



**Registration of a Charge**

Company name: **GAPCAP LIMITED**

Company number: **09080838**



X8X11P6P

Received for Electronic Filing: **20/01/2020**

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**Details of Charge**

Date of creation: **16/01/2020**

Charge code: **0908 0838 0005**

Persons entitled: **INDUSTRIAL LENDING 2  
IL2 (2018)**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) .**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **BERMANS**



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

Company number: 9080838

Charge code: 0908 0838 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 16th January 2020 and created by GAPCAP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th January 2020 .

Given at Companies House, Cardiff on 21st January 2020

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



**Companies House**



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

Dated 16 January 2020

**GAPCAP LIMITED**

**as Assignor**

**INDUSTRIAL LENDING 2 and IL2 (2018)**

**as Assignee**

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**MASTER DEED OF ASSIGNMENT**

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This Deed is made on

16 January

2020

**Between**

- 1 (i) **IL2 (2018)**, a société à responsabilité limitée, incorporated under the laws of Luxembourg, having its registered office at 6 rue Adolphe, L-1116 Luxembourg and registered with the Luxembourg Trade and Companies' Register under number B226060 and (ii) **INDUSTRIAL LENDING 2**, a Luxembourg special limited partnership (société en commandite spéciale), having its registered office at 6 rue Adolphe, L-1116 Luxembourg, Grand Duchy of Luxembourg and registered with the Luxembourg trade and companies register under number B 224981 (together the **Assignee**); and
- 2 **GAPCAP LIMITED** (Registered Company Number 09080838) whose registered office is at 1 Vicarage Lane, London, England, E15 4HF ("**Assignor**")

**Whereas**

- (A) The Assignee and KX Media Capital Limited have entered into (i) a Revolving Credit Facility Agreement (**RCFA**) and (ii) an Eligible Receivables Facility Agreement (**RFA**) with the Assignor, dated on or around the date hereof.
- (B) It has been agreed that the Assignor may enter into certain contracts with its Customers on the terms set out in and in accordance with the terms of the Agreements from time to time (**Customer Contract**). Each Customer Contract shall be the subject of this Deed.
- (C) In consideration of the Assignee agreeing to enter into the Agreements the Assignor has agreed to execute this Deed, whereby the Assignor will assign to the Assignee from time to time its rights (including the right to receive the payments due) under certain Customer Contracts.

**It is agreed**

**1 Definitions and interpretation**

**1.1 In this Deed:**

**Account** has the meaning given to it in clause 4.2

**Agreements** means both the RCFA and the RFA

**Assigned Agreement** has the meaning given to it in clause 3.4

**Assigned Assets** has the meaning given to it in clause 3.4

**Facility Interest Rate** has the meaning given to it in the RFA

**Certificate of Assignment** has the meaning given to it in clause 3.3

**Customer** has the meaning given to it in the Agreements

**Customer Contract** has the meaning given to it in recital (B)

**Counterparty** means a party to an Assigned Agreement other than the Assignor

**Deed** means this master deed of assignment and, where the context so permits, each and every Certificate of Assignment

**Default Rate** means 4% per annum above the Facility Interest Rate from time to time

**Delegate** means any person appointed by the Assignee or any Receiver pursuant to clause 10 (Delegation) and any person appointed as attorney of the Assignee, Receiver or Delegate

**Eligible Receivable** has the meaning given to it in the RFA

**Enforcement Date** means the date on which the Assignee becomes entitled to enforce the Security created by and under this Deed, as set out in clause 8.1

**Event of Default** means any of the following events:

- (a) if any event occurs which results in the termination of the Agreements, or which gives the Assignee the right to terminate the Agreements
- (b) the Assignor breaches any of its obligations under this Deed or any other Finance Document or a representation or warranty given or repeated by the Assignor in any Finance Document is incorrect or
- (c) the Security created by this Deed is at any time in the opinion of the Assignee in jeopardy in any way whatsoever

**Finance Documents** means this Deed and the Agreements together with any other agreement entered into from time to time between the Assignor and the Assignee in connection with the Secured Obligations, or any of them and any document identified as a Finance Document by the Assignee and the Assignor in writing from time to time

**LPA** means the Law of Property Act 1925

**Receiver** means a receiver, receiver and manager or administrative receiver of any or all of the Assigned Assets appointed by the Assignee under clause 9 (Receiver)

**Secured Obligations** has the meaning given to it in clause 2 (Covenant to pay)

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

**Security Period** means the period beginning on the date of this Deed and ending on the date on which the Assignee is satisfied that the Secured Obligations have been irrevocably and unconditionally satisfied in full and all facilities made available by the Assignee under the Agreements have been cancelled

## 1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Deed to:
  - (i) the Assignee, the Assignor or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) Assigned Assets includes present and future revenues and rights of every description (including the right to receive the same);

- (iii) an agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented or restated (however fundamentally) or replaced with the written approval of the Assignee;
  - (iv) a person includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any other entity or body of any description;
  - (v) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (vi) a provision of law is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Deed;
  - (vii) a time of day is a reference to London time;
  - (viii) **sterling** and **£** shall be construed as a reference to the lawful currency of the United Kingdom;
  - (ix) **dispose** includes any sale, lease, licence, transfer or loan.
- (b) Clause and schedule headings are for ease of reference only.
  - (c) Any word importing the singular shall include the plural and vice versa.
  - (d) A term defined in this Deed has the same meaning when used in any notices, acknowledgements or other documents issued under or in connection with this Deed.
- 1.3 If the Assignee considers that an amount paid by the Assignor in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the Assignor or otherwise, that amount shall not be considered to have been irrevocably paid or discharged for the purposes of this Deed.
- 1.4 If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## 2 **Covenant to pay**

The Assignor shall, on demand, pay and discharge to the Assignee the following sums (together the **Secured Obligations**):

- (a) all monies and liabilities now or after the date of this Deed due, owing or incurred by the Assignor to the Assignee whatsoever, in any manner and in any currency or currencies and whether present or future, actual or contingent whether incurred solely or jointly with any other person and whether as principal or surety; and

- (b) all interest accruing on the monies and liabilities in clause 2(a) and all costs, charges and expenses incurred by the Assignee of any kind whatsoever including legal and other professional costs and charges in taking any steps whether by way of legal proceedings or otherwise to enforce any of the provisions of this Deed (such costs, charges and expenses to be payable in all cases on a full indemnity basis and so that any taxation of the Assignee's legal costs charges and expenses shall be on a solicitor and own client basis).

### 3 Assignment

3.1 All Security created by the Assignor under clause 3 or pursuant to any Certificate of Assignment is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;
- (b) granted with full title guarantee; and
- (c) granted in favour of the Assignee.

3.2 The Assignor assigns absolutely to the Assignee:

- (a) the full benefit of each Customer Contract entered into by the Assignor from time to time including, without limitation, each Eligible Receivable, all other book and other debts due to the Assignor and their proceeds under each Customer Contract and all other rights to receive all monies now and hereafter due or to become due to the Assignor under each Customer Contract and all claims, rights and remedies of the Assignor arising under or in connection with each Customer Contract;
- (b) the benefit of all guarantees, indemnities, negotiable instruments, securities or warranties taken or received by the Assignor or in respect of which the Assignor has the benefit in connection with each Customer Contract entered into by the Assignor from time to time; and
- (c) the full benefit of and all its rights, title and interest in and to:
  - (i) the Account;
  - (ii) all monies from time to time credited to, and for the time being standing to the credit of, the Account including all interest from time to time accrued thereon and shall include, where the context requires, any portion of the relevant amount (**Balance**);
  - (iii) the debts represented by the Balance; and
  - (iv) all rights, benefits and proceeds of the Balance.

3.3 The Assignor agrees that, without prejudice to clause 3.2, the execution of a certificate of assignment in substantially the form set out in the schedule or such other form as the Assignee may approve from time to time (**Certificate of Assignment**) shall constitute an absolute assignment by the Assignor of:

- (a) the full benefit of each Customer Contract specified in the appendix to the Certificate of Assignment including, without limitation, the right to receive all monies now and hereafter due or to become due to the Assignor under each Customer Contract specified in the appendix to the Certificate of Assignment and all claims, rights and



remedies of the Assignor arising under or in connection with each Customer Contract specified in the appendix to the Certificate of Assignment;

- (b) the benefit of all guarantees, indemnities, negotiable instruments, securities or warranties taken or received by the Assignor or in respect of which the Assignor has the benefit in connection with each Customer Contract specified in the appendix to the Certificate of Assignment.

3.4 The Customer Contracts and other agreement and instruments assigned to the Assignee pursuant to clauses 3.2, 3.3 and/or a Certificate of Assignment shall be the **Assigned Agreement** and the subject matter of each assignment referred to in clauses 3.2, 3.3 and/or a Certificate of Assignment shall be the **Assigned Assets**.

3.5 To the extent that any assignment in clause 3.2 or 3.3 or pursuant to a Certificate of Assignment is ineffective as an assignment, the Assignor charges by way of first fixed charge the Assigned Assets.

3.6 The Assignor charges by way of first floating charge all the Assigned Assets other than those effectively assigned or charged under clause 3.2, 3.3, 3.5 or a Certificate of Assignment. If (unless permitted in writing by the Assignee or expressly permitted under the terms of the Agreements):

- (a) the Assignor attempts to create any Security over the assets the subject of clause 3.5;
- (b) any person levies or attempts to levy any attachment, execution or other legal process over the assets the subject of clause 3.5;
- (c) any corporate action, legal proceedings or other procedures or steps are taken for the winding up, dissolution, administration or reorganisation of the Assignor,

the floating charge created by this Deed will automatically and immediately without notice be converted into a fixed charge over the relevant assets the subject of clause 3.5, or, in the case of clause 3.6(c), over all of the assets the subject of clause 3.5.

3.7 On the irrevocable and unconditional payment and discharge to the Assignee in full of the Secured Obligations, the Assignee shall at the request of the Assignor assign back to the Assignor such of the Assigned Assets as shall remain after payment and discharge of the Secured Obligations, subject always to the payment of the Assignee's costs associated with such reassignment which shall be paid by the Assignor on demand.

#### **4 Proceeds of Assigned Assets**

4.1 The Assignor shall procure that all proceeds of the Assigned Agreement, including without limitation the proceeds of each Eligible Receivable, shall be paid to the Assignee or as the Assignee may direct from time to time. Until the occurrence of an Event of Default or otherwise directed by the Assignee, the Assignor shall promptly invoice and/or collect all sums due under the Assigned Agreement, and in so doing shall observe good industry practices including in relation to the collection of unpaid sums and provide certified copies of such invoices to the Assignee on request.

4.2 All of the proceeds of the Assigned Assets received by the Assignor, including without limitation the proceeds of each Eligible Receivable, shall be deemed to have been received by it for and on behalf of and as trustee for the Assignee and the Assignor shall if requested to do so by the Assignee pay the same into a separate bank account approved by the

Assignee (**Account**) into which only the proceeds of the Assigned Assets shall be paid and in respect of which the Assignor shall, at the request of the Assignee, provide Security in the form the Assignee may require.

- 4.3 No payments shall be made out of the Account except in favour of the Assignee in satisfaction of any sum hereby covenanted to be paid by the Assignor or otherwise as the Assignee may direct in writing.
- 4.4 Subject to clause 4.5, monies received by the Assignee under this Deed shall be applied against the Secured Obligations as directed by the Assignee.
- 4.5 All monies received by the Assignee, a Receiver or Delegate pursuant to this Deed in relation to a Customer Contract 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) be applied in the following order of priority:
- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Assignee (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 connection with this Deed;
  - (b) in or towards payment of or provision for the Secured Obligations due under the Finance Documents (insofar as they relate to that Customer Contract); and
  - (c) in payment of the surplus (if any) to the Assignor or any other person entitled to it.
- 4.6 Notwithstanding this Deed, the Assignor shall remain fully liable for the Secured Obligations.

## **5 Notice of Assignment**

The Assignee may give notice of assignment of the Assigned Assets at any time.

## **6 Representations and warranties**

- 6.1 The Assignor represents and warrants on the date of this Deed and on each day throughout the Security Period (with reference to the facts and circumstances then existing):
- (a) the Assignor is the sole, absolute and unencumbered legal and beneficial owner of the Assigned Assets and has not assigned, charged, pledged or otherwise encumbered any of the Assigned Assets (other than in favour of the Assignee); and
  - (b) this Deed constitutes the Assignor's legal, valid, binding and enforceable obligations and is an effective and enforceable Security over the Assigned Assets and every part of them; and
  - (c) all actions and authorisations necessary to enable and entitle the Assignor to execute and perform this Deed have been undertaken and obtained and are in full force and effect and will remain in such force and effect at all times during the Security Period;
  - (d) the execution and performance of this Deed will not cause the Assignor to be in breach of any agreements to which it is a party or any applicable law or regulation;
  - (e) in relation to each Assigned Agreement that it constitutes the valid, binding and enforceable obligations of the parties thereto and is in full force and effect and has not been varied or modified in any way, cancelled or avoided and no party is in default;

- (f) the particulars of the Counterparty to the Assigned Agreement are correct in every respect;
- (g) all the requirements of all relevant enactments or regulations for the time being in force have been complied with in relation to the Assigned Agreement;
- (h) no right of action is vested in the Counterparty to the Assigned Agreement in respect of any matter or thing including, but not limited to, any representation, condition, warranty or other express or implied term;
- (i) the Assignor has no knowledge of any fact which would or might prejudice or affect any right, power or ability of the Assignee to enforce any term of any Assigned Agreement;
- (j) each Assigned Agreement is in a form which has been inspected and approved by the Assignee in writing and no other documents evidence the terms of an Assigned Agreement and there are no documents, agreements or arrangements that may affect the operation or enforceability of any Assigned Agreement;
- (k) there has been no variation or termination of an Assigned Agreement or other document, agreements or arrangement comprising the Assigned Assets;
- (l) no Assigned Agreement or other document, agreements or arrangement comprising the Assigned Assets is void, voidable or otherwise unenforceable;
- (m) it is not in breach of its obligations under any Assigned Agreement or other document, agreements or arrangement comprising the Assigned Assets:
  - (i) which is, or would (with the giving of notice of passage of time or both) constitute an event of default (however described) under an Assigned Agreement or other document, agreements or arrangement comprising the Assigned Assets; or
  - (ii) which would entitle a person to terminate or rescind an Assigned Agreement or other document, agreements or arrangement comprising the Assigned Assets;
- (n) there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect an Assigned Asset;
- (o) there is no prohibition on assignment of or granting of Security in any Assigned Agreement; and
- (p) there are no equities in existence between the parties to each Assigned Agreement which may adversely affect the Assignee.

6.2 The Assignor shall, promptly upon becoming aware of any of the same, notify the Assignee in writing of:

- (a) any representation or warranty set out in clause 6.1 which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this Deed.

## **7 Undertakings**

7.1 The Assignor shall not, otherwise than in favour of the Assignee or with the prior written consent of the Assignee and in accordance with and subject to any conditions which the Assignee may attach to such consent:

- (a) create, grant, incur, or permit to subsist any Security over the whole or any part of the Assigned Assets;
- (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner the whole or any part of or any interest in the Assigned Assets;
- (c) create or grant (or purport to create or grant) any interest in any Assigned Asset in favour of a third party;
- (d) or permit or agree to any variation of the rights attaching to the Assigned Assets.

7.2 The Assignor covenants with the Assignee that at all times during the Security Period the Assignor shall:

- (a) in a timely manner perform its obligations (including but not limited to obligations as to maintenance) under each Assigned Agreement, any other agreements or arrangement made between the Assignor and each Counterparty to an Assigned Agreement from time to time;
- (b) not do or refrain from doing anything which may prejudice or adversely affect the Assignee's interest in or to any of the Assigned Assets;
- (c) not do or permit there to be done any act or thing that might depreciate, jeopardise or otherwise prejudice the Security held by the Assignee or diminish the value of any of the Assigned Assets or the effectiveness of the Security created by this Deed;
- (d) not, without the prior written consent of the Assignee, make nor agree to any variation, supplement, waiver, release, termination or novation in respect of any of the Assigned Agreement or any of the obligations under an Assigned Agreement or in respect of any of the Assigned Assets;
- (e) not abandon, waive, dismiss, release or discharge any action, claim or proceeding against any Counterparty or any other person in connection with an Assigned Asset;
- (f) promptly notify the Assignee in writing of any action, claim, notice or demand made by or against it in connection with all or any part of the Assigned Assets together with the Assignor's proposals for settling liquidating, compounding or contesting any such action, claim or demand and shall at the Assignor's own expense implement the proposals which the Assignor directs and otherwise institute continue or defend all proceedings in connection with the Assigned Assets or any part thereof as the Assignee may reasonably require;
- (g) ensure that each Assigned Agreement is in a form which has been inspected and approved by the Assignee in writing;
- (h) provide a certified copy of each Assigned Agreement to the Assignee within 7 days of execution of the same by the Assignor, and immediately upon request by the Assignee from time to time deposit with the Assignee all original documents, instruments and agreements comprising the Assigned Assets;

- (i) give the Assignee such information concerning the Assigned Assets as the Assignee may require;
  - (j) maintain proper accounts in the names of its Customers under the Assigned Agreement showing the amounts paid by and due from such Customers and shall permit full inspection and audit of such accounts by the Assignee when required and will further permit the Assignee or any person authorised by it to take such copies of the relevant accounts and such extracts as it may require;
  - (k) execute and deliver to the Assignee a Certificate of Assignment in favour of the Assignee in respect of any Assigned Agreement entered into by the Assignor from time to time immediately upon being requested to do so by the Assignee;
  - (l) comply with the requirements of any law and regulation relating to or affecting the Assigned Assets or the use of them or any part of them; and
  - (m) obtain and promptly renew from time to time and comply with the terms of all authorisations that are required in connection with the Assigned Assets or their use or that are necessary to preserve, maintain or renew any Assigned Asset.
- 7.3 Without prejudice to the generality of clause 7.2(d), the Assignor shall notify the Assignee immediately in writing if any Assigned Agreement is terminated early for any reason. The Assignor shall pay any termination sum or compensation payment which it receives from the relevant Counterparty to the Assignee immediately on receipt by the Assignor, and shall hold such sum on trust for the Assignee until it has been so paid. The Assignee shall be entitled to retain such sum and to apply it in reduction or satisfaction of the Secured Obligations until the Secured Obligations have been unconditionally and irrevocably paid and discharged in full
- 7.4 If the Assignor fails to comply with any of the undertakings set out in this clause 7 the Assignor shall, if the Assignee so requires, allow (and hereby irrevocably authorises) the Assignee and/or such persons as it shall nominate to take such action on behalf of the Assignor as shall be necessary to ensure that the undertakings are complied with.
- 7.5 The Assignor shall indemnify the Assignee and shall keep the Assignee indemnified on demand against all losses and reasonable costs, charges and expenses properly incurred by the Assignee as a result of or in connection with a breach by the Assignor of its representations, warranties, undertakings or other obligations under this Deed and/or in connection with the exercise by the Assignee of its rights contained in this Deed.

## **8 Enforcement of Security**

### **8.1 When Security is enforceable**

On the occurrence of any Event of Default or at any time after the Assignee shall have demanded payment or discharge of the Secured Obligations, any Security created by and under this Deed is immediately enforceable.

### **8.2 Rights of Assignee**

After the Security constituted by this Deed has become enforceable, the Assignee may, in its absolute discretion, enforce all or any part of the 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 Assigned Assets and, without prejudice to the generality of the foregoing, shall immediately be entitled to put into force and exercise all the rights powers and remedies possessed by it

according to law as assignee of the Assigned Assets and without prejudice to the generality of the foregoing shall have the rights:

- (a) to collect recover compromise settle and give a good discharge for any and all monies and claims for monies for the time being comprised in the Assigned Assets;
- (b) to exercise in relation to the Assigned Assets all such rights as the Assignor then might exercise in relation thereto;
- (c) to apply any or all of the income from the Assigned Assets in or towards the satisfaction of any sum hereby covenanted to be paid by the Assignor to the Assignee;
- (d) to remedy a breach by the Assignor of any of its obligations under this Deed (in which case any monies expended by the Assignee in connection with the same shall be reimbursed by the Assignor to the Assignee on a full indemnity basis and shall carry interest in accordance with clause 17.1;
- (e) to enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- (f) to exercise its rights and powers conferred upon mortgagees by the LPA, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Assigned Assets; and
- (g) to appoint a receiver to all or any part of the Assigned Assets.

### **8.3 Exercise of rights**

The rights of the Assignee under clause 8.2 are without prejudice to any other rights of the Assignee under this Deed.

### **8.4 Access on enforcement**

- (a) At any time after the Enforcement Date, the Assignor will allow the Assignee 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 Assigned Asset and for that purpose to enter on any premises where an Assigned Asset is situated (or where the Assignee or a Receiver reasonably believes an Assigned Asset to be situated) without incurring any liability to the Assignor for, or by any reason of, that entry.
- (b) At all times, the Assignor must use its best endeavours to allow the Assignee or its Receiver access to any premises for the purposes of clause 8.4(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### **8.5 Right of appropriation**

To the extent that the Security created by this Deed constitutes a "security financial collateral arrangement" and the Assigned Assets constitute "financial collateral" for the purpose of the Financial Collateral Arrangements (No 2) Regulations 2003 (**Regulations**), the Assignee shall have the right on giving prior notice to the Assignor, at any time after the Enforcement Date, to appropriate all or any part of those Assigned Assets in or towards discharge of the Secured

Obligations. The parties agree that the value of the appropriated Assigned Assets shall be, in the case of cash, the amount of cash appropriated. For the purpose of Regulation 18(1) of the Regulations, the Assignor agrees that the method of valuation provided for in this clause constitutes a valuation "in a commercially reasonable manner".

#### **8.6 Contingencies**

If the Assignee enforces the Security constituted by or under this Deed at a time when no amounts are due to the Assignee under the Finance Documents but at a time when amounts may or will become so due, the Assignee (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

#### **8.7 Assignee 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 Enforcement Date, be exercised by the Assignee in relation to any of the Assigned Assets whether or not it has taken possession of any Assigned Asset and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

#### **8.8 Mortgagee in possession - no liability**

Neither the Assignee nor any Receiver nor Delegate will be liable, by reason of entering into possession of an Assigned Asset, to account as mortgagee in possession or for any loss on realisation, neglect or for any default or omission for which a mortgagee in possession might otherwise be liable.

#### **8.9 Redemption of prior mortgages**

At any time after the Enforcement Date or after any powers conferred by a Security having priority to this Deed shall have become exercisable, the Assignee may:

- (a) redeem any prior form of Security over any Assigned Asset;
- (b) procure the transfer of that Security to itself; and
- (c) settle and pass the accounts of any holder of a prior Security which once so settled and passed shall be conclusive and binding on the Assignor.

The settlement and passing of any such account shall, in the absence of manifest error, be conclusive and binding on the Assignor. All monies paid by the Assignee to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Assignee, be due from the Assignor to the Assignee on current account and shall bear interest at the Default Rate and be secured as part of the Secured Obligations.

#### **8.10 Statutory powers - general**

- (a) For the purposes of all powers implied by statute, the Secured Obligations shall be deemed to have become due and payable on the date of this Deed.
- (b) The power of sale and other powers conferred by section 101 of the LPA (as varied or extended by this Deed shall, as between the Assignee and a purchaser from the Assignee arise on and be exercisable at any time after the execution of this Deed, but the Assignee shall not exercise such power of sale or other powers until the Security constituted by this Deed has become enforceable.

- (c) Section 93 of the LPA (restricting the right of consolidation) shall not apply to this Deed or the Security constituted by it.
- (d) Section 103 of the LPA (restricting the power of sale) shall not apply to this Deed or the Security constituted by it.
- (e) Each Receiver and Delegate and the Assignee is entitled to all the rights, powers, privileges and immunities conferred by the LPA and the Insolvency Act 1986 on mortgagees and receivers.
- (f) The power to appoint a receiver conferred by this Deed shall be in addition to all statutory and other powers of the Assignee under the Insolvency Act 1986, the LPA or otherwise and such statutory and other powers of the Assignee shall be exercisable without any restrictions the application of which have been disappplied by this Deed.

#### **8.11 Protection of third parties**

- (a) No purchaser, mortgagee or other person dealing with the Assignee, any Receiver or Delegate shall be concerned to enquire:
  - (i) whether any of the Secured Obligations have become due or payable, or remain unpaid or undischarged;
  - (ii) whether any power of the Assignee, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
  - (iii) how any money paid to the Assignee, any Receiver or Delegate is to be applied.
- (b) The receipt of the Assignee 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 Assigned Assets or in making any acquisition in the exercise of their respective powers, the Assignee, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

### **9 Receiver**

#### **9.1 Appointment of Receiver**

- (a)
  - (i) At any time after the Enforcement Date, the Assignee may appoint on or more persons to be a Receiver of all or any part of the Assigned Assets.
  - (ii) At any time, if so requested in writing by the Assignor, without further notice, the Assignee may appoint a Receiver to all or any part of the Assigned Assets as if the Assignee had become entitled under the LPA to exercise the power of sale conferred under the LPA.
  - (iii) The power to appoint a Receiver (whether conferred by this Deed or statute) shall be, and remain, exercisable by the Assignee despite any prior appointment in respect of all or any part of the Assigned Assets.
- (b) Any Receiver appointed under this Deed shall be the agent of the Assignor and the Assignor shall be solely responsible for each of his acts, omissions and defaults and



for his remuneration and liable on each contract and engagement made or entered into by him and in no circumstances whatsoever shall the Assignee be in any way responsible for any act, omission, misconduct, negligence or default of the Receiver. The agency of each Receiver shall continue until the Assignor goes into liquidation and after that, the Receiver shall act as principal and shall not become the agent of the Assignee.

(c) Where the Assignor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986:

- (i) obtaining a moratorium; or
- (ii) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986,

shall not be grounds for appointment of a Receiver.

## **9.2 Removal**

The Assignee may without further notice (subject to section 45 of the Insolvency Act 1986) from time to time remove any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

## **9.3 Powers of Receiver**

### **(a) General**

- (i) In addition to those conferred by the LPA on any Receiver appointed under that Act and on administrative receivers in schedule 1 to the Insolvency Act 1986, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 9.3.
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
- (iii) A Receiver may, in the name of the Assignor:
  - (A) do all other acts and things which he may consider expedient, desirable or necessary for realising any Assigned Asset;
  - (B) exercise in relation to any Assigned Asset all the powers, authorities, rights and things which he would be capable of exercising if he were its absolute beneficial owner; and
  - (C) do all acts and things that he lawfully may or can do as agent for the Assignor.

### **(b) Delegation**

A Receiver may delegate his powers in accordance with clause 10 (Delegation) and all references to Receiver shall, where appropriate include the Delegate.

(c) **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 the Receiver thinks fit. A Receiver may discharge any such person or any such person appointed by the Assignor.

(d) **Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Assignor in relation to any Assigned Asset as he considers expedient.

(e) **Possession**

A Receiver may take immediate possession of, get in and collect any Assigned Asset.

(f) **Receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising any Assigned Asset.

(g) **Deal with Assigned Assets**

A Receiver may, without restriction, sell or vary the terms of or otherwise dispose of or deal with, all or any part of the Assigned Assets without being responsible for loss and any such sale, variation, disposal or dealing may be made on such terms and for such consideration as the Receiver thinks fit.

(h) **Security**

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Assignor and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

(i) **Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Assigned Assets and to use the name of the Assignor for all the purposes set out in this clause 9.

**9.4 Remuneration**

Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the LPA shall not apply to a Receiver appointed under this Deed and the Assignee may from time to time fix the remuneration of any Receiver appointed by it and the remuneration of the Receiver shall be a debt secured by this Deed, which shall be due and payable immediately on its being paid by the Assignee.

## **10 Delegation**

- 10.1 The Assignee and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Assignee and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Assignee and Receiver (as appropriate) may think fit.
- 10.2 The Assignee and any Receiver will not be liable or responsible to the Assignor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any Delegate.

## **11 Effectiveness of Security**

### **11.1 Immediate recourse**

The Assignor waives any right it may have to require the Assignee to enforce any Security or other right or claim any payment from or otherwise proceed against any other person before enforcing this Deed against the Assignor.

### **11.2 Security**

The Security constituted by this Deed:

- (a) shall be in addition to and shall be independent of every other Security which the Assignee may at any time hold for any of the Secured Obligations;
- (b) shall not merge with any prior Security held by the Assignee over the whole or any part of the Assigned Assets; and
- (c) shall remain in full force and effect as a continuing security unless and until the Assignee discharges it in writing.

### **11.3 Assignor's waiver of set-off**

The Assignor waives any present or future right of set-off it may have in respect of the Secured Obligations (including sums payable by the Assignor under this Deed).

### **11.4 Assignee's rights**

The Assignee's rights under this Deed are in addition to and not in substitution for any other Security which the Assignee may now or at any time in the future hold for all or any of the Secured Obligations and may be enforced without the Assignee first having recourse to any such Security and without taking any steps or proceedings against any person.

### **11.5 No further steps or enquiries**

- (a) It shall not be incumbent on the Assignee to take any steps or institute any proceedings for the recovery of the Assigned Assets or any part thereof nor shall the Assignee be answerable for any loss arising from having neglected to take such steps or institute such proceedings.
- (b) The Assignee shall not be obliged to make any enquiry as to the nature or sufficiency of any payment made under an Assigned Agreement or to make any claim or to take any other action to collect any money or enforce any rights or benefits assigned to the

Assignee or to which the Assignee may at any time be entitled under or in connection with this Deed.

#### **11.6 Sums paid not recoverable**

In the event of any circumstances in which further performance of the Agreements becomes impossible or unlawful or is otherwise frustrated, no sums paid by the Assignor to the Assignee under this Deed shall be recoverable by the Assignor.

#### **11.7 Accounts**

(a) If the Assignee has more than one account for the Assignor in its books, the Assignee may at any time after:

- (i) the Security constituted by this Deed has become enforceable; or
- (ii) the Assignee has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Assigned Assets,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account which may be in debit. After making any such transfer, the Assignee shall notify the Assignor of that transfer.

(b) All monies received, recovered or realised by the Assignee in the exercise of any powers conferred by this Deed may, in the Assignee's discretion, be accredited by it to any suspense or impersonal account and may be held in such account so long as the Assignee thinks fit pending the application from time to time of such monies (and any interest thereon) in or towards the discharge of the Secured Obligations.

#### **11.8 No prejudice**

Nothing contained in this Deed is intended to, or shall operate so as to, prejudice or affect any bill, note, guarantee, mortgage, debenture, pledge, charge or other Security of any kind whatsoever which the Assignee may have for the Secured Obligations or any of them or any right, remedy or privilege of the Assignee under this Deed.

#### **11.9 Preservation of rights**

The rights of the Assignee under this Deed, the Security hereby constituted and the Assignor's liability under this Deed shall not be discharged, prejudiced or affected by any act, omission, matter or thing which, but for this provision, might operate to impair, affect or discharge such rights and Security, in whole or in part, including without limitation, and whether or not known to or discoverable by the Assignor, the Assignee or any other person:

- (a) the Assignee 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 person; or
- (b) any Security, guarantee, indemnity, remedy or other right held by or available to the Assignee that is or becomes wholly or partially illegal, void or unenforceable on any ground; or
- (c) any time or waiver granted to or composition with the Assignor or any other person; or

- (d) the taking, variation, compromise, renewal or release of or refusal or neglect to perfect or enforce any rights, remedies or securities against the Assignor or any other person; or
- (e) any legal limitation, disability, incapacity or other circumstances relating to the Assignor or any other person; or
- (f) any amendment or supplement to the Agreements or to any other document or Security; or
- (g) the dissolution, amalgamation, reconstruction or reorganisation of the Assignor or any other person; or
- (h) the unenforceability, invalidity or frustration of any obligations of the Assignor or any other person under the Agreements or under any other document or Security.

## **12 Notice of second charge**

If the Assignee receives notice that the Assignor has assigned, charged or otherwise disposed of any interest in the Assigned Assets or any of them or has attempted to do so, the Assignee shall be entitled to rule off the Account and open new accounts in its books. If, despite being entitled to do so, the Assignee does not open a new account or accounts, it shall nevertheless be deemed to have done so at the time the Assignee received such notice and as from that time all payments made by the Assignor to the Assignee shall, in the absence of any express appropriation by the Assignee, be treated as having been accredited to such new account(s).

## **13 Power of attorney**

13.1 By way of Security the Assignor irrevocably appoints the Assignee, every Receiver and every Delegate separately to be the attorney of the Assignor and in its name, on its behalf and as its act and deed to execute any documents and do any acts and things which:

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

13.2 The Assignor 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 and discretions to in clause 13.1.

13.3 The Assignor shall do or permit there to be done each and every act or thing which the Assignee may from time to time reasonably require to be done for the purposes of enforcing the Assignee's rights under this Deed and shall allow its name to be used as and when required by the Assignee for that purpose.

## **14 Further assurance**

The Assignor shall, at its own expense, take whatever action (including, without limitation, payment of all stamp duties and other registration fees) the Assignee may require for:

- (a) perfecting or protecting the Security intended to be created by this Deed over any Assigned Asset; and

- (b) facilitating the realisation of any Assigned Asset or the exercise of any right, power or discretion exercisable, by the Assignee or any of its or delegates or sub-delegates in respect of any Assigned Asset, including the execution of any transfer, conveyance, assignment or assurance of any property whether to the Assignee or to its nominees, and the giving of any notice, order or direction and the making of any registration, which in any such case, the Assignee may think expedient.

## **15 Remedies, time and indulgence**

### **15.1 Remedies etc cumulative**

The rights, powers and remedies provided by this Deed are cumulative and are not, nor are they to be construed as, exclusive of any powers and remedies provided by law.

### **15.2 No waiver**

- (a) No failure on the part of the Assignee to exercise, or delay on the part of the Assignee in exercising any of the rights, powers and remedies provided by this Deed or by law shall operate as a waiver thereof, nor shall any single or partial waiver preclude any further or other exercise of any such rights, powers and remedies.
- (b) The Assignee may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person with any person not being party to this Deed (whether or not any such person is jointly liable with the Assignor) in respect of the Secured Obligations or of any other Security for them without prejudice either to this Deed or to the liability of the Assignor for the Secured Obligations.

## **16 Provisions severable**

Each of the provisions contained in this Deed shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable under the laws of any jurisdiction, the validity, legality and enforceability of each of the remaining provisions of this Deed under the laws of any jurisdiction shall not in any way be affected, prejudiced or impaired thereby.

## **17 Expenses, indemnity and conversion of currency**

17.1 The Assignor shall pay to, or reimburse, the Assignee, Receiver and Delegate on demand, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Assignee, Receiver or Delegate in connection with:

- (a) this Deed or the Assigned Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Assignee's, Receiver's or Delegate's rights under this Deed;
- (c) taking proceedings for, or recovering, any of the Secured Obligations,

together with interest, which shall accrue and be payable without the need for any demand for payment being made from the date on which the relevant cost, charge, expense, tax or liability arose, until full discharge of the same (whether before or after judgment, liquidation, winding up or administration of the Assignor) at the Default Rate compounded with the unpaid amount at the end of each month.

17.2 The Assignor shall indemnify the Assignee, each Receiver and each Delegate and their respective employees and agents, on a full indemnity basis against any cost, charge, expense, tax, loss, liability or damage incurred by any of them as a result of:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Assigned Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the Security constituted by this Deed; or
- (c) any default or delay by the Assignor in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this clause 17.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

17.3 If a payment is made to the Assignee under this Deed or in respect of an Assigned Asset in a currency (**Payment Currency**) other than the currency in which it is expressed to be payable or a currency of the Assignee's choosing (**Contractual Currency**), the Assignee may convert that payment into the Contractual Currency at the rate at which it (acting reasonably and in good faith) is able to purchase the Contractual Currency with the Payment Currency on or around the date of receipt of the payment and to the extent that the converted amount of the payment falls short of the amount due and payable the Assignor will remain liable for such shortfall and such shortfall shall form part of the Secured Obligations.

## **18 Certificates etc**

A certificate, determination, notification or opinion of the Assignee as to any amount payable under this Deed will be final and binding except in the case of manifest error.

## **19 Assignment and transfer**

### **19.1 Assignment by the Assignor**

The Assignor may not assign any of its rights or transfer any of its obligations under this Deed or enter into any transaction that would result in any of those rights or obligations passing to another person.

### **19.2 Assignment by the Assignee**

- (a) At any time, without the consent of the Assignor, the Assignee may assign or transfer the whole or any part of its rights and/or obligations under this Deed to any person.
- (b) The Assignee may disclose to any actual or proposed assignee or transferee any information about the Assignor, the Assigned Assets and the Finance Documents that the Assignee considers appropriate.

## **20 Contracts (Rights of Third Parties) Act 1999**

Subject to any provision conferring a right on a Receiver or Delegate, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit 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.

## **21 Notices**

### **21.1 Delivery**

All notices or other communications under or in connection with this Deed shall be given in writing or facsimile. Any notice will be deemed to be given as follows:

- (a) if in writing, when delivered; and
- (b) if by facsimile, when received.

However, a notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

### **21.2 Addresses<sup>1</sup>**

- (a) The Assignor's address and facsimile number for notices as at the date of this Deed are:

Address: 1 Vicarage Lane, London, England, E15 4HF

For the attention of: Alex Fenton

or as the Assignor may notify to the Assignee by not less than 5 working days' notice.

- (b) The Assignee's address and facsimile number for notices as at the date of this Deed are:

Address: 6 rue Adolphe, L-1116 Luxembourg

For the attention of: the Directors

With a Copy to

Boost&Co  
15 Crinan Street  
London N1 9SQ  
Attn: Lance Mysyrowicz

or as the Assignee may notify to the Assignor by not less than 5 working days' notice.

## **22 Counterparts and language**

### **22.1 Counterparts**

This Deed may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same document and either party may enter into this Deed by executing a counterpart.



**23 Governing law and jurisdiction**

23.1 This Deed shall be governed by and construed in accordance with English law and all claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this Deed, its subject matter, negotiation or formation will be determined in accordance with English law.

23.2 The parties hereto submit to the exclusive jurisdiction of the English courts.

**Executed as a deed** by the parties or their duly authorised representatives but not delivered until the date of this Deed.

## **The Schedule**

### **Form of the Certificate of Assignment**

**[On letterhead of the Assignor]**

To: Industrial Lending 2 and IL2 (2018)  
6 rue Adolphe  
L-1116 Luxembourg  
Grand Duchy of Luxembourg

Dated

20 ♦

Dear Sirs

#### **Certificate of Assignment**

This is a Certificate of Assignment contemplated in the master deed of assignment entered into between Gapcap Limited and Industrial Lending 2 and IL2 (2018), dated [date] (**Master Assignment**). We Gapcap Limited (company number 09080838) whose registered office is at 1 Vicarage Lane, London, England, E15 4HF as owner with full title guarantee and as a continuing security for the payment and discharge of the Secured Obligations hereby assign to you:

- 1 the full benefit of each Customer Contract set out in the appendix to this Certificate of Assignment entered into by the Assignor including, without limitation the right to receive all monies now and hereafter due or to become due to the Assignor under each Customer Contract set out in the appendix to this Certificate of Assignment and all claims, rights and remedies of the Assignor arising under or in connection with each Customer Contract set out in the appendix to this Certificate of Assignment;
- 2 the benefit of all guarantees, indemnities, negotiable instruments, securities or warranties taken or received by the Assignor or in respect of which the Assignor has the benefit in connection with each Customer Contract set out in the appendix to this Certificate of Assignment.

We confirm that the assignment set out in this Certificate of Assignment is made pursuant to the Master Assignment and that all the provisions of the Master Assignment shall apply to this Certificate of Assignment. Words and expressions not otherwise defined in this Certificate of Assignment shall have the meaning given to them in the Master Assignment.

**Executed as a deed** by the Assignor or its duly authorised representative but not delivered until the date of this Certificate of Assignment.

Executed as a deed by )  
♦ **Limited/plc** ) .....  
acting by a director in the presence of ) Director

.....  
Signature of witness

Name .....

Address .....

.....

## Appendix to Certificate of Assignment

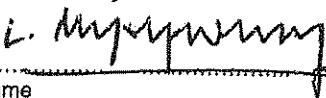
### Customer Contract

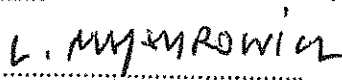
Customer Contract No	Customer Name and Address	Description of Customer Contract

SIGNATORIES TO THE MASTER DEED OF ASSIGNMENT


THE ASSIGNEE

SIGNED AS A DEED  
For and on behalf of  
INDUSTRIAL LENDING 2  
represented by:

  
.....  
Name

  
.....  
Title: Director A

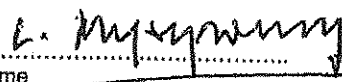
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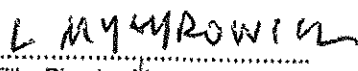
  
.....  
Name

Laurent HEILIGER


.....  
Title: Director B

SIGNED AS A DEED  
For and on behalf of  
IL2 (2018)  
represented by:

  
.....  
Name

  
.....  
Title: Director A

and

  
.....  
Name

Laurent HEILIGER

.....  
Title: Director B

**THE ASSIGNOR**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by **GAPCAP** )  
**LIMITED** acting by )

L. MYKULSWICK )  
a director, in the )  
presence of a witness: )

Signature

Name (block capitals)

L. MYKULSWICK  
Director

Witness signature

Witness name  
(block capitals)

Witness address

John Kelly  
MISCHA KOWALL  
15 Crinon St.  
London N19 5Q