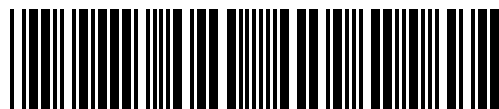




**Registration of a Charge**

Company Name: **OPTIMALE LTD**

Company Number: **10878576**



XCDWQYZK

Received for filing in Electronic Format on the: **11/10/2023**

**Details of Charge**

Date of creation: **06/10/2023**

Charge code: **1087 8576 0002**

Persons entitled: **MARS GROWTH CAPITAL FUND 1, L.P**

Brief description: **NONE**

**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 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: **JOSEPH MILLER**



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

Company number: 10878576

Charge code: 1087 8576 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th October 2023 and created by OPTIMALE LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th October 2023 .

Given at Companies House, Cardiff on 16th October 2023

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**                      October 6                      **2023**

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- (1)                      OPTIMALE LTD
- (2)    MARS GROWTH CAPITAL FUND 1,  
   L.P

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**DEBENTURE**

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THIS DEED is dated

October 6, 2023

## PARTIES

- (1) **OPTIMALE LTD** incorporated and registered in England and Wales with company number 10878576 whose registered office is at 71-75 Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ (**Chargor**).
- (2) **MARS GROWTH CAPITAL FUND 1, L.P.**, a limited partnership incorporated and registered under the laws of Singapore, having its registered office at 9 Raffles Place, #16-04 Republic Plaza, Singapore 048619 (**Lender**).

## BACKGROUND

- (A) The Lender has agreed pursuant to the Master Agreement to provide the Chargor's parent company Menwell Limited (the **Borrower**) with loan facilities on a secured basis.
- (B) The Chargor has agreed, pursuant to the Guarantee, to guarantee the Borrower's obligations to the Lender under the Master Agreement.
- (C) Under this deed, the Chargor provides security to the Lender for its obligations under the Guarantee.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

The following definitions apply in this deed:

**Administrator:** an administrator appointed to manage the affairs, business and property of the Chargor pursuant to clause 7.8.

**Book Debts:** all present and future book and other debts, and monetary claims due or owing to the Chargor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Delegate:** any person appointed by the Lender or any Receiver pursuant to clause 12 and any person appointed as attorney of the Lender, Receiver or Delegate.

**Designated Account:** any account of the Chargor nominated by the Lender as a designated account for the purposes of this deed (including, for the avoidance of doubt, the accounts listed in Schedules 1 and 2).

**Environment:** the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Law:** all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures,

judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

**Equipment:** all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Chargor, including any part of it and all spare parts, replacements, modifications and additions.

**Event of Default:** shall mean any of the following events:

- (a) if any of the Secured Liabilities shall not be paid or discharged when the same ought to be paid or discharged by the Chargor (whether on demand or at scheduled maturity or by acceleration or otherwise, as the case may be); or
- (b) if the Chargor shall be in breach of any of its obligations under this debenture or the Guarantee or any other agreement between the Chargor and the Lender and that breach (if capable of remedy) has not been remedied to the satisfaction of the Lender within the remedy period specified in the relevant agreement (if any). For the avoidance of doubt, if no remedy period is specified in the relevant agreement, the breach shall not be considered capable of remedy; or
- (c) if any Breach (as defined in the Master Agreement) has occurred and that breach (if capable of remedy) has not been remedied to the satisfaction of the Lender within the remedy period specified in the relevant agreement (if any) For the avoidance of doubt, if no remedy period is specified in the Master Agreement, the Breach shall not be considered capable of remedy; or
- (d) if the Chargor:
  - (i) becomes unable to pay its debts as they fall due (and/or the value of the Chargor's assets is less than the amount of its liabilities, taking into account the Chargor's contingent and prospective liabilities); or
  - (ii) as a result of financial difficulty of the Chargor, commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness; or
  - (iii) makes a general assignment for the benefit of, or a composition with, its creditors (other than any of its suppliers); or
- (e) the Chargor passes any resolution or takes any corporate action for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of it or of any or all of its revenues and assets;
- (f) a petition is presented or proceedings are commenced or any action is taken by any person for its winding up, dissolution, administration or re organisation, provided that such petition or proceeding is not removed, or such action withdrawn, within 60 days; or
- (g) a distress, execution, attachment or analogous legal process is levied or enforced upon or sued against all or any material part of the assets of the Chargor and remains undischarged for 60 days.

**Financial Collateral:** shall have the meaning given to that expression in the Financial Collateral Regulations.

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

**Guarantee:** the guarantee entered into between the Lender, the Chargor, CJA Balance Ltd and Think CBT Limited (the **Sister Companies**) on or around the date hereof, pursuant to which, inter alia, the Chargor and the Sister Companies agreed to guarantee the obligations of the Borrower under the Master Agreement.

**Insurance Policy:** each contract and policy of insurance effected or maintained by the Chargor from time to time in respect of its assets or business.

**Intellectual Property:** the Chargor's present and future patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

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

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

**LPA 1925:** Law of Property Act 1925.

**Master Agreement:** the master agreement (comprising the "Key Terms and Conditions" and "Full Terms and Conditions") dated on or around the date hereof between the Borrower (1) and the Lender (2), relating to the provision of loan facilities to the Borrower.

**Permitted Security:** means any other Security created by the Chargor in favour of the Lender and the Permitted Security Interests as defined in the Master Agreement.

**Properties:** all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Chargor, or in which the Chargor holds an interest, and **Property** means any of them.

**Receiver:** a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Lender under clause 10.

**Secured Assets:** all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this deed.

**Secured Liabilities:** all present and future monies, obligations and liabilities owed by the Chargor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, whether under or in connection with the Guarantee or this deed or otherwise, together with all interest (including, without limitation, default interest) accruing in respect of those monies or liabilities.

**Security Financial Collateral Arrangement:** shall have the meaning given to that expression in the Financial Collateral Regulations.

**Security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period:** the period starting on the date of this deed and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are outstanding and there are no further obligations on the Lender to make further advances to the Chargor.

## 1.2 Interpretation

In this deed:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes e-mail but not fax;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;



- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (l) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- (q) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- (r) a default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

### 1.3 **Clawback**

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

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

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

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- (b) the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;

- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of that Property, and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

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

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Guarantee and of any side letters between any parties in relation to the Guarantee are incorporated into this deed.

#### **1.6 Perpetuity period**

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

#### **1.7 Schedules**

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

### **2. COVENANT TO PAY**

The Chargor shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.

### **3. GRANT OF SECURITY**

#### **3.1 Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender by way of fixed charge:

- (a) all the Intellectual Property;
- (b) all the Book Debts; and
- (c) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account).

#### **3.2 Floating charge**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender, by way of floating charge, all the undertaking, property, assets and rights of the Chargor at any time not effectively mortgaged, charged or assigned pursuant to clause 3.1.

#### **3.3 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.2.

#### **3.4 Automatic crystallisation of floating charge**

The floating charge created by clause 3.2 shall automatically and immediately (without notice) be converted into a fixed charge over the assets subject to that floating charge if:

- (a) the Chargor:
  - (i) creates, or attempts to create, without the prior written consent of the Lender, a Security or a trust in favour of another person over all or any part of the Secured Assets (except the Permitted Security or as expressly permitted by the terms of this deed or the Master Agreement); or
  - (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised and as expressly permitted by the terms of the Master Agreement);
- (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
- (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor.

### **3.5 Part A1 moratorium**

- (a) Subject to Clause 3.5(b) below, the obtaining of a moratorium under Part A1 of the Insolvency Act 1986, or anything done with a view to obtaining such a moratorium (including any preliminary decision or investigation), shall not be an event causing any floating charge created by this Deed to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of any asset by a Chargor or a ground for the appointment of a Receiver.
- (b) Clause 3.5(a) above does not apply in respect of any floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act 1986.

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

The Lender may, in its sole discretion, and by written notice to the Chargor, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Lender in that notice. The Lender may give such notice at any time:

- (a) after the security created under this deed has become enforceable; or
- (b) if the Lender determines (acting reasonably) that the Secured Assets are in danger of being seized or sold under any form of distress, attachment, execution or that the same and/or the security created in this Deed in respect of it, is otherwise in jeopardy.

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

Any asset acquired by the Chargor after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a

floating charge under this deed, shall (unless the Lender confirms otherwise to the Chargor in writing) be charged to the Lender by way of first fixed charge.

#### **4. LIABILITY OF THE CHARGOR**

##### **4.1 Liability not discharged**

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

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

##### **4.2 Immediate recourse**

The Chargor waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Chargor.

#### **5. REPRESENTATIONS AND WARRANTIES**

##### **5.1 Representations and warranties**

The Chargor makes the representations and warranties set out in this clause 5 to the Lender.

##### **5.2 Ownership of Secured Assets**

The Chargor is the legal and beneficial owner of the Secured Assets.

##### **5.3 No Security**

The Secured Assets are free from any Security other than Permitted Security and the Security created by this deed.

##### **5.4 No adverse claims**

The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

##### **5.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

##### **5.6 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Secured Assets.

**5.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

**5.8 No overriding interests**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

**5.9 Environmental compliance**

The Chargor has, at all times, complied in all material respects with all applicable Environmental Law.

**5.10 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor, and is and will continue to be effective security over all and every part of the Secured Assets in accordance with its terms.

**5.11 Investments**

- (a) The Investments are fully paid and are not subject to any option to purchase or similar rights.
- (b) No constitutional document of an issuer of an Investment, nor any other agreement:
  - (i) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or
  - (ii) contains any rights of pre-emption in relation to the Investments.

**5.12 Times for making representations and warranties**

The representations and warranties set out in clause 5.2 to clause 5.10 are made by the Chargor on the date of this deed and are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

**6. GENERAL COVENANTS**

**6.1 Negative pledge**

The Chargor shall not at any time, except with the prior written consent of the Lender create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed or any Permitted Security.

**6.2 Preservation of Secured Assets**

The Chargor shall not do any act or thing that would or might materially depreciate, jeopardise or otherwise materially prejudice the security held by the Lender, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

### **6.3 Compliance with laws and regulations**

- (a) The Chargor shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to applicable law.
- (b) The Chargor shall:
  - (i) comply with the requirements of any applicable law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
  - (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets,

in each case where failure to do so would materially and adversely impact the interest of the Lender under this deed.

### **6.4 Enforcement of rights**

The Chargor shall use its reasonable endeavours to procure the prompt observance and performance of the covenants and other obligations imposed on the Chargor's counterparties.

### **6.5 Notice of misrepresentation and Events of Default**

The Chargor shall, promptly on becoming aware of any of the same, give the Lender notice in writing of:

- (a) any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any Event of Default.

### **6.6 Insurance**

- (a) The Chargor shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either use reasonable endeavours to procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:
  - (i) loss or damage by fire; and

- (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor.

Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender, and must be for not less than the replacement value of the Secured Assets.

- (b) The Chargor shall, if requested by the Lender, produce to the Lender the policy, certificate or cover note relating to the insurance required by clause 6.6(a) (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Chargor is entitled to obtain from the landlord under the terms of the relevant lease).

#### **6.7 Insurance premiums**

The Chargor shall promptly pay all premiums in respect of each insurance policy maintained by it in accordance with clause 6.6(a).

#### **6.8 No invalidation of insurance**

The Chargor shall not do or omit to do any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with clause 6.6(a).

#### **6.9 Proceeds of insurance policies**

After the security created under this deed becomes enforceable, all monies received or receivable by the Chargor under any insurance policy maintained by it in accordance with clause 6.6(a) at any time shall:

- (a) immediately be paid to the Lender;
- (b) if they are not paid directly to the Lender by the insurers, be held by the Chargor as trustee of the same for the benefit of the Lender (and the Chargor shall account for them to the Lender); and
- (c) at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

#### **6.10 Notices to be given by the Chargor**

The Chargor shall within 5 Business Days of the execution of this deed (or, if later, within 5 Business Days of the date of acquisition of the relevant Secured Asset):

- (a) give notice to each insurer that it has charged its rights and interest in and under each Insurance Policy under clause 3 and use reasonable endeavours to procure that each addressee of any such notice provides as soon as reasonably practicable to the Lender an acknowledgement of the notice of the Lender's interest; and
- (b) give notice in the form set out in Schedule 1 to any bank, financial institution or other person (excluding the Lender) with whom it has an account that it has charged to the Lender its rights and interests under

that account under clause 3.1(c) and shall use reasonable endeavours to procure that each addressee of any such notice provides as soon as reasonably practicable to the Lender an acknowledgement of the notice of the Lender's interest in the form set out in Schedule 2.

#### **6.11 Information**

The Chargor shall:

- (a) give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may reasonably require;
- (b) after the security created under this deed becomes enforceable, permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- (c) promptly notify the Lender in writing of any action, claim or demand made by or against it in connection with any Secured Asset that is not frivolous or vexatious and if determined against the Chargor is reasonably likely to materially and adversely impact the Secured Assets.

#### **6.12 Payment of outgoings**

The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets.

### **7. POWERS OF THE LENDER**

#### **7.1 Power to remedy**

If the Chargor fails to comply with any obligation set out in this deed, and that failure is not remedied within 10 days of the Lender giving notice to the Chargor or the Chargor becoming aware of the failure to comply, it will allow (and irrevocably authorises) the Lender or any Receiver to take any action on its behalf which the Lender or the Receiver deems necessary to ensure that those covenants are complied with. Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this deed shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.

#### **7.2 Exercise of rights**

The rights of the Lender under clause 7.1 are without prejudice to any other rights of the Lender under this deed. The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

#### **7.3 Power to dispose of chattels**

- (a) At any time after the security constituted by this deed has become enforceable, the Lender or any Receiver may, as agent for the Chargor, dispose of any chattels or produce found on any Property.
- (b) Without prejudice to any obligation to account for the proceeds of any disposal made under clause 7.3(a), the Chargor shall indemnify the



Lender and any Receiver against any liability arising from any disposal made under clause 7.3(a).

#### **7.4 Lender has Receiver's powers**

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

#### **7.5 Conversion of currency**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 7.5) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.
- (b) Any such conversion shall be effected at HSBC Bank plc then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this clause 7.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

#### **7.6 New accounts**

- (a) If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Chargor in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 7.6(a), then, unless the Lender gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

#### **7.7 Lender's set-off rights**

If the Lender has more than one account for the Chargor in its books, the Lender may at any time after:

- (a) the security constituted by this deed has become enforceable; and
- (b) the Lender has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Secured Assets,

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

## **7.8 Appointment of an Administrator**

- (a) The Lender may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.
- (b) Any appointment under this clause 7.8 shall:
  - (i) be in writing signed by a duly authorised signatory of the Lender; and
  - (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (c) The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 7.8 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

## **8. WHEN SECURITY BECOMES ENFORCEABLE**

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

The security constituted by this deed shall be immediately enforceable if an Event of Default occurs and is continuing.

### **8.2 Discretion**

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

## **9. ENFORCEMENT OF SECURITY**

### **9.1 Enforcement powers**

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this deed, but the Lender shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 8.1.
- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

### **9.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the

Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Chargor, to:

- (a) grant a lease or agreement to lease;
- (b) accept surrenders of leases; or
- (c) grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

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

### **9.3 Access on enforcement**

- (a) At any time after the security constituted by this deed has become enforceable, the Chargor will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.
- (b) At all times after the security constituted by this deed has become enforceable, the Chargor must use its reasonable endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 9.3(a) (including obtaining any necessary consents or permits of other persons).

### **9.4 Prior Security**

At any time after the security constituted by this deed has become enforceable, the Lender may:

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to it; and
- (c) settle and pass any account of the holder of any prior Security.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Lender, be due from the Chargor to the Lender on current account and shall bear interest at the rate specified in the Master Agreement as being the "Late Repayment Interest" and be secured as part of the Secured Liabilities.

### **9.5 Protection of third parties**

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

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Lender, any Receiver or any Delegate is to be applied.

#### 9.6 Privileges

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

#### 9.7 No liability as mortgagee in possession

Neither the Lender, any Receiver, any Delegate nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

#### 9.8 Conclusive discharge to purchasers

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

#### 9.9 Right of appropriation

- (a) To the extent that:
  - (i) the Secured Assets constitute Financial Collateral; and
  - (ii) this deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.
- (b) The value of any Secured Assets appropriated in accordance with this clause shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by any other method that the Lender may select (including independent valuation).
- (c) The Chargor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

### 10. RECEIVER

## **10.1 Appointment**

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

## **10.2 Removal**

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

## **10.3 Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, which shall be due and payable immediately on its being paid by the Lender.

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

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

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

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

## **10.6 Agent of the Chargor**

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

# **11. POWERS OF RECEIVER**

## **11.1 General**

- (a) Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 11.2 to clause 11.23.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

- (c) Any exercise by a Receiver of any of the powers given by clause 11 may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in clause 11.16) or himself.

**11.2 Repair and develop Properties**

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

**11.3 Surrender leases**

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

**11.4 Employ personnel and advisors**

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

**11.5 Make VAT elections**

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

**11.6 Remuneration**

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

**11.7 Realise Secured Assets**

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

**11.8 Manage or reconstruct the Chargor's business**

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

**11.9 Dispose of Secured Assets**

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

**11.10 Sever fixtures and fittings**

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

**11.11 Sell Book Debts**

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

**11.12 Valid receipts**

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

**11.13 Make settlements**

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

**11.14 Bring proceedings**

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

**11.15 Improve the Equipment**

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

**11.16 Make calls on Chargor members**

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Chargor on its directors in respect of calls authorised to be made by them.

**11.17 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 14, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this deed.

**11.18 Powers under the LPA 1925**

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

**11.19 Borrow**

A Receiver may, for any of the purposes authorised by this clause 11, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

**11.20 Redeem prior Security**

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

**11.21 Delegation**

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

**11.22 Absolute beneficial owner**

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

**11.23 Incidental powers**

A Receiver may do any other acts and things:

- (a) that he may consider desirable or necessary for realising any of the Secured Assets;
- (b) that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) that he lawfully may or can do as agent for the Chargor.

**12. DELEGATION**

**12.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 16.1).

**12.2 Terms**

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

**12.3 Liability**



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

### **13. APPLICATION OF PROCEEDS**

#### **13.1 Order of application of proceeds**

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

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

#### **13.2 Appropriation**

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

#### **13.3 Suspense account**

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

- (a) may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and
- (c) may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

### **14. COSTS AND INDEMNITY**

#### **14.1 Costs**

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

- (a) this deed or the Secured Assets;

(b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or

(c) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Chargor) at the rate specified in the Master Agreement as being the "Late Repayment Interest".

## **14.2 Indemnity**

The Chargor shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

(a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;

(b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or

(c) any default or delay by the Chargor in performing any of its obligations under this deed.

## **15. FURTHER ASSURANCE**

### **15.1 Further assurance**

The Chargor shall, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

(a) creating, perfecting or protecting the security intended to be created by this deed;

(b) facilitating the realisation of any Secured Asset; or

(c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

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

## **16. POWER OF ATTORNEY**

### **16.1 Appointment of attorneys**

After the security constituted by this deed becomes enforceable, by way of security, the Chargor irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

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

## **16.2 Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 16.1.

## **17. RELEASE**

Subject to clause 24.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

- (a) release the Secured Assets from the security constituted by this deed; and
- (b) reassign the Secured Assets to the Chargor.

## **18. ASSIGNMENT AND TRANSFER**

### **18.1 Assignment by Lender**

The Lender may freely assign or transfer any or all of its rights and obligations under this deed.

### **18.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **19. SET-OFF**

### **19.1 Lender's right of set-off**

After the security constituted by this deed has become enforceable, the Lender may at any time set off any liability of the Chargor to the Lender against any liability of the Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 19 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

## **20. AMENDMENTS, WAIVERS AND CONSENTS**

### **20.1 Amendments**

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

## **20.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

## **20.3 Rights and remedies**

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

## **21. SEVERANCE**

### **21.1 Severance**

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

## **22. COUNTERPARTS**

### **22.1 Counterparts**

- (a) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- (b) Transmission of an executed counterpart of this deed by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. Electronic signatures provided on any platform used by the Lender to circulate this deed for signature, shall also take effect as delivery of an executed counterpart of this deed.
- (c) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## **23. THIRD PARTY RIGHTS**

### **23.1 Third party rights**

- (a) Except as expressly provided in clause 14.2, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- (b) The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

## **24. FURTHER PROVISIONS**

### **24.1 Independent security**

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

### **24.2 Continuing security**

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

### **24.3 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement, the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

### **24.4 Certificates**

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

### **24.5 Consolidation**

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

## **25. NOTICES**

### **25.1 Delivery**

Any notice or other communication required to be given to a party under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or by way of international courier or sent by e-mail; and

- (c) sent to:
  - (i) the Chargor at its registered office from time to time or by e-mail to [callum@manual.co](mailto:callum@manual.co); and
  - (ii) the Lender at 154 Menachem Begin Rd., Tel Aviv, 6492107, Israel or to [oshri@liquidity-capital.com](mailto:oshri@liquidity-capital.com),

or to any other address or e-mail address as is notified in writing by one party to the other from time to time.

## 25.2 Receipt by Chargor

Any notice or other communication that the Lender gives to the Chargor shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by e-mail at the time of transmission.

A notice or other communication given as described in clause 25.2(a) or clause 25.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## 25.3 Receipt by Lender

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

## 25.4 Service of proceedings

This clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 26. GOVERNING LAW AND JURISDICTION

### 26.1 Governing law

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

### 26.2 Jurisdiction

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## SCHEDULE 1 – LETTER TO BANK

[ON THE LETTERHEAD OF THE CHARGOR]

[NAME OF BANK]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture dated [DATE] between Optimale Ltd and Mars Growth Capital Fund 1, LP (the Debenture)**

This letter constitutes notice to you that under the Debenture (a copy of which is attached) we have charged, by way of first fixed charge, in favour of Mars Growth Capital Fund 1, LP (the **Lender**) all monies from time to time standing to the credit of the account(s) held with you and detailed below (**Account(s)**), together with all other rights and benefits accruing to or arising in connection with the Account(s) (including, but not limited to, entitlements to interest):

Bank Name	Account Number/Sort Code	Branch Address	Purpose of Account
HSBC	[REDACTED] [REDACTED]	Alphabeta, 14-18 Finsbury Square, London, United Kingdom, EC2A 1BR	Operating Account

We irrevocably instruct and authorise you to:

- disclose to the Lender any information relating to the Account(s) requested from you by the Lender;
- comply with the terms of any written notice or instructions relating to the Account(s) received by you from the Lender;
- pay or release all or any part of the monies standing to the credit of the Account(s) in accordance with the written instructions of the Lender if the Lender notifies you that the Debenture is enforceable; and
- not to permit any amount to be withdrawn from the Account(s) if the Lender notifies you that the Debenture is enforceable.

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



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

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

Please confirm that you agree to the terms of this notice and to act in accordance with its provisions by sending the attached acknowledgement to the Lender by e-mail for the Attention of Oshri Harari, General Counsel and COO (oshri@liquidity-capital.com), with a copy to us.

Yours faithfully,

Signed.....

A duly authorised director for and on behalf of **Optimale Ltd**

## SCHEDULE 2 – LETTER FROM BANK

[On the letterhead of the Account Bank]

Mars Growth Capital Fund 1, LP

by e-mail to oshri@liquidity-capital.com

[DATE]

Dear Oshri,

**Debenture dated [DATE] between Optimale Ltd and Mars Growth Capital Fund 1, LP (the Debenture)**

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

We confirm that we:

- a. accept the instructions contained in the Notice and agree to comply with the Notice;
- b. have not received notice of the interest of any third party in the Account(s);
- c. have neither claimed nor exercised, nor will claim or exercise any security interest, set-off, counter-claim or other right in respect of the Account(s); and
- d. will not permit any amount to be withdrawn from any Account without your prior written consent if you notify us that the Debenture has become enforceable.

The Account(s) are:

Bank Name	Account Details	Branch Address	Purpose of Account
HSBC	[REDACTED]	Alphabeta, 14-18 Finsbury Square, London, United Kingdom, EC2A 1BR	Operating Account

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

Yours faithfully,

Signed.....

[NAME OF ACCOUNT BANK]

**EXECUTED and DELIVERED as a DEED by  
OPTIMALE LTD acting by two directors**



.....  
Director



.....  
Director

**EXECUTED** as a **DEED** by  
**MARS GROWTH CAPITAL FUND 1, L.P**  
acting by:



Authorised Signatory: .....



Authorised Signatory: .....