



**Registration of a Charge**

Company name: **A & A RECRUITMENT LIMITED**

Company number: **04746838**

Received for Electronic Filing: **21/12/2018**



X7L9N2LD

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**Details of Charge**

Date of creation: **20/12/2018**

Charge code: **0474 6838 0003**

Persons entitled: **KEY CAPITAL PARTNERS (NOMINEES) LIMITED**

Brief description:

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **WARD HADAWAY**



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

Company number: 4746838

Charge code: 0474 6838 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th December 2018 and created by A & A RECRUITMENT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st December 2018 .

Given at Companies House, Cardiff on 27th December 2018

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 20 December 2018

**WHCO9 Limited**  
as Borrower

and

**The Companies Listed in Schedule 1**  
as the companies

and

**Key Capital Partners (Nominees) Limited**  
as Security Trustee

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**COMPOSITE GUARANTEE**

**AND DEBENTURE**

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**THIS COMPOSITE GUARANTEE AND DEBENTURE  
IS SUBJECT TO THE INTERCREDITOR DEED**

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## DATE OF COMPOSITE GUARANTEE AND DEBENTURE 20 December 2018

### PARTIES

- (1) **WHCO9 LIMITED** particulars of which are set out in Part 1 of Schedule 1 (the "**Borrower**");
- (2) **THE COMPANIES** particulars of which are set out in Part 2 of Schedule 1 (together the "**Companies**", and each a "**Company**"); and
- (3) **Key Capital Partners (Nominees) Limited** (Company Number 06357261) a private limited company incorporated in England & Wales whose registered office is at 13 Park Place, Leeds, England, LS1 2SJ as security trustee for the Beneficiaries (the "**Security Trustee**"), which expression includes, where the context admits, all persons for the time being the trustee or trustees under this Deed.

### INTRODUCTION

- A Pursuant to the Share Purchase Agreement, the Borrower has issued the Loan Notes to the Loan Note Holders on and subject to the terms of the Loan Note Documents.
- B The Security Trustee has been appointed by the Beneficiaries under, and has agreed to act in accordance with, the provisions of the Security Trust Deed in respect of the Security created by this Deed.
- C It is a condition of the Loan Note Documents that the Obligors enter into this Deed.

### THIS DEED WITNESSES THAT:

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. Definitions

In this Deed, unless the context otherwise requires:

<b>"Accounts"</b>	means each Collection Account, and each an "Account";
<b>"Account Bank"</b>	means a bank, financial institution or other person with which any Obligor maintains an Account or any other account;
<b>"Administrator"</b>	means any person appointed as an administrator under Schedule B1 to the Insolvency Act 1986;
<b>"Alternative Remedy"</b>	means any contractual right or remedy, guarantee, indemnity, bill, note or any Security now or at any time held by the Security Trustee or any Beneficiary in respect of the Secured Obligations or any of them (other than any contained in this Deed);

<b>"Assigned Assets"</b>	means the Secured Assets assigned pursuant to Clause 3.4.
<b>"Bank"</b>	means Clydesdale Bank plc (trading as both Clydesdale Bank and Yorkshire Bank);
<b>"Beneficiaries"</b>	means the Loan Note Holders, together with any other party who accedes to the Security Trust Deed as a Beneficiary (and each a <b>"Beneficiary"</b> );
<b>"Cash at Bank"</b>	means together: <ul style="list-style-type: none"> <li>(a) all monies (including interest) standing to the credit of any Obligor's accounts (including the Accounts) with any Account Bank;</li> <li>(b) all deposits made by an Obligor with any Account Bank; and</li> <li>(c) all other sums held for an Obligor by any Account Bank,</li> </ul> and the debt represented by each of them;
<b>"Charged Property"</b>	means the Secured Assets charged under Clause 3.1.1;
<b>"Collection Account"</b>	means in relation to an Obligor its account with any other bank, financial institution or other person into which the proceeds of realisation of Debts are to be paid pursuant to Clause 11;
<b>"Collateral Instruments"</b>	means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any liabilities of any person and includes any document or instrument creating or evidencing Security;
<b>"Debts"</b>	means all book and other monetary debts, revenues and claims, now or at anytime in the future, due owing or incurred to an Obligor (but excluding Cash at Bank) the proceeds of those book and other monetary debts and claims and the benefit of all rights and remedies of any nature (including guarantees and security) relating to those

	book and other monetary debts and claims and all present and future things in action which give rise or may give rise to a debt or debts;
<b>"Declared Default"</b>	means the Security Trustee or any Loan Note Holder exercising any of its rights following an Event of Default;
<b>"Default Rate"</b>	means a rate of interest determined in accordance with Clause 4.5 of the Loan Note Instrument;
<b>"Disposal"</b>	includes any sale, lease, sub-lease, assignment or transfer, the grant of an option or similar right, the grant of any easement, right or privilege, the grant of a licence or permission to assign or sublet, the creation of a trust or other equitable interest or any other proprietary right in favour of a third party, a sharing or parting with possession or occupation whether by way of licence or otherwise and the granting of access to any other person over any Intellectual Property, and any agreement or attempt to do any of the foregoing (and <b>"dispose"</b> and <b>"disposition"</b> shall be construed accordingly);
<b>"Documents"</b>	means all documents and agreements listed or referred to in Schedule 7 (Documents);
<b>"Enforcement Date"</b>	means the date determined in accordance with Clause 17.1;
<b>"Environmental Claim"</b>	means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;
<b>"Environmental Law"</b>	means any applicable law or regulation which relates to: <ul style="list-style-type: none"> <li>(a) the pollution or protection of the environment;</li> <li>(b) harm to or the protection of human health;</li> <li>(c) the conditions of the workplace; or</li> <li>(d) any emission or substance capable of causing harm to any living organism or the environment;</li> </ul>



**"Equipment"**

means machinery, equipment, furniture, furnishings, fittings and fixtures and other tangible personal property (other than Inventory), including, without limitation, data processing hardware and software, motor vehicles, aircraft, dies, tools, jigs and office equipment, together with all present and future additions thereto, replacements or upgrades thereof, components and auxiliary parts and supplies used or to be used in connection therewith and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto wherever any of the foregoing is located and any other asset which would be treated as a fixed asset under the Accounting Principles;

**"Event of Default"**

means the occurrence of any of the events set out in clause 5 of the Loan Note Instruments;

**"Expenses"**

means all costs (including legal costs), charges and expenses, and any VAT on such costs, charges and expenses sustained or incurred from time to time by any Relevant Person in connection with:

- (a) the preparation, negotiation and execution of this Deed and any document referred to in this Deed and in the investigation of title to any assets intended to be secured pursuant to this Deed;
- (b) the perfection of this Security (including all fees payable in connection with the registration or filing of this Security at all appropriate registries);
- (c) the enforcement, defence or protection of this Security (including the costs of any investigation by any person for the purposes of determining whether any action is appropriate to enforce, defend or protect the Security);
- (d) the appointment of any Receiver, delegate or sub-delegate under this Deed; or
- (e) the pursuit of any rights contained in

this Deed or under any document referred to in this Deed or otherwise in connection with the Secured Assets;

**"Fixed Charge Assets"**

means the assets of an Obligor described in Clause 3.1;

**"Fixtures"**

means all fixtures and fittings (including trade fixtures and fittings), fixed plant and machinery;

**"Floating Charge"**

means any of the floating charges created by Clause 3.2;

**"Group"**

means the Borrower, the Companies and each of their respective Subsidiaries for the time being, and "member of the Group" shall be construed accordingly

**"Incapacity"**

means, in relation to a person, any action, legal proceedings or other procedure or step taken in relation to:

- (a) the suspension of payments, a moratorium of any Indebtedness, winding-up, dissolution, administration, amalgamation, reconstruction or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
- (b) a composition, compromise, assignment or arrangement with any creditor;
- (c) the appointment of a liquidator, Receiver, Administrator or other similar officer in respect of that person or any of its assets;
- (d) enforcement of any Security over any assets of that person; or
- (e) any analogous procedure or step in any jurisdiction;

**"Indebtedness"**

means any obligation for the payment or repayment of money, whether as principal or surety and whether present or future, actual or contingent;

**"Insurances"**

means all present and future contracts or policies of insurance (including life assurance policies) taken out by an Obligor or in which an Obligor from time to time has

	an interest;
<b>"Intellectual Property"</b>	<p>means, in relation to an Obligor:</p> <ul style="list-style-type: none"> <li>(a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered; and</li> <li>(b) the benefit of all applications and rights to use such assets of each member of the Group,</li> </ul> <p>including those listed in Schedule 6 (Intellectual Property);</p>
<b>"Intercreditor Deed"</b>	means the intercreditor deed dated on or around the date hereof between (inter alios) the Borrower, the Loan Note Holders and the Bank;
<b>"Inventory"</b>	means inventory, goods and merchandise, wherever located, raw materials, work-in-progress, finished goods, returned goods and materials and supplies of any kind, nature or description used in connection with an Obligor's business or used in connection with the manufacture, packing, shipping, advertising, selling or finishing of such goods, merchandise and such other specified property, and all documents of title or other documents representing them;
<b>"Loan Note Documents"</b>	means the Loan Notes, the Loan Note Instrument, this Deed, the Security Trust Deed and any other document designated as such by the Security Trustee and the Borrower;
<b>"Loan Notes"</b>	means the 4% secured loan notes of an aggregate principal amount of £1,500,000 constituted and issued in accordance with the Loan Note Instrument;
<b>"Loan Note Holders"</b>	means at the date of this Deed, the Security Trustee and after the date of this Deed, the holders of any Loan Notes from time to time;
<b>"Loan Note Instrument"</b>	means the loan note instrument, to be entered into on the date hereof by the Borrower, constituting the Loan Notes of

	the Borrower;
"LPA"	means the Law of Property Act 1925.
"Material Adverse Effect"	means a material adverse effect on: <ul style="list-style-type: none"> <li>(a) the business, operations, property or financial condition of the Group taken as a whole; or</li> <li>(b) the ability of an Obligor to perform its payment obligations under the Loan Note Documents; or</li> <li>(c) subject to the Legal Reservations, the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Loan Note Documents or the rights or remedies of any Beneficiary under any of the Loan Note Documents in each case in a manner and to an extent which is materially prejudicial to the interests of any Beneficiary;</li> </ul>
"Obligors"	means together the Borrower and each Company (and each an " <b>Obligor</b> ");
"Obligors' Agent"	means the Borrower, appointed to act on behalf of each Obligor in relation to this Deed pursuant to Clause 31;
"Party"	means a party to this Deed at any time (and together the " <b>Parties</b> ");
"Proceeds Account"	means any account of an Obligor maintained with an Account Bank for the purposes of Clause 20.4 (if any);
"Receiver"	means a receiver and/or manager, an administrative receiver (within the meaning of section 29(2) Insolvency Act 1986) appointed by the Security Trustee pursuant to Clause 20.1 (provided always that any reference to an administrative receiver is only applicable where there is no prohibition on appointing an administrative receiver by section 72A of the Insolvency Act 1986);
"Receivership Assets"	has the meaning given to it in Clause 19.1;
"Relevant Person"	means any of the Security Trustee, the Beneficiaries, an Administrator, any Receiver, any attorney, delegate or sub-

delegate of the Security Trustee, Administrator or any Receiver and any Stock Transferee;

**"Secured Assets"**

means all property, assets, undertakings, rights and benefits, mortgaged, charged or assigned to the Security Trustee under or pursuant to this Deed;

**"Secured Obligations"**

means all present and future obligations and liabilities of each Obligor to the Security Trustee, the Beneficiaries or any of them under or in connection with the Loan Note Documents (or any of them):

- (a) whether actual or contingent and whether incurred alone or jointly with any other person(s);
- (b) whether incurred as primary obligor, as surety or as guarantor;
- (c) whether incurred directly to the Security Trustee or any Beneficiary or whether the Security Trustee or any Beneficiary is entitled to claim the payment or discharge of any obligations or liabilities solely by reason of an assignment or transfer to it by the person originally entitled; and
- (d) in whatever currency those obligations and liabilities maybe denominated;

**"Security"**

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

**"Securities"**

means all the shares listed in Schedule 5 (Securities) and all other stocks, shares, bonds and securities of any kind whatsoever (including warrants and options to acquire or subscribe for any of the same) whether marketable or otherwise and all interests (including but not limited to loan capital) in any person, including all allotments, rights, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to the same and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest, or otherwise

in respect thereof;

**"Security Trust Deed"**

means the security trust deed dated on or around the date of this Deed and made between among others (1) the Borrower, (2) the Companies, (3) the Security Trustee, (4) the Beneficiaries (each term as defined therein) pursuant to which the Security Trustee has agreed to hold the benefit of the Security constituted by this Deed on trust for the Beneficiaries (each term as defined therein) from time to time;

**"Senior Expiry Date"**

has the meaning given to that term in the Intercreditor Deed;

**"Share Purchase Agreement"**

means the share purchase agreement entered into on the date hereof between the Sellers (as defined therein) and the Company;

**"Stock Transferee"**

means the Security Trustee or any other person to whom any of the Securities are transferred by or at the direction of the Security Trustee in accordance with the provision of this Deed;

**"Subsidiary"**

shall have the meaning given to it in Section 1159 of the Companies Act 2006;

**"Taxes"**

means all present or future income and other taxes, levies, imposts, deductions, charges, duties and withholdings in the nature or on account of tax together with interest on any of them and penalties and fines with respect to any of them, if any, and any payments made on or in respect of any of them and "Tax" and "Taxation" shall be construed accordingly;

**"Tax Deduction"**

means any withholding or deduction for and on account of any Taxes from any payment or receipt under this Deed;

**"Tax Payment"**

means any payment made by the Security Trustee or any Beneficiary on account of Taxes in respect of any payment or receipt under this Deed;

**"VAT"**

means value added tax or any similar tax.

1.2. Clause headings and the contents page are inserted for convenience of reference only and shall be ignored in the interpretation of this Deed.

1.3. The schedules are part of this Deed and shall have effect accordingly.

- 1.4. Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or enjoy the benefit of any term of this Agreement.
- 1.5. Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- 1.6. If the Security Trustee (acting reasonably) considers an amount paid by any Obligor or other person in respect of the Secured Obligations is capable of being avoided, set aside or otherwise affected on the liquidation or administration of that Obligor or person, then that amount shall not be considered to have been irrevocably paid for the purpose of this Deed.
- 1.7. Unless a contrary indication appears a reference to the Security Trustee shall be construed as a reference to the Security Trustee as trustee for itself and each of the Beneficiaries.
- 1.8. Where any right, interest or title is granted or any covenant, undertaking, representation or warranty is given by an Obligor in favour of the Security Trustee it shall be taken as granted or given in favour of the Security Trustee as agent and trustee for itself and for the Beneficiaries and any losses suffered by the Security Trustee shall be interpreted as references to the losses of the Security Trustee and the Beneficiaries.
- 1.9. The terms of:
  - 1.9.1. the Loan Note Documents; and
  - 1.9.2. any side letters between the Obligors (or any of them) and the Security Trustee or the Beneficiaries (or any of them) relating to the Loan Note Documents,are incorporated into this Deed to the extent required for any purported disposition of the Secured Assets contained in this Deed to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 1.10. This Deed shall in relation to each Obligor be read and construed as if it were a separate deed relating to that Obligor to the intent that if any Security created by any other Obligor under this Deed is invalid or liable to be set aside for any reason, this shall not affect any Security created under this Deed by that Obligor.
- 1.11. Save as expressly defined in this Deed, words and phrases defined in the Loan Note Instrument shall have the same meaning when used in this Deed.
- 1.12. In interpreting this Deed, unless the context otherwise requires, a reference to:
  - 1.12.1. any "**Beneficiary**", any "**Company**", any "**Obligor**", the "**Security Trustee**", any "**Party**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees (whether immediate or derivative) and, in the case of the Security Trustee, any replacement security trustee or (trustees) appointed in accordance with the Security Trust Deed;

- 1.12.2. the liquidation, administration, insolvency, bankruptcy or other similar incapacity of any body corporate includes the equivalent proceeding or occurrence in any other relevant jurisdiction;
- 1.12.3. the "**Secured Assets**", "**Charged Property**" or "**Assigned Assets**" is to be construed as a reference to all or any part of the same;
- 1.12.4. "**assets**" includes present and future properties, revenues and rights of every description;
- 1.12.5. a "**Loan Note Document**" or any other agreement or instrument (including without limitation the Intercreditor Deed) is a reference to that Loan Note Document or other agreement or instrument as the same may have been, or may (from time to time) be, amended, restated, varied, supplemented, modified or extended;
- 1.12.6. items, events or words as a list of possibilities following the words "**include**", "**includes**" or "**including**" shall be construed as a non-exhaustive list and shall not limit the generality of the relevant provision of this Deed;
- 1.12.7. "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.12.8. general words introduced by the word "**other**" are not to be given a restrictive meaning because they are preceded by words indicating a particular class of acts, matters or things and general words are not to be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words;
- 1.12.9. a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality), joint venture or consortium;
- 1.12.10. a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.12.11. a statute or statutory provision is to be construed as a reference to that statute or statutory provision as the same may have been, or may, from time to time, be, amended, supplemented, consolidated, re-enacted or replaced and includes all instruments, orders and regulations made under that statute or statutory provision for the time being in force;
- 1.12.12. words (including defined words and phrases) denoting the singular shall include the plural and vice versa and words importing a gender include any other;
- 1.12.13. a time of day is a reference to London time;
- 1.12.14. "**£**" denotes the lawful currency of the United Kingdom for the time being; and



- 1.12.15. a provision of law is a reference to that provision as amended or re-enacted.
- 1.13. This Deed is intended to take effect as a deed notwithstanding that the Security Trustee may have executed it under hand only.

## **2. SECURED OBLIGATIONS**

- 2.1. Each Obligor irrevocably and unconditionally, jointly and severally:
- 2.1.1. hereby covenants with the Security Trustee that it will on demand pay and discharge in full the Secured Obligations due, owing or incurred by it on the due date for payment or discharge of such obligations and liabilities and otherwise in the manner provided in the Loan Note Documents; and
- 2.1.2. hereby:
- 2.1.2.1. guarantees to the Security Trustee punctual performance by each other Obligor of all that Obligor's obligations under or pursuant to the Loan Note Documents;
- 2.1.2.2. guarantees to the Security Trustee payment of all moneys now or hereafter due, owing or incurred to the Beneficiaries under or pursuant to the Loan Note Documents by each other Obligor; and
- 2.1.2.3. undertakes with the Security Trustee that, if for any reason any other Obligor fails to discharge any such obligation or to pay any such moneys when due (taking into account any relevant grace period), it shall immediately on demand by the Security Trustee discharge such obligation or, as the case may be, pay such moneys to the Beneficiaries; and
- 2.1.3. hereby indemnifies the Security Trustee immediately on demand against any cost, loss, or liability suffered by any Beneficiary if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal.
- 2.2. The guarantee and indemnity contained in Clause 2.1 above is given subject to and with the benefit of the provisions set out in Schedule 2 (Terms of Guarantee and Indemnity) by each Obligor jointly and severally with every other Obligor except for the Obligor guaranteed.
- 2.3. Each Obligor shall on demand pay and reimburse to the Relevant Person all Expenses incurred by that Relevant Person. All Expenses are to be charged and paid as between an Obligor and a Relevant Person on the basis of a full indemnity.
- 2.4. Any amount not paid when due under this Deed shall bear interest (both before and after judgement) at the Default Rate calculated day by day from the due date until the date such amount is unconditionally and irrevocably paid and discharged in full, save to the extent that interest at that rate on that amount for that period is

charged pursuant to the relevant Loan Note Document and itself constitutes a Secured Obligation. Each Obligor shall pay such interest on demand.

3. **SECURITY**

3.1. Each Obligor as beneficial owner and with full title guarantee, as a continuing security for the payment, discharge and performance of the Secured Obligations charges to the Security Trustee:

3.1.1. by way of first legal mortgage:

3.1.1.1. the properties (if any) specified in Schedule 3 (Properties); and

3.1.1.2. all the estate and interest of the Obligor in any freehold and leasehold property located in England and Wales now vested in the Obligor together with all buildings and Fixtures on and the proceeds of sale of all or any part of such property and the benefit of any covenants for title given or entered into by any predecessor in title and any monies paid or payable in respect of those covenants (other than any property specified in Schedule 3 (Properties));

3.1.2. by way of first fixed charge (to the extent not the subject of a legal mortgage by virtue of Clause 3.1(a) or assigned pursuant to Clause 3.3):

3.1.2.1. all the estate and interest of the Obligor in any freehold and leasehold property now or at any time in the future belonging to or charged to the Obligor together with all buildings and Fixtures on and the proceeds of sale of all or any part of such property and the benefit of any covenants for title given or entered into by any predecessor in title and any money that is paid or payable in respect of those covenants;

3.1.2.2. the benefit of all guarantees, collateral warranties, contracts, agreements, covenants given or made by any person in favour of the Obligor in connection with the use, occupation, construction, repair or maintenance of the Charged Property or of any building or Fixture on the Charged Property and the benefit of any guarantees, indemnities or similar instruments given or made in connection with the same;

3.1.2.3. all Equipment (if any) specified in Schedule 4 (Equipment) and the benefit of all contracts and warranties relating to the same;

3.1.2.4. all Equipment (other than any Equipment specified in Schedule 4 (Equipment)) now, or from time to time hereafter owned by the Obligor or in which the

Obligor has an interest and the benefit of all contracts and warranties relating to the same;

- 3.1.2.5. all of its Debts;
- 3.1.2.6. all of its Securities;
- 3.1.2.7. all of its present and future Intellectual Property;
- 3.1.2.8. all of its present and future uncalled capital and goodwill;
- 3.1.2.9. all of its present and future benefits and rights under or in respect of any present or future contracts and/or policies of Insurance and the proceeds of all claims under them (to the extent the same are not otherwise subject to an effective fixed charge pursuant to this Clause 3.1);
- 3.1.2.10. all of its Cash at Bank;
- 3.1.2.11. all of its present and future plant, machinery, equipment, vehicles, computers and other chattels and its interest in plant, machinery, equipment, vehicles, computers or other chattels in its possession (other than for the time being part of its stock in trade or work in progress); and
- 3.1.2.12. the benefit of all present and future licences, permissions, consents, authorisations, concessions and agreements held in connection with this business or the use of any of its assets and the right to recover and receive all compensation that may at any time become payable to it in respect of any of them.

- 3.2. Each Obligor as beneficial owner and with full title guarantee, as a continuing security for the payment, discharge and performance of the Secured Obligations charges to the Security Trustee all its undertaking (present and future, wherever situated), including, without limitation, its stock in trade or work in progress and the assets charged, mortgaged or assigned pursuant to this Deed if and in so far as any such mortgage, charge or assignment shall for any reason be ineffective.
- 3.3. The provisions of paragraph 14 of Schedule B1 Insolvency Act 1986 apply to the floating charges in Clause 3.2(a) which shall be qualifying floating charges and shall be enforceable at any time on or after the Enforcement Date.
- 3.4. Each Obligor as beneficial owner and with full title guarantee as a continuing security for the payment, discharge and performance of the Secured Obligations assigns and agrees to assign absolutely to the Security Trustee all its right, title, interest and benefit in, to arising under or resulting from the Documents including the rights to make demand for and receive payment, to take any action (including for specific performance) and to exercise any remedies available at law or equity to the Obligor.

- 3.5. Subject always to the provisions of Clause 15.7 upon the Secured Obligations being unconditionally and irrevocably paid or discharged in full, the Security Trustee shall, at the request and cost of any Obligor, release this Security and reassign the Assigned Assets to the relevant Obligor.
- 3.6. Where any third party's consent is required for the creation of any Security contemplated by this Deed and such consent has not been obtained at the time of execution of this Deed the relevant Obligor shall use all reasonable endeavours to obtain such consent as soon as reasonably possible and provide a copy of such consent to the Security Trustee and so that:
- 3.6.1. Until such time as the relevant third party's consent has been obtained, the charge or assignment of the asset to which it relates shall not take effect and shall be conditional upon obtaining that consent;
- 3.6.2. On the issue of the relevant third party's consent, the relevant assets shall stand charged or as the case may be assigned to the Security Trustee pursuant to this Deed; and
- 3.6.3. If the Security Trustee so requests following receipt of a third party's consent, the relevant Obligor shall execute a legal mortgage, charge or assignment in respect of the relevant asset in accordance with Clause 16.2.

#### 4. **THE LAND REGISTRY**

- 4.1. Each Obligor hereby consents to the Security Trustee's application to the Chief Land Registrar in Form RX1 for the registration of the following restriction against each of the registered titles specified in Schedule 3 (*Properties*) (and against any title to any unregistered Property specified in Schedule 3 (*Properties*) which is or ought to be the subject of a first registration of title at the Land Registry at the date of this Deed):

**"RESTRICTION:**

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a prior written consent signed by the proprietor for the time being of the charge dated [date] in favour of [the chargee] referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its attorney, director or secretary."

- 4.2. In respect of any property charged pursuant to Clause 3.1.1 title to which is registered at the Land Registry, each Obligor hereby represents and warrants that the Security created by this Deed does not contravene any of the provisions of the memorandum and articles of association or any other constitutional documents of such Obligor.
- 4.3. Any obligation on the part of the Beneficiaries to make further advances to an Obligor under the Loan Note Documents shall be deemed to be incorporated in this Deed for the purposes of Section 94(1)(c) of the LPA and the Security Trustee may apply in Form CH2 to the Chief Land Registrar to enter a note of such obligation on the register of each title referred to in Schedule 3 (*Properties*).
- 4.4. Each Obligor hereby confirms that it will at any time on or after the execution of this Deed at the request of the Security Trustee enter into an agreement as to the

maximum sum secured by this Deed. Such agreement shall form part of this Deed and will be registered by the Security Trustee in Form CH3 against each title referred to in Clause 4.1 above.

5. **EFFECT OF COVENANTS**

The provisions of Clauses 6 to 13 inclusive constitute covenants of each Obligor in favour of the Security Trustee for the benefit of each Beneficiary and shall apply until this Security is released by the Security Trustee in accordance with Clause 3.4.

6. **RESTRICTIONS ON DEALING**

- 6.1. No Obligor shall create, agree or attempt to create or permit to subsist any Security over all or any of its assets or undertaking other than as permitted by the Intercreditor Deed.
- 6.2. No Obligor shall, nor shall it agree to, dispose of the equity of redemption in respect of all or any part of the Secured Assets.

7. **RIGHT OF APPROPRIATION**

- 7.1. To the extent that any of the Secured Assets constitutes "financial collateral" and are subject to a legal or equitable mortgage under this Deed which is or forms part of a "security financial collateral arrangement" (in each case as defined in, and for the purpose of the Financial Collateral Arrangements (No.2) Regulations 2003 (SI 2003 No.3226) (the "**Regulations**") the Security Trustee shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations.
- 7.2. For the purposes detailed in Clause 7.1 above the Parties agree that the value of such financial collateral so appropriated shall be:
  - 7.2.1. in the case of cash, the amount outstanding to the credit of the Collection Account together with accrued but unposted interest at the time the right of appropriation is exercised; and
  - 7.2.2. in the case of Securities, the market price of such Securities at such time as determined by the Security Trustee (acting reasonably) by reference to a relevant public index or by such other process as the Security Trustee may select, including independent valuation.
- 7.3. The Parties agree that each method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purpose of the Regulations.

8. **GENERAL COVENANTS**

The undertakings in this Clause 8 are given to the Security Trustee by each Obligor and shall remain in force from the date of this Deed until the Secured Obligations have been irrevocably and unconditionally paid in full and the Security created under this Deed has been released and discharged. Each Obligor undertakes with the Security Trustee that it shall (and shall procure that each member of the Group shall):

- 8.1. conduct and carry on its business in a proper and efficient manner;
- 8.2. not make any substantial alteration in the nature or mode of conduct of its business; and
- 8.3. keep or cause to be kept proper books of account relating to its business;
- 8.4. not form, create or acquire any Subsidiary unless the Security Trustee has given its prior written consent;
- 8.5. give the Security Trustee such information relating to any of its Secured Assets as the Security Trustee may reasonably require from time to time;
- 8.6. immediately give notice in writing to the Security Trustee of:
  - 8.6.1. any action, claim or demand made by or against that Obligor in connection with the Secured Assets or any of them or any fact, matter or circumstance which may give rise to such action, claim or demand; and
  - 8.6.2. any other fact, matter or circumstance which may materially affect any of its Secured Assets or affect its ability to perform its obligations under this Deed;
- 8.7. not do, cause or permit to be done anything that may in anyway depreciate, jeopardise or otherwise materially prejudice the value of this Security to the Security Trustee;
- 8.8. comply with the provisions of all present or future laws, statutes and directives and any regulation, notice order or direction (including those issued by any governmental, municipal or other regulatory authority) made under any laws, statutes or directives which relate to the Secured Assets their use, occupation or possession;
- 8.9. punctually pay all rents, rates, Taxes and other outgoings of any nature (including governmental or municipal) for the time being payable by the owner or occupier of the Secured Assets;
- 8.10. observe and perform in accordance with their terms all restrictive and other covenants under which the Secured Assets are held or which affect the Secured Assets or relate to their use and enjoyment; and
- 8.11. enforce and not waive or release any covenants, conditions, agreements or obligations benefiting the Secured Assets where a failure to enforce or any such waiver or release may adversely affect the value of the Secured Assets;
- 8.12. deposit with and permit the Security Trustee, during the continuance of this Security to retain all:
  - 8.12.1. deeds and documents of title relating to the Secured Assets including the Properties;
  - 8.12.2. Assigned Assets; and

such other documents relating to the Secured Assets as the Security Trustee may request from time to time.

9. **INSURANCE**

9.1. Each of the Obligors will effect and maintain insurances at its own expense in respect of all its assets and business (including assets taken on lease) with insurers of good standing and repute.

9.2. Such insurances shall (in addition to complying with the requirements as to maintenance of insurance in any other Loan Note Documents):

9.2.1. provide cover against (A) loss or damage by fire, (B) all risks which are normally insured against by other prudent companies owning or possessing similar assets and carrying on similar businesses and (C) all other risks which the Security Trustee may from time to time specify;

9.2.2. be in such amounts as would in the circumstances be prudent for such companies; and

9.2.3. have the interest of the Security Trustee as mortgagee noted on all relevant policies.

9.3. Each Obligor will:

9.3.1. promptly pay all premiums relating to the Insurances; and

9.3.2. (supply to the Security Trustee on request copies of each policy of Insurance which is required to be maintained in accordance with this Clause 9, together with the current premium receipts relating to it.

9.4. Each Obligor will ensure that the Insurance is on such terms and contains such clauses as the Security Trustee may reasonably require and in particular, but without limitation, on terms that the relevant insurer will inform the Security Trustee:

9.4.1. of any cancellation, alteration, termination or expiry of any such Insurance at least 30 days before it is due to take effect;

9.4.2. of any default in the payment of any premium or failure to renew the Insurance at least 30 days before the renewal date;

9.4.3. of any act, omission or event of which the insurer has knowledge which may make any Insurance void, voidable or unenforceable (in whole or in part).

9.4.4. and that the insurer agrees that the insurance effected shall not be invalidated or prejudiced so far as the Security Trustee is concerned by any breach of the insuring conditions or other act or omission unknown to or beyond the control of the Security Trustee on behalf of the Obligor or any tenant, lessee or licensee of any of the Secured Assets.

9.5. No Obligor will do or permit to be done or omit to do anything which may render any Insurance void, voidable or unenforceable (in whole or in part) and will not vary, amend or terminate any Insurance policy.

- 9.6. If at any time any Obligor defaults in effecting or keeping up the insurances referred to in this Clause 9, or in producing any Insurance policy or receipt to the Security Trustee on demand, the Security Trustee may take out or renew such policies of insurance in any sum which the Security Trustee may reasonably think expedient. All monies which are expended by the Security Trustee in doing so shall be deemed to be properly paid by the Security Trustee and shall be reimbursed by such Obligor on demand.
- 9.7. In relation to the proceeds of Insurances:
- 9.7.1. each of the Obligors will notify the Security Trustee if any claim arises or may be made under the Insurances;
- 9.7.2. the Security Trustee shall, subject to the provisions of any other term relating to the application of the proceeds of Insurances of the Loan Note document which shall prevail have the sole right to settle or sue for any such claim and give any discharge for insurance monies; and
- 9.7.3. all claims and monies received or receivable under any Insurances must (subject to the rights or claims of any lessor or landlord of any part of the Secured Assets) be applied (subject to any other term relating to the application of the proceeds of Insurances of the Loan Note Document which shall prevail) in repairing, replacing, restoring or rebuilding the property damaged or destroyed or (after the occurrence of a Declared Default) in permanent reduction of the Secured Obligations in such order as the Security Trustee sees fit.

10. **PROPERTY COVENANTS**

- 10.1. Each Obligor shall, on execution of this Deed or, if later, on receipt, deposit with the Security Trustee all deeds and documents of title relating to the Charged Property.
- 10.2. No Obligor shall effect or concur in any variation of the terms of any conveyance, grant, assignment, contract, agreement or other deed or document relating to or affecting the Charged Property, its development or use.
- 10.3. Each Obligor shall:
- 10.3.1. observe and perform the terms and conditions of any lease, tenancy, licence or agreement (each a "property agreement") under which Charged Property of that Obligor is held and enforce observance and performance of the covenants given by the counter-party to each such property agreement; and
- 10.3.2. promptly notify the Security Trustee upon its becoming aware of any action, claim, fact or circumstance arising in respect of any such property agreement described in Clause 10.3.1 above that is likely to materially and adversely affect the value of its interest in such property agreement.
- 10.4. Each Obligor shall promptly give notice to the Security Trustee if the Charged Property is materially damaged or destroyed.



- 10.5. Each Obligor shall keep the Charged Property, all buildings, Fixtures, Equipment and all computers, vehicles and equipment material to the conduct of its business in good repair and condition and in good working order.

**11. BOOK AND OTHER DEBTS**

Provided the Obligors shall not be in breach of the provisions of the Intercreditor Deed relating to Debts which shall prevail:

- 11.1. each Obligor shall following a request by the Security Trustee:
- 11.1.1. get in and realise all its Debts in the ordinary course of its business and hold the proceeds of such collection and realisation (until payment into its Collection Account) on trust for the Security Trustee; and
  - 11.1.2. immediately upon receipt pay the proceeds of such getting in and collection of Debts into the Collection Account, specified from time to time by the Security Trustee in a notice to each Obligor;
- 11.2. No Obligor shall release, exchange, compound, set-off, deal with or grant time or indulgence in respect of all or any of its Debts or any interest in them, except as may be permitted by the Loan Note Documents or as required by Clause 11.1.1 above.
- 11.3. Any proceeds of the Debts received by an Obligor and paid into a Collection Account in accordance with Clause 11.1 (Collection and payment) shall, upon payment into such account, be released from the fixed charge created by Clause 3.1.2.5 and shall be subject to the fixed charge created by Clause 3.1.2.10.
- 11.4. Each Obligor shall following a request from the Security Trustee after the occurrence of the Senior Expiry Date:
- 11.4.1. give notice to the Account Bank substantially in such terms as the Security Trustee may specify and use all reasonable endeavours (including incurring reasonable costs and expenses) to ensure that the Account Bank delivers to the Security Trustee an acknowledgement in such terms as the Security Trustee may specify; and
  - 11.4.2. as soon as is reasonably practicable after receipt of such acknowledgement the Security Trustee shall deliver to the Account Bank a notice in such terms as the Security Trustee may specify).

**12. SECURITIES**

- 12.1. After the occurrence of the Senior Expiry Date, each Obligor shall, and shall procure that any nominee of such Obligor shall, deposit with the Security Trustee or otherwise as the Security Trustee may direct:
- 12.1.1. all share certificates and other documents of title or evidence of ownership relating to its Securities;
  - 12.1.2. all deeds or instruments of transfer (duly executed by the registered holder but omitting the name of the transferee and the date) relating to those Securities;

- 12.1.3. such other documents (duly executed where required) relating to its Securities as the Security Trustee may from time to time reasonably require to enable the Security Trustee or its nominee to be registered as the owner of, or otherwise to acquire legal title to, those Securities or for vesting title to them in any purchaser or transferee; and
  - 12.1.4. all documents it receives in relation to any rights, monies or property arising out of its Securities (including any circular, notice of meeting or report).
- 12.2. After the occurrence of the Senior Expiry Date, each Obligor shall, and shall procure that any nominee of such Obligor shall, on request by the Security Trustee:
- 12.2.1. execute legal transfers of its Securities to the Security Trustee (or its nominees); and
  - 12.2.2. execute all such other documents and take such action as the Security Trustee may reasonably require for perfecting its title to the Securities or for vesting or enabling it to vest the same in itself or in any purchaser or transferee.
- 12.3. Each Obligor:
- 12.3.1. shall pay all calls or other amounts that may become due in respect of any of its Securities.
  - 12.3.2. indemnifies and agrees to keep indemnified each Stock Transferee against any liability in respect of any calls or other liabilities in connection with any Securities.
  - 12.3.3. shall remain liable to observe and perform all obligations assumed by it in respect of its Securities and none of the Security Trustee, the Beneficiaries and any Stock Transferee shall be under any obligation or liability by reason of the charge over the Securities contained in this Deed.
- 12.4. Each Obligor shall:
- 12.4.1. unless an Event of Default has occurred and is continuing, be entitled:
    - 12.4.1.1. (subject to Clause 12.4.2 below) to exercise, or direct a Stock Transferee in writing to exercise, all voting rights attached to its Securities in such manner as that Obligor thinks fit; and
    - 12.4.1.2. to receive and retain any dividends, distributions or other monies paid or derived from its Securities but shall forward to the Security Trustee promptly on receipt any notices or documents relating to such dividends, distributions or monies or their declaration; and

- 12.4.2. not, without the previous written consent of the Security Trustee (which shall not be unreasonably withheld), exercise or direct the exercise of voting rights attaching to any of the Securities in a manner which:
- 12.4.2.1. may have the effect of changing the terms of, or varying the rights attaching to, any of the Securities in a manner prejudicial to the interests of the Beneficiaries;
  - 12.4.2.2. would impair the value of those Securities; or
  - 12.4.2.3. would cause a Stock Transferee to incur any cost or expense or render itself subject to any liability unless previously indemnified to its satisfaction.
- 12.5. After the occurrence of the Senior Expiry Date, at all times whilst an Event of Default has occurred and is continuing, the Security Trustee shall be entitled to:
- 12.5.1. receive and retain all dividends, distributions and other monies paid or derived from the Securities; and
  - 12.5.2. exercise or direct the exercise of the voting rights attaching to the Securities in such manner as it considers fit.
- 12.6. Each Obligor shall comply with, or procure compliance with, any direction of the Security Trustee given pursuant to Clause 12.5.1 above and, if the Security Trustee so requires, shall deliver to the Security Trustee a duly executed form of proxy or other authority (in the form required by the Security Trustee) appointing such person as the Security Trustee may select as proxy of that Obligor or its nominee.
- 12.7. If any of the Securities are released from this Security the Security Trustee will not be obliged to return the Securities in identical form provided that the Securities which are returned are in the same Obligor, of the same type and for the same nominal value in aggregate.

### 13. **THE DOCUMENTS**

- 13.1. After the occurrence of the Senior Expiry Date, each Obligor shall:
- 13.1.1. following a request from the Security Trustee to do so, following its execution of this Deed, execute and deliver to all other parties to each Document a duly completed notice of assignment; and
  - 13.1.2. use reasonable endeavours to procure that the Security Trustee receives an acknowledgement of such notice from such parties,
- such notice and acknowledgement to be in such form as the Security Trustee may require (acting reasonably).
- 13.2. No Obligor shall make or agree to any variation, amendment, replacement, cancellation, surrender, discharge or release of, or supplement to, any of the Documents without the prior written consent of the Security Trustee (which shall not be unreasonably withheld).

13.3. Each Obligor shall:

- 13.3.1. observe and perform all its obligations under the Documents and pay promptly all sums at any time payable in respect of any Assigned Asset and not do or allow anything to be done or omitted whereby any Assigned Asset shall be or become void, voidable, cancelled or otherwise terminated;
- 13.3.2. enforce and not waive or release the obligations of the other parties to the Documents; and
- 13.3.3. upon its becoming aware of any breach by any party of its obligations under a Document, notify the Security Trustee of such breach and any steps proposed to be taken to remedy it.

14. **FLOATING CHARGE**

14.1. The Security Trustee may from time to time, by notice to an Obligor, convert the Floating Charge into a specific fixed charge as regards all or any of that Obligor's assets specified (whether generally or specifically) in the notice:

- 14.1.1. if an Event of Default has occurred and is continuing; or
- 14.1.2. if the Security Trustee (in good faith) considers those assets to be in jeopardy, whether due to a risk of being seized or sold under any form of distress, attachment, execution, sequestration or other legal process or otherwise.

14.2. Notwithstanding any other provision of this Deed, the Floating Charge shall (in addition to the circumstances in which the same will occur under the general law) automatically and without need for notice operate as a fixed charge the moment:

- 14.2.1. any Obligor breaches Clause 6; or
- 14.2.2. any person levies or attempts to levy any distress, attachment, execution, sequestration or other legal process against any of the Secured Assets; or
- 14.2.3. a resolution is passed or an order is made for the winding up, dissolution, administration or other reorganisation of any Obligor; or
- 14.2.4. an Administrator is appointed or any step intended to result in such appointment is taken,

provided that in the case of Clauses 14.2.1 and 14.2.2 above the Floating Charge shall only operate as a fixed charge over those of the Secured Assets to which the breach or levy relates.

15. **NATURE OF SECURITY**

- 15.1. This Security is created as, and shall remain, a continuing security notwithstanding any settlement of account or other matter whatsoever.
- 15.2. This Security is additional to and shall not merge with or prejudice or be prejudiced by any Alternative Remedy. Section 93 of the LPA shall not apply to this Security.

- 15.3. The obligations of the Obligor shall not be affected, nor shall the rights, powers and remedies conferred on the Security Trustee by this Deed be discharged, impaired or otherwise affected by:
- 15.3.1. any time, indulgence or concession given to any Obligor or any other person in respect of the Secured Obligations or any of them;
  - 15.3.2. any compounding, discharge, release or variation of the indebtedness or liabilities of an Obligor or any other person guaranteeing or securing the Secured Obligations or any of them;
  - 15.3.3. any amendment to, or variation, waiver or replacement of, any of the terms of any agreement or document relating to the Secured Obligations or any of them or of any Alternative Remedy;
  - 15.3.4. any failure to take, or fully to take, or to perfect or enforce or realise any Alternative Remedy agreed to be taken in respect of the Secured Obligations or any of them;
  - 15.3.5. any release, exchange, invalidity or unenforceability of or dealing with any Alternative Remedy;
  - 15.3.6. the winding-up, dissolution, administration or other Incapacity or any change in status, constitution, control or ownership of any Obligor or any other person;
  - 15.3.7. the illegality, invalidity or unenforceability of, or any defect in any obligation of any Obligor or other person under, the Loan Note Documents or any other document relating to the Secured Obligations or any of them; or
  - 15.3.8. any other act, omission, circumstance, matter or thing which, but for this provision, might operate to release or otherwise exonerate an Obligor from its obligations under this Deed, whether in whole or in part.
- 15.4. Each Obligor agrees to be bound by this Deed notwithstanding that any other person intended to execute it or to provide any Alternative Remedy may not do so.
- 15.5. The Security Trustee may enforce this Security against an Obligor, its assets and undertaking without the need for the Security Trustee to:
- 15.5.1. make any demand of or take any action or otherwise exhaust its remedies against any other Obligor or any other person; or
  - 15.5.2. take steps to enforce any Alternative Remedy.
- 15.6. Until all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full, no Obligor shall exercise any rights which it may have at any time by reason of performance of its obligations under this Deed, the enforcement of this Security or any action taken pursuant to any rights conferred by this Deed:
- 15.6.1. to take the benefit (in whole or in part and whether by subrogation or otherwise) of any rights, security or monies at any time held or

receivable by the Security Trustee, the Beneficiaries or any of them in respect of the Secured Obligations;

15.6.2. to be indemnified by an Obligor or any other person or to enforce any other right or claim (including rights of set-off) against any Obligor or any other person; or

15.6.3. to claim or prove in competition with the Security Trustee or any Beneficiary as a creditor of any Obligor or any co-guarantor.

15.7. Each Obligor shall:

15.7.1. if so required in writing by the Security Trustee, exercise such of its rights referred to in Clause 15.6 as the Security Trustee may from time to time direct; and

15.7.2. hold on trust for and forthwith pay or transfer to the Security Trustee:

15.7.2.1. any payment or distribution or benefit of security received by it; or

15.7.2.2. an amount equal to any amount set-off by it,

contrary to Clause 15.6 or pursuant to Clause 15.7.

15.8. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights and remedies provided by law and may be exercised as often as necessary.

15.9. Any release, settlement or discharge between the Security Trustee or the Beneficiaries and the Obligors or any of them shall be conditional upon no security, disposition or payment to the Security Trustee or the Beneficiaries by any person being avoided, set aside, reduced or ordered to be refunded for any reason. If any such security, disposition or payment is avoided, set aside, reduced or ordered to be refunded the Security Trustee shall be entitled to recover the value or amount of any such security, disposition or payment from the Obligors subsequently (including by enforcing this Security) as if such release, settlement or discharge had not occurred.

15.10. The Security Trustee shall be entitled to retain this Deed after as well as before the payment of all Secured Obligations for such period as the Security Trustee shall determine.

15.11. If at any time this Security ceases to be a continuing security or the Security Trustee or any Beneficiary receives, or is deemed to be affected by, any notice (actual or constructive) of any subsequent Security, all payments made to the Security Trustee or such Beneficiary from that time shall be, or shall be deemed to be, credited to such new account(s) and shall not reduce the Secured Obligations at the time of such cessation or receipt or deemed receipt of notice.

## 16. **PERFECTION**

16.1. Each Obligor shall, at its own expense, promptly execute, deliver and do all such deeds, documents, acts and things (including further Security over the Secured

Assets or any of them) as the Security Trustee may reasonably require for the purpose of:

- 16.1.1. registering, perfecting or protecting the security intended to be created by this Deed;
  - 16.1.2. obtaining the full benefit of the rights conferred on the Security Trustee under this Deed; or
  - 16.1.3. exercising any of the powers, authorities and discretions vested in the Security Trustee or any Receiver by this Deed.
- 16.2. Without prejudice to the generality of Clause 16.1, each Obligor shall promptly on request by the Security Trustee, execute in favour of the Security Trustee a legal mortgage, charge or assignment over all or any of the Secured Assets subject to, or intended to be subject to, any fixed charge or assignment created by this Deed in such form as the Security Trustee may require (but containing terms no more onerous than those in this Deed).
- 16.3. Each Obligor:
- 16.3.1. by way of security irrevocably appoints the Security Trustee, every Receiver and every person nominated for the purpose as delegate by the Security Trustee or a Receiver, severally as such Obligor's attorney and on its behalf and in its name or otherwise:
    - 16.3.1.1. to execute, deliver or otherwise perfect or do any deed, document, assurance, act or thing which the Obligor has failed to do in accordance with this Deed (including to make any demand of or to give any notice or receipt to any person owing monies to that Obligor and to execute and deliver any charges, legal mortgages, assignments or other security and transfers of Securities);
    - 16.3.1.2. generally in its name and on its behalf to exercise all or any of the powers, authorities and discretions conferred on the Security Trustee or any Receiver or their respective delegates by or pursuant to this Deed or by statute and to execute, deliver or otherwise perfect and do all such deeds, documents, acts and things as may be required or may be deemed proper by the Security Trustee or any Receiver for the full exercise of those powers, authorities and discretions.
  - 16.3.2. agrees to ratify and confirm whatever any attorney shall do or purport to do in the exercise or purported exercise of the power of attorney in Clause 16.3(a).
- 16.4. The power of attorney granted by Clause 16.3 is as regards the Security Trustee and its delegates (and as each Obligor irrevocably acknowledges), granted irrevocably and for value as part of the security constituted by this Deed to secure proprietary interests in and the performance of obligations owed to the respective donees within the meaning of Powers of Attorney Act 1971.

## 17. **ENFORCEMENT**

17.1. Subject to the terms of the Intercreditor Deed, this Deed shall become immediately enforceable at any time:

17.1.1. upon the occurrence of a Declared Default;

17.1.2. upon a step or proceeding being taken (including the giving of notice of an intention to appoint an administrator under paragraph 15 or 26 of Schedule B1 of the Insolvency Act 1986) for the appointment of an Administrator, liquidator or provisional liquidator or with a view to seeking a moratorium; and

17.1.3. upon the Security Trustee or any Beneficiary being invited to enforce the Security comprised in this Deed,

and at such time the Secured Obligations shall be deemed to become due within the meaning of Section 101 of the LPA and the Security Trustee may without further notice and without the restrictions contained in Section 103 of the LPA enforce this Security and exercise all the powers conferred on a mortgagee by the LPA and all the powers and discretions conferred by this Deed.

17.2. The power of sale and other powers conferred by Section 101 of the LPA (as varied or extended by this Deed) shall arise on execution of this Deed and shall be exercisable at any time after this Security has become enforceable. Section 103 of the LPA shall not apply to this Security.

17.3. The provisions of Sections 99 and 100 of the LPA shall not apply to this Security and the Security Trustee may, whilst this Security is enforceable, grant leases, make agreements for lease, accept surrenders of leases and grant options in relation to the Secured Assets on such terms as it thinks fit.

## 18. **APPOINTMENT OF ADMINISTRATOR**

Subject to the terms of the Intercreditor Deed, at any time on or after an event in Clause 17.1 has occurred the Security Trustee may appoint an Administrator in respect of any Obligor pursuant to paragraph 14 of Schedule B1 to the Insolvency Act 1986.

## 19. **APPOINTMENT AND POWERS OF RECEIVERS AND SECURITY TRUSTEE**

19.1. Whilst this Security is enforceable or if any Obligor so requests the Security Trustee in writing at any time, the Security Trustee may, by instrument in writing executed as a deed or under the hand of any director or other duly authorised officer appoint any person to be a Receiver of such part of the Secured Assets as the Security Trustee may specify (the "**Receivership Assets**"). Any such appointment may be made subject to such qualifications, limitations and/or exceptions (either generally or in relation to specific assets or classes of asset) as may be specified in the instrument effecting the appointment. Where more than one Receiver is appointed, each joint Receiver shall have power to act severally, independently of any other joint Receivers, except to the extent that the Security Trustee may specify to the contrary in the appointment. The Security Trustee may remove any Receiver so appointed and appoint another in his place.



- 19.2. Any Receiver shall be the agent of the Obligor in respect of which, or in respect of the assets of which, he is appointed and that Obligor shall be solely responsible for his acts or defaults and for his remuneration. This agency shall continue until that Obligor shall go into liquidation and from that time the Receiver shall act as principal and shall not become the agent of the Security Trustee.
- 19.3. Each Obligor irrevocably authorises the Security Trustee to agree as it sees fit, and free from the restrictions contained in Section 109(6) of the LPA, the remuneration payable to any Receiver.
- 19.4. The Security Trustee and any Receiver shall (except where expressly or impliedly excluded by any provision of this Deed and, in the case of a Receiver, subject to any limitations set out by the Security Trustee in the relevant appointment) have all the powers conferred on mortgagees or receivers by law or any statute without the restrictions of section 103 of the LPA. Where there is any conflict or ambiguity between those powers and the provisions of this Deed, the provisions of this Deed shall prevail.
- 19.5. In addition to but without limiting any of the powers referred to in Clause 19.4, any Receiver shall have the power, on behalf of and at the expense of the relevant Obligor or otherwise (and notwithstanding the Incapacity of that Obligor), to do or omit to do anything which that Obligor could do or omit to do in respect of the Secured Assets or any of them, and in particular the Receiver shall have power:
- 19.5.1. to enter into, take possession of, collect and get in the Receivership Assets or any of them and all rents and other income accruing in respect of them, in each case in such manner as the Receiver thinks fit;
  - 19.5.2. to take, defend, settle or discontinue any proceedings or submit to arbitration in the name of the Obligor or otherwise as may seem expedient;
  - 19.5.3. to carry on, manage, develop, reconstruct, amalgamate or diversify the whole or any part of the Obligor's business, or to concur in so doing;
  - 19.5.4. to enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract, transaction or arrangement to which the Obligor is, or is to be, party;
  - 19.5.5. to purchase, lease or otherwise acquire and/or to develop or improve the whole or any part of the Charged Property or other assets (including the completion, with or without modification, of any building which is in the course of construction or renovation and any development in which the Obligor was engaged);
  - 19.5.6. for the purpose of exercising any of the powers, authorities and discretions conferred on him by or pursuant to this Deed or of defraying costs, charges, losses or expenses (including his remuneration) incurred by him in the exercise of those powers, authorities and discretions or for any other purpose approved in advance by the Security Trustee, to raise or borrow any monies and to secure the payment of such monies upon the whole or any part of the Receivership Assets, whether in priority to this Security or otherwise;

- 19.5.7. to sell (by private contract, private auction or public auction), convey, transfer, assign, let, surrender or accept surrenders of, grant licences of or otherwise dispose of or deal with the whole or any part of the Receivership Assets, or to concur in so doing, in such manner, for such consideration (whether cash or in some other form and whether payable immediately or in instalments spread over such period as he may think fit) and generally on such terms as he may think fit;
- 19.5.8. to grant or accept a surrender of a lease or tenancy of any of the Receivership Assets and to take a lease or tenancy of the Charged Property required or convenient for the business of the Obligor;
- 19.5.9. to apply for any appropriate licence, permission or approval in relation to the Charged Property, its use or development;
- 19.5.10. to acquire, renew, extend, grant, vary or otherwise deal with such easements, rights, privileges and licences over or for the benefit of the Charged Property as the Receiver shall think expedient;
- 19.5.11. without any further consent by or notice to the Obligor, to exercise for and on behalf of the Obligor all or any of the powers and rights conferred on a landlord or tenant by the Landlord and Tenant Acts 1927 and 1987 in respect of the Charged Property or arising under any enactments from time to time affecting the Charged Property;
- 19.5.12. to carry out any and all acts necessary to comply with any Environmental Claim without incurring personal liability;
- 19.5.13. to promote the formation of new companies with a view to them purchasing, leasing or otherwise acquiring interests in all or any of the Receivership Assets on such terms as the Receiver may think fit, or otherwise arrange for those companies to trade or cease to trade;
- 19.5.14. to make and effect such repairs, renewals and improvements to the Receivership Assets or any of them as the Receiver may think fit and to maintain, renew, take out or increase insurances;
- 19.5.15. to make calls on the members of the Obligor in respect of uncalled capital;
- 19.5.16. to sign any document, execute and deliver any deed and do all such other acts and things including the making of payments, whether in the name of the Obligor or otherwise, considered by the Receiver to be incidental or conducive to any of his powers or to the protection and/or realisation of this Security;
- 19.5.17. effect and maintain insurances in respect of the business and properties of the Obligor;
- 19.5.18. use the Obligor's seal;
- 19.5.19. draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Obligor;

- 19.5.20. do all such things as may be necessary for the realisation of the Receivership Assets;
  - 19.5.21. transfer to Subsidiaries of the Obligor the whole or any part of the business or Receivership Assets;
  - 19.5.22. make any arrangement or compromise on behalf of the Obligor in respect of the Receivership Assets;
  - 19.5.23. to do anything in relation to the Receivership Assets as the Receiver could do if he were absolutely entitled to them; and
  - 19.5.24. rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the Obligor and to receive dividends, and to accede to trust deeds for the creditors of any such person.
- 19.6. Any Receiver may in the exercise of his powers appoint or employ (on such terms as he thinks fit) and rely upon the advice of and discharge any agents, managers, consultants, professional advisers, workmen or such other persons as he considers fit.
  - 19.7. Any Receiver may sever and sell Fixtures separately from the property to which they may be annexed and any sale or other disposition may be made upon any such terms as to indemnity as the Receiver may think fit.
  - 19.8. Any Receiver may exercise his powers in his absolute discretion, as he considers necessary or desirable to realise or to maintain the value of any Receivership Assets or the efficacy of this Security.
  - 19.9. Whilst this Security is enforceable, all the powers, authorities and discretions conferred by this Deed (expressly or impliedly) on a Receiver may be exercised by the Security Trustee whether or not any Receiver shall have been appointed.
  - 19.10. The Security Trustee may, at any time after this Security has become enforceable, redeem any Security having priority to this Security or procure the transfer of such Security to itself. In connection with such redemption or transfer, the Security Trustee may settle and pass the accounts of the beneficiary of that Security, which will be conclusive and binding on each Obligor. Each Obligor shall on demand pay to the Security Trustee all principal monies, interest, costs, charges and expenses of and incidental to any such redemption and transfer.
  - 19.11. Any discretion or power which may be exercised or any determination which may be made by the Security Trustee under this Deed may (save as otherwise provided in this Deed) be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons for such exercise or determination.
  - 19.12. If any Obligor breaches any of the covenants contained in this Deed the Security Trustee may (without being liable as mortgagee in possession), at such Obligor's cost, carry out and do such acts which it, in its absolute discretion, considers such Obligor ought to have done to comply with such covenants.
  - 19.13. The Security Trustee or any Receiver may from time to time delegate (including by power of attorney) to any person or persons any of the powers, authorities and discretions that are for the time being exercisable by the Security Trustee or a

Receiver under this Deed. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Security Trustee or such Receiver may think fit. Neither the Security Trustee nor any Receiver will be liable or responsible to any Obligor or any other person for any losses, liabilities or damages arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

20. **APPLICATION OF PROCEEDS**

- 20.1. Any monies received by the Security Trustee or any Receiver shall (subject to the payment of any claims having priority to this Security, the provisions of the Security Trust Deed and the provisions of the Intercreditor Deed) be applied in the following order (without prejudice to the rights of the Beneficiaries to recover any shortfall from the Obligors):
- 20.1.1. in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise of his powers (including his remuneration) and of all outgoings paid by him and liabilities incurred by him in exercising those powers;
  - 20.1.2. in or towards payment of the Secured Obligations in such order (whether as to principal and interest and notwithstanding Section 109(8) LPA or otherwise) as may be specified in the Security Trust Deed; and
  - 20.1.3. in payment of the surplus (if any) to the Obligor or other person entitled to it.
- 20.2. All monies received, recovered or realised by the Security Trustee or any Receiver under this Deed may be credited at the discretion of the Security Trustee or that Receiver to a suspense account in any name and may be held in that account for so long as the Security Trustee or that Receiver thinks fit pending its application in accordance with Clause 20.1.
- 20.3. Until all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full, each Beneficiary may:
- 20.3.1. refrain from applying any monies held or received by it in respect of the Secured Obligations or apply them in such manner and order as it sees fit; and
  - 20.3.2. hold in a suspense account (in such name as and for so long as it sees fit) any monies received from any Obligor or other person in respect of the Secured Obligations.
- 20.4. If this Security is enforced (whether by the appointment of a Receiver or otherwise) at a time when no amounts are due under the Loan Note Documents but at a time when amounts may become due, the Security Trustee or the Receiver may pay the proceeds of any recoveries it makes into such number of Proceeds Accounts as it considers appropriate.
- 20.5. The Security Trustee or a Receiver may withdraw amounts standing to the credit of the Proceeds Accounts and apply them in accordance with Clause 20.1.

## **21. SET-OFF**

- 21.1. The Security Trustee and each of the Beneficiaries or any of them may, at any time and without notice to any Obligor, combine, consolidate or merge all or any of the accounts of that Obligor with the Security Trustee or such Beneficiary and may set-off or transfer any sum (whether or not then due) standing to the credit of any such accounts and/or apply any monies received or otherwise held by the Security Trustee or that Beneficiary in or towards satisfaction of the whole or any part of the Secured Obligations which are due and payable. This may be done notwithstanding that such balances or monies and the Secured Obligations may be expressed in different currencies and the Security Trustee and each Beneficiary is authorised to effect the necessary currency conversion at its spot rate of exchange for the relevant currencies as at 11.00 am (London time) on the date such conversion is effected.
- 21.2. None of the Security Trustee and the Beneficiaries shall be under any obligation to exercise any of its rights under Clause 21.1, which rights are in addition to, and without prejudice to, any other right of set off, combination or consolidation of accounts or any other right of a similar nature to which it may at any time be entitled.

## **22. PROTECTION FOR THIRD PARTIES**

- 22.1. No person dealing with any Receiver or the Security Trustee shall be concerned to enquire whether this Security has become enforceable or whether any power that the Receiver or the Security Trustee is purporting to exercise has become exercisable.
- 22.2. The receipt of an Administrator, or a Receiver or the Security Trustee shall be an absolute and conclusive discharge to any purchaser and shall relieve him of any obligation to see to the application of any monies paid to or at the direction of an Administrator, or the Receiver or the Security Trustee.
- 22.3. All the protection to purchasers contained in Sections 104 and 107 LPA shall apply to any person purchasing from or dealing with an Administrator, or a Receiver or the Security Trustee.

## **23. LIABILITY**

- 23.1. No Relevant Person shall in any circumstances (including the entry into or taking possession of the Secured Assets) be liable (including as mortgagee in possession) to account to any Obligor for anything except that Relevant Person's actual receipts.
- 23.2. No Relevant Person shall in any circumstances be liable to any Obligor for any loss or damage arising from or as a result of:
- 23.2.1. any realisation of the Secured Assets;
  - 23.2.2. any act, default or omission of a Relevant Person in respect of the Secured Assets or the realisation of them;
  - 23.2.3. any exercise or non-exercise of any power, authority or discretion conferred on a Relevant Person under this Deed or by any statute; or

23.2.4. any negligence or default of a Relevant Person's nominees, correspondents or agents,

or for any other loss of any nature in connection with the Secured Assets.

23.3. The Security Trustee shall not have any liability to any Obligor for any act, default or omission of any other Relevant Person.

24. **PAYMENTS**

24.1. All sums received by the Security Trustee under this Deed shall be received in full without any set-off, counter-claim, withholding or deduction save for any Tax Deduction required by law.

24.2. If any Tax Deduction or Tax Payment is required then the Obligor making (or which has made) the relative payment shall promptly pay to the Security Trustee such additional amounts as will result in the receipt or retention by the Security Trustee and each Beneficiary of the amount which would otherwise have been received or retained by it had no such Tax Deduction or Tax Payment been made.

24.3. No payment to the Security Trustee (including under any judgement or court order) shall discharge any obligation of any Obligor unless it is made in the currency in which such obligation was incurred (the "**due currency**"). If a payment is not made in the due currency and on actual conversion into the due currency it is insufficient to pay or discharge in full the relevant obligation the Security Trustee and/or the other Beneficiaries shall have a further separate cause of action against the Obligors for that insufficiency.

24.4. Whilst this Security is enforceable the Security Trustee may, without notice, purchase such amount of any currency (whether using monies held by the Security Trustee or any Receiver or using its own monies) at the Security Trustee's then prevailing spot rate of exchange (as conclusively determined by the Security Trustee) for effecting such purchase as the Security Trustee considers fit to cover the Obligors' obligations and liabilities, actual or contingent, present or future.

25. **REPRESENTATIONS**

25.1. Each Obligor makes the representations and warranties set out in this Clause 25 to the Security Trustee.

25.2. Its Secured Assets are, or when acquired will be, beneficially owned by such Obligor free from any Security other than:

25.2.1. as created by this Deed; and

25.2.2. as permitted by the Intercreditor Deed.

25.3. This Deed creates the Security which it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of any Obligor or otherwise.

25.4. Each Obligor is the sole legal and beneficial owner of all its Secured Assets.

25.5. No litigation, arbitration or administrative proceeding has currently been started or threatened in relation to any Secured Asset.

25.6. The Securities are fully paid and the Securities listed in Schedule 5 (Securities) constitute the entire share capital owned by each Obligor in the relevant company.

25.7. In relation to the Charged Property:

25.7.1. Schedule 3 (Properties) identifies all freehold and leasehold properties which are beneficially owned by each Obligor at the date of this Deed;

25.7.2. All information provided to and used by each Obligor's legal advisers in preparation of any report on title was and remains true and complete in all material respects;

25.7.3. except as disclosed to the Security Trustee in any report on title:

25.7.3.1. there is no breach of the Planning Acts or any other law or regulation which may materially affect the value or marketability of the Property;

25.7.3.2. there is no covenant, agreement, stipulation, reservation, condition, interest, right or other matter affecting the Charged Property;

25.7.3.3. there is no unregistered interest which overrides (a) first registration or (b) registered dispositions affecting the Charged Property, and there is no person in adverse possession of the Charged Property;

25.7.3.4. no person has a right to terminate the use of a facility necessary for the enjoyment and use of the Charged Property;

25.7.3.5. no Obligor is aware of any adverse claim in respect of the ownership of, or any interest in, the Charged Property;

25.7.3.6. the Charged Property is free from any tenancies or licences; and

25.7.3.7. the Charged Property is in good and substantial repair.

25.8. All the representations and warranties in this Clause 25 are made by each Obligor on the date of this Deed and (except for those in Clause 25.7.1 are also deemed to be made by each Obligor on each date that any payment is to be made by any Obligor under any of the Loan Note Documents.

25.9. Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## 26. **NOTICES**

26.1. Any communication to be made under or in connection with the Loan Note Documents shall be made in writing.

26.2. The address of each Party for any communication or document to be made or delivered under or in connection with the Loan Note Documents is its registered office for the time being.

26.3.

26.3.1. Any communication or document made or delivered by one person to another under or in connection with the Loan Note Documents will only be effective when it has been left at the relevant address or 2 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.

26.3.2. Any communication or document to be made or delivered to the Obligors' Agent or the Security Trustee will be effective only when actually received by the Obligors' Agent or Security Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Obligors' Agent's or Security Trustee's signature below (or any substitute department or officer as the Obligors' Agent or Security Trustee shall specify for this purpose).

26.3.3. All notices from or to an Obligor shall be sent through the Obligors' Agent.

26.3.4. Any communication or document made or delivered to the Borrower in accordance with this Clause 26.3 will be deemed to have been made or delivered to each of the Obligors.

26.4.

26.4.1. Any communication to be made between the Obligors' Agent or the Security Trustee and a Beneficiary under or in connection with the Loan Note Documents may be made by electronic mail or other electronic means, if the Obligors' Agent, the Security Trustee and the relevant Beneficiary:

26.4.1.1. agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

26.4.1.2. notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

26.4.1.3. notify each other of any change to their address or any other such information supplied by them.

26.4.2. Any electronic communication made between the Obligors' Agent and a Beneficiary or the Security Trustee will be effective only when actually received in readable form and in the case of any electronic communication made by a Beneficiary to the Obligors' Agent or the Security Trustee only if it is addressed in such a manner as the Obligors' Agent or Security Trustee shall specify for this purpose.

26.5. Any notice given under or in connection with any Loan Note Document must be in English.



26.6. All other documents provided under or in connection with any Loan Note Document must be:

26.6.1. in English; or

26.6.2. if not in English, and if so required by the Security Trustee, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

26.7. Any certification or determination by a Beneficiary of a rate or amount under any Loan Note Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

27. **WAIVERS, CONSENTS, PARTIAL INVALIDITY AND TRUSTS**

27.1. No failure to exercise, nor any delay in exercising, on the part of any Beneficiary, any right or remedy under the Loan Note Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

27.2. If, at any time, any provision of the Loan Note Documents 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.

27.3. The perpetuity period applicable to any trust contained in or arising from this Deed will be a period of eighty years.

28. **CHANGES TO PARTIES**

28.1. Subject to the terms of the Intercreditor Deed, the Security Trustee may assign and transfer all of its rights and obligations under this Deed to a replacement Security Trustee appointed in accordance with the terms of the Security Trust Deed.

28.2. This Deed shall remain in full force and effect and binding on each Obligor notwithstanding any amalgamation or merger that may be effected by the Security Trustee with, or the sale or transfer of all or any part of the Security Trustee's undertaking and assets to, another person.

29. **SECURITY TRUSTEE**

The provisions of the Security Trust Deed shall apply to the Security Trustee's rights, obligations and duties under this Deed as if set out in this Deed in full.

30. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which shall be an original and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

31. **OBLIGOR'S AGENT**

- 31.1. Each Obligor (other than the Borrower) by its execution of or accession to this Deed irrevocably appoints the Borrower to act on its behalf as its agent in relation to the Loan Note Documents (the "**Obligors' Agent**") and irrevocably authorises:
- 31.1.1. the Borrower on its behalf to supply all information concerning itself contemplated by the Loan Note Documents to the Beneficiaries and to give all notices and instructions, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
  - 31.1.2. each Beneficiary to give any notice, demand or other communication to that Obligor pursuant to the Loan Note Documents to the Borrower,  
  
and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.
- 31.2. Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Loan Note Document on behalf of another Obligor or in connection with any Loan Note Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Loan Note Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

32. **INTERCREDITOR DEED**

- 32.1. This Deed is subject in all respects to the provisions of the Intercreditor Deed.
- 32.2. Where there is a conflict between the provisions of this Deed and the Intercreditor Deed, the Intercreditor Deed shall prevail.

33. **GOVERNING LAW AND ENFORCEMENT**

- 33.1. This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 33.2. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").
- 33.3. The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

- 33.4. Clause 33.2 is for the benefit of the Beneficiaries and Secured Parties only. As a result, no Beneficiary shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Beneficiaries and Secured Parties may take concurrent proceedings in any number of jurisdictions.
- 33.5. Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
- 33.5.1. irrevocably appoints the Borrower as its agent for service of process in relation to any proceedings before the English courts in connection with any Loan Note Document (and the Borrower by its execution of this Deed, accepts that appointment); and
- 33.5.2. agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- 33.6. If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Obligors' Agent. Failing this, the Security Trustee may appoint another agent for this purpose.

**IN WITNESS** of which the Parties have executed this Deed on the date set out above.

## **SCHEDULE 1**

### **Part 1** **The Company**

WHCO9 Limited (Company Number 11671147) whose registered office is at Unit 6250 Bishops Court Solihull Parkway, Birmingham Business Park, Birmingham, United Kingdom, B37 7YB.

### **Part 2** **Companies**

Siamo Azzuri Limited (Company Number 06372830) whose registered office is at Unit 6250 Bishops Court, Solihull Parkway Birmingham Business Park, Birmingham, B37 7YB.

Templine Employment Agency Limited (Company Number 02186417) whose registered office is at 6250 Bishops Court Solihull Parkway, Birmingham Business Park, Birmingham, B37 7YB

Qommunicate Ltd (Company Number 07005854) whose registered office is at Unit 6250 Bishops Court Solihull Parkway, Birmingham Business Park, Birmingham, England, B37 7YB

A&A Recruitment Limited (Company Number 04746838) whose registered office is at Unit 6250 Bishops Court, Solihull Parkway Birmingham Business Park, Birmingham, B37 7YB

Siamo Recruitment Limited (Company Number 08078986) whose registered office is at Unit 6250 Bishops Court, Solihull Parkway Birmingham Business Park, Birmingham, B37 7YB

**SCHEDULE 2**  
**Terms of Guarantee and Indemnity**

**1. GUARANTEE PROVISIONS**

- 1.1. This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Loan Note Documents regardless of any intermediate payment or discharge in whole or in part.
- 1.2. If any payment by an Obligor or any discharge given by the Security Trustee (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:
  - 1.2.1. the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
  - 1.2.2. the Security Trustee shall be entitled to recover the value or amount of the security or payment from each Obligor if the payment, discharge, avoidance or reduction had not occurred.
- 1.3. The obligations of each Obligor under Clause 2.1 of this Deed will not be affected by an act omission matter or thing which but for this paragraph 1 will reduce, release or prejudice any of its obligations under this Clause (without limitation and whether or not known to the Security Trustee or any Beneficiary) including:
  - 1.3.1. any time, waiver or consent granted to or composition with any Obligor or any other person;
  - 1.3.2. 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;
  - 1.3.3. 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 any other requirement in respect of any instrument or any failure to realise the full value of any security;
  - 1.3.4. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor for any other person;
  - 1.3.5. any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement of any Loan Note Document or any other document or security;
  - 1.3.6. any unenforceability, illegality or invalidity of any obligation of any person under the Loan Note Document or any other document or security; or

- 1.3.7. any insolvency or similar proceedings.

## **2. OBLIGOR INTENT**

Without prejudice to the generality of paragraph 1.3 above each Obligor expressly confirms that it intends that this Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of, or to any of the Loan Note Documents and/or any facility or amount made available under any of the Loan Note Documents for the purposes of or in connection with any of the following:

- 2.1. acquisitions of any nature;
- 2.2. increase in working capital;
- 2.3. enabling distributions to be made;
- 2.4. carrying out restructuring;
- 2.5. refinancing existing facilities;
- 2.6. refinancing any other indebtedness;
- 2.7. making facilities available to new borrowers;
- 2.8. and any other variation or extension for purposes for which any such facility or amount might be made available from time to time;
- 2.9. and any fees, costs and/or expenses associated with any of the foregoing.

## **3. IMMEDIATE RECOURSE**

Each Obligor waives any right it may have of first requiring any Beneficiary (or the Security Trustee or any agent on their behalf) to proceed against or enforce any other right or security or claim payment from any person before claiming from that Obligor under this paragraph 3. This waiver applies irrespective of any law or any provision of a Loan Note Document to the contrary.

## **4. APPROPRIATIONS**

Until all amounts which may or may become payable by the Obligors under or in connection with the Loan Note Documents have been irrevocably paid in full, each Beneficiary (or the Security Trustee or any agent on its behalf) may:

- 4.1. refrain from applying or enforcing any other monies security or rights held or received by the Beneficiary (or any Security Trustee or any 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 Obligor shall be entitled to the benefit of the same; and
- 4.2. hold in an interest bearing suspense account any monies received from any Obligor or on account of any Obligor's liability under this paragraph 4.

## **5. DEFERRAL OF RIGHTS**

- 5.1. Until all amounts which may be or become payable by the Obligors under or in connection with the Loan Note Documents have been irrevocably paid in full and unless the Security Trustee otherwise directs, no Obligor will exercise any rights which it may have by reason of performance by it of its obligations under the Loan Note Documents:
- 5.1.1. to be indemnified by an Obligor;
  - 5.1.2. to claim any contribution from any other guarantor of any Obligor's obligations under the Loan Note Documents;
  - 5.1.3. to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiaries under the Loan Note Documents or of any other guarantee or security taken pursuant to, or in connection with, the Loan Note Documents by any Beneficiary;
  - 5.1.4. to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under this deed;
  - 5.1.5. to exercise any right of set-off against any Obligor; and/or
  - 5.1.6. to claim or prove as a creditor of any Obligor in competition with any Beneficiary.
- 5.2. If an Obligor receives any benefit, payment or distribution in relation to such rights it shall hold the benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Beneficiaries by the Obligors under or in connection with the Loan Note Documents to be repaid in full on trust for the Beneficiaries and/or the Security Trustee and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with Clause 21 of this Deed.

## **6. ADDITIONAL SECURITY**

This guarantee is an addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Security Trustee or any Beneficiary.

## **7. GUARANTEE LIMITATIONS**

This guarantee does not apply to any liability to the extent that it will result in this guarantee constituting unlawful financial assistance with the meaning of Section 678 of the Companies Act 2006 (or any equivalent and applicable provisions under the laws of the jurisdiction or incorporation of the relevant Obligor).

**SCHEDULE 3**  
**Properties**

*Registered land*

<b>Owning Obligor</b>	<b>Address</b>	<b>Title Number</b>	<b>Land Registry</b>
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*Unregistered land*

<b>Owning Obligor</b>	<b>Full description of address and title</b>
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**SCHEDULE 4**  
**Equipment**

**SCHEDULE 5**  
**Securities**

<b>Name owning Obligor</b>	<b>of</b>	<b>Name of company</b>	<b>Company Number</b>	<b>Number and Class of Shares</b>
WHCO9 Limited		Siamo Azzuri Limited	06372830	430,000 A ordinary shares of £0.01 each
				570,000 B ordinary shares of £0.01 each
				1 C ordinary share of £0.01 each
Siamo Azzuri Limited		Templine Employment Agency Limited	02186417	100 ordinary shares of £1.00 each
		Qommunicate Ltd	07005854	1000 ordinary shares of £1.00 each
				1 A ordinary share of £1.00 each
				1 B ordinary share of £1.00 each
Templine Employment Agency Limited				1 C ordinary share of £1.00 each
		A&A Recruitment Limited	04746838	100 ordinary shares of £1.00 each
		Siamo Recruitment Limited	08078986	1000 ordinary shares of £1.00 each



**SCHEDULE 6**  
**Intellectual Property**

<b>Description</b>	<b>Date</b>	<b>Parties</b>
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**SCHEDULE 7**  
**Documents**

Description	Date	Parties
-------------	------	---------

[Illegible text]  
 [Illegible text]  
 [Illegible text]

[Illegible text]  
 [Illegible text]  
 [Illegible text]

[Illegible text]  
 [Illegible text]  
 [Illegible text]

## SIGNATURES


### Borrower

**SIGNED** and delivered as a deed by  
**WHCO9 LIMITED** acting by  
one director in the presence of:



.....  
Director

### Witness

Signature :   
Name : **Mona Mojtabavi**  
Occupation : *solicitor* **WardHadaway Solicitors**  
Address : **Manchester**

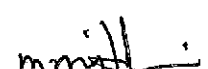
### Companies

**SIGNED** and delivered as a deed by  
**Slamo Azzuri Limited** acting by  
by one director in the presence of:



.....  
Director

### Witness


Signature :   
Name : **Mona Mojtabavi**  
Occupation : *solicitor* **WardHadaway Solicitors**  
Address : **Manchester**

**SIGNED** and delivered as a deed by  
**Templine Employment Agency Limited** acting by  
by one director in the presence of:



.....  
Director

### Witness

Signature :   
Name : **Mona Mojtabavi**  
Occupation : *solicitor* **WardHadaway Solicitors**  
Address : **Manchester**

**SIGNED** and delivered as a deed by  
**Siamo Recruitment Limited** acting by  
by one director in the presence of:



.....  
Director

**Witness**

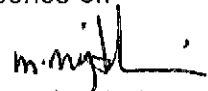
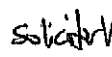
Signature :   
Name : Mona Mojtabavi  
Occupation :  Ward Hadaway Solicitors  
Address : Manchester

**SIGNED** and delivered as a deed by  
**Qommunicate Ltd** acting by  
by one director in the presence of:



.....  
Director

**Witness**

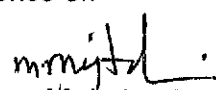
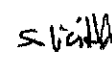
Signature :   
Name : Mona Mojtabavi  
Occupation :  Ward Hadaway Solicitors  
Address : Manchester

**SIGNED** and delivered as a deed by  
**A&A Recruitment Limited** acting by  
by one director in the presence of:



.....  
Director

**Witness**

Signature :   
Name : Mona Mojtabavi  
Occupation :  Ward Hadaway Solicitors  
Address : Manchester

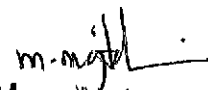
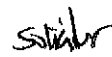
**Security Trustee**

**SIGNED** and delivered as a deed by  
**Key Capital Partners (Nominees) Limited** acting  
by its duly authorised attorney in the  
presence of:



.....  
Director

**Witness**

Signature :   
Name : Mona Mojtabavi  
Occupation :  Ward Hadaway Solicitors  
Address : Manchester

[illegible]

ANAL. Calcd for  $C_{10}H_{12}O$ : C, 88.10%; H, 11.90%. Found: C, 88.1%; H, 11.9%.

Page 14, and the data  
concerning the "Bridges"  
on column 14.