



Registration of a Charge

Company name: **BALHOUSIE HOLDINGS LIMITED**

Company number: **SC278485**



X3LXCRR6

Received for Electronic Filing: **03/12/2014**

Details of Charge

Date of creation: **26/11/2014**

Charge code: **SC27 8485 0008**

Persons entitled: **BANCO SANTANDER SA, LONDON BRANCH**

Brief description:

Contains fixed charge(s).

Contains floating 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 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

PATRICK DAVIS



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 278485

Charge code: SC27 8485 0008

The Registrar of Companies for Scotland hereby certifies that a charge dated 26th November 2014 and created by BALHOUSIE HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd December 2014 .

Given at Companies House, Edinburgh on 4th December 2014

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**



EVERSHEDS

Dated

26 NOVEMBER

2014

- (1) BALHOUSIE HOLDINGS LIMITED
- (2) BANCO SANTANDER SA, LONDON BRANCH

Deed of Charge over Account Balances

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This deed is made on 26 NOVEMBER 2014 between:

- (1) **BALHOUSIE HOLDINGS LIMITED** a company incorporated in Scotland with company number SC278485 c/o Balhousie Care Group, Earn House, Lamberkine Drive, Perth, PH1 1RA (the "**Chargor**"); and
- (2) **BANCO SANTANDER SA, LONDON BRANCH** (registered number BR001085), 2 Triton Square, Regents Place, London, NW1 3AN as security trustee for itself and the Secured Parties ("the **Security Agent**").

1. **INTERPRETATION**

1.1 **Expressly defined terms**

In this deed:

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration

"**Account**" means the account of which brief particulars are set out in **Schedule 1** (*The Accounts*) and includes, where the context admits, any sub-account or ledger relating to such account, and all renewals or redesignations of such account and also any account opened pursuant to the provisions of **clause 14.5** (*Power to establish new account*) and "**Accounts**" shall mean all of the Accounts

"**Account Balances**" means the aggregate of the sums from time to time standing to the credit of the Accounts, together with interest (including interest compounded and treated as capital) and other rights, benefits or sums accruing, offered or arising to, in respect of or incidental to each of the Accounts, and the debts represented by the Accounts

"**Beneficiaries**" means the Secured Parties (as defined in the Facilities Agreement)

"**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are open for general business in London or, for the purpose of **clause 15** (*Communications*), in the principal financial centre in the jurisdiction in which the relevant communication is delivered

"**Default Rate**" means one per cent. per annum above the highest rate of Interest ordinarily applicable to the Secured Obligations from time to time

"**Delegate**" means any delegate, agent, attorney or trustee appointed by the Security Agent

"**Discharge Date**" means the date with effect from which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Security Agent and any other of the Beneficiaries cancelled

"**Enforcement Party**" means any of the Security Agent, a Receiver or a Delegate

"**Event of Default**" means the occurrence of any of the events or circumstances defined in the Facilities Agreement as an Event of Default but shall also include any breach by the Chargor of or non-compliance by the Chargor with the provisions of this deed or of any other Finance Document

"Expenses" means all fees, discounts, commissions and other banking or service charges, legal and other professional fees, premiums, costs or expenses, in each case calculated on a full indemnity basis and together with VAT, incurred by any Enforcement Party in connection with the Secured Assets, the preparation, negotiation and creation of this deed, taking, perfecting, enforcing or exercising any power under this deed, the appointment of any Receiver or Delegate, the breach of any provision of this deed and / or the protection, realisation or enforcement of this deed, and includes the costs of transferring to the Security Agent or the Receiver any security ranking in priority to the security constituted by this deed, or the amount required to be paid to secure the unconditional and irrevocable discharge of such security, or any of the foregoing as the context shall require

"Facilities Agreement" means a term facilities agreement dated 30 September 2010 and made between (1) Balhousie Holdings Limited, as parent; (2) the entities listed in Part I of Schedule 1 as original borrowers; (3) the subsidiaries of the Chargor listed in Part I of Schedule 1 as original guarantors; (4) Santander UK Plc and The Cooperative Bank Plc (as arranger); (5) the financial institutions listed in Part II and Part III of Schedule 1 as original lenders; (6) the persons listed in Part IV of Schedule 1 as original hedge counterparties; (7) Banco Santander SA, London Branch (as agent); (8) Banco Santander SA, London Branch (as security agent); and (9) Santander UK Plc (as working capital lender), as amended, varied, modified, supplemented or replaced from time to time including by way of a deed of amendment and restatement entered into on the date hereof

"Finance Documents" as defined in the Facilities Agreement.

"Hedging Documentation" means the Hedging Agreement, Hedging Letter and/or Hedging Novation Agreement as varied, novated, amended and/or restated from time to time.

"Insolvency Act" means Insolvency Act 1986

"Interest" means interest at the rate provided in and calculated and compounded in accordance with the Facilities Agreement both before and after judgement

"Intercreditor Deed" means the Intercreditor agreement dated 30 September 2010 and made between, among others, the Chargor; the Debtors; Banco Santander SA, London Branch as Security Agent; Banco Santander SA, London Branch as Agent; the Lenders; the Arranger; the Working Capital Lender; the Hedge Counterparties; the Investor; Bank of Scotland Plc; and the Intra-Group Lenders (each as defined in the Intercreditor Deed)

"LPA" means Law of Property Act 1925

"Obligors" as defined in the Facilities Agreement

"Party" means a party to this deed

"Permitted Hedging Payment" means any transfer, payment or disposal of the Account Balances or any part of the Account Balances to the Hedge Counterparties as required by the Hedging Documentation.

"Permitted Security" means: (a) all security created under or pursuant to the Transaction Security Documents; and (b) a floating charge dated 28 September 2010 in favour of Bank of Scotland plc

"Receiver" means any one or more receivers and managers or (if the Security Agent so specifies in the relevant appointment) receivers appointed by the Security Agent pursuant to this deed in respect of the Chargor or in respect of the Secured Assets or any of them

"Secured Assets" means the assets charged pursuant to **clause 3.1** (*Grant of security*) or otherwise the subject of any security created by or pursuant to this deed and includes any part or parts of such assets

"Secured Obligations" means all indebtedness and all obligations or liabilities of any kind which may now or at any time in the future be due, owing or incurred by each of the Obligors to the Beneficiaries or any of them under any of the Finance Documents to the Security Agent, whatever their nature or basis, in any currency or currencies and however they are described together with Interest and Expenses PROVIDED THAT **"Secured Obligations"** shall not include any obligation or liability to the extent that if it were so included this deed (or any part of it) would give rise to financial assistance within the meaning of Sections 677(1) of the Companies Act 2006 (the **"Companies Act"**) unless such financial assistance is not prohibited by virtue of the provisions of sections 678, 679, 681 and 682 of the Companies Act

"Security Documents" means the Transaction Security Documents as defined in the Facilities Agreement

"Security Period" means the period beginning on the date of this deed and ending on the Discharge Date

"Security Agent" means Banco Santander SA, London Branch acting in its capacity as trustee and security agent for the Beneficiaries (including itself) in relation to the Security Documents, or such other trustee and security agent as may from time to time be appointed in that capacity pursuant to the terms of the Intercreditor Deed

"Subsidiary" means a subsidiary within the meaning of section 1159 of the Companies Act 2006

"Third Parties Act" means the Contracts (Rights of Third Parties) Act 1999

"VAT" means value added tax as provided for in the Value Added Taxes Act 1994 and any other tax of a similar fiscal nature.

1.2 Construction

In this deed:

1.2.1 any reference to:

1.2.1.1 the word **"assets"** includes present and future property, revenue, rights and interests of every kind;

1.2.1.2 the word **"guarantee"** includes any guarantee or indemnity and any other financial support (including any participation or other assurance against loss and any

deposit or payment) in respect of any person's indebtedness;

1.2.1.3 the word "**indebtedness**" includes any obligation for the payment or repayment of money, whatever the nature or basis of the relevant obligation (and whether present or future, actual or contingent);

1.2.1.4 the word "**law**" includes law established by or under statute, constitution, treaty, decree, regulation or judgment, common law and customary law; and the word "**lawful**" and similar words and phrases are to be construed accordingly;

1.2.1.5 the word "**person**" includes any individual, company, corporation, firm, government, state or any agency of a state and any association, partnership or trust (in each case, whether or not it has separate legal personality);

1.2.1.6 the word "**regulation**" includes all guidelines, official directives, regulations, requests and rules (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational agency, body or department or of any regulatory or other authority or organisation (whether statutory or non-statutory, governmental or non-governmental);

1.2.1.7 the word "**security**" includes any assignment by way of security, charge, lien, mortgage, pledge or other security interest securing any obligation of any person and any other agreement or arrangement having a similar effect;

1.2.1.8 the word "**set-off**" includes analogous rights and obligations in other jurisdictions;

1.2.1.9 the word "**sums**" includes all sums or amounts denominated in any currency whatever and includes the proceeds of any conversion of any sum or amount from one currency to another; and

1.2.1.10 the word "**tax**" includes any tax, duty, impost or levy and any other charge or withholding of a similar nature (including any interest or penalty for late payment or non-payment);

1.2.2 except where this deed expressly states otherwise, each term used in this deed which is defined in the Facilities Agreement has the same meaning as in the Facilities Agreement, construed in accordance with the Facilities Agreement;

1.2.3 where something (or a list of things) is introduced by the word "**including**", or by the phrase "**in particular**", or is followed by the phrase "**or otherwise**", the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);

- 1.2.4 each reference to the "**Chargor**" or to the "**Security Agent**" or to any "**Beneficiary**" includes its successors in title and its permitted assignees or permitted transferees;
- 1.2.5 unless this deed expressly states otherwise or the context requires otherwise, (a) each reference in this deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this deed) and (b) each reference in this deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this deed and whether amended or re-enacted since the date of this deed);
- 1.2.6 each reference to this deed (or to any other agreement or deed) means, at any time, this deed (or as applicable such other agreement or deed) as amended, novated, re-stated, substituted or supplemented at that time, provided that the relevant amendment, novation, re-statement, substitution or supplement does not breach any term of this deed;
- 1.2.7 each reference to the singular includes the plural and vice versa, as the context permits or requires;
- 1.2.8 the index and each heading in this deed is for convenience only and does not affect the meaning of the words which follow it;
- 1.2.9 each reference to a clause or Schedule is (unless expressly provided to the contrary) to be construed as a reference to the relevant clause or Schedule to this deed;
- 1.2.10 wherever this deed states that the Chargor must not take a particular step without the consent of the Security Agent, the Security Agent has discretion whether to give its consent and can impose conditions on any such consent it gives; and
- 1.2.11 an Event of Default is "**continuing**" if it has not been waived.

1.3 **Third Party interests**

- 1.3.1 A person who is not an Enforcement Party has no right under the Third Parties Act to enforce or enjoy the benefit of any term of this deed except to the extent that this deed or any other of the Finance Documents expressly provides for it to do so.
- 1.3.2 No consent of any person who is not a Party is required to rescind or vary this deed at any time.
- 1.3.3 This **clause 1.3** does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

1.4 **Incorporation of other terms**

The provisions of clause 1.2 (*Construction*) of the Facilities Agreement shall apply to this deed as if set out in this deed in full.

2. COVENANT TO PAY

2.1 Covenant

The Chargor hereby, as primary obligor and not merely as surety, covenants with the Security Agent that it will pay, discharge and perform the Secured Obligations on demand and (where applicable) in the manner provided in the Finance Documents.

2.2 Default Interest

Any amount which is not paid under this deed on the due date shall bear interest (as well after as before judgment) payable on demand at the Default Rate from time to time from the due date until the date of actual unconditional and irrevocable payment and discharge of such amount in full, save to the extent that interest at such rate on such amount and for such period is charged pursuant to any other document relevant to that liability and itself constitutes part of the Secured Obligations.

3. CHARGING CLAUSE

3.1 Grant of security

The Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations charges to the Security Agent all its rights, title and interest in and to the Account Balances:

3.1.1 by way of first fixed charge; and

3.1.2 by way of first floating charge (to the extent only that the Account Balances or any part of them are not effectively subject to the first fixed charge established pursuant to **clause 3.1.1**).

3.2 Continuing security

All the security granted or created by this deed is to be a continuing security which shall remain in full force and effect notwithstanding any intermediate payment or settlement of account or other matter or thing whatsoever and in particular the intermediate satisfaction by the Chargor or any other person of the whole or any part of the Secured Obligations.

3.3 Full title guarantee and implied covenants

All the security created or given under this deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

3.4 Miscellaneous

The fact that incorrect or incomplete, details of any particular Account are included or inserted in a **Schedule 1 (The Accounts)** shall not affect the validity or enforceability of the security created by this deed.

4. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS

4.1 Negative pledge

During the Security Period, the Chargor must not create, extend or permit to subsist any security over any of the Secured Assets, nor may it:

- 4.1.1 sell, transfer or otherwise dispose of any of the Secured Assets
- 4.1.2 in any way sell or dispose of the equity of redemption or any interest in the Secured Assets; or
- 4.1.3 enter into any other preferential arrangement having a similar effect.

4.2 Exceptions

Clause 4.1 does not apply:

- 4.2.1 to the security created or required to be created by this deed;
- 4.2.2 to the Permitted Security;
- 4.2.3 to any Permitted Hedging Payment;
- 4.2.4 to any other security or transaction which is permitted pursuant to the terms of the Facilities Agreement; nor
- 4.2.5 to any security or transaction to which the Security Agent has given its written consent.

5. REPRESENTATIONS AND WARRANTIES

The Chargor represents and warrants to the Security Agent on the date of this deed and on each subsequent date upon which the representations and warranties set out in the Facilities Agreement are repeated and upon which falls during the Security Period as follows:

5.1 Status

It is a limited liability company, duly incorporated and validly existing under the laws of England and Wales and has the power to own its assets and carry on its business and other activities as they are being conducted;

5.2 Power and enforceability

the Chargor has the power to enter into this deed and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by it under this deed are (and at all relevant times have been) legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary and subject to any applicable insolvency laws);

5.3 No Event of Default

- 5.3.1 no Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this deed or from effect being given to its provisions;

- 5.3.2 no person who holds any other security over any other asset of the Chargor has enforced or given notice of its intention to enforce such security;

5.4 **Non-conflict with other obligations**

neither the execution of this deed by the Chargor, nor the Chargor's compliance with its terms will:

- 5.4.1 conflict with or result in any breach of any law or regulation applicable to it;
- 5.4.2 cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers to be exceeded; nor
- 5.4.3 constitute a default, acceleration of payment or termination event (however described) under any agreement or instrument binding upon it;

5.5 **Authorisations**

all Authorisations required or desirable for the execution, delivery, issue, validity or enforceability of this deed or of the performance of the Chargor's obligations or the exercise of its rights under this deed have been obtained and have not been (and the Chargor is not aware of any circumstance having arisen whereby they might be) withdrawn or varied in whole or part;

5.6 **Priority of security**

the security contained in **clause 3** (*Charging clause*) constitute first priority security over the assets which are expressed to be secured by such security and those assets are not subject to any prior or pari passu security; and

5.7 **Beneficial ownership**

Save for the security created by the Finance Documents, the Chargor is the sole absolute and unencumbered legal and beneficial owner of each Account and of the Account Balances and has the right to charge the Secured Assets in favour of the Security Agent upon the terms of this deed.

6. **UNDERTAKINGS**

The Chargor undertakes to the Security Agent in the terms of the following provisions of this **clause 6**, all such undertakings to commence on the date of this deed and to continue throughout the Security Period:

6.1 **Perform**

It will at all times comply with the terms (express or implied) of this deed and of all contracts relating to the Secured Obligations;

6.2 **Not to jeopardise security**

It will not do anything or allow anything to be done which may in any way depreciate, jeopardise or otherwise prejudice the value to the Security Agent of the security constituted by this deed or the priority of its ranking as expressed in this deed;

6.3 No withdrawals

it will not, except (i) with the prior consent of the Security Agent and/or (ii) in respect of any Permitted Hedging Payment made by the Security Agent, withdraw all or any monies from time to time standing to the credit of any Account;

6.4 Operation of Accounts

it will take all necessary action to ensure that each Account is operated in accordance with the terms of the mandate relating to it and of this deed;

6.5 Claims

it will promptly inform the Security Agent of any material claims relating to the Accounts or the Account Balances;

6.6 Further assurance

it will at all times (and forthwith upon the Security Agent's written request) but at the Chargor's own expense take all steps (including the making of all filings and registrations and the payment of all fees and taxes) and execute all documents necessary or, in the reasonable opinion of the Security Agent, desirable (a) to render effective and valid any security or any right or power created or intended to be created or evidenced under or by this deed but which is or may be ineffective or invalid, (b) to perfect, protect or improve any such security or to facilitate its enforcement or realisation, (c) to protect the Security Agent's position under this deed or any other deed or document entered into pursuant to this deed or (d) in connection with the exercise of any of any rights or powers by any Enforcement Party under or in relation to this deed, and so that any security document required to be executed pursuant to this clause will be in such form and will contain such provisions as the Security Agent may reasonably require;

6.7 Deposit of documents

It will promptly at the Security Agent's request deposit with the Security Agent (or as the Security Agent directs) the originals of all such certificates, acknowledgements, letters, statements or other documents relating to the Secured Assets as the Security Agent may from time to time reasonably require;

6.8 Retention of documents

it agrees that the Security Agent may retain any document delivered to it pursuant to **clause 6.7** (*Deposit of Documents*) or otherwise until the Discharge Date and if, for any reason it ceases to hold any such document before such time, it may by notice to the Chargor require that the relevant document be redelivered to it and the Chargor must immediately comply (or procure compliance) with such notice;

6.9 Power to remedy

it agrees that if the Chargor fails to comply with any of the covenants and undertakings set out or referred to in **clauses 6.1** to Error! Reference source not found. inclusive it will allow (and hereby irrevocably authorises) the Security Agent and/or such persons as the Security Agent nominates to take such action

(including the making of payments) on behalf of the Chargor as is necessary to ensure that such covenants are complied with;

6.10 Expenses

it will pay all Expenses on demand. If it does not do so, the Expenses will bear Interest at the Default Rate from and including the date of demand to and including the date of actual payment; and

6.11 Indemnity

the Chargor will indemnify the Security Agent and will keep the Security Agent indemnified against all losses and Expenses incurred by the Security Agent as a result of a breach by the Chargor of its obligations under **clauses 6.1** to Error! Reference source not found. inclusive and in connection with the exercise by the Security Agent of its rights contained in **clause 6.9** (*Power to remedy*). All sums the subject of this indemnity will be payable by the Chargor to the Security Agent on demand and if not so paid will bear interest at the Default Rate. Any unpaid interest will be compounded with Monthly rests.

7. ENFORCEABILITY

For the purposes of all powers implied by the LPA or any other applicable statute the Secured Obligations shall be deemed to have become due and payable and this deed will become immediately enforceable and the powers of the Security Agent and any Receiver exercisable on the date of this deed, but, as between the Security Agent and the Chargor, the power of sale shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless there has been a request from the Chargor for the appointment of a Receiver, in which case it shall be exercisable at any time after the making of such request).

8. ENFORCEMENT OF SECURITY

8.1 At any time after the Security Agent's power of sale has become exercisable, the Security Agent may without further notice:

8.1.1 appropriate and apply or transfer as the Security Agent thinks fit the whole or any part of the Account Balances notwithstanding that the Account Balances or any part of them may be subject to a fixed maturity date which has not, or may not have, arisen; or

8.1.2 otherwise take possession of the Secured Assets; or

8.1.3 appoint one or more than one Receiver in respect of the Secured Assets or any of them and if more than one Receiver is appointed the Receiver may act jointly and severally or individually; or

8.1.4 in its absolute discretion enforce all or any part of the security created by this deed in such other lawful manner as it thinks fit.

8.2 The Security Agent may remove the Receiver and appoint another Receiver and the Security Agent may also appoint an alternative or additional Receiver.

8.3 The Receiver will, so far as the law permits, be the agent of the Chargor and the Chargor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver.

The Security Agent will not be responsible for any misconduct, negligence or default of the Receiver.

- 8.4 The powers of the Receiver will continue in full force and effect following the liquidation of the Chargor.
- 8.5 The remuneration of the Receiver may be fixed by the Security Agent but will be payable by the Chargor. The amount of the remuneration will form part of the Secured Obligations.
- 8.6 The Receiver will have the power on behalf and at the cost of the Chargor:
 - 8.6.1 to do or omit to do anything which he considers appropriate in relation to the Secured Assets; and
 - 8.6.2 to exercise all or any of the powers conferred on the Receiver or the Security Agent under this deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision).
- 8.7 If (notwithstanding any representation or warranty to the contrary contained in this deed) there shall be any security affecting the Secured Assets or any of them which ranks in priority to the security created by this deed and the holder of such prior security takes any steps to enforce such security, the Security Agent or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such security.
- 8.8 The Security Agent may, at any time after this deed has become enforceable pursuant to **clause 7 (Enforceability)**, exercise, to the fullest extent permitted by law, all or any of the powers authorities and discretions conferred on a Receiver by this deed, whether as attorney of the Chargor or otherwise and whether or not a Receiver has been appointed.
- 8.9 The Security Agent may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on Receivers by this deed.

9. **APPLICATION OF PROCEEDS**

9.1 **Recoveries by Receiver**

The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying, in the following order of priority:

- 9.1.1 the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;
- 9.1.2 any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, taxes, rates and outgoings whatever affecting the Secured Assets, all premiums on Insurances properly payable under this deed or any applicable statute, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or

other payments, and the interest on all principal sums, having priority to the Secured Obligations;

9.1.3 the Secured Obligations, in accordance with the provisions of the Finance Documents and otherwise in such order as the Security Agent may determine; and

9.1.4 the claims of those persons entitled to any surplus.

9.2 Right of appropriation

The Security Agent is entitled to appropriate money and/or assets to Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.

9.3 Suspense Account

The Security Agent may place (for such time as it thinks prudent) any money received by it pursuant to this deed to the credit of a separate or suspense account (without liability to account for interest thereon) for so long and in such manner as the Security Agent may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Obligations.

10. PROTECTION OF THIRD PARTIES

10.1 No duty to enquire

A buyer from, or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which it has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this deed.

10.2 Receipt conclusive

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

11. PROTECTION OF SECURITY AGENT

11.1 Security Agent's receipts

The Security Agent shall not be obliged to account to the Chargor, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or who the Security Agent, acting reasonably, believes to be entitled) in accordance with the requirements of this deed.

11.2 Exclusion of liability

11.2.1 No Enforcement Party will be liable to the Chargor for any expense, loss, liability or damage incurred by the Chargor arising out of the exercise of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

11.2.2 The Chargor may not take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this deed.

11.2.3 Any officer, employee or agent of any Enforcement Party may rely on this **clause 11** under the Third Parties Act.

11.3 **Effect of possession**

If the Security Agent or any Receiver enters into possession of the Secured Assets, this will not oblige either the Security Agent or the Receiver to account as mortgagee in possession, and if the Security Agent enters into possession at any time of the Secured Assets it may at any time at its discretion go out of such possession.

11.4 **Repayment obligation**

The Security Agent shall be under no obligation at any time during the Security Period to account to the Chargor for any sums representing the Account Balances or any part of them, nor to transfer sums between Accounts and may refuse to pay out on any cheque or instrument drawn by the Chargor on any Account.

11.5 **Chargor's indemnity**

The Chargor agrees with the Security Agent to indemnify the Security Agent and any Receiver or Delegate on demand against any costs, loss or liability incurred by any of them in respect of:

11.5.1 any exercise of the powers of the Security Agent or the Receiver or any attempt or failure to exercise those powers save in the case of fraud, gross negligence or wilful misconduct; and

11.5.2 anything done or omitted to be done in the exercise or purported exercise of the powers under this deed or under any appointment duly made under the provisions of this deed.

12. **POWER OF ATTORNEY**

12.1 **Grant of power**

The Chargor irrevocably and by way of security appoints the Security Agent and each Receiver and any person nominated for the purpose by the Security Agent or the Receiver (in writing, under hand, signed by an officer of the Security Agent or by the Receiver) severally to be the attorney of the Chargor (with full power of substitution and delegation) for the purposes set out in **clause 12.2**.

12.2 **Extent of power**

The power of attorney granted in **clause 12.1** allows the Security Agent, the Receiver or such nominee, in the name of the Chargor, on its behalf and as its act and deed to:

12.2.1 perfect the security given by the Chargor under this deed; and

- 12.2.2 execute, seal and deliver (using the Chargor's seal where appropriate) any document or do any act or thing which the Chargor may, ought or has agreed to execute or do under this deed or which the Security Agent, the Receiver or such nominee may in their absolute discretion consider appropriate in connection with the exercise of any of the rights, powers authorities or discretions of the Security Agent or the Receiver under, or otherwise for the purposes of, this deed.

12.3 Ratification

The Chargor covenants with the Security Agent to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this **clause 12**.

13. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS

13.1 Conditions applicable to power of sale etc.

- 13.1.1 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of **clause 7 (Enforceability)**), the conditions set out in that section as to when such powers arise do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this deed; and
- 13.1.2 the Security Agent and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this deed.

13.2 Extension of powers of sale, etc.

- 13.2.1 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Security Agent in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this deed.
- 13.2.2 The Security Agent and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the LPA and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this deed, those contained in this deed shall prevail.

13.3 Consolidation of mortgages

The restriction on the consolidation of mortgages in Section 93 of the LPA does not apply to this deed nor to any security given to the Security Agent pursuant to this deed.

13.4 LPA provisions relating to appointment of Receiver

Section 109(1) of the LPA shall not apply to this deed.

13.5 Application of proceeds

Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Security Agent nor to a Receiver appointed under this deed.

14. OTHER MISCELLANEOUS PROVISIONS

14.1 Powers, rights and remedies cumulative

The powers, rights and remedies provided in this deed are in addition to (and not instead of), powers, rights and remedies under law.

14.2 Exercise of powers, rights and remedies

If an Enforcement Party fails to exercise any power, right or remedy under this deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.

14.3 Discretion

14.3.1 The Security Agent may decide:

14.3.1.1 whether and, if so, when, how and to what extent (i) to exercise its rights under this deed and (ii) to exercise any other right it might have in respect of the Chargor (or otherwise); and

14.3.1.2 when and how to apply any payments and distributions received for its own account under this deed,

and the Chargor has no right to control or restrict the Security Agent's exercise of this discretion.

14.3.2 No provision of this deed will interfere with the Security Agent's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs), except as expressly stated.

14.4 Set-off and combination of accounts

14.4.1 No right of set-off or counterclaim may be exercised by the Chargor in respect of any payment due to the Security Agent under this deed.

14.4.2 The Security Agent may at any time after this deed has become enforceable and without notice to the Chargor:

14.4.2.1 combine or consolidate all or any of the Chargor's then existing accounts with, and liabilities to, the Security Agent;

14.4.2.2 set off or transfer any sums standing to the credit of any one or more of such accounts; and/or

14.4.2.3 set-off any other obligation owed by the Security Agent to the Chargor (whether or not matured at such time),

in or towards satisfaction of any of the Secured Obligations. The Security Agent is to notify the Chargor in writing that such a transfer has been made.

- 14.4.3 If any amount is in a different currency from the amount against which it is to be set off, the Security Agent may convert either amount (or both) at any reasonable time and at any reasonable rate.

14.5 Power to establish new account

If the Security Agent receives notice of a subsequent mortgage or charge relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Security Agent does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.

14.6 Information

The Chargor authorises the holder of any prior or subsequent security to provide to the Security Agent, and the Security Agent to receive from such holder, details of the state of account between such holder and the Chargor.

14.7 No assignment by Chargor

The Chargor must not assign, novate or otherwise deal with its rights or obligations under or interests in this deed, except with the prior written consent of the Security Agent.

14.8 Transfer by Security Agent

- 14.8.1 Save as otherwise provided in the Facilities Agreement and subject always to the terms of the Facilities Agreement, the Security Agent may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this deed.

- 14.8.2 Subject to the terms of Clause 40 (*Confidentiality*) of the Facility Agreement, the Security Agent may disclose any information about the Chargor, the Secured Assets and/or this deed to any person to whom it proposes to assign or novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this deed, or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests.

- 14.8.3 Any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this deed in the same way as if it had been a Party.

14.9 Avoidance of settlements and other matters

- 14.9.1 Any payment made by the Chargor, or settlement or discharge between the Chargor and the Security Agent, is conditional upon no security or payment to the Security Agent by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and accordingly (but without limiting the Security Agent's other rights under this deed) the Security Agent shall be entitled to recover from

the Chargor the value which the Security Agent has placed upon such security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

- 14.9.2 If the Security Agent, acting reasonably, considers that any amount paid by the Chargor in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in **clause 14.9.1**, then for the purposes of this deed such amount shall not be considered to have been irrevocably paid.

14.10 **Waiver of immunity**

To the extent that the Chargor may be entitled in any jurisdiction to claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process of any kind wherever it might originate or to the extent that in any such jurisdiction there may be attributed to the Chargor or its assets such immunity (whether or not claimed), it hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.

14.11 **Time Deposits**

Without prejudice to the provisions of **clause 14.4** (*Set-off and combination of accounts*), if during the Security Period a time deposit matures on any account which the Chargor holds with the Security Agent and an Event of Default has arisen which is continuing but no amount of Secured Obligations has fallen due and payable such time deposit shall be renewed for such further maturity as the Security Agent may in its absolute discretion determine.

14.12 **Release of security**

On the Discharge Date (but subject to **clause 14.9** (*Avoidance of settlements and other matters*)) the Security Agent shall at the request and cost of the Chargor execute and do all deeds, acts and things as may be necessary to release the Secured Assets from the security constituted hereby or pursuant hereto.

15. **COMMUNICATIONS**

- 15.1 Each notice, consent and other communication in respect of this deed will be effective only if made by letter or fax, delivered to the relevant address or fax number specified on the execution page(s) of this deed (or to any substitute address or fax number notified in writing by the relevant Party for this purpose) and marked for the attention of the specified department/individual, if applicable. Each communication by letter will be effective only if delivered by hand, sent by first class post (if sent from and to an address in the UK) or sent by airmail (if sent from or to an address elsewhere).

- 15.2 Each communication will become effective as follows (references to times are to times in the place of delivery of the communication):

- 15.2.1 a hand-delivered letter will be effective as soon as it is delivered (or, if it is delivered after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day);

- 15.2.2 a letter sent by post from and to an address in the UK will be effective at 9am on the second Business Day after it is posted and a letter sent by airmail from or to an address elsewhere will be effective at 9am on the tenth Business Day after it is posted;
- 15.2.3 a fax will be effective one hour after the sending fax machine (or other system) generates a confirmation that the communication has been sent in full (or, if this occurs after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day); and
- 15.2.4 each communication to the Security Agent will become effective only when actually received by the Security Agent.

16. GOVERNING LAW

16.1 Governing law

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

16.2 Jurisdiction

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed) and any non-contractual obligations arising out of or in connection with it (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly neither Party will argue to the contrary. This **clause 16.2** is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party will be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.

17. THIS DEED

17.1 Consideration

The Chargor has entered into this deed in consideration of the Beneficiaries (or some of them) at the request of the Security Agent agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed between them.

17.2 Execution of this deed - counterparts

If the Parties execute this deed in separate counterparts, this deed will take effect as if they had all executed a single copy.

17.3 Execution of this deed - formalities

This deed is intended to be a deed even if any Party's execution is not in accordance with the formalities required for the execution of deeds.

17.4 Partial invalidity

- 17.4.1 If, at any time, any provision of this deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of

the other provisions of this deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

17.4.2 If any Party is not bound by this deed (or any part of it) for any reason, this does not affect the obligations of each other Party under this deed (or under the relevant part).

17.5 Conflict

If there is any conflict between the provisions of the Facilities Agreement and the provisions of this deed, the provisions of the Facilities Agreement shall prevail.

17.6 Other security

This deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other security or guarantee which the Security Agent may now or at any time after the date of this deed hold for or in respect of the Secured Obligations.

17.7 Ownership of this deed

This deed and every counterpart is the property of the Security Agent.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

The Accounts

	Line	Account number	Split Code	Account Name
1				

EXECUTION

The Chargor

Executed as a deed by **Balhousie Holdings Limited,**

acting by a director in the presence of a witness

Witness signature:

Witness Name:

JACK MOIR

Witness Address:

Witness Occupation:

Director

Communications to be delivered to:

Address:

Fax number:

Attention:

The Security Agent

Executed as a deed by two directed signatories
as attorney for **Banco Santander SA,**)
London Branch in the presence of:)

as attorney for
Banco Santander SA, London Branch

Witness signature:

Witness Name:

Witness Address:

Witness Occupation:

Communications to be delivered to:

Address:
2 Triton Square
Regent's Place
London
NW1 3AN

Fax number: 0845 602 7836

Attention:
Robert Adams and Richard Priaulx