



Registration of a Charge

Company Name: **ANYDAYDIRECT LIMITED**

Company Number: **14131639**



XB82MK2A

Received for filing in Electronic Format on the: **12/07/2022**

Details of Charge

Date of creation: **11/07/2022**

Charge code: **1413 1639 0001**

Persons entitled: **TRACKPACK LIMITED (IN LIQUIDATION)**

Brief description: **NONE**

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: **JOSEPH MILLER**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 14131639

Charge code: 1413 1639 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 11th July 2022 and created by ANYDAYDIRECT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th July 2022 .

Given at Companies House, Cardiff on 14th July 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**

Debenture

- (1) Anydaydirect Ltd
- (2) Trackpack Limited (in liquidation)
- (3) Asher Miller and Stephen Katz

Date: 11 July **2022**

THIS DEED is dated 11 July 2022

PARTIES

- (1) **ANYDAYDIRECT LTD** incorporated and registered in England and Wales under Company Number 14131639 and having its registered office at First Floor, 5 Fleet Place, London, United Kingdom, EC4M 7RD (the **Chargor**).
- (2) **TRACKPACK LIMITED (IN LIQUIDATION)** incorporated and registered in England and Wales with company number 08153232, c/o Begbies Traynor (London) LLP, Pearl Assurance House, 319 Ballards Lane, London, N12 8LY (the **Company**).
- (3) **ASHER MILLER** and **STEPHEN KATZ** of Begbies Traynor (London) LLP, Pearl Assurance House, 319 Ballards Lane, London, N12 8LY (each a **Company Liquidator** and together the **Company Liquidators**).

BACKGROUND

- (A) The Company has agreed, pursuant to the Asset Purchase Agreement, to sell certain business and assets of the Company to the Chargor.
- (B) Under this deed, the Chargor provides security to the Company for the deferred consideration for the Company's assets and all other obligations under the Asset Purchase Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in this deed:

Administrator: an administrator appointed to manage the affairs, business and property of the Chargor pursuant to clause 12.12.

Asset Purchase Agreement: the asset purchase agreement dated on or about the date of this deed between, the Chargor, the Company Liquidators, the Company and the guarantor for the sale of certain business and assets of the Company.

Book Debts: all present and future book and other debts, and monetary claims due or owing to the Chargor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Delegate: any person appointed by the Company or any Receiver pursuant to clause 17 and any person appointed as attorney of the Company, Receiver or Delegate.

Designated Account: any account of the Chargor nominated by the Company as a designated account for the purposes of this deed.

Environment: the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

Environmental Law: all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

Equipment: all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Chargor, including any part of it and all spare parts, replacements, modifications and additions.

Event of Default: has the meaning given in clause 24.

Financial Collateral: has the meaning given to that expression in the Financial Collateral Regulations.

Financial Collateral Regulations: the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

Insurance Policy: each contract and policy of insurance effected or maintained by the Chargor from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Properties or the Equipment).

Intellectual Property: the Chargor's present and future patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Investments: all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Chargor, including any:

- (a) dividend, interest or other distribution paid or payable in relation to any of the Investments; and
- (b) right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

LPA 1925: the Law of Property Act 1925.

Properties: all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Chargor, or in which the Chargor holds an interest, and **Property** means any of them.

Receiver: a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Company under clause 15.

Secured Assets: all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

Secured Liabilities: all present and future monies, obligations and liabilities of the Chargor to the Company, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Asset Purchase Agreement or this deed (including, without limitation, those arising under clause 30.3(b)), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

Security Financial Collateral Arrangement: has the meaning given to that expression in the Financial Collateral Regulations.

Security: any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

Security Period: the period starting on the date of this deed and ending on the date on which the Company is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

1.2 In this deed:

- (a) clause headings shall not affect the interpretation of this deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes fax but not email;

- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause is to a clause of this deed;
- (l) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (q) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

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

1.4 A reference in this deed to a charge or mortgage of or over any Property includes:

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- (b) the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;
- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of that Property, and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

1.5 For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Asset Purchase Agreement and of any side letters between any parties in relation to the Asset Purchase Agreement are incorporated into this deed.

1.6 If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

2. COVENANT TO PAY

The Chargor shall, on demand, pay to the Company and discharge the Secured Liabilities when they become due.

3. GRANT OF SECURITY

3.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Company, by way of first legal mortgage, each Property.

3.2 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Company by way of first fixed charge:

- (a) all Properties acquired by the Chargor in the future;
- (b) all present and future interests of the Chargor not effectively mortgaged or charged under the preceding provisions of this clause 3 in, or over, freehold or leasehold property;
- (c) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
- (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Chargor's business or the use of any Secured Asset, and all rights in connection with them;
- (e) all its present and future goodwill;
- (f) all its uncalled capital;
- (g) all the Equipment;
- (h) all the Intellectual Property;
- (i) all the Book Debts;
- (j) all the Investments;
- (k) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest);

- (l) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.3.
- 3.3 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Company absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy.
- 3.4 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Company, by way of first floating charge, all the undertaking, property, assets and rights of the Chargor at any time not effectively mortgaged, charged or assigned pursuant to clause 3.1 to clause 3.3 inclusive.
- 3.5 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.4.
- 3.6 The floating charge created by clause 3.4 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:
 - (a) the Chargor:
 - (i) creates, or attempts to create, without the prior written consent of the Company, Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed or the Asset Purchase Agreement); or
 - (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
 - (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
 - (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor.
- 3.7 The Company may, in its sole discretion, at any time and by written notice to the Chargor, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Company in that notice.
- 3.8 Any asset acquired by the Chargor after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a floating charge under this deed, shall (unless the Company confirms otherwise to the Chargor in writing) be charged to the Company by way of first fixed charge.

4. LIABILITY OF THE CHARGOR

- 4.1 The Chargor's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:
- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Company that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
 - (b) the Company renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
 - (c) any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.
- 4.2 The Chargor waives any right it may have to require the Company to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Chargor.

5. REPRESENTATIONS AND WARRANTIES

- 5.1 The Chargor makes the representations and warranties set out in this clause 5 to the Company.
- 5.2 The Chargor is the sole legal and beneficial owner of the Secured Assets.
- 5.3 The Secured Assets are free from any Security other than the Security created by this deed.
- 5.4 The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.
- 5.5 There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.
- 5.6 There is no breach of any law or regulation that materially and adversely affects the Secured Assets.
- 5.7 No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.
- 5.8 Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.
- 5.9 No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

- 5.10 There is no prohibition on assignment in any Insurance Policy and the entry into this deed by the Chargor does not, and will not, constitute a breach of any Insurance Policy or any other agreement or instrument binding on the Chargor or its assets.
- 5.11 The Chargor has, at all times, complied in all material respects with all applicable Environmental Law.
- 5.12 This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor, and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms.
- 5.13 **Investments**
- (a) The Investments are fully paid and are not subject to any option to purchase or similar rights.
 - (b) No constitutional document of an issuer of an Investment, nor any other agreement:
 - (i) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or
 - (ii) contains any rights of pre-emption in relation to the Investments.
 - (c) The Chargor has complied with all notices relating to all or any of the Investments received by it pursuant to sections 790D and 790E of the Companies Act 2006.
 - (d) No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Investments.
- 5.14 The representations and warranties set out in clause 5.2 to clause 5.13 are made by the Chargor on the date of this deed and are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

6. GENERAL COVENANTS

- 6.1 The Chargor shall not at any time, except with the prior written consent of the Company:
- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed;
 - (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or
 - (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

6.2 The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Company, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

6.3 **Compliance with laws and regulations**

- (a) The Chargor shall not, without the Company's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- (b) The Chargor shall:
 - (i) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
 - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
 - (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

6.4 The Chargor shall use its best endeavours to:

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on each insurer in respect of an Insurance Policy); and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Company may require from time to time.

6.5 The Chargor shall, promptly on becoming aware of any of the same, notify the Company in writing of:

- (a) any representation or warranty set out in clause 5 which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this deed.

6.6 **Insurance**

- (a) The Chargor shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:
 - (i) loss or damage by fire or terrorist acts;
 - (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor; and

- (iii) any other risk, perils and contingencies as the Company may reasonably require.
- (b) Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Company, and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Secured Assets (meaning in the case of any premises on any Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years, including provision for increases in rent during the period of insurance
- (c) The Chargor shall, if requested by the Company, produce to the Company each policy, certificate or cover note relating to the insurance required by clause 6.6(a) (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Chargor is entitled to obtain from the landlord under the terms of the relevant lease).
- (d) The Chargor shall, if requested by the Company, procure that a note of the Company's interest is endorsed upon each insurance policy (other than public liability and third party liability insurances) maintained by it or any person on its behalf in accordance with clause 6.6(a) but without the Company having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.

6.7 The Chargor shall:

- (a) promptly pay all premiums in respect of each insurance policy maintained by it in accordance with clause 6.6(a) and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Company so requires) produce to, or deposit with, the Company the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with clause 6.6(a) (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Chargor is entitled to obtain from the landlord under the terms of the relevant lease).

6.8 The Chargor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with clause 6.6(a).

6.9 All monies payable under any insurance policy maintained by it in accordance with clause 6.6(a) at any time (whether or not the security constituted by this deed has become enforceable) shall:

- (a) immediately be paid to the Company;
- (b) if they are not paid directly to the Company by the insurers, be held, pending such payment, by the Chargor as trustee of the same for the benefit of the Company; and
- (c) be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this deed has become enforceable and if the Company so directs, in or towards discharge or reduction of the Secured Liabilities.

6.10 The Chargor shall:

- (a) on the execution of this deed and as so requested by the Company from time to time:
 - (i) give notice of this deed to each insurer under an Insurance; and
 - (ii) procure that each insurer provides to the Company promptly an acknowledgement of the notice; and
- (b) on the execution of this deed and as so requested by the Company from time to time:
 - (i) give notice of this deed to each bank, financial institution or other person (other than the Company) with whom the Chargor holds an account (including each Designated Account); and
 - (ii) procure that each such bank, financial institution or other person provides to the Company promptly an acknowledgement of the notice.

6.11 The Chargor shall:

- (a) give the Company such information concerning the location, condition, use and operation of the Secured Assets as the Company may require;
- (b) permit any persons designated by the Company and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- (c) promptly notify the Company in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Company's prior approval, implement those proposals at its own expense.

- 6.12 The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Company.

7. PROPERTY COVENANTS

- 7.1 The Chargor shall keep all premises and fixtures and fittings on each Property in good and substantial repair and condition.
- 7.2 The Chargor shall not, without the prior written consent of the Company:
- (a) pull down or remove the whole, or any part of, any building forming part of any Property or permit the same to occur;
 - (b) make or permit any material alterations to any Property, or sever or remove, or permit to be severed or removed, any of its fixtures; or
 - (c) remove or make any material alterations to any of the Equipment belonging to, or in use by, the Chargor on any Property (except to effect necessary repairs or replace them with new or improved models or substitutes).
- 7.3 The Chargor shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in that trade or business.
- 7.4 The Chargor shall:
- (a) give full particulars to the Company of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (**Planning Notice**) that specifically applies to any Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Planning Notice; and
 - (b) at its own expense, immediately on request by the Company, and at the cost of the Chargor, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Company in making, any objections or representations in respect of that Planning Notice that the Company may desire.
- 7.5 The Chargor shall:
- (a) observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or may be subjected, and (if the Company so requires) produce evidence sufficient to satisfy the Company that those covenants, stipulations and conditions have been observed and performed;
 - (b) diligently enforce all covenants, stipulations and conditions benefiting each Property and shall not (and shall not agree to) waive, release or vary any of the same; and

- (c) (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.

7.6 The Chargor shall:

- (a) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and
- (b) pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier.

7.7 The Chargor shall not, without the prior written consent of the Company:

- (a) grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise, or agree to exercise, the statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the Law of Property Act 1925; or
- (b) in any other way dispose of, surrender or create, or agree to dispose of, surrender or create, any legal or equitable estate or interest in the whole or any part of any Property.

7.8 If the title to any Property is not registered at the Land Registry, the Chargor shall procure that no person (other than itself) shall be registered under the Land Registration Acts 1925 to 2002 as proprietor of all or any part of any Property without the prior written consent of the Company. The Chargor shall be liable for the costs and expenses of the Company in lodging cautions against the registration of the title to the whole or any part of any Property from time to time.

7.9 The Chargor shall not, without the prior written consent of the Company:

- (a) make or, insofar as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- (b) carry out, or permit, or suffer to be carried out on any Property any development as defined in the Town and Country Planning Act 1990 and the Planning Act 2008, or change or permit or suffer to be changed the use of any Property.

7.10 The Chargor shall:

- (a) comply with all the requirements of Environmental Law both in the conduct of its general business and in the management, possession or occupation of each Property; and
- (b) obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law.

- 7.11 The Chargor shall not, without the prior written consent of the Company, enter into any onerous or restrictive obligations affecting the whole or any part of any Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Property.
- 7.12 The Chargor shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Property without the prior written consent of the Company.
- 7.13 The Chargor shall permit the Company, any Receiver and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice.
- 7.14 The Chargor shall inform the Company promptly of any acquisition by the Chargor of, or contract made by the Chargor to acquire, any freehold, leasehold or other interest in any property.
- 7.15 The Chargor shall not, without the prior written consent of the Company:
- (a) exercise any VAT option to tax in relation to any Property; or
 - (b) revoke any VAT option to tax exercised, and disclosed to the Company, before the date of this deed.
- 7.16 The Chargor consents to an application being made by the Company to the Land Registry for the following restriction in Form P to be registered against its title to each Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of TRACKPACK LIMITED (IN LIQUIDATION) referred to in the charges register or their conveyancer."

8. INVESTMENTS COVENANTS

8.1 Deposit of title documents

- (a) The Chargor shall:
- (i) on the execution of this deed, deliver to the Company, or as the Company may direct, all stock or share certificates and other documents of title or evidence of ownership relating to any Investments owned by the Chargor at that time; and
 - (ii) on the purchase or acquisition by it of Investments after the date of this deed, deposit with the Company, or as the Company may direct, all stock or share certificates and other documents of title or evidence of ownership relating to those Investments.

- (b) At the same time as depositing documents with the Company, or as the Company may direct, in accordance with clause 8.1(a), the Chargor shall also deposit with the Company, or as the Company may direct:

- (i) all stock transfer forms relating to the relevant Investments duly completed and executed by or on behalf of the Chargor, but with the name of the transferee, the consideration and the date left blank; and
 - (ii) any other documents (in each case duly completed and executed by or on behalf of the Chargor) that the Company may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments,

so that the Company may, at any time and without notice to the Chargor, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration.

8.2 Nominations

- (a) The Chargor shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated:
 - (i) does not exercise any rights in respect of any Investments without the prior written approval of the Company; and
 - (ii) immediately on receipt by it, forward to the Company all communications or other information received by it in respect of any Investments for which it has been so nominated.
- (b) The Chargor shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

8.3 The Chargor shall:

- (a) obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Investments, for the transfer of the Investments to the Company or its nominee, or to a purchaser on enforcement of the security constituted by this deed; and
- (b) procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer of the Investments in any manner that the Company may require in order to permit the transfer of the Investments to the Company or its nominee, or to a purchaser on enforcement of the security constituted by this deed.

8.4 **Dividends and voting rights before enforcement**

- (a) Before the security constituted by this deed becomes enforceable, the Chargor may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Company or any of its nominees, the Company will hold all those dividends, interest and other monies received by it for the Chargor and will pay them to the Chargor promptly on request.
- (b) Before the security constituted by this deed becomes enforceable, the Chargor may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Company or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:
 - (i) it shall not do so in any way that would breach any provision of the Asset Purchase Agreement or this deed or for any purpose inconsistent with the Asset Purchase Agreement or this deed; and
 - (ii) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Company's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Company's security under this deed.
- (c) The Chargor shall indemnify the Company against any loss or liability incurred by the Company (or its nominee) as a consequence of the Company (or its nominee) acting in respect of the Investments at the direction of the Chargor.
- (d) The Company shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Company considers prejudicial to, or impairing the value of, the security created by this deed.

8.5 After the security constituted by this deed has become enforceable:

- (a) all dividends and other distributions paid in respect of the Investments and received by the Chargor shall be held by the Chargor on trust for the Company and immediately paid into a Designated Account or, if received by the Company, shall be retained by the Company; and
- (b) all voting and other rights and powers attaching to the Investments shall be exercised by, or at the direction of, the Company and the Chargor shall, and shall procure that its nominees shall, comply with any directions the Company may give, in its absolute discretion, concerning the exercise of those rights and powers.

8.6 Notwithstanding the security created by this deed, the Chargor shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Chargor acknowledges that the Company

shall not be under any liability in respect of any such calls, instalments or other payments.

- 8.7 The Chargor shall not, without the prior written consent of the Company, amend, or agree to the amendment of:
- (a) the memorandum or articles of association, or any other constitutional documents, of any issuer of the Investments that is not a public company; or
 - (b) the rights or liabilities attaching to, or conferred by, all or any of the Investments.
- 8.8 The Chargor shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of the Investments that is not a public company shall not:
- (a) consolidate or subdivide any of the Investments, or re-organise, exchange, repay or reduce its share capital in any way;
 - (b) issue any new shares or stock; or
 - (c) refuse to register any transfer of any of the Investments that may be lodged with it for registration by, or on behalf of, the Company or the Chargor in accordance with this deed.
- 8.9 The Chargor shall, promptly following receipt, send to the Company copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments.
- 8.10 The Chargor shall promptly copy to the Company and comply with all requests for information which are made under the Companies Act 2006 (including, without limitation, under sections 790D, 790E and 793 of the Companies Act 2006) relating to all or any part of the Secured Assets. If it fails to do so, the Company may elect to provide such information as it may have on behalf of the Chargor.

9. EQUIPMENT COVENANTS

- 9.1 The Chargor shall:
- (a) maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;
 - (b) at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and
 - (c) not permit any Equipment to be:
 - (i) used or handled other than by properly qualified and trained persons;or

- (ii) overloaded or used for any purpose for which it is not designed or reasonably suitable.

9.2 The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Company.

9.3 The Chargor shall, if so requested by the Company, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF CHARGE

This [DESCRIBE ITEM] and all additions to it [and ancillary equipment] are subject to a fixed charge dated [DATE] in favour of TRACKPACK LIMITED (IN LIQUIDATION)."

9.4 The Chargor shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 9.3.

10. BOOK DEBTS COVENANTS

10.1 The Chargor shall as an agent for the Company, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Company.

10.2 The Chargor shall not, without the prior written consent of the Company, withdraw any amounts standing to the credit of any Designated Account.

10.3 The Chargor shall, if called on to do so by the Company, execute a legal assignment of the Book Debts to the Company on such terms as the Company may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

10.4 The Chargor shall not (except as provided by 10.1 or with the prior written consent of the Company) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

11. INTELLECTUAL PROPERTY COVENANTS

11.1 The Chargor shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.

11.2 The Chargor shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Company informed of all matters relating to each such registration.

11.3 The Chargor shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

12. POWERS OF THE COMPANY

12.1 The Company shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.

12.2 The Chargor irrevocably authorises the Company and its agents to do all things that are necessary or desirable for that purpose.

12.3 Any monies expended by the Company in remedying a breach by the Chargor of its obligations contained in this deed shall be reimbursed by the Chargor to the Company on a full indemnity basis and shall carry interest in accordance with clause 19.1.

12.4 The rights of the Company under clause 12.1 to 12.3 are without prejudice to any other rights of the Company under this deed.

12.5 The exercise of any rights of the Company under this deed shall not make the Company liable to account as a mortgagee in possession.

12.6 At any time after the security constituted by this deed has become enforceable, the Company or any Receiver may, as agent for the Chargor, dispose of any chattels or produce found on any Property.

12.7 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 12.6, the Chargor shall indemnify the Company and any Receiver against any liability arising from any disposal made under clause 12.6.

12.8 To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Company in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

12.9 If the Company receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Company may open a new account for the Chargor in the Company's books. Without prejudice to the Company's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

12.10 If the Company does not open a new account immediately on receipt of the notice, or deemed notice, under clause 12.9, then, unless the Company gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Company shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Company.

12.11 The Company may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this deed or to the liability of the Chargor for the Secured Liabilities.

12.12 Appointment of an Administrator

(a) The Company may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

(b) Any appointment under this clause 12.12 shall:

(i) be in writing signed by a duly authorised signatory of the Company; and

(ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

(c) The Company may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 12.12 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

13. WHEN SECURITY BECOMES ENFORCEABLE

13.1 The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

13.2 After the security constituted by this deed has become enforceable, the Company may, in its absolute discretion, 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 Secured Assets.

14. ENFORCEMENT OF SECURITY

14.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

- 14.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 13.1.
- 14.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.
- 14.4 The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Company and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Chargor, to:
- (a) grant a lease or agreement to lease;
 - (b) accept surrenders of leases; or
 - (c) grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Chargor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Company or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

- 14.5 At any time after the Company has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this deed or the Asset Purchase Agreement, the Chargor will allow the Company or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Company or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.
- 14.6 At all times, the Chargor must use its best endeavours to allow the Company or its Receiver access to any premises for the purpose of clause 14.5 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.
- 14.7 At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Company may:
- (a) redeem that or any other prior Security;
 - (b) procure the transfer of that Security to it; and
 - (c) settle and pass any account of the holder of any prior Security.
- 14.8 The settlement and passing of any such account passed under clause 14.7(c) shall, in the absence of any manifest error, be conclusive and binding on the Chargor. All monies paid by the Company to an encumbrancer in settlement of any of those

accounts shall, as from its payment by the Company, be due from the Chargor to the Company on current account and shall bear interest at the default rate of interest specified in the Asset Purchase Agreement and be secured as part of the Secured Liabilities.

14.9 No purchaser, mortgagee or other person dealing with the Company, any Receiver or Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Company, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Company, any Receiver or any Delegate is to be applied.

14.10 Each Receiver and the Company is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

14.11 Neither the Company, any Receiver, any Delegate nor any Administrator shall be liable, by reason of entering into possession of a Security Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

14.12 The receipt of the Company, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Company, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

14.13 To the extent that:

- (a) the Secured Assets constitute Financial Collateral; and
- (b) this deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement,

the Company shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Company may, in its absolute discretion, determine.

14.14 The value of any Secured Assets appropriated in accordance with this clause shall be:

- (a) in the case of cash, the amount standing to the credit of each of the Chargor's accounts with any bank, financial institution or other person, together with all

interest accrued but unposted, at the time the right of appropriation is exercised; and

- (b) in the case of Investments, the price of those Investments at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Company may select (including independent valuation).

14.15 The Chargor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

15. RECEIVER

15.1 At any time after the security constituted by this deed has become enforceable, or at the request of the Chargor, the Company may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

15.2 The Company may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

15.3 The Company may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

15.4 The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Company under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

15.5 The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Company despite any prior appointment in respect of all or any part of the Secured Assets.

15.6 Any Receiver appointed by the Company under this deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Company.

16. POWERS OF RECEIVER

16.1 General

- (a) Any Receiver appointed by the Company under this deed shall, in addition to the powers conferred on it by statute, have the powers set out in clause 16.2 to clause 16.23.
 - (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
 - (c) Any exercise by a Receiver of any of the powers given by clause 16 may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in clause 16.16) or itself.
- 16.2 A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.
- 16.3 A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that it thinks fit.
- 16.4 A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.
- 16.5 A Receiver may make, exercise or revoke any value added tax option to tax as it thinks fit.
- 16.6 A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Company may prescribe or agree with it.
- 16.7 A Receiver may collect and get in the Secured Assets or any part of them in respect of which it is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.
- 16.8 A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor.
- 16.9 A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

- 16.10 A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Chargor.
- 16.11 A Receiver may sell and assign all or any of the Book Debts in respect of which it is appointed in any manner, and generally on any terms and conditions, that it thinks fit.
- 16.12 A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.
- 16.13 A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that it may think expedient.
- 16.14 A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as it thinks fit.
- 16.15 A Receiver may make substitutions of, or improvements to, the Equipment as it may think expedient.
- 16.16 A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Chargor on its directors in respect of calls authorised to be made by them.
- 16.17 A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 19, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this deed.
- 16.18 A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if it had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.
- 16.19 A Receiver may, for any of the purposes authorised by this clause 16, raise money by borrowing from the Company (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Company consents, terms under which that security ranks in priority to this deed).
- 16.20 A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.
- 16.21 A Receiver may delegate his powers in accordance with this deed.
- 16.22 A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it would be capable of exercising, and do all those acts and

things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

- 16.23 A Receiver may do any other acts and things that it:
- (a) may consider desirable or necessary for realising any of the Secured Assets;
 - (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
 - (c) lawfully may or can do as agent for the Chargor.

17. DELEGATION

- 17.1 The Company or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 21.1).
- 17.2 The Company and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.
- 17.3 Neither the Company nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

18. APPLICATION OF PROCEEDS

- 18.1 All monies received by the Company, a Receiver or a Delegate pursuant to this deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:
- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Company (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
 - (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Company determines; and
 - (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.
- 18.2 Neither the Company, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.
- 18.3 All monies received by the Company, a Receiver or a Delegate under this deed:
- (a) may, at the discretion of the Company, Receiver or Delegate, be credited to any suspense or securities realised account;

- (b) shall bear interest, if any, at the rate agreed in writing between the Company and the Chargor; and
- (c) may be held in that account for so long as the Company, Receiver or Delegate thinks fit.

19. COSTS AND INDEMNITY

19.1 The Chargor shall, promptly on demand, pay to, or reimburse, the Company and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Company, any Receiver or any Delegate in connection with:

- (a) this deed or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Company's, a Receiver's or a Delegate's rights under this deed; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Chargor) at the rate and in the manner specified in the Asset Purchase Agreement.

19.2 The Chargor shall indemnify the Company, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- (c) any default or delay by the Chargor in performing any of its obligations under this deed.

Any past or present employee or agent may enforce the terms of this clause 19.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

20. FURTHER ASSURANCE

20.1 The Chargor shall, at its own expense, take whatever action the Company or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security intended to be created by this deed;
- (b) facilitating the realisation of any Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Company or any Receiver in respect of any Secured Asset,

including, without limitation (if the Company or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Company or to its nominee) and the giving of any notice, order or direction and the making of any registration.

21. POWER OF ATTORNEY

21.1 By way of security, the Chargor irrevocably appoints the Company, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Chargor is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Company, any Receiver or any Delegate.

21.2 The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 21.1.

22. RELEASE

Subject to clause 30.3, on the expiry of the Security Period (but not otherwise), the Company shall, at the request and cost of the Chargor, take whatever action is necessary to:

- (a) release the Secured Assets from the security constituted by this deed; and
- (b) reassign the Secured Assets to the Chargor.

23. EXCLUSION OF THE COMPANY LIQUIDATORS' LIABILITY

The Company Liquidators have entered into and signed this deed as agent for or on behalf of the Company and neither they, their firm, partners, employees, advisers, representatives or agents shall incur any personal liability in respect of any of the

obligations undertaken by the Company or in respect of any failure on the part of the Company to observe, perform or comply with any such obligations or under or in relation to any associated arrangements or negotiations or under any document or assurance made pursuant to this deed. The Company Liquidators are party to this deed in their personal capacity only for the purpose of receiving the benefit of the exclusions, limitations, undertakings, covenants and indemnities in their favour contained in this deed.

24. EVENTS OF DEFAULT

Each of the events or circumstances set out in this clause is an Event of Default.

- 24.1 The Chargor fails to pay any sum due under the Asset Purchase Agreement and/or this deed when due.
- 24.2 The Chargor fails (other than by failing to pay) to comply with any provision of the Asset Purchase Agreement and/or this deed and (if the Company considers, acting reasonably, that the default is capable of remedy), such default is not remedied within 10 Business Days of the earlier of:
 - (a) the Company notifying the Chargor of the default and the remedy required; and
 - (b) the Chargor becoming aware of the default.
- 24.3 Any representation, warranty or statement made, repeated or deemed made by the Chargor in, or pursuant to, the Asset Purchase Agreement and/or this deed is (or proves to have been incomplete, untrue, incorrect or misleading when made, repeated or deemed made).
- 24.4 The Chargor stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay their debts as they fall due.
- 24.5 The value of the Chargor's assets is less than its liabilities (taking into account contingent and prospective liabilities).
- 24.6 A moratorium is declared in respect of any Indebtedness of the Chargor.
- 24.7 Any action, proceedings, procedure or step is taken for:
 - (a) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Chargor; or
 - (b) the composition, compromise, assignment or arrangement with any creditor of the Chargor; or
 - (c) the appointment of a liquidator, receiver, administrative receiver, administrator, manager or other similar officer in respect of the Chargor or any of its assets.

- 24.8 The Chargor commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties).
- 24.9 Any event occurs in relation to the Chargor similar to those in clause 24.4 to clause 24.8 (inclusive) under the laws of any applicable jurisdiction.
- 24.10 A distress, attachment, execution, expropriation, sequestration or another analogous legal process is levied, enforced or sued out on, or against, the Chargor's assets and is not discharged or stayed within 21 days.
- 24.11 Any provision of the Asset Purchase Agreement and/or this deed is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.

25. ASSIGNMENT AND TRANSFER

- 25.1 At any time, without the consent of the Chargor, the Company may assign or transfer any or all of its rights and obligations under this deed. The Company may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Secured Assets and this deed that the Company considers appropriate.
- 25.2 The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

26. SET-OFF

- 26.1 The Company may at any time set off any liability of the Chargor to the Company against any liability of the Company to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Company may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Company of its rights under this clause 26 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.
- 26.2 The Company is not obliged to exercise its rights under clause 26.1. If, however, it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.
- 26.3 All payments made by the Chargor to the Company under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

27. AMENDMENTS, WAIVERS AND CONSENTS

- 27.1 No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
- 27.2 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 27.3 A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Company shall be effective unless it is in writing.
- 27.4 The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

28. SEVERANCE

- 28.1 If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

29. THIRD PARTY RIGHTS

- 29.1 Except as expressly provided in clause 19.2, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 29.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.]

30. FURTHER PROVISIONS

- 30.1 The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Company may hold for any of the Secured

Liabilities at any time. No prior security held by the Company over the whole or any part of the Secured Assets shall merge in the security created by this deed.

- 30.2 The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Company discharges this deed in writing.
- 30.3 Any release, discharge or settlement between the Chargor and the Company shall be deemed conditional on no payment or security received by the Company in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:
- (a) the Company or its nominee may retain this deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Company deems necessary to provide the Company with security against any such avoidance, reduction or order for refund; and
 - (b) the Company may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.
- 30.4 A certificate or determination by the Company as to any amount for the time being due to it from the Chargor under this deed and the Asset Purchase Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.
- 30.5 The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.
- 30.6 Notwithstanding anything to the contrary in this deed, neither the obtaining of a moratorium by the Chargor under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Chargor with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:
- (a) an event under this deed which causes any floating charge created by this deed to crystallise;
 - (b) an event under this deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Chargor; or
 - (c) a ground under this deed for the appointment of a Receiver.

31. NOTICES

- 31.1 Any notice or other communication given to a party under or in connection with, this agreement shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service; and
- (c) sent to the address set out besides each party above or to any other address (or email address) as is notified in writing by one party to the other from time to time.

31.2 Any notice or other communication that the Company gives to the Chargor shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; or
- (c) if sent by email, on transmission of such email.

A notice or other communication given as described in clause 31.2(a) or clause 31.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

31.3 Any notice or other communication given to the Company shall be deemed to have been received only on actual receipt.

31.4 This clause 31 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

32. GOVERNING LAW AND JURISDICTION

32.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

32.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim that arises out of, or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a Deed for and on behalf of)
ANYDAYDIRECT LTD)
)



Director



Witness

In the presence of:

Witness name:

Witness address:

Witness occupation:

EVALDAS SALTUPYS
2 DRAGONFLY HOUSE
UPPERWOOD CRESCENT
LONDON UB6 7FL
WAREHOUSE MANAGER

Executed as a Deed by the Company)
Liquidator, for himself and on behalf of)
the other Company Liquidator, for the)
purposes of taking the benefit of the)
terms of this agreement only and without
personal responsibility



Liquidator

In the presence of:

SUMIYAH HUSSAIN
Witness

Witness name:

Witness address:

PEARL ASSURANCE HOUSE,
319 BALLARDS LANE, LONDON,
FINCHLEY, N12 8LY
INSOLVENCY ADMINISTRATOR

Witness occupation:

Executed as a Deed by the Company)
Liquidator for and on behalf of)
TRACKPACK LIMITED (IN)
LIQUIDATION))
acting as agent and without personal
liability



Liquidator

In the presence of:

SUMIYAH HUSSAIN
Witness

Witness name:

Witness address:

PEARL ASSURANCE HOUSE,
319 BALLARDS LANE, LONDON,
FINCHLEY, N12 8LY
INSOLVENCY ADMINISTRATOR

Witness occupation: