



Registration of a Charge

Company name: **123 RETAIL LIMITED**

Company number: **10535440**



X7L9MSXK

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

Details of Charge

Date of creation: **21/12/2018**

Charge code: **1053 5440 0002**

Persons entitled: **ULTIMATE FINANCE LIMITED**

Brief description: **ALL PRESENT AND FUTURE FREEHOLD AND LEASEHOLD LAND, ALL PRESENT AND FUTURE INTELLECTUAL PROPERTY AND ALL PRESENT AND FUTURE AIRCRAFT AS DEFINED IN, AND PURSUANT TO, CLAUSE 5.2 OF THE ACCOMPANYING COPY INSTRUMENT.**

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **KAREN BUNTING**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 10535440

Charge code: 1053 5440 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st December 2018 and created by 123 RETAIL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st December 2018 .

Given at Companies House, Cardiff on 27th December 2018

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



ULTIMATE
FINANCE

Dated 21st December 2018

123 RETAIL LIMITED (1)

ULTIMATE FINANCE LIMITED (2)

ALL ASSETS DEBENTURE

Comprising Fixed and Floating Charges over the whole or
substantially the whole of the business, assets and undertaking.

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This Deed is dated 21st December 2018

Between:

- (1) **123 RETAIL LIMITED** (company registry number 10535440) whose registered office is at 34 Roundhay Road, Leeds, England, LS7 1AB ("**you**" and "**your**" shall be construed accordingly); and
- (2) **ULTIMATE FINANCE LIMITED** (company number 4325262) whose registered office is at First Floor, Equinox North, Great Park Road, Bradley Stoke, Bristol BS32 4QL ("**we**" and "**us**" and "**our**" shall be construed accordingly)

It is agreed that:

1 Definitions

- 1.1 Any terms used but not defined in this deed shall have the meaning given to them in the Agreement.
- 1.2 In this deed:

"Administrator" means any person appointed under Schedule B1 of the Insolvency Act;

"Agreement" means the agreement between Direct Footwear Limited (the "**Obligor**") and us, as contained in the relevant offer, terms and conditions and any other document or agreement between us and the Obligor dated on or about the date of this deed and/or at any time and from time to time for the purchase, factoring or discounting of Book Debts, provision of trade finance facilities or the pre-funding of the purchase of goods;

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

"Bank Accounts" means all your right, title and interest from time to time in and to all current, deposit or other accounts with any bank or financial institution, all balances from time to time standing to the credit of or accrued on those accounts and all Related Rights;

"Book Debt" means all of your right, title and interest from time to time in and to all book and other debts of any nature, all other rights to receive money (excluding in relation to Bank Accounts) and all Related Rights;

"Chargor" means you and any person granting Security to us as security for the discharge of the Secured Liabilities;

"Environmental Laws" means all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency concerning the protection of the environment or human health, including without limitation the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or the rectification thereof or any related matters;

"Environmental Licence" means any permit, licence, authorisation, consent or other approval required by any Environmental Law;

"Finance Document" means the Agreement, this deed, any Security Document and any other document designated as such by us;

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

"Goods" means all of your rights, title and interest from time to time in all materials, goods or other items including all documents of title and all Related Rights;

"Group" means in relation to any company, that company, its Subsidiaries, its holding company (as defined in Section 1159 of the Companies Act 2006) and the Subsidiaries of that holding company;

"Insolvency Act" means the Insolvency Act 1986;

"Insurances" means all of your right, title and interest from time to time in and to all contracts and policies of insurance of any kind taken out by or on behalf of you and all Related Rights;

"Intellectual Property" means all of your right, title and interest from time to time in and to:

- (a) any patents, designs, copyrights, design rights, trade marks, service marks, trade and business names, know-how, inventions, confidential information, database rights, domain names, moral rights and other intellectual property rights and interests, whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets,

and all Related Rights (in each case including any related licences and sub-licences of the same granted by it or to it);

"Law of Property Act" means the Law of Property Act 1925;

"Location" means the premises used for storage of the Goods as notified to us from time to time;

"Moratorium" means a moratorium coming into effect pursuant to Schedule A1 or Schedule B1 of the Insolvency Act 1986 or pursuant to paragraph 1A of Schedule 1 to the Insolvent Partnerships Order 1994;

"Non-Vesting Book Debts" means all or any Book Debts purchased or purported to be purchased by us pursuant to the Agreement but which fail to vest absolutely and effectively in us for any reason, together with the Related Rights to such Book Debts;

"Other Book Debts" all sums due and owing or accruing due and owing to you whether or not on account of your trading both present and future except:

- (a) Non-Vesting Book Debts; and
- (b) any Book Debts whilst they remain absolutely and effectively vested in or held on trust for us under the Agreement and whether such vesting results from a legal or equitable assignment pursuant to the Agreement;

"Plant and Machinery" means all of your right, title and interest from time to time in and to all plant and machinery and all Related Rights;

"Real Property" means all of your right, title and interest from time to time in and to any freehold or leasehold property in England and Wales and other real property anywhere in the world, all Fixtures from time to time on that property, and all Related Rights;

"Receiver" means a receiver and manager or other receiver appointed in respect of all or any part of the Security Assets and shall, if allowed by law, to include an administrative receiver;

"Related Rights" means, in relation to a Security Asset:

- (a) any proceeds of sale, transfer or other disposal, lease, licence, sub-licence or agreement for sale, transfer or other disposal, lease, licence or sub-licence of that Security Asset;

- (b) any moneys or proceeds paid or payable deriving from that Security Asset;
- (c) any rights, claims, guarantees, indemnities, Security or covenants for title in relation to that Security Asset;
- (d) any awards or judgments in your favour in relation to that Security Asset; and
- (e) any other assets deriving from, or relating to, that Security Asset;

"Secured Liabilities" means all present and future liabilities, moneys, debts and obligations at any time due, owing or incurring by Direct Footwear Limited to us under the Agreement, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or on a Termination Event or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by Direct Footwear Limited of a payment, prepayment, repayment, redemption, defeasance or discharge of those liabilities or obligations on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings;

"Security" means a mortgage, charge, pledge, lien or other security interest securing any of your obligations or any other agreement or arrangement having similar effect;

"Security Assets" means the assets which from time to time are, or expressed to be, the subject of the Security Interests or any part of those assets;

"Security Document" means each document creating or purporting to create the Security required to be provided by you or on your behalf for the performance of your obligations under the Agreement, as specified in the Agreement, the offer letter between us or as requested by us from time to time;

"Security Interests" means all or any of the Security created or expressed to be created in our favour by or pursuant to this deed;

"Securities" means all of your right, title and interest from time to time in and to:

- (a) stocks, shares, debentures, units, notes, commercial paper, certificates of deposit, depository interest, bonds and other securities;
- (b) warrants, options and other rights to subscribe for, purchase or otherwise acquire securities and investments;
- (c) any other securities or investments deriving from Securities or any rights attaching or relating to securities or investments,

and all dividends and other Related Rights;

"Subsidiary" means:

- (a) a subsidiary or holding company within the meaning of Section 1159 of the Companies Act 2006; and

- (b) unless the context otherwise requires, a subsidiary undertaking within the meaning of Section 1162 of the Companies Act 2006; and

"VAT" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

2 Interpretation

2.1 Unless a contrary indication appears, in this deed:

- 2.1.1 references to a **"Party"** or any other person shall be construed so as to include its successor in title, permitted assigns and permitted transferees;
- 2.1.2 reference to a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplement, extended restated (however fundamentally and whether or not more onerous) or replaced;
- 2.1.3 reference to a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- 2.1.4 reference to a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 2.1.5 an Termination Event is **"continuing"** if it has not been remedied or waived;
- 2.1.6 a provision of law is a reference to that provision as amended or re-enacted;
- 2.1.7 the singular shall include the plural and vice versa; reference to one gender shall include a reference to any other genders;
- 2.1.8 references to clauses and to schedules are to those in this deed and are for reference only and shall not affect the interpretation of this deed; and
- 2.1.9 all and any references to **"we"**, **"us"**, **"our"** or similar shall, where the context admits include our officers, agents and representatives.

3 Disposition of property

The terms of the other Finance Document and of any agreement, document or side letter between the Parties are incorporated into this deed to the extent require for any purported disposition of all or any part of any Real Property or any other relevant Security Asset contained in any Finance Document to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

4 Covenant to Pay

You agree with us to pay each of the Secured Liabilities when due or if they do not specify a time, on demand.

5 Charging provisions

5.1 All of the Security Interests:

- 5.1.1 are created in our favour;
- 5.1.2 are created over your present and future Security Assets;
- 5.1.3 are security for the payment of all the Secured Liabilities; and
- 5.1.4 are made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

5.2 You charge:

- 5.2.1 by way of first legal mortgage, all Real Property in England and Wales (including any specified in Schedule 1 to this deed);
 - 5.2.2 (to the extent that they are not the subject of a legal mortgage under clause 5.2.1 above) by way of a first fixed charge, all other Real Property;
 - 5.2.3 by way of first mortgage, all of your Securities;
 - 5.2.4 by way of first fixed charge:
 - (a) all of your Bank Accounts;
 - (b) all of your Book Debts, Non-Vesting Book Debts and Other Book Debts;
 - (c) all of your Intellectual Property;
 - (d) all of your right, title and interest from time to time in and to your beneficial interest, claim or entitlement in any pension fund;
 - (e) all of your Goods;
 - (f) all of your goodwill;
 - (g) all of your uncalled capital;
 - (h) all documents of title to any Security Asset which at any time and for any purpose has been or may be deposited with us and all assets mentioned in such title documents, whether now in existence or coming into existence in the future;
 - (i) (to the extent that they are not the subject of a legal mortgage under clause 5.2.1 or first fixed charge under clause 5.2.2 above) all of your Plant and Machinery;
 - (j) all of your Insurances, to the extent not validly and effectively assigned under clause 5.3 below;
 - (k) the benefit of all Authorisations held by you in relation to any Security Assets; and
 - 5.2.5 by way of first floating charge, all of your undertaking and all of your assets, both present and future (including assets expressed to be mortgaged, charged or assigned under clause 5).
- 5.3 You assign to us absolutely, subject to a provision for re-assignment in accordance with clause 34.1, all of your Insurances.
- 5.4 You pledge to us absolutely, all of your Goods.

5.5 The floating charge created by you pursuant to clause 5.2.5 above is a "qualifying floating charge" for the purposes of paragraph 14 of Schedule B1 of the Insolvency Act.

5.6 Paragraph 14 of Schedule B1 of the Insolvency Act shall apply to this deed and we may appoint an Administrator to you pursuant to that paragraph.

6 Ranking

6.1 The floating charge created by you under clause 5.2.5 ranks:

6.1.1 behind all the mortgages, fixed charges and assignments created by you; but

6.1.2 in priority to any other Security over your Security Assets except for Security ranking in priority in accordance with clause 26.

7 Conversion

7.1 We may convert the floating charge over all or any of the Security Assets into a fixed charge by notice to you specifying the relevant Security Assets:

7.1.1 if we consider it desirable to do so in order to protect or preserve the Security Interests over those Security Assets and/or the priority of those Security Assets; and/or

7.1.2 while a Termination Event is continuing.

7.2 If:

7.2.1 you take any step to create any Security in breach of clause 10.1 over any Security Asset;

7.2.2 an Administrator is appointed or we receive notice of an intention to appoint an Administrator in respect of any Chargor; or

7.2.3 any person takes any step to effect any expropriation, attachment, sequestration, distress or execution against any Security Asset,

the floating charge over the relevant Security Assets shall automatically and immediately be converted into a fixed charge.

8 Company voluntary arrangement moratorium

Obtaining a Moratorium or doing anything with a view to obtaining a Moratorium (including any preliminary decision or investigation) shall not cause the floating charge over all or any of the Security Assets to crystallise until the date upon which it is permitted to crystallise in accordance with paragraph 13 of Schedule A1 of the Insolvency Act.

9 Consents

9.1 If the consent of any party to a document is required to create fixed security over, or an assignment of, your rights under that document, you shall promptly notify us and;

9.1.1 until consent of the relevant party has been obtained, this deed shall secure all amounts which you may receive, or have received, under that document but exclude any fixed security over, or any assignment of, those rights; and

9.1.2 unless we require otherwise, you shall use reasonable endeavours to obtain the consent of the relevant party to the creation of Security Interests as soon as reasonably practicable.

10 Restrictions on Dealing

- 10.1 You shall not create or permit to subsist any security over any Security Asset, except as permitted by the Agreement.
- 10.2 You will deal with the Non-Vesting Book Debts and Other Book Debts and their Related Rights as if they were Book Debts and their Related Rights purchased by us under the Agreement and in particular will not bank or deal with remittances in respect of them except by dealing with them in accordance with the Agreement.
- 10.3 You will not enter into a single transaction or series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, licence, transfer or otherwise dispose of any Real Property:
- 10.3.1 subject to the floating charge herein, except by way of sale at full value in the ordinary course of your business now being carried on; and
 - 10.3.2 subject to the fixed charges herein without our prior written consent but such restriction shall not prohibit the disposal of an asset (other than freehold or leasehold property) for the purpose of its immediate replacement, modification, repair and/or maintenance, such request for consent to be obtained in form set out in Schedule 3.
- 10.4 Following a Termination Event, you will not without our prior written consent withdraw any monies received in connection with your Book Debts, Non-Vesting Book Debts and Other Book Debts from any Bank Account or compromise, compound, vary, discharge, postpone or release any of the Book Debts, Non-Vesting Book Debts and Other Book Debts or waive your right of action in connection therewith or do or omit to do anything which may delay or prejudice the full recovery thereof.
- 10.5 You will not without our prior written consent charge, sell, discount, factor, transfer, dispose of or, except in accordance with this deed, otherwise deal with your Non-Vesting Book Debts and Other Book Debts.
- 10.6 You will not sell, transfer, lease licence, part with possession or dispose of or grant any interest in or relating to your goodwill including (without limitation) diverting or encouraging the diversion of any sales following orders from customers, to any of your Subsidiaries or your holding company (as defined in section 1159 of the Companies Act 2006) or any of your associates (as defined in section 435 of the Insolvency Act) or any other party.
- 10.7 You will not remove, or cause to be removed, the Goods from any place in which they are stored without our prior written consent.

11 Further assurance

- 11.1 You shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as we may reasonably specify (and in such form as we may reasonably require in our favour):
- 11.1.1 to perfect the Security created or intended to be created under or evidenced by this deed or for the exercise of any of our rights, powers and remedies provided by or pursuant to the Finance Documents or by law;
 - 11.1.2 to confer on us over any your property and assets located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this deed; and/or
 - 11.1.3 to facilitate the realisation of the assets which are, or are intended to be, the subject of Security Interests.

- 11.2 You shall take all such action as is available to you (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on us by or pursuant to this deed.

12 Real Property

- 12.1 You shall promptly notify us of your acquisition of, or agreement to acquire, any Real Property.
- 12.2 You shall promptly deposit with us and we shall be entitled to hold all title deeds and documents relating to your present and future Real Property.
- 12.3 You shall, in respect of all Real Property in England and Wales owned by you:
- 12.3.1 if applicable, promptly apply to the Land Registry for first registration of that Real Property (where that Real Property is capable of being registered at the Land Registry and is not already so registered) and for registration of it as proprietor of that Real Property;
 - 12.3.2 promptly apply to the Land Registry to register the Security created by this deed; and
 - 12.3.3 promptly pay all registration fees.
- 12.4 You consent, in respect of all Real Property in England and Wales owned by you on the date of this deed and if you acquire any Real Property after the date of this deed, to our application to the Land Registry:
- 12.4.1 in Form RX1 for the registration of the following restriction against each such Real Property:

"RESTRICTION:

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated 21st December 2018 in favour of Ultimate Finance Limited (company number 4325262) referred to in the charges register or, if appropriate signed on such proprietor's behalf by its attorney, directors and/or secretary."; and
 - 12.4.2 to enter the obligation to make further loans or advances on the charges register of such Real Property.
- 12.5 You will grant us or our solicitors on request all reasonable access to your Real Property to enable us or them to carry out, at your expense, such investigation of title to the Real Property and enquiries about it.
- 12.6 You will comply in all material respects with all laws concerning the Real Property, including all Environmental Laws, and every notice, order, direction, licence, consent, permission lawfully made or given in respect of it and likewise with the requirements of any competent authority.
- 12.7 You will punctually pay all outgoings payable in respect of the Real Property and will promptly produce the receipts for them to us upon request.
- 12.8 You will keep all your Real Property in good and substantial repair and condition and keep all of your Fixtures, except for any necessary repairs or replacements and will allow us free access, at all reasonable times, to view the state and condition of any such Real Property, but without us becoming liable to account as a mortgagee in possession.

- 12.9 You will observe and perform all the lessee's covenants in any lease under which any of the Real Property may be held and will take no action which might lead to such lease being surrendered or forfeited.
- 12.10 You will allow us, at your expense, to carry out repairs or take any action which we shall reasonably consider necessary should you fail to observe or perform your obligations as a lessee.
- 12.11 You will not exercise the powers of leasing or accepting surrenders of leases, conferred on a mortgagee in possession by Sections 99 and 100 of the Law & Property Act 1925, or any other powers of leasing or accepting surrenders of leases, without our prior written consent.
- 12.12 You will make sure that an order of the Court is obtained, under Section 38(4) of the Landlord and Tenant Act 1954, excluding the security of tenure provisions of that Act, before granting any lease.
- 12.13 You will insure and keep insured those parts of the Real Property as are of an insurable nature against loss or damage by fire and other risks usually insured against and such other risks that we shall reasonably require to their full insurable value with insurers approved by us.
- 12.14 You will observe and perform all restrictive and other covenants and stipulations for the time being affecting the Real Property or its use or enjoyment.
- 12.15 You will not do or allow anything to be done on your Real Property which shall be treated as a development or a change of use unless our prior written consent has been obtained.
- 12.16 If you hold Real Property as a tenant or lessee and shall be required by the landlord either to insure or to reimburse your landlord for any insurance premium paid by him then you shall be treated as having complied with your insuring obligation under this deed if you duly and promptly comply with such requirements. However, this shall not affect our right to require you to produce satisfactory evidence that you have complied with the landlord's requirements.
- 12.17 You shall provide us within 7 days of receipt by it of a copy of every material communication made in connection with any of your Real Property and comply with our reasonable instructions in relation to any such communication.
- 12.18 If you do not comply with any provision of this clause 12, we, or any agent, contractor or other person required by us, may take any action reasonably required by us to comply with any such provision. The cost and expense of which shall be borne by you.

13 Plant and Machinery

- 13.1 You shall keep the Plant and Machinery in good and substantial repair and in good working order and condition.
- 13.2 You shall take any action which we may reasonably require to evidence our interest in the Plant and Machinery; this includes fixing a nameplate on your Plant and Machinery in a prominent position stating that:
- 13.2.1 the Plant and Machinery is charged in our favour; and
- 13.2.2 the Plant and Machinery must not be disposed of without our prior consent.

14 Bank Accounts

- 14.1 You shall not make any withdrawal from any Bank Account except:
- 14.1.1 prior to the occurrence of a Termination Event which is continuing, in the ordinary course of your business; and

14.1.2 while a Termination Event is continuing, with our prior consent.

14.2 You shall promptly deliver to us and we shall be entitled to hold, such documents relating to your Bank Accounts as we may require, including any notice to the relevant bank or financial institution of the Security Interests over them in such form as we may require.

15 Book Debts

15.1 Unless agreed otherwise in the Agreement, you shall promptly collect all Book Debts, Non-Vesting Book Debts and Other Book Debts and shall hold the proceeds of collection on trust for us.

15.2 You shall immediately pay all moneys received or receivable by you from any source (including all proceeds of collection of Book Debts, Non-Vesting Book Debts and Other Book Debts) into the relevant Bank Account designated for this purpose by us. We may designate different Bank Accounts for different moneys.

15.3 You shall promptly deliver to us and we shall be entitled to hold, such documents relating to your Book Debts, Non-Vesting Book Debts and Other Book Debts as we may require.

16 Securities

16.1 You shall promptly notify us of:

16.1.1 your acquisition of, or agreement to acquire, Securities;

16.1.2 the declaration, payment, receipt, offer or issue of any Related Rights in respect of any Securities excluding any cash dividend; and

16.1.3 any intention of which you become aware of any Securities to be held in uncertificated form.

16.2 You shall on the date of this deed and where Securities are acquired by you after the date of this deed, on the date of that acquisition:

16.2.1 deliver to us and we shall be entitled to hold, all certificates and other documents of title or evidence of ownership in relation to your Securities and; and

16.2.2 deliver to us and we shall be entitled to hold, transfers of the Securities, each executed in blank, and other documents relating to the Securities reasonably required by us.

16.3 At any time prior to the occurrence of a Termination Event which is continuing:

16.3.1 you shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Securities, provided that:

(a) you do so for a purpose which is not inconsistent with any Finance Document; and

(b) the exercise of or, as the case may be, the failure to exercise those rights would not have an adverse effect on the value of the relevant Securities or the Security Assets or our ability to realise the Security Interests and would not otherwise prejudice our interests under any Finance Document; and

16.3.2 you shall be entitled to retain any cash dividend deriving from the Securities.

16.4 At any time while a Termination Event is continuing:

- 16.4.1 and we have given you notice that we intend to exercise our rights under this clause 16.4:
- (a) we or the Receiver shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Securities; and
 - (b) you shall comply or procure the compliance with any of our directions or those of the Receiver in respect of the exercise of those rights and shall promptly execute and/or deliver to us or the Receiver such forms of proxy as we or it may require with a view to enabling such person as it selects to exercise those rights.
- 16.4.2 you shall hold any cash dividend deriving from the Securities received by you on trust for us and transfer or pay the same immediately to us or as we may direct.
- 16.5 If any Securities are held in the name of your nominee, you shall promptly upon our request deliver to us an irrevocable power of attorney, expressed to be given by way of security and executed as a deed by that nominee. That power of attorney shall appoint us and each Receiver as the attorney of the holder and shall be in such form as we may require.
- 16.6 You shall promptly upon request deliver to us a copy of each circular, notice, report, set of accounts or other document received by you or your nominee relating to any of your Securities.
- 16.7 You shall promptly deliver to us a copy of, and comply with, each request for information which is made under section 793 of the Companies Act 2006 or any similar provision contained in any articles of association or other constitutional document relating to any of your Securities and.
- 17 Intellectual property**
- 17.1 You shall promptly notify us of your acquisition or, or agreement to acquire, (by licence or otherwise) any Intellectual Property, and any application by you or on your behalf to register any Intellectual Property.
- 17.2 You shall promptly deliver to us and we shall be entitled to hold, such documents relating to your Intellectual Property as we may require.
- 17.3 You shall:
- 17.3.1 preserve and maintain the subsistence and validity of the Intellectual Property necessary for your business from time to time;
 - 17.3.2 use reasonable endeavours to prevent any infringement in any material respect of your Intellectual Property including, where appropriate, commencing and diligently undertaking the prosecution of infringement actions or oppositions;
 - 17.3.3 make registrations where registration is necessary or desirable and pay all registration fees, renewal fees and taxes necessary to maintain your Intellectual Property in full force and effect and record your interest in that Intellectual Property;
 - 17.3.4 not use or permit your Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of your Intellectual Property or imperil your right to use such property;
 - 17.3.5 not to discontinue the use of your Intellectual Property;

- 17.3.6 take all steps to record this deed and restrictions on disposal under this deed on such registers, in such jurisdictions and within such time limits as we require in order to perfect the Security Interests over your Intellectual Property; and
 - 17.3.7 perform and comply with all laws and obligations to which you are subject as registered proprietor, beneficial owner, user, licensor or licensee of any Intellectual Property held by you.
- 17.4 You shall not grant any exclusive registered user agreement or exclusive licence in relation to any of your present or future Intellectual Property.

18 Insurances

- 18.1 You must insure the Real Property and Plant and Machinery for their full reinstatement value and against any loss or damage, including but not limited to, loss or damage caused by fire, storm, flood, terrorism or, in the case of Real Property, loss of rent.
- 18.2 You shall promptly upon request by us deliver to us and we shall be entitled to hold, such contracts and policies of insurance taken out by or on your behalf and the related premium receipts, and such other documents relating to your Insurances, as we may require.
- 18.3 You shall ensure that each contract and policy of insurance taken out by you or on your behalf names us as sole loss payee and will produce to us the receipts for each current premium within fifteen days of its becoming due; failing such production we may effect or renew any such insurance as we shall think fit at your expense.
- 18.4 You shall not do or omit to do or permit to be done or omitted anything which might render any of your Insurances void, voidable or unenforceable.
- 18.5 You shall diligently pursue your rights under any contract or policy of insurance taken out by you or on your behalf or in which you has an interest, but only if and to the extent that the exercise of those rights in the manner proposed would not result in a Termination Event.
- 18.6 You must take such steps (at your own cost) as we may require to enforce those rights; this includes initiating and pursuing legal or arbitration proceedings in your name.
- 18.7 You must hold any payment received by you under any contract or policy of insurance taken out by you or on your behalf or in which you have an interest on trust for us.
- 18.8 If you do not comply with any requirement of this clause 18, we may take out any insurances of the Security Assets as may be reasonably required by us and may take any action reasonably required by us to comply with any such provision. The cost and expense of which shall be borne by you.
- 18.9 The proceeds of any insurance claim shall be applied, at our option promptly towards making good the loss or damage in respect of which the proceeds were received or towards the discharge of any Secured Liabilities.

19 Goods

- 19.1 You shall promptly notify us of your acquisition of, or agreement to acquire, any Goods.
- 19.2 You shall promptly deliver to us and we shall be entitled to hold, such documents of title relating to the Goods as we may require.
- 19.3 You shall:
 - 19.3.1 if and when we so require, execute and sign all transfers, delivery orders and other documents which we may from time to time require for perfecting our title or for vesting or enabling us to vest any of the Goods in or for facilitating delivery of the same to us or our nominees or any purchaser of those Goods;

- 19.3.2 do all such acts and things as may be necessary or expedient for effecting or in connection with any sale or other disposition we may make;
- 19.3.3 keep the Goods insured in their full value with an insurance company approved by us against all insurable risks as is usual for such pledged assets or for such insurable risks and for such amounts as we may from time to time require, including, but not limited to, fire and flood; and
- 19.3.4 if we require, you shall assign the benefit of such policy to us or in the absence of such requirement shall cause a note of our interest to be endorsed on the policy and in case of loss or damage to the Goods howsoever caused will pay over to us all sums received from such insurance or otherwise in respect of such loss or damage,

and we are hereby irrevocably authorised to recover the full amount from the insurers and to the extent that such amount is insufficient to discharge the Secured Liabilities, you confirm that the amount of such deficiency remains due and payable to us by you on demand. You shall hold the policies of such insurance and proof of payment of the current premiums on our behalf and on demand deliver them to us; and
- 19.3.5 pay all transit and other charges, rent and all other costs of and incidental to the Goods and indemnify us against such amounts.
- 19.4 We may at our option insure and store or arrange for the storage of all or any of the Goods and debit any of your accounts with any costs, charges or expenses of or in connection therewith but we shall not be responsible for any loss or damage resulting from our omission to insure or store.
- 19.5 We are not to be liable to account as a mortgagee in possession or for default by any storekeeper, broker, auctioneer or other person employed in connection with the Goods or the sale or other disposition thereof or for any neglect, default, loss or damage in connection with the Goods howsoever caused.
- 20 General Undertakings**
- 20.1 The undertakings given by you in the deed remain in force from the date of this deed until the Security Assets have been discharged from the Security Interests in accordance with clause 33.
- 20.2 You shall promptly supply us with such information regarding your financial condition, business and operations, your Security Assets and your compliance with this deed as we may reasonably request.
- 20.3 You shall permit us and/or any of your representatives (including workmen, surveyors, valuers and other persons) at all reasonable times to view the condition of, and repair, any Security Assets.
- 20.4 You shall not do, or permit to be done, anything which could prejudice the Security Interests.
- 20.5 You will, immediately upon becoming aware, provide us with details of any present or future litigation, arbitration or administrative proceedings in progress, pending or, to your knowledge, threatened against you.
- 20.6 You will promptly obtain, comply with and do all that is necessary to maintain in full force and effect and supply certified copies to us of any Authorisation required under any law or regulation of England and Wales to enable you to perform your obligations under this deed and to ensure the legality, validity, enforceability or admissibility in evidence of this deed.

- 20.7 You will permit us free access at all reasonable times to inspect and take copies of and extracts from your books, accounts and records and such other documents as we may require and will provide us with all information and facilities which we may require.
- 20.8 You shall comply in all respect with all laws to which you are subject, if failure to so comply would materially impair your ability to perform your obligations under this deed.
- 20.9 You shall not enter into any amalgamation, demerger, merger or corporate reconstruction.
- 20.10 You shall not and shall procure that none of your Subsidiaries change the general nature of the business that you or that Subsidiary carries on at the date of this deed.
- 20.11 You will conduct and carry on your business and procure that each of your Subsidiaries conducts and carries on its business so that its centre of main interest for the purposes of Council Regulations (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings (the **"Main Interests Regulation"**) including, but not limited to, its headquarter functions is located at all times within England and Wales and not move your centre of main interest to any other jurisdiction or otherwise divert from England and Wales the substantive management and control of your business or any of your Real Property.
- 20.12 If you are a limited company, will not reduce your issued share capital, nor write off or release any part of such capital which is uncalled.
- 20.13 If you are an LLP, will not allow the reduction of the investment in you by your partners.
- 20.14 You will carry on your business in a proper and efficient manner and will not make any material alteration to your business, constituting a change from that carried on at the date hereof.
- 20.15 You will maintain proper and up to date books of account of your business; will keep such books of account and all other documents relating to your affairs at your registered office or at such other place where the same ought to be kept and will promptly provide copies thereof to us upon request.
- 20.16 You will deliver to us the copies of your audited financial statements and any reports and notes accompanying them within 6 months of each year end.
- 20.17 You will punctually pay all your debts and liabilities becoming due and payable and which would, on your winding up, have priority over the charges created by this deed.

21 Representations and Warranties

- 21.1 You make the representations and warranties in this clause 21 to us on the date of this deed and is deemed to be repeated on each day until the Security Assets have been discharged from the Security Interests in accordance with clause 33, by reference to the facts and circumstances then existing.
- 21.2 You certify that the execution of this deed has been duly authorised by (in the case of a limited liability company) a resolution of your Board of Directors or (in the case of a limited liability partnership) a resolution of the meeting of the members and that it does not break any of the provisions of your Memorandum and Articles of Association or of any other Security, security or agreement entered into prior to the date of this deed or the laws of any jurisdiction applying to you.
- 21.3 You represent and warrant to us that:
 - 21.3.1 you are duly incorporated and validly existing under the law of your jurisdiction of incorporation;
 - 21.3.2 you have the power to own the Security Assets and carry on your business as it is being conducted;

- 21.3.3 you are and will at all times have the necessary power and authority to enter into, perform and deliver, and you have taken all necessary action to authorise your entry into, performance and delivery of this deed and the transactions contemplated by it;
- 21.3.4 this deed and the obligations expressed to be assumed by you in this deed constitute your legal, valid, binding and enforceable obligations;
- 21.3.5 this deed creates effective Security Interests overall and every part of the Security Assets in accordance with its terms and with the ranking and authority it is expressed to have;
- 21.3.6 the entry into, and performance by you of the obligations under, this deed do not and will not conflict with any law or regulation applicable to you, your constitutional documents or any agreement or instrument binding upon you or any Security Assets;
- 21.3.7 all necessary Authorisations and consents required or desirable to enable you to lawfully enter into, exercise your rights and comply with your obligations in this deed, to make this deed admissible in evidence in England and Wales, to enable you to create the Security Interests and to ensure such Security Interests have the priority and ranking it is expressed to have, have been obtained and are in full force and effect;
- 21.3.8 you are not required to make any deduction for or on account of tax from any payment you may make under this deed;
- 21.3.9 no Termination Event is continuing or might reasonably be expected to result from the execution or performance of the transactions contemplated by this deed;
- 21.3.10 your payment obligations under this deed rank at least *pari passu* with the claims of all your other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law;
- 21.3.11 nothing has arisen or has been created or is subsisting, which would be an overriding interest in any Security Asset;
- 21.3.12 no Security expressed to be created by this deed is liable to be avoided or otherwise set aside on the liquidation or administration of you or otherwise;
- 21.3.13 you are the absolute legal and beneficial owner of all the Security Assets;
- 21.3.14 no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency have been started or are threatened against you or any of your Subsidiaries;
- 21.3.15 for the purposes of the Main Interests Regulation, your centre of main interest is situated in England and Wales and you have no "establishment" (as that term is used in the Main Interests Regulation) in any other jurisdiction;
- 21.3.16 you have obtained and maintained all such insurance policies as would be maintained by prudent companies carrying on business of the type carried on by you at all relevant times and have complied in all material respects with the terms and conditions of such policies;
- 21.3.17 in relation to the Real Property:
- (a) you are the sole legal and beneficial owner with full title guarantee of all the Real Property and you have good and marketable title to the Real Property, in each case, free from Security (other than those set out in this deed) and restrictions and onerous covenants;

- (b) all Authorisations required by you in connection with your ownership of the Real Property have been obtained or effected, as appropriate, and are in full force and effect;
- (c) no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of the Real Property;
- (d) there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter adversely affecting the Real Property;
- (e) nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or registered dispositions, over the Real Property;
- (f) none of the facilities for the enjoyment and use of the Real Property (including those necessary for the carrying on of your business at the Real Property):
 - (i) entitle any person to terminate or curtail use of the Real Property; or
 - (ii) conflict with a restraint on your use of the Real Property;
- (g) you have not received any notice of any adverse claim by any person in respect of the ownership of the Real Property or any interest in it, nor has any acknowledgement been given to any person in respect of the Real Property;
- (h) the Real Property is held by you free from any lease or licence;
- (i) you have complied with all planning laws to which you may be subject;
- (j) all planning permissions required in connection with any Real Property have been obtained and are in full force and effect and you have complied with the terms of those planning permissions;
- (k) you have complied with the terms of any agreement entered into with, or undertakings given to, any planning authority or other public body or authority charged with administering planning law;

21.3.18 in relation to Environmental Laws and Licences:

- (a) you have acquired, maintained and complied with all Environmental Licences (if any) needed for your use or occupation of the Real Property or for the conduct of your business;
- (b) you have complied with all applicable Environmental Laws to which you are subject and have not done or permitted any act or omission whereby your Environmental Licences (if any) could be varied or revoked;
- (c) so far as you are aware, there has been no discharge, spillage, release or emission of any prescribed, dangerous, noxious or offensive substance or any controlled waste on, into or from any of the Real Property or any premises adjoining any part of it; and no such substances or any controlled waste have been stored or disposed of on or in any part of the Real Property or, so far as you are aware, in any adjoining premises except in accordance with the requirements of the applicable Environmental Laws; and

- (d) you are not in breach of and have not incurred or become subject to any civil or criminal liability under any Environmental Laws or the terms of any Environmental Licence;

21.3.19 in relation to the Securities:

- (a) the Securities are duly authorised, validly issued and fully paid and are not subject to any option to purchase or any similar right;
- (b) the constitutional documents of the issuer of the Securities do not and could not restrict or inhibit the transfer of those Securities on creation or the enforcement of the Security Interests;
- (c) you are the sole legal and beneficial owner of the Securities; and
- (d) there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any issuer of the Securities (including any option or right of pre-emption or conversion);

21.3.20 in relation to the Intellectual Property:

- (a) you are the sole legal and beneficial owner of or you have the licence to all Intellectual Property which is material to your business and which is required by you in order to carry on your business as it is being conducted; and
- (b) you have taken all formal or procedural actions (including payment of fees) required to maintain the Intellectual Property; and

21.3.21 in relation to the Goods:

- (a) you have a good title to the Goods in order to pledge or charge them to us and the Goods are within your own disposition and control and are and will remain free from any other pledge, charge, lien or encumbrance of any kind;
- (b) they are and will remain stored in the Location;
- (c) you will be responsible for performing your obligations under the Agreement and this deed;
- (d) at the time of handing over the Goods to us, you have met all requirements relating to exporting or importing the Goods and you are not aware that anyone else has failed to meet these requirements;
- (e) you do not know, and have no reason to suspect, that the Goods are, or are connected with, the proceeds of criminal activity;
- (f) you have given us all information that you are aware of relating to the condition or provenance of the Goods;
- (g) you have told us in writing about any alterations, repairs or restoration to the Goods of which you are aware;
- (h) you have told us and will continue to tell us about all facts and matters of which you are aware which might affect the future sale or value of the Goods or the terms on which we are prepared to accept the Goods for purposes of this Deed or the Agreement; and
- (i) you will tell you as soon as you become aware or have reason to suspect, that any of your representations or warranties set out in this Deed or the Agreement are, or may have become, untrue.

22 Enforcement

- 22.1 The Security Interests shall be immediately enforceable on and at any time after the occurrence of a Termination Event which is continuing.
- 22.2 At any time after the Security Interests have become enforceable, we may in our absolute discretion enforce all or any part of the Security Interests in any manner we see fit.
- 22.3 At any time after the Security Interests have become enforceable, the powers, authorities and discretions conferred by the Law of Property Act on mortgagees, including the power of sale and other powers conferred by section 101 of the Law of Property Act, as varied or extended by this deed, shall be immediately exercisable.
- 22.4 If we or any Receiver takes possession of the Security Assets, we or the Receiver, as applicable, may at any time relinquish possession. We shall not and no Receiver shall be liable, by reason of viewing or repairing any of your present or future assets, as a mortgagee in possession.
- 22.5 Neither us nor any Receiver shall, either by reason of taking possession of the Security Assets or for any other reason and whether as mortgagee in possession or otherwise, be liable for:
- 22.5.1 any costs, losses or expenses relating to the realisation of any Security Assets; or
 - 22.5.2 any act or omission by us or any Receiver or our respective officers, employees or agents in relation to the Security Assets or in connection with the Finance Documents,
- unless directly caused by our gross negligence or wilful misconduct.

23 Law of Property Act

- 23.1 The power of sale and other powers conferred by section 101 of the Law of Property Act on mortgagees, as varied or extended by this deed, shall arise (and the Secured Liabilities shall be deemed due and payable for that purpose) on the date of this deed and shall be exercisable in accordance with clause 22.3.
- 23.2 Section 103 of the Law of Property Act shall not apply to this deed.
- 23.3 Section 93 of the Law of Property Act shall not apply to this deed.
- 23.4 At any time after the Security Interests have become enforceable, we may make any lease or agreement for lease, accept any surrender of lease and grant any option as we see fit and without the need to comply with any provision of section 99 or section 100 of the Law of Property Act.

24 Power of Attorney

- 24.1 You, by way of security, hereby irrevocably appoint us and every other officer for the time being of us and any Receiver jointly and severally to be your attorney (with full power of substitution), in your name and on your behalf or otherwise, at such time and in such manner as the attorney thinks fit:
- 24.1.1 to do anything which you are obliged to do under any Finance Document to which you are a party but have failed to do; and

- 24.1.2 to exercise any of the rights conferred on us and any Receiver in relation to the Security Assets or under any Finance Document or under any law.
- 24.2 We and our directors and company secretary and every other officer of ours for the time being are empowered to appoint and remove at will any substitute attorney or agent for you in respect of the power of attorney.
- 24.3 You agree to ratify and confirm whatever we or our offices, substitutes and agents or any Receiver do lawfully pursuant to the above power of attorney.
- 24.4 These powers shall continue both during and after the ending of the Agreement and during any disability on your part until all sums due to us have been paid.
- 24.5 You also irrevocably appoint any assignee of ours or any person to whom we may novate the Agreement to perform any of the acts set out above.
- 24.6 Neither we, nor any delegate or assignee shall be in any way liable or responsible to the you for any loss or damage arising from any act, default or omission arising following the exercise of the powers herein contained.
- 24.7 You shall indemnify us against any cost, loss, charges, interest, demands and liability we may suffer as a result of exercising our powers under this clause 24 (*Power of Attorney*).

25 Appointment of Receiver and Administrators

- 25.1 We may by deed or otherwise in writing, and without notice to you, appoint any one or more persons to be a Receiver of all or any part of the Security Assets if we are requested to do so by you or the Security Interests have become enforceable.
- 25.2 We may remove any Receiver and appoint a new Receiver.
- 25.3 We may appoint more than one person to act as the Receiver. Where more than one person shall be appointed to act as Receiver, those so appointed shall carry out their duties, exercise their rights, and be subject to their obligations jointly as well as severally. References in this deed to the Receiver shall be to each and all of them as appropriate.
- 25.4 Any Receiver shall be your agent for all purposes. You alone shall be responsible for the Receiver's contracts, engagements, acts, omissions and defaults. We shall not incur any liability (either to you or any other person) by reason of our appointment of a Receiver or for any other reason.
- 25.5 We may determine the remuneration of any Receiver and the maximum rate specified in section 109(6) of the Law of Property Act shall not apply. We may direct payment of that remuneration out of moneys it receives as Receiver. You alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver.

26 Powers of Receivers

- 26.1 Any rights conferred by any Finance Document upon a Receiver may be exercised by us, whether or not we have taken possession or appointed a Receiver of the Security Assets.
- 26.2 Receiver has all of the rights, powers and discretions set out below in this clause in addition to those conferred on it by law, including those conferred by the Law of Property Act and the Insolvency Act.
- 26.3 Any Receiver appointed pursuant to clause 25 shall have the right, either in its own name or in your name or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person to:
- 26.3.1 take immediate possession of, get in and collect all or any part of the Security Assets;

- 26.3.2 manage and carry on your business in any manner he thinks fit;
- 26.3.3 sell, transfer, assign, exchange, hire out, lend, licence or otherwise dispose of or realise all or any part of the Security Assets (including any Fixtures, which may be sold separately from the related Real Property) to any person either by public offer or auction, tender or private contract and for consideration of any kind;
- 26.3.4 form a new company and to subscribe for or acquire (for cash or otherwise) any investment in or of the new company and sell, transfer, assign, exchange and otherwise dispose of or realise any such investments or any rights attaching thereto;
- 26.3.5 raise and borrow money either unsecured or on the security of any Security Assets (either in prior to the Security Interests or otherwise);
- 26.3.6 lend money or advance credit to any person;
- 26.3.7 enter into bonds, covenants, guarantees, indemnities and other commitments;
- 26.3.8 appoint, hire and employ officers, employees, contractors, agents, advisors and others and to discharge any such persons and any such persons appointed, hired or employed by you;
- 26.3.9 grant leases, tenancies, licences and rights of user, grant renewals and accept surrenders of leases, tenancies, licences or rights of user, and otherwise to reach agreements and make arrangements with, and to make allowances to, any lessees, tenants or other persons;
- 26.3.10 manage and use all or any part of the Security Assets and to exercise and do all such rights and things as the Receiver would be capable of exercising or doing if it were the absolute beneficial owner of all or any part of the Security Assets;
- 26.3.11 insure all or any part of the Security Assets, to carry out decorations, repairs, alterations, improvements and additions to all or any part of the Security Assets (including the development or redevelopment of any Real Property), to commence and/or complete any building operation, to apply for and maintain any planning permission, building regulation approval or any other authorisation and to purchase or otherwise acquire or do anything in connection with all or any part of the Security Assets;
- 26.3.12 bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to all or any part of the Security Assets or your business;
- 26.3.13 settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or relating to all or any part of the Security Assets or your business;
- 26.3.14 redeem any Security (whether or not having priority to the Security Interests) over all or any part of the Security Assets and to settle the accounts of any person with an interest in all or any part of the Security Assets;
- 26.3.15 delegate in any manner to any person any rights exercisable by the Receiver under any Finance Document and any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as it thinks fit and to pass confidential information to any such delegate;
- 26.3.16 exercise all powers set out in Schedule 1, B1 or (in the case of a Scottish Receiver) Schedule 2 of the Insolvency Act as now in force (whether or not in force at the date of exercise and whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1 or Schedule 2, as the case may be, after the date of this deed;

- 26.3.17 give valid receipt for any moneys and do anything which may be necessary or desirable for realising all or any part of the Security Assets; and
- 26.3.18 do anything else it may think fit for the realisation of all or any part of the Security Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of any Finance Document to which you are a party, the Law of Property Act or the Insolvency Act.

27 Financial Collateral Arrangement

- 27.1 To the extent that this deed constitutes a "financial collateral arrangement" (as defined in the Financial Collateral Arrangements (No.2) Regulations 2003 (the "**Regulations**")), we shall have the right:
 - 27.1.1 to use and dispose of any Security Asset which constitutes "financial collateral" (as defined in the Regulations ("**Financial Collateral**")) in such manner as we see fit, in which case we shall comply with any requirements of the Regulations in relation to obtaining "equivalent financial collateral" (as defined in the Regulations);
 - 27.1.2 to set-off the value of any equivalent financial collateral against, or apply it in discharge of, any Secured Liabilities in accordance with the Regulations; and
 - 27.1.3 at any time after the Security Interests have become enforceable, to appropriate any Security Asset which constitutes Financial Collateral in such manner as we see fit in or towards satisfaction of the Secured Liabilities in accordance with the Regulations.
- 27.2 If we are required to value any equivalent financial collateral or Financial Collateral for the purposes of clauses 27.1.2 or 27.1.3 above, the value shall be:
 - 27.2.1 in the case of cash, its face value at the time of appropriation or set-off; and
 - 27.2.2 in the case of any Securities, their market value at the time of appropriation or set-off as determined by us by reference to a public index, independent valuation or by such other process as we may select (acting reasonably),as converted, where necessary, into the currency in which the Secured Liabilities are denominated at a market rate of exchange prevailing at the time of appropriation or set-off selected by us. The Parties agree that the methods of valuation set out in this clause 27.2 are commercially reasonable for the purposes of the Regulations.
- 27.3 You authorise us to transfer any Security Asset which constitutes Financial Collateral in accordance with the Regulations, and any such Security Asset shall pass from you to us by way of outright title transfer, free and clear of any liens, claims, charges or encumbrances or any other interest of yours or any third party. We shall, accordingly, have the right to deal with, lend, dispose of, pledge, charge or otherwise use any Security Asset which constitutes Financial Collateral.

28 Application of Monies

- 28.1 All amounts from time to time received or recovered by us or by any Receiver pursuant to this deed or in connection with the realisation or enforcement of all or any part of the Security Interests shall be applied in the following order:
 - 28.1.1 in the discharge of all sums owing to us or any Receiver;
 - 28.1.2 in the discharge of all costs and expenses incurred by us in connection with any realisation or enforcement of the Security Interests or any action taken at our request under clause 11;

- 28.1.3 in payment or distribution to us for application towards the discharge of the Secured Liabilities in accordance with the terms of the Agreement;
- 28.1.4 if you are not under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom we are obliged to pay or distribute in priority to you; and
- 28.1.5 the balance, if any, in payment or distribution to you.

29 Protection of Third Parties

- 29.1 No person dealing with us or any Receiver shall be concerned to enquire:
 - 29.1.1 whether the powers conferred by or pursuant to any Finance Document have arisen or are exercisable;
 - 29.1.2 whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
 - 29.1.3 whether we or any Receiver or its agents are acting within their powers;
 - 29.1.4 whether any money remains due under the Finance Documents and the receipt in writing from us or any Receiver or our agents shall be sufficient discharge to that person;
 - 29.1.5 as to the propriety or validity of any act purporting or intending to be an exercise of such powers; or
 - 29.1.6 as to the application of any money paid to us or any Receiver or our agents.

30 Delegation

- 30.1.1 We may delegate by power of attorney or in any other manner and on such terms as we think fit, to any person any right, power discretion exercisable by us under this deed.
- 30.1.2 We shall not in any way be liable or responsible to you for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

31 Continuing and Additional Security

- 31.1 Subject to clause 33, the Security Interests are continuing Security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part
- 31.2 If any discharge, release or arrangement (whether in respect of your obligations or any security for those obligations or otherwise) is made by us in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then your liability and the liability of the Obligor and the Security Interests will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 31.3 Neither your obligations under this deed nor the Security Interests will be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of your obligations under any Finance Document or any of the Security Interests (without limitation and whether or not known to it or us) including:

- 31.3.1 any time, waiver or consent granted to, or composition with, you or any other person;
 - 31.3.2 the release of any other Chargor, the Obligor or any other person under the terms of any composition or arrangement with any creditor;
 - 31.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Chargor, the Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - 31.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Chargor, the Obligor or any other person;
 - 31.3.5 any amendment, novation, supplement, extension, restatement (however fundamental) or replacement of any Finance Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
 - 31.3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
 - 31.3.7 any insolvency or similar proceedings.
- 31.4 Without prejudice to clause 31.3, you expressly confirm that you intend that the Security Interests shall extend from time to time to any variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents.
- 31.5 You waive any right you may have of first requiring us (or any trustee or agent on our behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from you under this deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.
- 31.6 Until all amounts which may be or become payable by the Obligor or the Chargors under and in connection with the Finance Documents have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated:
- 31.6.1 we (or any trustee or agent on our behalf) may:
 - (a) refrain from applying or enforcing any other moneys, security or rights held or received by us in respect of those amounts, or apply and enforce the same in such manner and order as we see fit and you shall not be entitled to the benefit of the same; and
 - (b) hold in an interest-bearing suspense account any moneys received from you or on account of your liability under this deed (including any received at a time when no amount is due under the Finance Documents but any such amount may or will become due), and
 - 31.6.2 you may not exercise any rights you may have to:
 - (a) be indemnified by a Chargor or the Obligor;
 - (b) claim any contribution from any other Chargor or guarantor of the Obligor's obligations under the Finance Documents;
 - (c) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of our rights under the Finance Documents or of any other

guarantee or security taken by us pursuant to, or in connection with, the Finance Documents;

- (d) bring legal or other proceedings for an order requiring any Chargor to make any payment, or perform any obligation, in respect of which the Chargor had given a guarantee, undertaking or indemnity;
- (e) exercise any right of set-off against the Obligor or any Chargor; and/or
- (f) claim or prove as a creditor of the Obligor or any Chargor in competition with us.

31.7 If you receive any benefit, payment or distribution in relation to such rights you may have under clause 31.6.2, you shall hold that benefit, payment or distribution on trust for us and promptly pay or transfer the same to us.

31.8 The Security Interests are in addition to and are not in any way prejudiced by any other guarantee or security now or subsequently held by us.

32 Currency Indemnity

32.1 All payments by you under this deed (including damages for breach of its terms) shall be made in pounds sterling.

32.2 We or any Receiver may convert any monies received, recovered or realised under this deed (including the proceeds of any previous conversion) from their existing currency into such other currency as we or such Receiver may think fit. Any such conversion shall be effected at the then prevailing spot selling rate of exchange of our bankers for such other currency against the existing currency.

32.3 You will indemnify us against any shortfall between:

32.3.1 any amount received or recovered by us in respect of any of the Secured Liabilities which are converted in accordance with clause 32.2 into the currency in which such liability was payable; and

32.3.2 the amount payable to us under this deed in the currency of such liability.

33 Continuation of accounts

33.1 At any time if any subsequent Security affects any Security Assets or a petition is presented or resolution passed in relation to winding you up, we may open a new account in your name.

33.2 If we do not open such an account we shall nevertheless be treated as if we had done so at the time when notice of such subsequent Security was received or deemed to have been received by us and as from that time all payments made to us by you or on your behalf shall be credited or be treated as having been credited to the relevant new account.

33.3 No moneys paid into any account, whether new or continuing, as at or after the time when the relevant notice of such subsequent Security was received or deemed to have been received by us shall discharge or reduce any Secured Liabilities.

34 Discharge

34.1 Subject to clause 34.2, if we are satisfied that all amounts which may or become payable by the Obligor or the Chargors under or in connection with the Finance Documents have been irrevocably paid in full and that all facilities which might give rise to Secured Liabilities have been terminated, we shall at the your request and cost, release, reassign or discharge the Security Assets from the Security Interests, without recourse to, or any representation or warranty by us or any of our nominees.

- 34.2 If we consider that any amount paid or credited to us under any Finance Document is capable of being avoided or set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably repaid.

35 Costs and Indemnity

- 35.1 You shall pay to or reimburse us and any Receiver on demand, on a full indemnity basis, all costs, losses, liabilities and expenses (including legal fees) incurred by us or any Receiver in relation to any Finance Document (including the administration, protection, realisation, enforcement or preservation of any rights under or in connection with any Finance Document, or any consideration by us as to whether to realise or enforce the same, and/or any amendment, waiver, consent or release of this deed and/or any other document referred to in this deed).
- 35.2 You shall, within 3 Business Days' of demand, indemnify us and any Receiver against any cost, loss, liability or expense incurred by us or them as a result of:
- 35.2.1 any breach by your of this deed; or
 - 35.2.2 the exercise or purported exercise of any of the rights, powers, discretions, authorities and remedies conferred on us or them by this deed or otherwise relating to the Security Assets.

36 VAT

- 36.1 If VAT is chargeable on any supply made by us to you in connection with this deed, and you are required by the terms of this deed to pay an amount equal to the consideration for such supply to us, you shall also pay to us (in addition to and at the same time a paying such amount) an amount equal to the amount of such VAT.
- 36.2 Where this deed requires you to reimburse us for any costs or expenses, you shall also at the same time pay and indemnify us against all VAT incurred in respect of the costs or expenses to the extent that we reasonably determine that we are not entitled to credit or repayment from the relevant tax authority in respect of the VAT.

37 Set-Off

- 37.1 All payments to be made by you under this deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- 37.2 We may at any time set-off and without notice, any monies due from you to us or to any Ultimate Finance Group Company (as defined in the Agreement), whether actually, prospectively or contingently, and whether alone or jointly with others, and whether pursuant to this deed or otherwise (including any liability you may have to us as a debtor of another client of ours), against any sums due from us or any Ultimate Finance Group Company to you.
- 37.3 We and any Ultimate Finance Group Company may at any time and without notice to you, apply funds received by us in connection with this deed in or towards the satisfaction of monies owing:
- 37.3.1 to us; or
 - 37.3.2 to any Ultimate Finance Group Company.
- 37.4 Any funds may be applied in such proportions as we or any Ultimate Finance Group Company, as applicable, shall think fit notwithstanding any direction you may give to us to the contrary.

- 37.5 We may, without notice, set-off against any credit balance on any account(s) of yours (in any currency), your liability in respect of any facilities provided by us or any Ultimate Finance Group Company or owed by you to us in any other capacity or to any client of ours and we may combine any such account in order to give effect to this provision.
- 37.6 We and any Ultimate Finance Group Company may at any time without notice combine or consolidate your accounts with us or any Ultimate Finance Group Company.
- 37.7 You may not exercise any right of set-off or counterclaim against moneys due from you to us. Any sums due from us to you shall be paid to you in such manner and at such time as we may agree.

38 Changes to the Parties

- 38.1 We may assign any of our rights or transfer any of our rights or obligations under this deed to any person. References in this deed to us, we or our shall include our successors, assignees and transferees.
- 38.2 You may not assign or transfer any of your rights or obligations under this deed.
- 38.3 We may disclose any information about you and any member of your Group and any other person connected or associated with you to any member of our Group and/or to any person to whom we are proposing to transfer or assign or have transferred or assigned this deed. You represent and warrant that you have and (so far as permitted by law) will maintain any necessary authority by or on behalf of any such persons to agree to the provisions of this clause.

39 Third Party Rights

- 39.1 A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this deed.
- 39.2 Any Receiver may, subject to this clause 39 and the Third Parties Act, rely on any clause of this deed which expressly confers rights on it.

40 Notices

- 40.1 Any communication to be made under or in connection with this deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.
- 40.2 The address, fax number and email address (and the department or officer, if any for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this deed is as follows or any substitute address, fax number or email address as the Party may notify to the other by giving not less than 5 Business Days' notice:

Ultimate Finance Limited

Address: First Floor, Equinox North, Great Park Road, Bradley Stoke,
Bristol BS32 4QL

Fax number: 01454 207 051

123 Retail Limited

Address: 34 Roundhay Road, Leeds, LS7 1AB

Fax number: N/A

Email address: N/A

- 40.3 Any communication or document made or delivered by one Party to another under or in connection with this deed will only be effective:
- 40.3.1 if sent by post, 48 hours from the time of posting;
 - 40.3.2 if sent by fax, when received in legible form; or
 - 40.3.3 if sent by email, at the time of transmission.
- 40.4 Any notice in writing by you to us required hereunder shall only be effective only when it is received by us.
- 40.5 Any notice given under or in connection with this deed must be in English.

41 Remedies, waivers and determinations

- 41.1 No failure to exercise, nor any delay in exercising on our part or the part of any Receiver, any right or remedy under any Finance Document shall operate as a waiver of any such right or remedy or operate or constitute an election to affirm any of the Finance Documents. No waiver or election to affirm any of the Finance Documents on our part of any Receiver shall be effective unless in writing. Any single, partial or defective exercise of any such right or remedy shall not prevent the exercise or any further exercise of that or any other right or remedy.
- 41.2 Our rights under this deed are cumulative. They are not exclusive of any rights provided by law. They may be exercised from time to time and as often as we see fit.
- 41.3 Any certificate signed by a director or authorised officer of ours as to the amount of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

42 Partial Invalidity

If at any time any one or more of the provisions of this deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction then neither the legality, validity or enforceability of the remaining provisions of this deed nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.

43 Counterparts

This deed may be executed in any number of counterparts and this has the same effect as if all signatures on the counterparts were on a single copy of this deed.

44 Governing Law and Jurisdiction

- 44.1 This deed and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales.
- 44.2 The courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or connection with this deed (including any non-contractual obligations arising out of or in connection with this deed) (a "**Dispute**").
- 44.3 The Parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

44.4 We shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, we may take concurrent proceedings in any number of jurisdictions.

THIS DEED has been entered into as a deed on the date stated at the beginning of this deed.

Schedule 1

Real Property

Description of the land registered at the Land Registry	Freehold / Leasehold	London Borough/County and District	Title Numbers

Schedule 2

Plant and Machinery

Schedule 3

Form of letter of request to dispose of Security Assets

To: The Directors
Ultimate Finance Limited
First Floor
Equinox North
Great Park Road
Bradley Stoke
Bristol BS32 4QL

2018

Dear Sirs

We refer to the debenture dated granted to you by us ("**Debenture**").

We hereby request your consent to dispose of [asset] being part of the Security Assets (as defined in the Debenture). We wish to dispose of [asset] to [purchaser] [describe terms].

Please confirm your consent to the above disposal by signing and returning the enclosed letter.

Yours faithfully

.....
for and on behalf of
123 Retail Limited

Signature page to the Debenture between 123 Retail Limited and Ultimate Finance Limited

EXECUTED as a **DEED** by **123 RETAIL LIMITED** acting by Stephen Buck, a director in the presence of:


Director

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:


CHLOE LINES
3 SUNNY HILL CLOSE
WF2 0BZ
Financial Controller

EXECUTED as a **DEED** by

KAREN BAKER

as attorney for and on behalf of **ULTIMATE FINANCE LIMITED** in the presence of:

Attorney

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:


KAREN BUNTING

Ultimate Finance Limited
Equinox North
Great Park Road
Bradley Stoke
Bristol BS32 4QL