



**Registration of a Charge**

Company Name: **MANCHESTER HEAT NETWORK SUPPLYCO LIMITED**

Company Number: **11958857**



Received for filing in Electronic Format on the: **23/12/2022**

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**Details of Charge**

Date of creation: **23/12/2022**

Charge code: **1195 8857 0001**

Persons entitled: **THE COUNCIL OF THE CITY OF MANCHESTER**

Brief description:

**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: **BROWNE JACOBSON LLP**



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

Company number: 11958857

Charge code: 1195 8857 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd December 2022 and created by MANCHESTER HEAT NETWORK SUPPLYCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd December 2022 .

Given at Companies House, Cardiff on 3rd January 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**

EXECUTION VERSION

brownejacobson<sup>LLP</sup>

**Dated**      23 December                      **2022**

- (1)    **Manchester Heat Network Supplyco Limited**
- (2)    **The Council of the City of Manchester**

**Debenture**

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This deed is dated 23 December 2022

## Parties

- (1) **MANCHESTER HEAT NETWORK SUPPLYCO LIMITED** a company registered in England and Wales with registration number 11958857 whose registered address is at PO BOX 532 Town Hall, Albert Square, Manchester, England, M60 2LA (the **Chargor**)
- (2) **THE COUNCIL OF THE CITY OF MANCHESTER** whose registered address is at Town Hall, Albert Square, Manchester, M60 2LA (the **Lender**)

## Background

- (A) The Lender has agreed, pursuant to the Facility Agreement, to provide Manchester Heat Network HoldCo Limited with loan facilities on a secured basis.
- (B) Under this deed, the Chargor provides security to the Lender for the loan facilities made available under the Facility Agreement.

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

Terms defined in the Facility Agreement shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

<b>Administrator</b>	an administrator appointed to manage the affairs, business and property of the Chargor pursuant to clause 11.7;
<b>Book Debts</b>	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;
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>Charged Property</b>	any freehold, leasehold or commonhold property the subject of the security constituted by this deed and references to "Charged Property" shall include references to the whole or any part of it;
<b>Delegate</b>	any person appointed by the Lender or any Receiver pursuant to clause 16 and any person appointed as attorney of the Lender or any Receiver or Delegate;
<b>Designated Account</b>	any account of the Chargor nominated by the Lender as a designated account for the purposes of this deed;

<b>Environment</b>	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;
<b>Environmental Law</b>	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;
<b>Environmental Licence</b>	any authorisation, permit or licence necessary under Environmental Law in respect of any of the Secured Assets;
<b>Equipment</b>	all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property owned by the Chargor or in which it has an interest, including any part of it and all spare parts, replacements, modifications and additions;
<b>Event of Default</b>	has the meaning given to that expression in the Facility Agreement;
<b>Facility Agreement</b>	the facility agreement dated on or around the date of this deed between the Chargor and the Lender for the provision of the loan facilities secured by this deed;
<b>Financial Collateral</b>	has the meaning given to that expression in the Financial Collateral Regulations;
<b>Financial Collateral Regulations</b>	the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);
<b>Insurance Policy</b>	each contract and policy of insurance effected or maintained by the Chargor from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Charged Properties or the Equipment);
<b>Intellectual Property</b>	the Chargor's present and future patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) 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;
<b>Investments</b>	all certificated shares, stock, debentures, bonds or other securities or investments (whether or not marketable) from time to time legally or beneficially owned by or on behalf of the Chargor;
<b>LPA 1925</b>	the Law of Property Act 1925;
<b>Receiver</b>	a receiver, receiver and manager or administrative receiver appointed by the Lender under clause 14;
<b>Relevant Agreement</b>	each agreement specified in Schedule 2;
<b>Secured Assets</b>	all the assets, property and undertaking of the Chargor which are, or are expressed to be, subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them);
<b>Secured Liabilities</b>	all present and future obligations and liabilities of it and each other Obligor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 28), together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities;
<b>Security Financial Collateral Arrangement</b>	has the meaning given to that expression in the Financial Collateral Regulations;
<b>Security</b>	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;
<b>Security Period</b>	the period starting on the date of this deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding;
<b>VAT</b>	value added tax or any equivalent tax chargeable in the UK or elsewhere.

## **1.2 Interpretation**

The provisions of clause 1 (Interpretation) of the Facility Agreement apply to this deed as if they were set out in full in this deed, except that each reference in that clause to the Facility Agreement shall be read as a reference to this deed.

## **1.3 Clawback**

If the Lender considers 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 Charged Property includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of that Charged Property at any time;
- 1.4.2 the proceeds of the sale of any part of that Charged Property and any other monies paid or payable in respect of or in connection with that Charged Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of that Charged Property, and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Charged Property.

## **1.5 Nature of security over Investments**

A reference in this deed to any share, stock, debenture or other security or investment includes:

- 1.5.1 any dividend, interest or other distribution paid or payable in respect of that share, stock, debenture or other security or investment;
- 1.5.2 any right, money, shares or property accruing, offered or issued at any time in relation to that share, stock, debenture or other security or investment by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

## **1.6 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 Facility Agreement and of any side letters between



any parties in relation to the Facility Agreement are incorporated into this deed.

## **1.7 General**

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

1.7.2 The fact that no or incomplete details of any assets are inserted in Schedule 1 (The Real Property) or Schedule 2 (Relevant Agreements) does not affect the validity or enforceability of this Security.

1.7.3 If the rights of a Chargor under a document cannot be secured without the consent of a party to that document:

- (a) that Chargor must notify the Lender promptly;
- (b) this Security will constitute security over all proceeds and other amounts which that Chargor may receive, or has received, under that document but exclude that Chargor's other rights under the document; and
- (c) unless the Lender otherwise requires, that Chargor must use all reasonable endeavours (to obtain the consent of the relevant party to all that Chargor's rights under that document being secured under this deed.

## **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 General**

The Chargor shall pay or discharge the Secured Liabilities in the manner provided in the Finance Documents.

### **3.2 Legal mortgage**

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 a first legal mortgage, all estates or interests in any freehold, leasehold or commonhold property now owned by it, including the real property (if any) specified in Schedule 1.

### **3.3 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 a first fixed charge:

- 3.3.1 all present and future estates or interests of the Chargor in, or over, any freehold, leasehold or commonhold property (other than any such property effectively mortgaged under clause 3.2);
- 3.3.2 the benefit of all other contracts, guarantees, appointments and warranties relating to each Charged Property and other documents to which the Chargor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of any Charged Property or otherwise relating to any Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them);
- 3.3.3 all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business or the use of any Secured Asset, and all rights in connection with them;
- 3.3.4 all its present and future goodwill;
- 3.3.5 all its uncalled capital;
- 3.3.6 all the Equipment;
- 3.3.7 all the Intellectual Property;
- 3.3.8 all the Book Debts;
- 3.3.9 all the Investments;
- 3.3.10 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), together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest);
- 3.3.11 all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.4; and
- 3.3.12 all its rights in respect of each Relevant Agreement and all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under clause 3.4.

### **3.4 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

3.4.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and

3.4.2 the benefit of each Relevant Agreement and the benefit of all other agreements, instruments and rights relating to the Secured Assets.

### **3.5 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 first floating charge, all its undertaking, property, assets and rights not otherwise effectively mortgaged, charged or assigned under clause 3.2 to clause 3.4 inclusive.

### **3.6 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.5.

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

The floating charge created by clause 3.5 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

3.7.1 the Chargor:

(a) creates, or attempts to create, without the prior written consent of the Lender, Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed or the Facility Agreement); or

(b) 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);

3.7.2 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets;

3.7.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor; or

3.7.4 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed

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

Except as provided in clause 3.9, the Lender may, in its sole discretion, at any time 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.

### **3.9 Part A1 moratorium**

3.9.1 Subject to paragraph (b) below, the floating charge created by clause 3.5 may not be converted into a fixed charge solely by reason of obtaining a moratorium (or anything done with a view to obtaining a moratorium) under Part A1 of the Insolvency Act 1986.

3.9.2 Paragraph (a) above does not apply to any floating charge referred to in section A52(4) of Part A1 of the Insolvency Act 1986.

### **3.10 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:

4.1.1 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;

4.1.2 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

4.1.3 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 Times for making representations and warranties**

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

## **5.2 Ownership of Secured Assets**

The Chargor is the sole legal and beneficial owner of, and has good, valid and marketable title to, the Secured Assets.

## **5.3 No Security**

The Secured Assets are free from any Security other than 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 Charged Property.

## **5.9 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

## **5.10 No prohibitions or breaches**

There is no prohibition on assignment in any Insurance Policy or Relevant Agreement and the entry into this deed by the Chargor does not, and will not, constitute a breach of any Insurance Policy, Relevant Agreement or any other policy, agreement, document, instrument or obligation binding on the Chargor or its assets.

## **5.11 Environmental compliance**

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

## **5.12 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.

## **5.13 Investments**

5.13.1 The Investments are fully paid and are not subject to any option to purchase or similar rights.

5.13.2 No constitutional document of an issuer of an Investment, nor any other agreement:

(a) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or

(b) contains any rights of pre-emption in relation to the Investments.

5.13.3 The Chargor has complied with all notices relating to all or any of the Investments received by it pursuant to sections 790D and 790E of the Companies Act 2006.

5.13.4 No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Investments.

## **5.14 Status**

The Chargor is a limited liability corporation duly incorporated and validly existing under the laws of England and Wales.

## **5.15 Binding obligations**

5.15.1 The obligations expressed to be assumed by it in this deed are legal, valid, binding and enforceable obligations.

5.15.2 Without limiting the generality of paragraph (a) above, this deed creates the security interests which it purports to create and those security interests are valid and effective.

## **5.16 Non-conflict with other obligations**

The entry into and performance by the Chargor of, and the transactions contemplated by, this deed, and the granting of the Transaction Security under this deed do not and will not conflict with:

5.16.1 any law or regulation applicable to it;

5.16.2 its constitutional documents; or

5.16.3 any agreement or instrument binding upon it or any of its assets.

#### 5.17 Power and authority

The Chargor has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this deed and the transactions contemplated by this deed

#### 5.18 Validity and admissibility in evidence

5.18.1 All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this deed; and
- (b) to make this deed admissible in evidence in England and Wales,

have been obtained or effected and are in full force and effect.  
have been obtained or effected and are in full force and effect.

5.18.2 All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Chargor have been obtained or effected and are in full force and effect.

### 6 Preservation of Security

#### 6.1 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by the Lender 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, administration or otherwise, without limitation, then the liability of the Chargor under this deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### 6.2 Waiver of defences

The obligations of the Chargor under this deed will not be affected by any act, omission, matter or thing which, but for clause 6, would reduce, release or prejudice any of its obligations under this deed including (without limitation and whether or not known to it or the Lender):

- 6.2.1 any time or waiver granted to, or composition with, any Obligor or other person;
- 6.2.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any creditor;
- 6.2.3 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 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;

- 6.2.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- 6.2.5 any amendment of any Finance Document or any other document or security including without limitation 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;
- 6.2.6 any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security; or
- 6.2.7 any insolvency, resolution or similar proceedings.

### **6.3 Immediate recourse**

The Chargor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person before claiming from the Chargor under this deed. This waiver applies irrespective of any law or provision of a Finance Document to the contrary.

### **6.4 Appropriations**

The Lender (or any trustee or agent on its behalf) may at any time during the Security Period:

- 6.4.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Lender (or trustee or agent) in respect of the Secured Liabilities or apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- 6.4.2 hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this deed

### **6.5 Deferral of Chargor's rights**

Unless the Security Period has expired or the Lender otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this deed or by reason of any amount being payable, or liability arising, under this deed:

- 6.5.1 to be indemnified by an Obligor;
- 6.5.2 to claim any contribution from any other person who has provided security or a guarantee in respect of any Obligor's obligations under the Finance Documents;



- 6.5.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;
- 6.5.4 to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Chargor has granted security under this deed;
- 6.5.5 to exercise any right of set-off against any Obligor; and/or
- 6.5.6 to claim or prove as a creditor of any Obligor in competition with the Lender.

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with the terms of this deed.

#### **6.6 Additional Security**

- 6.6.1 This deed is in addition to and is not in any way prejudiced by any other security or guarantee now or subsequently held by the Lender.
- 6.6.2 No prior security held by the Lender (in its capacity as such or otherwise) over any Security Asset will merge into this Security.

#### **6.7 Security held by Chargor**

The Chargor shall not, without the prior consent of the Security Agent, hold any security from any other Obligor in respect of the Chargor's liability under this deed. The Chargor shall hold any security held by it in breach of this provision on trust for the Lender.

### **7 General covenants**

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

The Chargor shall not at any time, except with the prior written consent of the Lender:

- 7.1.1 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;
- 7.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or

- 7.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

## **7.2 Preservation of Secured Assets**

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise 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.

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

- 7.3.1 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 law.

- 7.3.2 The Chargor shall:

- (a) comply with the requirements of any law or regulation relating to or affecting the Secured Assets or the use of it or any part of them;
- (b) 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
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

## **7.4 Enforcement of rights**

The Chargor shall use its best endeavours to:

- 7.4.1 procure the prompt observance and performance by each counterparty to any agreement or arrangement with the Chargor forming part of the Secured Assets (including each counterparty in respect of a Relevant Agreement and each insurer in respect of an Insurance Policy) of the covenants and other obligations imposed on that counterparty; and
- 7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets as the Lender may require from time to time.

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

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

7.5.1 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

7.5.2 any breach of any covenant set out in this deed.

## **7.6 Title documents**

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

7.6.1 all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Chargor (and if they are not within the possession or control of the Chargor, the Chargor undertakes to obtain possession of all those deeds and documents of title);

7.6.2 all Insurance Policies and any other insurance policies relating to any of the Secured Assets that the Chargor is entitled to possess;

7.6.3 all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time; and

7.6.4 a copy of each Relevant Agreement, certified to be a true copy by either a director of the Chargor or by the Chargor's solicitors.

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

The Chargor shall, promptly following any request from the Lender from time to time give notice to each counterparty to a Relevant Agreement in the form set out in Part 1 of Schedule 3, and procure that each counterparty provides to the Lender promptly an acknowledgement of the notice in the form set out in Part 2 of Schedule 3.

## **7.8 Information**

The Chargor shall:

7.8.1 give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require;

7.8.2 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

7.8.3 promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the

Lender's prior approval, implement those proposals at its own expense.

#### **7.9 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 and, on demand, produce evidence of payment to the Lender.

### **8 Investments covenants**

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

##### **8.1.1 The Chargor shall:**

- (a) on the execution of this deed, deposit with the Lender, or as the Lender may direct, all stock or share certificates and other documents of title or evidence of ownership relating to any Investments owned by the Chargor at that time; and
- (b) on the purchase or acquisition by it of Investments after the date of this deed, deposit with the Lender, or as the Lender may direct, all stock or share certificates and other documents of title or evidence of ownership relating to those Investments.

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

- (a) all stock transfer forms relating to the relevant Investments duly completed and executed by or on behalf of the Chargor, but with the name of the transferee, the consideration and the date left blank; and
- (b) any other documents (in each case duly completed and executed by or on behalf of the Chargor) that the Lender may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments,

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

#### **8.2 Nominations**

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

- (a) does not exercise any rights in respect of any Investments without the prior written approval of the Lender; and
- (b) immediately on receipt by it, forward to the Lender all communications or other information received by it in respect of any Investments for which it has been so nominated.

8.2.2 The Chargor shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

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

The Chargor shall:

- 8.3.1 obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Investments, for the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this deed; and
- 8.3.2 procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer of the Investments in any manner that the Lender may require in order to permit the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this deed.

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

- 8.4.1 Before the security constituted by this deed becomes enforceable, the Chargor may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Lender or any of its nominees, the Lender will hold all those dividends, interest and other monies received by it for the Chargor and will pay them to the Chargor promptly on request.
- 8.4.2 Before the security constituted by this deed becomes enforceable, the Chargor may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Lender or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:
  - (a) it shall not do so in any way that would breach any provision of the Facility Agreement or this deed or for any purpose inconsistent with the Facility Agreement or this deed; and
  - (b) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Lender's opinion, have an adverse effect on the value of the

Investments or otherwise prejudice the Lender's security under this deed.

8.4.3 The Chargor shall indemnify the Lender against any loss or liability incurred by the Lender (or its nominee) as a consequence of the Lender (or its nominee) acting in respect of the Investments at the direction of the Chargor.

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

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

After the security constituted by this deed has become enforceable:

8.5.1 all dividends and other distributions paid in respect of the Investments and received by the Chargor shall be held by the Chargor on trust for the Lender and immediately paid into a Designated Account or, if received by the Lender, may be applied by the Lender in accordance with clause 17.1; and

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

#### **8.6 Calls on Investments**

Notwithstanding the security created by this deed, the Chargor shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Chargor acknowledges that the Lender shall not be under any liability in respect of any such calls, instalments or other payments.

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

The Chargor shall not, without the prior written consent of the Lender, amend, or agree to the amendment of:

8.7.1 the memorandum or articles of association, or any other constitutional documents, of any issuer of the Investments that is not a public company; or

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

## **8.8 Preservation of Investments**

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

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

## **8.9 Investments information**

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

## **8.10 Compliance with requests for information**

The Chargor shall promptly send a copy to the Lender of, and comply with, all requests for information which is within its knowledge and which are made under any law or regulation or any similar provision in any articles of association or other constitutional document, or by any listing or other authority, relating to any of the Investments. If it fails to do so, the Lender may elect to provide such information as it may have on behalf of the Chargor.

# **9 Book Debts covenants**

## **9.1 Realising Book Debts**

The Chargor shall as an agent for the Lender, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender.

The Chargor shall not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account.

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

## **9.2 Preservation of Book Debts**

The Chargor shall not (except as permitted under clause 9.1 or with the prior written consent of the Lender) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

## **10 Relevant Agreements covenants**

### **10.1 Relevant Agreements**

- 10.1.1 The Chargor shall, unless the Lender agrees otherwise in writing, comply with the terms of each Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets.
- 10.1.2 The Chargor shall not, unless the Lender agrees otherwise in writing:
- (a) amend or vary or agree to any change in, or waive any requirement of or its rights under;
  - (b) settle, compromise, terminate, rescind or discharge (except by performance); or
  - (c) abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty to a Relevant Agreement or other person in connection with,
- any Relevant Agreement or any other document, agreement or arrangement comprising the Secured Assets.

## **11 Powers of the Lender**

### **11.1 Power to remedy**

- 11.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.
- 11.1.2 The Chargor irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- 11.1.3 The Chargor shall reimburse the Lender, on a full indemnity basis, for any monies the Lender expends in remedying a breach by the Chargor of its obligations contained in this deed, and such monies shall carry interest in accordance with clause 18.1.

### **11.2 Exercise of rights**

- 11.2.1 The rights of the Lender under clause 11.1 are without prejudice to any other rights of the Lender under this deed.
- 11.2.2 The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

### **11.3 Power to dispose of chattels**

- 11.3.1 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 Charged Property.



- 11.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 11.3.1, the Chargor shall indemnify the Lender and any Receiver against any liability arising from any disposal made under clause 11.3.1.

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

To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law 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.

#### **11.5 New accounts**

- 11.5.1 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.

- 11.5.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 11.5.1, 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.

#### **11.6 Indulgence**

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

#### **11.7 Appointment of an Administrator**

- 11.7.1 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.
- 11.7.2 Any appointment under this clause 11.7 shall:
- (a) be in writing signed by a duly authorised signatory of the Lender; and

- (b) take effect in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

11.7.3 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 11.7 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

#### **11.8 Further advances**

The Lender covenants with the Chargor that it shall perform its obligations to make advances under the Facility Agreement (including any obligation to make available further advances).

### **12 When security becomes enforceable**

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

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

#### **12.2 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.

### **13 Enforcement of security**

#### **13.1 General**

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

13.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 12.1.

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

#### **13.2 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:

13.2.1 grant a lease or agreement for lease;

- 13.2.2 accept surrenders of leases; or
- 13.2.3 grant any option in respect 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.

### **13.3 Access on enforcement**

- 13.3.1 At any time after the Lender has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this deed or the Facility Agreement, 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.
- 13.3.2 At all times, the Chargor must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 13.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### **13.4 Redemption of prior Security**

- 13.4.1 At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable], the Lender may:
  - (a) redeem any prior Security over any Secured Asset;
  - (b) procure the transfer of that Security to itself; and
  - (c) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor).
- 13.4.2 The Chargor shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

### **13.5 Protection of third parties**

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

- 13.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 13.5.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- 13.5.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

### **13.6 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.

### **13.7 Exclusion of liability**

Neither the Lender, nor any Receiver or Delegate, shall be liable to the Chargor or any other person:

- 13.7.1 (by reason of entering into possession of a Secured Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Secured Assets;
- 13.7.2 for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- 13.7.3 for any expense, loss or liability:
  - (a) relating to the enforcement of, or any failure to enforce or delay in enforcing, any security constituted by or pursuant to this deed;
  - (b) relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this deed; or
  - (c) arising in any other way in connection with this deed,

except that this does not exempt the Lender or any Receiver or Delegate from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender or the relevant Receiver or Delegate.

### **13.8 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, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

### 13.9 Right of appropriation

#### 13.9.1 To the extent that:

- (a) the Secured Assets constitute Financial Collateral; and
- (b) 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.

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

- (a) in the case of cash, the amount standing to the credit of each of the Chargor's accounts with any bank, financial institution or other person, together with any accrued but unpaid interest, at the time the right of appropriation is exercised; and
- (b) in the case of Investments, the market price of those Investments at the time the right of appropriation is exercised determined by the Lender by reference to a recognised market index or by any other method that the Lender may select (including independent valuation).

#### 13.9.3 The Chargor agrees that the methods of valuation provided for in are commercially reasonable for the purposes of the Financial Collateral Regulations.

## 14 Receiver

### 14.1 Appointment

14.1.1 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.

14.1.2 The Lender may not appoint a Receiver solely as a result of the obtaining of a moratorium (or as a result of anything done with a view to obtaining a moratorium) under Part A1 of the Insolvency Act 1986 other than in respect of a floating charge referred to in section A52(4) of Part A1 of the Insolvency Act 1986.

### 14.2 Removal

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed

by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

#### **14.3 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, to the extent not otherwise discharged.

#### **14.4 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.

#### **14.5 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.

#### **14.6 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.

### **15 Powers of Receiver**

#### **15.1 General**

15.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on it by statute, have the rights, powers and discretions set out in clause 15.2 to clause 15.23.

15.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.

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

- 15.1.4 Any exercise by a Receiver of any of the powers given by clause 15 may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in clause 15.16) or itself.

## **15.2 Repair and develop Charged Properties**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Charged 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.

## **15.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting any Secured Asset on any terms, and subject to any conditions, that it thinks fit.

## **15.4 Employ personnel and advisers**

15.4.1 A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit.

15.4.2 A Receiver may discharge any such person or any such person appointed by the Chargor.

## **15.5 Make and revoke VAT options to tax**

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

## **15.6 Remuneration**

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

## **15.7 Possession**

A Receiver may take immediate possession of, get in and realise any Secured Asset.

## **15.8 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.

## **15.9 Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally

on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

**15.10 Sever fixtures and fittings**

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

**15.11 Sell Book Debts**

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

**15.12 Valid receipts**

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

**15.13 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Chargor or relating in any way to any Secured Asset.

**15.14 Legal action**

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

**15.15 Improve the Equipment**

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

**15.16 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.

**15.17 Insure**

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 18, 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.



#### **15.18 Subsidiaries**

A Receiver may form a subsidiary of the Chargor and transfer to that subsidiary any Secured Asset.

#### **15.19 Borrow**

A Receiver may, for whatever purpose it thinks fit, raise and borrow money either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

#### **15.20 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.

#### **15.21 Delegation**

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

#### **15.22 Absolute beneficial owner**

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

#### **15.23 Incidental powers**

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

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

### **16 Delegation**

#### **16.1 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 20.1).

## **16.2 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.

## **16.3 Liability**

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

# **17 Application of proceeds**

## **17.1 Order of application of proceeds**

All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), 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 (but without prejudice to the Lender's right to recover any shortfall from the Chargor):

- 17.1.1 in or towards payment of all costs, liabilities, 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;
- 17.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and
- 17.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.

## **17.2 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.

## **17.3 Suspense account**

All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

- 17.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;
- 17.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and

- 17.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

## 18 Costs and indemnity

### 18.1 Costs

The Chargor shall, promptly 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:

- 18.1.1 the negotiation, preparation, execution and delivery of this deed;
- 18.1.2 the Secured Assets;
- 18.1.3 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;
- 18.1.4 any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- 18.1.5 any release of any security constituted by this deed; or
- 18.1.6 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, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment) at the rate and in the manner specified in the Facility Agreement.

### 18.2 Indemnity

- 18.2.1 The Chargor shall, promptly on demand, 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, releasing 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.

18.2.2 Any past or present employee or agent may enforce the terms of this clause 18.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **19 Further assurance**

### **19.1 Further assurance**

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

- 19.1.1 creating, perfecting or protecting the security created or intended to be created by this deed;
- 19.1.2 facilitating the realisation of any Secured Asset; or
- 19.1.3 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 the execution of any mortgage, 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 filing or registration which, in any such case, the Lender may consider necessary or desirable.

## **20 Power of attorney**

### **20.1 Appointment of attorneys**

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:

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

### **20.2 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 20.1.

## **21 Release**

Subject to clause 28.3, at the end of the Security Period, the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

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

21.2 reassign the Secured Assets to the Chargor.

## **22 Assignment and transfer**

### **22.1 Assignment by Lender**

22.1.1 At any time, without the consent of the Chargor, the Lender may assign any of its rights or transfer any of its rights and obligations under this deed.

22.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Secured Assets and this deed that the Lender considers appropriate.

### **22.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

## **23 Set-off**

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

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 23 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

### **23.2 Exclusion of Chargor's right of set-off**

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

## **24 Amendments, waivers and consents**

### **24.1 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).

## **24.2 Waivers and consents**

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

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

## **24.3 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.

## **25 Partial invalidity**

### **25.1 Partial invalidity**

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

## **26 Counterparts**

### **26.1 Counterparts**

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

## **27 Third party rights**

### **27.1 Third party rights**

27.1.1 Except as expressly provided in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.

27.1.2 Notwithstanding any term of this deed, the consent of any person who is not a party to this deed is not required to rescind or vary this deed at any time.

## **28 Further provisions**

### **28.1 Independent security**

The security constituted by 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.

### **28.2 Continuing security**

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

### **28.3 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Lender shall be conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced, set aside or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

28.3.1 the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

28.3.2 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.

### **28.4 Certificates**

Any certification or determination by the Lender of any rate or amount under this deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **28.5 Consolidation**

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

## **29 Notices**

### **29.1 Delivery**

29.1.1 Every notice or other communication made under this deed shall be in writing (by way of letter or facsimile transmission) and shall be given:

(a) in the case of the Chargor to the Directors, at the address specified on page 1 of this deed; and

(b) in the case of the Lender to City Solicitors Department, P.O. Box 532, Town Hall, Manchester, England, M60 2LA,

or to such other person or address as a party may notify the other from time to time in writing.

29.1.2 Every notice or other communication will only be effective:

(a) in the case of a letter when delivered personally or five days after its posting by first class post; and

(b) in the case of a facsimile transmission when received in legible form.

## **29.2 Service of proceedings**

This clause 29 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.

## **30 Governing law and jurisdiction**

### **30.1 Governing law**

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

### **30.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the 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.

### **30.3 Other service**

The Chargor irrevocably consents to any process in any legal action or proceedings under clause 30.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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 Real Property**

### **Part 1. Registered Property**

[DETAILS OF REGISTERED PROPERTY, INCLUDING TITLE NUMBER]

### **Part 2. Unregistered Property**

[DETAILS OF UNREGISTERED PROPERTY]

## **Schedule 2 Relevant Agreements**

Any intra-group loan agreement between (1) the Chargor (2) Manchester Heat Network SupplyCo Limited and (3) Manchester Heat Network HoldCo Limited.

## **Schedule 3 Notice and acknowledgement - Relevant Agreement**

### **Part 1. Form of notice**

[On headed notepaper of the Chargor]

[NAME OF COUNTERPARTY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF COUNTERPARTY],

Debenture dated [DATE] between [CHARGOR] and [LENDER] (Lender) (Debenture)

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

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

We confirm that:

- We will remain liable under the Contract to perform all the obligations assumed by us under the Contract.
- Neither the Lender nor any receiver or delegate appointed by the Lender will at any time be under any obligation or liability to you under or in respect of the Contract.

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

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

Please note that we have agreed that we will not amend or waive any provision of or terminate the Contract without the prior written consent of the Lender.

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

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 at [ADDRESS OF LENDER], with a copy to us.

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

Yours sincerely,

.....

[NAME OF CHARGOR]

## **Part 2. Form of acknowledgement**

[On headed notepaper of the counterparty]

[NAME OF LENDER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF LENDER],

Debenture dated [DATE] between [CHARGOR] (Chargor) and [LENDER] (Lender) (Debenture)

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

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

We confirm that:

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

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

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 sincerely,

.....

[COUNTERPARTY]

CHARGOR

Executed as a deed by )  
MANCHESTER HEAT NETWORK )  
SUPPLYCO LIMITED acting by ) Director  
Matthew Bennett )  
a director, in the presence of: )

Witness: -----

Signature: -----

Name: Leon Phillip -----

Address: -----

Occupation: Contract & Commissioning Lead -----

LENDER

THE COMMON SEAL of THE  
COUNCIL OF THE CITY OF  
MANCHESTER was hereunto  
affixed in pursuance of an  
Order of the Council of the  
said City:-

Authorised Signatory

**CHARGOR**

Executed as a deed by )  
MANCHESTER HEAT NETWORK )  
SUPPLYCO LIMITED acting by ) Director  
a director, in the presence of: )

Witness: .....

Signature: .....

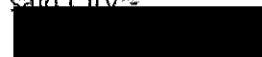
Name: .....

Address: .....

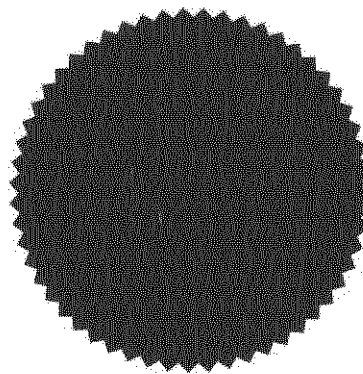
Occupation: .....

**LENDER**

THE COMMON SEAL of THE  
COUNCIL OF THE CITY OF  
MANCHESTER was hereunto  
affixed in pursuance of an  
Order of the Council of the  
said City:-



Authorised Signatory



01118476