



Registration of a Charge

Company name: **THIRD EQUATION LTD**

Company number: **12188439**



X8EVB9XU

Received for Electronic Filing: **27/09/2019**

Details of Charge

Date of creation: **10/09/2019**

Charge code: **1218 8439 0001**

Persons entitled: **HFM INVESTMENTS PTY LTD**

Brief description:

Contains fixed charge(s).

Contains floating charge(s) .

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by:

TAYLOR WESSING LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 12188439

Charge code: 1218 8439 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th September 2019 and created by THIRD EQUATION LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th September 2019 .

Given at Companies House, Cardiff on 30th September 2019

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

10 September 2019

(1) THIRD EQUATION LTD

as Chargor

and

(2) HFM INVESTMENTS PTY LTD

as Security Agent

DEBENTURE

Execution version

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THIS DEBENTURE is made on

10 September 2019

BETWEEN

- (1) **THIRD EQUATION LTD** as **Chargor**; and
- (2) **HFM INVESTMENTS PTY LTD** as **Security Agent**.

AGREED TERMS

1. Definitions and Interpretation

1.1 Definitions

To the extent not defined herein, capitalised terms and expressions used in this deed shall have the same meanings as ascribed to them in the Agreement (as defined below):

"Account Bank" means any account bank appointed as such from time to time in accordance with this deed;

"Administrators" means Helen Dale and Nicholas S. Wood of Grant Thornton UK LLP of 30 Finsbury Square, London EC2P 2YU as joint administrators of the Seller;

"Asset Purchase Agreement" means the assets purchase agreement between the Chargor, the Seller and the Administrators dated on or about the date of this Agreement;

"Administrator" means any one or more persons appointed as an administrator of the Chargor by the Security Agent under paragraph 14 of schedule B1 to the Insolvency Act;

"Agreement" means a loan agreement dated 10 September 2019 made between, amongst others, the Chargor and the Security Agent;

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

"Charged Property" means the assets mortgaged, charged or assigned by the Chargor under this deed;

"Chargor" means Third Equation Ltd a company incorporated in England and Wales with registration no 12188439 whose registered office is at 5 New Street Square, London, United Kingdom, EC4A 3TW;

"Debts" means all book and other debts and rights to money and income (other than any rights assigned under clause 3(d), any Dividends and any Related Rights) liquidated and unliquidated due or owing to the Chargor including the benefit of all negotiable instruments, securities, guarantees and indemnities for such debts and rights but excluding cash at bank;

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Security Agent pursuant to clause 12.6 (Delegation);

"Dividends" means all dividends, interest and other money payable in respect of the Group Shares and Investments;

"Event of Default" has the meaning given to this term in the Agreement;

"Financial Collateral Regulations" means the Financial Collateral Arrangements (No 2) Regulations 2003 SI 2003/3226;

"Finance Documents" has the meaning given to this term in the Agreement;

"Group Shares" means all the shares specified in schedule 2 and any offer, right or benefit in respect of any such shares other than Dividends;

"Insolvency Act" means the Insolvency Act 1986;

"Insurances" means any contract of insurance effected by or for the benefit of the Chargor;

"Intellectual Property" means all present and future rights of the Chargor in respect of any patent, copyright, trade mark, service mark, invention, design, knowhow, confidential information or any other kind of intellectual property whether registered or unregistered and any registration or application for registration, licence or permission relating to any of the foregoing (including (for the avoidance of doubt) any intellectual property rights transferred to the Chargor pursuant to the Asset Purchase Agreement including those listed in Schedule 1 of such Asset Purchase Agreement);

"Investment" means any:

- (a) stock, share, bond or any form of loan capital of or in any legal entity excluding the Group Shares;
- (b) unit in any unit trust or similar scheme;
- (c) warrant or other right to acquire any such investment,

and any offer, right or benefit in respect of any such investment other than Dividends;

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liabilities for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences applicable to creditors generally under the laws of any relevant jurisdiction;

"LPA" means the Law of Property Act 1925;

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Chargor;

- (b) the ability of the Chargor duly to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents or the rights or remedies of the Security Agent under any of the Finance Documents;

"Other Assets" has the meaning given to this term in the Asset Purchase Agreement;

"Permitted Security" means the Security created under this deed and, for a period beginning on the date when it attached to the relevant Charged Property and ending 30 days from such date, a lien arising by operation of law in the ordinary course of business;

"Plant and Equipment" means any fittings, plant, equipment, machinery, tools, vehicles, furniture and other tangible movable property (which are not Real Property), transferred to the Chargor pursuant to the Asset Purchase Agreement including those listed in Schedule 2 of such Asset Purchase Agreement;

"Property" means the property described in schedule 1;

"Real Property" means:

- (a) any freehold, leasehold or immovable property (including the Property);
- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of such property;

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property;

"Related Rights" means, in relation to an agreement, any guarantee or security for the performance of any such agreement, any money now or at any time in the future due or owing to the Chargor under or in connection with any such agreement, all claims for damages or other remedies in respect of any present or future breach of such agreement and all rights and remedies for enforcing such agreement;

"Relevant Jurisdictions" means, in relation to the Chargor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the this deed is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of this deed;

"Rental Income" means the aggregate of all amounts paid or payable to or for the account of the Chargor in connection with the letting, licence or grant of other rights of use or occupation of any part of any Real Property;

"Secured Liabilities" means all obligations of the Chargor owed or expressed to be owed to the Secured Parties (or any of them) under or in connection with the Finance Documents whether owed jointly or severally, as principal or surety or in any other capacity;

"Secured Party" means the Security Agent, a Receiver or any Delegate;

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

"Security Agent" means HFM Investments Pty Ltd, a company incorporated in Australia with company number 081 238 888 and registered address Level 1, 88 Collins Street, Melbourne VIC 3000 Australia;

"Seller" means Faraday Grid Ltd (in administration), a company incorporated and registered in England and Wales with company number 10360764 whose registered office is at 4 Hardman Square, Spinningfields, Manchester, M3 3EB, acting by its Administrators;

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

1.2 *Construction*

Unless a contrary indication appears, any reference in this deed to:

- (a) the **"Security Agent"** or **"Chargor"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) **"assets"** includes present and future properties, revenues and rights of every description;
- (c) **"disposal"** includes a sale, transfer, assignment, grant or creation of any interest derived out of all or any part of any asset, licence, declaration of trust or other disposal, whether voluntary or involuntary, and **"dispose"** will be construed accordingly;
- (d) a **"Finance Document"** any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;
- (e) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (f) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality); and
- (g) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 *Interpretation*

Unless a contrary indication appears, in this deed:

- (a) **"obligations"** means obligations and liabilities;

- (b) references to obligations and liabilities include the whole or any part of them, present and future, actual and contingent;
- (c) any reference to "**powers**" includes rights, powers, discretions and authorities;
- (d) any reference to any asset includes any proceeds of sale of any such asset;
- (e) any reference to a provision of law is a reference to that provision as amended or re-enacted from time to time;
- (f) any reference to clauses, paragraphs and schedules are to the clauses, paragraphs of and schedules to this deed;
- (g) any reference to "**this clause**" is to the clause with a bold heading in which such expression appears and includes each sub-clause in that clause;
- (h) any reference to a time is to London time;
- (i) the words "**including**" and "**in particular**" are used by way of illustration or emphasis only and do not limit the generality of any words preceding them;
- (j) the words "**other**" and "**otherwise**" are not limited by any words preceding them;
- (k) clause and schedule headings are for ease of reference only; and
- (l) an Event of Default is "**continuing**" if it has not been remedied to the satisfaction of the Security Agent or waived in writing.

1.4 *Construction of charging clause*

Each of the security interests created by clause 3 (Fixed Security) shall be construed as separate and distinct interests over the relevant assets so that the recharacterisation for any reason of any security interest over any one asset shall not affect the nature of the security interest created over any other asset.

1.5 *Incorporation*

This deed incorporates the terms of the Agreement and any side letters between the parties to the extent required to ensure the validity of any purported disposition under this deed of any freehold or leasehold property under s2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

2. **Undertaking to Pay**

The Chargor undertakes with the Security Agent to pay the Secured Liabilities to the Security Agent when due.

3. **Fixed Security**

As continuing security for the payment of the Secured Liabilities the Chargor with full title guarantee:

- (a) charges to the Security Agent by way of legal mortgage all Real Property owned by the Chargor at the date of this deed including the Property;

- (b) charges to the Security Agent by way of equitable mortgage any Real Property acquired by the Chargor after the date of this deed;
- (c) assigns to the Security Agent by way of fixed security its rights and interest in all present or future Rental Income;
- (d) assigns to the Security Agent by way of fixed security its rights and interest in any present or future compensation and damages for the compulsory purchase of, or any blight or disturbance affecting, any Real Property;
- (e) assigns to the Security Agent by way of fixed security its rights and interest in any present or future right to occupy any Real Property under licence;
- (f) assigns to the Security Agent by way of fixed security its rights and interest in any present or future contract for the purchase of any Real Property and any Related Rights;
- (g) assigns to the Security Agent by way of equitable mortgage its rights and interest in:
 - (i) the Group Shares;
 - (ii) any present or future Dividends in respect of the Group Shares;
- (h) assigns to the Security Agent by way of equitable mortgage its rights and interest in:
 - (i) any present or future Investments other than the Group Shares;
 - (ii) any present or future Dividends in respect of any such Investments;
- (i) charges to the Security Agent by way of fixed charge its rights and interest in any Plant and Equipment;
- (j) charges to the Security Agent by way of fixed charge its rights and interest in its present or future goodwill and uncalled capital;
- (k) charges to the Security Agent by way of fixed charge its rights and interest in any present or future Debts owing to the Chargor;
- (l) charges to the Security Agent by way of fixed charge its rights and interest in any money now or at any time after the date of this deed standing to the credit of any accounts held by the Chargor from time to time;
- (m) charges to the Security Agent by way of fixed charge its rights and interest in any present or future Intellectual Property;
- (n) charges to the Security Agent by way of fixed charge its rights and interest in any present or future Insurances and any Related Rights;
- (o) charges to the Security Agent by way of fixed charge its rights and interest in the Other Assets;
- (p) charges to the Security Agent by way of fixed charge its rights and interest in the Asset Purchase Agreement and any assets transferred pursuant to the Asset Purchase Agreement;

- (q) assigns to the Security Agent by way of fixed security its rights and interest in any agreements listed in schedule 3 and any Related Rights to the extent capable of assignment without infringing any provision of such agreement and if the terms of any agreement listed in schedule 3 require the consent of any party to such agreement to the assignment to the Security Agent which consent has not been obtained at the date of this deed such assignment shall take effect immediately on such consent being obtained;
- (r) to the extent that any agreement listed in schedule 3 is not capable of assignment without infringing any provision of such agreement but is capable of being charged, charges to the Security Agent by way of fixed security its rights and interest in such agreement and any Related Rights; and
- (s) to the extent that any agreement listed in schedule 3 is not capable of assignment or charge without infringing any provision of such agreement, charges to the Security Agent the proceeds of any Related Rights in respect of such agreement.

4. Floating Security

4.1 *Floating charge*

As continuing security for the payment of the Secured Liabilities the Chargor charges to the Security Agent by way of floating charge with full title guarantee the whole of its present or future assets to the extent that such assets are not effectively mortgaged, charged or assigned to the Security Agent by way of fixed security under clause 3 (Fixed Security).

4.2 *Conversion*

Subject to clause 4.3 (Moratorium under Insolvency Act), the Security Agent may at any time by written notice to the Chargor convert the floating charge created by clause 4.1 (Floating Charge) into a fixed charge as regards any assets specified in the notice if:

- (a) an Event of Default has occurred; or
- (b) in the opinion of the Security Agent such assets are at risk of becoming subject to any Security (other than a Permitted Security) or are otherwise at risk of ceasing to be within the ownership or control of the Chargor.

4.3 *Moratorium under Insolvency Act*

The Security Agent shall not be entitled to convert the floating charge created by clause 4.1 (Floating Charge) into a fixed charge as a result only of the Chargor obtaining a moratorium or anything done with a view to obtaining a moratorium under s1A of and schedule A1 to the Insolvency Act.

4.4 *Qualifying floating charge*

Paragraph 14(2)(a) of schedule B1 to the Insolvency Act applies to the floating charge created by clause 4.1 (Floating Charge) which is a "qualifying floating charge" for the purpose of paragraph 14(1) of schedule B1 to the Insolvency Act.

5. Notices of Assignment

5.1 *Notice of charge of Account*

The Chargor shall give notice of the charge of any accounts opened in accordance with clause 5.3 (below) in the form set out in part 1 of schedule 4 to the Account Bank and shall use reasonable endeavours to procure that the Account Bank executes and delivers to the Security Agent an acknowledgement of such notice in the form set out in part 2 of schedule 4.

5.2 *Security Agent may give notice*

Nothing in this clause 5 shall prevent the Security Agent from giving any notice it considers necessary or desirable in relation to the Security created over any Charged Property.

5.3 *Consent required*

The Chargor shall not open any bank accounts with any Account Bank without the prior written consent of the Security Agent.

6. Debts

6.1 *Dealings with Debts*

The Chargor shall:

- (a) use its best endeavours (having regard exclusively to the interests of the Security Agent) to realise the Debts and not give any release or waiver or do anything which may prejudice the collection and recovery of any of the Debts;
- (b) from time to time if required by the Security Agent provide the Security Agent with the names and addresses of the debtors of the Chargor and the amount of the Debts owing from each of them and such other information relating to the Debts as the Security Agent may require; and
- (c) permit the Account Bank to disclose to the Security Agent from time to time upon request full details of all the Chargor's accounts with such bank and any other information relating to the Chargor held by such bank.

7. Group Shares and Investments

7.1 *Deposit of certificates*

The Chargor shall deposit with the Security Agent:

- (a) on or before the date of this deed, the certificates or other documents of title to each Group Share and Investment owned by the Chargor on such date;
- (b) on the date of the acquisition of any Group Share or Investment acquired by the Chargor after the date of this deed or on the withdrawal of any Group Share or Investment owned by the Chargor from any clearance system, the certificates or other documents of title to each such Investment;
- (c) together with the certificates or other documents of title referred to in paragraphs 7.1(a) and 7.1(b) above, duly executed undated blank transfers in

respect of each such Group Share or Investment and forms of waiver of any pre-emption rights necessary to enable such transfers to be registered.

7.2 *Payment of money due*

The Chargor shall promptly pay all money which may from time to time be due in respect of any Group Share or Investment forming part of the Charged Property.

7.3 *Nominees*

If any Group Share or Investment forming part of the Charged Property is registered in the name of a nominee the Chargor shall on demand provide to the Security Agent an equitable mortgage over such Group Share or Investment or power of attorney or acknowledgement of the rights created by this deed over such Group Share or Investment in favour of the Security Agent in such terms as the Security Agent may require duly executed by or on behalf of such nominee.

7.4 *Completion of transfers*

The Security Agent may at any time after this deed has become enforceable complete any transfers of any Group Share or Investment delivered to it under clause 7.1(c) in favour of itself or any nominee for it as transferee and may present the same for registration.

7.5 *Dividends and voting rights before Event of Default*

The Chargor shall be entitled to exercise each of the following rights until this deed becomes enforceable and the Security Agent gives notice of its intention to exercise any of such rights:

- (a) to receive all Dividends in respect of any Group Share or Investment free from the security created by this deed; and
- (b) to exercise all voting rights attached to any Group Share or Investment and if the Security Agent is registered as the holder of any such Group Share or Investment it will exercise all voting rights attached to it as directed by the Chargor.

7.6 *Dividends and voting rights after Event of Default*

The Security Agent shall be entitled to exercise each of the following rights at any time after this deed becomes enforceable and the Security Agent gives the Chargor notice of its intention to exercise such right itself:

- (a) to receive all Dividends and apply them in reduction of the Secured Liabilities whether or not any Group Share or Investment is registered in the name of the Security Agent or any nominee for the Security Agent or in the name of the Chargor or any nominee for the Chargor;
- (b) at its discretion to exercise or procure the exercise of all voting rights attached to any Group Share or Investment registered in the name of the Security Agent or any nominee for the Security Agent for the purpose only of preserving the value of such Group Share or Investment or realising the security over such Investment created by this deed; and
- (c) to require the Chargor to exercise any voting rights attached to any Group Share or Investment registered in the name of the Chargor or any nominee for

the Chargor as directed by the Security Agent for the purpose mentioned in paragraph 7.6(b) above.

7.7 *Security Agent may give up voting rights*

The Security Agent may at any time by giving notice to the Chargor give up any right it may have under clause 7.6(b) or clause 7.6(c) in relation to any of the Group Shares or Investments specified in such notice (the "**Notified Shares**") whereupon the Chargor may exercise all voting rights in relation to the Notified Shares subject to the terms of the Finance Documents.

7.8 *Dematerialisation*

The Chargor must promptly take all action required for the rematerialisation of any Group Share or Investment forming part of the Charged Property held in dematerialised form in a clearance system.

8. Representations

8.1 *Duration and Scope*

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

8.2 *Status*

- (a) It is a limited liability company, duly incorporated and validly existing under the law of England and Wales.
- (b) It has the power to own its assets and carry on its business in England and Wales as it is being conducted.
- (c) Its centre of main interests for the purposes of Council Regulation (EC) No 2015/848 of 20 May 2015 on insolvency procedures (recast) (the "**Regulations**") is in England and Wales and it has no establishment as such term is used in the Regulations in any other jurisdiction.

8.3 *Binding obligations*

The obligations expressed to be assumed by it in this deed are legal, valid, binding and enforceable obligations subject to the Legal Reservations.

8.4 *Non-conflict with other obligations*

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

- (a) any law or regulation applicable to it;
- (b) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any agreement or instrument binding upon it.

8.5 *Power and authority*

- (a) It 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.
- (b) No limit on any of its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by this deed.

8.6 *Validity and admissibility in evidence*

Except for registration of this deed in accordance with clause 8.7 (Registration requirements) 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.

8.7 *Registration requirements*

Except for registration of this deed under the Companies Act 2006 it is not necessary to file, register or record this deed in any public place or elsewhere.

8.8 *Governing law and enforcement*

- (a) The choice of English law as the governing law of this deed will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in England in relation to this deed will be recognised and enforced in its Relevant Jurisdictions.

8.9 *Deduction of Tax*

It is not required under the law of England and Wales to make any deduction for or on account of Tax from any payment it may make under this deed to the Security Agent.

8.10 *No filing or stamp taxes*

8.11 Except for registration fees associated with registration of this deed in accordance with clause 8.7 (Registration requirements), it is not necessary under the law of its Relevant Jurisdictions that this deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar tax or fee be paid on or in relation to this deed or the transactions contemplated by this deed.

8.12 *No default*

- (a) No Event of Default is continuing or might result from the entry into, or the performance of, any transaction contemplated by this deed.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or

instrument which is binding on the Chargor or to which the Chargor's assets are subject which has or is reasonably likely to have a Material Adverse Effect.

8.13 *No misleading information*

- (a) All information supplied by it or on its behalf to the Security Agent in connection with this deed was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information which, if disclosed, would make the information referred to in paragraph 8.13(a) above untrue or misleading in any respect.
- (c) As at the date of this deed, nothing has occurred since the date of the information referred to in paragraph 8.13(a) above which, if disclosed, would make that information untrue or misleading in any material respect.

8.14 *Ranking of Security*

This deed creates valid first priority Security of the type described over the assets to which they relate and those assets are not subject to any other Security.

8.15 *Repetition*

The representations and warranties in this clause are deemed to be made by the Chargor by reference to the facts and circumstances then existing on each day on which any representations and warranties are deemed to be repeated under the Agreement.

9. Negative Undertakings

9.1 *Negative pledge*

The Chargor shall not create or permit to subsist any Security over any of the Charged Property other than a Permitted Security.

9.2 *Disposals*

The Chargor shall not sell, transfer, lease or otherwise dispose or purport or agree to dispose of:

- (a) any of its assets which are expressed to be mortgaged by way of legal or equitable mortgage, assigned by way of security or charged by way of fixed security or charge to the Security Agent under clause 3 (Fixed Security);
- (b) any of its other assets other than on arm's length terms in the ordinary course of its trading.

10. General Undertakings

10.1 *Authorisations*

The Chargor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

- (b) supply certified copies to the Security Agent of,
any Authorisation required under any law or regulation of its Relevant Jurisdictions to:
- (i) enable it to perform its obligations under the Transaction Documents to which it is a party and to ensure the legality, validity, enforceability or admissibility in evidence in the Relevant Jurisdictions of any such Transaction Document;
 - (ii) enable it to own its assets and carry on its business as it is being conducted.

10.2 *Compliance with laws*

The Chargor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents to which it is a party.

10.3 *Consents*

The Chargor shall ensure that all consents and all documents, registrations, licences and other matters and things required by the Security Agent to perfect this deed are produced executed obtained or made as required by the Security Agent in accordance with this deed.

11. **Enforcement of Security**

11.1 *Security Agent's powers*

On the occurrence of an Event of Default or if the Chargor requests that the Security Agent exercises any of its powers under this clause 11.1, this deed shall become enforceable and the Security Agent may immediately or at any time thereafter:

- (a) appoint one or more persons as an Administrator of the Chargor in accordance with schedule B1 to the Insolvency Act;
- (b) exercise the power of sale and all other powers conferred by s101 of the LPA as varied or extended by this deed;
- (c) subject to clause 4.3 (Moratorium under Insolvency Act), by written notice to the Chargor convert the floating charge created by clause 4.1 (Floating Charge) into a fixed charge as regards any assets specified in the notice;
- (d) make any lease or agreement for lease or accept surrenders of leases and grant options on such terms as it thinks fit without needing to comply with sections 99 and 100 of the LPA;
- (e) subject to s72A of and paragraph 43 of Schedule A1 to the Insolvency Act, appoint one or more persons as a Receiver of any Charged Property;
- (f) exercise all the powers conferred on a Receiver by this deed, the LPA and the Insolvency Act;
- (g) by notice to the Chargor end the Chargor's right to possession of all or any Real Property forming part of the Charged Property and enter into possession of all or such part of such Real Property;

- (h) secure and perfect its title to all or any part of the Charged Property and/or transfer any asset into the name of its nominee;
- (i) to the extent that this deed constitutes a "security financial collateral arrangement" as defined in the Financial Collateral Regulations, appropriate any Charged Property which constitutes "financial collateral" as defined in the Financial Collateral Regulations in or towards satisfaction of the Secured Liabilities and the Security Agent shall value such Charged Property by reference to an independent valuation or other procedure selected by the Security Agent acting reasonably.

11.2 *Powers under the LPA*

- (a) Section 103 of the LPA will not apply to this deed.
- (b) The power of sale and all other powers conferred by s101 of the LPA as varied or extended by this deed will arise upon execution of this deed by the Chargor.

11.3 *Administrators*

If the Security Agent appoints two or more persons as Administrator of the Chargor, the appointment may specify whether those persons are to act jointly or concurrently.

11.4 *Receivers*

- (a) The Security Agent may appoint any Receiver upon such terms as to remuneration and otherwise as the Security Agent thinks fit and the maximum rate specified in s109(6) of the LPA shall not apply.
- (b) Any Receiver will be the agent of the Chargor for all purposes and the Chargor will be responsible for such Receiver's acts and defaults and for his remuneration, costs, fees, taxes and expenses to the exclusion of liability on the part of the Security Agent.
- (c) Where two or more persons are appointed as Receiver any act authorised to be done by the Receiver may be done by all of them acting jointly or by any one or more of them acting severally.
- (d) The Security Agent may at any time by writing remove any Receiver (subject to the obtaining of any required order of the court in the case of an administrative receiver) whether or not the Security Agent appoints any other person as Receiver in his place.

12. **Powers of Receiver and Security Agent**

12.1 *Statutory powers*

A Receiver shall have and be entitled to exercise all the powers conferred on a receiver by the LPA and, whether or not such a Receiver is an administrative receiver, all the powers conferred upon an administrative receiver by Schedule 1 to the Insolvency Act which powers are incorporated in this deed.

12.2 *Additional powers*

By way of addition to and without limiting any other powers referred to in this clause a Receiver shall have power (both before and after the commencement of any liquidation of the Chargor) to do every act and thing and exercise every power:

- (a) which the Chargor would have been entitled to do or exercise if no Receiver had been appointed or which the Receiver would have been entitled to do or exercise if the Receiver were the absolute legal and beneficial owner of the Charged Property;
- (b) which such Receiver in his absolute discretion considers necessary or desirable for maintaining or enhancing the value of any Charged Property or for or in connection with the enforcement of the Security created by this deed or the realisation of any Charged Property;

and may use the name of the Chargor in connection with any exercise of such powers.

12.3 *Consideration*

The receipt of the Security Agent or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property the Security Agent or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

12.4 *Prior encumbrances*

At any time after the security given by this deed has become enforceable, the Security Agent may redeem any prior Security against the Charged Property or procure a transfer of such Security to itself and may agree the accounts of the person entitled to that Security and any accounts so agreed will be binding on the Chargor. Any money paid by the Security Agent in connection with a redemption or transfer of any prior Security will form part of the Secured Liabilities.

12.5 *Possession*

If the Security Agent, any Receiver or any Delegate takes possession of any Charged Property it may go out of possession at any time.

12.6 *Delegation*

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by this deed.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub delegate.

13. **Exclusion of Liability**

13.1 *No obligation to recover*

Neither the Security Agent nor any Receiver is under any obligation to take action to collect any money or enforce any rights comprised in the Charged Property whether or not it is in possession of the relevant Charged Property.

13.2 *Liability as mortgagee in possession*

If the Security Agent or any Receiver takes possession of any Charged Property, it will not be liable to account to the Chargor for anything except actual receipts or be liable to the Chargor for any loss arising from any realisation of any Charged Property or for any default or omission for which a receiver or mortgagee in possession would be liable.

13.3 *Losses on enforcement*

No Secured Party will be liable to the Chargor for any loss or damage arising from:

- (a) any sale of any Charged Property;
- (b) any act, default or omission of any Secured Party in relation to any Charged Property; or
- (c) any exercise or non-exercise by any Secured Party of any power conferred upon it in relation to any Charged Property by or pursuant to this deed or by the LPA,

unless such loss or damage is caused by the fraud, gross negligence or wilful misconduct of such Secured Party.

14. **Reimbursement and Indemnity**

14.1 *Enforcement and preservation costs*

The Chargor shall, on demand, pay to the Security Agent the amount of all costs and expenses (including legal fees, out-of-pocket expenses, accountancy fees and consultancy fees and VAT) incurred by it in connection with the enforcement of or the preservation of any rights under this deed, steps taken to ascertain the ability of the Chargor to meet its obligations under this deed and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Security constituted by this deed or enforcing those rights.

14.2 *Indemnity to the Security Agent*

The Chargor shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (including any liability under any Environmental Law) incurred by any of them:

- (a) as a result of:
 - (i) the taking, holding, protection or enforcement of the Security constituted by this deed;
 - (ii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent and each Receiver and Delegate by this deed or by law; or
 - (iii) any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this deed; or
- (b) which otherwise relates to any of the Charged Property or the performance of the terms of this deed (otherwise than as a result of its fraud, gross negligence or wilful misconduct).

14.3 *Priority of Indemnity*

The Security Agent and every Receiver and Delegate may indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in clause 14.2 (Indemnity to the Security Agent) and shall have a lien on the Security constituted by this deed and the proceeds of enforcement of the Security constituted by this deed for all moneys payable to it.

15. **Application of Proceeds**

15.1 *Order of application*

Subject to clause 15.2 (Prospective liabilities) and to claims having priority to the Security created by this deed and by way of variation to the provisions of the LPA, all amounts from time to time received or recovered by the Security Agent in connection with the realisation or enforcement of all or any part of the Security constituted by this deed (for the purposes of this clause the "**Recoveries**") shall be held by the Security Agent to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause), in the following order:

- (a) in payment of all costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of this deed and of all outgoings properly payable by any Secured Party;
- (b) in payment of remuneration to any Receiver;
- (c) in or towards payment of the Secured Liabilities;
- (d) the balance (if any) will be applied as required by law.

15.2 *Prospective liabilities*

The Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under clause 15.1 (Order of Application) in respect of:

- (a) any sum owing to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

15.3 *Investment of proceeds*

Prior to the application of the proceeds of the Recoveries in accordance with clause 15.1 (Order of Application) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with clause 15.1 (Order of Application).

15.4 *Currency Conversion*

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to the currency in which the Secured Liabilities are denominated, at a market rate of exchange.
- (b) The obligations of the Chargor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

15.5 *Permitted Deductions*

The Security Agent shall be entitled, in its discretion:

- (a) to set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this deed; and
- (b) to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise.

16. **Protection of Persons Dealing with Security Agent or Receiver**

No person dealing with the Security Agent or any Receiver will be concerned to enquire:

- (a) whether any event has happened upon which any of the powers conferred by this deed may have arisen or be exercisable;
- (b) otherwise as to the propriety or regularity of any exercise of the powers conferred by this deed or of any act purporting or intended to be in exercise of such powers; or
- (c) whether any Secured Liabilities remain owing.

17. **Notice of Subsequent Charge**

If the Security Agent receives notice of any Security or other interest affecting any Charged Property:

- (a) it may open a new account for the Chargor in its books and may transfer any outstanding balance owing by the Chargor to such new account;
- (b) if it does not open a new account then, unless it gives express written notice to the contrary to the Chargor, all payments made by the Chargor to it will as from the time of receipt of such notice 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.

18. Further Assurance

When required by the Security Agent or any Receiver the Chargor shall, at its own cost:

- (a) execute a charge by way of legal mortgage, assignment by way of security or fixed charge over any assets of the Chargor and such legal mortgage, assignment or charge shall secure the Secured Liabilities and contain a power of sale which arises immediately upon execution, provisions excluding s93 of the LPA and the restrictions contained in s103 of the LPA and such other provisions including any similar to those in this deed as the Security Agent may reasonably require;
- (b) execute any documents or do any other thing which the Security Agent or any Receiver may require for perfecting or protecting any Security created by this deed or in connection with the exercise of any powers given to the Security Agent or any Receiver under this deed; and
- (c) convey, transfer, assign or otherwise deal with any Charged Property in such manner as the Security Agent or any Receiver may require in connection with any enforcement of any Security created by this deed.

19. Power of Attorney by Chargor

The Chargor irrevocably and by way of security appoints each of the Security Agent, any person selected by the Security Agent and any Receiver its attorney in each case (with full power to appoint substitutes and to delegate) severally in its name and on its behalf at any time when an Event of Default is continuing, to execute any document or do any act or thing which:

- (a) the Chargor is entitled to execute or do in relation to the Charged Property including giving a receipt for any money and exercising any rights or remedies forming part of the Charged Property; or
- (b) the Chargor is obliged to execute or do under this deed.

20. Discharge of Security

20.1 *Discharge conditional*

Any discharge of the Chargor by the Security Agent in reliance on a payment or security received by the Security Agent will cease to be effective if that payment or security is avoided, reduced or invalidated for any reason and the Security Agent will be entitled to recover from the Chargor on demand the amount of the Secured Liabilities discharged by such payment or security.

20.2 *Retention of security*

Following any discharge of the Chargor made by the Security Agent in reliance on a payment or security, if the Security Agent reasonably believes that such payment or security is likely to be avoided, reduced or invalidated for any reason, the Security Agent may retain the security constituted by this deed (and all documents of title or other documents necessary to protect such Security) until the expiry of the maximum period within which such payment or security can be avoided, reduced or invalidated for any reason. If the person making such payment or giving such security goes into liquidation or administration or equivalent proceedings in any foreign jurisdiction within

that period the Security Agent may retain the security constituted by this deed for as long as it thinks fit.

21. Redemption

If the Security Agent determines that all of the Secured Liabilities have been fully and finally discharged and it is not under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents the Security Agent shall release:

- (a) without recourse or warranty, all of the Security constituted by this deed; and
- (b) the rights of the Security Agent under this deed.

22. Default Interest

Any sum payable by the Chargor under this deed will bear interest from the date on which it is due or if payable on demand from the date of demand until payment (both before and after judgment) at the interest rate as calculated and compounded from time to time.

23. Notices

23.1 *Communications in writing*

Any communication to be made under or in connection with this deed shall be made in writing and, unless otherwise stated, may be made by letter.

23.2 *Addresses*

The address (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this deed is:

- (a) in the case of the Chargor:

Address: 5 New Street Square, London, United Kingdom, EC4A 3TW

For the attention of: James Brooks

- (b) in the case of the Security Agent:

Address: Level 1, 88 Collins Street, Melbourne VIC 3000 Australia

For the attention of: Michael Fitzpatrick

or any substitute address or department or officer as the Chargor may notify to the Security Agent (or the Security Agent may notify to the Chargor, if a change is made by the Security Agent) by not less than five Business Days' notice. In the case of the Chargor, the address of its registered office or of any place where it carries on business shall also be addresses of Chargor for the purpose of this clause.

23.3 *Delivery*

- (a) Any communication or document made or delivered by the Security Agent on the Chargor under or in connection with this deed will be effective:

- (i) if left at an address referred to in this clause, when so left;
 - (ii) if posted by first class post to an address referred to in this clause, on the next working day in the place of receipt following the day when it was posted;
- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer specified above (or any substitute department or officer as the Security Agent shall specify for this purpose).

23.4 *English language*

Any notice given under or in connection with this deed must be in English. All other documents provided under or in connection with this deed must be:

- (a) in English; or
- (b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

24. Calculations and Certificates

24.1 *Accounts*

In any litigation or arbitration proceedings arising out of or in connection with this deed, the entries made in the accounts maintained by the Security Agent are prima facie evidence of the matters to which they relate.

24.2 *Certificates and Determinations*

Any certification or determination by the Security Agent of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

24.3 *Day count convention*

Any interest, commission or fee accruing under this deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the Security Agent determines that practice in the relevant interbank market differs, in accordance with that market practice.

25. Partial Invalidity

If, at any time, any provision of this deed is or becomes illegal, invalid 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. Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this deed shall operate as a waiver of any such right or remedy or constitute an election to affirm any of this deed. No election to affirm any of this deed on the part of the Security Agent shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this deed are cumulative and not exclusive of any rights or remedies provided by law.

27. Counterparts

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

28. Miscellaneous

28.1 Possession

The Chargor shall be entitled to possession of any Real Property forming part of the Charged Property until termination of such right by the Security Agent under clause 11.1 (Security Agent's powers).

28.2 Third Party Rights

- (a) Unless expressly provided to the contrary, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this deed.
- (b) Notwithstanding any term of this deed, the consent of any person other than the Chargor and the Security Agent is not required to rescind or vary this deed at any time.
- (c) A Secured Party may, subject to this clause 28.2 and the Third Parties Act, rely on any provision of this deed which expressly confers rights on it.

28.3 Continuing Security

This deed is a continuing security and extends to the balance from time to time of the Secured Liabilities irrespective of any intermediate payment of the Secured Liabilities.

28.4 Other Security

This deed is in addition to and will not in any way be prejudiced or affected by the holding or release by the Security Agent or any other person of any other security at any time held by the Security Agent.

28.5 Consolidation

The restrictions on the right of consolidating mortgage securities contained in s93 of the LPA will not apply to this deed.

28.6 *Execution*

It is intended that this deed takes effect as a deed notwithstanding the fact that a Party may only execute it under hand.

28.7 *Land Registry Consent*

By executing this deed the Chargor consents to the entry of the following restriction against any registered titles (and any unregistered properties subject to compulsory first registration) which are at any time subject to this deed:

"No [disposition or specify type of disposition] of the registered estate [(other than a charge)] by the proprietor of the registered estate[, or by the proprietor of any registered charge, not being a charge registered before the entry of the restriction,] is to be registered without a written consent signed by the proprietor for the time being of the charge [date] in favour of [chargee] referred to in the charges register [or [their conveyancer or specify appropriate details]]".

29. **Law and jurisdiction**

- 29.1 This deed, and any claim, dispute or issue arising out of or in connection with this deed or its subject matter (including non-contractual claims), will be governed by, and construed in accordance with, the laws of England and Wales.
- 29.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this deed or its subject matter (including non-contractual claims). Accordingly, any proceedings relating to, or in connection with, this deed may be brought in such courts.

This deed has been executed and delivered as a deed by the Chargor and signed on behalf of the Security Agent on the date shown at the beginning of this deed.

SCHEDULE 1

The Property

None as at the date of this deed

SCHEDULE 2

List of Group Shares

None as at the date of this deed.

SCHEDULE 3

List of Agreements

Any agreements and contracts transferred to the Chargor pursuant to the Asset Purchase Agreement.

SCHEDULE 4

Part 1

Form of notice to Account Bank

To:

[address to be confirmed]

(the "**Account Bank**")

Dated: []

Dear Sirs

We refer to the account of Third Equation Ltd (the "**Chargor**") with you numbered [].

We give you notice that, by a debenture dated [] the Chargor has charged to HFM Investments PTY Ltd (the "**Security Agent**") by way of fixed charge its interest in and to the money from time to time standing to the credit of the account referred to above (the "**Charged Account**") and to all interest (if any) accruing on the Charged Account.

We irrevocably authorise and instruct you until you receive written notice from the Security Agent to the contrary:

1. to pay all or any part of monies from time to time standing to the credit of the Charged Account to the Security Agent (or as it may direct) promptly following receipt of written instructions from the Security Agent to that effect;
2. to disclose to the Security Agent any information relating to the Chargor and the Charged Account which the Security Agent may from time to time request you to provide; and
3. not to permit the Chargor to receive, withdraw or otherwise transfer any credit balance from time to time on the Charged Account without first obtaining the consent in writing of the Security Agent.

This notice and any non-contractual obligations arising out of or in connection with this notice are governed by the law of England and Wales.

Would you please acknowledge receipt of this letter and your acceptance of the above by signing the attached form of acknowledgement and returning it to the Security Agent at address Level 1, 88 Collins Street, Melbourne VIC 3000 Australia.

Yours faithfully,

Third Equation Ltd

Part 2

Acknowledgement

To:

HFM Investments PTY Ltd
Level 1
88 Collins Street
Melbourne VIC
3000 Australia

[Date]

Dear

We acknowledge receipt of a notice (a copy of which is attached) dated [] and addressed to us by Third Equation Limited (the "**Chargor**"). Expressions defined in such notice have the same meanings in this acknowledgement.

We acknowledge and confirm that:

1. we accept the instructions in the notice and will act in accordance with the provisions of such notice until the Security Agent notifies us in writing that the notice is revoked;
2. we have not received notice that any third party has any interest in the Charged Account;
3. we have not claimed or exercised, nor will we claim or exercise against the Chargor, any right of set-off, lien, combination of accounts, counterclaim or other right relating to the Charged Account.

This acknowledgement and any non-contractual obligations arising out of or in connection with this acknowledgement are governed by the law of England and Wales and in connection with any proceedings with respect to this acknowledgment and any such non-contractual obligations we submit to the jurisdiction of the Courts of England for your exclusive benefit.

Yours faithfully,

[Account Bank]

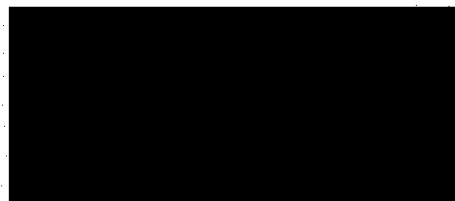
Execution page

The Chargor

EXECUTED as a DEED by
THIRD EQUATION LTD

acting by a director
in the presence of:

)
)
)
)
)



Director

Signature of witness



Name of witness: *Nicola Caten*

Address of witness: *Taylor Welling LLP, 5 New Street Square, London*

Occupation of witness: *Solicitor*

The Security Agent

SIGNED by
HFM INVESTMENTS PTY LTD
a company incorporated in Australia
acting by.....
who in accordance with the
laws of that territory is acting under the
authority of the company

)
)
)
)
)
)
)

Authorised Signatory

Execution page

The Chargor

EXECUTED as a DEED by)
THIRD EQUATION LTD)
)
acting by a director)
in the presence of:)

.....
Director

Signature of witness:

Name of witness:

Address of witness:

Occupation of witness:

The Security Agent

SIGNED by)
HFM INVESTMENTS PTY LTD)
a company incorporated in Australia)
acting by)
who in accordance with the)
laws of that territory is acting under the)
authority of the company)



Authorised Signatory