secured Party shall be effective unless it is in writing.
- (c) No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy.
- (d) The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law.

## **24. Tacking**

The Chargor acknowledges that each Finance Party shall comply with its obligations under the Finance Documents (including any obligation to make further advances).

## **25. No Merger or Prejudice**

This Deed is in addition to and will not merge in or in any way be prejudiced or affected by the holding or release by the Security Agent of any other security at any time held by the Security Agent.

## **26. Partial invalidity**

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

### **26.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Security Agent is prima facie evidence of the matters to which they relate

### **26.2 Certificates and determinations**

A certificate or determination by the Security Agent of a rate or amount under any Finance Document this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **26.3 Currency indemnity**

- (a) If, for any reason, any payment due from the Chargor under or in connection with this Deed (or received on any realisation of this Security) is made or is satisfied or received in a currency (the "**Other Currency**") other than the currency in which the relevant payment is due (the "**Contractual Currency**"), then to the extent that the payment (when converted into the Contractual Currency at the rate of exchange on the date of payment or, in the case of the winding-up or administration or insolvency of the Chargor, at the rate of exchange on the latest date permitted by applicable law for the determination of liabilities in such winding-up or administration or insolvency) actually



received by the Security Agent falls short of the amount expressed to be due under or secured by the terms of this Deed, the Chargor shall, as a separate and independent obligation, indemnify the Security Agent and hold the Security Agent harmless against the amount of such shortfall.

- (b) For the purpose of this Clause "**rate of exchange**" means the rate at which the Security Agent is able on the relevant date to purchase the Contractual Currency with the Other Currency and shall take into account any premium and other costs of exchange.

#### **26.4 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.

#### **27. Governing law**

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

#### **28. Enforcement**

##### **28.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed).
- (b) It is agreed 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 28.1 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

**EXECUTED** as a Deed and delivered on the date stated at the beginning of this document.

**Schedule 1**

## Particulars of the Shares

<b>Registered Holder</b>	<b>Number of shares or amount of stock</b>	<b>Description of stocks shares, or other securities</b>
The Chargor	1	1 ordinary share in Pay Later Financial Services III Limited (the Company)

**Schedule 2**

Particulars of the Assigned Receivables

<b>Name of Debtor</b>	<b>Amount</b>	<b>Loan Agreement Dated</b>
Pay Later Financial Services III Limited	Up to £1,500,000	29 <sup>th</sup> November 2019

### Schedule 3

Notice to Company

**NOTICE** dated [ • ]<sup>1</sup>

From: [ • ] (the "**Chargor**")

To: [ • ] (the "**Debtor**")

Copy: [ • ] (the "**Security Agent**")

1. This notice relates to the following agreements (each a "**Loan Agreement**").
  - (a) the £[ • ] intercompany loan agreement dated [ • ] between the Chargor as lender and the Debtor as borrower; and
  - (b) the £[ • ] intercompany loan agreement dated [ • ] between the Chargor as lender and the Debtor as borrower.
2. The Chargor confirms that:
  - (a) it will remain liable under each Loan Agreement to perform all the obligations assumed by it under that Loan Agreement; and
  - (b) none of the Security Agent, its agents, any receiver or any other person will at any time be under any obligation or liability to the Debtor under or in respect of any Loan Agreement.
3. The Chargor must not amend or waive any provision of the Loan Agreements without the prior consent of the Security Agent.
4. The Chargor confirms that:
  - (a) the Debtor owes £[ • ] to the Chargor; and
  - (b) all amounts payable to the Chargor by the Debtor must, after having been notified by the Security Agent that an Event of Default has occurred and is continuing, be paid to the Security Agent or as it may direct.
5. The instructions in this notice may not be revoked or amended without the prior written consent of the Security Agent.
6. This notice and the acknowledgement below and any non-contractual obligations arising out of or in connection with them are governed by English law.
7. Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to the Chargor) to confirm (by way of undertaking in favour of the Security Agent) that the Debtor:
  - (a) agrees to the terms of this notice and to act in accordance with its provisions;

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<sup>1</sup> Notice to be served on and from the Senior Discharge Date only.

- (b) has not received notice of the interest of any third party in any of the Loan Agreements other than pursuant to the Senior Security Agreement;
- (c) will, having been notified by the Security Agent that an Event of Default has occurred and is continuing, pay any amounts due under each Loan Agreement to the Security Agent;
- (d) will not amend or waive any term of any Loan Agreement on request by the Chargor or any other party without the prior written consent of the Security Agent; and
- (e) owes £[ • ] to the Chargor.

.....

For and on behalf of  
[ • ] as Chargor

Acknowledgement of Debtor

[*On acknowledgement copy*]

From: [ • ] (the "**Debtor**")

To: [ • ] (the "**Security Agent**")

Copy: [ • ] (the "**Chargor**")

We acknowledge receipt of the above notice and agree to and confirm the matters set out in it.

.....


for and on behalf of  
[*Debtor*]

Date: [ • ]

**THE CHARGOR**

**EXECUTED** as a **DEED** by **PAY LATER MIDCO LIMITED** acting  
by a director in the presence of:

.....  
Signature of director

Signature of witness ..... 

Print name ...VLADIMIR ARUTYUNYAN.....

Address .....  
.....  
.....  
.....

Fox Williams LLP  
10 Finsbury Square  
London  
EC2A 1AF

THE SECURITY AGENT

SIGNED for and on behalf of BCI FINANCE LIMITED

By: *SAM KEMP*

Title: *MD*

