



Registration of a Charge

Company name: **ESSENTIAL FLEET SERVICES LIMITED**

Company number: **03337954**

Received for Electronic Filing: **08/07/2015**



X4B6G7V6

Details of Charge

Date of creation: **01/07/2015**

Charge code: **0333 7954 0046**

Persons entitled: **RAYMOND O'TOOLE**

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 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:

SQUIRE PATTON BOGGS (UK) LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3337954

Charge code: 0333 7954 0046

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st July 2015 and created by ESSENTIAL FLEET SERVICES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th July 2015 .

Given at Companies House, Cardiff on 9th July 2015

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 1 July 2015

THE COMPANIES IDENTIFIED IN SCHEDULE 1 (1)

and

RAYMOND O'TOOLE AS SECURITY TRUSTEE (2)

COMPOSITE GUARANTEE AND DEBENTURE

RELATING TO A LOAN NOTE INSTRUMENT

Constituting up to £489,818 8% fixed rate secured loan notes 2021

THIS INSTRUMENT IS SUBJECT TO THE TERMS OF THE INTERCREDITOR DEEDS (AS SUCH TERM IS DEFINED HEREIN)

We hereby certify that this is a true and correct copy of the original

Dated 8 July 2015
Squire Patton Boggs (UK) LLP
SQUIRE PATTON BOGGS (UK) LLP
2 PARK LANE
LEEDS
LS3 1ES

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THIS DEBENTURE is made on 1 July 2015

BETWEEN:

- (1) **THE COMPANIES** details of which are set out in Schedule 1 to this deed (together the **Chargors** and each a **Chargor**) ; and
- (2) **RAYMOND O'TOOLE** of Treescape, Broomfield Avenue, Halifax, HX3 0JF as Security Trustee for itself and the other Management Loan Note Creditors under and as defined in the Agency and Security Trust Deed (in this capacity, the **Security Trustee**, which expression shall include any person for the time being appointed as security trustee in accordance with the Agency and Security Trust Deed).

1 DEFINITIONS AND INTERPRETATION

1.1 In this Debenture, the following terms shall have the following meanings:

Account means any credit balance from time to time on any account opened or maintained by any of the Chargors with any financial institution (and any replacement account or subdivision or sub-account of that account) and all Related Rights;

Acquisition Agreement means the share purchase agreement dated on or around the date of this Debenture relating to the sale and purchase of the Target Shares and made between the Company and the Vendor;

Administrative Receiver means any person appointed or to be appointed by the Security Trustee as administrative receiver pursuant to the exceptions to section 72A (1) or (2) of the Insolvency Act 1986;

Agency and Security Trust Deed means the Agency and Security Trust Deed dated on or around the date of this Debenture entered into between Raymond O'Toole in his capacity as Agent Raymond O'Toole in his capacity as Security Trustee and the Management Loan Note Creditors relating to the appointment of the Agent and the Security Trustee;

Agent means the person appointed as agent under the Agency and Security Trust Deed and being Raymond O'Toole as at the date of this Debenture;

Administrator means any person appointed or to be appointed by the Security Trustee as administrator pursuant to Schedule B1 to the Insolvency Act 1986;

Book Debts means:

- (a) all book and other debts in existence from time to time, both present and future, due, owing to or which may become due, owing to or purchased or otherwise acquired by each Chargor in relation to any Intellectual Property, any Investment, the proceeds of any Insurance Policy, any court order or judgment, any contract or agreement to which a Chargor is a party and any other assets, property, rights or undertaking of a Chargor); and
- (b) the benefit of all rights whatsoever relating to the debts referred to above including, any related agreements, documents, rights and remedies (including, negotiable or non-negotiable instruments, guarantees, indemnities, legal and equitable charges, reservation or proprietary rights, rights of tracing, unpaid vendor's liens and all similar connected or related rights and assets whatsoever in respect of the same);

Book Debts Account means such account or accounts with any bank which the Security Trustee may from time to time specify in writing for the purpose of receiving payments of the Book Debts;

Business Day means a day (excluding Saturday and Sunday and statutory holidays) on which commercial banks are generally open for business in London;

Charged Property means in relation to a Chargor, the whole or any part of the property, assets, income and undertaking of that Chargor from time to time mortgaged, charged or assigned to the Security Trustee under this Debenture;

Company means Alpha Holdco 1 Limited (company number 09496091) whose registered office is at 3 Whitehall Quay, Leeds, LS1 4BF;

Costs means all costs, charges or expenses on a full indemnity basis of any kind including, costs and damages in connection with litigation, professional fees, disbursements and any value added tax to be charged on those costs, charges, expenses and disbursements;

Delegate means any delegate, agent, attorney or trustee appointed by the Security Trustee;

Derivative Assets means all assets derived from any of the Shares including all allotments, accretions, offers, rights, dividends, interest, income, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to any of the Shares and all stocks, shares, rights, money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, exchange, purchase, substitution, option, interest or otherwise in respect thereof;

Enforcement Party means any of the Security Trustee, a Receiver or a Delegate;

Event of Default has the meaning given to such term in the Management Loan Note Instrument;

Guarantor means each Chargor in its capacity as a guarantor of the obligations of each other Obligor to the Management Loan Note Creditors pursuant to clause 2;

Group means each Obligor and each of its Subsidiaries from time to time (if any);

Insurance Policy means any policy of insurance (including, without limitation, key-man insurance, life insurance or assurance) in which any Chargor may from time to time have an interest;

Intellectual Property means together the property described in clauses 3.5 to 3.12;

Intercreditor Deeds means the Lombard Intercreditor Deed and the Junior Intercreditor Deed;

Interest means interest at the rate charged by any of the Management Loan Note Creditors to the Company from time to time;

Investments means:

- (a) any stocks, shares, debentures, bonds, coupons, negotiable instruments, securities and certificates of deposit (but not including the Shares);

- (b) all interests in collective investment schemes; and
- (c) all warrants, options and other rights to subscribe for or acquire any of the investments described in paragraphs (a) and (b) above,

in each case whether held directly by or to the order of any Chargor or by any trustee, nominee, fiduciary or clearance system on its behalf and all Related Rights (including all rights against any such trustee, nominee, fiduciary or clearance system);

Investment Agreement means the investment agreement dated on or around the date hereof between Endless LLP and others relating to a proposed investment in the Parent;

Junior Intercreditor Deed means an intercreditor deed dated on or around the date hereof entered into between, inter alia, the Agent, the Security Trustee, the Senior Lenders (as such term is defined therein), the Investor Loan Note Holders (as such term is defined therein), the Management Loan Note Holders (as such term is defined therein), the Company, the Parent and the Target;

Loan Agreement means the revolving credit facility agreement dated on or around the date of this Debenture between, inter alia, Endless Fund IV A LP and Endless Fund IV B LP as lenders, Endless LLP as agent for and on behalf of the Finance Parties (as such term is defined therein), Endless LLP as security trustee for and on behalf of the Finance Parties (as such term is defined therein), the Company and the Target;

Lombard Intercreditor Deed means the intercreditor deed between, among others, (1) Lombard North Central plc, (2) Endless LLP (in various capacities), (3) the Investor Loan Note Holders, (4) the Management Loan Note Holders, (5) the Company and (6) the Target;

Management Loan Note Creditors means the Agent, the Security Trustee and the Management Loan Note Holders;

Management Loan Note Documents means the Management Loan Note Instrument, the Management Loan Notes, this Deed, the Agency and Security Trust Deed and any other document designated as such by agreement between the Agent and the Company from time to time;

Management Loan Note Holders means the holders of the Management Loan Notes from time to time;

Management Loan Note Instrument means the instrument executed by the Company on or about the date of this Deed constituting the Management Loan Notes;

Management Loan Notes means the £489,818 8% fixed rate secured loan notes 2021 of the Company constituted by the Management Loan Note Instrument;

MSA means the master services agreement dated on or about the date hereof between Kier MG Limited and the Target;

Obligors means the Company, each Chargor and any other member of the Group which incurs any obligation to a Management Loan Note Creditor under the Management Loan Note Documents;

Parent means Alpha Topco 1 Limited, a company incorporated under the laws of England and Wales with registered number 09608634;

Permitted Security means (1) this Deed, (2) the debenture and guarantee dated on or around the date of this Deed between the Parent, the Company, the Target and Endless LLP as security trustee for and on behalf of the Senior Creditors (as such term is defined in the Junior Intercreditor Deed), (3) the debenture and guarantee dated on or around the date of this Deed between the Parent, the Company, the Target and Endless LLP as security trustee for and on behalf of the Investor Loan Note Holders (as such term is defined in the Junior Intercreditor Deed), (4) the assignment and charge dated 10 September 2001 between the Target and Barclays Mercantile Business Finance Limited, (5) the equipment mortgages dated 01 April 2010, 10 July 2007 and 8 April 2014 between the Target and Lombard North Central plc and (6) the deed of assignment dated 5 July 2012 between the Target and HSBC Asset Finance (UK) Limited;

Receiver means any person appointed or to be appointed by the Security Trustee as receiver or receiver and manager or (where applicable) an Administrative Receiver pursuant to this Debenture;

Related Rights means, in relation to any asset (including the Shares, the Derivative Assets and the Investments):

- (a) the proceeds of sale of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset;

Rights means all a Chargor's rights, title and interest from time to time in any lease, licence or occupational right (or an agreement for any of them) together with all that Chargor's rights, title and interest from time to time in any renewal of, replacement of or variation to any lease, licence or occupational right (or an agreement for any of them);

Scheduled Property means the property details of which are set out at Schedule 3;

Secured Liabilities means in respect of a Chargor, all monies, debts and liabilities from time to time due, owing or incurred by that Chargor to the Management Loan Note Creditors (other than in their capacity as shareholders of a Chargor or any holding company of the Chargor) of any kind and in any currency (whether incurred alone or jointly with another, whether actual or contingent, and whether as principal or surety), including any monies, debts and liabilities of that Chargor to a third party which have been assigned or novated to or otherwise vested in a Management Loan Note Creditor and the charges, commission, Costs and Interest of the Management Loan Note Creditors;

Security means a mortgage, charge, pledge, lien, hypothecation, assignment or deposit 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 Documents means any document entered into by any person from time to time creating any Security Interest, directly or indirectly, for the Secured Liabilities including this Debenture;

Security Interest means any mortgage, charge, assignment, pledge, lien, right of set off, hypothecation, encumbrance, priority or other security interest (whether fixed or floating) including any 'hold-back' or 'flawed asset' arrangement together with any preferential right, retention of title, deferred purchase, leasing, sale or purchase, sale and leaseback, arrangement, trust, agreement, declaration of trust, trust arising by operation of law, any option or agreement for any of the same or any arrangement which has substantially the same commercial or substantive effect as the creation of security;

Service Agreements has the meaning given to such term in the Investment Agreement;

Shares means all of the shares in the capital of any other limited liability company incorporated in England and Wales, in each case held by, to the order or on behalf of any Chargor from time to time;

Specific Contracts means the Acquisition Agreement, the Investment Agreement, the Service Agreements, the TPA, the TSA and any MSA and any other document designated by the Security Trustee and the Company as a Specific Contract from time to time;

Subsidiary shall have the meaning given in section 1159 of the Companies Act 2006.

Target means Essential Fleet Services Limited (formerly Kier FPS Limited), a limited liability company incorporated under the laws of England and Wales with registered number 03337954;

Target Shares means all of the shares in Target;

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

TPA means the trading and partnering agreement dated on or around the date hereof between Kier MG Limited and the Target;

TSA means the transitional services agreement dated on or around the date hereof between the Target and Kier Services Limited;

Vendor means Senturion (Bidco) Limited, a company incorporated under the laws of England and Wales with registered number 06270621.

1.2 In this Debenture:

- 1.2.1 clause and schedule headings are included for ease of reference only;
 - 1.2.2 words denoting the singular include the plural and vice versa;
 - 1.2.3 words denoting one gender include each gender and all genders;
 - 1.2.4 the word **including** shall be construed to mean **including without limitation**;
 - 1.2.5 each of the provisions is distinct and severable from the others and if at any time one or more of such provisions is or becomes illegal, invalid or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 1.3 In this Debenture, unless the context otherwise requires, references to:
- 1.3.1 persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations and trusts (in each case whether or not having a separate legal personality) and shall include each of their respective successors, transferees and assigns;
 - 1.3.2 documents, instruments and agreements (including this Debenture and any document referred to in this Debenture) are references to such documents, instruments and agreements as modified, amended, varied, supplemented or novated from time to time;
 - 1.3.3 receivers are references to receivers of whatsoever nature including receivers and managers and administrative receivers;
 - 1.3.4 the terms **the Security Trustee, the Administrator and the Receiver** include, where the context so permits, references to any delegate of any such person;
 - 1.3.5 **clauses** are references to clauses in this Debenture;
 - 1.3.6 if only one Chargor is listed in Schedule 1, more than one **Chargor** shall be construed as references to that one Chargor, *mutatis mutandis*;

1.3.7 statutory provisions (where the context so admits and unless otherwise expressly provided) are construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time, and to any orders, regulations, instruments or other subordinate legislation made under the relevant statute; and

1.3.8 a time of day is a reference to London time.

2 COVENANT TO PAY, GUARANTEE AND INDEMNITY

2.1 Each Chargor hereby covenants with the Security Trustee that it will on demand in writing made to it by the Security Trustee for itself and/or on behalf of each Management Loan Note Creditor (provided such sums, obligations or liabilities are due and payable) pay the Secured Liabilities PROVIDED ALWAYS that payment of the Secured Liabilities direct to the relevant Management Loan Note Creditor in accordance with the provisions applicable to the relevant indebtedness will (subject to the provisions of clauses 20, 21, 24 and 24 below) be a good discharge of this covenant to the extent of such payment.

2.2 Each Chargor irrevocably and unconditionally jointly and severally:

2.2.1 guarantees to the Management Loan Note Creditors punctual performance by each other Obligor of all that Obligor's obligations under the Management Loan Note Documents;

2.2.2 undertakes with each Management Loan Note Creditor that whenever any other Obligor does not pay any amount when due under or in connection with any Finance Document, that Chargor shall immediately on demand pay that amount as if it was the principal obligor; and

2.2.3 indemnifies each Management Loan Note Creditor immediately on demand against any cost, loss or liability suffered by that Management Loan Note Creditor if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which the relevant Management Loan Note Creditor would otherwise have been entitled to recover.

2.3 This guarantee is given subject to, and with the benefit of, the provisions set out in Schedule 2.

3 CHARGE

Each Chargor covenants to discharge on demand when due the Secured Liabilities and as a continuing security for such discharge and with full title guarantee charges to the Security Trustee the property set out below in the manner set out below:

- 3.1 by way of fixed charge by way of legal mortgage, the Scheduled Property and all Rights relating to the Scheduled Property;
- 3.2 by way of fixed charge, all the freehold and leasehold property now vested in or charged to that Chargor (not otherwise effectively mortgaged in the Security Trustee's favour by clauses 3.1) and all Rights relating to it;
- 3.3 by way of fixed charge all estates or interests in any freehold or leasehold property in the future vested in or charged to that Chargor (not otherwise effectively mortgaged in the Security Trustee's favour by clauses 3.1 and 3.2) and all Rights relating to it;
- 3.4 by way of fixed charge, the Book Debts;
- 3.5 by way of fixed charge, all subsisting patents and subsisting rights of a similar nature of that Chargor present and future held in any part of the world, applications for patents and such rights, divisions and continuations of such applications for patents and the right to apply for any applications in any part of the world (in each case for their full period and all extensions and renewals of them);
- 3.6 by way of fixed charge, all domain name registrations of that Chargor present and future and all applications for them and the right to apply for any of them in any part of the world;
- 3.7 by way of fixed charge, all registered trademarks of that Chargor present and future and all applications for them and the right to apply for any of them in any part of the world and all unregistered trademarks of that Chargor present and future;
- 3.8 by way of fixed charge, all service marks of that Chargor present and future;

- 3.9 by way of fixed charge all registered designs of that Chargor present and future and all applications for them and the right to apply for any of them in any part of the world;
- 3.10 by way of fixed charge, all inventions, utility models, confidential information, business names, trade names, brand names, copyright and rights in the nature of copyright, design rights and get-up and any similar rights existing in any country (including rights in computer software) of that Chargor present and future;
- 3.11 by way of fixed charge all the body of knowledge, technical experience, expertise and skills, technical processes, secret processes, formulae and technical information held by that Chargor from time to time and relating to its business, which is not in the public domain;
- 3.12 by way of fixed charge, the benefit (subject to the burden) of any and all present and future agreements, arrangement and licences in connection with the Intellectual Property;
- 3.13 by way of fixed charge, all the plant and machinery, equipment, fittings, installations and apparatus, furniture, furnishings, tools, motor vehicles and all other chattels and moveable assets (other than fixtures) of that Chargor present and future and not regularly disposed of in the ordinary course of business and all associated warranties and maintenance contracts;
- 3.14 by way of fixed charge, all the goodwill and uncalled capital for the time being of that Chargor;
- 3.15 by way of fixed charge, all stocks, shares and other securities held by that Chargor from time to time in any Subsidiary and all income and rights derived from or attaching to them;
- 3.16 by way of fixed charge, the Investments and all Related Rights;
- 3.17 by way of fixed charge, the Shares, all dividends, interest and other monies payable in respect of the Shares, all interests in limited liability partnerships and all other Related Rights (whether derived by way of redemption, bonus, preference, option, substitution, conversion or otherwise); and
- 3.18 by way of fixed charge, the Accounts;

- 3.19 by way of fixed charge the benefit of any currency or interest rate swap cap or collar or other hedging agreement or any futures transaction or treasury instrument made with the Chargors or any third party from time to time.
- 3.20 by way of floating charge all the undertaking and all property assets and rights of the Chargor present and future not subject to a fixed charge under this Debenture. The floating charge created by this Clause 3.21 shall be deferred in point of priority to all fixed security validly and effectively created by a Chargor under the Management Loan Note Documents in favour of the Security Trustee as security for the Secured Liabilities. Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to this Clause 3.21.

4 ASSIGNMENTS

- 4.1 Each Chargor hereby assigns with full title guarantee to the Security Trustee as security for the payment and discharge of the Secured Liabilities, subject to a proviso for re-assignment on redemption, all such Chargor's right, title and interest from time to time in and to each of the following assets:
- 4.1.1 the proceeds of any Insurance Policy;
 - 4.1.2 all Intellectual Property;
 - 4.1.3 all rights and claims in relation to any Account; and
 - 4.1.4 each of the Specific Contracts,
- and, in each case, all Related Rights.
- 4.2 Each Chargor shall, promptly upon receiving a request to that effect from the Security Trustee, give notice of each assignment of all (if any) its right, title and interest in and to the assets which are purported to be assigned pursuant to Clause 4.1 (*Assignments*) by sending a notice in the form reasonably required by the Security Trustee.
- 4.3 The Chargor shall use its reasonable endeavours to procure that, within 14 days of the date of receiving a request under Clause 4.2 to give notice to the relevant other party, each such other party delivers an acknowledgement to the Security Trustee in the form reasonably required by the Security Trustee.

5 EXERCISE OF RIGHTS UNDER CONTRACTS

- 5.1 Whilst no Event of Default exists and is continuing, the Security Trustee shall permit each Chargor to exercise its rights under all of the contracts which are purported to be assigned pursuant to Clause 4.1. (*Assignments*), provided that the exercise of those rights in the manner proposed would not result in an Event of Default.
- 5.2 Where an Event of Default exists and is continuing, each Chargor shall, if requested by the Security Trustee, exercise its rights under the Specific Contracts only in accordance with the instructions of the Security Trustee

6 NEGATIVE PLEDGE

No Chargor shall:

- 6.1 create, purport to create or allow to subsist, any Security Interest over the whole or any part of the Charged Property other than Permitted Security and Security in favour of the Security Trustee or with the prior written consent of the Security Trustee (which it may exercise in its sole discretion); or
- 6.2 without prejudice to clauses 6.3 and 6.4 below, sell, lease or otherwise dispose of the whole or any part of the Charged Property except in the ordinary course of its trade in respect of that part of the Charged Property which is subject only to an uncrystallised floating charge in favour of the Security Trustee; or
- 6.3 sell, assign, factor or discount any of its book debts (including the Book Debts) or any future revenues or income; or
- 6.4 sell, lease or otherwise dispose of any interest in freehold or leasehold property without the prior written consent of the Security Trustee (which it may exercise at its sole discretion).

7 CONVERSION OF FLOATING CHARGE

- 7.1 The Security Trustee may by written notice to the relevant Chargor convert the floating charge into a fixed charge as regards such Charged Property as the Security Trustee may specify (whether generally or specifically) in that notice.

7.2 If, without the prior written consent of the Security Trustee, any Chargor breaches or takes any step with a view to breaching any provision of clause 4 (Negative Pledge) in respect of any of the Charged Property which is subject to an uncrystallised floating charge under this Debenture, or if any person levies or attempts to levy any distress, attachment, execution or other legal process against any of that Charged Property to which the breach or step relates, such floating charge will automatically, without notice, be converted into a fixed charge as soon as that breach occurs or that step is taken.

8 FURTHER ASSURANCE

Each Chargor shall:

- 8.1 promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require) in favour of the Security Trustee or its nominee(s) (a) to perfect the Security created or intended to be created or evidenced by this Debenture or for the exercise of any rights, powers and remedies of the Security Trustee provided by or pursuant to this Debenture; (b) to confer on the Security Trustee Security over any property or assets of any Chargor located in England and Wales or any other jurisdiction equivalent or similar to the Security intended to be created, or expressed to be created, by this Debenture; and/or (c) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Debenture;
- 8.2 take all such action as is available to it (including making all filings and registrations and the payment of all fees and Taxes) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee by or pursuant to this Debenture;

9 DEPOSIT OF DOCUMENTS AND TITLE DEEDS

(Subject to the rights of any prior chargee) each Chargor shall deposit with the Security Trustee (and the Security Trustee during the continuance of this Debenture may hold and retain):

- 9.1 all deeds and documents of title relating to the Charged Property and all insurance policies (or where the Security Trustee agrees in writing, copies of them);
- 9.2 all stock or share certificates or other documents of title to or representing the stocks, shares and securities charged by this Debenture together with duly executed transfers or assignments with the name of the transferees, date and consideration left blank (as the Security Trustee requires from time to time).

10 THE BOOK DEBTS

- 10.1 The relevant Chargor shall on request from the Security Trustee pay the proceeds of the collection and realisation of its Book Debts into the Book Debts Account. It shall not except with the prior written consent of the Security Trustee withdraw from the Book Debts Account all or any monies standing to the credit of the Book Debts Account.
- 10.2 If called upon to do so by the Security Trustee the relevant Chargor shall execute a legal assignment of the Book Debts to the Security Trustee in such terms as the Security Trustee may require and give notice of the legal assignment to the debtors from whom such debts are owing or incurred and take such other steps as the Security Trustee may require to perfect such legal assignment.

11 INSURANCE

Each Chargor shall apply all monies received by virtue of any insurance of the whole or any part of the Charged Property in making good, or in recouping expenditure incurred in making good, any loss or damage or, if the Security Trustee so requires in its sole discretion, towards discharge of the Secured Liabilities. The relevant Chargor shall ensure that all such monies which are not paid directly by the insurers to the Security Trustee shall be held by the recipient upon trust for the Security Trustee and be applied by the relevant Chargor in accordance with this clause.

12 REPAIR AND IDENTIFICATION

Each Chargor shall:

- 12.1 at all times keep in as good and substantial a state of repair and condition as at the date hereof all the Charged Property including all buildings, erections and structures on and in the Property;
- 12.2 keep all plant and machinery in as good a state of repair, working order and condition as at the date hereof and fit for its purpose;
- 12.3 where it is uneconomic to repair any material part of the Charged Property, replace such part by another similar asset of equal or greater quality and value; and
- 12.4 if so required by the Security Trustee affix to such of the Charged Property as the Security Trustee shall specify such plaques, name plates, notices, boiler plates, notices or other forms of wording of reasonable size and type in a readily visible position as the Security Trustee may require to the effect that the Security Trustee has an interest in the same as mortgagee.

13 ENFORCEMENT

This Debenture will become enforceable:

- 13.1 upon the occurrence of an Event of Default;
- 13.2 if any of the Secured Liabilities is not paid and/or discharged in accordance with the terms of this Debenture; or
- 13.3 if the floating charge has crystallised pursuant to the provisions of this Debenture or otherwise; or
- 13.4 a Chargor so requests the Security Trustee in writing (whether or not the Security Trustee has entered into or taken possession of the Charged Property) to appoint any person or persons (including a manager or official of the Security Trustee) to be an Administrator and/or a Receiver over the whole or any part of its assets.

14 STATUTORY POWER OF SALE

- 14.1 For the purposes of all powers implied by statute, and in particular the power of sale under section 101 of the Law of Property Act 1925 (Powers incident to estate or interest of mortgagee), the Secured Liabilities will be deemed to have become due when the security created by this Debenture becomes enforceable and section 103 of the Law of Property Act 1925 (Regulation of exercise of power of sale) and section 93 of the Law of Property Act 1925 (Restriction on consolidation of mortgages) will not apply.
- 14.2 The statutory powers of leasing conferred on the Security Trustee are extended so as to authorise the Security Trustee to lease, make arrangements for leases, accept surrender of leases and grant options on such terms and conditions as the Security Trustee may in its absolute discretion think fit. The Security Trustee 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 Law of Property Act 1925.
- 14.3 Each of the Security Trustee, the Administrators and the Receiver, as the case may be, may exercise their respective statutory powers of sale in respect of the whole or any part of the property described in clauses 3.1 to 3.2 (inclusive).
- 14.4 Section 109 of the Law of Property Act 1925 (Appointment, powers, remuneration and duties of receiver) shall not apply to this Debenture.

15 ADMINISTRATORS AND RECEIVERS

- 15.1 The Security Trustee may at any time after the security created by this Debenture becomes enforceable (whether or not the Security Trustee has entered into or taken possession of the Charged Property) by writing appoint any person or persons (including a manager or official of the Security Trustee) to be:

15.1.1 an Administrator; and/or

15.1.2 a Receiver,

all upon such terms as to remuneration and otherwise as the Security Trustee may from time to time think fit and may similarly remove any of the above office

holders and appoint another office holder in his stead and any Administrator or Receiver so appointed shall be the agent of the relevant Chargor for all purposes.

- 15.2 A Receiver has all the powers to do or abstain from doing anything which a Chargor could do or abstain from doing in relation to the Charged Property and shall have all the powers set out in Schedule 1 to the Insolvency Act 1986 as if he was an Administrative Receiver and all other powers from time to time conferred on Receivers by statute and shall be able to do all such other acts and things as the Receiver may in his discretion 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.
- 15.3 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to this Debenture and to the floating charges contained within it.
- 15.4 An Administrator has all the powers to do or abstain from doing anything which the relevant Chargor could do or abstain from doing in relation to the Charged Property and shall have all the powers of a Receiver and shall have all the powers conferred by paragraph 59 of Schedule B1 and Schedule 1 to the Insolvency Act 1986 and shall be able to do all such other acts and things as the Administrator may in his discretion consider to be incidental or conducive to:
- 15.4.1 any of the matters or powers set out in this Debenture; and/ or
 - 15.4.2 the preservation, improvement or realisation of the Charged Property; and/or
 - 15.4.3 furthering the objectives described in paragraph 3 of Schedule B1 to the Insolvency Act 1986.
- 15.5 Where more than one Administrator or Receiver, as the case may be, is appointed, each Administrator or Receiver, as the case may be, has the power to act jointly and severally unless the Security Trustee specifies otherwise in the appointment of such Administrator or Receiver.
- 15.6 The Security Trustee may exercise all powers granted to Administrators and Receivers by this Debenture, whether as attorney for the relevant Chargor or otherwise.

15.7 The powers of the Administrator and Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Security Trustee as provided in clause 14 (Statutory power of sale) or otherwise and so that, inter alia, such powers are and remain exercisable by the Security Trustee in respect of that part of the Charged Property in respect of which no appointment is made of an Administrator or Receiver.

15.8 The Administrator or Receiver, as the case may be, shall apply all money he receives first in repayment of all money borrowed by him and his expenses and liabilities and in payment of his fees and secondly towards the remaining matters specified in section 109(8) of the Law of Property Act 1925 (Appointment, powers, remuneration and duties of receiver).

16 PROTECTION OF THIRD PARTIES

16.1 No person (including any purchaser, mortgagor or mortgagee) dealing with the Security Trustee shall be concerned to enquire:

16.1.1 whether all or some part of the Secured Liabilities has become due; or

16.1.2 whether a demand for such Secured Liabilities has been duly made; or

16.1.3 whether any power which the Security Trustee, Administrator or Receiver is purporting to exercise has become exercisable; or

16.1.4 whether any money remains due to the Management Loan Note Creditors; or

16.1.5 how any money paid to the Management Loan Note Creditors, Administrator or Receiver is to be applied.

17 NO LIABILITY AS MORTGAGEE IN POSSESSION

The Security Trustee, the Administrator or Receiver will not by virtue of entering into possession of any of the Charged Property be liable to account as mortgagee in possession in respect of the Charged Property or for any loss upon realisation or exercise of any power, authority or right of the Security Trustee, Administrator or Receiver arising under this Debenture, nor for any act, default, neglect, or misconduct of any nature whatsoever.

18 POWER OF ATTORNEY

Each Chargor irrevocably appoints, by way of security the Security Trustee, each person deriving title from the Security Trustee, Administrator or Receiver, as the case may be, jointly and severally to be its attorney (with full power to appoint substitutes and to sub-delegate) to do any act or thing which that Chargor is, or may become, obliged to do pursuant to this Debenture. Each Chargor ratifies and confirm anything done or purported to be done by any attorney appointed pursuant to this clause.

19 APPLICATION AND PROCEEDS

All monies received by the Security Trustee, a Management Loan Note Creditor, or any Receiver or Administrator appointed pursuant to this Debenture shall be applied in accordance with the terms of the Agency and Security Trust Deed (subject to clause 9 hereof) and the terms of the Intercreditor Deeds.

20 CUMULATIVE AND CONTINUING SECURITY

- 20.1 This Debenture is a continuing security to the Security Trustee regardless of any 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 circumstances which, but for this clause, might affect or diminish its effectiveness.
- 20.2 The security constituted by this Debenture is in addition to and is not in any way prejudiced by any rights whatsoever which any Management Loan Note Creditor may have in respect of the Secured Liabilities or any other obligations whatsoever including any rights arising under any other Security Interest and shall not be affected by any release, reassignment or discharge of such other security.
- 20.3 Any release or discharge of the security created by or pursuant to this Debenture or any of the Secured Liabilities shall not release or discharge any Chargor from any liability to the Security Trustee or any of the beneficiaries for the same or any other moneys which may exist independently of this Debenture.

21 AVOIDANCE OF PAYMENTS

21.1 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 the Insolvency Act 1986, and no release, settlement or discharge given or made by a Management Loan Note Creditor on the faith of any such assurance, security or payment, prejudices or affected the rights of any Management Loan Note Creditor:

21.1.1 to recover any monies from the Chargors (including any monies which it is compelled to refund under Chapter X (Malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions) of the Insolvency Act 1986 and any Costs payable by it incurred in connection with such process); or

21.1.2 to enforce the security constituted by this Debenture to the full extent of the Secured Liabilities;

21.2 The Security Trustee may at its discretion retain the security so created 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 any Management Loan Note Creditor.

21.3 If at any time within the period referred to in clause 21.2 any person takes any step whatsoever relating to (i) the winding-up or administration of a Chargor; or (ii) any arrangement with the creditors of a Chargor, the Security Trustee may retain the whole or any part of the security constituted by this Debenture for such further period as the Security Trustee may in its discretion think fit. Such security will be deemed to have been held and remained held by the Security Trustee as security for the payment to the Management Loan Note Creditors of the Secured Liabilities.

22 PRIOR CHARGES

At any time after this Debenture has become enforceable the Security Trustee may redeem any prior Security Interest or procure the transfer of that Security Interest to itself and may settle and pass the accounts of the person entitled to that Security Interest. Any accounts which are settled and passed by the Security Trustee are

conclusive and binding on the Chargors. Each Chargor shall reimburse the Security Trustee for any monies paid out and Costs incurred by the Security Trustee in exercise of its rights under this clause.

23 OPENING A NEW ACCOUNT

If the Security Trustee receives notice of any subsequent Security Interest affecting the Charged Property the Security Trustee may open a new account for the relevant Chargor in its books. If the Security Trustee does not open a new account, then unless the Security Trustee gives express written notice to the contrary to the relevant Chargor, all payments by or on behalf of the relevant Chargor to the Security Trustee will be treated from time of receipt of notice of the subsequent Security Interest by the Security Trustee as having been credited to a new account of the relevant 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.

24 SUSPENSE ACCOUNT

The Security Trustee may hold in a suspense or impersonal account on whatever terms the Security Trustee may think fit all monies received, recovered or realised by the Security Trustee pursuant to this Debenture until the Secured Liabilities have been irrevocably paid in full.

25 PAYMENTS AND WITHHOLDING TAXES

Each Chargor shall pay and discharge the Secured Liabilities without any deduction, withholding, set-off, counterclaim, restriction or condition and without regard to any equities between the Chargors and the Management Loan Note Creditors, except to the extent that the relevant Chargor is required by law to deduct or withhold any amounts payable under this Debenture, in which case it shall pay to the relevant Management Loan Note Creditor an additional amount sufficient to ensure that the net amount received by the relevant Management Loan Note Creditor after the required deduction or withholding (including any required deduction or withholding on the additional amount) be equal to the amount that the relevant Management Loan Note Creditor would have received had no deduction or withholding being made. Any additional amount paid under this clause shall be treated as agreed compensation and not as interest.

26 SET-OFF

Each Chargor agrees that any Management Loan Note Creditor may at any time after this Debenture has become enforceable without notice or further demand combine or consolidate all or any of its then existing accounts including any accounts in the name of the relevant Management Loan Note Creditor or of that Chargor (whether current, deposit, loan or any other nature whatsoever whether subject to notice or not and whether in sterling or in any other currency) and set-off or transfer any sum standing to the credit of any one or more of those accounts in or towards satisfaction of the Secured Liabilities.

27 ASSIGNMENT

The Chargors may not assign, transfer, novate or dispose of any of their rights and obligations under this Debenture.

28 WAIVERS

No failure or delay or other relaxation or indulgence on the part of a Management Loan Note Creditor to exercise any power, right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

29 HM LAND REGISTRY

29.1 The relevant Chargors hereby apply to the Chief Land Registrar to enter a restriction in the Proprietorship Registers of the registered titles (if any) of the Scheduled Property or, in the case of the first registration of the whole or any part of the Scheduled Property, against the Scheduled Property, or both, of a restriction in the following form:

"No disposition or dealing of the registered estate by the proprietor of the registered estate is to be registered without a written consent by the proprietor for the time being of the charge dated [*date*] in favour of [*chargee*] referred to in the charges register."

29.2 Each Chargor will on request by the Security Trustee apply to the Chief Land Registrar to enter a restriction in the Proprietorship Registers of the registered titles of any real property which it owns in the following form:

"No disposition or dealing of the registered estate by the proprietor of the registered estate is to be registered without a written consent by the proprietor for the time being of the charge dated [date] in favour of [chargee] referred to in the charges register."

30 CONFLICT WITH INTERCREDITOR DEEDS

If there is any conflict between the provisions of this Debenture and the Intercreditor Deeds, the terms of the Intercreditor Deeds will prevail.

31 NOTICES

31.1 Each party may give any notice, demand or other communication under or in connection with this Debenture by letter, facsimile or comparable means of communication addressed to the other party at the address identified with its name below. Any such communication will be deemed to be given as follows:

31.1.1 if personally delivered, at the time of delivery;

31.1.2 if by letter, two clear business days following the day of posting (or in the case of airmail, seven clear days after the day of posting); and

31.1.3 if by email, facsimile transmission or comparable means of communication during the business hours of the Security Trustee then on the day of transmission, otherwise on the next following Business Day.

31.2 In providing such service it shall be sufficient to prove that personal delivery was made or that such letter was properly stamped first class, addressed and delivered to the postal authorities or in the case of facsimile transmission or other comparable means of communication, that a confirming hard copy was provided promptly after transmission.

32 WAIVER OF CONFIDENTIALITY

Each Chargor hereby agrees that the Security Trustee may disclose to each party to the Agency and Security Trust Deed , and each party to the Agency and Security Trust Deed may disclose to each other party to the Agency and Security Trust Deed and/or Security Trustee and/or to their respective professional advisers any information which any of them may have in connection with the affairs of each Chargor and/or the assets, liabilities, projections, forecasts and prospects of each Chargor and/or the state of each Chargor's accounts with each party to the Agency and Security Trust Deed and/or the Security Trustee.

33 COUNTERPARTS

This Debenture may be executed in any number of counterparts and by the separate parties hereto in separate counterparts so that when executed and delivered all the counterparts shall together constitute one and the same document.

34 GOVERNING LAW

This Debenture shall be governed by and construed in accordance with English law.

35 THIRD PARTY RIGHTS

A person who is not a party to this Debenture (other than an Enforcement Party) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Debenture but this does not affect any right or remedy of a third party which exists or is available apart from that Act (including any right or remedy arising by virtue of an assignment of the benefit of this Debenture or any part of this Debenture which is permitted in accordance with its terms).

IN WITNESS WHEREOF this Debenture has been executed and delivered as a deed on the date written at the beginning of this Debenture and the parties to this Debenture intend that it takes effect as a deed notwithstanding the fact that the Security Trustee may only execute to this Debenture under hand, or not at all.

SCHEDULE 1 – THE CHARGORS

Name	Registered Number	Registered Office
The Company	09496091	3 Whitehall Quay, Leeds, LS1 4BF
Essential Fleet Services Limited (formerly Kier FPS Limited)	03337954	Tempsford Hall, Sandy, Bedfordshire, SG19 2BD
Alpha Topco 1 Limited	09608634	3 Whitehall Quay, Leeds, LS1 4BF

SCHEDULE 2 – GUARANTEE PROVISIONS

- 1 The guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Management Loan Note Documents, regardless of any intermediate payment or discharge in whole or in part.
- 2 If any payment by an Obligor or any discharge given by a Management Loan Note Creditor (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
 - 2.1 the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
 - 2.2 that Management Loan Note Creditor (or the Security Trustee on its behalf) shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.
- 3 The obligations of each Guarantor under clause 2 will not be affected by an act, omission, matter or thing which, but for clause 2, would reduce, release or prejudice any of its obligations under clause 2 (without limitation and whether or not known to it or a Management Loan Note Creditor) including:
 - 3.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;
 - 3.2 the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
 - 3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - 3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

- 3.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
 - 3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
 - 3.7 any insolvency or similar proceedings.
- 4 Each Guarantor waives any right it may have of first requiring the Management Loan Note Creditor (or any trustee or agent on their behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under clause 2. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.
- 5 Until all amounts which may be or become payable by the Obligors under or in connection with the Management Loan Note Documents have been irrevocably paid in full, the Management Loan Note Creditors (or any trustee or agent on their behalf) may:
- 5.1 refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
 - 5.2 hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under clause 2.
- 6 Until all amounts which may be or become payable by the Obligors under or in connection with the Management Loan Note Documents have been irrevocably paid in full and unless the Security Trustee otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Management Loan Note Documents:
- 6.1 to be indemnified by an Obligor;

- 6.2 to claim any contribution from any other guarantor of any Obligor's obligations under the Management Loan Note Documents; or
 - 6.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Management Loan Note Creditors under the Management Loan Note Documents or of any other guarantee or security taken pursuant to, or in connection with, the Management Loan Note Documents by the Management Loan Note Creditors.
- 7 The guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any of the Management Loan Note Creditors.

SCHEDULE 3 – SCHEDULED PROPERTY

THIS SCHEDULE IS INTENTIONALLY LEFT BLANK

THE CHARGORS

EXECUTED and DELIVERED a deed by
ALPHA HOLDCO 1 LIMITED acting by a
director in the presence of:



Director

Witness

Signature :
Name :
Occupation :
Address :



Elizabeth Tindall
Eversheds LLP
Solicitor

Notice Details

Address: 3 Whitehall Quay, Leeds, LS1 4BF

Fax No: None

Attention: The Directors

EXECUTED and DELIVERED a deed by
ALPHA TOPCO 1 LIMITED acting by a
director in the presence of:



Director

Witness

Signature :
Name :
Occupation :
Address :



Elizabeth Tindall
Eversheds LLP
Solicitor

Notice Details

Address: 3 Whitehall Quay, Leeds, LS1 4BF

Fax No: None

Attention: The Directors

EXECUTED and DELIVERED a deed by
ESSENTIAL FLEET SERVICES LIMITED
(FORMERLY KIER FPS LIMITED) acting by a
director in the presence of:



Witness

Signature :
Name :
Occupation :
Address :



Elizabeth Tindall
Eversheds LLP
Solicitor

Notice Details

Address: 3 Whitehall Quay, Leeds, LS1 4BF
Fax No: None
Attention: The Directors

THE SECURITY TRUSTEE

SIGNED by RAYMOND O'TOOLE in
the presence of:

Witness

Signature :
Name :
Occupation :
Address :



Elizabeth Tindall
Eversheds LLP
Solicitor

Notice Details

Address: Treescape, Broomfield Avenue, Halifax, HX3 0JF
Fax No: None
Attention: Raymond O'Toole