



Registration of a Charge

Company name: **TELECOM PLUS PLC**

Company number: **03263464**



X2NUPDBK

Received for Electronic Filing: **23/12/2013**

Details of Charge

Date of creation: **20/12/2013**

Charge code: **0326 3464 0011**

Persons entitled: **NPOWER LIMITED**

Brief description: **FIXED CHARGE OVER ALL ESTATES AND OTHER INTERESTS IN ANY FREEHOLD, LEASEHOLD OR OTHER IMMOVABLE PROPERTY (INCLUDING WITHOUT LIMITATION, ALL BUILDINGS AND FIXTURES ON SUCH PROPERTY, AND THE BENEFIT OF ALL COVENANTS GIVEN IN RESPECT OF SUCH PROPERTY) WHETHER AT THE DATE OF THE DEED OR ANY TIME THEREAFTER. FIXED CHARGE OVER ALL INTELLECTUAL PROPERTY RIGHTS MEANING ALL LEGAL AND/OR EQUITABLE INTERESTS (INCLUDING, WITHOUT LIMITATION, THE BENEFIT OF ALL LICENCES IN ANY PART OF THE WORLD) OF THE CHARGOR AT THE DATE OF THE DEED OR IN THE FUTURE IN, OR RELATING TO ANY PATENTS, TRADE MARKS, SERVICE MARKS, DESIGNS, BUSINESS NAMES, COPYRIGHTS, DATABASE RIGHTS, DESIGN RIGHTS, DOMAIN NAMES, MORAL RIGHTS, INVENTIONS, CONFIDENTIAL INFORMATION, KNOW-HOW AND OTHER INTELLECTUAL PROPERTY RIGHTS AND INTERESTS (WHICH MAY NOW OR IN THE FUTURE SUBSIST), WHETHER REGISTERED OR UNREGISTERED, AND THE BENEFIT OF ALL APPLICATIONS AND RIGHTS TO USE SUCH ASSETS OF THE CHARGOR. FOR MORE INFORMATION PLEASE REFER TO THE INSTRUMENT.**

Contains fixed charge(s).

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

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: **TOBY LARKHAM, FOR BOND DICKINSON LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3263464

Charge code: 0326 3464 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th December 2013 and created by TELECOM PLUS PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd December 2013 .

Given at Companies House, Cardiff on 23rd December 2013



Companies House



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

DEBENTURE

dated 20 December 2013

TELECOM PLUS PLC

and certain of its subsidiaries

as Chargors

and

NPOWER LIMITED

as Chargee

Subject to the terms of the Priority and Subordination Agreement

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This Debenture is made as a deed on 20 December 2013

Between:

- (1) **TELECOM PLUS PLC (registered in England and Wales with company number 03263464)** whose registered office is at 333 Edgware Road, London NW9 6TD (the "Company");
- (2) **The Subsidiaries of the Company** whose names, company numbers and registered offices are set out in Schedule 1 (the "Original Chargers", and each an "Original Chagor"); and
- (3) **NPOWER LIMITED (registered in England and Wales with company number 03653277)** whose registered office is at Windmill Hill Business Park, Swindon, Wiltshire SN5 6PB (the "Chargee").

It is agreed as follows:

1. **Definitions and interpretation**

1.1 **Definitions**

Unless otherwise defined in this Debenture, the following expressions shall have the following meanings:

"2002 Act" means the Land Registration Act 2002.

"2003 Rules" mean the Land Registration Rules to the Land Registration Act 2002.

"Additional Consideration" means any amount payable to the Chargee pursuant to clause 3.2 of the Share Purchase Agreement.

"Assets" mean the whole of the property or undertaking (including uncalled share capital) which is or may from time to time be comprised in the property and undertaking of each of the Chargers.

"Authorities" mean all national and local governments, government departments, supranational bodies, local or public authorities, statutory undertakings, states or agencies.

"Book Debts" mean:

- (a) all book and other debts in existence from time to time (including, without limitation, any sums whatsoever owed by banks or similar institutions), both present and future, due, owing to or which may become due, owing to or purchased or otherwise acquired by any Chagor; and
- (b) the benefit of all rights whatsoever relating to the debts referred to above including, without limitation, any related agreements, documents, rights and remedies (including, without limitation, negotiable or non-negotiable instruments, guarantees, indemnities, legal and equitable charges, reservation of proprietary rights, rights of tracing, unpaid vendor's liens and all similar connected or related rights and assets).

"Book Debts Account" means such separate and denominated account or accounts with the Chargee as may be specified in writing by the Chargee for the purpose of receiving payment of the proceeds of realisation and collection of Book Debts.

"Charged Property" means the whole or any part of the property, assets, income and undertaking of each of the Chargers from time to time mortgaged, charged or assigned, or purported to be mortgaged, charged or assigned to the Chargee pursuant to this Debenture, including, where the context permits, the proceeds of sale or realisation thereof.

"Chargors" mean the Company and the Original Chargors.

"Collection Account Agreement" means the collection account agreement dated 24 May 2011 as amended and restated on or around the date hereof between, inter alios, Npower, Gas Plus, Electricity Plus, TP, Barclays Bank plc and the Collection Account Trustee.

"Collection Account Trustee" means Barclays Bank Trust Company Limited of 1 Churchill Place, London E14 5HP

"Contracts" mean all of each Chargor's rights, title, interest and benefit in and to any licence, consent, agreement or contract in respect of the whole or any part of the Charged Property to which such Chargor is a party from time to time, but excluding (i) any such licence, consent, agreement or contract which on its terms prohibits charge or (ii) any rights, title, interest or benefit in or arising in respect of such licence, consent, agreement or contract to the extent that they cannot be charged pursuant to Industry Codes and Agreements binding on the relevant Chargor.

"Credit Agreement" means the Credit Agreement made between the Company, Barclays Bank plc and others on 19 November 2013.

"Debenture Security" means the Security constituted by this Debenture and any Supplemental Debenture.

"Default Rate" means the rate of 2% per annum over the base rate from time to time of Barclays Bank plc or (in the absence thereof) at such similar rate as the Chargee shall select and notify to the Chargors.

"Deferred Consideration" means the Deferred Price, as defined in the Share Purchase Agreement.

"Derivative Assets" mean all stocks, shares, warrants or other securities, rights, dividends, interest or other property accruing, offered, issued or deriving at any time by way of dividend, bonus, redemption, exchange, purchase, substitution, conversion, consolidation, subdivision, preference, option or otherwise attributable to any Securities or any Derivative Assets previously described.

"Event of Default" means (i) the early termination of the SSA as a result of default by a Chargor or (ii) the Deferred Consideration or the Additional Consideration is not paid or discharged in full when due under the terms of the Share Purchase Agreement.

"Financial Collateral" shall have the meaning given to that expression in the Financial Collateral Regulations.

"Financial Collateral Regulations" mean the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003 No. 3226).

"Fixed Charge Asset" means an asset for the time being comprised within a mortgage, fixed charge or assignment by way of security created by Clause 4 (*Security*), or (with effect from the date of its creation) pursuant to a Supplemental Debenture or pursuant to Clause 6 (*Further Assurance*).

"Fixtures" mean all assets of whatsoever nature, apart from land and buildings, forming part of any freehold or leasehold property owned by any Chargor and deemed by law to be immovable property other than tenant's fixtures.

"Group" means the Company and each of its Subsidiaries for the time being.

"Industry Codes and Agreements" means any industry codes, regulations and agreements that underpin the UK electricity and gas wholesale and retail markets to which gas and

electricity licensees in the UK are required to maintain, become a party to, or comply with in accordance with the conditions of their licences.

"Insolvency Act" means the Insolvency Act 1986 unless otherwise stated.

"Intellectual Property Rights" means all legal and/or equitable interests (including, without limitation, the benefit of all licences in any part of the world) of each Chargor now or in the future in, or relating to:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Chargor (which may now or in the future subsist).

"LPA" means the Law of Property Act 1925.

"Nominees" mean the Chargee its agents, nominees and any other person holding the Securities and the Derivative Assets on behalf of the Chargee from time to time.

"Permitted Security" means any Senior Security Interests (as defined in the Priority and Subordination Agreement) and any other Security which is permitted by the terms of the Credit Agreement or any Refinancing Finance Documents (as defined under the Priority and Subordination Agreement).

"Plant and Machinery" means all plant and machinery, equipment, fittings, installations and apparatus, tools, motor vehicles and all other similar assets (other than Fixtures), wherever they are situated, which are now, or at any time after the date of this Debenture become, the property of any Chargor.

"Property" means all estates and other interests in any freehold, leasehold or other immovable property (including, without limitation, all buildings and Fixtures on such property, and the benefit of all covenants given in respect of such property) which are now, or at any time after the date of this Debenture become, the property of a Chargor, but excluding any interest in land in Scotland, and **"Properties"** shall be construed accordingly.

"Receiver" means any receiver appointed pursuant to this Debenture, including, for the avoidance of doubt, a receiver and manager, a manager or an administrative receiver.

"Rights" mean all of any Chargor's rights, title and interest from time to time in any lease, licence or occupational right whatsoever together with the entire benefit of each Chargor's rights, title and interest from time to time in any renewal of, replacement of or variation to any such lease, licence or occupational right (including, without limitation, all its rights, title and interest in any occupational lease, and any associated agreements which may be granted by a Chargor or any person deriving title from a Chargor from time to time over or in respect of the whole or any part of the Property and any other properties (freehold or leasehold) in which a Chargor has an interest).

"Secured Liabilities" mean all money, debts, obligations and liabilities from time to time due, owing or incurred by the Chargors or any of them to the Chargee or its assignee or successor under or in respect of any Transaction Document (whether present or future, whether alone or jointly with any other person, whether actual or contingent, whether as principal or as surety, whether express or implied, in whatever name, form or style, in whatever currency it is denominated, but excluding any obligation which, if it were included, would result in this Debenture contravening Section 678 of the Companies Act 2006).

"Securities" means all stocks, shares, loan notes, bonds, certificates of deposit, depositary receipts, loan capital indebtedness, debentures or other securities from time to time legally or

beneficially owned by or on behalf of each Chargor, together with all property and rights of each Chargor in respect of any account held by or for it as participant, or as beneficiary of a nominee or trustee participant, with any clearance or settlement system or depository or custodian or sub-custodian or broker in the United Kingdom or elsewhere.

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

"Security Financial Collateral Arrangement" shall have the meaning given to that expression in the Financial Collateral Regulations.

"Priority and Subordination Agreement" means the Priority and Subordination agreement dated on or around the date hereof between Barclays Bank plc, the Chargee and the Chargors.

"Supplemental Debenture" means a supplemental debenture to this Debenture (in form and substance satisfactory to the Chargee) creating further assignments, mortgages or charges over the Assets of any Chargor.

"Share Purchase Agreement" means the Share Purchase Agreement between the Company (1) and the Chargee (2) in relation to the transfer of the entire issued share capital of Electricity Plus and Gas Plus from the Chargee to the Chargor dated on 19 November 2013.

"SSA" means the amended and restated supply and services agreement between the Chargee (1), Electricity Plus (2), Gas Plus (3) and Plus Shipping (4) dated 30 September 2013 as amended and restated on 19 November 2013.

"Target Shares" means the Shares as defined in the Share Purchase Agreement.

"Transaction Documents" means this Debenture, the Collection Account Agreement, the SSA, the Priority and Subordination Agreement and the Share Purchase Agreement.

1.2 **Construction**

(a) Unless a contrary indication appears, any reference in this Debenture:

- (i) a reference to a statute or statutory provision includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and to any former statute or statutory provision that it consolidated or re-enacted before the date of this debenture;
- (ii) a reference to one gender includes a reference to the other genders;
- (iii) words in the singular include the plural and in the plural include the singular;
- (iv) a reference to a clause or Schedule is to a clause of, or Schedule to, this debenture, and references to paragraphs are to paragraphs of the relevant Schedule;
- (v) a reference to this debenture (or any specified provision of it) or any other document shall be construed as a reference to this debenture, that provision or that document as in force for the time being and as amended or novated from time to time;
- (vi) a reference to a person shall include a reference to an individual, firm, corporation, unincorporated body of persons, or any state or any agency of a person;

- (vii) a reference to an amendment includes a supplement, variation, novation or re-enactment (and amended shall be construed accordingly);
- (viii) a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (ix) a reference to an authorisation includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- (x) 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; and
- (xi) clause, schedule and paragraph headings shall not affect the interpretation of this debenture.
- (xii) "**administrators**" are references to administrators appointed under the Insolvency Act, and include administrators appointed under the out-of-court procedure under the Insolvency Act;
- (xiii) the "**Chargor**" or "**Chargors**", or "**Chargee**" shall be construed so as to include its successors in title, permitted assigns, permitted transferees and any delegate of any such person;
- (xiv) "**costs**" means all costs, fees, charges or expenses of whatsoever nature (including, without limitation, legal fees) including, without limitation, disbursements and any VAT to be charged on such costs, charges, expenses and disbursements;
- (xv) "**receivers**" are references to receivers of whatsoever nature including, without limitation, receivers and managers and administrative receivers; and
- (xvi) "**subsidiary**" means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

1.3 **Trust**

The perpetuity period for any trusts in this Debenture is 125 years.

1.4 **Third Party Rights**

- (a) Unless expressly provided in this Debenture, no express term of this Debenture nor any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it. Notwithstanding any term of any Finance Document, the consent is not required to rescind or vary this Debenture at any time of any person who is not a party to it.
- (b) For the avoidance of doubt, the terms of this Debenture are intended to be enforceable by each of the Chargor and any Receiver.

2. **Covenant to pay**

- 2.1 Each Chargor irrevocably and unconditionally covenants with the Chargee to pay to the Chargee or discharge on demand all the Secured Liabilities when due and payable in accordance with the terms of the Transaction Documents.
- 2.2 Each Chargor gives the covenants in this Clause jointly and severally with the other Chargors from time to time.

3. **Interest**

Each Chargor shall pay to the Chargee interest on the Secured Liabilities to the extent unpaid when due (after as well as before any demand made or judgment obtained or the liquidation or administration of such Chargor) at the Default Rate.

4. **Security**

4.1 ***General provisions***

All Security created under this Debenture:

- (a) is made with full title guarantee in accordance with the Law of Property Act (Miscellaneous Provisions) Act 1994; and
- (b) is continuing security for the payment and discharge of the Secured Liabilities.

4.2 ***Property***

Each Chargor charges, by way of fixed charge:

- (a) all Property and all Rights relating to such Property;
- (b) all easements, rights and agreements in respect of all Property; and
- (c) all proceeds of sale derived from all Property.

4.3 ***Contracts***

Each Chargor charges, by way of fixed charge, the Contracts.

4.4 ***Book Debts***

Each Chargor charges, by way of fixed charge, the Book Debts.

4.5 ***Intellectual Property***

Each Chargor charges, by way of fixed charge, all its Intellectual Property Rights.

4.6 ***Plant and Machinery***

Each Chargor charges, by way of fixed charge, the Plant and Machinery.

4.7 ***Securities and Derivative Assets***

- (a) Each Chargor charges by way of fixed charge, the Securities specified next to its name in Schedule 2 to this Debenture.
- (b) Each Chargor charges by way of fixed charge, all its Securities not charged by Clause 4.7(a).
- (c) Each Chargor charges by way of fixed charge, all Derivative Assets of a capital nature.
- (d) Each Chargor charges by way of fixed charge, all Derivative Assets of an income nature.

4.8 **Bank Accounts**

- (a) Each Chargor charges by way of fixed charge each Book Debt Account, and all monies standing to the credit of each such account.
- (b) Each Chargor charges by way of fixed charge all present and future bank accounts, cash at bank and credit balances of that Chargor not charged by Clause 4.8(a) (excluding those arising on fluctuating accounts) with any bank or other person and all rights relating to or attaching to them (including the right to interest).

4.9 **Goodwill**

Each Chargor charges by way of fixed charge, all the goodwill and uncalled capital for the time being of that Chargor.

4.10 **Insurances**

Each Chargor charges by way of fixed charge all present and future insurances and the proceeds of any insurances.

4.11 **Accruals etc**

- (a) Each Chargor charges by way of fixed charge all rights, money or property accruing or payable to that Chargor now or in the future under or by virtue of a Fixed Charge Asset, except to the extent such rights, money or property are for the time being effectively charged under the provisions of Clauses 4.2 (*Property*) to 4.10 (*Insurances*) (inclusive).
- (b) Each Chargor charges by way of fixed charge, that Chargor's rights now or hereafter to recover any VAT on any supplies made to it relating to the Assets any tax refund, rebate or repayment, and any sums so recovered.

4.12 **Floating Charge**

- (a) Each Chargor charges by way of first floating charge, all the undertaking and assets of that Chargor whatsoever, wherever situate, whether movable, immovable, present or future, including, without limitation, its uncalled capital for the time being and all the undertaking and assets of that Chargor referred to above which are, for any reason, not validly charged or assigned pursuant to Clauses 4.2 (*Property*) to 4.11 (*Accruals etc*) (inclusive) of this Debenture.
- (b) The floating charge created by this Debenture is a qualifying floating charge for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act.

4.13 **Priority and Subordination Agreement**

This Debenture is subject to the terms of the Priority and Subordination Agreement.

5. **Conversion of floating charge**

5.1 **Conversion by notice**

The Chargee may by notice in writing to the relevant Chargor convert the floating charge contained in this Debenture into a fixed charge as regards such Charged Property as the Chargee may specify (whether generally or specifically) in that notice if: (i) the Chargee reasonably considers the Charged Property to be in jeopardy in any respect, or (ii) an Event of Default has occurred and is continuing, or both.

5.2 **Automatic conversion**

If, without the prior written consent of the Chargee: (i) any Chargor creates any Security (other than Permitted Security) over any of the Charged Property not expressed to be subject to a fixed charge under this Debenture, or attempts to do so, or (ii) any person levies or attempts to levy any distress, attachment, execution or other legal process against any of such Charged Property, or (iii) any steps are taken for the appointment of, or notice is given of intention to appoint, or a petition is filed or application is made, or a competent court makes an order for the appointment of an administrator, in relation to any Chargor, then the floating charge created by this Debenture over the Charged Property which is the subject of such Security, process, steps or order will automatically, without notice, be converted into a fixed charge as soon as such event occurs.

5.3 No conversion as a result of Moratorium

Notwithstanding any other provision of this Debenture, the floating charge contained in this Debenture may not be converted into a fixed charge solely by reason of the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, as a preliminary to a creditors voluntary arrangement, by an eligible company (as determined by Schedule A1 of the Insolvency Act) under the Insolvency Act.

6. Further assurance

Each Chargor shall, subject to the Priority and Subordination Agreement and the rights of the holder of any Senior Security Interest, if required by the Chargee and at such Chargor's own expense:

- (a) execute and deliver to the Chargee, or carry out, such further Supplemental Debentures, legal or other mortgages, charges, assignments, securities, authorities, documents, acts and things as the Chargee in its discretion (acting reasonably) may require of or in respect of the whole or such part of the Assets as the Chargee may consider necessary, in such form as the Chargee in its discretion (acting reasonably) may consider necessary, to secure the payment or discharge of the Secured Liabilities or to vest the whole or such part of the Assets in the Chargee, its nominee, a Receiver, or in any purchaser from the Chargee or a Receiver or to perfect or protect the security created by this Debenture; and
- (b) pending the execution and delivery of any such further Security, hold such Assets upon trust for the Chargee or in any other manner required by the Chargee (acting reasonably) subject to the provisions of this Debenture.

7. Deposit of documents and title deeds

7.1 While the Debenture Security subsists, each Chargor shall, save to the extent such documents or title deeds are held by the holder of a Senior Security Interest deposit with the Chargee as soon as reasonably practicable:

- (a) all deeds and documents of title relating to the Property within its possession or control;
- (b) all stock and share certificates or other documents of title to or representing the Securities (including without limitation the Securities listed in Schedule 2 to this Debenture) and the Derivative Assets (together with duly executed blank transfers);
- (c) to the extent requested by the Chargee from time to time:
 - (i) all deeds and documents of title (if any) relating to the Book Debts within its possession or control; and
 - (ii) details of all bank accounts.

- 7.2 The Chargee shall be entitled to provide for the safe custody by third parties of all stock and share certificates and documents of title deposited with the Chargee or its nominee at the expense of the Chargors and shall not be responsible for any loss of or damage to any such certificates or documents unless such loss or damage is caused by gross negligence or wilful misconduct upon its part.

8. **Bank Accounts and Book Debts**

8.1 ***Book Debts and the Book Debts Account***

While the Debenture Security subsists, each Chargor shall:

- (a) collect and realise all Book Debts in the ordinary course of its business;
- (b) at any time when an Event of Default is continuing:
 - (i) hold the proceeds of such collection and realisation of the Book Debts upon trust for the Chargee pending payment of such proceeds into a Book Debts Account;
 - (ii) pay the proceeds of such collection and realisation into a Book Debts Account;
 - (iii) not, except with the prior written consent of the Chargee, withdraw or attempt or be entitled to withdraw from any Book Debts Account all or any monies standing to the credit of the Book Debts Account; and
 - (iv) if called upon so to do by the Chargee, execute a legal assignment of the Book Debts to the Chargee in such terms as the Chargee in its discretion may require, give such notice of that legal assignment to the debtors from whom the Book Debts are due, owing or incurred and take any such others step as the Chargee in its discretion may require to perfect such legal assignment.

8.2 ***Other Bank Accounts***

At any time when an Event of Default has occurred and is continuing, if the Chargee has served written notice on the Company requiring the same, no Chargor shall, except with the prior written consent of the Chargee, withdraw or attempt or be entitled to withdraw from any of its bank accounts all or any monies standing to the credit of such bank accounts.

9. **Dividends, voting rights and Nominees**

9.1 ***Dividends and voting rights***

For so long as no Event of Default has occurred and is continuing, each Chargor may:

- (a) subject to Clause 7 (*Deposit of document and title deeds*), receive and retain all dividends, interest and other income deriving from and received by it in respect of the Securities and the Derivative Assets; and
- (b) exercise all voting and other rights and powers attached to the Securities and the Derivative Assets provided that such exercise does not adversely affect the Securities and the Derivative Assets and is not otherwise inconsistent with this Debenture.

9.2 ***Chargee's powers of enforcement over the Securities and the Derivative Assets***

- (a) Following the occurrence of an Event of Default that is continuing:
 - (i) the Chargee may in its discretion (in the name of any Chargor or otherwise and without any consent or authority on the part of any Chargor) exercise all the powers given to trustees by Section 10(3) and (4) of the Trustee Act 1925

(as amended by Section 9 of the Trustee Investments Act 1961) in respect of those Securities and Derivative Assets subject to a trust;

- (ii) all dividends, interest and other income forming part of the Securities and Derivative Assets shall, unless otherwise agreed between the Chargee and the Company, be applied as though they were proceeds of sale in accordance with Clause 17.7 (*Application of proceeds*);
 - (iii) all voting rights in respect of all Securities and Derivative Assets charged by Clause 4.7 (*Securities and Derivative Assets*) may be exercised (without obligation to do so) by the Chargee (or its nominee) in such a manner as it shall (in its absolute discretion) see fit;
 - (iv) (if directed to do so in writing by the Chargee) each Chargor shall procure the registration in its books of the transfer of the Securities and the Derivative Assets to the Chargee (or its Nominees), the entry of the Chargee (or its Nominees) in the register of members of the company or companies which has/have issued the Securities as the holder or holders of the Securities and the Derivative Assets and the issue of new share certificates in respect of the Securities and the Derivative Assets to the Chargee (or its Nominees); and
 - (v) upon the accrual, offer, issue or receipt of any Derivative Assets, each Chargor shall deliver or pay to the Chargee or procure the delivery or payment to the Chargee of all such Derivative Assets or the stock or share certificates or other documents of title to or representing them together with duly executed blank transfers.
- (b) The Chargee shall not have any duty as to any Securities or Derivative Assets and shall not incur liability for:
- (i) ascertaining or taking action in respect of any calls, instalments, conversions, exchanges, maturities, tenders or other matters in relation to any Securities or Derivative Assets or the nature or sufficiency of any payment whether or not the Chargee has or is deemed to have knowledge of such matters; or
 - (ii) taking any necessary steps to preserve rights against prior parties or any other rights pertaining to any Securities or Derivative Assets; or
 - (iii) any failure to present any interest, coupon or any bond or stock drawn for repayment or for any failure to pay any call or instalment or to accept any offer or to notify any Chargor of any such matter or for any failure to ensure that the correct amounts (if any) are paid or received in respect of the Securities or the Derivative Assets.

10. **Representations and warranties**

Each Chargor makes the representations and warranties set out in this Clause 10 (*Representations and warranties*) to the Chargee on the date of this Debenture.

10.1 **Status**

It has the power to own and grant security as contemplated in this Debenture over its assets.

10.2 **Ownership of the Charged Property**

- (a) Subject to paragraph (d) below, it is the sole legal and beneficial owner of the Charged Property as from the date it or any part of it becomes charged under this Debenture and its rights in respect of the Charged Property are free from any Security of any kind other than under this Debenture or as permitted by the Credit Agreement.

- (b) Schedule 2 (*The Secured Assets*) identifies all the Securities in respect of companies incorporated in England and Wales beneficially owned by each Chargor at the date of the Debenture.
- (c) The Securities listed in Part 2 of Schedule 2 are all fully paid.
- (d) The Target Shares shall not be legally and beneficially owned by the Company until the Closing Date, and shall be registered in the register of shareholders of the relevant company as soon as possible after the Closing Date.

10.3 **Future Security**

Except as contemplated by this Debenture, the execution of this Debenture by it and its exercise of the rights and performance of its obligations under this Debenture will not result in the existence of or oblige any Chargor to create any Security over all or any of its present or future revenues or assets.

11. **General undertakings**

Each Chargor gives each of the undertakings contained in this Clause 11 (*General undertakings*) to the Chargee and each of the undertakings shall remain in force while the Debenture Security subsists.

11.1 **Negative Pledge**

No Chargor shall without the previous written consent of the Chargee:

- (a) create or attempt to create or permit to subsist any mortgage, charge, lien or encumbrance (other than the Permitted Security) on the Charged Property; or
- (b) sell, transfer, assign, factor, lease or otherwise dispose of or part with possession in any way of all or any of its Assets (other than (i) any Assets the subject of the floating charge created by clause 4.12 above (but not any fixed charge or mortgage) on arms length terms in the ordinary course of trading or (ii) any disposal made in accordance with Clause 32.2); or
- (c) in any way dispose of the equity of redemption of any such Asset or any interest in any such Asset.

11.2 **Insurance**

Each Chargor shall:

- (a) supply on written request copies of each of its policies of insurance together with the current premium receipts relating to each such policy provided that, following any deposit of any insurance policy and at any time prior to the occurrence of an Event of Default that is continuing, any Chargor may demand that the Chargee return to the Chargor such insurance policy that is required by the Chargor in order to enforce its rights under such insurance policy and the Chargee shall, as soon as reasonably practicable following such request, deliver such insurance policy to the Company;
- (b) ensure that the interest of the Chargee is noted on all its insurance policies in respect of its Charged Property from time to time;
- (c) duly and punctually pay all premiums and any other moneys necessary for maintaining its insurance policies in full force and effect. If the Chargor at any time fails to pay any such premiums or other moneys, the Chargee may pay such premiums and other moneys and the Company shall reimburse the Chargee for the amount of such premiums and other moneys within 3 Business Days of demand; and

- (d) not, without the prior written consent of the Chargee, do any act or commit any default which might prejudice the insurance policies, including, without limitation, any act or default whereby the insurance policies might become void or voidable.

11.3 **Insurance monies**

- (a) Any monies received by virtue of any insurance relating to the whole or any part of the Charged Property (whether effected pursuant to this Debenture or otherwise) shall be deemed to be part of the Charged Property. Each Chargor shall apply all such monies in the repair, reinstatement or replacement of the relevant asset or, if the Chargee in its discretion so requires at any time when an Event of Default is continuing, towards discharge of the Secured Liabilities.
- (b) At any time when an Event of Default is continuing, each Chargor shall ensure that all such monies referred to in Clause 11.3(a) (*Insurance monies*) which are not paid directly by the insurers to the Chargee shall be held by the recipient upon trust for the Chargee and be applied by that Chargor in accordance with Clause 11.3(a) (*Insurance monies*).

11.4 **To repair**

Each Chargor shall:

- (a) at all times keep in good and substantial repair and condition, ordinary wear and tear excepted, all the Charged Property which is of a repairable nature including, without limitation, all buildings, erections and structures on and in the Property; and
- (b) keep all Plant and Machinery in good repair, working order and condition and fit for its purpose;.

11.5 **To allow entry**

Each Chargor shall allow, and shall procure that any person occupying the whole or any part of the Property under any lease or licence will allow, the Chargee and its agents, with or without surveyors, workmen or others authorised by it upon reasonable prior written notice (except in an emergency) to enter the Property at reasonable times from time to time in order to view the Charged Property or to carry out any repairs on the Charged Property which the Chargee considers necessary to procure compliance with any obligation of the Chargor in this Debenture.

11.6 **Alterations**

No Chargor shall:

- (a) commit any waste, or in any manner lessen the value of the Property;
- (b) carry out any works of demolition, construction, refurbishment, addition or otherwise in or to the Property;
- (c) sever any Fixtures; or
- (d) make any structural or other material alterations to the Property

except with the prior written consent of the Chargee.

11.7 **VAT**

No Chargor shall, without the express prior written consent of the Chargee, exercise any option to waive exemption from VAT in relation to the Charged Property or any part thereof and

will provide to the Chargee, on demand, such details of the Chargor's registration for VAT purposes as the Chargee requires.

11.8 *Notices relating to a Chargor*

Each Chargor shall as soon as reasonably practicable notify the Chargee in the event of any creditor executing diligence against it or if any distress or execution is levied or enforced against it or any third party debt order or freezing order is made and served on it or any steps are taken (including, without limitation, the making of any application or the giving of any notice) by any person (including, without limitation, that Chargor or its directors or members, or any of them) in relation to potential or actual administration, receivership, winding-up or dissolution.

11.9 *To provide information*

Each Chargor shall supply to the Chargee as soon as reasonably practicable upon demand such information, documents or papers relating to the Charged Property from time to time as the Chargee in its discretion (acting reasonably) may deem necessary.

11.10 *Intellectual Property Rights*

Each Chargor shall, unless it has the prior written consent of the Chargee, take prudent steps to preserve the Intellectual Property Rights necessary for the conduct of its business, use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property Rights and not use nor permit the Intellectual Property Rights to be used in a way or take any step or omit to take any step in respect of the Intellectual Property Rights which may materially and adversely affect the existence or value of the Intellectual Property Rights.

11.11 *Miscellaneous undertakings*

Each Chargor shall, unless it has the prior written consent of the Chargee:

- (a) punctually pay or cause to be paid all rents, rates, taxes, duties, assessments and other outgoings payable in respect of the Charged Property or any part thereof; and
- (b) not do, cause or permit to be done anything which would cause the value or marketability of any Charged Property to depreciate or be jeopardised or prejudiced (or make any omission which has such an effect).

12. *Costs*

Each Chargor shall, within 3 Business Days of demand, pay to the Chargee or the Receiver, or discharge (as the case may be), all costs and expenses (including legal fees) incurred by any of them in connection with the enforcement of, or preservation of rights under this Debenture, on a full and unlimited indemnity basis, together with interest at the Default Rate from the date the relevant cost was expended, incurred or suffered (whichever is the earlier) by the Chargee or the Receiver (as the case may be) until full payment or discharge of such cost and such cost shall form part of the Secured Liabilities.

13. *Default*

13.1 *When the Debenture Security becomes enforceable*

The Debenture Security shall become enforceable without further notice immediately:

- (a) on the occurrence of an Event of Default that is continuing; or

- (b) if any Chargor requests the Chargee to appoint an administrator or a receiver over the whole or any part of its undertaking or assets.

13.2 Enforcement

- (a) On and at any time after the Debenture Security becomes enforceable, the Chargee will be entitled to enforce all or any part of the Debenture Security in any manner it sees fit, including without limitation by exercising all or any of the powers conferred on a mortgagee by the LPA (as varied or extended by this Debenture), all or any of the powers conferred on the holder of a qualifying floating charge (as defined in the Insolvency Act) and all or any of the rights and powers conferred by this Debenture.
- (b) Without limiting the generality of sub-clause (a) above, on and at any time after the occurrence of an Event of Default that is continuing, the Chargee in its absolute discretion may by written notice to a Chargor appropriate (for the purposes of the Financial Collateral Regulations and subject to Clause 15.3 (*Financial Collateral*) below) any part or the whole of the Financial Collateral secured by this Debenture.

13.3 Financial Collateral

- (a) To the extent that any of the Charged Property constitutes Financial Collateral and is subject to a Security Financial Collateral Arrangement created by or pursuant to this Debenture, the Chargee shall have the right, at any time after the Debenture Security has become enforceable, to appropriate all or any part of those Assets in or towards the payment or discharge of the Secured Liabilities.
- (b) The value of any Assets appropriated in accordance with this Clause 13.3 (*Financial Collateral*) shall be determined by such method as the Chargee may reasonably select (including independent valuation), at the time the right of appropriation is exercised. Each Chargor agrees that the methods of valuation provided for in this Clause 13.3 (*Financial Collateral*) are commercially reasonable for the purposes of Regulation 18 of the Financial Collateral Regulations.
- (c) To the extent that the Assets constitute Financial Collateral, each Chargor agrees that such Assets shall be held or designated so as to be under the control of the Chargee for all purposes of the Financial Collateral Regulations.

14. Statutory power of sale

- 14.1 For the purposes of all powers under this Debenture and implied by statute, and in particular the power of sale under Section 101 of the LPA (Powers incident to estate or interest in a mortgage), the Secured Liabilities will be deemed to have become due immediately on the date of this Debenture and Section 103 of the LPA (Regulation of exercise of power of sale) and Section 93 of the LPA (Restriction on consolidation of mortgages) will not apply.
- 14.2 The statutory powers of leasing conferred on the Chargee are extended so as to authorise the Chargee to lease, make arrangements for leases, accept surrender of leases and grant options on such terms and conditions as the Chargee may in its discretion think fit. The Chargee is not obliged to comply with any of the provisions of Section 99 (Leasing powers of mortgagor and mortgagee in possession) and Section 100 (Powers of mortgagor and mortgagee in possession to accept surrenders of leases) of the LPA.
- 14.3 Each of the Chargee and the Receiver may exercise the statutory power of sale and the statutory powers of leasing, as amended and varied in the foregoing clauses, and all other statutory powers, in respect of the whole or any part of the Property.

15. Administrator

At the time that, or at any time after, the Debenture Security becomes enforceable, whether or not the Chargee has entered into or taken possession of the whole or any part of the Charged

Property pursuant to this Debenture, the Chargee may, insofar as permitted by law, at its option and in addition to any right to appoint a Receiver, by writing under the hand of any authorised officer of the Chargee, appoint, petition the relevant court to appoint or apply to the court for the appointment of any person to be an administrator of any Chargor under the Insolvency Act and such person shall, from the effective date of such appointment, be an administrator.

16. Receiver

16.1 Appointment of Receiver

- (a) At any time that, or at any time after, the Debenture Security becomes enforceable, whether or not the Chargee has entered into or taken possession of the whole or any part of the Charged Property pursuant to this Debenture:
 - (i) the Chargee may, insofar as permitted by law, at its option, by writing under the hand of any authorised officer of the Chargee, appoint any person to be a receiver of the Charged Property and such person shall, with effect from the effective date of such appointment, be a Receiver provided that this provision shall not apply solely by reason of the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, as a preliminary to a creditors voluntary arrangement, by an eligible company (as defined in Schedule A1 of the Insolvency Act) under the Insolvency Act;
 - (ii) the Chargee may, from time to time, in similar manner, remove the Receiver and appoint another in his place;
 - (iii) the Chargee may, either at the time of appointment or at any time thereafter, fix the remuneration of the Receiver (excluding for the purposes of this Clause the limitation set out in Section 109(6) LPA (Appointment, powers, remuneration and duties of receivers));
 - (iv) the Chargee and any Nominee wherever situate may, without further notice and without the restrictions contained in Section 103 of the LPA (Regulation of exercise of power of sale), exercise in respect of all or any part of the Securities and the Derivative Assets all the powers and rights exercisable by the registered holder of the Securities and the Derivative Assets and all other powers conferred on mortgagees by the LPA as varied or extended by this Debenture; and
 - (v) the Chargee and any Nominee wherever situate may apply any dividends, interest or other payments received or receivable by the Chargee or by such Nominee in respect of the Securities and the Derivative Assets as if they were proceeds of sale.
- (b) None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.
- (c) The Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Debenture or otherwise, upon such terms and for such periods of time as he may in his discretion (acting reasonably) think fit and may from time to time terminate any such delegation. Neither the Chargee nor any Receiver shall be liable to any Chargor for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever.

16.2 Powers of Receiver

The Receiver has all the powers to do or abstain from doing anything which the Chargee or any Chargor could do or abstain from doing in relation to the Charged Property including,

without limitation the powers conferred by Section 109 of the LPA (Appointment, powers, remuneration and duties of receivers) and, in the case of a Receiver who is an administrative receiver, the powers conferred by Section 29 of the Insolvency Act (Definitions) and Schedule 1 to the Insolvency Act (Powers of administrator or administrative receiver), and in particular the Receiver may:

(a) *Possession*

take immediate possession of, get in and collect the Charged Property or any part thereof;

(b) *Carry on business*

carry on, manage or concur in carrying on or managing the whole or any part of the business of any Chargor as he in his discretion may think fit;

(c) *Protection of assets*

(i) manage, insure, repair, decorate, maintain, alter, improve, develop, construct, modify, refurbish, renew or add to the Charged Property or concur in so doing;

(ii) commence, continue or complete any new works, unfinished work, building operations, construction, reconstruction, maintenance, furnishing, finishing or fitting-out on the Property;

(iii) apply for and maintain any planning permissions, building regulations, approvals and any other permissions, consents or licences,

in each case as he in his discretion may think fit;

(d) *Realisation of assets*

sell, exchange, convert into money and realise the Charged Property or concur in so doing by public auction or private contract and generally in such manner and on such terms as he in his discretion may think fit. Without prejudice to the generality of the foregoing, he may do any of these things for any valuable consideration, whether full market value or otherwise, including, without limitation, cash, shares, stock, debentures or other obligations. Any such consideration may be payable in a lump sum or by instalments spread over such period as he in his discretion may think fit;

(e) *Let, hire or lease*

(i) let, hire or lease (with or without premium) and accept surrenders of leases or tenancies or concur in so doing;

(ii) grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property;

(iii) exchange or concur in exchanging the Charged Property;

in each such case in such manner and generally on such terms as he may in his discretion think fit, with all the powers of an absolute beneficial owner. The Receiver may exercise any such power by effecting such transaction in the name or on behalf of the relevant Chargor or otherwise;

(f) *Registration*

use a Chargor's name to effect any registration or election for tax or other purposes;

(g) *Insurances*

effect, review or vary insurances;

(h) *Borrowing*

for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to this Debenture or of defraying any costs (including, without limitation, his remuneration) which are incurred by him in the exercise of such powers, authorities or discretions or for any other purpose, to raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the Debenture Security or otherwise, and generally on such terms as he in his discretion may think fit. No person lending such money is to be concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of money so raised or borrowed;

(i) *Lending*

lend money to any person;

(j) *Advance credit*

advance credit, in the ordinary course of the Chargor's business, to any person;

(k) *Make calls*

make, or require the directors of any Chargor to make, such calls upon the shareholders of that Chargor in respect of any uncalled capital of that Chargor as the Receiver in his discretion may require and enforce payment of any call so made by action (in the name of that Chargor or the Receiver as the Receiver in his direction may think fit) or otherwise;

(l) *Compromise*

(i) settle or compromise any claim by, adjust any account with, refer to arbitration any dispute with, and deal with any question or demand from, any person who is, or claims to be, a creditor of any Chargor, as he may in his discretion think fit; and

(ii) settle or compromise any claim, adjust any account, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he in his discretion may think fit;

(m) *Proceedings*

in the name of any Chargor, bring, prosecute, enforce, defend or abandon all such actions, suits and proceedings in relation to the Charged Property as he in his discretion may think fit;

(n) *Subsidiaries*

(i) promote the formation of any subsidiary of any Chargor with a view to such subsidiary purchasing, leasing, licensing or otherwise acquiring an interest in the Charged Property;

(ii) arrange for the purchase, lease, licence or acquisition of an interest in the Charged Property by any such subsidiary for any valuable consideration, including, without limitation, cash, shares, debentures, loan stock, convertible loan stock or other securities, profits or a sum calculated by reference to profits, turnover, royalties, licence fees or otherwise, whether or not secured

on the undertaking or assets of such subsidiary and whether or not such consideration is payable or receivable in a lump sum or at any time or any number of times by instalments spread over such period, as the Receiver in his discretion may think fit; and

(iii) arrange for such subsidiary to trade or cease to trade as the Receiver in his discretion may think fit;

(o) *Employees*

appoint and discharge any manager, officer, agent, professional adviser, employee and any other person, upon such terms as he in his discretion may think fit;

(p) *Receipts*

give valid receipts for all monies and execute all assurances and things which he in his discretion may think proper or desirable for realising the Charged Property;

(q) *Environment*

conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions, whether required under Environmental Law or by the Chargee or otherwise and comply with all lawful orders and directives of all Authorities regarding Environmental Law;

(r) *Delegation*

delegate any or all of his powers in accordance with this Debenture; and

(s) *General powers*

do all such other acts and things as the Receiver in his discretion may consider to be incidental or conducive to any of the matters or powers set out in this Debenture or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

16.3 Receiver as agent of a Chargor

The Receiver is at all times and for all purposes the agent of the Chargor over which, or over the assets of which, he is appointed. Subject to the provisions of the Insolvency Act, that Chargor is solely responsible for all the Receiver's and the Receiver's delegates' acts, defaults, neglect and misconduct of any nature whatsoever and for his remuneration and costs, to the exclusion of liability on the part of the Secured Parties.

16.4 No obligation

The Receiver is not obliged to exercise any nor all of the powers set out in this Clause 16.

16.5 Several power

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Chargee specifies otherwise in the appointment of such Receiver.

16.6 Powers exercisable by the Chargee

- (a) The Chargee may exercise all powers granted to the Receiver by this Debenture, whether as attorney of any Chargor or otherwise when an Event of Default has occurred and is continuing.
- (b) The powers of the Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Chargee as provided in Clause 14 (*Statutory power of sale*) or otherwise and so that, inter alia, such powers are and remain exercisable by the Chargee in respect of that part of the Charged Property in respect of which no appointment of a Receiver by the Chargee is from time to time subsisting.

16.7 **Application of proceeds**

The provisions of Sections 99 to 109 inclusive of the LPA are varied and extended to the extent that all monies received by the Receiver shall be applied (subject to the provisions of the Insolvency Act, in so far as applicable to this Debenture) in the following order:

- (a) in full payment of his remuneration and the costs of realisation including, without limitation, all costs of, or incidental to, any exercise of any power referred to in this Debenture, including, without limitation, all outgoings properly paid by the Receiver;
- (b) providing for the matters specified in paragraphs (i) to (iii) inclusive of Section 109 (8) of the LPA (Appointment, powers, remuneration and duties of receiver);
- (c) in or towards satisfaction of any debts or other imposts which are by statute made payable in preference to the Secured Liabilities to the extent to which such debts or imposts are made so payable;
- (d) if so required by the Chargee in its discretion, in or towards satisfaction of the Secured Liabilities; and
- (e) to the person or persons entitled by law to any surplus.

17. **Protection of third parties**

17.1 Any person (including, without limitation, any purchaser, mortgagor or mortgagee) (in this Clause 17 (*Protection of Third Parties*) a "**purchaser**") dealing with the Chargee or the Receiver may assume without inquiry that:

- (a) some part of the Secured Liabilities has become due;
- (b) a demand for such Secured Liabilities has been duly made, if required; and
- (c) such Secured Liabilities have become due within the meaning of Section 101 of the LPA (Powers incident to estate or interest in a mortgage).

17.2 No purchaser dealing with the Receiver or the Chargee is to be concerned to enquire whether any power exercised or purported to be exercised by the Receiver or the Chargee has become exercisable, or as to the propriety or regularity of any sale by, or other dealing with, the Receiver or the Chargee. Any such sale or dealing is deemed to be within the powers conferred by this Debenture and to be valid and effective accordingly. All the protection to purchasers contained in Section 104 (Conveyance on sale) and Section 107 (Mortgagee's receipt, discharges etc.) of the LPA and Section 42(3) of the Insolvency Act (Prohibition upon enquiry into administrative receiver's powers) apply to any purchaser.

18. **No liability as mortgagee in possession**

18.1 **Mortgagee's liability**

Neither the Chargee nor the Receiver is:

- (a) liable to account as mortgagee in possession in respect of the Charged Property; nor
- (b) liable for any loss upon realisation or exercise of any power, authority or right of the Chargee or the Receiver arising under this Debenture, nor for any act, default, neglect or misconduct of any nature whatsoever unless caused by fraud, gross negligence or wilful misconduct upon its part.

18.2 **Possession**

If the Chargee or the Receiver enters into possession of the Charged Property, such person may at any time go out of possession at their own discretion.

19. **Delegation**

19.1 **Power of Attorney**

The Chargee or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Debenture in relation to the Charged Property.

19.2 **Terms**

Any delegation under this Clause 20 (*Delegation*) or Clause 20 (*Power of Attorney*) may be made upon any terms (including power to sub-delegate) which the Chargee or any Receiver may think fit (acting reasonably).

19.3 **Liability**

Neither the Chargee nor any Receiver shall be in any way liable or responsible to any Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

20. **Power of attorney**

20.1 Each Chargor irrevocably and by way of security appoints the Chargee, each person deriving title from the Chargee and the Receiver, jointly and severally to be its attorney (with full power to appoint substitutes and to delegate) for it, in its name, on its behalf and as its act and deed or otherwise to sign or execute any deed or document or do any act or thing which that Chargor is, or may become, obliged to sign, execute or do pursuant to this Debenture or which the Chargee, the Receiver or any person deriving title from the Chargee or the Receiver in the absolute discretion of such person may think fit in connection with the exercise of any of the powers of such person or the realisation of any of the Debenture Security.

20.2 Without prejudice to the generality of the foregoing, each Chargor unconditionally undertakes to the Chargee, and separately to the Receiver and to each person deriving title from the Chargee or the Receiver, that it shall ratify and confirm anything done or purported to be done by any attorney appointed pursuant to this Clause 20.

21. **Cumulative and continuing security**

21.1 The Debenture Security constitutes a continuing security to the Chargee regardless of the intermediate payment or discharge of the whole or any part of the Secured Liabilities and will not be prejudiced or affected by any act, omission or circumstance which, but for this Clause 23, might affect or diminish their effectiveness.

- 21.2 The Debenture Security is in addition to, are not in substitution for, are without prejudice to, and do not merge with, any rights whatsoever which the Chargee may have, whether in respect of the Secured Liabilities or otherwise, including, without limitation, any rights arising under any other Security, any bill, note, guarantee, contract or applicable rule of law.
- 21.3 The obligations of the Chargors under this Charge will not be affected by any amendment, variation, restatement or supplement of or to, or any novation, transfer or termination (in whole or in part) of, any document relating to the Secured Liabilities or any exercise by any Finance Party (in its absolute discretion) of its rights to refuse, grant, continue, vary, review, determine or increase any credit or facilities to the Chargors or any other person.
- 21.4 Any receipt, release or discharge of the Debenture Security, or of any liability arising under, this Debenture shall not release or discharge any Chargor from any liability which may exist independently of this Debenture to the Chargee.
- 21.5 Where the Debenture Security initially takes effect as collateral or further security to any other Security held by the Chargee then, notwithstanding any receipt, release or discharge given in respect of such other Security, this Debenture shall take effect as an independent security for any monies, liabilities or other sums secured by such other Security.

22. Avoidance of payments

- 22.1 No assurance, security or payment which may be avoided under the law or subject to an order of the court made under any law relating to bankruptcy, insolvency, administration or winding-up, including, without limitation, the Insolvency Act, and no release, settlement or discharge given or made by the Chargee on the faith of any such assurance, security or payment, prejudices or affects the right of:
- (a) The Chargee to recover any monies from any Chargor (including, without limitation, any monies which it is compelled to refund under the Insolvency Act and any costs payable by it incurred in connection with such process); or
 - (b) the Chargee to enforce the Debenture Security to the full extent of the Secured Liabilities, and

where any payment has been so received it will not be considered to have been paid for the purposes of this Debenture or for reduction or discharge of the Secured Liabilities.

- 22.2 The Chargee, at its discretion (acting reasonably), may retain the Debenture Security as security for the Secured Liabilities for a period of one month plus any statutory period within which any such assurance, security or payment can be avoided or invalidated, notwithstanding any release, settlement, discharge or arrangement given or made by the Chargee.
- 22.3 If at any time within the period referred to in Clause 22.2 (*Avoidance of Payments*) any person takes any step whatsoever relating to (i) the winding-up or administration of any Chargor or (ii) any arrangement with the creditors of any Chargor, then the Chargee may retain the whole or any part of the Debenture Security for such further period as the Chargee may in its discretion (acting reasonably) think fit. Such Security will be deemed to have been held and to have remained held by the Chargee as security for the payment of the Secured Liabilities.

23. Prior charges

- 23.1 If there subsists any prior Security against the Charged Property and either any step is taken to exercise any power or remedy conferred by such Security or the Chargee or the Receiver exercises any power of sale pursuant to this Debenture, then the Chargee may redeem such prior Security or procure the transfer of such Security to itself and may settle and pass the accounts of the person entitled to such Security. Any accounts so settled and passed are conclusive and binding on each Chargor.

- 23.2 Each Chargor shall reimburse the Chargee for any reasonable costs properly incurred by the Chargee in exercise of its rights under this Clause 23 (*Prior charges*).

24. Opening a new account

- 24.1 If the Chargee receives notice of any subsequent Security affecting the Charged Property, then the Chargee may open a new account for any Chargor in its books.
- 24.2 If the Chargee does not open such new account, then, unless the Chargee gives express written notice to the contrary to the relevant Chargor, all payments by or on behalf of the Chargor to the Chargee will be treated as from time of receipt of notice of such subsequent Security by the Chargee as having been credited to a new account of that Chargor and not as having been applied in reduction of the amount of the Secured Liabilities as at the time when the notice was received.

25. Suspense account

The Chargee may, in its discretion, credit to any suspense or impersonal account and hold in such account, on such terms as the Chargee in its discretion may think fit, all monies received, recovered or realised by the Chargee pursuant to this Debenture (including, without limitation, the proceeds of any conversion of currency) pending the application from time to time (as the Chargee may effect in its discretion) of such monies and accrued interest, if any, in or towards satisfaction of the Secured Liabilities.

26. Changes to the Parties

- 26.1 No Chargor shall be entitled to assign, transfer, novate or dispose of all or any part of, or any interest in, its rights, benefit or obligations under this Debenture.
- 26.2 The Chargee may assign, transfer, novate or dispose of all or any part of, or any interest in, its rights and obligations under this Debenture, to any permitted assignee in accordance with the terms of the SSA.

27. Currency

- 27.1 All monies received or held by the Chargee or any Receiver in respect of the Secured Liabilities may be converted from time to time after demand has been made, into such other currency as the Chargee in its absolute discretion considers necessary to cover the obligations and liabilities actual or contingent of any Chargor in that other currency at the Agent's Spot Rate of Exchange for purchasing that other currency with the existing currency.
- 27.2 Neither the Chargee nor any Receiver shall be liable to any Chargor for any loss resulting from any fluctuation in exchange rates before or after the exercise of any of its or their powers or rights under this Debenture.
- 27.3 No payment to the Chargee (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of any Chargor in respect of which it was made unless and until the Chargee shall have received payment in full in the currency in which such obligation or liability was incurred and, to the extent that the amount of any such payment, on actual conversion into such currency, shall fall short of such obligation or liability actual or contingent expressed in that currency, the Chargee shall have a further separate cause of action against that Chargor and shall be entitled to enforce the security constituted by this Debenture to recover the amount of the shortfall and such amount will bear interest at the Default Rate from the date of payment by the Chargee until the date of reimbursement.

28. Set-off

After the occurrence of an Event of Default that is continuing, the Chargee may, subject to the Priority and Subordination Agreement, set off any matured obligation due from a Chargor

under the Transaction Documents against any matured obligation owed by the Chargee to that Chargor.

29. **Notices**

- (a) Clause 36 (*Notices*) of the SSA is incorporated into this Debenture as if fully set out in this Debenture.
- (b) Any notices from or to a Chargor may be sent by or to the Chargee directly.

30. **Miscellaneous**

- 30.1 Every provision contained in this Debenture shall be severable and distinct from every other provision and if, at any time, any provision of this Debenture is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 30.2 If this Debenture is prepared in several parts, each of the parties may execute one or more parts and all the executed parts will constitute one agreement.
- 30.3 Any failure to exercise or delay in exercising any rights or remedies in this Debenture will not operate as a waiver of the rights or remedies or prevent any further exercise of them.
- 30.4 A waiver of a breach of or default under the terms of this Debenture will not affect the other terms of this Debenture and does not constitute a waiver of any other breach or default.
- 30.5 No purported alteration of this Debenture shall be effective unless it is in writing, refers specifically to this Debenture and is duly executed by each Party hereto.
- 30.6 Failure by one or more parties ("**Non-Signatories**") to execute this Debenture on the date of this Debenture will not invalidate the provisions of this Debenture as between the other parties who do execute this Debenture. Any Non-Signatories may execute this Debenture (or a counterpart of this Debenture) on a subsequent date and will thereupon become bound by its provisions.
- 30.7 If any one or more of the Chargors is not bound by any or all of the provisions of this Debenture (whether by reason of lack of capacity, improper execution, failure to execute or for any other reason whatsoever) the remaining Chargors shall nonetheless continue to be bound as if such Chargor had never been a party.

31. **HM Land Registry**

- 31.1 Each Chargor shall apply in the manner specified by the 2003 Rules to the Land Registry (or will use all reasonable endeavours to assist the Chargee in its application to the Land Registry, and in any event will not object to such registration), at the same time as applying to register this Debenture, for registration against the title to the Property of the following restriction:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [●] in favour of [Npower Limited] as Chargee referred to in the charges register".

32. **Release**

- 32.1 Subject to Clause 22.2 (*Avoidance of payments*), upon irrevocable discharge in full of the Secured Liabilities the Chargee shall, at the request and the cost of the Chargors, release from the Debenture Security and reassign to the Chargors all the Chargors' rights, title, interest and benefit in and to the Charged Property by executing a release in the form set out in Schedule 5, with such amendments as the Chargee may agree at the Chargors' request and return to

the Chargor all certificates, policies and any other document deposited with the Chargee pursuant to the terms of this Debenture.

- 32.2 Where any Chargor sells or otherwise disposes of an asset to a purchaser which is not a member of the Group, and such sale or disposal is permitted by the terms of the Credit Agreement or any Refinancing Finance Documents (as defined under the Priority and Subordination Agreement), the Chargee shall, at the request and cost of the relevant Chargor, release from the Debenture Security all the Chargor's rights, title, interest and benefit in and to the asset the subject of the sale or disposal.

33. **Governing law**

This Debenture and any dispute, controversy, proceedings, claim or obligation of whatever nature arising out of or in any way relating to it, its subject matter or formation (whether contractual or non-contractual) is governed by and shall be construed in accordance with English law.

In witness whereof this Debenture has been entered into on the date written and the beginning of this Debenture has been executed and delivered as a deed by each of the Chargors on the date written at the beginning of this Debenture.

Schedules

Schedule 1

The Chargors

Name of Chargor	Company Number	Company Address
Telecom Plus PLC	03263464	Network HQ 333 Edgware Road London NW9 6TD
Gas Plus Supply Limited	05199935	Network HQ 333 Edgware Road London NW9 6TD
Electricity Plus Supply Limited	05199936	Network HQ 333 Edgware Road London NW9 6TD

Schedule 2
The Secured Assets

Securities

Chargor	Name of company in which Securities are held	Securities held
Telecom Plus PLC	Telecommunications Management Limited	2 ordinary shares of £1 each
Telecom Plus PLC	Electricity Plus Supply Limited	1 ordinary share of £1
Telecom Plus PLC	Gas Plus Supply Limited	1 ordinary share of £1

Schedule 3

Form of Deed of Release

This Deed of release is made on

201●

Between:

- (1) **Npower Limited** (registered in England and Wales with company number 03653277) whose registered office is at Windmill Hill Business Park, Swindon, Wiltshire SN5 6PB (the "**Chargee**"); and
- (2) [The Chargors] (the "**Chargors**").

It is agreed as follows:

1. The Chargee hereby absolutely, irrevocably and unconditionally releases all and any security interests created or evidenced in the debenture granted by the Chargors to the Chargee on [●] (the "**Debenture**") and all and any fixed and floating charges created by the Debenture over any of the property, rights and assets more particularly described in the Debenture and reassigns all of the Chargors assets and undertaking assigned to the Chargee by or pursuant to the Debenture (together the "**Security Interests**").
2. The Chargee hereby agrees, subject to its costs for so doing being fully indemnified by the Chargors, to execute such other documents for the release of the Security Interests as the Chargors may require, including, without limitation, notices of reassignment and Land Registry Forms.
3. This Deed shall be governed by and construed in accordance with English Law.
4. Unless expressly provided in this Deed, no express term of this Deed nor any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it and the consent is not required to rescind or vary this Deed at any time of any person who is not a party to it.

In witness whereof this Deed has been executed and delivered as a deed on the date written at the beginning of this Deed.

[Add signature blocks]

NOTE: *this deed of release is intended to provide a simple template for the Chargee to execute on redemption of the secured liabilities without needing to take additional legal advice at such time should it choose not to. It cannot therefore be negotiated until the time of release, at which point the Chargee will consider any proposed amendments from the Chargor.*

Signatures

The Company

Executed and Delivered as a Deed)
for and on behalf of)
TELECOM PLUS PLC)
by a director)
in the presence of:)



Signature of witness: _____

Name: *DAVID BAXTER*

Address: *NETWORK HQ, 333 EDGWARE ROAD, LONDON, NW9 6TD*

Occupation: *CHARTERED ACCOUNTANT*

Other Chargors

Executed and Delivered as a Deed)
for and on behalf of)
ELECTRICITY PLUS SUPPLY LIMITED)
by its duly authorised attorney)
in the presence of:)

Signature of witness: _____

Name:

Address:

Occupation:

Executed and Delivered as a Deed)
for and on behalf of)
GAS PLUS SUPPLY LIMITED)
by its duly authorised attorney)
in the presence of:)

Signature of witness: _____

Name:

Address:

Occupation:

The Chargee

Signed for and on behalf of
NPOWER LIMITED
by its duly authorised attorney
in the presence of:

)
)
)
)

Signature of witness: _____

Name:

Address:

Occupation: