



**Registration of a Charge**

Company name: **BARCLAY & MATHIESON LIMITED**

Company number: **SC030987**



X72NWSD7

Received for Electronic Filing: **28/03/2018**

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**Details of Charge**

Date of creation: **26/03/2018**

Charge code: **SC03 0987 0053**

Persons entitled: **SECURE TRUST BANK PLC**

Brief description: **N/A**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **PINSENT MASONS LLP**



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

Company number: 30987

Charge code: SC03 0987 0053

The Registrar of Companies for Scotland hereby certifies that a charge dated 26th March 2018 and created by BARCLAY & MATHIESON LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th March 2018 .

Given at Companies House, Edinburgh on 29th March 2018

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

This Fixed Charge is made on 26 MARCH 2018

**Between**

**STB: Secure Trust Bank Plc** a company incorporated and registered under the laws of England and Wales and registered with the number 00541132 with its registered office at One Arleston Way, Solihull B90 4LH; and

**Client: BARCLAY & MATHIESON LIMITED** a company incorporated and registered under the laws of Scotland with limited liability and registered with the number SC030987 with its registered office at 180 Hardgate Road Glasgow, G51 4TB

**Background**

The Client enters into this Deed to secure the repayment and satisfaction of the Secured Obligations.

**It is agreed** as follows:

**1 Interpretation**

**1.1 In this Deed**

**Delegate** means any delegate, agent, nominee or attorney appointed by STB or a Receiver

**Finance Agreement** means the receivables finance agreement between the Client and STB dated on or about the date of this Deed (and as varied or amended from time to time) and/or any other funding agreement between the Client and STB at any time and from time to time

**Non-Vesting Debt** means any Debt which either fails to vest absolutely or effectively in STB under the Finance Agreement for any reason, including where the assignment of the Debt to STB is void or voidable (whether as between STB and the Client or as between STB and any third party)

**Other Debt** means

- (a) all present and future book and other debts due or owing to the Client, the proceeds of the same and all other moneys due and owing to the Client or which may become due and owing to it in the future
- (b) all moneys (including accrued and accruing interest) from time to time standing to the credit of each present and future account of the Client with any bank, financial institution or other person and the debts represented thereby
- (c) all present and future sums due or owing by way of grant, subsidy or refund by any person, body, authority or institution and
- (d) the benefit of all rights, securities, Encumbrances, guarantees and other assurances against loss, indemnities of any nature whatsoever now or at any time enjoyed or held by it in relation to any of the debts, proceeds, moneys or sums referred to in any of paragraphs (a), (b) or (c) above,

but excluding Non-Vesting Debts and any Debts which are vested in STB in accordance with the Finance Documents

**Receiver** means a receiver over the Secured Assets

**Related Rights** means any rights in relation to a Debt or Sale Contract including

- (i) the Client's rights as an unpaid seller;
- (ii) documents of title to goods;
- (iii) the benefit of all insurances;
- (iv) all Remittances, Security, bonds, guarantees and indemnities;
- (v) all accounting records;
- (vi) the ownership of all Returned Goods; and
- (vii) interest

**Secured Assets** means all the property, assets, rights, title and interests of the Client referred to in clause 3 (Security)

**Secured Obligations** means all monies and liabilities now or after the date of this Deed due, owing or incurred by the Client to STB whatsoever, in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, (including without limitation under the Finance Agreement) together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by STB, except for any obligation which, if it were included here, would constitute unlawful financial assistance, or its equivalent in any other jurisdiction

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

**Security Period** means the period beginning on the date of this Deed and ending on the date on which STB is satisfied that the Secured Obligations have been irrevocably and unconditionally satisfied in full and that no further Secured Obligations are capable of arising

**Termination Event** means any event or circumstance specified as Termination Event under any Finance Document

**Unpaid Sum** means any sum due and payable to STB but unpaid by the Client

**VAT** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature

## 1.2 In this Deed

- (a) Unless a contrary indication appears, a reference in this Deed to:
  - (i) words and phrases which are not defined or construed in this Deed but which are defined or construed in the Finance Agreement shall be construed as having the meanings ascribed to them therein;
  - (ii) STB, the Client, any Party or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- (iii) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
  - (iv) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally) or replaced;
  - (v) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a **person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any other entity or body of any description;
  - (vii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (viii) a provision of law is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Deed;
  - (ix) a time of day is a reference to London time; and
  - (x) **dispose** includes any sale, lease, licence, transfer or loan.
- (b) Clause and schedule headings are for ease of reference only.
  - (c) Any word importing the singular shall include the plural and vice versa.
  - (d) A Termination Event is continuing if it has not been waived to the satisfaction of STB.
  - (e) Any certificate provided by a director of the Client pursuant to the terms of this Deed shall be given without incurring any personal liability.
  - (f) A term defined in this Deed has the same meaning when used in any notices, acknowledgements or other documents issued under or in connection with this Deed.

### 1.3 Third party rights

- (a) Unless expressly provided to the contrary in any Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it.
- (b) Unless expressly provided to the contrary in any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Finance Document entered into under or in connection with it.

**1.4 Incorporated terms**

- (a) This Deed is a Finance Document.
- (b) The terms of the Finance Documents and of any side letters relating to the Finance Documents and the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of any Secured Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

**2 Covenant to pay**

The Client covenants with STB to pay and discharge the Secured Obligations when they become due for payment and discharge.

**3 Security**

3.1 The Client, as a continuing security for the payment and discharge of the Secured Obligations, charges by way of first fixed charge:

- (a) all Non-Vesting Debts and their proceeds (both collected and uncollected) together with the full benefit of all Related Rights.
- (b) all Other Debts and their proceeds (both collected and uncollected) together with the full benefit of all Related Rights.

3.2 Every disposition effected by this Deed is made with full title guarantee. The other terms of this Deed do not limit or extend any of the covenants implied by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 but create separate and independent obligations having effect cumulatively with those implied covenants.

**4 Undertakings and Acknowledgement**

4.1 The Client shall collect and realise the Non-Vesting Debts and Other Debts in the ordinary course of trading as agent for STB and pay their proceeds into the Trust Account (as defined in the Finance Agreement) immediately on receipt. It shall hold all such proceeds on trust for STB pending payment of them into the Trust Account.

4.2 The Client shall not set off, postpone or release any of the Non-Vesting Debts and Other Debts or do or omit to do anything which may delay or prejudice the full recovery of all Non-Vesting Debts and Other Debts without the prior written consent of STB.

4.3 The Client immediately on receipt shall pay into the Trust Account all monies which it may receive in respect of the Secured Assets and shall not without the prior consent of STB in writing make any withdrawals or direct any payment from the said account.

4.4 The Client shall, if called upon to do so by STB:

- (a) Execute a legal assignment of the Secured Assets to STB in such terms as STB may require and give notice thereof to the debtors from whom the Secured Assets are owing or incurred and take such other steps as STB may require to perfect such legal assignment.
- (b) Deliver an account to STB of the particulars of and the amounts due in respect of the Secured Assets at that date.

4.5 The Client shall not without the prior consent in writing of STB purport to charge, waive, assign or otherwise deal with the Secured Assets in favour of any other person.

4.6 The Client acknowledges and agrees that STB shall have complete and unfettered discretion to permit or cause (or refuse to permit or cause) any payments to be made from the Trust Account and that if it does permit or cause any such payment to be made then it shall then (but only then) be deemed to have given its consent for the purposes of clause 4.3.

## **5 Application of Secured Assets**

All monies received, collected or realised by STB or any Receiver in connection with the enforcement of the charge created by clause 3 (Security) shall be applied in or towards discharge of the Secured Obligations in such order as STB sees fit.

## **6 Representations and Warranties**

6.1 The Client makes the representations and warranties set out in this clause 6 to STB. The representations and warranties so set out are made on the date of this Deed and are deemed to be repeated by the Client daily throughout the Security Period with references to the facts and circumstances then existing.

6.2 Except pursuant to this Deed, the Client is the sole, lawful and beneficial owner of all the Secured Assets free from encumbrances.

6.3 The Client has and will at all times have the necessary power to enable it to enter into and perform the obligations expressed to be assumed by it under this Deed.

6.4 This Deed constitutes the Client's legal, valid, binding and enforceable obligations and is an effective and enforceable Security over the Secured Assets and every part of them.

6.5 All necessary authorisations to enable and entitle the Client to enter into this Deed have been obtained and are in full force and effect and will remain in such force and effect at all times during the subsistence of the Security constituted by this Deed.

## **7 Restrictions**

7.1 The Client shall not create or permit to subsist any Security over any of its assets.

7.2 Save as otherwise permitted in any Finance Document, the Client shall not:

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by it;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

7.3 Save as otherwise permitted in any Finance Document, the Client shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or

involuntary to sell, lease, transfer or otherwise dispose of any Secured Assets or call on, or accept payment of any uncalled capital.

## **8 Power of Attorney**

The Client hereby irrevocably appoints each of STB and any Receiver appointed by STB severally to be the attorney of the Client and in the Client's name and on its behalf and as its act and deed to sign, seal, execute, delivery, perfect and do all such documents and things as may be, or as STB or any such Receiver may consider to be, requisite for carrying out any obligations imposed on the Client under this Deed. The Client hereby undertakes to ratify and confirm all things done and documents executed by STB or any such Receiver in the exercise of the power of attorney conferred by this clause.

## **9 Enforcement of security**

- 9.1 On the occurrence of a Termination Event which is continuing, the Security created by and under this Deed is immediately enforceable.
- 9.2 STB may, at its absolute discretion, at any time after the Security created by or under this Deed is enforceable:
- (a) enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
  - (b) exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Secured Assets;
  - (c) appoint a Receiver to all or any part of the Secured Assets; or
  - (d) exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed).
- 9.3 For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- 9.4 Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- 9.5 Each Receiver and STB is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers.
- 9.6 If STB enforces the Security constituted by or under this Deed at a time when no amounts are due to STB but at a time when amounts may or will become so due, STB (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.
- 9.7 At any time after the Security created by or under this Deed has become enforceable, STB may, at the sole cost of the Client (payable to STB on demand):
- (a) redeem any prior form of Security over any Secured Asset; and/or
  - (b) procure the transfer of that Security to itself; and/or



- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Client.

## **10 Receiver**

- 10.1 At any time after any Security created by or under this Deed is enforceable, STB may appoint a Receiver to all or any part of the Secured Assets.
- 10.2 Any Receiver appointed under this Deed shall be the agent of the Client and the Client shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall STB be in any way responsible for any misconduct, negligence or default of the Receiver.
- 10.3 STB may by written notice remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.
- 10.4 In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 10.4.
- 10.5 A Receiver of the Client has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.
- 10.6 Joint receivers may exercise their powers jointly and severally.
- 10.7 A Receiver may:
  - (a) in the name of the Client do all other acts and things which he may consider expedient for realising any Secured Asset and exercise in relation to any Secured Asset all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner;
  - (b) raise and borrow money (in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit;
  - (c) carry on the business of the Client as he thinks fit;
  - (d) settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Client or relating in any way to any Secured Asset;
  - (e) delegate his powers in accordance with clause 10.9;
  - (f) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper;
  - (g) let any Secured Asset for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of any Secured Assets on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender);

- (h) bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Client in relation to any Secured Asset as he considers expedient;
- (i) take immediate possession of, get in and collect any Secured Asset;
- (j) in each case as he may think fit:
  - (i) make and effect all repairs and insurances and do all other acts which the Client might do in the ordinary conduct of its business be they for the protection or for the improvement of the Secured Assets;
  - (ii) commence and/or complete any building operations on the Secured Property or other Secured Asset; and
  - (iii) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence;
- (k) give valid receipts for all monies and execute all assurances and things which may be expedient for realising any Secured Asset;
- (l) sell, exchange, convert into monies and realise any Secured Asset in any manner and on any terms which he thinks proper;
- (m) form a Subsidiary of the Client and transfer to that Subsidiary any Secured Asset;
- (n) without restriction sell, let or lease, surrender or accept surrenders of leases or tenancies or charge or deal with the Secured Assets including disposing of, or grant options and licences over or otherwise dealing with, all or any part of the Secured Assets;
- (o) exercise all voting and other rights attaching to the Investments, Associated Rights, and stocks, shares and other securities owned by the Client and comprised in the Secured Assets in such manner as he may think fit;
- (p) redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Client and the money so paid shall be deemed to be an expense properly incurred by the Receiver;
- (q) purchase or acquire any land and purchase, acquire or grant any interest in or right over land;
- (r) implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Secured Property and do all acts and things incidental to the Secured Property;
- (s) on behalf of the Client and without consent of or notice to the Client exercise all the powers conferred on a landlord or a tenant by the Landlord and Tenants Acts, the Rents Acts and Housing Acts or any other legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Secured Property;

- (t) make calls conditionally or unconditionally on the members of the Client in respect of uncalled capital;
- (u) do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Assets and to use the name of the Client for all the purposes set out in this clause 10.

10.8 STB may from time to time fix the remuneration of any Receiver appointed by it.

10.9 STB and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by STB and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit.

10.10 STB and any Receiver will not be liable or responsible to the Client or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

## 11 Currency clauses

If a payment is made to STB under this Deed in a currency (**Payment Currency**) other than the currency in which it is expressed to be payable (**Contractual Currency**), STB may convert that payment into the Contractual Currency at the rate at which it (acting reasonably and in good faith) is able to purchase the Contractual Currency with the Payment Currency on or around the date of receipt of the payment and to the extent that the converted amount of the payment falls short of the amount due and payable the Client will remain liable for such shortfall and such shortfall shall form part of the Secured Obligations.

## 12 Application of monies

12.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.

12.2 All monies received by STB or any Receiver under this Deed and applied in discharge of the Secured Obligations shall be applied to the Secured Obligations in such order as STB may determine.

12.3 STB and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

## 13 Remedies and waivers

13.1 No failure to exercise, nor any delay in exercising, on the part of STB or any Receiver, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy 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.

13.2 A waiver given or consent granted by STB under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

#### **14 Protection of third parties**

14.1 No person (including a purchaser) dealing with STB or a Receiver or its or his agents has an obligation to enquire of STB, Receiver or others:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power purported to be exercised has become exercisable;
- (c) whether any Secured Obligations or other monies remain outstanding;
- (d) how any monies paid to STB or to the Receiver shall be applied; or
- (e) the status, propriety or validity of the acts of the Receiver or Lender.

14.2 The receipt by STB or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of STB or any Receiver.

14.3 In clauses 14.1 and 14.2, **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Secured Assets or any of them.

#### **15 Consolidation of Securities**

Subsection (1) of Section 93 of the Law of Property Act 1925 shall not apply to this Deed.

#### **16 Effectiveness of Security**

16.1 The security constituted by this Deed:

- (a) Shall be in addition to and shall be independent of every other Security which STB may at any time hold for any of the Secured Obligations.
- (b) Shall not merge with any prior Security held by STB over the whole or any part of the Secured Assets.
- (c) Shall remain in full force and effect as a continuing security unless and until STB discharges it.

16.2 The rights of STB under this Deed are in addition to and not in substitution for any other Security which STB may now or at any time in the future hold for all or any of the Secured Obligations and may be enforced without STB first having recourse to any such security and without taking steps or proceedings against any person.

16.3 Nothing contained in this Deed is intended to, or shall operate so as to, prejudice or affect any bill, note, guarantee, mortgage, debenture, pledge, charge or other security of any kind whatsoever which STB may have for the Secured Obligations or any of them or any right, remedy or privilege of STB thereunder.

#### **17 Remedies, Time or Indulgence**

17.1 The rights, powers and remedies provided by this Deed are cumulative and are not, nor are they to be construed as, exclusive of any powers and remedies provided by law.

- 17.2 No failure on the part of STB to exercise, or delay on the part of STB in exercising any of the rights, powers and remedies provided by this Deed or by law shall operate as a waiver thereof, nor shall any single or partial waiver preclude any further or other exercise of any such rights, powers and remedies.

## **18 Provisions Severable**

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 Set-off**

STB may, set off any matured obligation due from the Client (to the extent beneficially owned by STB) against any matured obligation owed by STB to the Client, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, STB may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **20 Notices**

- 20.1 All consents, notices and other communications must be in writing.
- 20.2 STB may deliver notices in person or by post to the Client's registered office or the address last known to STB at which the Client carried on business or by fax, email or via Electronic Data.
- 20.3 Any such notice or process will be considered served:
- (a) if delivered - at the time of delivery;
  - (b) if sent by post - 48 hours from the time of posting;
  - (c) if sent by facsimile transmission or electronic medium - at the time of transmission;  
and
  - (d) if handed over - at the time of handing over.
- 20.4 The Client must serve notice to STB to STB's registered office, unless otherwise notified by STB.

## **21 Further assurance**

The Client shall, at its cost, promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as STB may reasonably specify (and in such form as STB may reasonably require) in favour of STB or its nominee(s) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of STB provided by or pursuant to this Deed or by law.

## **22 Suspense Account**

All monies received, recovered or realised by STB in the exercise of any powers conferred by this Deed may, in STB's discretion, be credited by it to any suspense or impersonal account

and may be held in such account so long as STB thinks fit pending the application from time to time of such monies (and any interest thereon) in or towards the discharge of the Secured Obligations.

**23 Certificate**

Any certification or determination by STB as to any amount claimed under this Deed shall be conclusive evidence of the amount due in the absence of manifest error.

**24 Release**

Upon the expiry of the Security Period (but not otherwise), STB shall, at the request and cost of the Client, take whatever action is necessary to release the Secured Assets from the security constituted by this Deed.

**25 Indemnity**

25.1 The Client shall promptly indemnify STB and every Receiver and any of their delegates (each an **Indemnified Person**) against any cost, loss or liability together with any associated VAT incurred by any of them as a result of:

- (a) the taking, holding, protection or enforcement of this Deed;
- (b) the exercise of any of the rights, powers, discretions and remedies vested in STB and each Receiver and Delegate by this Deed or by law; and
- (c) any default by the Client in the performance of any of the obligations expressed to be assumed by it in this Deed.

25.2 STB may indemnify itself out in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause and shall have a lien on this Deed and the proceeds of the enforcement of this Deed for all monies payable to it.

**26 Exclusion of liability**

26.1 Neither STB nor any Receiver shall be liable in respect of all or any part of the Secured Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers unless such loss or damage is caused by its gross negligence or wilful acts of default and recklessness.

26.2 The Client may not take proceedings against any officer, employee or agent of STB in respect of any claim it might have against STB or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed and any officer, employee or agent of STB may rely on this clause.

**27 Fees, costs and expenses**

27.1 The Client shall promptly on demand pay STB the amount of all costs, fees and expenses (including legal fees) together with any associated VAT incurred by it in connection with the negotiation, preparation, printing, execution and perfection of this Deed.

27.2 If the Client requests an amendment, waiver or consent of this Deed, the Client shall, within 3 Working Days of demand, reimburse STB for the amount of all costs and expenses (including legal fees) together with any associated VAT reasonably incurred by STB in responding to, evaluating, negotiating or complying with the request or requirement.

- 27.3 The Client shall, within 3 Working Days of demand, pay to STB the amount of all costs, fees and expenses (including legal fees) together with any associated VAT incurred by STB in connection with the enforcement of or the preservation of any rights under this Deed and any proceedings instituted by or against STB as a consequence of taking or holding the Security created or expressed to be created in favour of STB under this Deed or enforcing these rights.
- 27.4 If the Client fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at the annual percentage rate equal to the applicable Discount Rate set out in the Finance Agreement. Any interest accruing under this clause 27 shall be immediately payable by the Client on demand by STB.
- 27.5 Default interest (if unpaid) arising on Unpaid Sums will be compounded with the overdue amount at the end of each calendar month but will remain immediately due and payable.

## **28 Counterparts**

This Deed or any Finance Document entered into under or in connection with this Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed or any such Finance Document entered into under or in connection with this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

## **29 Assignment**

STB may assign or otherwise transfer all or any of its rights under this Deed in accordance with the Finance Agreement.

## **30 Law and Jurisdiction**

This Deed and any non contractual obligations arising in connection with this Deed are governed and interpreted by English law. The Client irrevocably agree that the English courts will have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of this Deed and, for such purposes, irrevocably submit to the jurisdiction of the English courts. The submission to the jurisdiction of the English courts will not (and will not be construed so as to) limit STB's right to take proceedings against the Client in any other court of competent jurisdiction nor will the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

**In witness** whereof the parties hereto have executed this Deed as a deed and have delivered it on the day and year first written above.

**SIGNATURES TO THE FIXED CHARGE**

**SECURE TRUST BANK**

Executed as a deed by:

*JAMES HODKINSON*

as attorney for and on behalf of

**Secure Trust Bank Plc**

in the presence of

Signature of witness

Name *Francesca Heggie*

Address

(attorney's signature)

PINSENT MASONS LLP  
3 HARDMAN STREET  
MANCHESTER  
M3 3AU  
Tel: +44 (0)161 234 8234  
Fax: +44 (0)161 234 8235  
DX 14490 MANCHESTER 2

**CLIENT**

Executed as a deed by

**BARCLAY & MATHIESON LIMITED** acting by  
two directors or by a director and its secretary or  
a director in the presence of a witness

Signature of witness:

Witness' full name:

Witness' address:

Witness' occupation:

) *[Signature]*

) Director

)

)

) Director/Secretary

)

)

) *NICK PUCKER*

) **Gunnercooke llp**

) **53 King Street**

) **Manchester M2 4LQ**

) *SOLICITOR*