



**Registration of a Charge**

Company name: **EASYHOTEL UK LIMITED**

Company number: **05018910**



X5KTWH3K

Received for Electronic Filing: **30/11/2016**

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**Details of Charge**

Date of creation: **18/11/2016**

Charge code: **0501 8910 0006**

Persons entitled: **SANTANDER UK PLC**

Brief description: **THE FREEHOLD PROPERTY KNOWN AS EASYHOTEL OLD STREET, 80-86 (EVENS), OLD STREET, LONDON, EC1V 9NN, REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBER NGL422541 THE LEASEHOLD PROPERTY KNOWN AS EASYHOTEL CROYDON, PART GROUND FLOOR AND PART FLOORS 4 TO 8, ALICO HOUSE, 22 ADDISCOMBE ROAD, CROYDON, CR9 5AZ, REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBER SGL745832. THE HERITABLE PROPERTY KNOWN AS EASYHOTEL GLASGOW, 1 HILL STREET, GLASGOW, G3 6RN, REGISTERED AT THE REGISTER OF SCOTLAND WITH TITLE NUMBER GLA207385. THE LEASEHOLD PROPERTY KNOWN AS 81-91 JOHN BRIGHT STREET, BIRMINGHAM, B1 1BL, REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBER WM891206. THE FREEHOLD PROPERTY KNOWN AS EQUITY AND LAW HOUSE, 43, 47, 49, 51 AND 53 CASTLE STREET AND 1-3 HARRINGTON STREET, LIVERPOOL, L2 9UB REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBER MS422235 AND MS502244. THE FREEHOLD PROPERTY KNOWN AS 33 DALE STREET, MANCHESTER, M1 2HE, REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBERS GM96853 AND MAN266517. THE FREEHOLD PROPERTY KNOWN AS 3-5 NORTHGATE STREET, IPSWICH, IP1 3BX, REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBER SK30791.**

**Contains fixed charge(s).**

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

## Authentication of Form

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

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## Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **BIRD & BIRD LLP**



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

Company number: 5018910

Charge code: 0501 8910 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th November 2016 and created by EASYHOTEL UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th November 2016 .

Given at Companies House, Cardiff on 1st December 2016

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**

Date: 18<sup>th</sup> November 2016

- (1) easyHotel UK Limited
- (2) THE COMPANIES LISTED IN SCHEDULE 1
- (3) SANTANDER UK PLC

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COMPOSITE DEBENTURE

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Ref: CBK/JOH/SANUB/0255

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COMPOSITE DEBENTURE dated 18<sup>th</sup> November 2016

**BETWEEN:**

- (1) **easyHotel UK Limited**, a company incorporated in England and Wales with registered number 05018910 having its registered office at Easyhotel House, 80 Old Street, London EC1V 9AZ (the "**Company**");
- (2) **The companies listed in Schedule 1** (The Chargors) (together with the Company the "**Chargors**" and each a "**Chargor**"); and
- (3) **Santander UK plc**, a company incorporated in England and Wales with registered number 02294747 as trustee for the Secured Parties (the "**Security Agent**").

**Recitals**

- A. The Chargors have agreed to provide Security to the Security Agent (as trustee for the Secured Parties) to secure the payment and discharge of the Secured Liabilities.
- B. The Chargors acknowledge there is no agreement, arrangement or understanding between the Finance Parties and the Chargors to the effect that the Secured Liabilities are limited to liabilities incurred in connection with only one or more (but not all) of the transactions between them, and that the Finance Parties have made no representation to that effect.

**This deed witnesses**

**1. Definitions and interpretation**

**1.1 Definitions**

"**Act**" means the Law of Property Act 1925.

"**Administrator**" means an administrator appointed to manage the affairs, business and property of a Chargor pursuant to clause 14.8.

"**Book Debts**" means in relation to each Chargor, all its present and future book and other debts, and monetary claims due or owing to that Chargor, and all Related Rights.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Designated Account**" means the Debt Service Account, the Disposals Account and any other account of a Chargor nominated by the Security Agent and Chargor as a designated account for the purposes of this deed.

"**Derivative Contract**" means, in relation to a Chargor, any master agreement, schedule, transaction, confirmation, novation or other instrument entered into by that Chargor and a counterparty from time to time in connection with protection against or benefit from fluctuation in any rate or price.

"**Equipment**" means, in relation to a Chargor, all its fixed and moveable plant, machinery, tools, vehicles, computers and office and other equipment and the benefit of all related Authorisations, agreements and warranties, and all Related Rights.

**"Excluded Franchise Agreements"** means:

- (a) the franchise agreement dated 13 June 2007 between i.gen hotels GmbH as licensee and the Company (previously easyHotel Limited); and
- (b) the franchise agreement dated 28 January 2008 between Tiamat Limited as franchisee and the Company (previously easyHotel Limited).

**"Excluded Agreement"** means any agreement in which a Chargor has an interest which is excluded from the Security created by Clause 3.3 (*Assignment*) pursuant to Clause 3.6 (*Excluded Assets*).

**"Excluded Relevant Agreements"** means:

- (a) those agreements set out in Schedule 3 of this Debenture; and
- (b) those agreements referred to in paragraph (d) of the definition of "Relevant Agreement".

**"Facility Agreement"** means a facility agreement dated on or around the date of this deed and made between, amongst others, the Company as borrower and the Security Agent as agent, original lender, security agent and original hedge counterparty.

**"Financial Collateral"** has the meaning given to that expression in the Financial Collateral Regulations.

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

**"Investments"** means, in relation to a Chargor, all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by that Chargor, including any:

- (a) dividend, interest or other distribution paid or payable in relation to any of the Investments; and
- (b) right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise,

and all Related Rights,

**"Receiver"** means a receiver appointed pursuant to this Debenture or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and, if the Security Agent is permitted by law to appoint an administrative receiver, includes an administrative receiver.

**"Related Rights"** means, in relation to any asset:

- (a) all rights under any licence, agreement for sale or agreement for lease or other use in respect of all or any part of that asset;

- (b) all rights, easements, powers, benefits, claims, contracts, warranties, remedies, covenants for title, security, guarantees or indemnities in respect of any part of that asset;
- (c) the proceeds of sale of all or any part of that asset; and
- (d) any other monies paid or payable in respect of that asset.

**"Relevant Agreement"** means:

- (a) each agreement specified in Schedule 3;
- (b) the Hedging Agreement;
- (c) each Derivative Contract;
- (d) all other agreements in which a Chargor has an interest (other than any agreement relating to that Chargor's present and future right, title and interest in, or over, any freehold or leasehold property which is not a Property),

including in each case, all Related Rights.

**"Secured Assets"** means all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to this deed (and references to the Secured Assets shall include references to any part of them).

**"Secured Liabilities"** means all present and future monies, obligations and liabilities of each Chargor to the Secured Parties under the Finance Documents whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity now or at any time in the future due, owing or incurred to the Secured Parties.

**"Secured Party"** means a Finance Party, a Receiver or a Delegate.

**"Security Financial Collateral Arrangement"** has the meaning given to that expression in the Financial Collateral Regulations.

**"Security Period"** means the period starting on the date of this deed and ending on the date on which the Security Agent is satisfied that:

- (a) all of the Secured Liabilities have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Chargor.

## **1.2 Construction**

1.2.1 Unless a contrary intention appears, all defined terms in the Facility Agreement shall have the same meaning in this deed.

1.2.2 Unless a contrary intention appears, any reference in this Debenture to:



- (a) this **deed** or this **Debenture** is a reference to this Debenture as amended, varied, novated, supplemented and replaced from time to time;
- (b) a **Chargor**, the **Security Agent** or any other **Secured Party** includes any one or more of its assigns, transferees and successors in title (in the case of a Chargor, so far as any such is permitted); and
- (c) the **Security Agent** or any other **Secured Party** (except for the references in Clause 21 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.
- (d) a document in **agreed form** is a document which is previously agreed in writing by or on behalf of a Chargor and the Security Agent or, if not so agreed, is in the form specified by the Security Agent;
- (e) a reference to **writing** or **written** includes fax but not email;
- (f) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (g) **assets** includes present and future properties, revenues and rights of every description;
- (h) **disposal** includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other **disposal**, whether voluntary or involuntary, and dispose will be construed accordingly;
- (i) any other agreement or instrument is a reference to that other agreement or instrument as amended, novated, supplemented, extended or restated;
- (j) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (k) **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;
- (l) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- (m) 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 of any regulatory, self-regulatory or other authority or organisation;

- (n) a provision of law is a reference to that provision as amended or re-enacted;
- (o) a time of day is a reference to London time; and
- (p) **liabilities** includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present of future, actual or contingent and whether owed jointly or severally or in any other capacity.

1.2.3 The liabilities of the Chargors under this Debenture are joint and several.

### **1.3 Third party rights**

- 1.3.1 Unless expressly provided to the contrary in this Debenture, a person who is not a party to this Debenture has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Debenture.
- 1.3.2 The parties to this Debenture may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Debenture without the consent of any person that is not a party (without prejudice to the terms of any other document between any Chargor and a Finance Party).
- 1.3.3 Any Secured Party or any person described in Clauses 14.5 or 14.8 may, subject to this Clause 1.3 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Debenture which expressly confers rights on it.

### **1.4 Effect as a deed**

This Debenture shall take effect as a deed even if it is signed under hand on behalf of the Security Agent.

### **1.5 Law of Property (Miscellaneous Provisions) Act 1989**

The terms of any agreements or side letters in writing between any parties in relation to the Secured Liabilities are incorporated in this Debenture to the extent required to ensure that any purported disposition of an interest in Land contained in this Debenture is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### **1.6 Clawback**

If the Security Agent (acting reasonably) considers that an amount paid by a Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of that Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

### **1.7 Nature of security over real property**

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

- 1.7.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings that are situated on or form part of that Property at any time;
- 1.7.2 the proceeds of the sale of or any part of that Property and any other monies paid or payable in respect of or in connection with that Property;
- 1.7.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of a Chargor in respect of that Property, and any monies paid or payable in respect of those covenants; and
- 1.7.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

#### **1.8 Perpetuity period**

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

#### **1.9 Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

#### **1.10 Facility Agreement precedence**

The Chargors and the Security Agent (on behalf of each Secured Party) hereby agree, confirm and acknowledge that, notwithstanding anything to the contrary in any Finance Document:

- 1.10.1 if there is any inconsistency or conflict between any provision of this deed and any provision of the Facility Agreement, the provision of the Facility Agreement shall prevail; and
- 1.10.2 for the purposes of the Finance Documents (including without limitation Clauses 12.1.1 (*Power to remedy*) and 22.1.1 (*Appointment of Attorneys*) and clauses 24.3 (*Other obligations*) and 24.4 (*Misrepresentation*) of the Facility Agreement):
  - (a) no misrepresentation or breach of warranty shall arise under Clause 6 (*Representations and warranties*) unless the facts and/or circumstances giving rise to such misrepresentation and/or breach of warranty would give rise to a misrepresentation and/or breach of warranty under Clause 19 (*Representations*) of the Facility Agreement at the same time;
  - (b) no failure to comply with or breach of any obligation under Clauses 7.2 (*Preservation of Secured Assets*) to 7.5 (*Notices of misrepresentations and breaches*), 7.7 (*Insurance*), 7.9 (*Information*), 7.10 (*Payment of outgoings*), 9.1 (*Maintenance of Equipment*), 8.6 (*Calls on Investments*), 8.8 (*Preservation of Investments*), 9.2 (*Payment of Equipment taxes*), 10.2 (*Preservation of Book Debts*) and 11.1 (*Relevant Agreements*) by any Chargor shall arise unless the facts, circumstances, actions and/or omissions giving rise to a breach of such obligation would also result in a breach by that Chargor of any of its obligations

under Clause 22 (*General Undertakings*) and/or 23 (*Property Undertakings*) of the Facility Agreement; and

- 1.10.3 any waiver or consent given in respect of any provision of the Facility Agreement shall also constitute a waiver or consent (as the case may be) in respect of any relevant provision of this deed.

**2. Covenant to pay**

- 2.1 The Chargors covenant with the Security Agent and the other Secured Parties that they will on demand pay and discharge the Secured Liabilities when due.
- 2.2 Each Chargor acknowledges to the Security Agent that the amount secured by this deed is the full amount of the Secured Liabilities.

**3. Creation of Security**

**3.1 Legal Mortgage**

As a continuing security for the payment and discharge of the Secured Liabilities, each Chargor with full title guarantee charges to the Security Agent, by way of first legal mortgage, each Property set opposite its name in Schedule 2.

**3.2 Fixed Charges**

Subject to Clause 3.6 (*Excluded Assets*), as a continuing security for the payment and discharge of the Secured Liabilities, each Chargor with full title guarantee charges to the Security Agent by way of first fixed charge:

- 3.2.1 all its present and future right, title and interest in and to the Properties;
- 3.2.2 all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
- 3.2.3 all its present and future right, title and interest in and to licences, consents and authorisations (statutory or otherwise) held or required in connection with that Chargor's business or the use of any Secured Asset, and all rights in connection with them;
- 3.2.4 all its present and future goodwill;
- 3.2.5 all its uncalled capital;
- 3.2.6 all its present and future right, title and interest in and to the Equipment;
- 3.2.7 all its present and future right, title and interest in and to the Intellectual Property;
- 3.2.8 all its present and future right, title and interest in and to the Book Debts;
- 3.2.9 all its present and future right, title and interest in and to the Investments;
- 3.2.10 all its present and future right, title and interest in and to monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together

with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest);

- 3.2.11 all its rights, present and future, to receive all and any monies payable under the Hedging Agreement or any Derivative Contract;
- 3.2.12 all its present and future right, title and interest in any letter of credit issued in its favour;
- 3.2.13 all its present and future right, title and interest in any bill of exchange or other negotiable instrument held by it;
- 3.2.14 any beneficial interest of it in, or claim or entitlement to, any assets of any pension fund;
- 3.2.15 all its present and future right, title and interest in respect of each of the Insurances, including all claims, the proceeds of all claims and all returns of premium in connection with each of the Insurances, to the extent not effectively assigned under clause 3.3; and
- 3.2.16 all its present and future right, title and interest in respect of each Relevant Agreement and all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned pursuant to Clause 3.3 below.

### **3.3 Assignment**

Subject to Clause 3.6 (*Excluded Assets*), as a continuing security for the payment and discharge of the Secured Liabilities, each Chargor with full title guarantee assigns to the Security Agent absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- 3.3.1 all its rights in each of the Insurances, including all claims, the proceeds of all claims and all returns of premium in connection with each of the Insurances; and
- 3.3.2 the benefit of each Relevant Agreement and the benefit of all other agreements, instruments and rights relating the Secured Assets.

### **3.4 Floating Charge**

Subject to Clause 3.6.1 (*Excluded Assets*), as a continuing security for the payment and discharge of the Secured Liabilities, each Chargor with full title guarantee charges to the Security Agent, by way of first floating charge, all its undertaking, property, assets and rights at any time not effectively mortgaged, charged or assigned pursuant to clauses 3.1 to 3.3 inclusive.

### **3.5 Qualifying Floating Charge**

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

### **3.6 Excluded Assets**

There shall be excluded from:

- 3.6.1 the charges created by Clauses 3.2 (*Fixed Charges*) and 3.4 (*Floating Charge*) and the security by way of assignment under Clause 3.3 (*Assignment*), the Global Brand Licence Agreement;
- 3.6.2 the charge created by Clause 3.2 (*Fixed Charges*) and the security by way of assignment under Clause 3.3 (*Assignment*), any present and future right, title and interest in, or over, any freehold or leasehold property which is not a Property;
- 3.6.3 the security by way of assignment under Clause 3.3 (*Assignment*):
  - 3.6.3.1 the Excluded Franchise Agreements;
  - 3.6.3.2 any Relevant Agreement in place as of the date of this deed other than those agreements falling within limbs (a-c) (inclusive) of the definition of Relevant Agreement set out above; and
  - 3.6.3.3 any Relevant Agreement entered into by a Chargor after the date of this deed which:
    - (a) has a value of less than £20,000 per annum; or
    - (b) is an employment contract or relates to benefits for employees,provided always that any Franchise Agreement entered into by a Chargor after the date of this deed shall not be excluded from the security by way of assignment under Clause 3.3 (*Assignment*), or any other Security created by this deed, irrespective of its value; and
- 3.6.4 the charge created by Clause 3.2 (*Fixed Charges*) and the security by way of assignment under Clause 3.3 (*Assignment*), any Permitted Non-Obligor Asset.

### **3.7 Automatic crystallisation of floating charge**

The floating charge created by clause 3.4 shall automatically and immediately (without notice) convert into a fixed charge over all of each Chargor's assets subject to that floating charge (in addition to the circumstances in which the same will occur under general law) if:

- 3.7.1 that Chargor:
  - 3.7.1.1 creates, or attempts to create, without the prior written consent of the Security Agent, Security or a trust in favour of another person over all or any part of the Secured Assets, unless the creation of such Security is otherwise permitted by any Finance Document and such Security is created in accordance with the terms of the relevant Finance Document; or
  - 3.7.1.2 disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised), unless such disposal is otherwise permitted by the Finance Documents and such disposal is carried out in accordance with the terms of the relevant Finance Document;

- 3.7.2 any person levies (or attempts to levy) any distress, attachment, execution or other similar process against all or any part of the Secured Assets; or
- 3.7.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of a Chargor.

### **3.8 Crystallisation of floating charge by notice**

The Security Agent may by notice to a Chargor at any time during the Security Period convert the floating charge created by that Chargor under this Debenture into a fixed charge in respect of any Security Asset specified in that notice if:

- 3.8.1 the Security Agent (acting in accordance with the Finance Documents) has served notice on any Chargor demanding payment or discharge of all or any of the Secured Liabilities;
- 3.8.2 the Security Agent considers that Security Asset to be in danger of being seized, attached, charged, taken possession of or sold under any form of distress, sequestration, execution or other process or otherwise to be in jeopardy; or the Security Agent considers that such conversion is necessary in order to protect the priority of the Transaction Security.

### **3.9 Assets acquired after any floating charge has crystallised**

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

### **3.10 Letter of non-crystallisation**

The Security Agent shall, within 10 Business Days of demand by a Chargor and at the reasonable cost of that Chargor, deliver to that Chargor a letter of non-crystallisation:

- 3.10.1 in relation to such Permitted Non-Obligor Asset(s) as are specified by that Chargor;
- 3.10.2 substantially in the form set out in Schedule 7 (or in such other form as the relevant Chargor and the Security Agent may agree); and
- 3.10.3 addressed to such person for whose benefit a Chargor intends to grant Permitted Non-Obligor Security as specified by that Chargor,

subject always to the Security Agent being satisfied (acting reasonably) that the statements set out in such letter of non-crystallisation are accurate and that the provisions of the Finance Documents relating to the granting of Permitted Non-Obligor Security have been complied with.

## **4. Nature of Security created**

### **4.1 General**

- 4.1.1 The Security created under this Debenture is created:
  - (a) (except in the case of assets which are the subject of a legal mortgage under this Debenture) over all present and future

assets of the kind described which are owned by the relevant Chargor and, to the extent that it does not own those assets, shall extend to any right or interest which it may have in them;

- (b) in favour of the Security Agent as trustee for the Secured Parties in accordance with their respective interests under the Facility Agreement; and
- (c) with full title guarantee

#### **4.2 Security over Derivative Contracts**

The Security created under this Debenture over the Hedging Agreement or any Derivative Contract shall apply net of set-off or combination of accounts owed under, and in accordance with the terms of, that Hedging Agreement or Derivative Contract.

### **5. Liability not discharged**

#### **5.1 Liability of the Chargors**

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

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Secured Parties that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 a Secured Party renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of a Chargor.

#### **5.2 Immediate Recourse**

Each Chargor waives any right it may have to require a Secured Party to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against a Chargor.

### **6. Representations and warranties**

#### **6.1 Each Chargor makes the representations and warranties set out in this clause 6 to the Security Agent**

- 6.1.1 its the sole legal and beneficial owner of the assets that it purports to mortgage, charge or assign under this deed;
- 6.1.2 the Secured Assets are free from any Security other than the Transaction Security;
- 6.1.3 it has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them;



- 6.1.4 there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets;
- 6.1.5 there is no breach of any law or regulation that materially and adversely affects the Secured Assets;
- 6.1.6 no facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use;
- 6.1.7 nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property;
- 6.1.8 no Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of a Chargor or otherwise;
- 6.1.9 there is no prohibition on assignment in any of the Insurances or Relevant Agreement and the entry into this deed by each Chargor does not, and will not, constitute a breach of any of the Insurances, Relevant Agreement or any other agreement or instrument binding on each Chargor or its assets;
- 6.1.10 its obligations under any Relevant Agreement to which it is a party are valid, legally binding and enforceable in accordance with its terms.
- 6.1.11 this deed constitutes and will constitute the legal, valid, binding and enforceable obligations of each Chargor, and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms; and
- 6.1.12
  - 6.1.12.1 the Investments are duly authorised, validly issued, fully paid and are not subject to any option to purchase or similar rights.
  - 6.1.12.2 no constitutional document or an issuer of an Investment, nor any other agreement:
    - (a) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or
    - (b) contains any rights of pre-emption in relation to the Investments.
  - 6.1.12.3 each Chargor has complied with all notices relating to all or any of the Investments received by it pursuant to sections 790D and 790E of the Companies Act 2006; and
  - 6.1.12.4 no warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Investments.
- 6.2 Each of the representations and warranties set out in clause 6.1 are made by each Chargor on the date of this deed and are deemed to be repeated on each date that the Repeating Representations are deemed to be made with reference to the facts and circumstances existing at the time of repetition.

## **7. General covenants**

### **7.1 Negative pledge and disposal restrictions**

No Chargor shall at any time, except with the prior written consent of the Security Agent:

- 7.1.1 create or grant (or purport to create or grant) or permit to subsist any Security on or other interest in, or in relation to, any Secured Asset other than any Security created by this deed; or
- 7.1.2 (whether by a single transaction or a number of related or unrelated transactions and whether voluntarily or involuntarily) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or

unless permitted to do so under the Facility Agreement.

### **7.2 Preservation of Secured Assets**

No Chargor shall do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Security Agent, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

### **7.3 Compliance with laws and regulations**

- 7.3.1 No Chargor shall, without the Security Agent's prior written consent, use or permit the Secured Assets to be used in any way contrary to law,
- 7.3.2 Each Chargor shall:
  - 7.3.2.1 comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
  - 7.3.2.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
  - 7.3.2.3 promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets

### **7.4 Enforcement of rights**

Each Chargor shall use its best endeavours to:

- 7.4.1 procure the prompt observance and performance of the covenants and other obligations imposed on that Chargor's counterparties (including each counterparty in respect of a Relevant Agreement and each insurer in respect of any of the Insurances); and

- 7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Security Agent may require from time to time.

## **7.5 Notice of misrepresentation and breaches**

Each Chargor shall, promptly on becoming aware of any of the same, notify the Security Agent in writing of:

- 7.5.1 any representation or warranty set out in clause 6 which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 7.5.2 any breach of any covenant set out in this deed.

## **7.6 Title documents**

Each Chargor shall as so required by the Security Agent, deposit with the Security Agent and the Security Agent shall, for the duration of this deed be entitled to hold:

- 7.6.1 all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Chargors (and if these are not within the possession or control of the Chargors, each Chargor undertakes to obtain possession of all these deeds and documents of title other than those deeds and documents of title held at the applicable Land Registry);
- 7.6.2 all of the Insurances and any other insurance policies relating to any of the Secured Assets that a Chargor is entitled to possess;
- 7.6.3 all deeds and documents of title (if any) relating to the Book Debts as the Security Agent may specify from time to time; and
- 7.6.4 copies of all the Relevant Agreements, certified to be true copies by either a director of the relevant Chargor or by the Company's solicitors.

## **7.7 Insurance**

- 7.7.1 Each Chargor shall:
  - 7.7.1.1 take all reasonable steps to preserve and enforce its rights and remedies under or in respect of its Insurances that are required to be maintained pursuant to the Facility Agreement; and
  - 7.7.1.2 supply to the Security Agent on request copies of each of its Insurances together with the current applicable premium receipts.

## **7.8 Notices to be given by the Chargors**

Each Chargor shall:

- 7.8.1 on the execution of this deed:
  - 7.8.1.1 give notice to each counterparty to a Relevant Agreement (other than an Excluded Relevant Agreement) in the form set out in Part 1 of Schedule 4; and

- 7.8.1.2 use reasonable endeavours to procure that each counterparty provides to the Security Agent within 5 Business Days an acknowledgement of the notice in form set out in Part 2 of Schedule 4;
- 7.8.2 when requested by the Security Agent after the occurrence of an Event of Default which is continuing:
  - 7.8.2.1 give notice to each counterparty to a Relevant Agreement (other than an Excluded Agreement) which has not previously been notified under clause 7.8.1 above in the form set out in Part 1 of Schedule 4; and
  - 7.8.2.2 use reasonable endeavours to procure that each counterparty provides to the Security Agent within 5 Business Days an acknowledgement of the notice in form set out in Part 2 of Schedule 4;
- 7.8.3 on the execution of this deed:
  - 7.8.3.1 give notice to each insurer under each of the Insurances in the form set out in Part 1 of Schedule 5; and
  - 7.8.3.2 use reasonable endeavours to procure that each insurer provides to the Security Agent within 5 Business Days an acknowledgement of the notice in form set out in Part 2 of Schedule 5; and
- 7.8.4 on the execution of this deed:
  - 7.8.4.1 give notice to each bank, financial institution or other person (other than any Secured Party) with whom that Chargor holds an account (including each Designated Account) in the form set out in Part 1 of Schedule 6; and
  - 7.8.4.2 use reasonable endeavours to procure that each bank, financial institution or other person provides to the Security Agent within 5 Business Days an acknowledgement of the notice in form set out in Part 2 of Schedule 6.

## **7.9 Information**

Each Chargor shall:

- 7.9.1 give the Security Agent such information concerning the location, condition, use and operation of the Secured Assets as the Security Agent may require.
- 7.9.2 permit any persons designated by the Security Agent and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- 7.9.3 promptly notify the Security Agent in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in

each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Security Agent's prior approval, implement those proposals at its own expense.

#### **7.10 Payment of outgoings**

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

### **8. Investments covenants**

#### **8.1 Deposit of title documents**

##### **8.1.1 Each Chargor shall:**

8.1.1.1 on the execution of this deed, deliver to the Security Agent, or as the Security Agent may direct, all stock or share certificates and other documents of title or evidence of ownership relating to any Investments owned by it at that time; and

8.1.1.2 on the purchase or acquisition by it of Investments after the date of this deed, deposit with the Security Agent, or as the Security Agent may direct, all stock or share certificates and other documents of title or evidence of ownership relating to those Investments.

##### **8.1.2 At the same time as depositing documents with the Security Agent, or as the Security Agent may direct, in accordance with clause 8.1.1, each Chargor shall also deposit with the Security Agent, or as the Security Agent may direct:**

8.1.2.1 all stock transfer forms relating to the relevant Investments duly completed and executed by or its behalf, but with the name of the transferee, the consideration and the date left blank; and

8.1.2.2 any other documents (in each case duly completed and executed by or on behalf of that Chargor) that the Security Agent may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments,

so that the Security Agent may, at any time and without notice to the Chargors, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration.

#### **8.2 Nominations**

8.2.1 Each Chargor shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated:

8.2.1.1 does not exercise any rights in respect of any Investments without the prior written approval of the Security Agent; and

8.2.1.2 immediately on receipt by it, forward to the Security Agent all communications or other information received by it in respect of any Investments for which it has been so nominated.

8.2.2 No Chargor, during the Security Period, shall exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

### **8.3 Pre-emption rights and restrictions on transfer**

Each Chargor shall:

8.3.1 use reasonable endeavours to obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Investments, for the transfer of the Investments to the Security Agent or its nominee, or to a purchaser on enforcement of the security constituted by this deed; and

8.3.2 in the case of shares held by that Chargor in its wholly-owned Subsidiary, procure, or in the case of any other shares held by that Chargor which are subject to the Security created by this deed, use reasonable endeavours to procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer of the Investments in any manner that the Security Agent may require in order to permit the transfer of the Investments to the Security Agent or its nominee, or to a purchaser on enforcement of the security constituted by this deed.

### **8.4 Dividends and voting rights before enforcement**

8.4.1 Before the security constituted by this deed becomes enforceable, each Chargor may:

8.4.1.1 retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Security Agent or any of its nominees, the Security Agent will hold all those dividends, interest and other monies received by it for that Chargor and will pay them to that Chargor promptly on request;

8.4.1.2 exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Security Agent or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:

(a) it shall not do so in any way that would breach any provision of the Facility Agreement or this deed or for any purpose inconsistent with the Facility Agreement or this deed; and

(b) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Security Agent's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Security Agent's security under this deed.

8.4.2 Each Chargor shall indemnify the Security Agent against any loss or liability incurred by the Security Agent (or its nominee) as a consequence of the Security Agent (or its nominee) acting in respect of the Investments at the direction of a Chargor.

8.4.3 The Security Agent shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Security Agent considers prejudicial to, or impairing the value of, the security created by this deed.

## **8.5 Dividends and voting rights after enforcement**

8.5.1 Each Chargor appoints the Security Agent (or its nominee) as its proxy to exercise all voting rights in respect of the Investments with effect from the date on which the security constituted by this deed has become enforceable to the extent that those Investments remain registered in its name.

8.5.2 After the security constituted by this deed has become enforceable:

8.5.2.1 all dividends and other distributions paid in respect of the Investments and received by a Chargor shall be held by that Chargor on trust for the Security Agent and immediately paid into a Designated Account or, if received by the Security Agent, shall be retained by the Security Agent; and

8.5.2.2 all voting and other rights and powers attaching to the Investments shall be exercised by, or at the direction of, the Security Agent and each Chargor shall, and shall procure that its nominees shall, comply with any directions the Security Agent may give, in its absolute discretion, concerning the exercise of those rights and powers; and

## **8.6 Calls on Investments**

Notwithstanding the security created by this deed, each Chargor shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. Each Chargor acknowledges that the Security Agent shall not be under any liability in respect of any such calls, instalments or other payments, however if a Chargor fails to make payment of any calls or other payments that may be or become due in respect of any of its Investments, the Security Agent (or nominee) may make such payment on behalf of that Chargor, in which case the sums paid by the Security Agent (or its nominee) shall be reimbursed by that Chargor to the Security Agent on demand.

## **8.7 No alteration of constitutional documents or rights attaching to Investments**

No Chargor, without the prior written consent of the Security Agent, amend, or agree to the amendment of:

8.7.1 the memorandum or articles of association, or any other constitutional documents, of any issuer of the Investments that is not a public company if it could reasonably be expected to materially and adversely affect the interests of the Secured Parties under the Finance Documents; or

- 8.7.2 the rights or liabilities attaching to, or conferred by, all or any of the Investments.

**8.8 Preservation of Investments**

Each Chargor shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of the Investments that is not a public company shall not:

- 8.8.1 consolidate or subdivide any of the Investments, or re-organise, exchange, repay or reduce its share capital in any way;
- 8.8.2 issue any new shares or stock; or
- 8.8.3 refuse to register any transfer of any of the Investments that may be lodged with it for registration by, or on behalf of, the Security Agent or a Chargor in accordance with this deed.

**8.9 Investments information**

Each Chargor shall, promptly following receipt, send to the Security Agent copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments.

**8.10 Compliance with requests for information**

Each Chargor shall promptly copy to the Security Agent and comply with all requests for information which are made under the Companies Act 2006 (including, without limitation, under sections 790D, 790E and 793 of the Companies Act 2006) relating to all or any part of the Secured Assets. If it fails to do so, the Security Agent may elect to provide such information as it may have on behalf of the Chargors.

**9. Equipment covenants**

**9.1 Maintenance of Equipment**

Each Chargor shall:

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

where failure to do so would have a Material Adverse Effect.



**9.2 Payment of Equipment taxes**

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

**9.3 Notice of charge**

9.3.1 Each Chargor shall, if so requested by the Security Agent, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF CHARGE

This [DESCRIBE ITEM] and all additions to it [and ancillary equipment] are subject to a fixed charge dated [DATE] in favour of [SECURITY AGENT]."

9.3.2 No Chargor shall, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 9.3.1.

**10. Book Debts covenants**

**10.1 Realising Book Debts**

10.1.1 Each Chargor shall;

10.1.1.1 collect in and realise all Book Debts in a prudent manner;

10.1.1.2 pay the proceeds of the Book Debts into an Account as soon as reasonably practicable following receipt,

and in each case other than as permitted pursuant to the Facility Agreement.

10.1.2 No Chargor shall, without the prior written consent of the Security Agent, withdraw any amounts standing to the credit of any Designated Account, other than as permitted pursuant to the Facility Agreement.

10.1.3 Each Chargor shall, if called on to do so by the Security Agent, execute a legal assignment of the Book Debts to the Security Agent on such terms as the Security Agent may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

**10.2 Preservation of Book Debts**

No Chargor shall (except as provided by clause 10.1 or with the prior written consent of the Security Agent) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

**10.3 Exercise of rights after enforcement**

After the security constituted by this deed has become enforceable the Security Agent shall be entitled to withdraw, apply, transfer or set-off any or all of the credit balance from time to time of any Account in or towards payment or other satisfaction or all or part of the Secured Liabilities.

**11. Relevant Agreements covenants**

**11.1 Relevant Agreements**

- 11.1.1 Each Chargor shall, unless the Security Agent agrees otherwise in writing, comply with the terms of any Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets (other than the Insurances).
- 11.1.2 Each Chargor shall take all reasonable and practicable steps to preserve and enforce its rights in and remedies under or in respect of its Relevant Agreements.
- 11.1.3 No Chargor shall, unless the Security Agent agrees otherwise in writing:
  - 11.1.3.1 amend or vary or agree to any change in, or waive any requirement of;
  - 11.1.3.2 settle, compromise, terminate, rescind or discharge (except by performance); or
  - 11.1.3.3 abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty to a Relevant Agreement or other person in connection with,

any Relevant Agreement or any other document, agreement or arrangement comprising the Secured Assets (other than the Insurances).

**11.2 After the security constituted by this deed has become enforceable:**

- 11.2.1 the Security Agent may exercise (without any further consent or authority on the part of any Chargor and irrespective of any direction given by any Chargor) any Chargor's rights and remedies (including direction of any payments to the Security Agent) under or in respect of any Relevant Agreement to which that Chargor is a party; and
- 11.2.2 each Chargor shall hold any payment that it receives in respect of its Relevant Agreement on trust for the Security Agent, pending payment to the Security Agent for application in accordance with the Facility Agreement.

**12. Powers of the Security Agent**

**12.1 Power to remedy**

- 12.1.1 The Security Agent shall be entitled (but shall not be obliged) to remedy, at any time, a breach by a Chargor of any of its obligations contained in this deed.
- 12.1.2 Each Chargor irrevocably authorises the Security Agent and its agents to do all things that are necessary or desirable for that purpose.
- 12.1.3 Any monies expended by the Security Agent in remedying a breach by a Chargor of its obligations contained in this deed shall be reimbursed by the Chargors to the Security Agent on a full indemnity basis and shall carry interest in accordance with clause 20.1.

**12.2 Exercise of rights**

- 12.2.1 The rights of the Security Agent under clause 13.1 are without prejudice to any other rights of the Security Agent under this deed.
- 12.2.2 The exercise of any rights of the Security Agent under this deed shall not make the Security Agent liable to account as a mortgagee in possession.

**12.3 Power to dispose of chattels**

- 12.3.1 At any time after the security constituted by this deed has become enforceable, the Security Agent or any Receiver may, as agent for a Chargor, dispose of any chattels or produce found on any Property.
- 12.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 12.3.1, the Chargors shall indemnify the Security Agent and any Receiver against any liability arising from any disposal made under clause 12.3.1.

**12.4 Security Agent has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Security Agent in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

**12.5 Conversion of currency**

- 12.5.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Security Agent may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 12.5) from their existing currencies of denomination into any other currencies of denomination that the Security Agent may think fit.
- 12.5.2 Any such conversion shall be effected at the Security Agent's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- 12.5.3 Each reference in this clause 12.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

**12.6 New accounts**

- 12.6.1 If the Security Agent receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Security Agent may open a new account for a Chargor in the Security Agent's books. Without prejudice to the Security Agent's right to combine accounts, no money paid to the credit of a Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- 12.6.2 If the Security Agent does not open a new account immediately on receipt of the notice, or deemed notice, under clause 12.6.1, then, unless the Security

Agent gives express written notice to the contrary to the Company, all payments made by the Chargors to the Security Agent shall be treated as having been credited to a new account of the relevant Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Security Agent.

#### **12.7 Indulgence**

The Security Agent may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with a Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this deed or to the liability of a Chargor for the Secured Liabilities.

#### **12.8 Appointment of an Administrator**

12.8.1 The Security Agent may, without notice to the Chargors, appoint any one or more persons to be an Administrator of a Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

12.8.2 Any appointment under this clause 12.8 shall:

12.8.2.1 be in writing signed by a duly authorised signatory of the Security Agent; and

12.8.2.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

12.8.2.3 The Security Agent may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 12.8 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

#### **13. When security becomes enforceable**

##### **13.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall be enforceable at any time at which an Event of Default is continuing.

##### **13.2 Discretion**

After the security constituted by this deed has become enforceable, the Security Agent may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

#### **14. Enforcement of security**

##### **14.1 Enforcement powers**

14.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

14.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 14.1.

14.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

#### **14.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Security Agent and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of a Chargor, to:

14.2.1 grant a lease or agreement to lease;

14.2.2 accept surrenders of leases; or

14.2.3 grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

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

#### **14.3 Access on enforcement**

14.3.1 At any time at which an Event of Default is continuing, the Chargors will allow the Security Agent or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Security Agent or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargors for, or by any reason of, that entry.

14.3.2 At all times, each Chargor must use reasonable endeavours to allow the Security Agent or its Receiver access to any premises for the purpose of clause 15.3(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

#### **14.4 Prior Security**

14.4.1 At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Security Agent may:

14.4.1.1 redeem that or any other prior Security;

14.4.1.2 procure the transfer of that Security to it; and

14.4.1.3 settle and pass any account of the holder of any prior Security.

- 14.4.2 The settlement and passing of any such account passed shall, in the absence of any manifest error, be conclusive and binding on each Chargor. All monies paid by the Security Agent to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Security Agent, be due from the Chargors to the Security Agent on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

**14.5 Protection of third parties**

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

- 14.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 14.5.2 whether any power the Security Agent, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 14.5.3 how any money paid to the Security Agent, any Receiver or any Delegate is to be applied.

**14.6 Privileges**

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

**14.7 No liability as mortgagee in possession**

Neither the Security Agent, any Receiver, any Delegate nor any Administrator shall be liable, by reason of entering into possession of a Security Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

**14.8 Conclusive discharge to purchasers**

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

**14.9 Right of appropriation**

- 14.9.1 To the extent that:

14.9.1.1 the Secured Assets constitute Financial Collateral; and

14.9.1.2 this deed and the obligations of the Chargors under it constitute a Security Financial Collateral Arrangement,

the Security Agent shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured

Liabilities in any order that the Security Agent may, in its absolute discretion, determine.

14.9.2 The value of any Secured Assets appropriated in accordance with this clause shall be:

14.9.2.1 in the case of cash, the amount standing to the credit of each of the relevant Chargor's accounts with any bank, financial institution or other person, together with all interest accrued but unposted, at the time the right of appropriation is exercised; and

14.9.2.2 in the case of Investments, the price of those Investments at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Security Agent may select (including independent valuation).

14.9.3 Each Chargor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## **15. Receiver**

### **15.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Chargors, the Security Agent may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

### **15.2 Removal**

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

### **15.3 Remuneration**

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

### **15.4 Power of appointment additional to statutory powers**

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

### **15.5 Power of appointment exercisable despite prior appointments**

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

**15.6 Agent of the Chargors**

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

**16. Powers of Receiver**

**16.1 General**

16.1.1 Any Receiver appointed by the Security Agent under this deed shall, in addition to the powers conferred on it by statute, have the powers set out in clause 16.2 to clause 16.23.

16.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

16.1.3 Any exercise by a Receiver of any of the powers given by clause 16 may be on behalf of the relevant Chargor, the directors of the relevant Chargor (in the case of the power contained in clause 16.16) or itself.

**16.2 Repair and develop Properties**

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

**16.3 Surrender leases**

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that it thinks fit.

**16.4 Employ personnel and advisers**

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

**16.5 Make VAT elections**

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

**16.6 Remuneration**

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



**16.7 Realise Secured Assets**

A Receiver may collect and get in the Secured Assets or any part of them in respect of which it is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

**16.8 Manage or reconstruct a Chargor's business**

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

**16.9 Dispose of Secured Assets**

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

**16.10 Sever fixtures and fittings**

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

**16.11 Sell Book Debts**

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

**16.12 Valid receipts**

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

**16.13 Make settlements**

A Receiver may make any arrangement, settlement or compromise between the relevant Chargor and any other person that it may think expedient.

**16.14 Bring proceedings**

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

**16.15 Improve the Equipment**

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

**16.16 Make calls on Chargor members**

A Receiver may make calls conditionally or unconditionally on the members of the relevant Chargor in respect of uncalled capital with (for that purpose and for the

purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the relevant Chargor on its directors in respect of calls authorised to be made by them.

**16.17 Insure**

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 19, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the relevant Chargor under this deed.

**16.18 Powers under the LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if it had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

**16.19 Borrow**

A Receiver may, for any of the purposes authorised by this clause 16, raise money by borrowing from the Security Agent (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Security Agent consents, terms under which that security ranks in priority to this deed).

**16.20 Redeem prior Security**

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

**16.21 Delegation**

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

**16.22 Absolute beneficial owner**

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

**16.23 Incidental powers**

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

- 16.23.1 may consider desirable or necessary for realising any of the Secured Assets;
- 16.23.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- 16.23.3 lawfully may or can do as agent for the relevant Chargor.

**17. Delegation**

**17.1 Delegation**

The Security Agent or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 21.1).

**17.2 Terms**

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

**17.3 Liability**

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

**18. Application of proceeds**

**18.1 Order of application of proceeds**

All monies received by the Security Agent, a Receiver or a Delegate pursuant to this deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- 18.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Security Agent (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- 18.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Security Agent determines; and
- 18.1.3 in payment of the surplus (if any) to the relevant Chargor or other person entitled to it.

**18.2 Appropriation**

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

**18.3 Suspense account**

All monies received by the Security Agent, a Receiver or a Delegate under this deed:

- 18.3.1 may, at the discretion of the Security Agent, Receiver or Delegate, be credited to any suspense or securities realised account;

18.3.2 shall bear interest, if any, at the rate agreed in writing between the Security Agent and the relevant Chargor; and

18.3.3 may be held in that account for so long as the Security Agent, Receiver or Delegate thinks fit.

## **19. Costs and indemnity**

### **19.1 Transaction expenses**

Each Chargor shall promptly on demand pay the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it (and by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, and perfection of:

19.1.1 this deed and any other documents referred to in this deed; and

19.1.2 any other document required under this deed to be executed after the date hereof,

provided that, at any time when no Default is continuing, the Security Agent shall use reasonable endeavours to obtain estimates and (unless the Security Agent considers it inappropriate for reasons of confidentiality or otherwise) to provide copies of any fee estimates it obtains to the Company, but at no time shall the consent of the Chargors (or any of them) be required prior to the Security Agent incurring such costs.

### **19.2 Amendment costs**

If a Chargor requests an amendment, waiver or consent under this deed, the Chargors shall, within three Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement provided that, at any time when no Default is continuing, the Security Agent shall use reasonable endeavours to obtain estimates and (unless the Security Agent considers it inappropriate for reasons of confidentiality or otherwise) to provide copies of any fee estimates it obtains to the Company, but at no time shall the consent of the Chargors (or any of them) be required prior to the Security Agent incurring such costs.

### **19.3 Enforcement and preservation costs**

Each Chargor shall, within three Business Days of demand, pay to each of the Security Agent and any Receiver or Delegate the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, this deed and with any proceedings instituted by or against the Security Agent and/or that Receiver or Delegate as a consequence of it entering into this deed or enforcing its rights hereunder.

### **19.4 No Double Recovery**

The Security Agent (and any Receiver or Delegate) shall not be entitled to obtain payment or recover from the Chargors more than once in respect of the same cost, expense, liability or loss recoverable under clauses 19.1 to 19.3 (inclusive) above.

### **19.5 Indemnity**

Each Chargor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

- 19.5.1 any failure by a Chargor to comply with its obligations under this Clause 19;
  - 19.5.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - 19.5.3 the taking, holding, protection or enforcement of the Transaction Security;
  - 19.5.4 the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver or Delegate by the Finance Documents or by law;
  - 19.5.5 any default by any Chargor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - 19.5.6 instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this deed provided that, at any time when no Default is continuing, the Security Agent shall use reasonable endeavours to obtain estimates and (unless the Agent considers it inappropriate for reasons of confidentiality or otherwise) to provide copies of any fee estimates it obtains to the Company, but at no time shall the consent of the Chargors (or any of them) be required prior to the Security Agent instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; or
  - 19.5.7 acting as Security Agent or Receiver under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's or Receiver's gross negligence or wilful misconduct).
20. The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

## **21. Further assurance**

### **21.1 Further assurance**

Each Chargor shall, at its own expense, take whatever action the Security Agent or any Receiver may reasonably require for:

- 21.1.1 creating, perfecting or protecting the security intended to be created by this deed;
- 21.1.2 facilitating the realisation of any Secured Asset; or
- 21.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Security Agent or any Receiver in respect of any Secured Asset,

including, without limitation (if the Security Agent or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Security Agent or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **22. Power of attorney**

### **22.1 Appointment of attorneys**

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

22.1.1 that Chargor is required to execute and do under this deed and has failed to execute or do; or

22.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Security Agent, any Receiver or any Delegate at any time at which a Default is continuing.

### **22.2 Ratification of acts of attorneys**

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

## **23. Release**

Subject to clause 31.3, on the expiry of the Security Period or in accordance with Clause 27.2 (*Release of security*) of the Facility Agreement (but not otherwise), the Security Agent shall, at the request and cost of the Chargors, enter into any document and do all such other things which are reasonably required to:

23.1.1 release the Secured Assets from the security constituted by this deed; and

23.1.2 reassign the Secured Assets to the relevant Chargor.

## **24. Assignment and transfer**

### **24.1 Assignment by Security Agent**

24.1.1 At any time, without the consent of the Chargors, the Security Agent may assign or transfer any or all of its rights and obligations under this deed.

24.1.2 The Security Agent may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargors, the Secured Assets and this deed that the Security Agent considers appropriate.

### **24.2 Assignment by Chargors**

No Chargor may assign any of its rights, or transfer any of its rights or obligations, under this deed.

**25. Set-off**

**25.1 Security Agent's right of set-off**

The Security Agent may set off any matured obligation due from a Chargor under the Finance Documents (to the extent beneficially owned by the Security Agent, whether in its capacity as Security Agent or otherwise) against any matured obligation owed by the Security Agent to that Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**25.2 No obligation to set off**

The Security Agent is not obliged to exercise its rights under clause 24.1. If, however, it does exercise those rights it must promptly notify the relevant Chargor of the set-off that has been made.

**25.3 Exclusion of Chargor's right of set-off**

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

**26. Amendments, waivers and consents**

**26.1 Amendments**

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

**26.2 Waivers and consents**

26.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

26.2.2 A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Security Agent shall be effective unless it is in writing.

**26.3 Rights and remedies**

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

**27. Severance**

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

**28. Counterparts**

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed. Delivery of a counterpart of this deed by email attachment shall be an effective mode of delivery.

**29. Notice of charge or assignment**

This deed constitutes notice in writing to each Chargor of any charge or assignment of a debt owed by that Chargor to any other Chargor.

**30. Third party rights**

**30.1 Third party rights**

30.1.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

30.1.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

**31. Further provisions**

**31.1 Independent security**

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

**31.2 Continuing security**

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

**31.3 Discharge conditional**

Any release, discharge or settlement between the Chargors and the Security Agent shall be deemed conditional on no payment or security received by the Security Agent in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded



pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

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

#### **31.4 Certificates**

A certificate or determination by the Security Agent as to any amount for the time being due to it from a Chargor under this deed and the Facility Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

#### **31.5 Consolidation**

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

#### **31.6 Small company moratorium**

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

- 31.6.1 an event under this deed which causes any floating charge created by this deed to crystallise;
- 31.6.2 an event under this deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by a Chargor; or
- 31.6.3 a ground under this deed for the appointment of a Receiver.

#### **32. Notices**

##### **32.1**

- 32.1.1 Any notice or other communication to be served under or in connection with this deed shall be made in accordance with the Facility Agreement and those clauses are incorporated into this deed in full as if set out in full in this deed, with references to "this Agreement" being treated as references to this deed.
- 32.1.2 All communications and documents made in connection with this deed from the Chargors shall be sent through the Company and all communications and documents to the Chargors may be sent through the Company.
- 32.1.3 Any communication or document made through or delivered to the Company in accordance with this clause 30 shall be deemed to have been made by or delivered to each Chargor.

**32.2 Service of proceedings**

This clause 30 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**32.3 No notice by email**

A notice or other communication given under or in connection with this deed is not valid if sent by email.

**33. Governing law and jurisdiction**

**33.1 Governing law**

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

**33.2 Jurisdiction**

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

**33.3 Other service**

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

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

**SCHEDULE 1**

**Chargors**

<b>Name of Chargor</b>	<b>Registered number (or equivalent, if any)</b>
the Company	05018910
easyHotel plc	09035738

**SCHEDULE 2****Property****Registered Property**

<b>Owner</b>	<b>Address of Property</b>
easyHotel UK Limited	The freehold property known as easyHotel Old Street, 80-86 (evens), Old Street, London, EC1V 9NN, registered at the Land Registry with title number NGL422541
easyHotel UK Limited	The leasehold property known as easyHotel Croydon, part ground floor and part floors 4 to 8, Alico House, 22 Addiscombe Road, Croydon, CR9 5AZ, registered at the Land Registry with title number SGL745832
easyHotel UK Limited	The heritable property known as easyHotel Glasgow, 1 Hill Street, Glasgow, G3 6RN, registered at the Registers of Scotland with title number GLA207385
easyHotel UK Limited	The leasehold property known as 81-91 John Bright Street, Birmingham, B1 1BL, registered at the Land Registry with title number WM891206
easyHotel UK Limited	The freehold property known as Equity and Law House, 43, 47, 49, 51 and 53 Castle Street and 1-3 Harrington Street, Liverpool, L2 9UB, registered at the Land Registry with title numbers MS422235 and MS502244
easyHotel UK Limited	the freehold property known as 33 Dale Street, Manchester, M1 2HE, registered at the Land Registry with title numbers GM96853 and MAN266517
easyHotel UK Limited	The freehold property known as 3-5 Northgate Street, Ipswich, IP1 3BX, registered at the Land Registry with title number SK30791

**Unregistered Property**

None

### **SCHEDULE 3**

#### **Relevant Agreements**

1. A franchise agreement originally dated 24 December 2007 between DanZep Hotels B.V. as licensee and easyHotel Limited (now EasyHotel UK Limited) as licensor, as varied by a deed of variation dated 21 May 2010 and as amended on 29 May 2013 and 17 December 2015 in relation to a hotel located in Amsterdam, a hotel located in The Hague and a hotel located in Rotterdam.
2. A franchise agreement dated 14 December 2015 between easyHotel Schweiz AG as licensee and easyHotel UK Limited as licensor in relation to a hotel located in Basel.
3. A franchise agreement dated 17 July 2006 between MedScan Kft. as licensee and easyHotel Limited (now Easyhotel UK Limited) as licensor in relation to a hotel located in Budapest.
4. A franchise agreement dated 26 April 2006 between Isithmar Budget Hotels FZE as licensee and easyHotel Limited (now Easyhotel UK Limited) as licensor in relation to a hotel located in Dubai.
5. A franchise agreement dated 12 May 2006 between Peyton limited as licensee and easyHotel Limited (now Easyhotel UK Limited) as licensor in relation to a hotel located in London Earls Court.
6. A franchise agreement dated 12 January 2016 between Parcotel Limited as franchisee and Easyhotel UK Limited as franchisor in relation to a hotel located in Edinburgh.
7. A franchise agreement dated 4 October 2007 between Eclipse Hotels Limited as franchisee and easyHotel Limited (now Easyhotel UK Limited) as franchisor in relation to a hotel located in London Heathrow.
8. A franchise agreement dated 1 February 2007 between Eclipse Hotel group as licensee and easyHotel Limited (now Easyhotel UK Limited) as licensor in relation to a hotel located in London Luton.
9. A franchise agreement dated 23 July 2008 between Fontskill Limited as franchisee and easyHotel Limited (now Easyhotel UK Limited) as franchisor in relation to a hotel located in London Paddington.
10. A franchise agreement dated 4 May 2006 between Shiraz Boghani and Bashir Nathoo as licensee and easyHotel Limited (now Easyhotel UK Limited) as licensor in relation to a hotel located in London Victoria.
11. A franchise agreement dated 8 February 2008 between E.Hotel JSC as franchisee and easyHotel Limited (now Easyhotel UK Limited) as franchisor in relation to a hotel located in Sofia.
12. A franchise agreement dated 30 October 2015 between easyHotel Schweiz AG as licensee and Easyhotel UK Limited as licensor in relation to a hotel located in Zurich.
13. A JCT Standard Building Contract without quantities 2011 for the Property in Birmingham dated 28 October 2016 between The Shaylor Group and easyHotel UK Limited.

- 14 A JCT Standard Building Contract without quantities 2011 for the Property in Liverpool dated 20 July 2016 between Styles & Wood and easyHotel UK Limited.
- 15 A JCT Standard Building Contract without quantities 2011 for the Property in Manchester dated 20 July 2016 between Styles & Wood and easyHotel UK Limited.

#### **SCHEDULE 4**

##### **Notice and acknowledgement - Relevant Agreement**

###### **Form of notice**

[On the letterhead of the relevant Chargor]

[NAME OF COUNTERPARTY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [CHARGORS] and [SECURITY AGENT]**

We refer to the [DESCRIBE RELEVANT AGREEMENT] (Contract).

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have [charged **OR** assigned, by way of security,] to [SECURITY AGENT] (Security Agent) all our rights in respect of the Contract.

We confirm that:

- We will remain liable under the Contract to perform all the obligations assumed by us under the Contract.
- None of the Security Agent, any delegate appointed by the Security Agent or any receiver will at any time be under any obligation or liability to you under or in respect of the Contract.

Neither the Debenture nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Contract.

Subject to the above, we will remain entitled to exercise all our rights, powers and discretions under the Contract and you may continue to deal with us in relation to the Contract and give notices under the Contract to us unless and until you receive written notice to the contrary from the Security Agent. Thereafter, all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Security Agent or as it directs and we will cease to have any right to deal with you in relation to the Contract and you must deal only with the Security Agent.

The instructions in this notice may only be revoked or amended with the prior written consent of the Security Agent.

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Security Agent at [ADDRESS OF SECURITY AGENT], with a copy to us.

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

Yours faithfully,

.....  
[NAME OF CHARGOR]

**Form of acknowledgement**

*[On the letterhead of the counterparty]*

[NAME OF SECURITY AGENT]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [CHARGOR] and [SECURITY AGENT]**

We confirm receipt from [CHARGOR] (Chargor) of a notice (Notice) dated [DATE] of [a charge **OR** an assignment, by way of security,] of all the Chargor's rights under [DESCRIBE RELEVANT AGREEMENT] (Contract).

[Terms defined in the Notice shall have the same meaning when used in this acknowledgement.]

We confirm that:

- We accept the confirmations and instructions contained in the Notice and agree to comply with the Notice.
- There has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract.
- We will not cancel, avoid, release or otherwise allow the Contract to lapse without giving the Security Agent at least 30 days' prior written notice.
- We have not, as at the date of this acknowledgement, received notice that the Chargor has assigned its rights under the Contract to a third party, or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party.
- The Security Agent will not in any circumstances have any liability in relation to the Contract.



- The Contract shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Security Agent.

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

Yours faithfully,

.....

[COUNTERPARTY]

## **SCHEDULE 5**

### **Notice and acknowledgement - Insurances**

#### **Form of notice**

*[On the letterhead of the relevant Chargor]*

[NAME OF INSURANCE COMPANY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [CHARGORS] and [SECURITY AGENT]**

We refer to the [DESCRIBE INSURANCE POLICY AND SPECIFY ITS POLICY NUMBER] (Policy).

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have [charged **OR** assigned, by way of security,] to [SECURITY AGENT] (Security Agent) all our rights in respect of the Policy (including all claims and all returns of premium in connection with the Policy).

We irrevocably instruct and authorise you to:

- [Note the Security Agent's interest on the Policy as [DESCRIBE NOTATION REQUIRED BY SECURITY AGENT TO BE ENDORSED ON POLICY, FOR EXAMPLE, "FIRST MORTGAGEE"]] and first loss payee **OR** Name the Security Agent on the Policy as co-insured].
- Comply with the terms of any written instructions received by you from the Security Agent relating to the Policy, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions.
- Hold all sums from time to time due and payable by you to us under the Policy to the order of the Security Agent.
- Pay, or release, all monies to which we are entitled under the Policy to the Security Agent, or to such persons as the Security Agent may direct.
- Disclose information in relation to the Policy to the Security Agent on request by the Security Agent.

Neither the Debenture nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Policy.

Subject to the foregoing, you may continue to deal with us in relation to the Policy until you receive written notice to the contrary from the Security Agent. Thereafter, we will cease to have any right to deal with you in relation to the Policy and you must deal only with the Security Agent.

The instructions in this notice may only be revoked or amended with the prior written consent of the Security Agent.

Please confirm that you agree to the terms of this notice and to act in accordance with its provisions by sending the attached acknowledgement to the Security Agent at [ADDRESS OF SECURITY AGENT], with a copy to us.

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

Yours faithfully,

.....

[NAME OF CHARGOR]

#### **Form of acknowledgement**

*[On the letterhead of the insurance company]*

[NAME OF SECURITY AGENT]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [CHARGORS] and [SECURITY AGENT]**

We confirm receipt from [CHARGOR] (Chargor) of a notice (Notice) dated [DATE] of [a charge **OR** an assignment, by way of security,] of all the Chargor's rights under [DESCRIBE INSURANCE POLICY AND ITS NUMBER] (Policy).

[Terms defined in the Notice shall have the same meaning when used in this acknowledgement.]

We confirm that:

- We accept the instructions and authorisations contained in the Notice and agree to comply with the Notice.

- We have noted the Security Agent's interest on the Policy as [DESCRIBE NOTATION REQUIRED BY SECURITY AGENT TO BE ENDORSED ON POLICY, FOR EXAMPLE, "FIRST MORTGAGEE AND FIRST LOSS PAYEE" OR AS "CO-INSURED"].
- There has been no amendment, waiver or release of any rights or interests in the Policy since the date the Policy was issued.
- We will not cancel, avoid, release or otherwise allow the Policy to lapse without giving the Security Agent at least 30 days' prior written notice.
- We have not, as at the date of this acknowledgement, received notice that the Chargor has assigned its rights under the Policy to a third party, or created any other interest (whether by way of security or otherwise) in the Policy in favour of a third party.
- The Security Agent will not in any circumstances be liable for the premiums in relation to the Policy.
- The Policy shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Security Agent.

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

Yours faithfully,

.....  
[INSURER]

## **SCHEDULE 6**

### **Notice and acknowledgement - bank account**

#### **Form of notice**

*[On the letterhead of the relevant Chargor]*

**[BANK, FINANCIAL INSTITUTION OR OTHER PERSON]**

**[ADDRESS LINE 1]**

**[ADDRESS LINE 2]**

**[POSTCODE]**

**[DATE]**

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [CHARGORS] and [SECURITY AGENT]**

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have charged, by way of first fixed charge, in favour of [SECURITY AGENT] (the Security Agent) all monies from time to time standing to the credit of the account held with you and detailed below (the Account), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest):

**Name of Account: [NAME OF ACCOUNT]**

**Sort code: [SORT CODE]**

**Account number: [ACCOUNT NUMBER]**

We irrevocably instruct and authorise you to:

- Disclose to the Security Agent any information relating to the Account requested from you by the Security Agent.
- [Comply with the terms of any written notice or instructions relating to the Account received by you from the Security Agent.]
- [Hold all sums from time to time standing to the credit of the Account to the order of the Security Agent.]
- [Pay or release all or any part of the monies standing to the credit of the Account in accordance with the written instructions of the Security Agent.]

[We acknowledge that you may comply with the instructions in this notice without any further permission from us.]

---

<sup>1</sup> Paragraphs in square brackets only to be included in notices relating to Designated Accounts.

[We are not permitted to withdraw any amount from the Account without the prior written consent of the Security Agent.] OR [We are permitted to make withdrawals from the Account until such time as the Lender shall notify you in writing that this permission is withdrawn, whereupon we will not be permitted to withdraw any amounts from the Account without the prior written consent of the Lender.] **[FIRST OPTION TO BE USED FOR DESIGNATED ACCOUNTS; SECOND OPTION FOR OTHER ACCOUNTS]**

[The instructions in this notice may only be revoked or amended with the prior written consent of the Security Agent.]

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

Please [acknowledge receipt of this notice OR confirm that you agree to the terms of this notice and to act in accordance with its provisions] by sending the attached acknowledgement to the Security Agent at [ADDRESS OF SECURITY AGENT], with a copy to us.

Yours faithfully,

Signed.....

[NAME OF CHARGOR]

#### **Form of acknowledgement**

*[On the letterhead of the bank, financial institution or other person]*

[SECURITY AGENT]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [CHARGORS] and [SECURITY AGENT]**

We confirm receipt from [CHARGOR] (the Chargor) of a notice (the Notice) dated [DATE] of a charge (on the terms of the Debenture) over all monies from time to time standing to the credit of the account detailed below (the Account), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest).

We confirm that we<sup>2</sup>:

- Accept the instructions contained in the Notice and agree to comply with the Notice.

---

<sup>2</sup> Paragraph in square brackets only to be included in acknowledgements relating to Designated Accounts.

- [Will not permit any amount to be withdrawn from the Account without your prior written consent.]
- Have not received notice of the interest of any third party in the Account.
- Have neither claimed nor exercised, nor will claim or exercise any security interest, set-off, counter-claim or other right in respect of the Account.

The Account is:

**Name of Account:** [NAME OF ACCOUNT]

**Sort code:** [SORT CODE]

**Account number:** [ACCOUNT NUMBER]

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

Yours faithfully,

Signed.....

[NAME OF BANK, FINANCIAL INSTITUTION OR OTHER PERSON]

**SCHEDULE 7**

**Letter of Non-Crystallisation**

*[To be typed on Security Agent's headed notepaper]*

[address]

[date]

Dear Sirs

**Debenture dated [•] granted by easyHotel plc and easyHotel UK Limited (the "Debenture")**

We refer to the floating charge created by the Debenture in our favour and confirm that:

- (a) we are not aware of any event that has resulted in the crystallisation of the floating charge in accordance with the Debenture; and
- (b) we have not taken any action which has resulted in the crystallisation of the floating charge in accordance with the Debenture.

Yours faithfully

.....  
Signed on behalf of [Security Agent]



Executed as a deed by **easyHotel UK Limited** acting by a *Marie VIELLEDENT* director in the presence of:

)  
)  
)  
)

Signature of witness:

.....  
.....

Name of witness:

..... *HYUNWU KANG* .....

Address:

..... Stephenson Harwood LLP  
..... 1 Finsbury Circus  
..... London  
..... EC2M 7SH .....

Executed as a deed by **easyHotel plc** acting by a *Marie VIELLEDENT* director in the presence of:

)  
)  
)  
)

Signature of witness:

.....  
.....

Name of witness:

..... *HYUNWU KANG* .....

Address:

..... Stephenson Harwood LLP  
..... 1 Finsbury Circus  
..... London  
..... EC2M 7SH .....

Signed for and on behalf of )  
**Santander UK plc** )