



Registration of a Charge

Company name: **OFFICE DEPOT UK PENSION SPONSOR LIMITED**

Company number: **10475084**



X5XVKZMQ

Received for Electronic Filing: **11/01/2017**

Details of Charge

Date of creation: **31/12/2016**

Charge code: **1047 5084 0001**

Persons entitled: **GILBERT UK PENSION TRUSTEES LIMITED**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **TRAVERS SMITH LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 10475084

Charge code: 1047 5084 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st December 2016 and created by OFFICE DEPOT UK PENSION SPONSOR LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th January 2017 .

Given at Companies House, Cardiff on 12th January 2017

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 31 DECEMBER 2016

OFFICE DEPOT UK PENSION SPONSOR LIMITED
(the *Chargor*)

and

GUILBERT UK PENSION TRUSTEES LIMITED
As trustee of the Guilbert UK Retirement Benefits Plan
(the *Secured Party*)

Fixed Charge Deed

Sackers

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4144-1578-7272_5

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THIS DEED is made on 31 December 2016

BETWEEN

- (1) **OFFICE DEPOT UK PENSION SPONSOR LIMITED**, a company incorporated in England (registered number 10475084), whose registered office is at 10-18 Union Street, London SE1 1SZ (the **Chargor**); and
- (2) **GUILBERT UK PENSION TRUSTEES LIMITED**, a company incorporated in England (registered number 02804248), whose registered office is at Curzon House, 24 High Street, Banstead, Surrey SM7 2LJ acting in its capacity as trustee of the Guilbert UK Retirement Benefits Plan (the **Secured Party**),

(each a **Party** and together the **Parties**).

WHEREAS

- (A) The Chargor has incurred certain obligations to the Secured Party under the PTA (as defined below).
- (B) The Chargor has agreed to grant a first fixed security over all its right, title, benefit and interest in the Charged Property (as defined below) as security for the Secured Liabilities (as defined below).

IT IS AGREED

1. INTERPRETATION AND DEFINITIONS

- 1.1 Unless otherwise defined in this Deed, capitalised terms defined in the PTA shall have the same meaning in this Deed. In this Deed the following expressions shall, in addition to the terms defined in the Recitals, except where the context otherwise requires or where otherwise defined herein, have the following meaning:

Acceptable Bank means:

- (a) a bank or financial institution which is incorporated in the United Kingdom or maintains a branch in London, and acts as a primary banker to Office Depot;
- (b) a bank or financial institution which is incorporated in the United Kingdom or maintains a branch in London, and has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency;
- (c) subject to (d), any other bank or financial institution approved in writing in advance by the Secured Party; or
- (d) if the criteria in (a) and (b) cannot be satisfied by any bank or financial institution, a bank or financial institution which is incorporated in the United Kingdom or maintains a branch in London as selected by the Chargor and which the Secured Party has approved in writing in advance (such approval not to be unreasonably withheld or delayed).

Account means the account with number _____ in the name of the Chargor and such other account as the Account Bank may from time to time establish with respect to this Deed;

Account Agreement means an agreement dated before the date of this Deed and entered into

between the Chargor and the Account Bank pursuant to which the Account has been established and as supplemented by a side letter between the Chargor, the Account Bank and the Secured Party;

Account Bank means, as of the date of this Deed, Wells Fargo Bank, National Association London Branch and shall include any successor or additional account bank appointed by the Chargor in respect of this Deed;

Bankruptcy Code means Title 11 of the United State Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute;

Charged Property means all the assets for the time being subject to the Security created by this Deed (and references to the Charged Property include references to any part of them);

Chargor Insolvency Event means in respect of the Chargor

- (a) an 'insolvency event' as defined in section 121 of the Pensions Act 2004 or regulations made from time to time thereunder;
- (b) the receipt by the Board of the Pension Protection Fund (as established under Part 2 of the Pensions Act 2004) of an application or notification from the Secured Party or the Pensions Regulator that an employer is unlikely to continue as a going concern, which is purported to be made in accordance with section 129 of the Pensions Act 2004 or regulations made from time to time thereunder;
- (c) any step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors;
- (d) a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or to file documents with a court or any registrar for, its winding-up, administration or dissolution or any such resolution is passed;
- (e) any person presents a petition, or files documents with a court or any registrar, for its winding-up, administration, dissolution or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
- (f) any mortgage, charge, pledge, lien, assignment, hypothecation or other security interest (other than the security created under this Deed) securing any obligation of any person or any other agreement or arrangement having a similar effect is enforced over any of its assets;
- (g) an order for its winding-up, administration or dissolution is made;
- (h) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
- (i) its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
- (j) any other analogous step or procedure is taken in any jurisdiction;

Control Agreement means with respect to this Deed and the Account the Deposit Account Control

Agreement dated on or before the date hereof and entered into between the Chargor, the Account Bank and the Secured Party;

Enforcement Event has the meaning specified in Clause 4 (*Default*);

Guarantee means the guarantee given to the Secured Party by OD Pension Finance on the date of this Deed;

Indemnified Loss means any liability, damages, cost, loss (whether in contract or tort or otherwise) or expense (including legal fees) (but always excluding any consequential loss and any loss of profit) and any VAT thereon;

Insolvency Laws means the Bankruptcy Code, the Insolvency Act 1986, the Companies Act 2006 (as it relates to solvent reorganization) and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the US, the United Kingdom or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally;

Interest means any interest paid or credited by the Account Bank from time to time in respect of the balance standing to the credit of the Account. Any Interest shall form part of the Charged Property;

Loan Agreement means the Loan Agreement dated 28 December 2016 and entered into between OD Pension Finance as lender and Office Depot, Inc. as borrower;

LPA means the Law of Property Act 1925;

OD Inc. Guarantee means the guarantee provided by Office Depot dated 26 March 2008 in favour of the Secured Party (as amended from time to time);

OD Insolvency Event means an event that would constitute an "Event of Default" (as defined in the Loan Agreement) under clause 14.5 (*Insolvency Proceedings*) of the Loan Agreement;

Office Depot means Office Depot, Inc., a Delaware corporation, located at 6600 North Military Trail, Boca Raton, Florida 33496 USA;

OD Pension Finance means Office Depot Pension Finance, LLC a limited liability company organised under the laws of the State of Delaware with its registered office at c/o Corporate Creations Network Inc., 3411 Silverside Road, Rodney Building #104, Wilmington, Delaware, 19810

OD Pension Finance Insolvency Event means in respect of OD Pension Finance:

- (a) an involuntary proceeding (including the filing of any notice of intention in respect thereof) shall be commenced or an involuntary petition shall be filed seeking (A) bankruptcy, liquidation, winding-up, dissolution, reorganization, examination, suspension of general operations or other relief in respect of the Chargor or its debts, or of a substantial part of its assets, under any Insolvency Law now or hereafter in effect, (B) the composition, rescheduling, reorganization, examination, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations of the Chargor, (C) the appointment of a Receiver, interim receiver, receiver and manager, liquidator, provisional liquidator, administrator, examiner, trustee, custodian, sequestrator, conservator, examiner, agent or similar official for the Chargor or for any substantial part of its assets or (D) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over any substantial part of the assets of the Chargor and, in any such case, such proceeding or petition shall continue undismissed for 30 days or an order or decree approving or ordering any of the foregoing shall be entered; or

- (b) the Chargor shall (A) voluntarily commence any proceeding, file any petition, pass any resolution or make any application seeking liquidation, reorganization, administration or other relief under any Insolvency Law now or hereafter in effect, (B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph (a) above, (C) apply for or consent to the appointment of a Receiver, interim receiver, receiver and manager, liquidator, assignee, trustee, custodian, sequestrator, administrator, examiner, conservator or similar official for the Chargor or for a substantial part of its assets, (D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (E) make a general assignment for the benefit of creditors or (F) take any action for the purpose of effecting any of the foregoing;

PTA means the plan transfer agreement entered into on the date of this Deed between, amongst others, the Secured Party and the Chargor;

Receiver means any person (being a licensed insolvency practitioner), who is, subject to any applicable law, appointed by the Secured Party to be a receiver or, where permitted by law, an administrative receiver of the whole or any part of the Charged Property to act jointly, or jointly and severally, as the Secured Party shall determine in its sole discretion;

Secured Liabilities means all present and future amounts which may now or at any time hereafter be or become owing to the Secured Party in respect of:

- (i) the "Agreed Contribution" (as defined in the PTA);
- (ii) the "Annual Contributions" (as defined in the PTA);
- (iii) the "Catch-up Payments" (as defined in the PTA);
- (iv) the "Bullet Payment" (as defined in the PTA) or the "Default Acceleration Payment" (as defined in the PTA) or the "Non-Default Acceleration Payment" (as defined in the PTA),

each as provided for in the PTA; and

Security means any mortgage, sub-mortgage, charge, sub-charge, pledge, lien, assignment by way of security, hypothecation, security interest, title retention, preferential right or trust arrangement and any other agreement or arrangement having the effect of security including anything having the corresponding legal effect to any of the foregoing under the laws of any jurisdiction.

Interpretation

- 1.2 Any reference in this Deed to a statutory provision shall include that provision and any regulations made in pursuance thereof as from time to time modified or re-enacted on or after the date of this Deed so far as such modification, re-enactment or replacement applies or is capable of applying to any transactions entered into under or in connection with this Deed.
- 1.3 The headings in this Deed are inserted for convenience only and shall be ignored in construing this Deed.
- 1.4 References to **transfer** in this Deed mean, in relation to cash, payment and, in relation to other assets, delivery, assignment or novation.
- 1.5 Unless the context otherwise requires, words (including words defined in this Deed) denoting the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and words importing a person shall include a body corporate or firm and vice versa.
- 1.6 The words **written** and **in writing** include any means of visible reproduction.

- 1.7 References to Parties or Clauses are to the Parties to or Clauses of this Deed.
- 1.8 The rule known as *ejusdem generis* rule shall not apply and accordingly:
- (a) general words shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
 - (b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words; and
 - (c) the words **include**, **includes** and **including** shall be construed as if they were followed by the words **without limitation**.

Conflicts

- 1.9 In the event of any inconsistency between this Deed and the provisions of the PTA, this Deed will prevail.

2. SECURITY

Covenant to Pay or Perform

- 2.1 The Chargor covenants with the Secured Party that it shall perform the Secured Liabilities as defined in paragraph (a) of the definition of Secured Liabilities and shall discharge all obligations, as and when they fall due in accordance with their terms, which the Chargor may at any time have to the Secured Party, whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or as surety or in some other capacity). The Chargor shall pay to the Secured Party when due and payable every sum at any time owing, due or incurred by the Chargor to the Secured Party in respect of any such Secured Liabilities, provided that neither such covenant nor the security constituted by this Deed shall extend to or include any liability or sum which would, but for this proviso, cause such covenant or security to be unlawful or prohibited by any applicable law.

Security

- 2.2 The Chargor, as security for the payment and performance of the Secured Liabilities hereby;
- (a) charges and agrees to charge with full title guarantee, in favour of the Secured Party by way of first fixed charge all of its right, title, interest and benefit present and future, in, to and under the Account, including without limitation, all monies received in respect thereof and maintained therein; and
 - (b) by way of security assigns and agrees to assign absolutely, subject to a proviso for re-assignment on redemption, all of its rights, title and interest in and to the Account Agreement, all rights and remedies in connection with the Account Agreement and any proceeds and claims arising from it.

Restrictions

- 2.3 No transfer of any or all of the Charged Property or payment from the Account shall be made unless the Secured Party has given written instructions to the Account Bank authorising such transfer or payment. The Secured Party shall give instructions to the Account Bank in accordance with the terms of this Deed.

- 2.4 At any time after the occurrence of an Enforcement Event, the Secured Party shall be able to give any and all instructions in respect of transfers of any and all assets and payments from the Account without the consent of the Chargor.

Release of Security

- 2.5 Where monies are paid from the Account in accordance with Clause 3.3 (*Instructions to Account Bank*), the Security granted under this Deed in respect of that Charged Property will be released immediately without any further action by either Party.

Preservation of Security

- 2.6 The Security constituted by this Deed shall be a continuing security and shall not be satisfied by any intermediate payment or satisfaction of the whole or any part of the Secured Liabilities but shall secure the ultimate balance of the Secured Liabilities.

Waiver of Defences

- 2.7 The obligations of the Chargor under this Deed shall not be affected by any act, omission or circumstance which, but for this provision, might operate to release or otherwise exonerate the Chargor from its obligations under this Deed or affect such obligations including (but without limitation) and whether or not known to the Chargor or the Secured Party:
- (a) any time or indulgence granted to or composition with the Chargor or any other person (unless otherwise agreed between the Secured Party and the Chargor);
 - (b) the variation, extension, compromise, renewal or release of, or refusal or neglect to perfect or enforce any terms of the PTA or any rights or remedies against, or any security granted by the Chargor or any other person;
 - (c) any irregularity, invalidity or unenforceability of any obligations of the Chargor under the PTA, the Control Agreement, Account Agreement or any present or future law or order of any government or authority (whether of right or in fact) purporting to reduce or otherwise affect any of such obligations; or
 - (d) any legal limitation, disability, incapacity or other circumstance relating to the Chargor or any other person or any amendment to or variation of the terms of the PTA or any other document or security.

Immediate Recourse

- 2.8 The Chargor waives any right it may have of first requiring the Secured Party (or any trustee or agent on its behalf) to proceed against or claim payment from any other person or enforce any guarantee or security before enforcing this Deed.

Reinstatement

- 2.9 Where any discharge (whether in respect of the security constituted by this Deed, any other security or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or any amount paid pursuant to any such discharge or arrangement must be repaid on bankruptcy, liquidation or pursuant to any applicable law or otherwise without limitation, the security constituted by this Deed and the liability of the Chargor under this Deed shall continue as if there had been no such discharge or arrangement.

Negative Pledge

- 2.10 Without the prior written consent of the Secured Party, the Chargor shall not;

- (a) create or permit to exist (except where such Security arises by operation of law or hereunder) any Security (howsoever ranking in priority) in, over or affecting the Account or any Charged Property; and
- (b) after this Deed has become enforceable, sell, transfer, licence, lease or otherwise dispose of any Charged Property, except as expressly allowed under the PTA and this Deed.

3. UNDERTAKINGS

Control Agreement

- 3.1 The Chargor shall on or before the date of this Deed deliver to the Secured Party a copy of the Control Agreement duly executed and in effect.

Operation of Account

- 3.2 Subject to the terms of this Deed and the Control Agreement, the Chargor shall ensure that:
- (a) no Charged Property is withdrawn from the Account or otherwise disposed of or dealt with except with the prior written consent of the Secured Party;
 - (b) all cash paid or received in respect of or in connection with the Charged Property is credited to the Account;
 - (c) no amounts are withdrawn from the Account except with the prior written consent of the Secured Party;
 - (d) no other instructions are given to the Account Bank or by the Account Bank in relation to the Account except with the prior written consent of the Secured Party; and
 - (e) the Account Bank provides to the Secured Party such information regarding the Charged Property, the Account or the Control Agreement as the Secured Party may reasonably request from time to time.

Instructions to Account Bank

- 3.3 Subject to Clause 3.4 (*Instructions following an Enforcement Event*), the Chargor shall notify the Secured Party in writing of any proposed instructions to the Account Bank in relation to the Account and all instructions shall require the countersignature or authorisation (in whatever format required to effect instructions) of the Secured Party (which shall be evidenced by the Secured Party's countersignature on or authorisation in respect of those instructions and which may be given or denied in the sole discretion of the Secured Party). For the avoidance of doubt, if the Secured Party gives such consent the Secured Party shall be deemed not to have relinquished control of the Charged Property or otherwise waived its rights under this Deed.

Instructions following an Enforcement Event

- 3.4 At any time after the occurrence and during the continuance of an Enforcement Event, the Secured Party shall be entitled to issue any instructions to the Account Bank in accordance with the Control Agreement in relation to the Account and, for so long as such Enforcement Event shall be continuing, the Chargor shall no longer be entitled to and shall not issue any instructions to the Account Bank in relation to the Account and the Charged Property.

Control Agreement

- 3.5 The Chargor shall remain liable to perform all of its obligations under the Control Agreement (including, for the avoidance of doubt, following the occurrence and during the continuance of an Enforcement Event).

No variation of Control Agreement

- 3.6 The Chargor shall not, without the prior written consent of the Secured Party:
- (a) amend, supplement, vary or waive (or agree to amend, supplement, vary or waive) any provision of the Control Agreement;
 - (b) exercise any right to rescind, cancel or terminate the Control Agreement;
 - (c) release any counterparty from any obligations under the Control Agreement;
 - (d) waive any breach by any counterparty or consent to any act or omission which would otherwise constitute such a breach; or
 - (e) except as provided in this Deed, novate, transfer or assign any of its rights under the Control Agreement.

Breach of Control Agreement

- 3.7 The Chargor shall notify the Secured Party of:
- (a) any breach of or default under the Control Agreement by it or any other party;
 - (b) the occurrence of any other event giving either the Chargor or the Account Bank the right to rescind, cancel or terminate the Control Agreement; and
 - (c) any claim made or threatened to be made by it or the Account Bank under or in connection with the Control Agreement,

promptly on, and in any event within two Business Days of, becoming aware of the same. The Chargor shall provide the Secured Party with reasonable details of any such claim or event, any steps taken or proposed to be taken to address the same and its progress. The Chargor shall notify the Secured Party as soon as practicable upon, and no later than one Business Day after, that claim or event being resolved.

Performance of obligations under Control Agreement

- 3.8 Without prejudice to the terms of the Control Agreement, the Chargor undertakes to the Secured Party to perform all its material obligations under the Control Agreement.

Replacement of Account Bank

- 3.9 The Chargor may replace the Account Bank with another bank, provided the proposed bank is an Acceptable Bank. Where the Chargor gives written notice to the Secured Party that it wishes to replace the Account Bank, the Secured Party agrees that it will enter into negotiations in good faith with the Chargor and the new account bank with a view to replacing the security constituted by this Deed with security over a new account established by the Chargor with the new account bank on terms substantially the same as the terms of this Deed, and with the benefit of a Control Agreement or notice and acknowledgement which will give the Secured Party equivalent protection to its satisfaction, acting reasonably.

Segregated Account

- 3.10 The Chargor shall, at all times at which the Secured Liabilities remain outstanding, maintain the segregated Account in which to hold Charged Property under this Deed. Except as provided otherwise herein, the Charged Property shall at all times be and remain segregated from the other property of the Chargor, and shall at no time be commingled with the property of the Chargor.

Interest

- 3.11 With respect to Charged Property in the form of cash, any Interest shall be credited to the Account.
- 3.12 Any Interest credited to the Account will constitute Charged Property and will be subject to the security interest granted under Clause 2.2 (*Security*).

4. ENFORCEMENT

Enforcement Event

- 4.1 For the purposes of this Deed, an **Enforcement Event** will have occurred if:
- (a) the Chargor fails to perform any Secured Liabilities under the PTA and this failure is not remedied within the applicable grace period; or
 - (b) OD Pension Finance fails to make payment of any properly authorised distribution to the Chargor and this failure is not remedied within 5 Business Days;
 - (c) an "Event of Default" (as defined in the Loan Agreement) has occurred and is continuing in respect of Office Depot;
 - (d) a Chargor Insolvency Event occurs;
 - (e) a OD Pension Finance Insolvency Event occurs;
 - (f) an OD Insolvency Event occurs;
 - (g) the Guarantee ceases to be in full force and effect;
 - (i) the Chargor fails to comply with or perform any non-payment related agreement or obligation to be complied with or performed by it in accordance with the PTA, this Deed and/or the Control Agreement and such failure is not remedied on or before the earlier of (x) the thirtieth day after the Chargor becomes aware of such failure and (y) the thirtieth day after notice of such failure is given to the Chargor.

Rights of the Secured Party

- 4.2 At any time after the occurrence of an Enforcement Event, the Secured Party shall have the right, either in its own name or in the name of the Chargor or otherwise and in such manner and upon such terms and conditions as the Secured Party sees fit, and either alone or jointly with any other person:
- (a) **Transfer:** to transfer the Charged Property into the name of such nominee(s) of the Secured Party as it shall in its discretion require;
 - (b) **Take possession:** to apply or (to the fullest extent permitted by law) appropriate, take

possession of, get in and collect the Charged Property, and to require payment to it of all dividends or the credit balance (if any) of the Account in or towards the payment or discharge of any amounts payable by the Chargor with respect to the Secured Liabilities;

- (c) **Exercise of the Chargor's rights:** to exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the Chargor under the Control Agreement in respect of the Account, to exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the Chargor under the Loan Agreement or by the legal or beneficial owner of the Charged Property;
- (d) **Deal with Charged Property:** to sell, transfer, assign, exchange or otherwise dispose of or realise the Charged Property to any person either by public offer or auction, tender or private contract and for consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);
- (e) **Rights of ownership:** to manage and use the Charged Property and to exercise and do (or permit the Chargor or any nominee of it to exercise and do) all such rights and things as the Secured Party would be capable of exercising or doing if it were the absolute beneficial owner of the Charged Property;
- (f) **Claims:** to settle, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Charged Property;
- (g) **Legal actions:** to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Property, including taking any action in a bankruptcy or insolvency proceeding with respect to the Chargor or Office Depot;
- (h) **Redemption of Security:** to redeem any Security (whether or not having priority to the Security granted under this Deed) over the Charged Property and to settle the account of any person with an interest in the Charged Property; and
- (i) **Other powers:** to do anything else it may think fit for the realisation of the Charged Property or incidental to the exercise of any of the rights conferred on the Secured Party under or by virtue of this deed, the LPA or the Insolvency Act 1986.

Statutory power of sale

- 4.3 The statutory power of sale shall arise on and be exercisable at any time after the execution of this Deed (and the Secured Liabilities shall be deemed to have become due and payable for that purpose), provided that the Secured Party shall not exercise such power of sale until the Security constituted by this Deed has become enforceable.

Extension of statutory powers

- 4.4 Any restriction imposed by law on the power of sale (including under s.103 LPA) or on the right of a mortgagee to consolidate mortgages (including under s.93 LPA) does not apply to the security constituted by this Deed and the Secured Party or any Receiver shall have the right to consolidate all or any of the Security constituted by this Deed with any other Security in existence at any time.

No obligation to enquire

- 4.5 No person dealing with the Secured Party or any Receiver appointed hereunder, or its agents or brokers, shall be concerned to enquire:

- (a) whether the Security constituted by this Deed has become enforceable;

- (b) whether any power exercised or purported to be exercised has become exercisable;
 - (c) whether any money remains due under the PTA;
 - (d) as to the necessity or expediency of the stipulations and conditions subject to which any sale of any Charged Property shall be made, or otherwise as to the propriety or regularity of any sale of any of the Charged Property; or
 - (e) how any money paid to the Secured Party or Receiver, or its agents or brokers is to be applied.
- 4.6 In the absence of bad faith on the part of the Secured Party or any Receiver or its agents or brokers, such dealings shall be deemed, so far as regards the safety and protection of the Secured Party or any Receiver such purchaser or its agents or brokers, to be within the powers conferred by this Deed and to be valid accordingly. The remedy of the Chargor in respect of any impropriety or irregularity whatever in the exercise of such powers shall be in damages only.

Power of Attorney

- 4.7 The Chargor, by way of security and solely for the purpose of more fully securing the performance of the Secured Liabilities, irrevocably appoints the Secured Party as the attorney-in-fact of the Chargor on its behalf and in the name of the Chargor or the Secured Party (as the attorney may decide) to do all acts which the Chargor may be obliged to perform under, pursuant to or in connection with this Deed but have not performed, and execute all documents which the Chargor could itself execute but have not so executed, in relation to any Charged Property or in connection with any of the matters provided for in this Deed, including (but without limitation):
- (a) to execute any transfer, bill of sale or other assurance in respect of the Charged Property;
 - (b) to exercise all the rights and powers of the Chargor in respect of the Charged Property;
 - (c) to ask, require, demand, receive, compound and give a good discharge for any and all moneys and claims for moneys due and to become due under or arising out of any of the Charged Property;
 - (d) to endorse any cheques or other instruments or orders in connection with any of the Charged Property;
 - (e) to make any claims or to take any action or to institute any proceedings which the Secured Party considers to be necessary or advisable to protect or enforce the security interest created by this Deed; and
 - (f) to direct the Account Bank, with respect to the Charged Property (including with respect to any of the foregoing).

Valuation of Charged Property for purposes of appropriation

- 4.8 In determining the value of Charged Property which the Secured Party determines to appropriate in accordance with this Clause 4 (*Enforcement*):
- (a) an amount in cash shall be the cash amount; and
 - (b) Charged Property other than cash shall be valued by reference to the official market closing price derived by the Secured Party in a reasonable manner from a reputable pricing information service taking account of all reasonable transaction costs, illiquidity discounts, fees, commissions and expenses which would be incurred in connection with a sale of such Charged Property, or where such price is not available or does not reflect the fair

market value at which such Charged Property could be sold, an amount which, in the reasonable opinion of the Secured Party, represents the fair market value, having regard to such pricing sources and methods (which may include, without limitation, available prices for securities with similar maturities, terms, size and credit characteristics as the Charged Property) as the Secured Party considers appropriate.

- 4.9 If the value so determined exceeds the amount secured, the Secured Party shall promptly account to the Chargor for the amount by which the value of the appropriated Charged Property exceeds the amount secured.

5. RECEIVER

Appointment of Receiver

- 5.1 At any time following the occurrence of an Enforcement Event that is continuing the Secured Party may, in its absolute discretion, appoint such person or persons (including an officer or officers of the Secured Party) as the Secured Party considers appropriate to be a Receiver of the Charged Property or any part thereof and, in the case of an appointment of more than one person, to act together or independently of the other or others.

Removal and Replacement

- 5.2 Except as otherwise required by law, the Secured Party may by writing or by deed (a) remove a Receiver whether or not appointing another in his place or another to act with an existing Receiver or (b) appoint another Receiver if the Receiver resigns. For the avoidance of doubt, no delay or waiver of the right to exercise the power to appoint a Receiver shall prejudice the future exercise of such power.

Extent of Appointment

- 5.3 The exclusion of any part of the Charged Property from the appointment of the Receiver shall not preclude the Secured Party from subsequently extending his or their appointment (or that of the Receiver replacing him or them) to that part of the Charged Property or appointing another Receiver over any other part of the Charged Property.

Agent of the Chargor

- 5.4 The Receiver shall be the agent of the Chargor and the Chargor alone shall be responsible for the Receiver's contracts, engagements, acts, omissions, misconduct, negligence or default and for liabilities incurred by him and in no circumstances whatsoever shall the Secured Party be in any way responsible for or incur any liability in connection with the Receiver's contracts, engagements, acts, omissions, misconduct, negligence or default, and if a liquidator of the Chargor shall be appointed, the Receiver shall act as principal and not as agent for the Secured Party. Notwithstanding the generality of the foregoing, the Receiver shall in the exercise of his powers, authorities and discretions conform to the regulations (if any) from time to time made and given in writing by the Secured Party.

Remuneration and Expenses

- 5.5 (a) **Remuneration:** The remuneration of the Receiver shall be reasonably fixed by the Secured Party, but shall be payable hereunder by the Chargor alone. The amount of such reasonable remuneration shall be paid in accordance with the terms and conditions and in the manner agreed from time to time between the Receiver and the Secured Party and shall form part of the Secured Liabilities.
- (b) **Expenses:** In addition to the remuneration of the Receiver, the Chargor shall pay or reimburse all reasonable out-of-pocket costs, charges and expenses (including reasonable legal and travelling expenses and insurance premiums) which the Receiver properly incurs in or in connection with:

- (i) the exercise or the attempted exercise, or the consideration or taking of advice as to the exercise by or on behalf of the Receiver of any of the powers of the Receiver;
- (ii) the enforcement, preservation or attempted preservation of this Deed (or any of the charges contained in or granted pursuant to it) or any of the Charged Property or any other action taken by or on behalf of the Receiver with a view to or in connection with the recovery by the Receiver of the Secured Liabilities from the Chargor or any other person;
- (iii) the carrying out of any other act or matter which the Receiver may consider to be necessary for the preservation, improvement or benefit of the Charged Property; or
- (iv) this Deed, the PTA, the Control Agreement and/or the transactions contemplated in any such document.

Indemnity of Receiver

- 5.6 The Chargor shall, indemnify and keep indemnified the Receiver in full against any Indemnified Loss which it incurs, otherwise than by reason of its wilful default, negligence or fraud in respect of:
- (a) the performance by the Receiver of its obligations under this Deed or any document or arrangement entered into between the Chargor and such Receiver in connection with the obligations of the Receiver under this Deed;
 - (b) anything done or purported to be done by the Receiver under this Deed, or the other documents referred to in Clause 5.6(a) (*Indemnity of Receiver*) or anything omitted or purported to be done by the Receiver thereunder; and
 - (c) the exercise or attempted exercise by or on behalf of the Receiver of any of its powers, discretions or determinations or any other actions taken by the Receiver with a view to or in connection with enforcing on behalf of the Secured Party its rights under this Deed.

Receiver's Powers

- 5.7 The Receiver, in addition to any powers conferred on an administrative receiver, receiver, manager or receiver and manager by statute or common law (including, without limitation, Schedule 1 of the Insolvency Act 1986, regardless of whether the Receiver is an administrative receiver), shall have the following powers as varied or extended by the provisions of this Deed (in the name or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor):
- (a) **Possession of Charged Property:** to enter upon, take immediate possession of, get in and collect the Charged Property (or such part thereof in respect of which he may be appointed) or any part thereof including income whether accrued before or after the date of his appointment;
 - (b) **Disposal of Charged Property:** to sell, exchange, license, surrender, release, disclaim, abandon, return or otherwise dispose of or in any way whatsoever deal with the Charged Property or any interest in the Charged Property or any part thereof for such consideration (if any) and upon such terms (including by deferred payment or payment by instalments) as he may consider appropriate and to concur in any such transaction;
 - (c) **Borrowing to pay remuneration:** in connection with the exercise or the proposed exercise of any of his powers or in order to obtain payment of his remuneration (whether or not it is already payable), to borrow or raise money from any person without security or on the security of any of the Charged Property and generally in such manner and on such

terms as he may consider appropriate;

- (d) **Compromise:** to negotiate, settle, adjust, refer to arbitration, compromise, abandon and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a Secured Party or relating in any way to the Charged Property or any part thereof;
- (e) **Legal actions:** to bring, prosecute, enforce, defend and abandon any actions, suits and proceedings concerning the Charged Property or any part of them as may seem to him to be expedient;
- (f) **Receipts:** to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Charged Property;
- (g) **Transfer of Charged Property:** to transfer all or any of the Charged Property;
- (h) **Discharge of Security:** to redeem, discharge or compromise any Security from time to time having priority to or ranking *pari passu* with this Deed;
- (i) **Insurance:** to effect or maintain indemnity insurance and other insurance and obtain performance bonds and guarantees;
- (j) **Action on behalf of the Chargor:** in connection with the exercise of any of their powers, to execute or do, or cause or authorise to be executed or done, on behalf of or in the name of the Chargor or otherwise, all documents, receipts, registrations, acts or things which he may consider appropriate;
- (k) **Exercise powers in relation to Charged Property:** to exercise any powers, discretions, voting, conversion or other rights or entitlements in relation to any of the Charged Property or incidental to the ownership of or rights in or to any of the Charged Property and to complete or effect any transaction entered into by the Chargor and complete, disclaim, abandon or modify all or any of the outstanding contracts or arrangements of the Chargor relating to or affecting the Charged Property, as he may consider appropriate;
- (l) **Transactions relating to Charged Property:** generally to carry out, or cause or authorise to be carried out, any transaction, scheme or arrangement whatsoever, whether similar or not to any of the foregoing, in relation to the Charged Property which he may consider appropriate as effectually as if he were solely and absolutely entitled to the Charged Property; and
- (m) **Other action:** to do all other acts and things permitted by law which he may consider necessary or desirable for realising the Charged Property, or any part thereof, or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed.

Limitation of liability of the Receiver

- 5.8 The Receiver shall not be liable or responsible for any loss, liability or cost suffered or incurred, whether in tort or contract or otherwise, by the Chargor which may result from anything done or omitted to be done by it or its officers or employees under this Deed save where any such loss, liability or cost arises as a result of breach of contract, wilful default, negligence or fraud on the part of the Receiver or any of its officers or employees. None of the provisions of this Deed shall, in any case in which the Receiver or its officers or employees have failed to show care or diligence required as a receiver or an administrative receiver under this Deed, having regard to the provisions of this Deed and to general law, relieve or indemnify the Receiver against any liabilities which by virtue of any rule of law would otherwise attach to it in respect of any such breach of contract, wilful default, negligence or fraud.

Provisions of the Law of Property Act 1925

- 5.9 Sections 109(6) and (8) of the Law of Property Act 1925 shall not apply in relation to any Receiver.
- 5.10 None of the restrictions imposed by the Law of Property Act 1925 in relation to the appointment of receivers or as to the giving of notice or otherwise shall apply to this Deed.

6. APPLICATION OF MONIES

The Secured Party or any Receiver shall apply all monies received by him:

- (a) first in paying all taxes, duties and outgoings affecting any Charged Property;
- (b) secondly in paying all costs, charges and expenses of and incidental to any Receiver's appointment and the exercise of its powers and all outgoings paid by it and any reasonable expenses incurred by the Secured Party in connection with the liquidation and/or application and/or any other enforcement under Clause 4 (*Enforcement*) ;
- (c) thirdly in paying the Receiver's remuneration;
- (d) fourthly in or towards discharge of the Secured Liabilities; and
- (e) finally in paying any surplus to the Chargor.

7. RELEASE

Upon the irrevocable and unconditional full and final payment or discharge of all the Secured Liabilities, the Secured Party at the request and cost of the Chargor, shall promptly release, or discharge the whole of the Charged Property from the Security created by this Deed to, or to the order of the Chargor. The Security over the Charged Property shall be released pursuant to this Clause only upon the execution as a deed by the Secured Party of an absolute and unconditional release or the execution by the Secured Party of a receipt for all (and not part only) of the Secured Liabilities.

8. REPRESENTATIONS

- 8.1 The Chargor represents to the Secured Party on an ongoing basis that:

- (a) it is entitled absolutely to the benefit of the Charged Property;
- (b) it has the power and authority to execute, deliver and perform all obligations under this Deed and it has taken all necessary action to authorise such execution, delivery and performance;
- (c) the security interest created pursuant to this Deed over the Account and the Charged Property will give the Secured Party a first ranking valid Security in such Charged Property,
- (d) other than the Security granted under Clause 2.2 (*Security*) and the rights of the Account Bank pursuant to the Account Agreement and Control Agreement, the Account is not and shall not be subject to any right of retention or other limitation or Security;
- (e) it has the power to grant the security interest created pursuant to this Deed in and over the Account and the Charged Property from time to time and has taken all necessary actions to authorise the granting of that security interest;
- (f) this Deed constitutes legal, valid and binding obligations of the Chargor and is enforceable against it in accordance with its terms except as such enforcement may be limited by any

relevant bankruptcy, insolvency, administration or similar laws affecting creditors' rights generally; and

- (g) it is solvent and able to pay its debts as they fall due and, following its entry into the PTA to which it is a Party, there are no grounds on which it could be found to be unable to pay its debts as they fall due.

8.2 The Secured Party represents to the Chargor that it has the power to execute, deliver and perform all its obligations under this Deed and has taken all necessary action to authorise such execution, delivery and performance.

9. EXPENSES

All reasonable costs and expenses incurred by the Secured Party in connection with the liquidation and/or application and or any other enforcement under Clause 4 (*Enforcement*) will be payable, within 5 Business Days following demand, by the Chargor to the extent not deducted from any application of proceeds.

10. REMEDIES CUMULATIVE

The provisions of this Deed and the rights and remedies of the Parties are cumulative and are without prejudice and in addition to any rights or remedies such Party may have at law or in equity; no exercise by a Party of any one right or remedy under this Deed, or at law or in equity shall (save to the extent, if any, provided expressly in this Deed, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy. Each and every right and remedy may be exercised from time to time and as often and in such order as may be deemed expedient by the relevant Party.

11. WAIVERS

No failure or delay by any Party in exercising any right or remedy provided by law under or pursuant to this Deed shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

12. FURTHER ASSURANCES

Promptly following a demand made by a Party the other Party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that Party to create, preserve, perfect or validate any security interest granted under Clause 2 (*Security*), to enable that Party to exercise or enforce its rights under this Deed with respect to the Charged Property or to effect or document a release of a Security with respect to the Charged Property.

13. FURTHER PROTECTION

The Chargor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Charged Property that could adversely affect the security interest granted by it under Clause 2 (*Security*).

14. RELATIONSHIP BETWEEN PARTIES

Nothing herein shall be deemed to be construed by the Parties or by any third parties as creating a partnership, an agency relationship or joint venture between the Parties or any of their respective employees or agents.

15. NOTICES

Any notice, request, demand or other communication (*Notices*) required or permitted to be given or made

under or in connection with this Deed may be given in any manner permitted under the PTA and in accordance with the details and terms set out therein.

16. VARIATION

- 16.1 No variation of this Deed (or of any of the documents referred to in this Deed) shall be valid unless it is in writing and signed by or on behalf of each of the Parties to it. The expression *variation* shall include any variation, supplement, deletion or replacement however effected. No waiver of this Deed (or of any of the documents referred to in this Deed) shall be valid unless it is in writing and signed by the Party giving such waiver.
- 16.2 Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Deed, nor shall it affect any rights, obligations or liabilities under or pursuant to this Deed which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Deed shall remain in full force and effect, except and only to the extent that they are so varied.

17. ASSIGNMENT

Neither this Deed nor any interest or obligation in or under this Deed may be transferred, assigned or otherwise dealt with in whole in part (whether by way of security or otherwise) by either Party without the prior written consent of the other Party.

18. SUCCESSORS

This Deed shall be for the benefit of the trustees of the Guilbert UK Retirement Benefits Plan from time to time and shall be binding in respect of any successors of the Chorgor.

19. NO RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

20. ENTIRE AGREEMENT

- 20.1 This Deed sets out the whole agreement between the Parties in respect of its subject matter and supersedes any prior agreement (whether oral or written) relating to its subject matter
- 20.2 This Clause 20 (Entire Agreement) shall not exclude any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.

21. SEVERABILITY

If any part of this Deed is held to be invalid or unenforceable, the rest of this Deed will be construed (to the maximum extent possible after making suitable grammatical and other minor consequential changes) as if it had been executed omitting the invalid or unenforceable words and will remain in full force and effect.

22. COUNTERPARTS

This Deed may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

23. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

24. JURISDICTION

24.1 Jurisdiction

- (a) The courts of England have exclusive Jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a *Dispute*).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 24.1 (*Jurisdiction*) is for the benefit of the Secured Party only. As a result, the Secured Party shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Party may take concurrent proceedings in any number of jurisdictions.

IN WITNESS of which this Deed has been EXECUTED as a DEED and has been DELIVERED on the date first above written.

THE CHARGOR

EXECUTED as a DEED for and on behalf of OFFICE)
DEPOT UK PENSION SPONSOR LIMITED acting by)

Stephen R. Calkins)
Director)



In the presence of)

Name of Witness: Joy M. Behavis)

Address of Witness: 7793 NW 60th LN)
Parkland FL, USA)



THE SECURED PARTY

EXECUTED as a DEED for and on behalf of)
GUILBERT UK PENSION TRUSTEES LIMITED in its)
capacity as trustee of the Guilbert UK Retirement)
Benefits Plan acting by)

_____, and)
Director / Secretary / Authorised Signatory)

_____,)
Director (duly authorised by PAN Governance LLP to)
sign on its behalf as Director of Guilbert UK Pension)
Trustees Limited))

IN WITNESS of which this Deed has been **EXECUTED** as a **DEED** and has been **DELIVERED** on the date first above written.

THE CHARGOR

EXECUTED as a **DEED** for and on behalf of **OFFICE**)
DEPOT UK PENSION SPONSOR LIMITED acting by)

Director)

In the presence of)

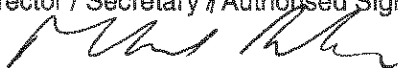
Name of Witness: _____)

Address of Witness: _____)
_____)

THE SECURED PARTY

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GUILBERT UK PENSION TRUSTEES LIMITED in its)
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Benefits Plan acting by)

_____, and)
Director / Secretary / Authorised Signatory)


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DEPOT UK PENSION SPONSOR LIMITED acting by)
)
)

Director)

In the presence of)
)
Name of Witness: _____)
)
Address of Witness: _____)
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)

THE SECURED PARTY

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Benefits Plan acting by)
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Director / ~~Secretary~~ / ~~Authorised Signatory~~)
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Director (duly authorised by PAN Governance LLP to)
sign on its behalf as Director of Guilbert UK Pension)
Trustees Limited))