



**Registration of a Charge**

Company Name: **GREEN SWAN HOLDING LIMITED**

Company Number: **13189817**



XB9KAUPC

Received for filing in Electronic Format on the: **02/08/2022**

**Details of Charge**

Date of creation: **18/07/2022**

Charge code: **1318 9817 0004**

Persons entitled: **SA GUARANTEE SPECIALISTS**

Brief description: **N/A**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

Certification statement: **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: **MEG HERRING**



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

Company number: 13189817

Charge code: 1318 9817 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th July 2022 and created by GREEN SWAN HOLDING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd August 2022 .

Given at Companies House, Cardiff on 3rd August 2022

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

DATED 18 JULY 2022

GREEN SWAN HOLDING LIMITED  
AS CHARGOR

IN FAVOUR OF

SA GUARANTEE SPECIALISTS  
AS COLLATERAL AGENT

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ISSUER SECURITY AGREEMENT

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THIS AGREEMENT is made by way of deed on 18 July 2022

BY:

- (1) **GREEN SWAN HOLDING LIMITED**, a private limited company incorporated under the laws of England and Wales with registration number 13189817 (the "**Chargor**") in favour of
- (2) **SA GUARANTEE SPECIALISTS** as collateral agent for the Secured Party on the terms and conditions set out in this Agreement (the "**Collateral Agent**", which expression shall include any person for the time being appointed as collateral agent or as an additional collateral agent for the purpose of, and in accordance with, this Agreement).

**BACKGROUND:**

- (A) On or around the date of this Agreement, the Chargor in its capacity as issuer (the "**Issuer**") intends to issue US\$125,000,000 aggregate principal amount 6.75% Senior Guaranteed Notes due 2027, constituted by an indenture (the "**Indenture**") originally dated as of 26 October 2021 as amended and restated on 18 July 2022 between, amongst others, the Issuer, Green Swan Investments Limited, Mutual & Federal Risk Financing Limited as insurance guarantor represented by SA Guarantee Specialists, UMB Bank National Association as trustee, registrar, transfer agent, paying agent and securities intermediary and SA Guarantee Specialists as collateral agent (as further amended, modified or supplemented from time to time).
- (B) In connection with the issuance of the Notes (as defined below) and the entry into the Indenture, the Chargor has agreed at the request of the Secured Party to enter into this Agreement to secure the obligations owing by the Issuer to the Secured Party under the Indenture.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

"**Account**" means each of the accounts opened or maintained by the Chargor with the Collateral Agent, any bank, building society, financial institution or other person (including any renewal, redesignation, replacement, subdivision or subaccount of such account) and the debt or debts represented thereby, including without limitation, the each of the accounts listed in Schedule 1 (*Accounts*) but excluding any account over which a first ranking security interest has been validly and effectively created by the Chargor pursuant to the Indenture and/or any other Security Documents.

"**Administration Event**" means:

- (a) the presentation of an application to the court for the making of an administration order in relation to the Chargor; or

- (b) the giving of written notice by any person (who is entitled to do so) of its intention to appoint an administrator of the Chargor or the filing of such a notice with the court.

**"Charged Assets"** means all of the assets and undertaking of the Chargor which from time to time are the subject of any Security created or expressed to be created by it in favour of the Collateral Agent by or pursuant to this Agreement.

**"Collateral Rights"** means all rights, powers, protections, indemnities and remedies of the Collateral Agent provided by or pursuant to this Agreement, the other Transaction Documents or by law.

**"Control Account"** means each of the Accounts described in Schedule 2 (*Control Accounts*) (and any renewal, redesignation, replacement, subdivision or subaccount of such accounts) and any other Account that may from time to time be identified in writing as a Control Account by the Collateral Agent.

**"Fixed Security"** means any mortgage, fixed charge or assignment expressed to be created by or pursuant to Clause 5 (*Fixed Security*) of this Agreement.

**"Guarantee Facility Agreement"** has the meaning given to such term in the Indenture.

**"Notes"** means the US\$125,000,000 aggregate principal amount 6.75% Senior Guaranteed Notes due 2027 issued by the Chargor.

**"Notice of Assignment"** means a notice of assignment in substantially the form set out in Schedule 5 (*Form of Notice of Security to Account Bank*) and Schedule 6 (*Form of Notice of Assignment of Specific Contract*) or in such form as may be specified by the Collateral Agent.

**"Notice of Charge"** means a notice of charge in substantially the form set out in Schedule 5 (*Form of Notice of Security to Account Bank*) or in such form as may be specified by the Collateral Agent.

**"Party"** means a party to this Agreement.

**"Receiver"** means a receiver, receiver and manager or, where permitted by law, an administrative receiver and that term will include any appointee made under a joint or several appointment.

**"Related Rights"** means, in relation to any asset:

- (a) the proceeds of sale or rental of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset.

**"Secured Obligations"** means all present and future obligations and liabilities at any time due, owing or incurred by the Chargor to the Collateral Agent (whether for its own account under this Agreement or as collateral agent for the Secured Party) or the Secured Party under or pursuant to each of the Transaction Documents, whether actual or contingent, whether originally incurred by the Chargor or by any other person and whether incurred solely or jointly and as principal or surety or in any other capacity, including any liability in respect of any further issuances made under the Transaction Documents, except for any obligation or liability which, if it were included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful, prohibited or invalid by or under any applicable law.

**"Secured Party"** means each of the Collateral Agent and the Insurance Guarantor (as that term is defined in the Indenture), being as at the date of this Agreement, Mutual & Federal Risk Financing Limited, a South African insurance provider.

**"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 Documents"** has the meaning given to such term in the Indenture.

**"Security Period"** means the period beginning on the date of this Agreement and ending on the date on which, in accordance with the terms of the Indenture, the Secured Obligations have been irrevocably and unconditionally paid or discharged in full and the Secured Party is not under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person under the Transaction Documents.

**"Shareholder Bankruptcy Event"** means:

- (a) the presentation of an application to the court for the making of a bankruptcy or insolvency order in relation to the estate of Mr. Andre J Schut, ultimate beneficial owner of the Chargor; or
- (b) the giving of written notice by any person (who is entitled to do so) of its intention to appoint an insolvency or a bankruptcy practitioner to the estate of Mr. Andre J Schut, ultimate beneficial owner of the Chargor or the filing of such a notice with the court.

**"Shares"** means any stocks, shares, debentures and other securities listed in Schedule 3 (*Shares*) and all of the Chargor's other present and future shares in the capital of any subsidiary of the Chargor from time to time held by, to the order, or on behalf, of the Chargor.

**"Specific Contracts"** means

- (a) the intracompany loan between the Chargor and Green Swan Investments Limited entered into on 19 November 2021; and
- (b) any other Specific Contract that may from time to time be identified in writing as a Specific Contract by the Chargor to the Collateral Agent.



**"Transaction Documents"** means the Indenture, the Notes, the Guarantee Facility Agreement and the Security Documents and any other document entered into in connection with the issuance of the Notes and the provisions of the Insurance Guarantee.

## 1.2 **Terms defined in the Indenture**

Unless defined in this Agreement, or the context otherwise requires, a term defined in the Indenture has the same meaning in this Agreement, or any notice given under or in connection with this Agreement.

## 1.3 **Construction**

In this Agreement:

- (a) the rules of interpretation contained in section 1.02 (*Rules of Construction*) of the Indenture shall apply to the construction of this Agreement, or in any notice given under or in connection with this Agreement;
- (b) any reference to the **"Collateral Agent"**, the **"Secured Party"** or **"Chargor"** shall be construed so as to include its (and any subsequent) successors in title, permitted assigns and permitted transferees in accordance with their respective interests;
- (c) any reference to **"including"** and **"include"** shall mean including and include "without limitation" and any words following such terms shall be construed as illustrative and shall not limit the meaning or scope of the phrase or words preceding such terms; and
- (d) references in this Agreement to any Clause or Schedule shall be to a Clause or Schedule contained in this Agreement unless specified otherwise.

## 1.4 **Third party rights**

- (a) 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 to enjoy the benefit of any term of this Agreement.
- (b) The consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver may enforce and enjoy the benefit of any Clause which expressly confers rights on it, subject to paragraph (b) above and the provisions of the Third Parties Act.

## 1.5 **Present and future assets**

- (a) A reference in this Agreement to any Charged Asset or other asset includes, unless the contrary intention appears, present and future Charged Assets and other assets.

- (b) The absence of or incomplete details of any Charged Assets in any Schedule shall not affect the validity or enforceability of any Security under this Agreement.

## **1.6 Separate Security**

Clauses 5.1 (*Fixed charge over Accounts*) to 5.6 (*Assignment of Specific Contracts*) shall be construed as creating a separate and distinct mortgage, fixed charge or assignment over each relevant asset within any particular class of assets defined in this Agreement and the failure to create an effective mortgage, fixed charge or assignment (whether arising out of this Agreement or any act or omission by any party) over any one asset shall not affect the nature or validity of the mortgage, charge or assignment imposed on any other asset whether within that same class of assets or not.

## **1.7 Collateral Agent assumes no obligation**

The Collateral Agent shall not be under any obligation in relation to the Charged Assets as a consequence of this Agreement and the Chargor shall at all times remain liable to perform all obligations in respect of the Charged Assets.

## **2. COVENANT TO PAY**

### **2.1 Covenant to pay**

The Chargor covenants with the Collateral Agent that it shall, on demand of the Collateral Agent pay, discharge and satisfy the Secured Obligations in accordance with their respective terms.

### **2.2 Default Interest**

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor shall pay interest on any such sum (before and after any judgment and to the extent interest at a default rate is not otherwise being paid on such sum) from the due date until the date of actual payment calculated on a daily basis at the rate of one per cent. per annum over the rate at which the Collateral Agent was being offered, by prime banks in the London Interbank Market, deposits in an amount comparable to such sums in the currency or currencies thereof for such period(s) as the Collateral Agent, acting at the direction of the Secured Party, may from time to time select.

## **3. COLLATERAL AGENT**

The Collateral Agent has agreed to act as Collateral Agent in relation to the Transaction Documents on the terms and subject to the conditions set out in the Indenture and Schedule 4 (*Collateral Agent Provisions*), and the Chargor, the Secured Party and the Collateral Agent agree to be bound by the provisions of that Schedule and the Indenture.

## **4. COMMON PROVISIONS**

### **4.1 Common provisions as to all Security**

All the Security created by or pursuant to this Agreement is:

- (a) created with full title guarantee;
- (b) created in favour of the Collateral Agent as collateral agent for the Secured Party and the Collateral Agent shall hold the benefit of this Agreement and the Security created by or pursuant to it on trust for itself and the Secured Party; and
- (c) continuing security for the payment and discharge of all the Secured Obligations.

#### **4.2 Consent for Fixed Security**

The Chargor creates each Fixed Security subject to obtaining any necessary consent to such Fixed Security from any relevant third party.

### **5. FIXED SECURITY**

#### **5.1 Fixed charge over Accounts**

The Chargor charges, by way of first fixed charge, all of its rights, title, benefit and interest from time to time in and to its Accounts (except for the Control Accounts) and all Related Rights.

#### **5.2 Fixed charge over contracts**

The Chargor charges, by way of first fixed charge, all of its rights, title, benefit and interest from time to time in and to any contract or agreement to which the Chargor is a party (except for the Specific Contracts) and all Related Rights.

#### **5.3 Fixed charge over Shares**

The Chargor charges, by way of first fixed charge, all of its rights, title, benefit and interest from time to time in and to its Shares and all dividends, interest and other monies payable in respect of those Shares and all Related Rights (whether derived by way of redemption, bonus, preference, options, substitution, conversion, compensation or otherwise).

#### **5.4 Fixed charge over other assets**

The Chargor charges (to the extent not validly and effectively assigned pursuant to Clauses 5.5 (*Assignment of Control Accounts*) to 5.6 (*Assignment of Specific Contracts*)) by way of first fixed charge, all of its rights, title, benefit and interest from time to time in and to each Control Account and each Specific Contract and all Related Rights in relation to each of those assets.

#### **5.5 Assignment of Control Accounts**

The Chargor assigns and agrees to assign absolutely, all of its rights, claims, title, benefit and interest from time to time in and to each Control Account and all Related Rights.

## **5.6 Assignment of Specific Contracts**

The Chargor assigns and agrees to assign absolutely, all of its rights, claims, title, benefit and interest from time to time in and to each Specific Contract and all Related Rights.

## **6. FLOATING CHARGE**

### **6.1 Floating charge**

- (a) The Chargor charges by way of first floating charge in favour of the Collateral Agent all present and future assets and undertaking of the Chargor.
- (b) The floating charge created pursuant to paragraph (a) of Clause 6.1 above shall be deferred in point of priority to all first ranking Fixed Security validly and effectively created by the Chargor pursuant to this Agreement and any other fixed security validly and effectively created under the Indenture and/or the Security Documents in favour of the Collateral Agent as security for the Secured Obligations.
- (c) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to paragraph (a) of Clause 6.1 above.

### **6.2 Crystallisation: by notice**

The Collateral Agent may at any time by notice in writing to the Chargor convert the floating charge created by it pursuant to Clause 6.1 (*Floating Charge*) with immediate effect into a fixed charge as regards any property or assets specified in the notice if:

- (a) an Event of Default has occurred and is continuing;
- (b) the Collateral Agent, at the direction of the Secured Party, considers that any of the Charged Assets may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process;
- (c) the Collateral Agent, at the direction of the Secured Party, considers that it is desirable in order to protect the priority of the Security; or
- (d) the Chargor requests the Collateral Agent to exercise any of its powers under this Agreement.

### **6.3 Crystallisation: automatic**

Notwithstanding Clause 6.2 (*Crystallisation: by notice*) and without prejudice to any law which may have a similar effect, a floating charge created by the Chargor pursuant to Clause 6.1 (*Floating Charge*) will automatically be converted (without notice) with immediate effect into a fixed charge as regards all the assets subject to the floating charge if:

- (a) the Chargor creates or attempts to create any Security (other than any Security permitted under the terms of the Indenture), over any of the Charged Assets;

- (b) any person levies or attempts to levy any distress, execution or other process against any of the Charged Assets;
- (c) an Administration Event occurs;
- (d) a Shareholder Bankruptcy Event occurs;
- (e) a Receiver is appointed over all or any of the Charged Assets;
- (f) a meeting is convened for the passing of a resolution for the voluntary winding-up of the Chargor;
- (g) a petition is presented for the compulsory winding-up of the Chargor;
- (h) a provisional liquidator is appointed to the Chargor; or
- (i) a resolution is passed or an order is made for the dissolution or reorganisation of the Chargor,

or any analogous procedure or step is taken in any jurisdiction.

## **7. PROVISIONS AS TO SECURITY AND PERFECTION**

### **7.1 Negative pledge and restriction on dealings**

Except as permitted under the Indenture, the Chargor shall not at any time during the Security Period create or permit to subsist any Security over all or any part of the Charged Assets or dispose of or otherwise deal with all or any part of the Charged Assets.

### **7.2 Implied covenants for title**

- (a) The covenants set out in sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clauses 5 (*Fixed Security*) or 6 (*Floating charge*).
- (b) It shall be implied in respect of Clauses 5 (*Fixed Security*) and 6 (*Floating charge*) that the Chargor is disposing of the Charged Assets free from all charges and incumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

### **7.3 Notice of Security: Accounts**

#### **(a) *Control Accounts***

The Chargor shall, on the date of this Agreement or, if later, promptly upon the designation at any time by the Collateral Agent of any Account as a Control Account, deliver to the Collateral Agent (or procure the delivery of) a Notice of Assignment duly executed by, or on behalf of, the Chargor in respect of each Control Account and the Chargor shall use all reasonable endeavours to procure from each account bank, building society, financial institution or other person

with which any Control Account is opened or maintained, an acknowledgement in the form set out in such Notice of Assignment.

(b) ***Notice to Collateral Agent***

The execution of this Agreement by the Chargor and the Collateral Agent shall constitute notice to the Collateral Agent of the charge created over any Account opened or maintained with the Collateral Agent.

(c) ***Other Accounts***

The Chargor shall, if requested by the Collateral Agent from time to time after the occurrence of an Event of Default, promptly deliver to the Collateral Agent (or procure the delivery of) a Notice of Charge in relation to the Accounts (except any Control Account) duly executed by, or on behalf of, the Chargor and the Chargor shall use all reasonable endeavours to procure from each account bank, building society, financial institution or other person with which any Account is opened or maintained, an acknowledgement in the form set out in such Notice of Charge.

**7.4 Notice of Security: other assets**

- (a) The Chargor shall, on the date of this Agreement or, if later, when requested by the Collateral Agent, acting at the direction of the Secured Party, from time to time, promptly deliver to the Collateral Agent (or procure the delivery of) a Notice of Assignment or a Notice of Charge (as appropriate) duly executed by, or on behalf of, the Chargor in relation to any asset (other than the Accounts) which is the subject of the Fixed Security and any floating charge which is converted into a fixed charge pursuant to Clauses 6.2 (*Crystallisation: by notice*) and 6.3 (*Crystallisation: automatic*).
- (b) The Chargor shall use all reasonable endeavours to procure from each recipient of such a Notice of Assignment or a Notice of Charge (as appropriate) an acknowledgement in the form set out therein.

**7.5 Deposit of share certificates**

The Chargor shall:

- (a) on the date of this Agreement (and upon its coming into possession thereof at anytime), deposit with the Collateral Agent (or procure the deposit of) all certificates or other documents of title to the Shares, and stock transfer forms (executed in blank by it or on its behalf) in respect of the Shares; and
- (b) promptly upon the accrual, offer or issue of any stocks, shares, warrants or other securities in respect of or derived from the Shares (or upon acquiring any interest therein), notify the Collateral Agent of that occurrence and deposit with the Collateral Agent (or procure the deposit of) (i) all certificates or other documents of title representing such assets and (ii) such stock transfer forms or other instruments of transfer (executed in blank by it or on its behalf) in respect thereof as the Collateral Agent may request.

## **7.6 Custodians and nominees**

The Collateral Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to all or any part of the Charged Assets as the Collateral Agent may determine and the Collateral Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any such person or be bound to supervise the proceedings or acts of any such person.

## **8. FURTHER ASSURANCE**

### **8.1 Extension of implied covenant**

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in Clause 8.2 below.

### **8.2 Further assurance**

The Chargor shall promptly, at its own cost, take all such action (including making all filings, registrations and notarisations) and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Collateral Agent may specify (and in such form as the Collateral Agent may require) in favour of the Collateral Agent or its nominee(s):

- (a) to create, perfect, protect and/or maintain the Security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Assets) or for the exercise of the Collateral Rights;
- (b) to confer on the Collateral Agent Security over any asset or undertaking of the Chargor located in any jurisdiction outside England and Wales equivalent or similar to the Security intended to be conferred by or pursuant to this Agreement; and/or
- (c) to facilitate the realisation of the Charged Assets.

### **8.3 Consents**

- (a) The Chargor shall, as soon as possible, use its best reasonable endeavours to obtain any consents necessary or to remove any restriction on the creation of Security (in each case in form and substance satisfactory to the Collateral Agent, acting reasonably) to enable the assets of the Chargor to be the subject of the relevant Fixed Security pursuant to this Agreement.
- (b) Immediately upon obtaining any such consent or removing any such restriction, the asset concerned will become subject to that Fixed Security and the Chargor shall promptly deliver a copy of such consent or evidence of such removal to the Collateral Agent.

## **9. SHARES**

### **9.1 Shares: Undertaking**

The Chargor shall:

- (a) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any Subsidiary incorporated in the United Kingdom whose Shares are charged under this Agreement; and
- (b) promptly provide the Collateral Agent with a copy of that notice.

### **9.2 Voting rights and dividends prior to an Event of Default**

Prior to the occurrence of an Event of Default, the Chargor shall:

- (a) be entitled to receive all dividends, interest and other monies or distributions of an income nature arising from the Shares; and
- (b) be entitled to exercise all voting rights in relation to the Shares.

### **9.3 Voting rights and dividends after an Event of Default**

Upon the occurrence of an Event of Default, the Collateral Agent may, at its discretion, or shall, at the direction of the Secured Party, in the name of the Chargor or otherwise and without any further consent or authority from the Chargor:

- (a) exercise (or refrain from exercising) any voting rights in respect of the Shares;
- (b) apply all dividends, interest and other monies arising from the Shares as though they were the proceeds of sale in accordance with Clause 17 (*Application of Proceeds*);
- (c) transfer the Shares into the name of the Collateral Agent or such nominee(s) of the Collateral Agent as it shall require; and
- (d) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Shares including the right, in relation to any company whose shares or other securities are included in the Shares, to concur or participate in:
  - (i) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
  - (ii) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
  - (iii) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,



in each case in the manner and on the terms the Collateral Agent thinks fit, and the proceeds of any such action shall form part of the Shares.

#### **9.4 Shares: Voting rights**

The Chargor shall not exercise (and shall procure that any nominee acting on its behalf does not exercise) its voting rights in relation to the Shares in any manner, or otherwise permit or agree to or concur or participate in any:

- (a) variation of the rights attaching to or conferred by all or any part of the Shares;
- (b) increase in the issued share capital of any company whose shares are charged pursuant to this Agreement;
- (c) exercise, renunciation or assignment of any right to subscribe for any shares or securities; or
- (d) reconstruction, amalgamation, sale or other disposal of any company or any of the assets or undertaking of any company (including the exchange, conversion or reissue of any shares or securities as a consequence thereof) whose shares are charged pursuant to this Agreement,

which, in the opinion of the Collateral Agent, would prejudice the value of, or the ability of the Collateral Agent to realise, the Security created pursuant to this Agreement **provided that** the proceeds of any such action shall form part of the Shares.

### **10. ACCOUNTS**

#### **10.1 Accounts: Notification and variation**

- (a) The Chargor shall promptly deliver to the Collateral Agent on the date of this Agreement (and, if any Account is opened or the details of such Account are amended thereafter, on the date of such change), details of each Account opened or maintained by it with any bank, building society, financial institution or other person.
- (b) The Chargor shall not, without the Collateral Agent's prior written consent (such consent to be given only at the direction of the Secured Party), permit or agree to any variation of the rights attaching to any Account or close any Account.

#### **10.2 Accounts: Operation before Event of Default**

The Chargor shall, prior to the occurrence of an Event of Default, be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account (other than a Control Account) subject to the terms of the Indenture and the Guarantee Facility Agreement.

#### **10.3 Accounts: Operation after Event of Default**

After the occurrence of an Event of Default the Chargor shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account

except with the prior consent of the Collateral Agent (acting at the direction of the Secured Party).

#### **10.4 Control Accounts**

- (a) The Chargor shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Control Account except with the prior consent of the Collateral Agent or as permitted under the Indenture.
- (b) The Collateral Agent may (on behalf of any Secured Party), and at the direction of the Secured Party, shall, at any time, upon the occurrence of an Event of Default, without prior notice exercise from time to time all rights, powers and remedies held by it as assignee of the Control Accounts and to:
  - (i) demand and receive all and any monies due under or arising out of each Control Account; and
  - (ii) exercise all such rights as the Chargor was then entitled to exercise in relation to such Control Account or might, but for the terms of this Agreement, exercise.

#### **10.5 Accounts: Application of monies**

The Collateral Agent shall, upon the occurrence of an Event of Default, be entitled without notice to apply, transfer or set-off any or all of the credit balances from time to time on any Account in or towards the payment or other satisfaction of all or part of the Secured Obligations in accordance with Clause 17 (*Application of Proceeds*).

### **11. GENERAL UNDERTAKINGS**

#### **11.1 Authorisations**

The Chargor shall promptly:

- (a) for the conduct of its business, trade and ordinary activities;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (c) supply certified copies to the Collateral Agent of,

any authorisation required under any law or regulation of any relevant jurisdiction to enable it to perform its obligations under this Agreement and to ensure the legality, validity, enforceability or admissibility in evidence in any relevant jurisdiction of this Agreement.

#### **11.2 Compliance with laws**

The Chargor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Agreement.

### **11.3 Information and access**

- (a) The Chargor shall from time to time on request of the Collateral Agent, furnish the Collateral Agent with such information as the Collateral Agent may reasonably require about the Chargor's business and affairs, the Charged Assets and its compliance with the terms of this Agreement and the Chargor shall permit the Collateral Agent or its designee, its representatives, professional advisers and contractors, free access at all reasonable times and on reasonable notice (i) to inspect and take copies and extracts from the books, accounts and records of the Chargor and (ii) to view the Charged Assets (without becoming liable as mortgagee in possession).
- (b) Without limiting paragraph (a) above, the Chargor shall from time to time on request of the Collateral Agent, furnish the Collateral Agent with a list of all Accounts held by the Chargor.

### **11.4 Preservation of assets**

The Chargor shall not do or permit to be done any act or thing which might jeopardise the rights of the Collateral Agent in the Charged Assets or which might adversely affect or diminish the value of the Charged Assets.

### **11.5 Notify**

The Chargor shall promptly notify the Collateral Agent of any circumstances which give rise, or may reasonably be expected to give rise, to a claim on or in relation to the Charged Assets.

### **11.6 No variation**

The Chargor shall not vary, rescind or amend the Specific Contracts except with the prior written consent of the Collateral Agent.

### **11.7 Payment of calls**

The Chargor shall pay when due all calls or other payments which may be or become due in respect of any Shares, and in any case of default by it in such payment, the Collateral Agent may, if it thinks fit, make such payment on behalf of the Chargor. Any sums so paid by the Collateral Agent shall be reimbursed by the Chargor to the Collateral Agent on demand and shall carry interest from the date of payment by the Collateral Agent until reimbursed, such interest to be calculated in accordance with Clause 2.2 (*Default interest*).

### **11.8 Compliance with Contract**

The Chargor shall promptly comply with its obligations under each of the Specific Contracts.

### **11.9 No set off etc**

The Chargor shall not take or omit to take any action which might result in (i) the alteration or impairment of any rights in the Charged Assets; (ii) any default of any of

its obligations under each of the Specific Contracts; (iii) any right to terminate any Specific Contract becoming exercisable by the obligor(s) under that Specific Contract; or (iv) any counterclaims or rights of set-off arising under any Specific Contract.

#### **11.10 People with Significant Control Register 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 issuer of any Shares; and
- (b) promptly provide the Collateral Agent with a copy of that notice.

### **12. CHARGOR'S REPRESENTATIONS**

#### **12.1 Representations**

The Chargor makes the representations and warranties set out in this Clause 12 to the Collateral Agent on the date of this Agreement.

(a) ***Status***

- (i) It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (ii) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

(b) ***Binding obligations***

The obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law as at the date of this Agreement, legal, valid, binding and enforceable obligations.

(c) ***Non-conflict with other obligations***

The entry into and performance by it of, and the transactions contemplated by, this Agreement (including any transfer of the Charged Assets on creation or enforcement of the Security created by this Agreement) do not and will not conflict with:

- (i) any law or regulation applicable to it;
- (ii) it's or any of its subsidiaries' constitutional documents; or
- (iii) any agreement or instrument binding upon it any of its assets.

(d) ***Power and authority***

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated by this Agreement.

(e) ***Validity and admissibility in evidence***

All authorisations, licences, approvals and consents required or desirable:

- (i) for the conduct of its business, trade and ordinary activities;
- (ii) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Agreement; and
- (iii) to make this Agreement admissible in evidence in its jurisdiction of incorporation and the jurisdiction of incorporation of each company whose shares are charged under this Agreement,

have been obtained or effected and are in full force and effect.

(f) ***Security***

No Security exists over any present or future Charged Assets other than the Security created pursuant to this Agreement.

(g) ***Ranking***

The Security created by this Agreement has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* Security.

(h) ***Transaction Security***

This Agreement validly creates the Security which is expressed to be created pursuant to Clause 5 (*Fixed Security*) and Clause 6 (*Floating Charge*) and evidences the Security it is expressed to evidence.

(i) ***Legal and beneficial owner***

It is the absolute legal and beneficial owner of the Charged Assets.

(j) ***The Shares***

The Shares are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of the company which has issued the Shares or any other document or arrangement do not and could not restrict or inhibit any transfer of the Shares on creation or on enforcement of the Security created pursuant to this Agreement.

## **12.2 Repetition**

The representations set out in paragraphs (a) (*Status*) to (j) (*The Shares*) of Clause 12.1 (*Representations*) are deemed to be made by the Chargor (by reference to the facts and circumstances then existing) on the date on which it opens a new Account or acquires any additional Shares or enters into any additional Specific Contracts.

## **13. ENFORCEMENT OF SECURITY**

### **13.1 Enforcement**

Any time after the occurrence of:

- (a) an Event of Default (as long as it is continuing);
- (b) an Administration Event;
- (c) a Shareholder Bankruptcy Event occurs; or
- (d) a request from the Chargor to the Collateral Agent that it exercise any of its powers under this Agreement,

the Security created by or pursuant to this Agreement is immediately enforceable and the Collateral Agent or its designee may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

- (i) secure and perfect its title to all or any part of the Charged Assets;
- (ii) enforce all or any part of that Security at the times, in the manner and on the terms it thinks fit and take possession of and hold or dispose of all or any part of the Charged Assets (and any assets of the Chargor which, when got in, would be part of the Charged Assets) at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration); and
- (iii) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement) on mortgagees and by this Agreement on any Receiver or otherwise conferred by law on mortgagees or Receivers.

### **13.2 Effect of moratorium**

Other than in respect of any floating charge referred to in section A52(4) of Part A1 of the Insolvency Act 1986, the Collateral Agent shall not be entitled to exercise its rights under Clause 13.1 (*Enforcement*), Clause 15.1 (*Appointment and removal*) or Clause 6.2 (*Crystallisation: by notice*) where the right arises as a result of an Event of Default occurring solely due to any person obtaining, or taking steps to obtain, a moratorium pursuant to Part A1 of the Insolvency Act 1986.

## **14. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION**

### **14.1 Extension of power of sale**

The power of sale or other disposal conferred on the Collateral Agent and on any Receiver by this Agreement shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Agreement.

## 14.2 Restrictions

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the exercise by the Collateral Agent of its right to consolidate all or any of the Security created by or pursuant to this Agreement with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Collateral Agent without notice to the Chargor on or at any time after the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 12 (*Enforcement of Security*).

## 14.3 Power of leasing

- (a) The statutory powers of leasing may be exercised by the Collateral Agent at any time on or after this Agreement has become enforceable in accordance with Clause 12 (*Enforcement of Security*) and the Collateral Agent and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with sections 99 and 100 of the Law of Property Act 1925.
- (b) For the purposes of sections 99 and 100 of the Law of Property Act 1925, the expression "Mortgagor" will include any incumbrancer deriving title under the Chargor and neither section 99(18) nor section 100(12) of the Law of Property Act 1925 will apply.

## 14.4 Right of appropriation

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 13.1 (*Enforcement*) to the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended, (the "**Regulations**") apply to a Charged Asset, the Collateral Agent shall have the right to appropriate all or any part of that Charged Asset in or towards the payment or discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of that Charged Asset shall be:

- (a) in the case of cash, the amount standing to the credit of each of the Accounts, together with any accrued but unposted interest, at the time of appropriation; and
- (b) in the case of any Shares, the market value of such Shares determined by the Collateral Agent by reference to a public index or independent valuation, or by such other process as the Collateral Agent may select.

In each case, the parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## 14.5 Statutory powers

The powers conferred by this Agreement on the Collateral Agent are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise

by law (as extended by this Agreement) and such powers shall remain exercisable from time to time by the Collateral Agent in respect of any part of the Charged Assets. In the case of any conflict between the statutory powers contained in any such Acts and those conferred by this Agreement, the terms of this Agreement shall prevail.

## **15. APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

### **15.1 Appointment and removal**

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 13.1 (*Enforcement*), the Collateral Agent (acting on the instructions of the Secured Party) may by deed or otherwise (acting through an authorised officer of the Collateral Agent);

- (a) without prior notice to the Chargor:
  - (i) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;
  - (ii) appoint two or more Receivers of separate parts of the Charged Assets;
  - (iii) remove (so far as it is lawfully able) any Receiver so appointed;
  - (iv) appoint another person(s) as an additional or replacement Receiver(s); and
  - (v) appoint one or more persons to be an administrator of the Chargor pursuant to paragraph 14 of Schedule B1 of the Insolvency Act 1986; and
- (b) appoint one or more persons to be an administrator of the Chargor pursuant to paragraph 12 of Schedule B1 of the Insolvency Act 1986.

### **15.2 Capacity of Receivers**

Each person appointed to be a Receiver pursuant to Clause 15.1 (*Appointment and removal*) shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) the agent of the Chargor which shall be solely responsible for the Receiver's acts, defaults and liabilities and for the payment of the Receiver's remuneration and no Receiver shall at any time act as agent for the Collateral Agent; and
- (c) entitled to be remunerated at a rate to be fixed by the Collateral Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).



### 15.3 Statutory powers of appointment

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Collateral Agent under the Law of Property Act 1925 (as extended by this Agreement) or otherwise and such powers shall remain exercisable from time to time by the Collateral Agent in respect of any part of the Charged Assets.

## 16. POWERS OF RECEIVERS

Every Receiver shall (subject to any restrictions in the Receiver's instrument of appointment but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Assets (and any assets of the Chargor which, when got in, would be Charged Assets) in respect of which the Receiver was appointed, and as varied and extended by the provisions of this Agreement (in the name of or on behalf of the Chargor or in the Receiver's own name and, in each case, at the cost of the Chargor):

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (c) all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do; and
- (d) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to:
  - (i) any of the functions, powers, authorities or discretions which are conferred on or vested in the Receiver;
  - (ii) the exercise of the Collateral Rights (including realisation of all or any part of the assets in respect of which that Receiver was appointed); or
  - (iii) bringing to the Receiver's hands any assets of the Chargor forming part of, or which when got in would be, Charged Assets.

## 17. APPLICATION OF PROCEEDS

All monies received or recovered and any non-cash recoveries made or received by the Collateral Agent or any Receiver pursuant to this Agreement or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied as follows:

- (a) *first*, in the payment or other discharge of the costs, charges and expenses incurred and payments made by the Receiver, the payment or other discharge of the Receiver's remuneration and of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of the Receiver's powers;

- (b) *second*, in payment of any amount due to the Collateral Agent under this Agreement pursuant to any indemnity granted by the Chargor in favour of the Collateral Agent and in discharging any sums payable by the Chargor to the Collateral Agent pursuant to this Agreement in respect of fees, costs and expenses, and, in each case, all applicable taxes thereon;
- (c) *third*, if any amount is due to the Secured Party under the Indenture; and
- (d) *fourth*, to the Chargor for its own account.

## **18. PROTECTION OF PURCHASERS**

### **18.1 Consideration**

The receipt of the Collateral Agent or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, the Collateral Agent or any Receiver may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit.

### **18.2 Protection of purchasers**

No purchaser or other person dealing with the Collateral Agent or any Receiver shall be bound to inquire whether the right of the Collateral Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned to inquire whether that power has been properly or regularly exercised by the Collateral Agent or such Receiver in such dealings.

## **19. POWER OF ATTORNEY**

### **19.1 Appointment and powers**

The Chargor by way of security irrevocably appoints the Collateral Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by this Agreement or any other agreement binding on the Chargor to which the Collateral Agent is a party (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets and perfecting and/or releasing the Security created or intended to be created in respect of the Charged Assets); and
- (b) enabling the Collateral Agent and any Receiver to exercise, or delegate the exercise of, any of the Collateral Rights (including, after the occurrence of an Event of Default, the exercise of any right of a legal or beneficial owner of the Charged Assets).

### **19.2 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of the attorney's powers.

## **20. EFFECTIVENESS OF SECURITY**

### **20.1 Continuing security**

- (a) The Security created by or pursuant to this Agreement shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Collateral Agent in writing.
- (b) No part of the Security from time to time intended to be created by this Agreement will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### **20.2 Cumulative rights**

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which the Collateral Agent or the Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent Security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Collateral Agent (whether in its capacity as collateral agent or otherwise) or the Secured Party over the whole or any part of the Charged Assets shall merge into the Security created by this Agreement.

### **20.3 No prejudice**

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, or the Collateral Agent (whether in its capacity as collateral agent or otherwise) or the Secured Party or by any variation of the terms of the trust upon which the Collateral Agent holds the Security or by any other thing which might otherwise prejudice that Security or any Collateral Right.

### **20.4 Remedies and waivers**

No failure on the part of the Collateral Agent to exercise, nor any delay on its part in exercising, any Collateral Right, shall operate as a waiver of that Collateral Right or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the Collateral Agent shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

### **20.5 No liability**

None of the Collateral Agent, its nominee(s) or any Receiver shall be liable:

- (a) to account as a mortgagee or mortgagee in possession; or

- (b) for any loss arising by reason of taking any action permitted by this Agreement or any neglect or default in connection with the Charged Assets or taking possession of or realising all or any part of the Charged Assets,

except in the case of gross negligence or wilful default upon its part.

#### **20.6 Partial invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

#### **20.7 Waiver of defences**

The obligations assumed, and the Security created, by the Chargor under this Agreement, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 20.7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Agreement (whether or not known to the Chargor or the Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any other person;
- (b) the release of any other person or any other person under the terms of any composition or arrangement with any creditor of the Chargor;
- (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 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, any other person;
- (e) any amendment, novation, supplement, extension, restatement (in each case, however fundamental and whether or not more onerous) or replacement of a Transaction Document or any other document or Security or of the Secured Obligations including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Transaction Document or other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Transaction Document or any other document or Security or of the Secured Obligations; and
- (g) any insolvency or similar proceedings.

## **20.8 Chargor intent**

Without prejudice to the generality of Clause 20.7 (*Waiver of Defences*), the Chargor expressly confirms that it intends that the Security created under this Agreement, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Transaction Documents and/or any facility or amount made available under any of the Transaction Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

## **20.9 Immediate recourse**

The Chargor waives any right it may have of first requiring the 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 other person before claiming from the Chargor under this Agreement or enforcing the Security created by this Agreement. This waiver applies irrespective of any law or any provision of this Agreement to the contrary.

## **20.10 Deferral of rights**

Until the end of the Security Period, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Agreement:

- (a) to be indemnified by any other person;
- (b) to claim any contribution from any guarantor or any other person in respect of its obligations under the Transaction 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 Party under the Transaction Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Transaction Documents by the Secured Party;
- (d) to bring legal or other proceedings for an order requiring any other person to make any payment, or perform any obligation, in respect of which any other person has given a guarantee, undertaking or indemnity under any Transaction Document;
- (e) to exercise any right of set-off against any other person; and/or
- (f) to claim or prove as a creditor of any other person in competition with the Secured Party.

If the Chargor 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 Party by the Chargor under or in connection with the Transaction Documents to be repaid in full on trust for the

Secured Party and shall promptly pay or transfer the same to the Collateral Agent or as the Collateral Agent may direct for application in accordance with Clause 17 (*Application of Proceeds*).

#### **20.11 Additional Security**

The Security created by the Chargor under this Agreement and the Collateral Rights are in addition to and are not in any way prejudiced by any other guarantee or Security now or subsequently held by the Secured Party.

### **21. PRIOR SECURITY INTERESTS**

#### **21.1 Redemption or transfer**

In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Charged Assets or in case of exercise by the Collateral Agent or any Receiver of any power of sale or right of appropriation or application under this Agreement, the Collateral Agent may redeem such prior Security or procure the transfer thereof to itself.

#### **21.2 Accounts**

The Collateral Agent may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Chargor.

#### **21.3 Costs of redemption or transfer**

All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Collateral Agent on demand together with accrued interest thereon calculated in accordance with Clause 2.2 (*Default Interest*).

### **22. SUBSEQUENT SECURITY INTERESTS**

If the Collateral Agent (acting in its capacity as collateral agent or otherwise) or the Secured Party at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all or any part of the Charged Assets which is prohibited by the terms of any Transaction Document, all payments thereafter made by or on behalf of the Chargor to the Collateral Agent (whether in its capacity as collateral agent or otherwise) or the Secured Party will (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

### **23. SUSPENSE ACCOUNTS**

All monies received, recovered or realised by the Collateral Agent under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Collateral Agent (acting at the direction of the Secured Party) be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Collateral Agent (acting at the direction of the Secured Party) considers appropriate (including itself) for so long as it

may think fit (the interest being credited to the relevant account) pending their application from time to time at the Collateral Agent's discretion (acting at the direction of the Secured Party), in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

## **24. RELEASE OF SECURITY**

### **24.1 Release of Security**

Upon the expiry of the Security Period, the Collateral Agent shall, at the request and cost of the Chargor, release and cancel the Security created by this Agreement and procure the reassignment to the Chargor of the property and assets assigned to the Collateral Agent pursuant to this Agreement, in each case subject to Clause 24.2 (*Clawback*) and without recourse to, or any representation or warranty by, the Collateral Agent or any of its nominees.

### **24.2 Clawback**

If the Collateral Agent (acting at the direction of the Secured Party) considers that any amount paid or credited to the Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Agreement and the Security created by those documents will continue and such amount will not be considered to have been irrevocably paid or credited.

## **25. SET-OFF**

The Chargor authorises the Collateral Agent (but the Collateral Agent shall not be obliged to exercise such right), after the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 13.1 (*Enforcement*), to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Collateral Agent to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Collateral Agent in accordance with Clause 17 (*Application of Proceeds*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

## **26. CHANGES TO THE PARTIES**

### **26.1 No assignments or transfers by Chargor**

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Agreement.

### **26.2 Assignments by the Collateral Agent**

The Collateral Agent may assign all or any of its rights under this Agreement. The Collateral Agent shall be entitled to disclose such information concerning the Chargor and this Agreement as the Collateral Agent considers appropriate to any actual or proposed direct or indirect assignee or to any person to whom information may be required to be disclosed by any applicable law.

### 26.3 Successors

This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Collateral Agent. References to the Collateral Agent shall include (i) any transferee, assignee or successor in title of the Collateral Agent, (ii) any entity into which the Collateral Agent is merged or converted or with which it may be consolidated, (iii) any legal entity resulting from any merger, conversion or consolidation to which such Collateral Agent is a party and (iv) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Collateral Agent under this Agreement or to which, under such laws, those rights and obligations have been transferred (such person described in (i) to (iv) being a successor to the Collateral Agent for all purposes under the Transaction Documents).

## 27. NOTICES

### 27.1 Communications in Writing

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

### 27.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

(a) in the case of the Chargor:

Address: Green Swan Holding Limited  
2 Trust Court  
Histon  
Cambridge  
England  
CB24 9PW

Attention: The Directors

Email: 

and

(b) in the case of the Collateral Agent:

Address: SA Guarantee Specialists  
Unit 1 E&F, Metrohm House  
20 Gardner Avenue, Paardvlei  
Somerset West, 7130  
South Africa

Attention: Nathan January



Email: [REDACTED]

or any substitute address, email, or department or officer as the Party may notify the other Parties in writing (which may be by email).

### **27.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement 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 27.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Collateral Agent will be effective only when actually received by the Collateral Agent and then only if it is expressly marked for the attention of the department or officer identified above (or any substitute department or officer as the Collateral Agent shall specify for this purpose).

### **27.4 Electronic communication**

- (a) Any communication to be made between the Chargor and the Collateral Agent under or in connection with this Agreement 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 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 may only be made in that way to the extent that the Chargor and the Collateral Agent agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by the Chargor to the Collateral Agent only if it is addressed in such manner as the Collateral Agent shall specify for this purpose.

- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the addressee of the relevant communication has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 27.4.

## **27.5 English language**

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Collateral 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.

## **28. EXPENSES, STAMP TAXES AND INDEMNITY**

### **28.1 Expenses**

The Chargor shall, from time to time on demand of the Collateral Agent, reimburse the Collateral Agent for all the reasonable costs and expenses (including legal fees) on a full indemnity basis together with any VAT thereon incurred by it in connection with:

- (a) the negotiation, preparation and execution of this Agreement and the completion of the transactions and perfection of the Security contemplated in this Agreement; and
- (b) the exercise, preservation and/or enforcement of any of the Collateral Rights or the Security contemplated by this Agreement or any proceedings instituted by or against the Collateral Agent as a consequence of taking or holding the Security or of enforcing the Collateral Rights,

and shall carry interest from the date of such demand until so reimbursed in accordance with Clause 2.2 (*Default Interest*).

### **28.2 Stamp Taxes**

The Chargor shall pay all stamp, registration, notarial and other taxes and fees to which this Agreement, the Security contemplated in this Agreement or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Collateral Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

### **28.3 Indemnity**

The Chargor shall, notwithstanding any release or discharge of all or any part of the Security created by or pursuant to this Agreement, indemnify the Collateral Agent, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Agreement, the exercise or purported exercise of any of the rights and powers conferred on them by this Agreement or otherwise relating to the Charged Assets.

## **29. AMENDMENTS AND WAIVERS**

Any term of this Agreement may be amended or waived only with the consent of the Collateral Agent (acting on the instructions of the Secured Party) and the Chargor.

## **30. DISCRETION AND DELEGATION**

### **30.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Collateral Agent or any Receiver may, subject to the terms and conditions of the Indenture, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons. Notwithstanding anything else to the contrary herein, whenever reference is made in this Agreement to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Collateral Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction, reasonable satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Collateral Agent, it is understood that in all cases the Collateral Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such written instruction, advice or concurrence of the Secured Party, as it deems appropriate. This provision is intended solely for the benefit of the Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defence, claim or counterclaim, or confer any rights or benefits on any party hereto

### **30.2 Delegation**

Each of the Collateral Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Collateral Agent or the Receiver itself.

## **31. CALCULATIONS AND CERTIFICATES**

### **31.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Agreement, the entries made in the accounts maintained by the Collateral Agent are *prima facie* evidence of the matters to which they relate.

### **31.2 Certificates and determinations**

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

## **32. COUNTERPARTS**

This Agreement 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 Agreement.

## **33. GOVERNING LAW**

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

## **34. JURISDICTION**

### **34.1 English Courts**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement) (a "**Dispute**").

### **34.2 Convenient forum**

The Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and, accordingly, that the Chargor will not argue to the contrary.

### **34.3 Exclusive jurisdiction**

Notwithstanding Clause 34.1 (*English Courts*), the Collateral Agent may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Collateral Agent may take concurrent proceedings in any number of jurisdictions.

### **34.4 The Collateral Agent**

In the performance of its obligations set forth herein, the Collateral Agent shall be entitled to all the rights benefits, protections, indemnities and immunities afforded to it under the Indenture.

**THIS AGREEMENT** has been signed by the Collateral Agent and executed as a deed by the Chargor and is delivered by it as a deed.

**SCHEDULE 1**  
**ACCOUNTS**

<b>Account Bank (including address and sort code)</b>	<b>Account Name</b>	<b>Account Number</b>	<b>Other information</b>
<i>Accounts to be opened following the date hereof.</i>			

**SCHEDULE 2**  
**CONTROL ACCOUNTS**

<b>Account Bank (including address and sort code)</b>	<b>Account Name</b>	<b>Account Number</b>	<b>Other information</b>
<i>Accounts to be opened following the date hereof.</i>			

**SCHEDULE 3**  
**SHARES**

<b><u>Name of Company</u></b>	<b><u>Issued Capital Share</u></b>	<b><u>Description and Number of Shares Held</u></b>	<b><u>Share Certificate Number(s)</u></b>
Green Swan Investments Limited	1,000 Ordinary Shares	1,000 Ordinary Shares	0001



**SCHEDULE 4**  
**COLLATERAL AGENT PROVISIONS**

**1. TRUST FOR THE SECURED PARTY**

**1.1 Trust**

The Collateral Agent declares that it shall hold the Security on trust for the Secured Party on the terms contained in this Agreement and the Indenture. The Collateral Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement, the Indenture, the Guarantee Facility Agreement and the other Security Documents (and no others shall be implied).

**1.2 No Independent Power**

The Secured Party shall not have any independent power to enforce, or have recourse to, any of the Security or to exercise any rights or powers arising under the Security Documents except through the Collateral Agent.

**1.3 Currency Conversion**

For the purpose of or pending the discharge of any of the Secured Obligations the Collateral Agent may convert any monies received, recovered or realised by the Collateral Agent from one currency to another, at the spot rate at which the Collateral Agent is able to purchase the currency in which the Secured Obligations are due with the amount received, recovered or realised. The obligations of the Chargor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

**1.4 Permitted Deductions**

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

**1.5 No Proceedings**

No party (other than the Collateral Agent) may take any proceedings against any officer, employee or agent of the Collateral Agent in respect of any claim it might have against the Collateral Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document and any officer, employee or agent of the Collateral Agent may rely on this paragraph, subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

## 1.6 **Collateral Agent's Actions**

The Collateral Agent shall act in accordance with the terms of the Indenture and the Guarantee Facility Agreement.

## 1.7 **Illegality**

Nothing contained in this Agreement or the Security Documents shall require the Collateral Agent to do anything which may in its opinion be illegal or contrary to any law of any jurisdiction or regulation or directive of any agency of any state or which would or might otherwise render it liable to any person and may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

## 1.8 **Powers of the Collateral Agent are Additional**

The powers conferred by this Agreement upon the Collateral Agent shall be in addition to any powers which may from time to time be vested in it by general law or as the Secured Party.

## 2. **TERMS OF APPOINTMENT OF COLLATERAL AGENT**

### 2.1 **Trustee Act 1925 and Trustee Act 2000**

The Collateral Agent shall have all the powers and discretions conferred upon trustees by the Trustee Act 1925 and the Trustee Act 2000, **provided that** (a) where there are any inconsistencies between the Trustee Act 1925 and/or the Trustee Act 2000 and the provisions of any Transaction Document, to the extent allowed by law the provisions of such Transaction Document shall prevail, (b) any inconsistencies between the Trustee Act 2000 and the provisions of any Transaction Document shall constitute a restriction or exclusion under the Trustee Act 2000; and (c) Section 1 of the Trustee Act 2000 does not apply to the duties of the Collateral Agent under this Agreement.

### 2.2 **Collateral Agent not responsible for supervision**

#### (a) ***Collateral Agent not responsible for supervision of parties to the Security Documents***

The Collateral Agent shall not be obliged to monitor or supervise the functions of any other person under the Transaction Documents and shall be entitled, in the absence of express notice of a breach of obligation, to assume that each other such person is properly performing its obligations.

#### (b) ***Determination of questions***

The Collateral Agent as between itself and the Secured Party shall have full power to determine all questions and doubts arising in relation to any of the provisions of this Schedule 4 (*Collateral Agent Provisions*), the Indenture, the Guarantee Facility Agreement and the Security Documents and every such determination, whether made upon a question actually raised or implied in the acts or proceedings of the Collateral Agent, shall be conclusive and shall bind the Collateral Agent and the Secured Party.

(c) ***Deposit of documents***

The Collateral Agent shall be at liberty to place this Agreement and all deeds and other documents relating to this Agreement in any safe deposit, safe or other receptacle selected by the Collateral Agent, or with any bank or banking Chargor, lawyer or firm of lawyers, believed by it to be of good repute, in any part of the world, and the Collateral Agent shall not be responsible for or required to insure against any loss incurred in connection with any such deposit and the Secured Party shall pay all properly incurred sums required to be paid on account of or in respect of any such deposits.

(d) ***Confidential information***

The Collateral Agent shall not (unless required by law or ordered to do so by a court of competent jurisdiction) be required to disclose to the Secured Party confidential information or other information made available to the Collateral Agent by the Chargor in connection with this Agreement and no Secured Party shall be entitled to take any action to obtain from the Collateral Agent any such information, provided that the Collateral Agent may disclose any such information to any attorney, manager, Receiver, delegate or other person appointed by it under this Agreement if in the opinion of the Collateral Agent it is necessary or desirable to the proper performance by such person of its duties that it should do so.

(e) ***Consent or approval***

Any consent or approval given by the Collateral Agent for the purposes of this Agreement and/or the Security Documents may be given on such terms and subject to such conditions (if any) as the Collateral Agent thinks fit and notwithstanding anything to the contrary in this Agreement or the Security Documents may be given retrospectively.

(f) ***Powers Supplemental***

The rights, powers and discretions conferred upon the Collateral Agent by this Agreement shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Collateral Agent by general law or otherwise.

(g) ***Collateral Agency Division Separate***

In acting as collateral agent for the Secured Party, the Collateral Agent shall be regarded as acting through its collateral agency division which shall be treated as a separate entity from any of its other divisions or departments and any information received by any other division or department of the Collateral Agent may be treated as confidential and shall not be regarded as having been given to the Collateral Agent's collateral agency division.

**2.3 No expenditure by the Collateral Agent of own funds**

Nothing contained in this Agreement shall require the Collateral Agent to take any action, expend or risk its own funds or otherwise incur any financial liability in the

performance of its duties or the exercise of any right, power, authority or discretion hereunder if it has reasonable grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not to its satisfaction assured to it.

#### **2.4 Collateral Agent not Responsible for Tax**

Notwithstanding anything contained in this Agreement, if the Collateral Agent is required to make any deduction or withholding from any distribution or payment made by it under this Agreement or if the Collateral Agent is otherwise charged to, or may become liable to, tax as a consequence of performing its duties under this Agreement, whether as a principal, trustee, agent or otherwise, and whether by reason of any assessment, prospective assessment or other imposition of liability to taxation of whatsoever nature and whensoever made upon the Collateral Agent, and whether in connection with or arising from any sums received or distributed by it or to which it may be entitled under this Agreement or the Security Documents (other than in connection with its remuneration for performing its duties under this Agreement) or any investments from time to time representing the same, including any income or gains arising therefrom, or any action of the Collateral Agent taken in connection with the administration of the trusts of this Agreement (other than the remuneration for performing its duties under this Agreement) or otherwise, then the Collateral Agent shall be entitled to make such deduction or withholding (as the case may be) to retain out of sums received by it an amount sufficient to discharge any liability to tax which relates to sums so received or distributed or to discharge any such other liability of the Collateral Agent to tax from the funds held by the Collateral Agent on the trusts of this Agreement.

#### **2.5 Stamp taxes**

The Secured Party shall pay all stamp, registration, notarial and other taxes and fees to which this Agreement, the Security contemplated in this Agreement or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Collateral Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

#### **2.6 Financial Transactions with Parties to the Security Documents**

The Collateral Agent and any of its directors or officers or any corporation being a Collateral Agent hereof shall not by reason of its fiduciary position be in any way precluded from making any contracts or entering into any transactions in the ordinary course of business with the Chargor, any other party to the Security Documents or any person or body corporate directly or indirectly associated with the Chargor, or from accepting the trusteeship of any other stock, debentures or securities of the Chargor or any person or body corporate directly or indirectly associated with the Chargor, any other party to the Security Documents and neither the Collateral Agent nor any such director or officer shall be accountable to the Secured Party, the Chargor, or any person or body corporate directly or indirectly associated with the Chargor or any other party to the Security Documents for any profit, fees, commissions, interest, discounts or share of brokerage earned, arising or resulting from any such contracts or transactions and the Collateral Agent shall also be at liberty to retain the same for its or his own benefit.

## **2.7 Chargor's Director Certificate of Evidence**

The Collateral Agent may, in the exercise of its functions hereunder, call for and shall be at liberty to accept as sufficient evidence of the relevant fact or matter relating to the Chargor, a certificate signed by one manager of the Chargor, and the Collateral Agent shall not be bound in any such case to call for further evidence or be responsible for any liability that may be occasioned by it or any other person acting on such certificate.

## **2.8 Collateral Agent liable for Gross Negligence**

None of the provisions of this Agreement shall in any case in which the Collateral Agent has failed to show the degree of care and diligence required by it as collateral agent, having regard to the provisions of this Agreement conferring on the Collateral Agent any powers, authorities or discretions, relieve or indemnify the Collateral Agent against any liability which by virtue of any rule of law would otherwise attach to it in respect of any gross negligence, wilful default or fraud of which it may be guilty in relation to its duties under this Agreement.

## **2.9 Collateral Agent not obliged**

The Collateral Agent shall not be bound to take any action under this Agreement including without limitation the exercise of any voting rights or other rights or any such action pursuant to this Agreement or the Security Documents or any other action against, or in relation to, the Chargor or any other person to enforce the provisions of this Agreement or any of the Security Documents or any other action or steps thereunder or in connection therewith unless it has been so requested in writing by the Secured Party and it has been indemnified and/or secured and/or prefunded to its satisfaction and/or had money paid on account, in each case at its discretion and to its satisfaction, against all proceedings, judgments, actions, claims and demands to which it may be or become liable and all fees, costs, charges, damages, issues and expenses which it may incur (including, without limitation, in respect of taxes, duties, levies and other charges).

## **2.10 Collateral Agent's Absolute Discretion**

The Collateral Agent shall (save as expressly otherwise provided herein) as regards all the trusts, powers, authorities and discretions vested in it by this Agreement or by operation of law, have absolute and uncontrolled discretion as to the exercise (which, as between the Collateral Agent and the Secured Party, shall be conclusive and binding on the Secured Party) or non-exercise thereof and the Collateral Agent shall not be responsible for any liability that may result from the exercise or non-exercise thereof but whenever the Collateral Agent is under the provisions of this Agreement bound to act at the request or direction of the Secured Party, the Collateral Agent shall nevertheless not be so bound unless first indemnified and/or secured and/or prefunded to its satisfaction against all actions, proceedings, claims and demands to which it may in its opinion render itself liable and all liabilities which it may in its opinion incur by so doing.

## **2.11 Adequacy of the Security**

- (a) The Collateral Agent shall not be responsible for any unsuitability, inadequacy or unfitness of any Charged Assets as security for any Secured Obligations and

shall not be obliged to make any investigation into, and shall be entitled to assume, the suitability, adequacy and fitness of the Charged Assets as security for the Secured Obligations and shall have no responsibility in relation to the legality, validity, sufficiency, genuineness, admissibility in evidence and enforceability of the Security and the Security Documents.

- (b) The Collateral Agent shall have no liability for any shortfall which arises on the enforcement or realisation of the Security.

## **2.12 Insurance**

Without prejudice to the provisions of any Security Document relating to insurance, the Collateral Agent shall not be under any obligation to insure any of the Security or any asset that is subject to the Security or any deeds or documents of title or other evidence in respect of the Security or to require any other person to maintain any such insurance or monitor the adequacy of any such insurance and shall not be responsible for any liability which may be suffered as a result of the lack of or inadequacy of any such insurance and is not liable with respect to any loss, theft or reduction in value with respect to the Charged Assets.

## **2.13 Depreciation in value**

Until such time as the Security becomes enforceable, the Charged Assets shall be dealt with in accordance with the provisions of the Security Documents and the Collateral Agent shall not be responsible in such circumstances or at any other time for any liability occasioned thereby whether by depreciation in value or by fluctuation in exchange rates or with respect to any loss or theft or otherwise.

## **2.14 Reliance on title to the Security**

The Collateral Agent may accept without investigation, requisition or objection such right and title as the Chargor may have to any of the Charged Assets and the other Security created in favour of the Collateral Agent by this Agreement and shall not be bound or concerned to examine or enquire into or be liable for any defect or failure in the right or title of the Chargor to all or any of the Charged Assets whether such defect or failure was known to the Collateral Agent or might have been discovered upon examination, enquiry, search or investigation and whether capable of remedy or not. The Secured Party shall be solely responsible for making its own independent appraisal of and investigation into the financial condition, creditworthiness, affairs, status and nature of the Chargor and the Collateral Agent shall not at any time have any responsibility for the same and the Secured Party shall not rely on the Collateral Agent in respect thereof.

## **2.15 Error of judgment**

The Collateral Agent shall not be liable for any error of judgment made in good faith by any officer or employee of the Collateral Agent assigned by the Collateral Agent to administer its corporate trust matters, subject to paragraph 2.8 (*Collateral Agent liable for Gross Negligence*).

## 2.16 Consequential loss

Notwithstanding any provision of this Agreement to the contrary, the Collateral Agent shall not in any event be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits, goodwill, reputation or opportunity), whether or not foreseeable, even if the Collateral Agent has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract, breach of duty, breach of trust, breach of fiduciary obligation or otherwise.

## 3. WAIVER AND MODIFICATION

### 3.1 Waiver and Modification

The Collateral Agent:

- (a) shall, if so instructed by the Secured Party, and without prejudice to its rights in respect of any subsequent breach, condition, event or act, from time to time and at any time:
  - (i) authorise or waive any proposed breach or breach of any of the covenants or provisions contained in this Schedule 4 (*Collateral Agent Provisions*) or any Security Document; or
  - (ii) concur with the Chargor and any other party to this Agreement or any Security Document in making any modification to this Schedule 4 (*Collateral Agent Provisions*) or any Security Document.
- (b) may concur with the Chargor in respect of amending the Transaction Documents to correct a manifest error or an error which in the opinion of the Collateral Agent is proven or, with the consent of the Collateral Agent, to cure any ambiguity, inconsistency or defective provision; or if, in the opinion of the Collateral Agent, such modification is of a formal, minor or technical nature.

### 3.2 No obligation to act

Notwithstanding any other provisions in this Agreement, the Collateral Agent shall not be obliged to agree to any amendment or modification, waiver or substitution or take any other action pursuant to an instruction from the Secured Party or otherwise which in the opinion of the Collateral Agent would have the effect of:

- (a) exposing the Collateral Agent to any liability against which it has not been indemnified and/or secured and/or prefunded to its satisfaction; or
- (b) increasing the obligations or duties or decreasing the protections of the Collateral Agent in any Security Document.

## 4. AVOIDANCE OF PAYMENTS

Any settlement, discharge or release between (a) the Chargor and (b) the Collateral Agent or any Receiver (the "**relevant person(s)**") shall be conditional upon no security or payment granted or made to the relevant person(s) by the Chargor or any other person

being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency or liquidation for the time being in force and, in the event of such security or payment being so avoided or reduced, the relevant person(s) shall be entitled to recover the value or amount of such security or payment from the Security subsequently as if such settlement, discharge or release had not occurred.



**SCHEDULE 5**  
**FORM OF NOTICE OF SECURITY TO ACCOUNT BANK**

To: [Account Bank/other financial institution]

Date: [ ]

We give you notice that, by a security agreement dated 18 July 2022 (the "**Security Agreement**")\*, we have [assigned] / [charged by way of fixed charge] to SA Guarantee Specialists (the "**Collateral Agent**") as collateral agent for the Secured Party all of our right, title, benefit and interest in and to and all monies (including interest) from time to time standing to the credit of, the account[s] listed below maintained with [bank/building society/financial institution] (including any renewal, redesignation, replacement, subdivision or subaccount of such account) and the debt or debts represented thereby:

Account Name[s]: [ ]  
Sort Code[s]: [ ]  
Account No[s]: [ ]

*[repeat list as necessary]*

We irrevocably instruct and authorise you to disclose to the Collateral Agent without any reference to or further authority from us and without any inquiry by you as to the justification for such disclosure, such information relating to [the]/[any] account[s] maintained with you from time to time as the Collateral Agent may request you to disclose to it.

*[Insert the following if notifying a charge over (operating) Accounts:*

We further instruct and authorise you to act only in accordance with the Collateral Agent's instructions following receipt by you of a notice of the occurrence of [an Event of Default] issued by the Collateral Agent. Until such notice is received by you, we are authorised by the Collateral Agent to receive, withdraw or otherwise transfer any credit balance from time to time on any Account [(other than a Control Account)] [subject to *[insert any restrictions set out in the Indenture].*]

*[Insert the following if notifying an assignment of Control Accounts:*

With effect from the date of your receipt of this notice:

- (a) [any existing payment instructions affecting the above account[s] (the "**Control Accounts**") are to be terminated and all payments and communications in respect of the Control Accounts should be made to the Collateral Agent or to its order (with a copy to us)]; and
- (b) all rights, title and interest whatsoever accruing to or for the benefit of ourselves arising from the Control Accounts are exercisable by, or at the direction of, the Collateral Agent.]

This letter and all non-contractual obligations arising out of or in connection with it are governed by and will be construed in accordance with the laws of England and Wales.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to the Collateral Agent at [ ] marked for the attention of [ ].

.....  
for and on behalf of

**GREEN SWAN HOLDING LIMITED**

**Form of Acknowledgement of Notice of  
Security by Account Bank**

To: SA Guarantee Specialists (the "**Collateral Agent**")

Date:

We confirm receipt from Green Swan Holding Limited (the "**Chargor**") of a notice dated [ ] of [an assignment]/[a fixed charge] upon the terms of a security agreement dated 18 July 2022 (the "**Security Agreement**") of all the Chargor's right, title, benefit and interest in and to, and all monies (including interest) from time to time standing to the credit of the following account[s] which [is/are] maintained with us and the debt or debts represented thereby:

*[List relevant accounts here]*

(the "**[Control] Account[s]**").

We confirm that the balance standing to the [Control] Account[s] at today's date is [ ], no fees or periodic charges are payable in respect of the [Control] Account[s] and there are no restrictions on (a) the payment of the credit balance on the [Control] Account[s] [(except, in the case of a time deposit, the expiry of the relevant period)] or (b) the creation of Security over the [Control] Account[s] in favour of the Collateral Agent or any third party.

We unconditionally and irrevocably waive all rights of set-off, lien, combination or consolidation of accounts and security in respect of any [Control] Account[s] and similar rights (however described) which we may have now or in the future in respect of [each of] the [Control] Account[s] or the balance thereon to the extent that such rights relate to amounts owed to us by the Chargor.

We confirm that we have not received notice of the interest of any third party in [any of] the [Control] Account[s] and will not, without the Collateral Agent's prior written consent, amend or vary any rights attaching to the [Control] Account[s].

We will act only in accordance with the instructions given by persons authorised by the Collateral Agent and we shall send all statements and other notices given by us relating to the [Control] Account[s] to the Collateral Agent.

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

.....  
for and on behalf of

*[Account Bank/other financial institution]*

cc. Green Swan Holding Limited

**SCHEDULE 6**  
**FORM OF NOTICE OF ASSIGNMENT OF SPECIFIC CONTRACT**

To: [ ]

Date: [ ]

We give you notice that, by a security agreement dated 18 July 2022 (the "**Security Agreement**"), we have assigned to SA Guarantee Specialists (the "**Collateral Agent**") as collateral agent for the Secured Party all our right, title and interest in and to [the intercompany loan between [ ] as borrower and [ ] as lender dated [ ] (as amended, restated or supplemented from time to time)] (the "**Contract**") including all monies which may be payable in respect of the Contract.

We will remain liable to perform all our obligations under the Contract and the Collateral Agent is under no obligation of any kind whatsoever under the Contract nor under any liability whatsoever in the event of any failure by us to perform our obligations under the Contract.

With effect from your receipt of this notice:

- (a) all payments by you to us under or arising from the Contract (the "**Payments**") shall be made to the Collateral Agent or to its order as it may specify in writing from time to time [*include details of the account into which sums are to be paid*];
- (b) all remedies provided for in the Contract (or otherwise available) shall be exercisable by, or at the direction of, the Collateral Agent;
- (c) all rights, title and interest whatsoever accruing to or for the benefit of ourselves arising from the Contract (including all rights to compel performance) shall be exercisable by, or at the direction of, the Collateral Agent; and
- (d) you are authorised and instructed, without requiring further approval from us, to provide the Collateral Agent with such information relating to the Contract as it may from time to time request and to send it copies of all notices issued by you under the Contract to the Collateral Agent as well as to us.

These instructions may not be revoked, nor may the terms of the Contract be amended, varied, waived or terminated without the prior written consent of the Collateral Agent.

This letter and all non-contractual obligations arising out of or in connection with it are governed by and will be construed in accordance with the laws of England and Wales.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to the Collateral Agent at [ ] marked for the attention of [ ].

.....  
for and on behalf of

**GREEN SWAN HOLDING LIMITED**

We confirm our agreement to the terms of this notice and instruct you, with effect from the date of your receipt of this notice, that:

- (a) the Payments shall be made to Green Swan Holding Limited; and
- (b) all remedies provided for in the Contract (or otherwise available) and all rights to compel performance of the Contract shall be exercisable by Green Swan Holding Limited,

in each case until you receive written notification from us to the contrary.

For and on behalf of the

**SA GUARANTEE SPECIALISTS**

**Form of Acknowledgement of  
Assignment of Specific Contract**

To: SA Guarantee Specialists as collateral agent for the Secured Party (the "**Collateral Agent**")

We acknowledge receipt of a notice dated [ ] of security created by Green Swan Holding Limited (the "**Chargor**") in favour of the Collateral Agent over all the Chargor's rights, title and interest in and to the Contract (as specified in that notice).

We confirm that:

- (a) we will comply with the terms of that notice; and
- (b) we have not received notice of any prior security over, or the interest of any third party in, the Contract.

We further confirm that:

- 1. no amendment, waiver or release of any of such rights, title, benefit and interest shall be effective without the prior written consent of the Collateral Agent;
- 2. no termination of such rights, title, benefit or interest shall be effective unless we have given the Collateral Agent 21 days written notice of the proposed termination, specifying the action necessary to avoid such termination;
- 3. the Chargor will remain liable to perform all its obligations under the Contract and the Collateral Agent is under no obligation of any kind whatsoever under the Contract nor under any liability whatsoever in the event of any failure by the Chargor to perform its obligations under the Contract; and
- 4. no breach or default on the part of the Chargor of any of the terms of the Contract shall be deemed to have occurred unless we have given notice of such breach to the Collateral Agent specifying how to make good such breach.

We confirm that we have made all necessary arrangements for all future payments payable under the Contract to be made as specified in the notice.

We have not claimed or exercised, and waive all future rights to claim or exercise, any right of set-off, lien, counterclaim or other similar right now or in the future relating to amounts owed to us by the Chargor.

We acknowledge receipt of instructions from you in connection with the assignment of the Contract and confirm that we shall act in accordance with them until we receive written notification from you to the contrary.

.....  
for and on behalf of

[            ]

cc.      Green Swan Holding Limited

EXECUTION PAGE TO AGREEMENT

The Chargor

EXECUTED AS A DEED

by GREEN SWAN HOLDING LIMITED

[Redacted Signature]

Signature of director

A. Schul

Name of director

in the presence of

[Redacted Signature]

Signature of witness

Elena Jureaulewa

Name of witness

[Redacted Address]

Address of witness

[Redacted Address]

The Collateral Agent

For and on behalf of

SA GUARANTEE SPECIALISTS

By:

Name:

Title:



EXECUTION PAGE TO AGREEMENT

The Chargor

EXECUTED AS A DEED )  
by GREEN SWAN HOLDING LIMITED )  
 )

..... Signature of director

..... Name of director

in the presence of

Signature of witness

..... Name of witness

..... Address of witness

.....

The Collateral Agent

For and on behalf of

SA GUARANTEE SPECIALISTS

By: 

DocuSigned by:

Name: Nathan January

Title: Senior Underwriter