



**Registration of a Charge**

Company Name: **CORE TECHNOLOGY SYSTEMS (U.K.) LIMITED**

Company Number: **02502866**



Received for filing in Electronic Format on the: **15/07/2022**

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**Details of Charge**

Date of creation: **30/06/2022**

Charge code: **0250 2866 0007**

Persons entitled: **ANDREW HAMILTON, SIMON MONTGOMERY, NEIL FRANCIS, BRIAN MILLHOUSE, NINA THAIN (AS EXECUTOR OF HOWARD STANLEY THAIN DECEASED), HAMILTON MANAGEMENT SERVICES LIMITED, LEENA DRUMMOND, ERIC SCOTT AND ROBERT VEITCH ALL C/O COMPANYNET LIMITED,**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**MACROBERTS LLP**



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

Company number: 2502866

Charge code: 0250 2866 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th June 2022 and created by CORE TECHNOLOGY SYSTEMS (U.K.) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th July 2022 .

Given at Companies House, Cardiff on 19th July 2022

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

Dated

30th June

2022

**CORE TECHNOLOGY SYSTEMS (U.K.) LIMITED**

and

**ANDREW HAMILTON and OTHERS**

THIS DEBENTURE IS SUBJECT TO THE TERMS OF THE INTERCREDITOR DEED DATED ON OR ABOUT THE DATE OF THIS DEBENTURE AND MADE BETWEEN (1) TC SECURITY TRUSTEE LIMITED (2) TC FUNDING LIMITED (3) THE JUNIOR LENDERS (AS DEFINED THEREIN) (4) CORE TECHNOLOGY SYSTEMS (U.K.) LIMITED AND (5) COMPANYNET LIMITED

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**DEBENTURE**

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Unit C1 - Hurstwood Court  
Duttons Way  
Shadsworth  
BLACKBURN  
BB1 2QR

THIS DEED is dated

30th June

2022

## PARTIES

**CORE TECHNOLOGY SYSTEMS (U.K.) LIMITED** incorporated and registered in England and Wales with company number 02502866 whose registered office is at 9<sup>th</sup> Floor, 9 Appold Street, London, EC2A 2AP (**Company**); and

in favour of

**ANDREW HAMILTON, SIMON MONTGOMERY, NEIL FRANCIS, BRIAN MILLHOUSE, NINA THAIN (as Executor of Howard Stanley Thain Deceased), HAMILTON MANAGEMENT SERVICES LIMITED, LEENA DRUMMOND, ERIC SCOTT and ROBERT VEITCH** all c/o CompanyNet Limited, (company number SC167440) of Clarence House, 133 George Street, Edinburgh EH2 4JS (together the **Noteholders**).

## BACKGROUND

- (A) Each of the Noteholders have each been issued with Secured Loan Notes of the Company (**Loan Notes**) on the terms and conditions of a Loan Note Instrument of even date and entered into by (1) the Company and (2) the Guarantor (**Loan Note Instrument**).
- (B) Under this deed the Company provides security to the Noteholders (jointly) for its obligations to the Noteholders under the Loan Note Instrument and in connection with the repayment of the Loan Notes.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 DEFINITIONS

Terms defined in the Loan Note Instrument shall, unless otherwise defined in this deed, have the same meaning in this deed.

In addition, the following definitions apply in this deed:

**Administrator:** an administrator appointed to manage the affairs, business and property of the Company pursuant to clause 13.6.

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

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

**Charged Property:** any freehold, leasehold or commonhold property the subject of the security constituted by this deed and references to "**Charged Property**" shall include references to the whole or any part or part of it.

**Delegate:** any person appointed by the Noteholders or any Receiver pursuant to clause 18 and any person appointed as attorney of the Noteholders or any Receiver or Delegate.

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

**Equipment:** all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property owned by the Company or in which it has an interest, including any part of it and all spare parts, replacements, modifications and additions.

**Event of Default:** means any of the events or circumstances defined in the Loan Note Instrument and any of the following events or circumstances and each is an event of default:

- (a) the Company suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or material part of its business;
- (b) the Company stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due;
- (c) the Company commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors (excluding the Noteholders) with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties);
- (d) a moratorium is declared in respect of any indebtedness of the Company;
- (e) any action, proceedings, procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Company; or
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Company; or
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Company or any of its assets;

- (f) a distress, attachment, execution, expropriation, sequestration or other analogous legal process is levied, enforced or sued out on, or against, the Company's assets and is not discharged or stayed within 30 days; or
- (g) the Company repudiates or rescinds or shows an intention to repudiate or rescind the Loan Note Instrument or this deed or either of them.

**Guarantee:** the guarantee contained in the Loan Note Instrument and given by the Guarantor in favour of the Noteholders.

**Guarantor:** Company Net Limited incorporated and registered in Scotland with company number SC167440 whose registered office is at Clarence House, 133 George Street, Edinburgh EH2 4JS.

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

**Intercreditor Deed:** the intercreditor deed entered into on or about the date of this deed between (1) TC Security Trustee Limited (2) TC Funding Limited (3) the Junior Lenders (as defined therein) (4) the Company and CompanyNet Limited (company registration number: SC167440).

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

**Investments:** all certificated shares, stock, debentures, bonds or other securities or investments (whether or not marketable) from time to time legally or beneficially owned by or on behalf of the Company

**LPA 1925:** the Law of Property Act 1925.

**Receiver:** a receiver, receiver and manager or administrative receiver appointed by the Noteholders under clause 16.

**Secured Assets:** all the assets, property and undertaking of the Company which are, or are expressed to be, subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

**Secured Liabilities:** all present and future obligations and liabilities of the Company to the Noteholders, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under the Loan Note

Instrument and/or in connection with the repayment of the Loan Notes and/or in connection with this deed (including, without limitation, those arising under clause 30), together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

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

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

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 INTERPRETATION

In this deed:

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



such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;

- (k) unless the context otherwise requires, a reference to a clause is to a clause of, this deed;
- (l) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (q) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (r) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 CLAWBACK

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

### 1.4 NATURE OF SECURITY OVER REAL PROPERTY

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

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of that Charged Property at any time;
- (b) the proceeds of the sale of any part of that Charged Property and any other monies paid or payable in respect of or in connection with that Charged Property;

- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Company in respect of that Charged Property, and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of that Charged Property.

## **1.5 NATURE OF SECURITY OVER INVESTMENTS**

A reference in this deed to any share, stock, debenture or other security or investment includes:

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

## **1.6 LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Loan Note Instrument are incorporated into this deed.

## **1.7 PERPETUITY PERIOD**

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

## **2. COVENANT TO PAY**

Subject to the provisions of the Intercreditor Deed the Company shall pay to the Noteholders and discharge the Secured Liabilities when they become due pursuant to the provisions of the Loan Note Instrument.

## **3. GRANT OF SECURITY**

### **3.1 LEGAL MORTGAGE**

As a continuing security for the payment and discharge of the Secured Liabilities, the Company with full title guarantee charges to the Noteholders, by way of a legal mortgage, all estates or interests in any freehold, leasehold or commonhold property now owned by it.

### 3.2 FIXED CHARGES

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

- (a) all present and future estates or interests of the Company in, or over, any freehold, leasehold or commonhold property (other than any such property effectively mortgaged under clause 3.1);
- (b) the benefit of all other contracts, guarantees, appointments and warranties relating to each Charged Property and other documents to which the Company is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of any Charged Property or otherwise relating to any Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them);
- (c) all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business or the use of any Secured Asset, and all rights in connection with them;
- (d) all its present and future goodwill;
- (e) all its uncalled capital;
- (f) all the Equipment;
- (g) all the Intellectual Property;
- (h) all the Book Debts;
- (i) all the Investments;
- (j) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest);
- (k) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.3; and
- (l) all its rights in respect of any agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under clause 3.3.

### **3.3 ASSIGNMENT**

As a continuing security for the payment and discharge of the Secured Liabilities, the Company with full title guarantee assigns to the Noteholders absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and
- (b) the benefit of all agreements, instruments and rights relating to the Secured Assets.

### **3.4 FLOATING CHARGE**

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

- (a) all its undertaking, property, assets and rights not otherwise effectively mortgaged, charged or assigned under clause 3.1 to clause 3.3 inclusive; and
- (b) all its property, assets and rights which are situated in Scotland or which are otherwise governed by Scots law, whether or not such property, assets and rights are effectively mortgaged, charged or assigned under clause 3.1 to clause 3.3 inclusive.

### **3.5 QUALIFYING FLOATING CHARGE**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.4.

### **3.6 AUTOMATIC CRYSTALLISATION OF FLOATING CHARGE**

Subject to the provisions of the Intercreditor Deed, the floating charge created by clause 3.4 shall (to the extent permitted under applicable law) automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

- (a) the Company:
  - (i) creates, or attempts to create, without the prior written consent of the Noteholders, Security or a trust in favour of another person over all or

- any part of the Secured Assets (except as expressly permitted by the terms of this deed or the Loan Note Instrument); or
- (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than in the ordinary course of its business and other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
- (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
  - (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Company.

### **3.7 CRYSTALLISATION OF FLOATING CHARGE BY NOTICE**

The Noteholders may (to the extent permitted under applicable law), in their sole discretion, by written notice to the Company, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Noteholders in that notice if:

- (a) an Event of Default is continuing; or
- (b) the Noteholders consider those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

### **3.8 ASSETS ACQUIRED AFTER ANY FLOATING CHARGE HAS CRYSTALLISED**

Any asset acquired by the Company after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a floating charge under this deed, shall (unless the Noteholders confirm otherwise to the Company in writing) be charged to the Noteholders by way of fixed charge.

### **3.9 EXCEPTIONS TO FIXED SECURITY**

The fixed charges created by clause 3.1 to clause 3.3 (inclusive) shall not apply to property, assets and rights which are situated in Scotland or which are otherwise governed by Scots law.

## **4. LIABILITY OF THE COMPANY**

### **4.1 LIABILITY NOT DISCHARGED**

The Company's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Noteholders that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Noteholders renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Company.

#### **4.2 IMMEDIATE RECOURSE**

The Company waives any right it may have to require the Noteholders to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Company.

#### **5. WARRANTIES**

##### **5.1 TIMES FOR MAKING WARRANTIES**

The Company makes the warranties set out in this clause 5 to the Noteholders on the date of this deed and the warranties set out in this clause 5 are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

##### **5.2 OWNERSHIP OF SECURED ASSETS**

The Company is the sole legal and beneficial owner of, and has good, valid and marketable title to, the Secured Assets.

##### **5.3 NO SECURITY**

The Secured Assets are free from any Security other than the Security created by this deed and the Security regulated by the Intercreditor Deed.

##### **5.4 NO ADVERSE CLAIMS**

The Company has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

#### **5.5 NO ADVERSE COVENANTS**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

#### **5.6 NO BREACH OF LAWS**

There is no breach of any law or regulation that materially and adversely affects the Secured Assets.

#### **5.7 NO INTERFERENCE IN ENJOYMENT**

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

#### **5.8 NO OVERRIDING INTERESTS**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Charged Property.

#### **5.9 AVOIDANCE OF SECURITY**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Company or otherwise.

#### **5.10 NO PROHIBITIONS OR BREACHES**

There is no prohibition on assignment in any Insurance Policy and the entry into this deed by the Company does not, and will not, constitute a breach of any Insurance Policy, or any other policy, agreement, document, instrument or obligation binding on the Company or its assets.

#### **5.11 ENFORCEABLE SECURITY**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Company, and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms and the terms of the Intercreditor Deed.

## **5.12 INVESTMENTS**

- (a) The Investments are fully paid and are not subject to any option to purchase or similar rights.
- (b) No constitutional document of an issuer of an Investment, nor any other agreement:
  - (i) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or
  - (ii) contains any rights of pre-emption in relation to the Investments.
- (c) The Company has complied with all notices relating to all or any of the Investments received by it pursuant to sections 790D and 790E of the Companies Act 2006.
- (d) No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Investments.

## **6. GENERAL COVENANTS**

### **6.1 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

Subject to any borrowing or Security permitted and regulated by the Loan Note Instrument and the Intercreditor Deed the Company shall not at any time, except with the prior written consent of the Noteholders:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or
- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

### **6.2 PRESERVATION OF SECURED ASSETS**

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



### **6.3 COMPLIANCE WITH LAWS AND REGULATIONS**

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

### **6.4 ENFORCEMENT OF RIGHTS**

The Company shall use its best endeavours to:

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

### **6.5 INSURANCE**

- (a) The Company shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:
  - (i) loss or damage by fire or terrorist acts, including any third party liability arising from such acts;
  - (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Company; and
  - (iii) any other risk, perils and contingencies as the Noteholders may reasonably require.
- (b) Any such insurance must:

- (i) be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Noteholders;
  - (ii) include property owners' public liability and third party liability insurance;
  - (iii) be for not less than the replacement value of the relevant Secured Assets (meaning in the case of any premises on any Charged Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and, in the case of any Charged Property, loss of rents payable by the tenants or other occupiers of any Charged Property for a period of at least three years, including provision for increases in rent during the period of insurance.
- (c) The Company shall, if requested by the Noteholders, produce to the Noteholders each policy, certificate or cover note relating to any insurance as is required by clause 6.5(a) (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Company is entitled to obtain from the landlord under the terms of the relevant lease).
- (d) The Company shall, if requested by the Noteholders, procure that a note of the Noteholders' interest is endorsed on each insurance policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf in accordance with clause 6.5(a) but without the Noteholders having any liability for any premium in relation to those insurance policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.

## **6.6 INSURANCE PREMIUMS**

The Company shall:

- (a) promptly pay all premiums in respect of each insurance policy as is required by clause 6.5(a) and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Noteholders so require) give to the Noteholders copies of the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy as is required by clause 6.5(a) (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Company is entitled to obtain from the landlord under the terms of the relevant lease).

## **6.7 NO INVALIDATION OF INSURANCE**

The Company shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy as is required by clause 6.5(a).

## **6.8 PAYMENT OF OUTGOINGS**

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

## **7. PROPERTY COVENANTS**

### **7.1 COMPLIANCE WITH AND ENFORCEMENT OF COVENANTS**

The Company shall:

- (a) observe and perform all covenants, stipulations and conditions to which each Charged Property, or the use of it, is or may be subject, and (if the Noteholders so require) produce to the Noteholders evidence sufficient to satisfy the Noteholders that those covenants, stipulations and conditions have been observed and performed; and
- (b) diligently enforce all covenants, stipulations and conditions benefiting each Charged Property and shall not (and shall not agree to) waive, release or vary any of the same.

### **7.2 PAYMENT OF RENT AND OUTGOINGS**

The Company shall:

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

## **8. INVESTMENTS COVENANTS**

### **8.1 NOMINATIONS**

The Company shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

## **8.2 PRE-EMPTION RIGHTS AND RESTRICTIONS ON TRANSFER**

The Company shall:

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

## **8.3 DIVIDENDS AND VOTING RIGHTS BEFORE ENFORCEMENT**

- (a) Before the security constituted by this deed becomes enforceable, the Company may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Noteholders or any of its nominees, the Noteholders will hold all those dividends, interest and other monies received by it for the Company and will pay them to the Company promptly on request.
- (b) Before the security constituted by this deed becomes enforceable, the Company may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Noteholders or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:
  - (i) it shall not do so in any way that would breach any provision of the Loan Note Instrument or this deed or for any purpose inconsistent with the Loan Note Instrument or this deed; and
  - (ii) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Noteholders' opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Noteholders' security under this deed.

## **8.4 DIVIDENDS AND VOTING RIGHTS AFTER ENFORCEMENT**

After the security constituted by this deed has become enforceable:

- (a) all dividends and other distributions paid in respect of the Investments and received by the Company shall be held by the Company on trust for the Noteholders and immediately paid into a Designated Account or, if received

by the Noteholders, may be applied by the Noteholders in accordance with clause 19.1; and

- (b) all voting and other rights and powers attaching to the Investments may be exercised by, or at the direction of, the Noteholders and the Company shall, and shall procure that its nominees shall, comply with any directions the Noteholders may give, in its absolute discretion, concerning the exercise of those rights and powers.

## **9. EQUIPMENT COVENANTS**

### **9.1 MAINTENANCE OF EQUIPMENT**

The Company shall:

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

### **9.2 PAYMENT OF EQUIPMENT TAXES**

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

## **10. BOOK DEBTS COVENANTS**

### **10.1 PRESERVATION OF BOOK DEBTS**

The Company shall not release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts other than in the ordinary course of its business.

## **11. RELEVANT AGREEMENTS COVENANTS**

### **11.1 RELEVANT AGREEMENTS**

- (a) The Company shall comply with the terms of each document, agreement or arrangement comprising the Secured Assets.
- (b) The Company shall not, unless the Noteholders agrees otherwise in writing:
  - (i) amend or vary or agree to any change in, or waive any requirement of or its rights under;
  - (ii) settle, compromise, terminate, rescind or discharge (except by performance); or
  - (iii) abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty or other person in connection with,any document, agreement or arrangement comprising the Secured Assets.

## **12. INTELLECTUAL PROPERTY COVENANTS**

### **12.1 PRESERVATION OF RIGHTS**

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

### **12.2 MAINTENANCE OF INTELLECTUAL PROPERTY**

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

## **13. POWERS OF THE NOTEHOLDERS**

### **13.1 POWER TO REMEDY**

- (a) The Noteholders shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Company of any of its obligations contained in this deed.
- (b) The Company irrevocably authorises the Noteholders and its agents to do all things that are necessary or desirable for that purpose.
- (c) The Company shall reimburse the Noteholders, for any monies the Noteholders reasonably and properly expend in remedying a breach by the Company of its obligations contained in this deed, and such monies shall carry interest in accordance with clause 20.1.

### **13.2 EXERCISE OF RIGHTS**

- (a) The rights of the Noteholders under clause 13.1 are without prejudice to any other rights of the Noteholders under this deed.
- (b) The exercise of any rights of the Noteholders under this deed shall not make the Noteholders liable to account as a mortgagee in possession.

### **13.3 POWER TO DISPOSE OF CHATTELS**

- (a) Subject to the provisions of the Intercreditor Deed, at any time after the Security constituted by this deed has become enforceable, the Noteholders or any Receiver may, as agent for the Company, dispose of any chattels or produce found on any Charged Property.
- (b) Without prejudice to any obligation to account for the proceeds of any disposal made under clause 13.3(a), the Company shall indemnify the Noteholders and any Receiver against any liability arising from any disposal made under clause 13.3(a).

### **13.4 NOTEHOLDERS HAVE RECEIVER'S POWERS**

Subject to the provisions of the Intercreditor Deed and to the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Noteholders in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **13.5 INDULGENCE**

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

### **13.6 APPOINTMENT OF AN ADMINISTRATOR**

- (a) Subject to the provisions of the Intercreditor Deed, the Noteholders may, without notice to the Company, appoint any one or more persons to be an Administrator of the Company pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.
- (b) Any appointment under this clause 13.6 shall:

- (i) be in writing signed by Andrew Hamilton (as the duly authorised representative signatory of the Noteholders); and
  - (ii) take effect in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (c) The Noteholders may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 13.6 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

## **14. WHEN SECURITY BECOMES ENFORCEABLE**

### **14.1 SECURITY BECOMES ENFORCEABLE ON EVENT OF DEFAULT**

The security constituted by this deed shall become enforceable if an Event of Default occurs and has not been remedied within 20 Business Days.

### **14.2 DISCRETION**

Subject to the provisions of the Intercreditor Deed, after the security constituted by this deed has become enforceable, the Noteholders may, in their absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

## **15. ENFORCEMENT OF SECURITY**

### **15.1 GENERAL**

- (a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date specified for repayment of the same in the Loan Note Instrument.
- (b) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 14.1.
- (c) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

### **15.2 EXTENSION OF STATUTORY POWERS OF LEASING**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the



Noteholders and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Company, to:

- (a) grant a lease or agreement for lease;
- (b) accept surrenders of leases; or
- (c) grant any option in respect of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

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

### **15.3 ACCESS ON ENFORCEMENT**

- (a) Subject to the provisions of the Intercreditor Deed, at any time after the Noteholders has demanded payment of the Secured Liabilities or if the Company defaults in the performance of its obligations under this deed or the Loan Note Instrument, the Company will allow the Noteholders or their Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Noteholders or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Company for, or by any reason of, that entry.
- (b) At all times, the Company must use its best endeavours to allow the Noteholders or its Receiver access to any premises for the purpose of clause 15.3(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### **15.4 REDEMPTION OF PRIOR SECURITY**

- (a) Subject to the provisions of the Intercreditor Deed, at any time after the Security constituted by this deed has become enforceable, or after any powers conferred by any other Security having priority to this deed shall have become exercisable, the Noteholders may:
  - (i) redeem any prior Security over any Secured Asset;
  - (ii) procure the transfer of that Security to itself; and
  - (iii) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Company).
- (b) The Company shall pay to the Noteholders all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer,

and such amounts shall be secured by this deed as part of the Secured Liabilities.

#### **15.5 PROTECTION OF THIRD PARTIES**

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

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

#### **15.6 PRIVILEGES**

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

#### **15.7 NO LIABILITY AS MORTGAGEE IN POSSESSION**

Neither the Noteholders nor any Receiver or Delegate shall be liable, by reason of entering into possession of a Secured Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

#### **15.8 CONCLUSIVE DISCHARGE TO PURCHASERS**

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

#### **16. RECEIVER**

##### **16.1 APPOINTMENT**

Subject to the provisions of the Intercreditor Deed, at any time after the Security constituted by this deed has become enforceable, or at the request of the Company, the Noteholders may, without further notice, appoint by way of deed, or

otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

## **16.2 REMOVAL**

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

## **16.3 REMUNERATION**

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

## **16.4 POWER OF APPOINTMENT ADDITIONAL TO STATUTORY POWERS**

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

## **16.5 POWER OF APPOINTMENT EXERCISABLE DESPITE PRIOR APPOINTMENTS**

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

## **16.6 AGENT OF THE COMPANY**

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

## **17. POWERS OF RECEIVER**

### **17.1 GENERAL**

- (a) Any Receiver appointed by the Noteholders under this deed shall, in addition to the powers conferred on it by statute, have the rights, powers and discretions set out in clause 17.2 to clause 17.23.
- (b) A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.
- (c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (d) Any exercise by a Receiver of any of the powers given by clause 17 may be on behalf of the Company, the directors of the Company (in the case of the power contained in clause 17.16) or itself.

### **17.2 REPAIR AND DEVELOP CHARGED PROPERTIES**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Charged Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

### **17.3 GRANT OR ACCEPT SURRENDERS OF LEASES**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting any Secured Asset on any terms, and subject to any conditions, that it thinks fit.

### **17.4 EMPLOY PERSONNEL AND ADVISERS**

- (a) A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit.
- (b) A Receiver may discharge any such person or any such person appointed by the Company.

### **17.5 MAKE AND REVOKE VAT OPTIONS TO TAX**

A Receiver may make, exercise or revoke any VAT option to tax as it thinks fit.

#### **17.6 REMUNERATION**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Noteholders may prescribe or agree with it.

#### **17.7 POSSESSION**

A Receiver may take immediate possession of, get in and realise any Secured Asset.

#### **17.8 MANAGE OR RECONSTRUCT THE COMPANY'S BUSINESS**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Company.

#### **17.9 DISPOSE OF SECURED ASSETS**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

#### **17.10 SEVER FIXTURES AND FITTINGS**

A Receiver may sever and sell separately any fixtures or fittings from any Charged Property without the consent of the Company.

#### **17.11 SELL BOOK DEBTS**

A Receiver may sell and assign all or any of the Book Debts in respect of which it is appointed in any manner, and generally on any terms and conditions, that it thinks fit.

#### **17.12 VALID RECEIPTS**

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

#### **17.13 MAKE SETTLEMENTS**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Company or relating in any way to any Secured Asset.

#### **17.14 LEGAL ACTION**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as it thinks fit.

#### **17.15 IMPROVE THE EQUIPMENT**

A Receiver may make substitutions of, or improvements to, the Equipment as it may think expedient.

#### **17.16 MAKE CALLS ON COMPANY MEMBERS**

A Receiver may make calls conditionally or unconditionally on the members of the Company in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Company on its directors in respect of calls authorised to be made by them.

#### **17.17 INSURE**

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 20, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Company under this deed.

#### **17.18 SUBSIDIARIES**

A Receiver may form a subsidiary of the Company and transfer to that subsidiary any Secured Asset.

#### **17.19 BORROW**

A Receiver may, for whatever purpose it thinks fit, raise and borrow money either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Noteholders consent, terms under which that security ranks in priority to this deed).

## **17.20 REDEEM PRIOR SECURITY**

Subject to the provisions of the Intercreditor Deed, a Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Company, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

## **17.21 DELEGATION**

A Receiver may delegate its powers in accordance with this deed.

## **17.22 ABSOLUTE BENEFICIAL OWNER**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it would be capable of exercising as, and do all those acts and things, an absolute beneficial owner could exercise or do, in the ownership and management of the Secured Assets or any part of the Secured Assets.

## **17.23 INCIDENTAL POWERS**

A Receiver may do any other acts and things that it:

- (a) may consider desirable or necessary for realising any of the Secured Assets;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) lawfully may or can do as agent for the Company.

## **18. DELEGATION**

### **18.1 DELEGATION**

The Noteholders or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 22.1).

### **18.2 TERMS**

The Noteholders and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

### **18.3 LIABILITY**

Neither the Noteholders nor any Receiver shall be in any way liable or responsible to the Company for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **19. APPLICATION OF PROCEEDS**

### **19.1 ORDER OF APPLICATION OF PROCEEDS**

Subject to the provisions of the Intercreditor Deed, all monies received or recovered by the Noteholders, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Noteholders' right to recover any shortfall from the Company):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Noteholders (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of the Secured Liabilities in any order and manner that the Noteholders determines; and
- (c) in payment of the surplus (if any) to the Company or other person entitled to it.

### **19.2 APPROPRIATION**

Neither the Noteholders, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

## **20. COSTS AND INDEMNITY**

### **20.1 COSTS**

The Company shall, within five Business Days of receipt of a written demand, pay to, or reimburse, the Noteholders and any Receiver, all costs, charges, expenses, and liabilities properly and reasonably incurred by the Noteholders, any Receiver or any Delegate in connection with:

- (a) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Noteholders', a Receiver's or a Delegate's rights under this deed; or



(b) taking proceedings for, or recovering, any of the Secured Liabilities, together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding-up or administration of the Company) at the rate and in the manner specified in the Loan Note Instrument.

## **20.2 INDEMNITY**

- (a) The Company shall indemnify the Noteholders, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses and all other professional costs and expenses) suffered or reasonably and properly incurred by any of them arising out of or in connection with:
- (i) the exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
  - (ii) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
  - (iii) any default or delay by the Company in performing any of its obligations under this deed.
- (b) Any past or present employee or agent may enforce the terms of this clause 20.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **21. FURTHER ASSURANCE**

### **21.1 FURTHER ASSURANCE**

21.2 Subject to the provisions of the Intercreditor Deed, the Company shall promptly, at its own expense, take whatever action the Noteholders or any Receiver may reasonably require for:

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

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Noteholders or to its nominee) and the giving of any notice, order or direction and the making of any filing or

registration which, in any such case, the Noteholders may consider necessary or desirable.

## **22. POWER OF ATTORNEY**

### **22.1 APPOINTMENT OF ATTORNEYS**

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

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

### **22.2 RATIFICATION OF ACTS OF ATTORNEYS**

The Company ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 22.1.

## **23. RELEASE**

23.1 Subject to clause 30.3, at the end of the Security Period, the Noteholders shall, at the request and cost of the Company, take whatever action is necessary to:

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

## **24. ASSIGNMENT PROHIBITED**

Neither the Company, nor any of the Noteholders may assign any of their rights, or transfer any of their rights or obligations, under this deed.

## **25. SET-OFF**

### **25.1 NOTEHOLDER'S RIGHT OF SET-OFF**

The Noteholders may at any time set off any liability of the Company to the Noteholders against any liability of the Noteholders to the Company, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different

currencies, the Noteholders may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Noteholders of its rights under this clause 25 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

## **25.2 NO OBLIGATION TO SET OFF**

The Noteholders are not obliged to exercise their rights under clause 25.1. If, however, it does exercise those rights it must promptly notify the Company of the set-off that has been made.

## **25.3 EXCLUSION OF COMPANY'S RIGHT OF SET-OFF**

All payments made by the Company to the Noteholders under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **26. AMENDMENTS, WAIVERS AND CONSENTS**

### **26.1 AMENDMENTS**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

### **26.2 WAIVERS AND CONSENTS**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Noteholders shall be effective unless it is in writing.

## **26.3 RIGHTS AND REMEDIES**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **27. SEVERANCE**

### **27.1 SEVERANCE**

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

## **28. COUNTERPARTS**

### **28.1 COUNTERPARTS**

- (a) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- (b) Transmission of an executed counterpart of this deed (but for the avoidance of doubt not just a signature page) by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- (c) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## **29. THIRD PARTY RIGHTS**

### **29.1 THIRD PARTY RIGHTS**

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

## **30. FURTHER PROVISIONS**

### **30.1 INDEPENDENT SECURITY**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Noteholders may hold for any of the Secured Liabilities at any time. No prior security held by the Noteholders over the whole or any part of the Secured Assets shall merge in the security created by this deed.

### **30.2 CONTINUING SECURITY**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Noteholders discharge this deed in writing.

### **30.3 DISCHARGE CONDITIONAL**

Any release, discharge or settlement between the Company and the Noteholders shall be deemed conditional on no payment or security received by the Noteholders in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Noteholders or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Noteholders deems necessary to provide the Noteholders with security against any such avoidance, reduction or order for refund; and
- (b) the Noteholders may recover the value or amount of such security or payment from the Company subsequently as if the release, discharge or settlement had not occurred.

### **30.4 CERTIFICATES**

A certificate or determination by the Noteholders as to any amount for the time being due to it from the Company under this deed and the Loan Note Instrument shall be, in the absence of any manifest error, conclusive evidence of the amount due.

### **30.5 CONSOLIDATION**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

### **30.6 SMALL COMPANY MORATORIUM**

Notwithstanding anything to the contrary in this deed, neither the obtaining of a moratorium by the Company under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Company with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:

- (a) an event under this deed which causes any floating charge created by this deed to crystallise;
- (b) an event under this deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Company; or
- (c) a ground under this deed for the appointment of a Receiver.

## **31. NOTICES**

### **31.1 DELIVERY**

Any notice or other communication given to a party under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:
  - (i) the Company at its registered office address from time to time  
Attention: Director
  - (ii) the Noteholders at 3 Jennie Lee Lane, Glenrothes, Scotland KY7 5GB  
Attention: Andrew Hamilton

or to any other address as is notified in writing by one party to the other from time to time.

### **31.2 RECEIPT BY COMPANY**

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

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

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

### **31.3 RECEIPT BY NOTEHOLDERS**

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

### **31.4 SERVICE OF PROCEEDINGS**

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

## **32. GOVERNING LAW AND JURISDICTION**

### **32.1 GOVERNING LAW**

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

### **32.2 JURISDICTION**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Noteholders to take proceedings against the Company in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

### **32.3 OTHER SERVICE**

The Company irrevocably consents to any process in any legal action or proceedings under clause 32.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This agreement has been entered into as a deed on the date stated at the beginning of it.



**EXECUTED AS A DEED** (but not  
delivered until the date hereof) by  
**CORE TECHNOLOGY SYSTEMS**  
**(U.K.) LIMITED**, acting by *consent* *callanan*  
- a Director in the presence of: -

) *C. Callanan*  
) .....  
) *C. Callanan*  
)

WITNESS SIGNATURE: .....

NAME: .....

ADDRESS: .....

OCCUPATION: .....

*MARIN HUBBS*  
*28 OAKHILL ROAD SW15 2QR London*  
*LAWYER*