



Registration of a Charge

LLP name: **TOSCAFUND ASSET MANAGEMENT LLP**

LLP number: **OC320318**



X6ZB4PFU

Received for Electronic Filing: **07/02/2018**

Details of Charge

Date of creation: **26/01/2018**

Charge code: **OC32 0318 0002**

Persons entitled: **SILICON VALLEY BANK**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 AS APPLIED BY THE LIMITED LIABILITY PARTNERSHIPS (APPLICATION OF COMPANIES ACT 2006) REGULATIONS 2009 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

PARISA CLOVIS



CERTIFICATE OF THE REGISTRATION OF A CHARGE

LLP number: OC320318

Charge code: OC32 0318 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th January 2018 and created by TOSCAFUND ASSET MANAGEMENT LLP was delivered pursuant to Part 25 of the Companies Act 2006 as applied by The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 on 7th February 2018 .

Given at Companies House, Cardiff on 9th February 2018

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under the Limited Liability Partnership
(Application of the Companies Act 2006) Regulations 2009 SI 2009/1804



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

EXECUTION VERSION

DATED 26 JANUARY 2018

**(1) TOSCA DEBT CAPITAL FUND II L.P.
ACTING BY ITS INVESTMENT MANAGER
TOSCAFUND ASSET MANAGEMENT LLP**

(2) TOSCA DEBT CAPITAL GP II LLP

(3) TOSCAFUND ASSET MANAGEMENT LLP

(as Chargors)

(4) SILICON VALLEY BANK

(as Lender)

**ACCOUNT CHARGE
(BANK ACCOUNT WITH THIRD PARTY BANK)**

ARTHUR COX

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THIS DEED is made on 26 JANUARY 2018

BETWEEN:

- (1) **TOSCA DEBT CAPITAL FUND II L.P.**, a limited partnership established in England and Wales with registered number LP17761 and having its registered office at 7th Floor, 90 Long Acre, London WC2E 9RA acting by its manager **TOSCAFUND ASSET MANAGEMENT LLP**, a limited liability partnership established under the laws of England and Wales with registered number OC320318 with its registered address at 7th Floor, 90 Long Acre London WC2E 9RA (the "**Borrower**");
- (2) **TOSCA DEBT CAPITAL GP II LLP**, a limited liability partnership established under the laws of England and Wales with registered number OC415057 with its registered address at 7th Floor, 90 Long Acre London WC2E 9RA (the "**General Partner**");
- (3) **TOSCAFUND ASSET MANAGEMENT LLP**, a limited liability partnership established under the laws of England and Wales with registered number OC320318 with its registered address at 7th Floor, 90 Long Acre London WC2E 9RA (the "**Manager**") and together with the Borrower and the General Partner, the "**Chargors**")
- (4) **SILICON VALLEY BANK** registered in England and Wales under numbers BR014561 and FC029579 of Alphabeta, 14 – 18 Finsbury Square, London EC2A 1BR (the "**Lender**").

RECITALS:

- (A) The Lender has agreed to make available a facility to the Borrower pursuant to the Facility Agreement (as defined below), whereby the Lender has agreed to make Loans (as defined in the Facility Agreement) for the purposes of, among other things, funding investment activities and paying partnership expenses incurred in connection with such investments.
- (B) Each Chargor has agreed to charge certain of its assets as Security to the Lender as set out in this Deed.
- (C) Pursuant to a management agreement entered into on 13 October 2017 between the Borrower (acting by the General Partner) and the Manager, the Manager was appointed by the Borrower (acting by the General Partner) to manage and operate the Borrower to the exclusion of any other person.
- (D) The Chargors are satisfied that they will receive direct or indirect economic benefits from the Loans and other extensions of credit under the Facility Agreement and that entering into this Deed is for the purposes and to the benefit of the Chargors and their business.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, (including the Recitals above) all terms and expressions shall, unless otherwise defined in this Deed, have the meaning attributed to such terms in the Facility Agreement. In addition, in this Deed (including the Recitals above) the following terms shall, unless the context otherwise requires, have the following meanings:

- (a) "**2009 Act**" means the Land and Conveyancing Law Reform Act 2009.

- (b) **"Account Bank"** means a bank (not being the Lender) with which a Chargor holds a Third Party Security Account.
- (c) **"Charged Property"** means the Chargors' undertaking, property and assets, both present and future, secured in favour of the Lender by this Deed and any reference to **"Charged Property"** includes a reference to any part thereof.
- (d) **"Companies Act"** means the Companies Act 2014.
- (e) **"Deed"** means this charge.
- (f) **"Default Rate"** means the rate specified in Clause 9.3 (*Default interest*) of the Facility Agreement.
- (g) **"Delegate"** means any delegate, agent, manager, attorney or co-trustee appointed by the Lender or by a Receiver.
- (h) **"Enforcement Date"** means a date on which an Event of Default has occurred and is continuing which has resulted in the Lender exercising any of its rights under Clause 19.18 (*Acceleration following an Event of Default*) under the Facility Agreement.
- (i) **"Examiner"** has the meaning given to that term in Section 2 of the Companies Act.
- (j) **"Facility Agreement"** means the revolving credit agreement dated on or about the date hereof between the Borrower as borrower, the General Partner as general partner, the Manager as investment manager and the Lender as may be amended, restated, supplemented or otherwise modified from time to time and any other agreement entered into under, or supplemental to it.
- (k) **"Parties"** means the parties to this Deed and any reference to **"Party"** means any one of them.
- (l) **"Receiver"** means a receiver or receiver and manager of the whole or any part of the Charged Property.
- (m) **"Secured Obligations"** means all present and future indebtedness, obligations, and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Chargors to the Lender under any of the Finance Documents, together with all costs, charges and expenses incurred by the Lender in connection with the protection, preservation or enforcement of its respective rights under the Finance Documents or any other document evidencing or securing any such obligations and liabilities.
- (n) **"Security"** means the security from time to time constituted, or intended to be constituted, by this Deed.
- (o) **"Security Interest"** means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
- (p) **"Security Period"** means the period from the date of this Deed until the later of:

- (i) the date on which all of the Secured Obligations have been unconditionally and irrevocably paid, performed and discharged in full; and
- (ii) the date on which all of the Security has been irrevocably and unconditionally released and discharged by the Lender.
- (q) **"Spot Rate of Exchange"** means the Lender's spot rate of exchange for the purchase of the relevant currency in Sterling in the London foreign exchange market at or about 11.00 a.m. London time on a particular day.
- (r) **"Terms"** means the terms and conditions on which a Third Party Security Account is from time to time held by a Chargor with an Account Bank.
- (s) **"Third Party Security Accounts"** means the accounts of the Chargors listed under the heading **"Third Party Security Accounts"** in Schedule 1, any replacement account(s) from time to time for those accounts or any subdivision or sub-account of that account and any renewal or re-designation of that account and any account designated by a Chargor and the Lender as a **"Third Party Security Account"** for the purposes of this Deed.
- (t) **"Third Party Security Account Balances"** means the balances from time to time standing to the credit of the Third Party Security Accounts.

1.2 Interpretation

- (a) Unless expressly defined in this Deed, capitalised terms defined in the Facility Agreement have the same meanings when used in this Deed; and
- (b) the construction provisions set out in Clause 1.2 (*Construction*) of the Facility Agreement shall apply equally to this Deed in so far as they are relevant to it, except that references to "this Agreement" will be construed as references to "this Deed"

2. COVENANT TO PAY

2.1 The Chargors will, on demand:

- (a) pay to the Lender, perform or discharge the Secured Obligations when they become due for payment, performance or discharge; and
- (b) pay to the Lender every sum now or hereafter due, owing or incurred by the Chargors in respect of the Secured Obligations.

2.2 If the Lender makes a demand under this Deed, that shall not preclude the Lender from making one or more further demands and shall not invalidate any previous demands.

2.3 Without prejudice to any rights that the Lender may have under the Facility Agreement subject to and in accordance with its terms, no liability under this Deed shall attach to the General Partner or Manager in excess of the proceeds of realisation of the Charged Property and the Lender shall not have recourse to any of the General Partner's or the Manager's assets other than its Charged Property.

3. CREATION OF SECURITY

As continuing security for the payment, performance and discharge of the Secured Obligations, each Chargor hereby charges by way of first fixed charge in favour of the Lender all of its rights, title, benefit and interest, present and future, in, to and in respect of the Third Party Security Accounts and Third Party Security Account Balances.

4. REPRESENTATIONS AND WARRANTIES

4.1 Each Chargor represents and warrants to the Lender that:

(a) *Registrations*

- (i) under the law of its Relevant Jurisdictions it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to this Deed or the transactions contemplated hereby;

(b) *Security*

- (i) this Deed creates the security which it purports to create and is not liable to be avoided or otherwise set aside in an insolvency of a Chargor;
- (ii) it is not a party to, nor are any of its assets bound by, any order or agreement under which it is, or in certain events may be, required to create or permit to arise any Security Interest over the Charged Property;
- (iii) where the Security is being provided to support a Chargor's obligations under a guarantee, an indemnity or a similar arrangement, it has not taken or received the benefit of any Security Interest from another person in respect of its obligations under this Deed;
- (iv) it has not taken (or omitted to take) any action, or permitted anything to be done, which could (in the Lender's opinion) jeopardise the existence or value of the Charged Property or the Security, or the priority of the Security;

(c) *Charged Property*

- (i) the details of the Charged Property listed in Schedule 1 to this Deed are true and complete;
- (ii) the Borrower is the sole legal and beneficial owner of the Charged Property;
- (iii) the Charged Property is not subject to any prior ranking or pari passu ranking Security Interest;
- (iv) no part of the Charged Property is subject to any prohibition or restriction on the creation of a Security Interest;
- (v) it has not agreed to dispose of the Charged Property;

- (vi) it has not received notice of any adverse claims in respect of the Charged Property;

(d) *Payments*

- (i) it is not required to make any deduction for or on account of Tax from any payment it may make under this Deed; and
- (ii) its payment obligations under this Deed rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

4.2 The representations and warranties contained in Clause 4.1 are made by each Chargor on the date of this Deed and on each date on which the representations and warranties contained in the Facility Agreement are deemed to be repeated in accordance with Clause 16 (*Representations and warranties*) of the Facility Agreement (by reference to the facts and circumstances existing at each date that they are deemed to be made).

5. **NEGATIVE PLEDGES**

5.1 Each Chargor covenants for the benefit of the Lender that, for the duration of the Security Period, it will not:

- (a) dispose of or otherwise deal with the Charged Property (including by way of any amendment to the terms on which the Charged Property is held or any amendment to the contractual rights of others in respect of the Charged Property) or create or agree or attempt to create or permit to exist any Security over the Charged Property without the Lender's prior written consent;
- (b) do or omit to do anything, or cause or permit anything to be done or omitted to be done, which could (in the opinion of the Lender) depreciate or otherwise prejudice the value or priority of the Security, or otherwise jeopardise the Charged Property (whether by way of the Charged Property becoming void or voidable, an increased payment becoming due to a third party by a Chargor in respect thereof, or otherwise); or
- (c) use the Lender's name or join the Lender in any legal proceedings in relation to the Charged Property without the Lender's prior written consent.

5.2 Notwithstanding the foregoing provisions of this Clause 5, the Parties agree that the Chargors are permitted to deal with the Charged Property as expressly permitted by the Facility Agreement.

6. **COVENANTS**

Each Chargor covenants for the benefit of the Lender, in the manner set out in this Clause 6, for the duration of the Security Period.

6.1 **General Covenants**

Each Chargor will:

- (a) comply with and punctually perform all of its obligations in respect of the Charged Property – if a Chargor fails to make a payment in respect of the Charged Property, it hereby agrees that the Lender may do so in its place and

the amount of such payment shall be deemed to form part of the Secured Obligations; and

- (b) diligently pursue its rights in respect of the Charged Property.

6.2 Authorisations

Each Chargor will promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

- (b) supply certified copies to the Lender of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- (i) enable it to perform its obligations under this Deed;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence of this Deed; and
- (iii) carry on its business where failure to do so has or is reasonably likely to have a material adverse effect on:
 - (A) its ability to perform its obligations under this Deed;
 - (B) the validity or enforceability of, or the effectiveness or ranking of the Security or the rights or remedies of the Lender hereunder.

6.3 Ranking

Each Chargor shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under this Deed rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

6.4 Compliance with Laws

Each Chargor will comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a material adverse effect on:

- (a) its ability to perform its obligations under this Deed; or
- (b) the validity or enforceability of, or the effectiveness or ranking of the Security or the rights or remedies of the Lender hereunder.

- 6.5 If a Chargor fails to comply with any covenant in this Deed or otherwise in respect of the Charged Property, the Lender may take any such action as it considers, in its sole discretion, to be necessary or desirable to preserve the value and priority of its Security, and to prevent the Charged Property and its value and priority being jeopardised by such failure to comply.

7. NOTICES AND ACKNOWLEDGEMENTS

Each Chargor will, immediately following execution of this Deed or, if later, immediately following the opening by it of a Third Party Security Account, deliver to each Account Bank

a notice of charge in the form set out in Part 1 of Schedule 2 and use all reasonable endeavours to procure delivery of an acknowledgement in the form set out in Part 2 of Schedule 2 to the Lender.

8. FURTHER ASSURANCES

- 8.1 Each Chargor shall, at its own cost, take such action as the Lender or any Receiver or Delegate may require for the purpose of creating, perfecting, maintaining, protecting, facilitating the realisation of, or facilitating the exercise of any rights in respect of, the Security.
- 8.2 The foregoing may include re-executing this Deed, executing other agreements creating a Security Interest or dealing with the Charged Property, serving notices, giving orders, giving directions, making filings or making registrations.
- 8.3 If a Chargor acquires an interest in any other Third Party Security Account or Third Party Security Account Balance after the date of this Deed, it shall promptly notify the Lender (at least seven Business Days before the acquisition and again immediately following the acquisition) and (at the Lender's request but at that Chargor's cost) execute and deliver such agreements and sign such forms as the Lender may require for the purposes of ensuring that the asset is secured in favour of the Lender in a manner satisfactory to the Lender.

9. ENFORCEMENT: GENERAL

9.1 On an Enforcement Date:

- (a) the Security will be immediately enforceable, and the Secured Obligations will be immediately due for payment, performance and discharge, without any requirement for notice to, or for demand to be served on, the Chargors; and
- (b) the statutory power of sale together with all other rights, powers, privileges, discretions and immunities conferred on mortgagees by law (in each case as varied by this Deed) will be immediately exercisable and the Lender shall have no liability arising out of its exercise of any such rights, powers, privileges, discretions and immunities.

9.2 On or at any time after an Enforcement Date:

- (a) the Lender may enforce, in its absolute discretion, all or any part of the Security in any manner that it sees fit. It shall not be necessary for any consent or court order to be obtained, any event to occur, any notification to be made or any condition to be fulfilled under any of Sections 97, 98, 100(1), 100(2), 100(3), 103(2) or 108(1) of the 2009 Act before the Lender takes steps to enforce the Security (including by way of appointment of one or more Receivers); and
- (b) the Lender may:
 - (i) redeem any prior Security Interest over the Charged Property; and/or
 - (ii) procure the transfer of any such Security Interest to itself; and/or

- (iii) settle and pass the accounts of the beneficiary of the prior Security Interest with any accounts so settled and passed being, in the absence of manifest error, conclusive and binding on the Chargors;
 - (c) each Chargor will, immediately on demand, pay to the Lender all of the Lender's costs and expenses (including Tax) in connection with the matters set out at (b) above and, until such amounts are paid in full, those amounts shall form part of the Secured Obligations.
- 9.3 Sections 92 (and any other restriction on the consolidation of mortgages), 94, 96(1)(c), 99, 101, 105(2), 106(3), 107 and 109 of the 2009 Act shall not apply to this Deed, the Security or any enforcement thereof.
- 9.4 On and after an Enforcement Date:
 - (a) each Chargor shall:
 - (i) take such steps as the Lender may require (at that Chargor's cost) to facilitate enforcement of the Security; and
 - (ii) hold any payment received by it in respect of any part of the Charged Property in trust for the Lender; and
 - (b) the Lender may exercise (without any consent or authority from the Chargors, and irrespective of any direction given by the Chargors) all of the Chargors' rights in respect of the Charged Property.

10. ENFORCEMENT: MORTGAGEE IN POSSESSION

- 10.1 On or at any time after an Enforcement Date, the Lender may (without any requirement for notice to, or for demand to be served on, the Chargors) and without prejudice to any other express or implied right of the Lender, take possession of the Charged Property as mortgagee in possession.
- 10.2 If the Lender takes possession as set out in Clause 10.1 above:
 - (a) it shall not be liable to account as mortgagee in possession, for any loss in connection with the Charged Property, for any loss on realisation of the Charged Property or for any default or omission for which a mortgagee in possession might be liable; and
 - (b) it shall not be obliged to take steps to sell the Charged Property.

11. ENFORCEMENT: RECEIVER APPOINTMENTS

- 11.1 On or at any time after an Enforcement Date, the Lender may appoint any person or persons as Receiver or Receivers of the Charged Property, regardless of whether the Lender is mortgagee in possession or not. The appointment of a Receiver over part of the Charged Property will not preclude the Lender from appointing the same or another Receiver over the balance of the Charged Property.
- 11.2 Any appointment of a Receiver, or removal or replacement of a Receiver, by the Lender must be in writing and may be made either under the hand of any officer, employee or agent of the Lender or as a deed.

- 11.3 The above powers of appointment are in addition, and without prejudice, to the Lender's powers under the 2009 Act and under other applicable laws, save as those powers may be expressly varied by this Deed.
- 11.4 The remuneration of any Receiver may be fixed by the Lender and, in doing so, the Lender shall not be bound by any restriction or maximum rate imposed by law (including by Section 108(7) of the 2009 Act).
- 11.5 Any such Receiver shall be the Chargors' agent for all purposes, and the Chargors will be solely responsible for the Receiver's acts, remuneration, contracts, engagements, defaults, losses, omissions and liabilities. All costs, expenses, outgoings and liabilities incurred by any such Receiver shall form part of the Secured Obligations.
- 11.6 The Lender shall not incur any liability whatsoever to any person as a result of either its appointment of a Receiver in respect of the Charged Property, or as a result of any action or inaction on the part of such Receiver.

12. ENFORCEMENT: RECEIVER POWERS

- 12.1 If more than one Receiver has been appointed, each may act individually or jointly (subject to the terms of the relevant appointment).
- 12.2 A Receiver may exercise any or all of his powers in his absolute discretion, and shall not be obliged to take any steps to sell the Charged Property.
- 12.3 No Receiver shall be liable to account as mortgagee in possession for any loss in connection with the Charged Property or the realisation thereof, or for any default or omission for which a mortgagee in possession might be liable.
- 12.4 A Receiver shall have all rights, powers, privileges, discretions and immunities conferred on receivers by law (in each case as varied by this Deed) including the powers listed in Section 437 of the Companies Act and shall also have the power to:
- (a) exercise (without being under any obligation to do so and without any liability for so doing) all rights in respect of the Charged Property over which he has been appointed, whether those rights are originally available (at law, in equity, under this Deed or under another agreement) to a Chargor, the Lender or any Receiver or Delegate;
 - (b) make notifications;
 - (c) enter into, amend, rescind or repudiate any agreements;
 - (d) comply with any requirement of law or regulation, and with any notices or orders received in respect of the Charged Property;
 - (e) deal with any accounts, claims (howsoever arising), contracts, demands, questions or disputes (howsoever arising) whatsoever which may arise in connection with the Security or the Charged Property;
 - (f) otherwise deal with the Charged Property in such manner and on such terms and conditions as he may see fit;
 - (g) use each Chargor's name and seal (if applicable) in the exercise of any of his powers; and

(h) delegate any or all of his powers.

12.5 A Receiver may exercise any powers referred to (expressly or by incorporation) in this Clause 12 (*Enforcement: Receiver Powers*) notwithstanding any insolvency of a Chargor, and a Receiver shall not be liable for any loss arising in connection with the exercise of those powers.

12.6 The Lender may exercise all rights, powers, privileges, discretions and immunities conferred on receivers by law or by this Deed irrespective of whether or not a Receiver has been appointed.

13. DELEGATION

The Lender or any Receiver appointed hereunder may at any time following an Enforcement Date delegate by power of attorney or in any other manner to any person or persons all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender or such Receiver under this Deed in relation to the Charged Property or any part thereof. Any such delegation may be made upon such terms (including power to sub-delegate) and subject to such regulations as the Lender or Receiver may think fit. The Lender or Receiver shall not be in any way liable or responsible to the Assignor for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate

14. POWER OF ATTORNEY

14.1 Each Chargor irrevocably appoints, by way of security, the Lender, each Receiver and each Delegate (acting solely, some acting together or all acting together) to be its attorney (with full powers of substitution and delegation) in its name and otherwise on its behalf, and as its act and deed to:

- (a) execute, deliver and perfect any agreement or form, and take any action (including the making of registrations, filings or notifications), which that Chargor is required to execute, deliver, perfect or take pursuant to this Deed whether for the purposes of perfecting the Security, or with effect from the Enforcement Date vesting the Charged Property in the Lender, any Receiver, any Delegate, any nominee of any of the foregoing, or any purchaser; and
- (b) generally with effect from the Enforcement Date use its name in connection with the exercise of any rights under this Deed.

14.2 Each Chargor agrees that:

- (a) it will be deemed to have ratified and approved anything done by any attorney pursuant to Clause 14.1; and
- (b) all monies expended by any such attorney in its capacity as such will be deemed to form part of the Secured Obligations.

15. APPLICATION OF PROCEEDS

15.1 Any moneys received by the Lender or by any Receiver appointed by it pursuant to this Deed and/or under the powers hereby conferred shall, after the occurrence of an Enforcement Date, be applied by the Lender for the following purposes and, unless otherwise determined by the Lender or such Receiver, in the following order of priority:

- (a) in satisfaction of or provision for all costs, charges and expenses incurred and payments made by the Lender or any Receiver appointed hereunder and of all remuneration due to a Receiver hereunder in each case, together with interest (after as well as before judgment) at the Default Rate from the date the same becomes due and payable until the date the same are unconditionally and irrevocably paid and discharged in full;
- (b) in or towards payment or discharged of the Secured Obligations or such part of them as is then due and payable; and
- (c) after the end of the Security Period, in payment of the surplus (if any) to the Borrower or other person entitled thereto

16. PROTECTION OF THIRD PARTIES

No person or company dealing with the Lender or the Receiver or its or his agents shall be concerned to enquire whether the Secured Obligations have become due and payable or whether any power which the Receiver is purporting to exercise has become exercisable or whether any of the Secured Obligations remains outstanding or to see to the application of any money paid to the Lender or to such Receiver.

17. AVOIDANCE OF PAYMENTS

If any amount paid to the Lender in respect of the Secured Obligations is capable of being avoided, reduced, adjusted, clawed-back or otherwise set aside on the insolvency of the payer or otherwise, that amount will not be considered as having been irrevocably paid for the purposes of this Deed and the Chargors' liability to the Lender in respect of that amount shall continue.

18. CURRENCY OF ACCOUNT

- 18.1 All payments hereunder shall be made in immediately available funds in the currency and to the account specified by the Lender in the corresponding demand
- 18.2 If any monies are received or held by the Lender in a currency other than that specified in such demand, such monies may be converted into such other currency as the Lender considers necessary or desirable to cover the Secured Obligations in that other currency at the Spot Rate of Exchange.
- 18.3 No payment to the Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of any Assignor unless and until the Lender shall have received payment in full in the currency in which the obligation or liability was incurred and to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency the Lender shall have a further separate cause of action against each Assignor to recover the amount of the shortfall.

19. MISCELLANEOUS PROVISIONS

19.1 Continuing Security

The Security is a continuing security and will extend to the ultimate balance of the Secured Obligations, regardless of any intermediate payment or settlement of the Secured Obligations.

19.2 Additional Security

The Security is in addition to, and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any other guarantee or security for the Secured Obligations which are now or may hereafter be held by the Lender whether from the Chargors or otherwise.

19.3 No Liability

None of the Lender, any Receiver or any Delegate or any person acting on its or their behalf shall incur any liability as a result of exercising its rights under this Deed, any neglect or default in respect of the Charged Property, taking possession of the Charged Property or realising the Security.

19.4 Financial Collateral

If any Charged Property constitutes “financial collateral” or this Deed and any Secured Obligations constitute a “security financial collateral arrangement” (in each case as defined in the European Communities (Financial Collateral Arrangements) Regulations 2010 (the “Financial Collateral Regulations”), the Lender may, on or after an Enforcement Date, appropriate all or any part of that financial collateral towards satisfaction of the Secured Obligations.

For that purpose, the Parties agree that:

- (a) the value of the appropriated financial collateral will be its market value determined by the Lender by reference to a public index, independent valuation or other method chosen by the Lender; and
- (b) the foregoing will constitute a commercially reasonable valuation method for the purposes of the Financial Collateral Regulations.

19.5 Confirmation

Each Chargor confirms that this Deed and the Security extend to any amendment to any Finance Document, however fundamental, and irrespective of whether such amendment imposes more onerous obligations on the Chargors.

19.6 Subsequent Security Interests and new accounts

If any subsequent Security Interest or any analogous expropriation, attachment, sequestration, distress, execution or process affects the Charged Property, the Lender may open a new account or accounts for the Chargors in its books or with any other person.

If the Lender does not do so, such account opening shall, unless express written notice is given by the Lender to the Chargors, be deemed to have taken place at the time when the Lender received, or was deemed to have received, notice of such Security Interest or process.

From the time that such account(s) is/are opened or deemed to have been opened, all payments made to the Lender will be credited, or will be deemed to be credited, to such new account(s) and will not operate to reduce any or all of the Secured Obligations.

19.7 Obligations not affected

Each Chargor's obligations under this Deed will not be affected by any act, omission, matter or thing which, but for this Clause 19.7, would reduce, release, prejudice or

diminish any of those obligations, in whole or in part (whether or not known to the Lender), including (in respect of the Chargors or any other person):

- (a) the grant of any time, waiver, consent, indulgence or concession;
- (b) the entry into, or the granting of any release in respect, of any composition or similar arrangement;
- (c) the entry into, amendment or release of any security or guarantee;
- (d) the enforcement, compromise, refusal to enforce or failure to enforce of any right, security or guarantee;
- (e) the failure to observe a formality or other requirement;
- (f) the failure to realise the full value of any security or guarantee;
- (g) a lack of capacity, power or authority;
- (h) an insolvency;
- (i) a change in constitution or membership;
- (j) the amendment (however fundamental) of any agreement;
- (k) any illegality, invalidity or unenforceability of any of the Secured Obligations or of any liability of another person;
- (l) the issue, confirmation, amendment, renewal or termination of any negotiable instrument;
- (m) any merger or amalgamation, howsoever effected;
- (n) any judgment being obtained; or
- (o) any act, event or omission which, but for this Clause 19.7, would or might operate to impair, discharge or otherwise affect the Chargors' obligations hereunder and the Secured Obligations.

19.8 Obligations remain enforceable

Each Chargor's obligations under this Deed will remain enforceable notwithstanding:

- (a) any restructuring of the Lender (including by way of an acquisition, change of control, change in legal status, change in constitution, merger, scheme of arrangement or division); or
- (b) the exercise of any stabilisation, recovery or resolution power in respect of the Lender.

19.9 Dealing with amounts received etc.

During the Security Period, the Lender may:

- (a) refrain from applying any monies received by, or enforcing any security or rights held by, the Lender or on its behalf in connection with the Secured Obligations, or apply those monies and enforce such security or rights as it

sees fit and the Chargors shall not be entitled to have those monies transferred to it; and

- (b) hold, in an interest-bearing suspense account, any monies received from the Chargors or from another person in respect of the Secured Obligations.

19.10 Waivers

Each Chargor waives:

- (a) any present or future right of set-off that it may have in respect of the Secured Obligations or the Charged Property; and
- (b) any right to interpose any defence based on any statute of limitations, claim of laches, claim of set-off or other counterclaim whatsoever.

19.11 Lender's discretion

Any right, remedy, power, authority or similar which may be exercised by the Lender or any Receiver or Delegate under this Deed may be exercised in its absolute and unfettered discretion without any obligation to provide a reason.

19.12 Amendments and waivers

This Deed may be amended or waived only with the consent of all Parties and any such amendment or waiver will be binding on all Parties.

19.13 Certificates and determinations

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

19.14 Accounts

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

19.15 Partial invalidity

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

19.16 Remedies and waivers

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

20. **RELEASE OF SECURITY**

Subject to the other provisions of this Deed, following the date on which all of the Secured Obligations have been unconditionally and irrevocably paid, performed and discharged in full, the Lender will, at the Chargors' request and cost, release, discharge and re-assign the Security to the Chargors.

21. **NOTICES AND COMMUNICATIONS**

Clause 25 (Notices) of the Facility Agreement shall apply to this Deed as if such clause were set out in full herein.

22. **ASSIGNMENT**

22.1 The Chargors may not assign, transfer or otherwise dispose of, or create a Security Interest over, all or any of their rights, title, interest, benefits or obligations under this Deed.

22.2 The Lender may assign and transfer all of its respective rights and obligations hereunder to any Party to who it is entitled to assign or transfer any of its obligations, rights and benefits under Clause 20 (*Changes to the Lender*) of the Facility Agreement.

23. **COUNTERPARTS**

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

24. **GOVERNING LAW AND JURISDICTION**

24.1 This Deed and any non-contractual obligations arising out of or in connection with it are governed by the laws of Ireland.

24.2 The Parties agree that the courts of Ireland:

- (a) have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed) or any non-contractual obligation arising out of or in connection with this Deed (a "Dispute"); and
- (b) are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

24.3 Clause 24.2 above is for the benefit of the Lender only. The Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction, and to the extent allowed by law, may take concurrent proceedings in any number of jurisdictions.

25. **PROCESS AGENT**

Without prejudice to any other mode of service allowed under any relevant law, each Chagor:

- (a) irrevocably appoints Matheson as its process agent in relation to any proceedings before the courts of Ireland in connection with this Deed;

- (b) agrees to procure that Matheson executes, on or about the date of this Deed, a letter confirming its appointment;
- (c) agrees that any failure by a process agent to notify that Chargor of the process will not invalidate the proceedings concerned; and
- (d) agrees that, if an appointed process agent is unable or becomes unwilling to act, that Chargor shall immediately and in any event within ten Business Days of that occurring appoint another process agent on terms acceptable to the Lender failing which the Lender may appoint another process agent.

SCHEDULE 1 - THE CHARGED PROPERTY

Account Bank	Name of Account	Branch	BIC	IBAN
Citco Bank Nederland N.V., Dublin Branch	Tosca Debt Capital Fund II LP – Operational Account	Dublin Branch	CITCIE2D	[REDACTED]
Citco Bank Nederland N.V., Dublin Branch	Tosca Debt Capital Fund II LP – Investor Account	Dublin Branch	CITCIE2D	[REDACTED]

SCHEDULE 2 – NOTICES AND ACKNOWLEDGEMENTS

Part 1 - Notice of Charge (Third Party Security Accounts)

From: [●] (the "Chargor")

To: [●]

Cc: [●] (the "Lender")

Date: [●]

Re: Account Name: [●], Account Number: [●], IBAN: [●], BIC: [●] (the "Account")

Dear Sir, Madam

1. We hereby notify you that pursuant to a charge dated [●] between the Chargor and the Lender (the "Deed"), the Chargor charged all of its rights, title, benefit and interest in and to the Account and the balance from time to time standing to the credit of the Account in favour of the Lender (the "Account Balance").
2. When you receive a notice from the Lender that it is enforcing its rights under the Deed, you are authorised:
 - (a) not to permit us to dispose of or otherwise deal with the Account or the Account Balance without the Lender's prior written consent; and
 - (b) to hold the Account Balance for the account of the Lender and to pay the Account Balance on request to the Lender or in such manner as it may direct.
3. This Notice is irrevocable, and may not be amended, unless the Lender notifies you otherwise in writing.
4. You need not enquire as to the justification for, or validity of, any notice, instruction or request received from the Lender before complying with it.
5. Please acknowledge receipt of this Notice by signing and returning the enclosed Acknowledgement.
6. This Notice and any non-contractual obligations arising out of or in connection with it are governed by the laws of Ireland.

Yours faithfully

Authorised Signatory

Part 2 - Acknowledgement of Notice (Third Party Security Accounts)

From: [●]

To: [●] (the "Lender")

Cc: [●] (the "Chargor")

Date: [●]

Re: Account Name: [●], Account Number: [●], IBAN: [●], BIC: [●] (the "Account")

Dear Sir, Madam

1. We confirm that:

- (a) we have received the Notice from the Chargor dated [●] pursuant to the charge dated [●] between the Chargor and the Lender in respect of the security created by the Chargor over the Account and the Account Balance (as defined in the Notice);
- (b) we accept the instructions contained in the Notice and agree to comply with its terms;
- (c) we will:
 - (i) disclose to you such information as you may from time to time request in relation to the Account and the Account Balance;
 - (ii) notify you upon becoming aware of any [material] breach of the terms on which the Account is held;
- (d) we will not exercise any right of set-off, combination of accounts or consolidation of accounts which we may have in respect of the Account or Account Balance;
- (e) when we receive a notice from the Lender that it is enforcing its rights in respect of the Account and the Account Balance, we will:
 - (i) not permit the Chargor to dispose of or otherwise deal with the Account or the Account Balance without the Lender's prior written consent; and
 - (ii) hold the Account Balance for the account of the Lender and pay the Account Balance on request to the Lender or in such manner as it may direct;
- (f) we are not aware of any breach by the Chargor of the terms on which the Account is held or of any interest (whether by way of security or otherwise) of any third party in the Account or the Account Balance.

2. This Notice and any non-contractual obligations arising out of or in connection with it are governed by the laws of Ireland.

Yours faithfully

Authorised Signatory

Execution Page

IN WITNESS WHEREOF the Parties hereto have caused this Deed to be executed and delivered as a deed the day and year first written above.

The Chargors:

EXECUTED and DELIVERED as a DEED for and on behalf of TOSCAFUND ASSET MANAGEMENT LLP acting in its capacity as investment manager of TOSCA DEBT CAPITAL FUND II L.P.



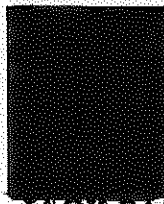
Authorised Signatory

Witness signature:

Witness name:

Witness occupation

Witness address:



**JACK PATRICK
90 LONG ACRE
LONDON WC2E 9RA
(SOLICITOR)**

EXECUTED and DELIVERED as a DEED for and on behalf of TOSCA DEBT CAPITAL GP II LLP



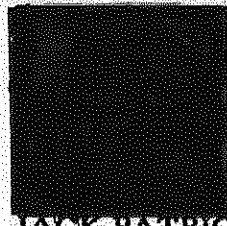
Authorised Signatory

Witness signature:

Witness name:


Witness occupation

Witness address:



**JACK PATRICK
90 LONG ACRE
LONDON WC2E 9RA
(SOLICITOR)**

**EXECUTED and DELIVERED as a DEED for and on
behalf of TOSCAFUND ASSET MANAGEMENT
LLP**



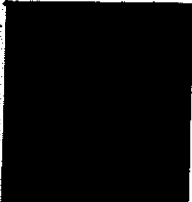
Authorised Signatory

Witness signature:

Witness name:

Witness occupation:

Witness address:


**JACK PATRICK
90 LONG ACRE
LONDON WC2E 9RA
(SOLICITOR)**

The Lender:

**EXECUTED as a DEED by
SILICON VALLEY BANK
acting by**

.....
Authorised signatory

Email: [Namita.Anand@svb.com]
Address: Alphabet, 14-18 Finsbury
Square, London, EC2A 1BR

.....
Name of witness:

Address:

Occupation:

**EXECUTED and DELIVERED as a DEED for and on
behalf of TOSCAFUND ASSET MANAGEMENT
LLP**

Authorised Signatory

Witness signature:

Witness name:

Witness occupation

Witness address:

The Lender:

**EXECUTED as a DEED by
SILICON VALLEY BANK
acting by**



Authorised signatory

Email: [Namita.Anand@svb.com]
Address: Alphabeta, 14-18 Finsbury
Square, London, EC2A 1BR



Name of witness: **RYAN PHAYER**

Address: **14-18 FINSBURY SQUARE, LONDON EC2A 1BR**

Occupation: **VICE PRESIDENT**