



Registration of a Charge

Company Name: **NWH HOLDINGS LIMITED**

Company Number: **SC303441**



Received for filing in Electronic Format on the: **25/11/2021**

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Details of Charge

Date of creation: **17/11/2021**

Charge code: **SC30 3441 0004**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC**

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 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: 303441

Charge code: SC30 3441 0004

The Registrar of Companies for Scotland hereby certifies that a charge dated 17th November 2021 and created by NWH HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 25th November 2021 .

Given at Companies House, Edinburgh on 26th November 2021

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**

DATED 17 November 2021

**(1) NWH HOLDINGS LIMITED (PREVIOUSLY KNOWN AS THE NWH GROUP LTD)
(AS ASSIGNOR)**

**(2) THE ROYAL BANK OF SCOTLAND PLC
(AS ASSIGNEE)**

ASSIGNMENT OF CONTRACTS



Pinsent Masons

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THIS DEED is made on

17 November

2021

BETWEEN

- (1) **NWH HOLDINGS LIMITED (PREVIOUSLY KNOWN AS THE NWH GROUP LIMITED)** a company incorporated in England and Wales with company number SC303441 whose registered office is at Unit 5, Mayfield Industrial Estate, Mayfield, Dalkeith, Midlothian, EH22 4AD (the "Assignor"); and
- (2) **THE ROYAL BANK OF SCOTLAND PLC** as assignee (the "Assignee")

RECITALS

- (A) The Assignee has agreed to make multiple credit facilities available on the terms of the Facility Agreements.
- (B) The Assignor has agreed to provide Security to the Assignee to secure the payment and discharge of the Secured Liabilities.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed:-

- | | |
|------------------------------|--|
| "RLS Loan Terms" | means the Assignee's Base Rate Loan Terms that form part of the Recovery Loan Scheme Agreement |
| "Charged Property" | means all the property, assets and undertaking of the Assignor which from time to time are, or are expressed to be, the subject of the Security created in favour of the Assignee by or pursuant to this Deed |
| "Contract" | means the advance payment guarantee entered into between HSBC UK Bank plc and the Assignor dated on or around the date of this Deed on account of the advance payments made or to be made by the Assignor to the Seller (as defined therein) |
| "Counterparty" | means HSBC UK Bank plc, a company incorporated in a company incorporated in England and Wales with company number 09928412 whose registered office is at 1 Centenary Square, Birmingham, United Kingdom, B1 1HQ |
| "Default Rate" | means the rate of interest specified in, and calculated in accordance with, clause 5.4 (<i>Interest</i>) of the Term Loan Facility Agreement, clause 6.4 (<i>Interest</i>) of the Revolving Credit Facility Agreement and clause 2.4 (<i>Interest</i>) of the RLS Loan Terms |
| "Facility Agreements" | <p>(a) means the £2,800,000 term loan facility agreement dated on or about the date of this Deed made between the Assignor as borrower and the Assignee as lender (the "Term Loan Facility Agreement");</p> <p>(b) the £2,400,000 revolving credit facility agreement dated on or about the date of this Deed made between the Assignor as borrower and the Assignee as lender (the "Revolving Credit Facility Agreement"); and</p> <p>(c) the £7,350,000 new recovery loan scheme facility agreement dated on or around the date of this Deed</p> |

made between the Assignor as borrower and the Assignee as lender (the "**Recovery Loan Scheme Agreement**").

"LPA"	means the Law of Property Act 1925
"Notice of Assignment"	means a notice of assignment in the form set out in Schedule 1 (<i>Form of Notice of Assignment</i>)
"Obligors"	<p>means:-</p> <ul style="list-style-type: none">(a) the Assignor;(b) NWH Group Limited (previously known as The NWH Group Ltd and as further previously known as NWH Waste Services Limited, a company incorporated in Scotland with registered number SC335165;(c) NWH Construction Services Ltd, a company incorporated in Scotland with registered number SC263290;(d) City Truck Sales Ltd, a company incorporated in Scotland with registered number SC325713; <hr/> <ul style="list-style-type: none">(e) Citysweep Limited, a company incorporated in Scotland with registered number SC303647;(f) CRM Investments Limited, a company incorporated in Scotland with registered number SC579060;(g) NWH Plant Hire Limited, a company incorporated in Scotland with registered number SC302669;(h) NWH Recycling (Philipstoun) Limited, a company incorporated in Scotland with registered number SC263252;(i) NWH Waste Services (Middleton) Limited, a company incorporated in Scotland with registered number SC480793; and(j) CRM Investments Limited, a company incorporated in Scotland with registered number SC579060. <p>and "Obligor" means any one of them.</p>
"Party"	means a party to this Deed
"Receiver"	means any receiver, receiver and manager or administrative receiver of the whole or any part of the Charged Property
"Related Rights"	<p>means in relation to any Charged Property:</p> <ul style="list-style-type: none">(a) the proceeds of sale of any part of that Charged Property;(b) all rights, benefits, claims, contracts, warranties, remedies, security or indemnities in respect of that Charged Property; and

- (c) any moneys and proceeds paid or payable in respect of that Charged Property

"Secured Liability"	means any liability expressed to be due, owing or payable by the Assignor to the Assignee on any current or other account or otherwise in any manner whatsoever (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise) (together the "Secured Liabilities")
"Security"	means a mortgage, charge, pledge, lien or any 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 earlier of (i) the date on which the Contract expires in accordance with its terms or (ii) the date on which the Assignee is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and all facilities which might give rise to Secured Liabilities have terminated

1.2 Incorporation of terms

Unless the context otherwise requires or unless defined in this Deed, all words and expressions defined or whose interpretation is provided for in the Facility Agreements have the same meanings in this Deed.

1.3 Interpretation

In this Deed unless the context requires otherwise:-

- 1.3.1 words importing the singular shall include the plural and vice versa;
- 1.3.2 references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.3.3 references to a **"person"** shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- 1.3.4 any reference to the Assignee or to a Party includes its permitted successors, transferees and assignees; and
- 1.3.5 **"tax"** means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and **"taxes"** and **"taxation"** shall be construed accordingly.
- 1.3.6 unless the context otherwise requires, a reference to any **"Facility Agreement"** or any other agreement or instrument is a reference to that Facility Agreement or other agreement or instrument as amended, novated, supplemented, restated, extended or replaced (however fundamentally) and includes any increase in, extension of, or change to, any facility made available under that Facility Agreement or other agreement or instrument.

1.4 Effect as a deed

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Assignee.

1.5 Third party rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

2. COVENANT TO PAY

2.1 Secured Liabilities

The Assignor covenants that it will on demand pay and discharge any or all of the Secured Liabilities when due.

2.2 Interest

The Assignor covenants to pay interest on any sum demanded in accordance with Clause 2.1 (*Secured Liabilities*) until payment (both before and after judgment) at the Default Rate.

3. SECURITY

3.1 Assignment

As a continuing security for payment of the Secured Liabilities, the Assignor with full title guarantee:-

3.1.1 assigns all its present and future right, title and interest in and to, and all benefits accruing under or in connection with the Contract and all Related Rights in respect of the Contract absolutely in favour of the Assignee subject to a proviso for reassignment on redemption; and

3.1.2 to the extent not assigned or effectively assigned by Clause 3.1.1, charges by way of first fixed charge in favour of the Assignee all its present and future right, title and interest in and to, and all benefits accruing under or in connection with the Contract and all Related Rights in respect of the Contract.

3.2 Dealings

3.2.1 Until an Event of Default occurs, but subject always to Clauses 4 (*Undertakings*) and 5 (*Restrictions and further assurance*), the Assignor may continue to deal with the Counterparty in relation to the Contract.

3.2.2 Upon the occurrence of an Event of Default, the Assignor shall have no further right to deal with the Counterparty and the Assignee may notify the Counterparty that it should deal only with the Assignee.

3.3 Trust

If or to the extent that for any reason the assignment or charging of any Charged Property is prohibited, the Assignor shall hold it on trust for the Assignee.

4. UNDERTAKINGS

The covenants in this Clause 4 (*Undertakings*) remain in force from the date of this Deed until the end of the Security Period.

4.1 The Assignor shall:-

- 4.1.1 duly and promptly perform all its obligations and diligently pursue its rights, and use all reasonable endeavours to procure that the Counterparty perform their obligations, under the Contract;
- 4.1.2 notify the Assignee of any breach by any person of any term of the Contract or any right of it or any other person to rescind, cancel or terminate the Contract promptly upon becoming aware of it;
- 4.1.3 supply to the Assignee all information, accounts and records necessary to enable the Assignee to verify all sums payable under the Contract;
- 4.1.4 provide the Assignee promptly upon request with any document in its possession, custody or control and provide or assist the Assignee in obtaining any document or information which it may require in relation to the Contract; and
- 4.1.5 deliver to the Assignee a duly executed Notice of Assignment on the date of this Deed and shall use all reasonable endeavours to procure that the Notice of Assignment is acknowledged by the Counterparty to whom it is addressed.

4.2 Conduct of claims

The Assignor:-

- 4.2.1 shall promptly notify the Assignee of any actual, threatened or anticipated claim relating to the Contract, and shall not, without the Assignee's prior written consent, compromise or settle any claim relating to the Contract;
- 4.2.2 shall not, without the Assignee's prior written consent, commence any proceedings or refer any dispute to arbitration in connection with the Contract; and
- 4.2.3 authorises the Assignee any time and in any manner (whether in the Assignee's name or the Assignor's name) to take, submit to arbitration, institute, stay, settle or discontinue any proceedings relating to any claim under the Contract.

4.3 Payments without deduction

The Assignor shall calculate and make all payments under this Deed without (and free and clear of any deduction for) set-off or counterclaim.

4.4 Assignor remains liable

The Assignor shall remain liable to perform all its obligations under the Contract and the Assignee shall be under no obligation or liability as a result of any failure by the Assignor to perform those obligations.

5. RESTRICTIONS AND FURTHER ASSURANCE

5.1 Security

The Assignor shall not create or permit to subsist any Security over any Charged Property, nor do anything else prohibited by clause 15 (*General Undertakings*) of the Term Loan Facility Agreement, clause 14 (*General Undertakings*) of the Revolving Credit Facility Agreement, clause 11 (*Undertakings*) of the Recovery Loan Scheme Agreement and clause 8 (*General Undertakings*) of the RLS Loan Terms.

5.2 Disposal

The Assignor shall not enter into or agree to enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub license, transfer or otherwise dispose of any Charged Property.

5.3 General

The Assignor shall not (and shall not agree to):-

- 5.3.1 (save to agree to extend the period that the Contract is enforceable) amend, supplement, substitute, rescind or cancel the Contract or any material provision of the Contract;
- 5.3.2 release any obligation under the Contract, or waive any material breach of the Contract;
- 5.3.3 make any claim that the Contract is frustrated;
- 5.3.4 permit any party to the Contract to assign any of their rights, or transfer any of their obligations, under the Contract; and
- 5.3.5 take or omit to take any action, the taking or omission of which might result in any alteration or impairment of any of the rights created by the Contract or this Deed, nor exercise any right or power conferred on it by the Contract in any manner adverse to the interests of the Assignee.

5.4 Preservation of Contracts

The Assignor shall not take any Security in connection with its liability under this Deed from any guarantor of, or provider of Security for, any of the Secured Liabilities.

5.5 Preservation of rights

The Assignor shall not do, permit or suffer or to be done anything which may prevent the Assignee (or any person claiming title through the Assignee) from exercising the rights of the Assignor (including any right to receive payments) under all or any part of the Contract following the occurrence of an Event of Default.

5.6 Further assurance

The Assignor shall promptly do whatever the Assignee requires:-

- 5.6.1 to perfect or protect the Security created or expressed to be created by this Deed, or its priority; or
- 5.6.2 to facilitate the realisation of the Charged Property or the exercise of any rights vested in the Assignee or any Receiver,

including executing any transfer, conveyance, charge, assignment or assurance of the Charged Property (whether to the Assignee or its nominees or otherwise), making any registration and giving any notice, order or direction.

6. DEMAND AND ENFORCEMENT

6.1 Enforcement

The Security created by this Deed shall become enforceable upon:-

- 6.1.1 the occurrence of an Event of Default;
- 6.1.2 the occurrence of any event described in clause 16 (*Change of Circumstances*) of the Term Loan Facility Agreement, clause 15 (*Change of Circumstances*) of the Revolving Credit Facility Agreement and clause 10 (*Change of Circumstances*) of the RLS Loan Terms;

- 6.1.3 any request being made by the Assignor to the Assignee for the appointment of a Receiver or an administrator, or for the Assignee to exercise any other power or right available to it.

6.2 Powers on enforcement

At any time after the Security created by this Deed has become enforceable, the Assignee may (without prejudice to any other rights and remedies and without notice to the Assignor) do all or any of the following:-

- 6.2.1 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the LPA;
- 6.2.2 apply any sums payable under the Contract in or towards satisfaction of the Secured Liabilities;
- 6.2.3 exercise all the powers and rights of the Assignor under the Contract; and
- 6.2.4 subject to Clause 7.1 (*Method of appointment or removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Charged Property.

6.3 Disposal of the Charged Property

In exercising the powers referred to in Clause 6.2 (*Powers on enforcement*), the Assignee or any Receiver may sell or dispose of all or any of the Charged Property at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

6.4 Same rights as Receiver

Any rights conferred upon a Receiver may be exercised by the Assignee or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not the Assignee shall have taken possession or appointed a Receiver of the Charged Property.

6.5 Delegation

The Assignee may delegate in any manner to any person any rights exercisable by the Assignee. Any such delegation may be made upon such terms and conditions (including power to sub delegate) as the Assignee thinks fit.

7. RECEIVERS

7.1 Method of appointment or removal

Every appointment or removal of a Receiver, any delegate or any other person by the Assignee under this Deed shall be in writing under the hand of any officer or manager of the Assignee (subject to any requirement for a court order in the case of the removal of an administrative receiver).

7.2 Removal

The Assignee may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Charged Property of which he is the Receiver and at any time (before or after any person shall have vacated office or ceased to act as Receiver in respect of any of such Charged Property) appoint a further or other Receiver or Receivers over all or any part of such Charged Property.

7.3 Powers

Every Receiver shall have and be entitled to exercise all the powers:-

- 7.3.1 of the Assignee under this Deed;
- 7.3.2 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;
- 7.3.3 of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;
- 7.3.4 in relation to any Charged Property, which he would have if he were its only beneficial owner; and
- 7.3.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

7.4 Receiver as agent

The Receiver shall be the agent of the Assignor (which shall be solely liable for his acts, defaults, remuneration, losses and liabilities) unless and until the Assignor goes into liquidation, from which time he shall act as principal and shall not become the agent of the Assignor.

7.5 Joint or several

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

7.6 Receiver's remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by the Assignee and the maximum rate specified in section 109(6) of the LPA shall not apply.

8. APPLICATION OF MONEYS

8.1 Application of moneys

All sums received by virtue of this Deed by the Assignee or any Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in the following order of priority:-

- 8.1.1 **first**, in or towards satisfaction pro rata of, or the provision pro rata for, all costs, charges and expenses incurred and payments made by the Assignee, or by any Receiver (including legal expenses), together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full or other person entitled to it;
- 8.1.2 **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Assignee or any Receiver;
- 8.1.3 **thirdly**, in or towards payment of the Secured Liabilities in accordance with the Facility Agreements;
- 8.1.4 **fourthly**, in the payment of the surplus (if any), to the Assignor or any other person entitled to it,

and section 109(8) of the LPA shall not apply.

9. POWER OF ATTORNEY

9.1 Appointment

The Assignor irrevocably and by way of security appoints:-

- 9.1.1 the Assignee (whether or not a Receiver has been appointed);
- 9.1.2 any delegate or sub delegate of, or other person nominated in writing by, an officer of the Assignee; and
- 9.1.3 (as a separate appointment) each Receiver,

severally as the Assignor's attorney and attorneys with power to do any act, and execute and deliver any deed or other document, on behalf of and in the name of the Assignor which the Assignor could be required to do or execute under any provision of this Deed, or which the Assignee in its sole opinion may consider necessary or desirable for perfecting its title to any of the Charged Property or enabling the Assignee or the Receiver to exercise any of its rights or powers under this Deed.

9.2 Ratification

The Assignor ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed pursuant to Clause 9.1 (*Appointment*) does or purports to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 9.1 (*Appointment*)

9.3 Exercise of Power

The appointment effected under Clause 9.1 (*Appointment*) shall take effect immediately, but the powers conferred shall only become exercisable upon the occurrence of an Event of Default which is continuing or if the Assignor does not fulfil any of its obligations under Clause 5.6 (*Further assurance*) within three Business Days of notice from the Assignee to do so.

10. CONSOLIDATION

10.1 Combination of accounts

In addition to any general lien, right to combine accounts, right of set-off or other right which it may at any time have, the Assignee may at any time after this Deed has become enforceable, without notice to the Assignor, combine or consolidate all or any accounts which it then has in relation to the Assignor (in whatever name) and any Secured Liabilities owed by the Assignor to it, and/or set-off or transfer any amounts standing to the credit of one or more accounts of the Assignor in or towards satisfaction of any Secured Liabilities owed it on any other account or otherwise.

10.2 Application

The Assignee's rights under Clause 10.1 (*Combination of accounts*) apply:-

- 10.2.1 whether or not any demand has been made under this Deed, or any liability concerned has fallen due for payment;
- 10.2.2 whether or not any credit balance is immediately available or subject to any restriction;
- 10.2.3 irrespective of the currencies in which any balance or liability is denominated, and the Assignee may, for the purpose of exercising its rights, elect to convert any sum or liability in one currency into any other at its spot rate applying at or about 11.00am on the date of conversion; and

10.2.4 in respect of any Secured Liabilities owed by the Assignor, however arising.

11. PROTECTION OF THIRD PARTIES

11.1 Statutory powers

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Assignee, as varied and extended by this Deed, and all other powers of the Assignee, shall be deemed to arise (and the Secured Liabilities shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

11.2 Purchasers

No purchaser from or other person dealing with the Assignee, any person to whom it has delegated any of its powers, or the Receiver, shall be concerned:-

11.2.1 to enquire whether any of the powers which the Assignee or a Receiver have exercised has arisen or become exercisable;

11.2.2 to enquire whether the Secured Liabilities remain outstanding or whether any event has happened to authorise the Receiver to act; or

11.2.3 as to the propriety or validity of the exercise of those powers,

and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

11.3 Receipts

All the protection to purchasers contained in sections 104 and 107 of the LPA, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Assignee, any Receiver or any person to whom any of them have delegated any of their powers.

12. PROTECTION OF THE ASSIGNEE AND ANY RECEIVER

12.1 No obligation

Notwithstanding any other term of this Deed the Assignee shall not have any obligation or liability under the Contract by reason only of this Deed to:-

12.1.1 perform any of the obligations or duties of the Assignor under the Contract;

12.1.2 make any payment under the Contract;

12.1.3 present or file any claim or take any other action to collect or enforce any claim for the payment of any sum payable under the Contract; or

12.1.4 make any enquiries as to the nature or sufficiency of any payments received by it under this Deed.

12.2 No liability

None of the Assignee, any Receiver or any of their respective officers, employees or delegates shall be liable in respect of any cost, liability, expense, loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise, any of their respective rights under this Deed.

12.3 Indemnity

The Assignor shall indemnify and keep indemnified the Assignee, any Receiver, and their respective officers, employees and delegates, against all claims, costs, expenses and liabilities incurred by them in respect of all or any of the following:-

- 12.3.1 any payment relating to or in respect of all or any of the Charged Property which is made at any time by any of them;
- 12.3.2 any stamp, registration or similar tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
- 12.3.3 exercising or purporting to exercise any of the rights, powers and discretions conferred on them or permitted under this Deed; and
- 12.3.4 any breach by the Assignor of any of its covenants or other obligations to the Assignee, except in the case of gross negligence or wilful misconduct on the part of that person.

12.4 Interest

The Assignor shall pay interest at the Default Rate on the sums payable under this Clause 12 (*Protection of the Assignee and any Receiver*) from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

12.5 Indemnity out of the Charged Property

The Assignee, any Receiver and their respective officers, employees and delegates shall be entitled to be indemnified out of the Charged Property in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 12.3 (*Indemnity*).

12.6 Continuing protection

The provisions of this Clause 12 (*Protection of the Assignee and any Receiver*) shall continue in full force and effect notwithstanding any release or discharge of this Deed or the discharge of any Receiver from office.

13. PROVISIONS RELATING TO THE ASSIGNEE

13.1 Powers and discretions

The rights, powers and discretions given to the Assignee in this Deed:-

- 13.1.1 may be exercised as often as, and in such manner as, the Assignee thinks fit;
- 13.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and
- 13.1.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

13.2 Trusts

The perpetuity period for any trusts constituted by this Deed shall be 125 years.

14. PRESERVATION OF SECURITY

14.1 Continuing Security

This Deed shall be a continuing security to the Assignee and shall remain in force until expressly discharged in writing by the Assignee notwithstanding any intermediate settlement of account or other matter or thing whatsoever.

14.2 Additional Security

This Deed is without prejudice and in addition to, and shall not merge with, any other right, remedy or Security of any kind which the Assignee may have now or at any time in the future for or in respect of any of the Secured Liabilities.

14.3 Waiver of Defences

Neither the Security created by this Deed nor the obligations of the Assignor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it or the Assignee) including:-

14.3.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;

14.3.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any person;

14.3.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

14.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;

14.3.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Facility Agreement or any other agreement, document, guarantee or Security;

14.3.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Facility Agreement, any other agreement, guarantee or Security or any other document; or

14.3.7 an insolvency, liquidation, administration or similar procedure.

14.4 Immediate recourse

The Assignor waives any right it may have of first requiring the Assignee to proceed against or enforce any other rights of Security or claim payment from any person before claiming from the Assignor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

14.5 Appropriations

During the Security Period the Assignee may:-

14.5.1 refrain from applying or enforcing any monies, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 8.1 (*Application of moneys*), apply and enforce the same in such manner and

order as it sees fit (whether against the Secured Liabilities or otherwise) and the Assignor shall not be entitled to the same; and

- 14.5.2 hold in an interest-bearing suspense account any moneys received from the Assignor on or account of the Secured Liabilities.

14.6 New Accounts

If the Assignee receives notice (whether actual or otherwise) of any subsequent Security over or affecting any of the Charged Property or if a petition is presented or a resolution passed in relation to the winding up of the Assignor, it may close the current account or accounts and/or open a new account or accounts for the Assignor. If the Assignee does not open a new account or accounts immediately it shall nevertheless be treated as if it had done so at the time when the relevant event occurred, and as from that time all payments made by the Assignor to the Assignee shall be credited or be treated as having been credited the new account or accounts and shall not operate to reduce the Secured Liabilities.

14.7 Tacking

For the purposes of section 94(1) of the LPA and section 49(3) of the Land Registration Act 2002 the Assignee confirms that it shall make further advances to the Assignor on the terms and subject to the conditions of the Facility Agreements.

14.8 Deferral of Assignor's rights

During the Security Period and unless the Assignee otherwise directs, the Assignor shall not exercise any rights which it may have by reason of performance by its obligations under this Deed or the enforcement of the Security created by this Deed:-

- 14.8.1 to receive or claim payment from, or be indemnified by an Obligor;
- 14.8.2 to claim any contribution from any guarantor of, or provider of Security in respect of, any Obligor's obligations under the Facility Agreements;
- 14.8.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Assignee under any Facility Agreements or of any guarantee or Security taken pursuant to, or in connection with, the Facility Agreements by the Assignee;
- 14.8.4 to exercise any right of set-off against any Obligor; and/or to claim or prove as a creditor of any Obligor in competition with the Assignee.

15. RELEASE

15.1 Release

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities and the termination of all facilities which might give rise to Secured Liabilities, the Assignee shall, or shall procure that its appointees will, at the request and cost of the Assignor:-

- 15.1.1 release the Charged Property from this Deed; and
- 15.1.2 re-assign the Charged Property that has been assigned to the Assignee under this Deed.

15.2 Reinstatement

If the Assignee considers that any amount paid or credited to Assignee (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is capable of being avoided, reduced or otherwise set aside:-

15.2.1 that amount shall not be considered to have been paid for the purposes of determining whether the Secured Liabilities have been irrevocably and unconditionally paid and discharged; and

15.2.2 the liability of the Assignor and the Security created by this Deed shall continue as if that amount had not been paid or credited.

15.3 Consolidation

Section 93 of the LPA dealing with the consolidation of mortgages shall not apply to this Deed.

16. MISCELLANEOUS PROVISIONS

16.1 Severability

If any provision of this Deed is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

16.1.1 the validity or enforceability of any other provision, in any jurisdiction; or

16.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.

16.2 Amendments and variations

This Deed shall remain in full force and effect notwithstanding any amendment, restatement, novation or supplementation of the Facility Agreements and/or any other agreement, guarantee and/or Security granted by any Obligor (including any increase in the amount of the Secured Liabilities).

16.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Assignee, 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.

16.4 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.

17. GOVERNING LAW

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

18. ENFORCEMENT

18.1 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 or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").

18.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

SCHEDULE 1

FORM OF NOTICE OF ASSIGNMENT

[Assignor's headed paper]

To: [] *[insert name and address of Counterparty]*

Attention: []

Date: []

Dear Sirs

NOTICE OF ASSIGNMENT – ADVANCE PAYMENT GUARANTEE ENTERED INTO BETWEEN HSBC UK BANK PLC AND NWH HOLDINGS LIMITED (PREVIOUSLY KNOWN AS THE NWH GROUP LTD) DATED [] (THE "CONTRACT")

1. We refer to the Contract.
2. We notify you that:-
 - 2.1 under a deed dated ** between us and The Royal Bank of Scotland plc (the "**Assignee**") we have assigned and charged to the Assignee all our right, title and interest in and to, and all benefits accruing under or in connection with the Contract as security for certain obligations owed to the Assignee;
 - 2.2 we may not, among other things, agree to amend, supplement, substitute, terminate, rescind or cancel the Contract or any material provision of the Contract, release any obligation under or in connection with the Contract or waive any material breach of the Contract;
 - 2.3 until you receive written notice to the contrary from the Assignee, you may continue to deal with us in relation to the Contract and credit all moneys to which we are entitled under the Contract to the following account in our name: ** *[insert details of account]*. After written notice is given by the Assignee we will cease to have any right to deal with you in relation to the Contract and from that time you should deal only with the Assignee; and
 - 2.4 you are authorised to disclose information relating to the Contract to the Assignee on request.
3. We request that you:-
 - 3.1 after receipt of written notice in accordance with paragraph 2.3, ensure that all moneys to which we are entitled under the Contract are credited to the account of the Assignee specified in that notice (and are not paid to us);
 - 3.2 give the Assignee written notice of any breach of any term of the Contract as soon as you become aware of it; and
 - 3.3 give the Assignee not less than 30 days' written notice of your *[giving notice to terminate or cancel]* the Contract.
4. Please sign and return the enclosed copy of this notice to the Assignee (with a copy to us) to confirm that you:

- 4.1 agree to the terms of this notice and to act in accordance with its provisions;
- 4.2 have not received notice that the Assignor assigned its rights under the Contract to a third party or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party; and
- 4.3 have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Assignor, any right of set-off, counter-claim or other right relating to the Contract.
5. The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully



For and on behalf of
NWH HOLDINGS LTD (PREVIOUSLY KNOWN AS THE NWH GROUP LTD)

[on acknowledgement copy]

To: **THE ROYAL BANK OF SCOTLAND PLC**
[NOTICE DETAILS TBC]

Copy to: **NWH HOLDINGS LIMITED (PREVIOUSLY KNOWN AS THE NWH GROUP LIMITED)**
[NOTICE DETAILS TBC]

We acknowledge receipt of the above notice and confirm the matters set out in paragraph 4.

For and on behalf of
HSBC UK BANK PLC

Date

The Assignor

EXECUTED as a Deed (but not delivered until the
date of this Deed)
By **NWH HOLDINGS LIMITED (PREVIOUSLY
KNOWN AS THE NWH GROUP LTD)**
acting by two Directors



Director *MAUL WILLIAMS*

Director *RICHARD WILLIAMS*

The Assignee

SIGNED for and on behalf of
THE ROYAL BANK OF SCOTLAND PLC

DATED 17 November 2021

**(1) NWH HOLDINGS LIMITED (PREVIOUSLY KNOWN AS THE NWH GROUP LTD)
(AS ASSIGNOR)**

**(2) THE ROYAL BANK OF SCOTLAND PLC
(AS ASSIGNEE)**

ASSIGNMENT OF CONTRACTS



Pinsent Masons

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THIS DEED is made on

17 November

2021

BETWEEN

- (1) **NWH HOLDINGS LIMITED (PREVIOUSLY KNOWN AS THE NWH GROUP LIMITED)** a company incorporated in England and Wales with company number SC303441 whose registered office is at Unit 5, Mayfield Industrial Estate, Mayfield, Dalkeith, Midlothian, EH22 4AD (the "Assignor"); and
- (2) **THE ROYAL BANK OF SCOTLAND PLC** as assignee (the "Assignee")

RECITALS

- (A) The Assignee has agreed to make multiple credit facilities available on the terms of the Facility Agreements.
- (B) The Assignor has agreed to provide Security to the Assignee to secure the payment and discharge of the Secured Liabilities.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed:-

"RLS Loan Terms"	means the Assignee's Base Rate Loan Terms that form part of the Recovery Loan Scheme Agreement
"Charged Property"	means all the property, assets and undertaking of the Assignor which from time to time are, or are expressed to be, the subject of the Security created in favour of the Assignee by or pursuant to this Deed
"Contract"	means the advance payment guarantee entered into between HSBC UK Bank plc and the Assignor dated on or around the date of this Deed on account of the advance payments made or to be made by the Assignor to the Seller (as defined therein)
"Counterparty"	means HSBC UK Bank plc, a company incorporated in a company incorporated in England and Wales with company number 09928412 whose registered office is at 1 Centenary Square, Birmingham, United Kingdom, B1 1HQ
"Default Rate"	means the rate of interest specified in, and calculated in accordance with, clause 5.4 (<i>Interest</i>) of the Term Loan Facility Agreement, clause 6.4 (<i>Interest</i>) of the Revolving Credit Facility Agreement and clause 2.4 (<i>Interest</i>) of the RLS Loan Terms
"Facility Agreements"	<ol style="list-style-type: none">(a) means the £2,800,000 term loan facility agreement dated on or about the date of this Deed made between the Assignor as borrower and the Assignee as lender (the "Term Loan Facility Agreement");(b) the £2,400,000 revolving credit facility agreement dated on or about the date of this Deed made between the Assignor as borrower and the Assignee as lender (the "Revolving Credit Facility Agreement"); and(c) the £7,350,000 new recovery loan scheme facility agreement dated on or around the date of this Deed

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made between the Assignor as borrower and the Assignee as lender (the "**Recovery Loan Scheme Agreement**").

"LPA"	means the Law of Property Act 1925
"Notice of Assignment"	means a notice of assignment in the form set out in Schedule 1 (<i>Form of Notice of Assignment</i>)
"Obligors"	<p>means:-</p> <ul style="list-style-type: none">(a) the Assignor;(b) NWH Group Limited (previously known as The NWH Group Ltd and as further previously known as NWH Waste Services Limited, a company incorporated in Scotland with registered number SC335165;(c) NWH Construction Services Ltd, a company incorporated in Scotland with registered number SC263290;(d) City Truck Sales Ltd, a company incorporated in Scotland with registered number SC325713;(e) Citysweep Limited, a company incorporated in Scotland with registered number SC303647;(f) CRM Investments Limited, a company incorporated in Scotland with registered number SC579060;(g) NWH Plant Hire Limited, a company incorporated in Scotland with registered number SC302669;(h) NWH Recycling (Philipstoun) Limited, a company incorporated in Scotland with registered number SC263252;(i) NWH Waste Services (Middleton) Limited, a company incorporated in Scotland with registered number SC480793; and(j) CRM Investments Limited, a company incorporated in Scotland with registered number SC579060. <p>and "Obligor" means any one of them.</p>
"Party"	means a party to this Deed
"Receiver"	means any receiver, receiver and manager or administrative receiver of the whole or any part of the Charged Property
"Related Rights"	<p>means in relation to any Charged Property:</p> <ul style="list-style-type: none">(a) the proceeds of sale of any part of that Charged Property;(b) all rights, benefits, claims, contracts, warranties, remedies, security or indemnities in respect of that Charged Property; and

- (c) any moneys and proceeds paid or payable in respect of that Charged Property

"Secured Liability" means any liability expressed to be due, owing or payable by the Assignor to the Assignee on any current or other account or otherwise in any manner whatsoever (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise) (together the **"Secured Liabilities"**)

"Security" means a mortgage, charge, pledge, lien or any 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 earlier of (i) the date on which the Contract expires in accordance with its terms or (ii) the date on which the Assignee is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and all facilities which might give rise to Secured Liabilities have terminated

1.2 Incorporation of terms

Unless the context otherwise requires or unless defined in this Deed, all words and expressions defined or whose interpretation is provided for in the Facility Agreements have the same meanings in this Deed.

1.3 Interpretation

In this Deed unless the context requires otherwise:-

- 1.3.1 words importing the singular shall include the plural and vice versa;
- 1.3.2 references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.3.3 references to a **"person"** shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- 1.3.4 any reference to the Assignee or to a Party includes its permitted successors, transferees and assignees; and
- 1.3.5 **"tax"** means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and **"taxes"** and **"taxation"** shall be construed accordingly.
- 1.3.6 unless the context otherwise requires, a reference to any **"Facility Agreement"** or any other agreement or instrument is a reference to that Facility Agreement or other agreement or instrument as amended, novated, supplemented, restated, extended or replaced (however fundamentally) and includes any increase in, extension of, or change to, any facility made available under that Facility Agreement or other agreement or instrument.

1.4 Effect as a deed

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Assignee.

1.5 Third party rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

2. COVENANT TO PAY

2.1 Secured Liabilities

The Assignor covenants that it will on demand pay and discharge any or all of the Secured Liabilities when due.

2.2 Interest

The Assignor covenants to pay interest on any sum demanded in accordance with Clause 2.1 (*Secured Liabilities*) until payment (both before and after judgment) at the Default Rate.

3. SECURITY

3.1 Assignment

As a continuing security for payment of the Secured Liabilities, the Assignor with full title guarantee:-

3.1.1 assigns all its present and future right, title and interest in and to, and all benefits accruing under or in connection with the Contract and all Related Rights in respect of the Contract absolutely in favour of the Assignee subject to a proviso for reassignment on redemption; and

3.1.2 to the extent not assigned or effectively assigned by Clause 3.1.1, charges by way of first fixed charge in favour of the Assignee all its present and future right, title and interest in and to, and all benefits accruing under or in connection with the Contract and all Related Rights in respect of the Contract.

3.2 Dealings

3.2.1 Until an Event of Default occurs, but subject always to Clauses 4 (*Undertakings*) and 5 (*Restrictions and further assurance*), the Assignor may continue to deal with the Counterparty in relation to the Contract.

3.2.2 Upon the occurrence of an Event of Default, the Assignor shall have no further right to deal with the Counterparty and the Assignee may notify the Counterparty that it should deal only with the Assignee.

3.3 Trust

If or to the extent that for any reason the assignment or charging of any Charged Property is prohibited, the Assignor shall hold it on trust for the Assignee.

4. UNDERTAKINGS

The covenants in this Clause 4 (*Undertakings*) remain in force from the date of this Deed until the end of the Security Period.

4.1 The Assignor shall:-

- 4.1.1 duly and promptly perform all its obligations and diligently pursue its rights, and use all reasonable endeavours to procure that the Counterparty perform their obligations, under the Contract;
- 4.1.2 notify the Assignee of any breach by any person of any term of the Contract or any right of it or any other person to rescind, cancel or terminate the Contract promptly upon becoming aware of it;
- 4.1.3 supply to the Assignee all information, accounts and records necessary to enable the Assignee to verify all sums payable under the Contract;
- 4.1.4 provide the Assignee promptly upon request with any document in its possession, custody or control and provide or assist the Assignee in obtaining any document or information which it may require in relation to the Contract; and
- 4.1.5 deliver to the Assignee a duly executed Notice of Assignment on the date of this Deed and shall use all reasonable endeavours to procure that the Notice of Assignment is acknowledged by the Counterparty to whom it is addressed.

4.2 Conduct of claims

The Assignor:-

- 4.2.1 shall promptly notify the Assignee of any actual, threatened or anticipated claim relating to the Contract, and shall not, without the Assignee's prior written consent, compromise or settle any claim relating to the Contract;
- 4.2.2 shall not, without the Assignee's prior written consent, commence any proceedings or refer any dispute to arbitration in connection with the Contract; and
- 4.2.3 authorises the Assignee any time and in any manner (whether in the Assignee's name or the Assignor's name) to take, submit to arbitration, institute, stay, settle or discontinue any proceedings relating to any claim under the Contract.

4.3 Payments without deduction

The Assignor shall calculate and make all payments under this Deed without (and free and clear of any deduction for) set-off or counterclaim.

4.4 Assignor remains liable

The Assignor shall remain liable to perform all its obligations under the Contract and the Assignee shall be under no obligation or liability as a result of any failure by the Assignor to perform those obligations.

5. RESTRICTIONS AND FURTHER ASSURANCE

5.1 Security

The Assignor shall not create or permit to subsist any Security over any Charged Property, nor do anything else prohibited by clause 15 (*General Undertakings*) of the Term Loan Facility Agreement, clause 14 (*General Undertakings*) of the Revolving Credit Facility Agreement, clause 11 (*Undertakings*) of the Recovery Loan Scheme Agreement and clause 8 (*General Undertakings*) of the RLS Loan Terms.

5.2 Disposal

The Assignor shall not enter into or agree to enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub license, transfer or otherwise dispose of any Charged Property.

5.3 General

The Assignor shall not (and shall not agree to):-

- 5.3.1 (save to agree to extend the period that the Contract is enforceable) amend, supplement, substitute, rescind or cancel the Contract or any material provision of the Contract;
- 5.3.2 release any obligation under the Contract, or waive any material breach of the Contract;
- 5.3.3 make any claim that the Contract is frustrated;
- 5.3.4 permit any party to the Contract to assign any of their rights, or transfer any of their obligations, under the Contract; and
- 5.3.5 take or omit to take any action, the taking or omission of which might result in any alteration or impairment of any of the rights created by the Contract or this Deed, nor exercise any right or power conferred on it by the Contract in any manner adverse to the interests of the Assignee.

5.4 Preservation of Contracts

The Assignor shall not take any Security in connection with its liability under this Deed from any guarantor of, or provider of Security for, any of the Secured Liabilities.

5.5 Preservation of rights

The Assignor shall not do, permit or suffer or to be done anything which may prevent the Assignee (or any person claiming title through the Assignee) from exercising the rights of the Assignor (including any right to receive payments) under all or any part of the Contract following the occurrence of an Event of Default.

5.6 Further assurance

The Assignor shall promptly do whatever the Assignee requires:-

- 5.6.1 to perfect or protect the Security created or expressed to be created by this Deed, or its priority; or

- 5.6.2 to facilitate the realisation of the Charged Property or the exercise of any rights vested in the Assignee or any Receiver,

including executing any transfer, conveyance, charge, assignment or assurance of the Charged Property (whether to the Assignee or its nominees or otherwise), making any registration and giving any notice, order or direction.

6. DEMAND AND ENFORCEMENT

6.1 Enforcement

The Security created by this Deed shall become enforceable upon:-

- 6.1.1 the occurrence of an Event of Default;
- 6.1.2 the occurrence of any event described in clause 16 (*Change of Circumstances*) of the Term Loan Facility Agreement, clause 15 (*Change of Circumstances*) of the Revolving Credit Facility Agreement and clause 10 (*Change of Circumstances*) of the RLS Loan Terms;

- 6.1.3 any request being made by the Assignor to the Assignee for the appointment of a Receiver or an administrator, or for the Assignee to exercise any other power or right available to it.

6.2 Powers on enforcement

At any time after the Security created by this Deed has become enforceable, the Assignee may (without prejudice to any other rights and remedies and without notice to the Assignor) do all or any of the following:-

- 6.2.1 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the LPA;
- 6.2.2 apply any sums payable under the Contract in or towards satisfaction of the Secured Liabilities;
- 6.2.3 exercise all the powers and rights of the Assignor under the Contract; and
- 6.2.4 subject to Clause 7.1 (*Method of appointment or removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Charged Property.

6.3 Disposal of the Charged Property

In exercising the powers referred to in Clause 6.2 (*Powers on enforcement*), the Assignee or any Receiver may sell or dispose of all or any of the Charged Property at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

6.4 Same rights as Receiver

Any rights conferred upon a Receiver may be exercised by the Assignee or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not the Assignee shall have taken possession or appointed a Receiver of the Charged Property.

6.5 Delegation

The Assignee may delegate in any manner to any person any rights exercisable by the Assignee. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Assignee thinks fit.

7. RECEIVERS

7.1 Method of appointment or removal

Every appointment or removal of a Receiver, any delegate or any other person by the Assignee under this Deed shall be in writing under the hand of any officer or manager of the Assignee (subject to any requirement for a court order in the case of the removal of an administrative receiver).

7.2 Removal

The Assignee may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Charged Property of which he is the Receiver and at any time (before or after any person shall have vacated office or ceased to act as Receiver in respect of any of such Charged Property) appoint a further or other Receiver or Receivers over all or any part of such Charged Property.

7.3 Powers

Every Receiver shall have and be entitled to exercise all the powers:-

- 7.3.1 of the Assignee under this Deed;
- 7.3.2 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;
- 7.3.3 of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;
- 7.3.4 in relation to any Charged Property, which he would have if he were its only beneficial owner; and
- 7.3.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

7.4 Receiver as agent

The Receiver shall be the agent of the Assignor (which shall be solely liable for his acts, defaults, remuneration, losses and liabilities) unless and until the Assignor goes into liquidation, from which time he shall act as principal and shall not become the agent of the Assignor.

7.5 Joint or several

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

7.6 Receiver's remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by the Assignee and the maximum rate specified in section 109(6) of the LPA shall not apply.

8. APPLICATION OF MONEYS

8.1 Application of moneys

All sums received by virtue of this Deed by the Assignee or any Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in the following order of priority:-

- 8.1.1 **first**, in or towards satisfaction pro rata of, or the provision pro rata for, all costs, charges and expenses incurred and payments made by the Assignee, or by any Receiver (including legal expenses), together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full or other person entitled to it;
- 8.1.2 **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Assignee or any Receiver;
- 8.1.3 **thirdly**, in or towards payment of the Secured Liabilities in accordance with the Facility Agreements;
- 8.1.4 **fourthly**, in the payment of the surplus (if any), to the Assignor or any other person entitled to it,

and section 109(8) of the LPA shall not apply.

9. POWER OF ATTORNEY

9.1 Appointment

The Assignor irrevocably and by way of security appoints:-

- 9.1.1 the Assignee (whether or not a Receiver has been appointed);
- 9.1.2 any delegate or sub delegate of, or other person nominated in writing by, an officer of the Assignee; and
- 9.1.3 (as a separate appointment) each Receiver,

severally as the Assignor's attorney and attorneys with power to do any act, and execute and deliver any deed or other document, on behalf of and in the name of the Assignor which the Assignor could be required to do or execute under any provision of this Deed, or which the Assignee in its sole opinion may consider necessary or desirable for perfecting its title to any of the Charged Property or enabling the Assignee or the Receiver to exercise any of its rights or powers under this Deed.

9.2 Ratification

The Assignor ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed pursuant to Clause 9.1 (*Appointment*) does or purports to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 9.1 (*Appointment*)

9.3 Exercise of Power

The appointment effected under Clause 9.1 (*Appointment*) shall take effect immediately, but the powers conferred shall only become exercisable upon the occurrence of an Event of Default which is continuing or if the Assignor does not fulfil any of its obligations under Clause 5.6 (*Further assurance*) within three Business Days of notice from the Assignee to do so.

10. CONSOLIDATION

10.1 Combination of accounts

In addition to any general lien, right to combine accounts, right of set-off or other right which it may at any time have, the Assignee may at any time after this Deed has become enforceable, without notice to the Assignor, combine or consolidate all or any accounts which it then has in relation to the Assignor (in whatever name) and any Secured Liabilities owed by the Assignor to it, and/or set-off or transfer any amounts standing to the credit of one or more accounts of the Assignor in or towards satisfaction of any Secured Liabilities owed it on any other account or otherwise.

10.2 Application

The Assignee's rights under Clause 10.1 (*Combination of accounts*) apply:-

- 10.2.1 whether or not any demand has been made under this Deed, or any liability concerned has fallen due for payment;
- 10.2.2 whether or not any credit balance is immediately available or subject to any restriction;
- 10.2.3 irrespective of the currencies in which any balance or liability is denominated, and the Assignee may, for the purpose of exercising its rights, elect to convert any sum or liability in one currency into any other at its spot rate applying at or about 11.00am on the date of conversion; and

10.2.4 in respect of any Secured Liabilities owed by the Assignor, however arising.

11. PROTECTION OF THIRD PARTIES

11.1 Statutory powers

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Assignee, as varied and extended by this Deed, and all other powers of the Assignee, shall be deemed to arise (and the Secured Liabilities shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

11.2 Purchasers

No purchaser from or other person dealing with the Assignee, any person to whom it has delegated any of its powers, or the Receiver, shall be concerned:-

11.2.1 to enquire whether any of the powers which the Assignee or a Receiver have exercised has arisen or become exercisable;

11.2.2 to enquire whether the Secured Liabilities remain outstanding or whether any event has happened to authorise the Receiver to act; or

11.2.3 as to the propriety or validity of the exercise of those powers,

and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

11.3 Receipts

All the protection to purchasers contained in sections 104 and 107 of the LPA, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Assignee, any Receiver or any person to whom any of them have delegated any of their powers.

12. PROTECTION OF THE ASSIGNEE AND ANY RECEIVER

12.1 No obligation

Notwithstanding any other term of this Deed the Assignee shall not have any obligation or liability under the Contract by reason only of this Deed to:-

12.1.1 perform any of the obligations or duties of the Assignor under the Contract;

12.1.2 make any payment under the Contract;

12.1.3 present or file any claim or take any other action to collect or enforce any claim for the payment of any sum payable under the Contract; or

12.1.4 make any enquiries as to the nature or sufficiency of any payments received by it under this Deed.

12.2 No liability

None of the Assignee, any Receiver or any of their respective officers, employees or delegates shall be liable in respect of any cost, liability, expense, loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise, any of their respective rights under this Deed.

12.3 Indemnity

The Assignor shall indemnify and keep indemnified the Assignee, any Receiver, and their respective officers, employees and delegates, against all claims, costs, expenses and liabilities incurred by them in respect of all or any of the following:-

- 12.3.1 any payment relating to or in respect of all or any of the Charged Property which is made at any time by any of them;
- 12.3.2 any stamp, registration or similar tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
- 12.3.3 exercising or purporting to exercise any of the rights, powers and discretions conferred on them or permitted under this Deed; and
- 12.3.4 any breach by the Assignor of any of its covenants or other obligations to the Assignee, except in the case of gross negligence or wilful misconduct on the part of that person.

12.4 Interest

The Assignor shall pay interest at the Default Rate on the sums payable under this Clause 12 (*Protection of the Assignee and any Receiver*) from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

12.5 Indemnity out of the Charged Property

The Assignee, any Receiver and their respective officers, employees and delegates shall be entitled to be indemnified out of the Charged Property in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 12.3 (*Indemnity*).

12.6 Continuing protection

The provisions of this Clause 12 (*Protection of the Assignee and any Receiver*) shall continue in full force and effect notwithstanding any release or discharge of this Deed or the discharge of any Receiver from office.

13. PROVISIONS RELATING TO THE ASSIGNEE

13.1 Powers and discretions

The rights, powers and discretions given to the Assignee in this Deed:-

- 13.1.1 may be exercised as often as, and in such manner as, the Assignee thinks fit;
- 13.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and
- 13.1.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

13.2 Trusts

The perpetuity period for any trusts constituted by this Deed shall be 125 years.

14. PRESERVATION OF SECURITY

14.1 Continuing Security

This Deed shall be a continuing security to the Assignee and shall remain in force until expressly discharged in writing by the Assignee notwithstanding any intermediate settlement of account or other matter or thing whatsoever.

14.2 Additional Security

This Deed is without prejudice and in addition to, and shall not merge with, any other right, remedy or Security of any kind which the Assignee may have now or at any time in the future for or in respect of any of the Secured Liabilities.

14.3 Waiver of Defences

Neither the Security created by this Deed nor the obligations of the Assignor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it or the Assignee) including:-

14.3.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;

14.3.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any person;

14.3.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

14.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;

14.3.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Facility Agreement or any other agreement, document, guarantee or Security;

14.3.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Facility Agreement, any other agreement, guarantee or Security or any other document; or

14.3.7 an insolvency, liquidation, administration or similar procedure.

14.4 Immediate recourse

The Assignor waives any right it may have of first requiring the Assignee to proceed against or enforce any other rights of Security or claim payment from any person before claiming from the Assignor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

14.5 Appropriations

During the Security Period the Assignee may:-

14.5.1 refrain from applying or enforcing any monies, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 8.1 (*Application of moneys*), apply and enforce the same in such manner and

order as it sees fit (whether against the Secured Liabilities or otherwise) and the Assignor shall not be entitled to the same; and

- 14.5.2 hold in an interest-bearing suspense account any moneys received from the Assignor on or account of the Secured Liabilities.

14.6 New Accounts

If the Assignee receives notice (whether actual or otherwise) of any subsequent Security over or affecting any of the Charged Property or if a petition is presented or a resolution passed in relation to the winding up of the Assignor, it may close the current account or accounts and/or open a new account or accounts for the Assignor. If the Assignee does not open a new account or accounts immediately it shall nevertheless be treated as if it had done so at the time when the relevant event occurred, and as from that time all payments made by the Assignor to the Assignee shall be credited or be treated as having been credited the new account or accounts and shall not operate to reduce the Secured Liabilities.

14.7 Tacking

For the purposes of section 94(1) of the LPA and section 49(3) of the Land Registration Act 2002 the Assignee confirms that it shall make further advances to the Assignor on the terms and subject to the conditions of the Facility Agreements.

14.8 Deferral of Assignor's rights

During the Security Period and unless the Assignee otherwise directs, the Assignor shall not exercise any rights which it may have by reason of performance by its obligations under this Deed or the enforcement of the Security created by this Deed:-

- 14.8.1 to receive or claim payment from, or be indemnified by an Obligor;
- 14.8.2 to claim any contribution from any guarantor of, or provider of Security in respect of, any Obligor's obligations under the Facility Agreements;
- 14.8.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Assignee under any Facility Agreements or of any guarantee or Security taken pursuant to, or in connection with, the Facility Agreements by the Assignee;
- 14.8.4 to exercise any right of set-off against any Obligor; and/or to claim or prove as a creditor of any Obligor in competition with the Assignee.

15. RELEASE

15.1 Release

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities and the termination of all facilities which might give rise to Secured Liabilities, the Assignee shall, or shall procure that its appointees will, at the request and cost of the Assignor:-

- 15.1.1 release the Charged Property from this Deed; and
- 15.1.2 re-assign the Charged Property that has been assigned to the Assignee under this Deed.

15.2 Reinstatement

If the Assignee considers that any amount paid or credited to Assignee (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is capable of being avoided, reduced or otherwise set aside:-

15.2.1 that amount shall not be considered to have been paid for the purposes of determining whether the Secured Liabilities have been irrevocably and unconditionally paid and discharged; and

15.2.2 the liability of the Assignor and the Security created by this Deed shall continue as if that amount had not been paid or credited.

15.3 Consolidation

Section 93 of the LPA dealing with the consolidation of mortgages shall not apply to this Deed.

16. MISCELLANEOUS PROVISIONS

16.1 Severability

If any provision of this Deed is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

16.1.1 the validity or enforceability of any other provision, in any jurisdiction; or

16.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.

16.2 Amendments and variations

This Deed shall remain in full force and effect notwithstanding any amendment, restatement, novation or supplementation of the Facility Agreements and/or any other agreement, guarantee and/or Security granted by any Obligor (including any increase in the amount of the Secured Liabilities).

16.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Assignee, 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 provide by law.

16.4 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.

17. GOVERNING LAW

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

18. ENFORCEMENT

18.1 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 or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").

18.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

SCHEDULE 1

FORM OF NOTICE OF ASSIGNMENT

[Assignor's headed paper]

To: [] *[insert name and address of Counterparty]*

Attention: []

Date: []

Dear Sirs

NOTICE OF ASSIGNMENT – ADVANCE PAYMENT GUARANTEE ENTERED INTO BETWEEN HSBC UK BANK PLC AND NWH HOLDINGS LIMITED (PREVIOUSLY KNOWN AS THE NWH GROUP LTD) DATED [] (THE "CONTRACT")

1. We refer to the Contract.
2. We notify you that:-
 - 2.1 under a deed dated ** between us and The Royal Bank of Scotland plc (the "Assignee") we have assigned and charged to the Assignee all our right, title and interest in and to, and all benefits accruing under or in connection with the Contract as security for certain obligations owed to the Assignee;
 - 2.2 we may not, among other things, agree to amend, supplement, substitute, terminate, rescind or cancel the Contract or any material provision of the Contract, release any obligation under or in connection with the Contract or waive any material breach of the Contract;
 - 2.3 until you receive written notice to the contrary from the Assignee, you may continue to deal with us in relation to the Contract and credit all moneys to which we are entitled under the Contract to the following account in our name: ** *[insert details of account]*. After written notice is given by the Assignee we will cease to have any right to deal with you in relation to the Contract and from that time you should deal only with the Assignee; and
 - 2.4 you are authorised to disclose information relating to the Contract to the Assignee on request.
3. We request that you:-
 - 3.1 after receipt of written notice in accordance with paragraph 2.3, ensure that all moneys to which we are entitled under the Contract are credited to the account of the Assignee specified in that notice (and are not paid to us);
 - 3.2 give the Assignee written notice of any breach of any term of the Contract as soon as you become aware of it; and
 - 3.3 give the Assignee not less than 30 days' written notice of your *[giving notice to terminate or cancel]* the Contract.
4. Please sign and return the enclosed copy of this notice to the Assignee (with a copy to us) to confirm that you:

- 4.1 agree to the terms of this notice and to act in accordance with its provisions;
- 4.2 have not received notice that the Assignor assigned its rights under the Contract to a third party or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party; and
- 4.3 have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Assignor, any right of set-off, counter-claim or other right relating to the Contract.
5. The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

.....
For and on behalf of
NWH HOLDINGS LTD (PREVIOUSLY KNOWN AS THE NWH GROUP LTD)

[on acknowledgement copy]

To: **THE ROYAL BANK OF SCOTLAND PLC**

[NOTICE DETAILS TBC]

Copy to: **NWH HOLDINGS LIMITED (PREVIOUSLY KNOWN AS THE NWH GROUP LIMITED)**

[NOTICE DETAILS TBC]

.....
We acknowledge receipt of the above notice and confirm the matters set out in paragraph 4.

For and on behalf of
HSBC UK BANK PLC

Date

The Assignor

EXECUTED as a Deed (but not delivered until the)
date of this Deed))
By NWH HOLDINGS LIMITED (PREVIOUSLY)
KNOWN AS THE NWH GROUP LTD))
acting by two Directors

Director

Director

The Assignee

SIGNED for and on behalf of)
THE ROYAL BANK OF SCOTLAND PLC)

