

## **IMPORTANT**

**This document is for lawyers who are familiar with transactions of this type involving the Pension Protection Fund (the "PPF"). It is not a comprehensive guide to the legal and practical issues that may arise on a deal-specific basis, and must be adapted on a deal-specific basis.**

## **EXPLANATORY NOTES**

### **1 Master version**

- 1.1 This is the master version of the PPF Precedent Guarantee and Debenture. It documents the terms upon which the PPF may be prepared, *inter alia*, to take security over the assets of a company or a group of companies (as guarantors and chargors, together referred to as the 'Chargors' in this precedent) in respect of the liabilities owed under a loan note as part of a package of measures in a restructuring.
- 1.2 It should be used in conjunction with the PPF Precedent Loan Note Instrument (master version), the PPF Precedent Shareholders' Agreement (master version) and the PPF Precedent Articles of Association.

### **2 Drafting points**

- 2.1 References to specific clauses in the Guarantee and Debenture may change depending on which clauses are deleted. Any renumbered clauses will need to be tracked through the document.
- 2.2 References to specific clauses and definitions in any intercreditor agreement or deed and the Loan Note Instrument may change depending on what is contained in those documents.
- 2.3 Where the obligations under more than one type of loan note are to be secured, the additional loan note instruments will need to be included as part of the secured liabilities in this deed.
- 2.4 This precedent is drafted on the basis that security is to be granted over assets situated in England and Wales by a company or companies incorporated with liability limited by shares in England and Wales. You should take specific advice if this is not the case, eg any of the charging companies are a limited liability partnership, an unlimited company or is incorporated outside England and Wales (including Scotland, Northern Ireland, the Republic of Ireland, the Isle of Man or the Channel Islands).
- 2.5 If floating charges only are required over certain assets, delete the relevant provisions of Clauses 4.1 to 4.14 (inclusive) and rely on the floating charge created by Clause 4.15.
- 2.6 The Guarantee and Debenture assumes full diligence has been completed on the Chargors' assets, particularly in relation to any key assets that they may hold. Consider information provided to TPR, the Trustees' accountants report, any Lender due diligence and the relevant clearance application. Consider also the extent to

which there may be prohibitions on taking security over the Chargors' assets (eg intercreditor arrangements, prohibitions on assigning agreements).

- 2.7 This Guarantee and Debenture will need to be registered at Companies House against every Chargor within 21 days of signing. Further registrations may also be needed if security is taken over certain other assets (eg land, intellectual property). You should take advice in relation to this.
- 2.8 Certain formalities may be required to perfect security under the Guarantee and Debenture (eg assigned agreements, bank accounts). In certain circumstances, this may affect the Companies' relationships with third parties. You should take advice in relation to this.

### **3 Execution by the PPF**

- 3.1 Please note the PPF is a statutory corporation rather than a Companies Act 2006 company. The PPF executes deeds by affixing its seal in the presence of one authorised signatory.

## Deed of Guarantee and Debenture

Dated

\*\*\*\*

- (1) ***[name of Company] [and name of other chargors]<sup>1</sup>***  
**(the Original Chargor[s]<sup>2</sup>)**
- (2) ***[name of trustees of pension scheme] [name of corporate trustee of pension scheme]***  
**(the Original Secured Party)**
- (3) **The Board of the Pension Protection Fund**  
**(the PPF)**

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<sup>1</sup> Delete square brackets if there is only one Chargor

<sup>2</sup> Change to reflect one or more charging company.

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## Deed of Guarantee and Debenture

**Dated** \*\*\*\*

### Between:

- (1) *[The name of the company]* registered in England and Wales (registered number [●]) whose registered office is at *[address]* (the "**Company**") and the companies listed in Schedule 1 (together with the Company are the "**Original Chargor[s]**"<sup>3</sup>);
- (2) *[name of the trustees of pension fund]/[name of individual trustee]* of *[address of trustee]/[name of corporate trustee]* registered in England and Wales registered number [●] whose registered office is at *[address]* (the "**Original Secured Party**"); and
- (3) **The Board of the Pension Protection Fund**, a statutory corporation established by the Pensions Act 2004 of Renaissance, 12 Dingwall Road, Croydon Surrey CR0 2NA (the "**PPF**").

### Whereas:

- (A) The Company has issued the Loan Note in favour of the Original Secured Party.
- (B) *[The Original Chargor[s], other than the Company have]* agreed to:
  - a. guarantee all of the obligations of the Company under the Loan Note; and
  - b. provide Security to secure the payment and discharge of the Secured Liabilities.]<sup>4</sup>

*[The Company has [also] agreed to*

  - c. guarantee all of the obligations of the other Original Chargors under this deed; and
  - d. provide Security to secure the payment and discharge of the Secured Liabilities.]
- (C) It is intended that following the issue and allotment of the Loan Note to the Original Secured Party, that Loan Note, with the benefit of the guarantees and Security constituted by, and other rights under, this Deed, may be transferred to the PPF such that, among other things, the PPF will become the Secured Party for the purposes of this Deed.
- (D) This document is the deed of *[the/each]* Chargor, even if it has not been duly executed by the Secured Party or has been executed by the Secured Party but not as a deed.

### This deed witnesses

#### 1 Definitions and interpretation

In this Deed:

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<sup>3</sup> This change will need to be made and traced through the agreement depending on how many companies sign the agreement. Schedule 1 must include the Company, ie the company that issues the loan note.

<sup>4</sup> Delete if Company is the only Chargor.

## 1.1 Definitions

"**Account**" means a Current Account [or a Controlled Account].

"**Account Bank**" means in respect of any Account, the bank or financial institution with which that Account is held.

"**Act**" means the Law of Property Act 1925.

"**Administrator**" means any administrator appointed under this Deed to manage the affairs, business and assets of [the/any] Chargor.

"**Assessment Period**" means an assessment period for the purposes of section 132 of the Pensions Act.

["**Assigned Agreements**" means

- (a) [material contracts between                   ];<sup>5</sup>
- (b) [each Derivatives Contract];
- (c) [keyman life policy between                   ];
- (d) [intercompany loan agreements between the Company and its Subsidiaries];
- (e) [Project agreements between                   ];
- (f) [each Occupational Lease];
- (g) [others]]<sup>6</sup>; and
- (h) any other document from time to time designated as an Assigned Agreement, either by the [relevant] Chargor and the Secured Party or in an Security Accession Deed.

"**Assumptions**" has the meaning set out in Clause 1.4 (*PPF*).

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

"**Book Debts**" means, in relation to [the/a] Chargor, all of its book debts or other debt, revenue or claim.

"**Business Day**" means a day (other than Saturday or Sunday) on which banks are open for general business in London.

"**Chargor**" means [the/an] Original Chargor and any New Chargor and Chargors" means all of them.

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<sup>5</sup> Add description of any key contracts for the company/business. These might include hedging, key man insurance, material contracts and intra group receivables. Note that these may be held in different companies within the group so this may need to be split out.

<sup>6</sup> Delete if there are no Assigned Agreements.

"**Controlled Account[s]**"<sup>7</sup> means [each of] the following bank account[s] in the name of [the/a] Chargor [or to which it is beneficially entitled]:

- (a) [insert name of Chargor, account number and sort code of any Controlled Account].]

"**Controlled Debt**" means any debt or moneys due or owing to [the/a] Chargor, the proceeds of which, once received by that Chargor, are or will be Controlled Proceeds.]

"**Controlled Proceeds**" means any proceeds or other moneys received by [the/a] Chargor from time to time which, under the terms of any arrangements with the Secured Party, that Chargor must either:

- (a) apply in repayment or prepayment of the Secured Liabilities;
- (b) pay into a Controlled Account; or
- (c) which the debtor is instructed to pay directly into any of the Controlled Accounts. ]

"**Current Account**" means:

- (a) each account of the Chargor[s] set out in Schedule 7 (*Current Accounts*);
- (b) any other account which [a/the] Chargor holds with any bank or financial institution from time to time [other than a Controlled Account].

"**Default**" means:

- (a) the occurrence of an Event of Default under, and as defined in, the Loan Note Instrument;
- (b) [the/a] Chargor defaults in the payment when due of any amount due under this Deed unless such non-payment is as a result of an administrative or technical error and the payment is made within three days of its due date;
- (c) [the/a] Chargor does not comply with or breaches any provision of a Transaction Document;
- (d) any representation made or deemed to be made by [the/a] Chargor in the Transaction Documents is or proves to have been incorrect or misleading when made or deemed to be made;
- (e) [a Chargor (other than the Company) ceases to be a wholly-owned subsidiary of the Company;]<sup>8</sup>
- (f) it is or becomes unlawful for [the/a] Chargor to perform any of its obligations under any Transaction Documents to which it is party unless such unlawfulness, if capable of remedy, is remedied within [ten] days of [the/a] Chargor becoming aware of its occurrence; or

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<sup>7</sup> Include any accounts from which the Chargor cannot make withdrawals. Do not use for accounts from which a Chargor is free to debit amounts.

<sup>8</sup> Delete if Company is the only Chargor.

- (g) [the/a] Chargor repudiates, or evidences an intention to repudiate, a Transaction Document to which it is party.

**"Default Rate"** means the rate of interest specified in, and calculated in accordance with, Clause [6.3]<sup>9</sup> (*Interest*) of the Loan Note.

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Secured Party or a Receiver.

**"Deposit"** means:

- (a) all amounts standing to the credit of each Controlled Account from time to time; and
- (b) all sums standing to the credit of any Current Account from time to time.

**"Derivatives Contract"** means any master agreement, schedule, confirmation, novation or other instruments or hedging agreement entered into by [the/a] Chargor and a counterparty in connection with protection against or benefit from fluctuation in any rate or price.<sup>10</sup>

**"Distribution Rights"** means:

- (a) all dividends, interest and other distributions paid or payable on or in respect of any Investments or Shares and any right to receive them; and
- (b) any right arising or accruing by way of redemption, substitution, exchange, bonus, preference, option or other right relating to the relevant Investment or Share.

**"Eligible Scheme"** means an eligible scheme for the purposes of section 126 of the Pensions Act.

**"Employer"** means an employer for the purposes of section 318 of the Pensions Act.

**"Equipment"** means, in relation to [the/a] Chargor, all its fixed and moveable plant, machinery, tools, vehicles, computers and office and other equipment and the benefit of all related Authorisations, agreements and warranties.

**"Group"** means [the Original Chargors][the Company and its Subsidiaries for the time being] and **"Group Company"** means any of them.<sup>11</sup>

**"Headlease"** means a Lease under which [the/a] Chargor holds title to any land forming part of the Security Assets.

**"Insolvency Event"** in relation to a person includes the dissolution, bankruptcy, insolvency, winding-up, liquidation, administration, examination, amalgamation, reconstruction, reorganisation, arrangement, adjustment, administrative or other receivership or dissolution of that person, the official management of all of its revenues

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<sup>9</sup> This cross reference is correct in relation to the precedent Loan Note. Please check it is still the same before execution of the deed or insert the relevant rate.

<sup>10</sup> Delete if there are no derivatives contracts.

<sup>11</sup> It assumes that note issuer is parent company; will need to be adapted as required if this is not the case.

or other assets or the seeking of protection or relief from debtors and any equivalent or analogous proceeding, whatever it is called, in any jurisdiction.

**"Insurance"** means, in relation to [the/a] Chargor, each contract or policy or insurance to which it is a party or in which it has an interest.

**"Intellectual Property Rights"** means

- (a) all patents, trade marks, trade names, domain names, service marks, software rights, designs, business names, copyrights, design rights, moral rights, topography rights in databases, inventions, confidential information, trade secrets, know-how and other intellectual property rights and interests, whether registered, registrable or unregistered (and including registrations and applications for registration of any of these and rights to apply for the same);
- (b) the benefit of all applications and rights to use such assets of [the/each] Chargor (which may now or in the future subsist); and
- (c) all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing anywhere in the world.

**"Investments"** means, in relation to [the/a] Chargor:

- (a) all or any of its stocks, shares (including any Shares), bonds and securities of any kind (marketable or otherwise), negotiable instruments and warrants and any other financial instruments (as defined in the Regulations) and all its rights against any nominee or other trustee, fiduciary, custodian or clearing system with respect to any Investments; and
- (b) all allotments, accretions, offers, options, rights, bonuses, benefits and advantages, whether by way of conversion, redemption, preference, option or otherwise which at any time accrue to or are offered or arise in respect of them,

and includes all Distribution Rights.

**["Intercreditor Agreement"** means the intercreditor [agreement][deed] dated [on or about the date of this Deed] made between, among others, the Company [and][the Original Chargors] and the Original Secured Party.]<sup>12</sup>

**"Lease"** means any lease, tenancy, licence, sub-lease, sub-licence or other occupational right.

**"Loan Note"** means the £[●]<sup>13</sup> [fixed/variable] [guaranteed] rate secured loan note [date] issued by the Company to the Original Secured Party pursuant to the Loan Note Instrument.

**"Loan Note Instrument"** means the instrument of [the Company] dated [date] under which the Loan Note is constituted.

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<sup>12</sup> Change this description to match date/parties to an intercreditor agreement.

<sup>13</sup> Insert the amount.

**"New Chargor"** means a Group Company which becomes a Chargor by executing a Security Accession Deed in accordance with Clause 19 (*Additional Chargors*).

**"Occupational Lease"** means any Lease to which any land secured under this Deed may at any time be subject.]<sup>14</sup>

**"Party"** means a party to this Deed and **"Parties"** means all of them.

**"Pension Scheme"** means [*name of Pension Scheme*] established by a deed dated [*insert date*] between [*insert parties*] [(as amended)], which is administered by the Original Secured Party.<sup>15</sup>

**"Pensions Act"** means the Pensions Act 2004 and its underlying regulations.

**"Pensions Regulator"** means the UK Pensions Regulator, a body corporate established pursuant to the Part I of the Pensions Act.

**"PPF Creditor Rights"** means the rights and powers in relation to the debts owed to the Original Secured Party which pass to the PPF by virtue of section 137 and/or section 161 of the Pensions Act.

**"Qualifying Insolvency"** means an insolvency event under section 121 of the Pensions Act which is a qualifying insolvency event for the purposes of section 127 of the Pensions Act.

**"Receiver"** means a receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and, if the Secured Party is permitted by law to appoint an administrative receiver, includes an administrative receiver (and in each case any substitute of any of them appointed from time to time).

**"Regulations"** means the Financial Collateral Arrangements (No 2) Regulations 2003 (S.I. 2003/3226) as amended by:

- (a) Financial Collateral Arrangements (No 2) Regulations 2003 (Amendment) Regulations 2009 SI 2009/2464; and
- (b) the Financial Markets and Insolvency (Settlement Finality and Financial Collateral Arrangements) (Amendment) Regulations 2010 SI 2010/2993,

or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements and "Regulation" means any of them.

**"Secured Liabilities"** means the liabilities of the Chargor[s] to the Secured Party under or pursuant to the Transaction Documents, whether present or future, actual or contingent and whether incurred solely or jointly and whether as principal or surety or in some other capacity (but excluding any money, obligation or liability which would cause the covenant set out in Clause 3 (*Covenant to pay*) or the Security which would otherwise be constituted by this Deed to be unlawful or prohibited by any applicable law or regulation).

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<sup>14</sup> Delete if there are no occupational leases.

<sup>15</sup> Insert the name of Pension Scheme: follow definition in Loan Note Instrument.

**"Secured Party"** means the Original Secured Party and any person to which the interests of the Original Secured Party under the Transaction Documents may be transferred or assigned from time to time, in each case in accordance with the Transaction Documents and/or the Pensions Act and any Receiver or any Delegate.

**"Security"** means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

**"Security Accession Deed"** means a deed executed by a Group Company substantially in the form set out in Schedule 10 (*Form of Security Accession Deed*) in terms satisfactory to the Secured Party and the PPF.

**"Security Assets"** means, in relation to [the/a] Chargor, all of its assets which are the subject of any Security created or to be created by this Deed.

**"Security Period"** means the period starting on the date of this Deed and ending on the date on which the Secured Party is satisfied that all of the Secured Liabilities have been irrevocably discharged in full and [the Chargor][each Chargor] has no commitment or liability, whether present or future, actual or contingent, under or in relation to any Transaction Document.

**"Shares"** means all shares held by the [the/a] Chargor in its Subsidiaries or held by a nominee on behalf of [the/a Chargor].

**"Subsidiary"** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

**"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).

**["Trade Mark"** means each United Kingdom registered trade mark owned now or in the future by [the/a] Chargor (including those registered trade marks described in Part 1 of Schedule 9 (*Trade Marks*)).]

**["Trade Mark Application"** means each application for the United Kingdom registration of a trade mark which has been made at the date of this Deed, or which may be made in the future by [the/a] Chargor (including those applications described in Part 2 of Schedule 9 (*Trade Marks*)).]

**["Trade Mark Chargor"** means a Chargor that owns Trade Mark Property.]

**["Trade Mark Property"** means:

- (a) all Trade Marks;
- (b) all Trade Mark Applications;
- (c) any goodwill of [the/a] Chargor's business to which any Trade Mark or Trade Mark Application relates; and

- (d) any other rights which may arise from, relate to, or be associated with any Trade Mark or Trade Mark Application or, in either case, its use in [the/a] Chargor's business.]<sup>16</sup>

**"Transaction Documents"** means the Loan Note, the Loan Note Instrument[, the Intercreditor Agreement] and this Deed, [and ] and Transaction Document" means any of them.<sup>17</sup>

## 1.2 Construction

1.2.1 In this Deed (unless otherwise provided), any reference to:

- (a) "assets" includes present, future, actual and contingent properties, revenues and rights of every description. Any reference to an asset includes any proceeds of disposal of all or part of that asset and any other monies paid or payable in respect of that asset and any reference to a particular type or category of assets includes any present or future assets of that type or category;
- (b) a "disposal" includes any lease, licence, transfer, sale or other disposal of any kind (with related words being construed accordingly);
- (c) a "guarantee" means [(other than in Clause 2 (*Guarantee*))]<sup>18</sup> any guarantee, letter of credit, bond, indemnity, documentary or other credit or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (d) "debt" or "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 and whether owed jointly or severally or in any other capacity;
- (e) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (f) a time of day is a reference to London time;
- (g) "liabilities" includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;

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<sup>16</sup> Add if Chargors have material trade marks.

<sup>17</sup> Conform to terms of deal.

<sup>18</sup> Delete if Clause 2 deleted.

- (h) references to "Clauses" and "Schedules" are to be construed as references to the Clauses of, and Schedules to, this Deed as amended or varied from time to time;
- (i) references to this "Deed" or to any other document mentioned in it shall be construed as references to this Deed or such document, as amended, varied, novated or supplemented, as the case may be, from time to time however fundamental that amendment, variation, novation or supplement may be;
- (j) [the/a] "Chargor", a "Secured Party", the "PPF", a "Receiver" or a "Delegate" includes any one or more of its assignees, transferees and successors in title (in the case of [the/a] Chargor and the Original Secured Party, so far as any such is permitted);
- (k) a "Secured Party", the "PPF", any "Receiver" or any "Delegate" (except for the references in Clause 15 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates;
- (l) words importing the singular shall include the plural and vice versa;
- (m) a "person" shall include that person's assigns or transferees or successors in title and shall be construed as including an individual, firm, partnership, consortium, joint venture, company, corporation, unincorporated body of persons or any state or any agency of any such state;
- (n) a "right" includes any title, estate, interest, claim, remedy, power, authority, discretion or other right of any kind, both present and future. Any reference to [the/a] Chargor's rights in any document or asset (or any type or category of documents or assets) includes any rights that it holds from time to time in, to, under, in respect of or derived from that document or asset (or any document or asset of that type or in that category);
- (o) references to any statute or statutory provision include any statute or statutory provision which amends, extends, modifies, consolidates or replaces the same, or which has been amended, extended, modified, consolidated or replaced by the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (p) a provision of law is a reference to that provision as amended or re-enacted;
- (q) the words "other" and "otherwise" shall not be construed ejusdem generis with any foregoing words where a wider construction is possible;
- (r) "this Security" means the Security constituted by or pursuant to this Deed; and

(s) the words "including" and in "particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any foregoing words.

1.2.2 Clause headings are for convenience of reference only and shall not affect the construction of this Deed.

1.2.3 [Each representation, warranty, covenant and other obligation given or entered into by the Chargors in or pursuant to this Deed is given or entered into by them jointly and severally. Each Chargor shall be bound by this Deed even if any person who was intended to execute it or be bound by it as a Chargor has not duly executed or become bound by it.]<sup>19</sup>

### 1.3 Third party rights

1.3.1 A Secured Party, the PPF (if not a Secured Party), any Receiver, any Delegate and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a Party has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

1.3.2 Notwithstanding any term of any Transaction Document, a Secured Party and any Receiver or Delegate may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person who is not a party to this Deed.

### 1.4 PPF

1.4.1 This Deed is being provided in the context of a restructuring of the [Company][Group] involving, among others, the PPF (which is entering into this Deed pursuant to section [111]<sup>20</sup> [137]<sup>21</sup> of the Pensions Act (and all other powers empowering it)); and the Parties acknowledge that the PPF has made the following assumptions (the "**Assumptions**") in the context of that involvement:

(a) the Pensions Regulator has given its clearance for the proposed restructuring of the Company [and the Group Companies];<sup>22</sup>

(b) the Pension Scheme is an Eligible Scheme; and

(c) [on or before [DATE]],<sup>23</sup> a Qualifying Insolvency [has occurred] [will occur] in relation to every Employer in relation to the Pension Scheme triggering an Assessment Period and the PPF Creditor Rights in relation to the whole of the Pension Scheme.

1.4.2 The Parties further acknowledge that:

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<sup>19</sup> Delete if only one Chargor is party to this Deed.

<sup>20</sup> For use before the commencement of the Assessment Period under s132 Pensions Act 2004.

<sup>21</sup> For use after the commencement of the assessment period.

<sup>22</sup> Delete if not other group companies. Check this accurately reflects all of the parties who should be seeking clearance.

<sup>23</sup> It may be necessary to impose a deadline in some cases.

- (a) the PPF has made the Assumptions without having made any enquiries in relation to the Assumptions, and without passing any opinion on or acknowledging whether or not the Assumptions (or any of them) are true or correct; and
- (b) nothing in this Deed, any other Transaction Document, or otherwise shall be construed so as to create any obligation on the PPF to confirm that an Assessment Period has commenced or to assume responsibility for the Pension Scheme or any part of it.

1.4.3 The Parties (other than the PPF) agree that, if an Assessment Period commences in relation to the Pension Scheme (or any part of it), then unless and until:

- (a) the PPF ceases to be involved with the Pension Scheme pursuant to section 149 of the Pensions Act; or
- (b) subsection 154(1) of the Pensions Act applies to the Pension Scheme,

the PPF may exercise any of the rights or powers of the Original Secured Party under this Deed, any other Transaction Document, or otherwise.

## **1.5 Effect as a deed**

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Original Secured Party and the PPF.

## **1.6 [Intercreditor Agreement]<sup>24</sup>**

The terms of this Deed are subject to the Intercreditor Agreement.]

## **1.7 PPF Consents**

Subject to Clause 9.6 (*Consents*), at all times when either the Pension Scheme is subject to an Assessment Period, or the PPF has assumed responsibility for the Pension Scheme:

1.7.1 the Original Secured Party shall not exercise any rights that it has under this Deed, including (without limitation) under:

- (a) Clause 6 (*Conversion of floating charge*);
- (b) Clause 10 (*Voting and other rights*); and/or
- (c) Clause 11 (*Enforcement*),

without the prior written consent of the PPF (or any assignee or transferee of the PPF); and <sup>25</sup>

1.7.2 the Original Secured Party shall promptly act in accordance with the instructions of the PPF (or any assignee or transferee of the PPF).

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<sup>24</sup> To be amended to reflect transaction. Delete if there is no intercreditor arrangement.

<sup>25</sup> Note these restrictions should be reflected in the other Transaction Documents.

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

The terms of the other Transaction Documents and of any side letters between any parties in relation to any Transaction Document are incorporated in this Deed to the extent required to ensure that any purported disposition of an interest in land contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

## **2 [Guarantee<sup>26</sup>**

### **2.1 Guarantee and indemnity**

Each Chargor irrevocably and unconditionally jointly and severally:

- 2.1.1 guarantees to the Secured Party punctual performance by each other Chargor of all that Chargor's obligations under the Transaction Documents;
- 2.1.2 undertakes with the Secured Party that whenever another Chargor does not pay any amount when due under or in connection with any Transaction Document, that Chargor shall immediately on demand pay that amount as if it were the principal obligor; and
- 2.1.3 agrees with the Secured Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal it will, as an independent and primary obligation, indemnify the Secured Party immediately on demand against any cost, loss or liability it incurs as a result of a Chargor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Transaction Document on the date when it would have been due. The amount payable by a Chargor under this indemnity will not exceed the amount it would have had to pay under this Clause 2 if the amount claimed had been recoverable on the basis of a guarantee.

### **2.2 Continuing guarantee**

This guarantee is a continuing guarantee and shall remain in force notwithstanding the liquidation, administration or dissolution of any Chargor or the appointment of a receiver or administrative receiver of all or any part of a Chargor's assets. It will extend to the ultimate balance of sums payable by any Chargor under the Transaction Documents, regardless of any intermediate payment or discharge in whole or in part.

### **2.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Chargor or any Security for those obligations or otherwise) is made by the Secured Party in whole or in part on the basis of any payment, security, recovery or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then:

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<sup>26</sup> Delete Clause 2 altogether if there is only one Chargor and hence no guarantee.

- 2.3.1 the liability of each Chargor and the Security created by that Chargor under this Deed will continue or be reinstated as if the payment, discharge, release or arrangement had not occurred; and
- 2.3.2 the Secured Party will continue to be entitled to recover the value or amount of that Security or payment from that Chargor as if the payment, discharge, release or arrangement had not occurred.

## **2.4 Waiver of defences**

Neither the Security created by this Deed nor the obligations of each Chargor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or any Secured Party or Party) including:

- 2.4.1 any time, waiver or consent granted to, or composition with, any Chargor or other person;
- 2.4.2 the release of any other Chargor or any other person under the terms of any composition or arrangement with any creditor of any person;
- 2.4.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Chargor 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;
- 2.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Chargor or any other person;
- 2.4.5 any amendment, novation, supplement, extension or restatement (however fundamental and whether or not more onerous) or replacement of a Transaction Document or any other document or Security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Transaction Document or other document or security;
- 2.4.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by any person under any Transaction Document or any other document;
- 2.4.7 any insolvency, liquidation, administration or similar procedure; or
- 2.4.8 any transfer of the Security created by this Deed in accordance with the terms of the Transaction Documents or pursuant to law.

## **2.5 Chargor intent**

Without prejudice to the generality of Clause 2.4 (*Waiver of defences*), each Chargor expressly confirms that it intends that the Security created by this Deed and the guarantee given in this Clause 2 shall extend from time to time to any (however

fundamental) variation, increase, extension or addition of or to any of the Transaction Documents and/or any facility or amount made available under any of the Transaction Documents for the purposes of or in connection with any of the following:

- 2.5.1 acquisitions of any nature;
- 2.5.2 increasing working capital;
- 2.5.3 enabling investor distributions to be made;
- 2.5.4 carrying out restructurings;
- 2.5.5 refinancing existing facilities;
- 2.5.6 refinancing any other indebtedness;
- 2.5.7 making facilities available to new borrowers;
- 2.5.8 any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; [and]
- 2.5.9 any fees, costs and/or expenses associated with any of the foregoing [and]
- 2.5.10 *[ADD the other circumstances contemplated by the parties].*

## **2.6 Immediate recourse**

Each Chargor waives any right it may have of first requiring the Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from that Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.

## **2.7 Appropriations**

During the Security Period, the Secured Party (or any trustee or agent on its behalf) may:

- 2.7.1 refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf) in respect of amounts which may be or become payable by the Chargors under or in connection with the Transaction Documents, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Chargor shall be entitled to the benefit of the same; and
- 2.7.2 hold in an interest-bearing suspense account any moneys received from any Chargor on account of any Chargor's liability under the Transaction Documents.

## **2.8 Deferral of Chargors' rights**

- 2.8.1 During the Security Period, and unless the Secured Party otherwise directs, no Chargor will exercise any rights which it may have by reason of performance by it of its obligations under the Transaction Documents or by reason of any amount being payable, or liability arising, under this Deed:

- (a) to receive or claim payment from or be indemnified by any person;
- (b) to claim any contribution from any other guarantor of, or provider of Security in respect of, any Chargor's obligations under the Transaction Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Party under any Transaction Document or of any guarantee or Security taken pursuant to, or in connection with, the Transaction Documents by the Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Chargor to make any payment, or perform any obligation, in respect of any Secured Liability or in respect of which any Chargor has given a guarantee, undertaking or indemnity under Clause 2.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Chargor or to invoke or benefit from the any equitable remedy which may be afforded to the Chargor in relation to indemnification from any other Chargor or the principal debtor or any similar or analogous rule or principle;
- (f) to claim or prove as a creditor of any Chargor in competition with the Secured Party; and/or
- (g) to receive, claim or have the benefit of any payment, distribution or Security from or on account of any Chargor.

2.8.2 If a 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 Secured Party by the Chargors under or in connection with the Transaction Documents to be repaid in full on trust for the Secured Party and shall promptly pay or transfer the same to the Secured Party or as the Secured Party may direct for application in accordance with Clause 11.10 (*Application of moneys*) of this Deed.

## **2.9 Release of Chargors' right of contribution**

If any Chargor (a "**Retiring Chargor**") ceases to be a guarantor in accordance with the Transaction Documents or otherwise, then on the date such Retiring Chargor ceases to be a guarantor:

- 2.9.1 that Retiring Chargor is released by each other Chargor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Chargor arising by reason of the performance by any other Chargor of its obligations under the Transaction Documents; and
- 2.9.2 each other Chargor waives any rights it may have by reason of the performance of its obligations under the Transaction Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Party under any Transaction Document or of any

other Security taken pursuant to, or in connection with, any Transaction Document where such rights or Security are granted by or in relation to the assets of the Retiring Chargor.

## **2.10 Additional Security**

The guarantee set out in this Clause 2 is in addition to and is not in any way prejudiced by, and shall not merge with, any other guarantee, contractual right or Security now or in the future held by, or available to, the Secured Party.

## **2.11 Guarantee limitations**

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance under any applicable provisions under the laws of the jurisdiction of incorporation of the relevant Chargor and, with respect to any New Chargor, is subject to any limitations set out in the Security Accession Deed applicable to that New Chargor.

## **2.12 Set off and withholding**

All payments to be made by the Chargor under this Deed shall be made in full without set off or counterclaim and free and clear of and without any deduction whatsoever except to the extent that the deduction is for or on account of tax and is required by law. If taxes are required by law to be deducted from a payment by a Chargor under this Deed, that Chargor shall pay such additional amount as will result in the receipt by the person to whom such payment is required to be made of such amount as would have been received by it if that deduction for or on account of tax had not been required.

## **2.13 No Security from Chargors**

During the Security Period, no Chargor shall take, or retain, any Security from any Chargor or other person in connection with any other Chargor's liabilities under this Deed. ]

## **3 Covenant to pay**

[The/Each] Chargor covenants with the Secured Party that it will on demand pay and discharge (or procure the payment and discharge of) the Secured Liabilities when due.

## **4 Creation of Security**

### **4.1 Land**

[The/Each] Chargor charges:

- 4.1.1 by way of legal mortgage its interest in all estates or interests in any land owned by it and any buildings, Equipment and other fixtures and fittings on such land referred to opposite its name in Schedule 2 (*Land charged by way of legal mortgage*);
- 4.1.2 to the extent not subject to the charge by way of legal mortgage under Clause 4.1.1, by way of fixed charge any estates or interests which it has now or

may subsequently acquire to or in any other land and any buildings, Equipment, and other fixtures and fittings on such land;

4.1.3 by way of fixed charge the proceeds of sale of any land so charged by way of legal mortgage or charged by a fixed charge;

4.1.4 by way of fixed charge the benefit of any agreements, covenants, covenants of title, restrictions, licences, instruments or rights in relation to any land so charged by way of legal mortgage or charged by a fixed charge and any rights to sums arising or money paid in relation to any of them; and

4.1.5 by way of fixed charge all sums arising by way of rental income in relation to any land so charged by way of legal mortgage or charged by a fixed charge.

## **4.2 Shares**

[The/Each] Chargor charges by way of fixed charge:

4.2.1 all Shares; and

4.2.2 all related Distribution Rights,  
including those held for it by a nominee.

## **4.3 Investments**

[The/Each] Chargor charges by way of fixed charge:

4.3.1 all Investments; and

4.3.2 all related Distribution Rights,  
including those held for it by any nominee.

## **4.4 Equipment**

[The/Each] Chargor charges by way of fixed charge all Equipment in so far as it is not charged by way of legal mortgage or fixed charge under Clause 4.1 (*Land*).

## **4.5 [Controlled Debts]**

[The/Each] Chargor charges by way of fixed charge:

4.5.1 all Controlled Debts; and

4.5.2 all rights, guarantees, Security or other collateral of any nature and the benefit of any judgement or order for payment in each case in relation to any Controlled Debts.]

## **4.6 [Controlled Accounts]**

[The/Each] Chargor charges by way of fixed charge all amounts standing to the credit of each Controlled Account and all of its right, title and interest in and relating to each

such Controlled Account and the Deposit and rights to the Deposit in each Controlled Account.]<sup>27</sup>

#### **4.7 Book Debts**

[The/Each] Chargor charges by way of fixed charge:

- 4.7.1 all of its Book Debts, and other debts arising and due to it and their proceeds whether collected or uncollected; and
- 4.7.2 all rights, guarantees, Security or other collateral of any nature, and the benefit of any judgment or order for payment in each case in relation to any Book Debt or other debts subject to the Security in Clause 4.7.1.

#### **4.8 Intellectual Property Rights**

[The/Each] Chargor charges by way of fixed charge all its Intellectual Property Rights[, including, where [the/that] Chargor is a Trade Mark Chargor:

- 4.8.1 the Trade Mark Property which belongs to it now or at any time during the Security Period; and
- 4.8.2 all fees, royalties and other rights of every kind deriving from the Trade Mark Property]<sup>28</sup>.

#### **4.9 Goodwill**

[The/Each] Chargor charges by way of fixed charge its goodwill.

#### **4.10 Uncalled capital**

[The/Each] Chargor charges by way of fixed charge its uncalled capital.

#### **4.11 Authorisations**

[The/Each] Chargor charges by way of fixed charge the benefit of all Authorisations held by it in relation to any Security Asset.

#### **4.12 [Assigned Agreements**

- 4.12.1 [The/Each] Chargor assigns absolutely all its rights and interests under the Assigned Agreements to which it is party [(including, in the case of each Occupation Lease, its rights to rental income and other payments and any guarantee or other right relating to an Occupational Lease)]<sup>29</sup>.
- 4.12.2 Until a Default occurs, but subject to Clause 8.6 (*[Assigned Agreements and] Insurances*), [the/the relevant] Chargor may continue to deal with the counterparties to the relevant Assigned Agreements.
- 4.12.3 For the avoidance of doubt, [the/each] Chargor will remain at all times liable in respect of all of its obligations under each Assigned Agreement and no

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<sup>27</sup> Delete Clauses 4.5 and 4.6 if no controlled accounts.

<sup>28</sup> Add if Chargors have material trade marks.

<sup>29</sup> Delete if no occupational leases.

Secured Party will be under any obligation or liability under or in respect of those Assigned Agreements.]<sup>30</sup>

#### **4.13 Insurances<sup>31</sup>**

4.13.1 [The/Each] Chargor assigns absolutely all its rights and interests in the Insurances and rights to the proceeds of any Insurances.

4.13.2 Until a Default occurs, but subject to Clause 8.6 [*Assigned Agreements and Insurances*], [the/the relevant] Chargor may continue to deal with the counterparties to the Insurances.

#### **4.14 Contractual Rights**

The/Each] Chargor charges by way of fixed charge all its rights under all deeds and agreements to which it is a party and which are not mortgaged, charged by way of fixed charge or assigned under any of Clause 4.1 (*Land*) to 4.13 (*Insurances*) (inclusive).

#### **4.15 Other assets**

4.15.1 [The/Each] Chargor charges by way of floating charge all its present and future business, undertaking and assets.

4.15.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to any floating charge created by this Deed.

#### **4.16 Trust**

4.16.1 Subject to Clause 4.16.2, if or to the extent that for any reason the assignment or charging of any Security Asset is prohibited, [the/the relevant] Chargor holds it on trust for the Secured Party.

4.16.2 If the reason referred to in Clause 4.16.1 is that:

- (a) a consent or waiver must be obtained; or
- (b) a condition must be satisfied,

then:

- (c) subject to Clause 4.16.3, the [relevant] Chargor shall apply for the consent or waiver; and
- (d) the [relevant] Chargor shall use all reasonable endeavours to satisfy the condition,

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<sup>30</sup> Delete if no assigned agreements.

<sup>31</sup> Consider making Secured Party co-insured as condition to signing. Check whether this is the correct approach if the Secured Party and/or PPF may be taking on undertakings if the co-insured structure is used. If not check with the broker about the method to have the interest of the Secured Party/PPF noted on the policy and instructions at default to make direct payments. This does not envisage the PPF or Secured Party is co-insured. If so consider what asset is available to secure.

in each case within [14] days of the date of this Deed or, if the Security Asset is acquired after the date of this Deed, within [14] days of the date of acquisition.

4.16.3 Where the consent or waiver is not to be unreasonably withheld, the [relevant] Chargor shall:

- (a) use all reasonable endeavours to obtain it as soon as possible; and
- (b) keep the Secured Party informed of the progress of the negotiations to obtain it.

4.16.4 On the waiver or consent being obtained, or the condition being satisfied, the Security Asset shall be mortgaged, charged or assigned (as appropriate) under this Clause 4 and, in relation to such Security Asset, the trust referred to in Clause 4.16.1 shall terminate. The Chargor shall do any act or execute such document, notice, deed or agreement required to grant a charge by way of legal mortgage, fixed charge or equitable or legal assignment in favour of the Secured Party in relation to the Security Asset.

## **5 Nature of Security created**

### **5.1 General**

5.1.1 The Security created under this Deed is created:

- (a) and shall remain in force as, a continuing security for the Secured Liabilities, regardless of any intermediate payment or discharge, unless and until it is released and discharged in writing by the Secured Party;
- (b) (except in the case of assets which are the subject of a legal mortgage under this Deed) over all present and future assets of the kind described which are owned by the [relevant] Chargor and, to the extent that it does not own those assets, shall extend to any right or interest which it may have in them;
- (c) in favour of the Secured Party; and
- (d) with full title guarantee (except that the covenant set out in section 3(1) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to all charges, encumbrances and rights, even if the [relevant] Chargor does not know and could not reasonably be expected to know about them).

5.1.2 Each fixed charge created under this Deed over rights in any chattels takes effect as an equitable mortgage.

5.1.3 Each assignment under this Deed is subject to a proviso for re-assignment on redemption in accordance with Clause 17 (*Discharge of Security*).

5.1.4 This Security is in addition to and is not in any way prejudiced by, and shall not merge with, any other guarantee, contractual right or Security now or in the future held by, or available to, the Secured Party.

## **6 Conversion of floating charge**

### **6.1 Conversion on notice**

Subject to Clause 6.2 (*Limitation*), the Secured Party may by notice to [the/a] Chargor at any time during the Security Period convert the floating charge created by [the/that] Chargor under this Deed into a fixed charge in respect of any Security Asset specified in that notice if:

- 6.1.1 a Default is continuing;
- 6.1.2 the Secured Party considers that Security Asset to be in danger of being seized, attached, charged, taken possession of or sold under any form of distress, sequestration, execution or other process or otherwise to be in jeopardy; or
- 6.1.3 the Secured Party considers that it is desirable to protect the priority of the Security created by this Deed.

### **6.2 Limitation**

Clause 6.1 (*Conversion on notice*) shall not apply by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.

### **6.3 Automatic conversion**

The floating charge created by [the/a] Chargor under this Deed will convert automatically into fixed charges over all assets subject to the floating charge:

- 6.3.1 if the Secured Party receives notice of an intention to appoint an administrator of [the/that] Chargor;
- 6.3.2 if any steps are taken (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator, administrator or Receiver in respect of [the/that] Chargor over all or any part of its assets, or if such person is appointed;
- 6.3.3 if [the/that] Chargor creates or attempts to create Security over all or any of the Security Assets, other than as agreed in writing by the Secured Party;
- 6.3.4 on the crystallisation of any other floating charge over any Security Assets;
- 6.3.5 if any person seizes, attaches, charges, takes possession of or sells any Security Asset under any form of distress, sequestration, execution or other process, or attempts to do so; and
- 6.3.6 in any other circumstances prescribed by law.

## **7 Representations and warranties<sup>32</sup>**

### **7.1 General**

The Secured Party has entered into this Deed in reliance on the representations of [the/each] Chargor set out in this Clause 7, and [the/each] Chargor [or, in the case of Clause 7.14 (*Trade Marks*) each Trade Mark Chargor,] warrants to the Secured Party on the date of this Deed and to any subsequent Secured Party on the date of any transfer of the rights under this Deed to that Secured Party in each case, in respect of itself [and each Group Company], as set out in this Clause 7.

### **7.2 Status**

7.2.1 It [and each of its Subsidiaries] is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

7.2.2 It [and each of its Subsidiaries] has the power to own its assets and carry on its business as it is being conducted.

### **7.3 Binding obligations and security**

7.3.1 The obligations expressed to be assumed by it in the Transaction Documents are legal, valid, binding and enforceable obligations.

7.3.2 This Deed creates the Security which it purports to create and that Security is valid and effective.

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

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is party do not and will not conflict with:

7.4.1 any law or regulation applicable to it [or its Subsidiaries];

7.4.2 its [or its Subsidiaries'] constitutional documents; or

7.4.3 any agreement or other document binding upon it [or its Subsidiaries] or any of its [or their] assets or constitute a default or termination event (however described) under any such agreement or other document.

### **7.5 Power and authority**

7.5.1 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, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

7.5.2 No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

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<sup>32</sup> Additional deal specific representations and warranties may be required.

## **7.6 Validity and admissibility in evidence**

All Authorisations required:

- 7.6.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- 7.6.2 to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

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

## **7.7 No filing or stamp taxes**

Under the laws of its jurisdiction of incorporation, it is not necessary that the Transaction Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Transaction Documents or the transactions contemplated by the Transaction Documents except:

- 7.7.1 registration of particulars of this Deed at Companies House in England and Wales under section 859A of the Companies Act 2006 and payment of associated fees;
- 7.7.2 [registration of particulars of this Deed at the Trade Marks Registry at the Patent Office in England and Wales and payment of associated fees; and]<sup>33</sup>
- 7.7.3 [registration of this Deed at HM Land Registry or the Land Charges Register in England and Wales and payment of associated fees,]<sup>34</sup>

which registrations and fees will be made and paid promptly after the date of this Deed.

## **7.8 Governing law and enforcement**

- 7.8.1 The choice of English law as the governing law of the Transaction Documents will be recognised and enforced in its jurisdiction of incorporation.
- 7.8.2 Any judgment obtained in England in relation to a Transaction Document will be recognised and enforced in its jurisdiction of incorporation.

## **7.9 Ranking**

[This Security has or will have [the ranking in priority which it is expressed to have]/[first ranking priority] and it is not subject to any prior ranking or *pari passu* ranking Security.]<sup>35</sup>

## **7.10 Security Assets**

It is the sole legal and beneficial owner of the respective assets over which it purports to grant Security in this Deed, free from any other Security.

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<sup>33</sup> Delete or retain as applicable.

<sup>34</sup> Delete or retain as applicable.

<sup>35</sup> Amend to reflect the agreed upon ranking.

### **7.11 [Group Companies]**

There are no Group Companies as at the date of this Deed which are not Chargors.]

### **7.12 Insurances**

7.12.1 All premiums and other moneys payable in respect of each Insurance have been duly and promptly paid in full.

7.12.2 Each Insurance is in full force and effect.

7.12.3 It has not made any false declaration or misstatement in support of obtaining any Insurance

7.12.4 It has disclosed in writing to the insurers of each Insurance all material facts.

### **7.13 Accounts**

As at the date of this Deed, [no Chargor holds][the Chargor does not hold] any account with a bank or financial institution other than:

7.13.1 [the Controlled Accounts (if any);]

7.13.2 the Current Accounts set out in Schedule 7 (*Current Accounts*).

### **7.14 [Trade Marks]**

7.14.1 It is the registered proprietor of each Trade Mark described opposite its name in Part 1 of Schedule 9 (*Trade Marks*).

7.14.2 It is not aware of any reason why any Trade Mark may for any reason be invalid or incapable of being the subject of the Security created by this Deed.

7.14.3 It is the applicant for each Trade Mark Application described opposite its name in Part 2 of Schedule 9 (*Trade Marks*).

7.14.4 It is not aware of any reason why its entitlement so to make any Trade Mark Application should be challenged.

7.14.5 To the best of its knowledge, there is no reason why any Trade Mark Application will not proceed to registration.

7.14.6 It is not aware of any conduct, action or lack of action which will or may have the effect of prejudicing the validity of any Trade Mark Property or adversely affecting its value.

7.14.7 Other than as disclosed in writing to the Secured Party on or before the date of this Deed:

(a) it is not restricted in any material way in its use or exercise of any Trade Mark Property; and

(b) to the best of its knowledge, information and belief (having made all reasonable enquiries), there are no licences, agreements (whether registered user agreements or otherwise) or Security (other than in

favour of the Secured Party) which relate to or affect any Trade Mark Property or the Security created by this Deed.

7.14.8 It is not aware of any claim from any third party relating to ownership of any Trade Mark or Trade Mark Application, or of any claim that any Trade Mark or Trade Mark Application infringes any trade mark (whether registered or unregistered) or any other Intellectual Property Rights of any third party.]<sup>36</sup>

## **7.15 Land**

All land beneficially owned by it as at the date of this Deed is described opposite its name in Schedule 2 (*Land charged by way of legal mortgage*).

## **7.16 Shares**

7.16.1 All Shares beneficially owned by it as at the date of this Deed are described opposite its name in Schedule 3 (*Shares*).

7.16.2 All of the Shares and, to the extent applicable, all Investments are:

- (a) fully paid;
- (b) not subject to any option to purchase or similar rights; and
- (c) freely transferable with no consents being required to the transfer or its registration.

7.16.3 [Except as provided in the Shareholders' Agreement, there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group (including any option or right of pre-emption or conversion).]

## **7.17 Repetition**

The representations and warranties set out in this Clause 7 shall survive the execution of this Deed and (other than the representation and warranty in Clause 7.13 (*Accounts*)) <sup>37</sup>are deemed to be repeated by reference to the facts and circumstances then existing on each day during the Security Period in favour of the relevant Secured Party and to the PPF on the date of the PPF becoming the Secured Party under this Deed.

## **8 Positive covenants**

The covenants in this Clause 8 remain in force from the date of this Deed until the end of the Security Period.

### **8.1 Preservation of the Security Assets**

[The/Each] Chargor shall:

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<sup>36</sup> Add if Chargors have material trade marks

<sup>37</sup> Consider if any representation could be given on the Accounts when the PPF becomes the Secured Party

- 8.1.1 keep all land, all Equipment and all other tangible assets which form part of the Security Assets in the same or better condition as that in which it is on the date of this Deed and permit the Secured Party free access at all reasonable times and on reasonable notice to view their state and condition;
- 8.1.2 promptly renew and replace any obsolete, worn out or damaged Equipment or parts with items of a similar or better quality and of equal or greater value;
- 8.1.3 preserve, maintain and renew as and when necessary all Intellectual Property Rights which form part of the Security Assets and any related registrations;
- 8.1.4 observe and perform all covenants, undertakings, laws and regulations from time to time affecting any Security Asset or the use or enjoyment of it;
- 8.1.5 obtain, maintain and comply with the terms of any Authorisation required or desirable in connection with any Security Asset;
- 8.1.6 pay all Tax, rents, rates, duties, fees, charges, assessments, impositions, calls, instalments and outgoings which are properly payable at any time during the Security Period in respect of any Security Asset or by the owner or occupier of it (and otherwise if it fails to pay that amount when due, the Secured Party may pay it);
- 8.1.7 notify the Secured Party of any action commenced by a third party to seize, attach, charge, take possession of or sell any Security Asset which (to the best of its knowledge and belief) has been started or threatened;
- 8.1.8 at its own cost use its best endeavours to enforce any rights and institute, continue or defend any proceedings (including proceedings to seize, attach, charge, take possession of or sell) relating to any of the Security Assets;
- 8.1.9 if so requested by the Secured Party in relation to any item of Equipment, affix to, and maintain on, that item in a conspicuous position a plate bearing in clearly legible wording approved by the Secured Party a notification of the fixed charge created by this Deed over that item;
- 8.1.10 do all acts and things which may be necessary to preserve and maintain the subsistence and validity of its Intellectual Property Rights and any related registrations; and
- 8.1.11 not without the prior written consent of the Secured Party make, permit or allow any alterations or additions of a material nature to any of its Security Assets or carry out any works of demolition on them.

## **8.2 Land**

- 8.2.1 [The/Each] Chargor shall promptly notify the Secured Party in writing if it:
  - (a) intends to acquire any estate or interest in land; or
  - (b) acquires any estate or interest in land.

- 8.2.2 [The/Each] Chargor shall remedy any material defect or want of repair promptly after service by the Secured Party of notice of the defect or want of repair.
- 8.2.3 [The/Each] Chargor shall give immediate notice in writing to the Secured Party if:
- (a) it receives any notice under section 146 of the Act; or
  - (b) any proceedings are commenced against it for the forfeiture of any lease of any land.
- 8.2.4 If [the/a] Chargor acquires any interest or estate in any land after the date of this Deed it shall:
- (a) immediately on request by the Secured Party and at the cost of [the/that] Chargor, execute and deliver to the Secured Party a legal mortgage in favour of the Secured Party of that land in any form which the Secured Party may require;
  - (b) if the title to that land is registered at the Land Registry or required to be so registered, apply to the Land Registry for registration of this Security; and
  - (c) if applicable, ensure that the provisions of Clause 14.2 (*Application to Land Registrar*) are complied with in relation to that legal mortgage.
- 8.2.5 If the consent of the landlord in whom the reversion of a lease is vested is required for [the/a] Chargor to execute a legal mortgage over it, [the/that] Chargor shall:
- (a) not be required to perform that obligation unless and until it has obtained the landlord's consent; and
  - (b) use all reasonable endeavours to obtain the landlord's consent.
- 8.2.6 [The/Each] Chargor shall perform all its obligations under any law or regulation in any way related to or affecting its land, except to the extent that non-performance of those obligations would not materially adversely affect the value or marketability of any of its land.
- 8.2.7 Following a Default or, in respect of any land acquired after the date of this Deed, upon request by the Secured Party, [the/each] Chargor shall:
- (a) grant the Secured Party or its lawyers on request all facilities within the power of [the/that] Chargor to enable the Secured Party or its lawyers (at the expense of [the/that] Chargor) to:
    - (i) carry out investigations of title to the land; and
    - (ii) make such enquiries in relation to any part of the land as a prudent mortgagee might carry out; and

- (b) if reasonably required by the Secured Party, provide it with a report on title of [the/that] Chargor to the land concerning those items which may properly be sought to be covered by a prudent mortgagee in a lawyer's report of that nature.
- 8.2.8 [The/Each] Chargor shall effect or procure the deposit with (or to the order of) the Secured Party of all title deeds and documents (including all local land charges, land charges, Land Registry search certificates and planning and other statutory consents) relating to the land forming part of the Security Assets.
- 8.2.9 On completion of the registration of this Deed against any Land Registry title comprised in the land forming part of the Security Assets, the [relevant] Chargor shall supply the Secured Party with a copy of the title information document for that title.
- 8.2.10 If [a/the] Chargor receives any application, requirement, order or notice served or given by any public, local or other authority or any landlord with respect to land forming part of the Security Assets, then it shall:
  - (a) within 14 days after such receipt deliver a copy to the Secured Party and inform it of the steps taken or proposed to be taken to comply with the relevant application, requirement, order or notice;
  - (b) take all necessary steps to comply with the application, requirement, order or notice; and
  - (c) make or join in making any representations which the Secured Party requests in respect of the application, requirement, order or notice.
- 8.2.11 Any compensation received as a result of an application, requirement, order or notice referred to in Clause 8.2.10, pursuant to s25 of the Act and/or the Landlord and Tenant Act 1954 or otherwise, shall be held on trust for, and promptly paid to, the Secured Party. The Secured Party shall apply the compensation as if it constituted proceeds of an enforcement of this Deed.

### **8.3 Accounts**

- 8.3.1 If [the/any] Chargor opens or otherwise acquires any Account after the date of this Deed, it shall notify the Secured Party immediately.
- 8.3.2 After executing this Deed (or in the case of any Account opened after the date of this Deed, after the date on which that Account is opened), [the/each] Chargor shall:
  - (a) [in respect of its Controlled Accounts (if any), promptly give notice to the Account Bank in the form set out in Part 1 of Schedule 8 (*Forms of letter to and from Account Bank*) and deliver to the Secured Party a certified copy of that notice;]
  - (b) in respect of each of its Current Accounts (if any), promptly give notice to the Account Bank in the form set out in Part 2 of Schedule

8 (*Forms of letter to and from Account Bank*) and deliver to the Secured Party a certified copy of that notice; and

- (c) use all reasonable endeavours to ensure that the Account Bank acknowledges each notice served on it pursuant to Clauses 8.3.2(a) [or 8.3.2(b)] in the form set out in Part 3 of Schedule 8 (*Forms of letter to and from the Account Bank*) or other form approved by the Secured Party.

8.3.3 [The/Each] Chargor may receive, withdraw or transfer any credit balance on any Current Account unless the Secured Party notifies it to the contrary at any time when a Default has occurred.

8.3.4 In addition to any rights of the Secured Party under the Transaction Documents, at any time after a Default has occurred, the Secured Party may:

- (a) apply any amount standing to the credit of Current Account or any amount it receives in respect of any such Account towards any amounts due and payable under the Transaction Documents; and
- (b) notify the Account Bank at which any Current Account is held that the [Chargor's/Chargors'] rights (or any of them) under Clause 8.3.3 cease to apply.]

#### **8.4 Shares and Investments**

8.4.1 [The/Each] Chargor shall duly and promptly pay (or ensure that there are paid) all calls, instalments or other monies which may from time to time become due in respect of any of its Shares and Investments, without deduction or set-off.

8.4.2 If [the/any] Chargor forms or acquires any Subsidiary after the date of this Deed, it shall notify the Secured Party immediately.

8.4.3 [The/Each] Chargor shall (in the case of the Shares specified in Schedule 3 (*Shares*) and its Investments as at the date of this Deed) immediately after entering into this Deed or (in the case of any other Shares and Investments) on such later date on which any Shares or Investments are issued to or otherwise acquired by [the/that] Chargor, deposit with the Secured Party, in respect of or in connection with its Shares and Investments:

- (a) all stock and share certificates and documents of or evidencing title;
- (b) signed undated transfers, completed in blank and, if the Secured Party so requires, pre-stamped; and
- (c) any other documents (including duly executed waivers of pre-emption and other rights) which the Secured Party may request from time to time to enable it (or its nominee) to:
  - (i) obtain legal title to (or otherwise be registered as the owner of) any Share or Investment; or

- (ii) be in a position to exercise any rights under this Deed in respect of it,

all of which will be held by the Secured Party at the expense and risk of [the/that] Chargor.

8.4.4 The Secured Party may at any time have any of [the/a] Chargor's Shares or Investments registered in its name or in the name of a nominee specified by it acting on its behalf.

8.4.5 [The/Each] Chargor shall:

- (a) promptly following receipt, forward to the Secured Party copies of all notices, documents and other communications received in connection with the Shares and Investments;
- (b) promptly copy to the Secured Party, and comply with, all requests for information which is within its knowledge and which are made under section 793 of the Companies Act 2006 or any similar provision contained in any articles of association or other constitutional document relating to any of its Shares and Investments; and
- (c) comply with all other conditions and obligations assumed by it in respect of any of the Shares and Investments where failure to so comply would adversely affect the interests of the Secured Party.

## **8.5 Book Debts**

[The/Each] Chargor shall:

8.5.1 collect in and realise the Book Debts in the ordinary course of its business (which shall not extend to selling or assigning or in any other way factoring or discounting them unless otherwise agreed in writing by the Secured Party);

8.5.2 pay the proceeds of such Book Debts into its current account with the Account Bank or into any other account which the Secured Party may specify;

8.5.3 [pay the proceeds of such Book Debts into a Controlled Account with the Account Bank or into any other account which the Secured Party may specify]; and

8.5.4 pending payment under Clause 8.5.2 [or Clause 8.5.3], hold such proceeds on trust for the Secured Party.

## **8.6 [Assigned Agreements and] Insurances**

8.6.1 [The/Each] Chargor shall:

- (a) perform all its obligations under the [Assigned Agreements and] Insurances in a diligent and timely manner;
- (b) promptly after the execution of this Deed, or (as the case may be) promptly after the execution of any [Assigned Agreement or]

Insurance entered into after the date of this Deed, give notice to the other parties to the [Assigned Agreements and] Insurances:

- (i) [in the case of Assigned Agreements [(other than any Derivatives Contracts)], substantially in the form set out in Schedule 4 (*Form of notice for Assigned Agreements*); and]
- (ii) in the case of Insurances, substantially in the form set out in Schedule 5 (*Form of notice for Insurances*); and
- (iii) [in the case of Derivative Contracts, substantially in the form set out in Schedule 6 (*Form of notice for Derivative Contracts*),]

and deliver to the Secured Party a copy of each notice; and

- (c) use all reasonable endeavours to procure that each party served with a notice under Clause 8.6.1(b) countersigns and returns it to the Secured Party within 14 days of the execution of this Deed or in the case of [Assigned Agreements] [and] Insurances entered into after the date of this Deed, within 14 days of the date of the execution of the [Assigned Agreement or] Insurance.

8.6.2 While no Default is continuing, the [relevant] Chargor may exercise all its rights in respect of [the Assigned Agreements][and] the Insurances (in each case to which it is a party) including receiving and exercising all rights relating to proceeds of those [Assigned Agreements] [and] Insurances.]

## **8.7 Insurances**

8.7.1 [The/Each] Chargor shall insure and at all times keep insured those of the Security Assets which are of an insurable nature against risks usually insured against by prudent companies carrying on businesses similar to those of the [relevant] Chargor.

8.7.2 [The/Each] Chargor shall effect each of its Insurances:

- (a) with reputable and responsible insurers approved by the Secured Party;
- (b) either in the name of [the/each] Chargor with the interest of the Secured Party noted on the Insurances, or, at the option of the Secured Party, in the joint names of [the/each] Chargor and the Secured Party; and
- (c) on such terms as the Secured Party may from time to time require.

8.7.3 [The/Each] Chargor shall in respect of each of its Insurances:

- (a) comply with its terms and not do or permit to be done anything which may make it void or voidable;

- (b) duly and promptly pay all premiums and other monies necessary to effect and maintain it and provide evidence of payment to the Secured Party; and
  - (c) as requested by the Secured Party from time to time, deliver to the Secured Party (or provide to the Secured Party and/or its representatives or agents for inspection) the contract or policy (or, if so requested, a copy or extract of it).
- 8.7.4 If [the/any] Chargor fails to comply with any of its obligations as to insurance, the Secured Party may, but shall not be required to, take out, renew or maintain the relevant insurance on the terms, in the name(s) and in the amount(s) which it considers appropriate.
- 8.7.5 Until a Default occurs the Secured Party agrees that any proceeds payable under the Insurances may be received by the [relevant] Chargor.
- 8.7.6 Until a Default occurs the Secured Party agrees that any proceeds received under the Insurances shall (subject to the payment of any third party claims) be applied by the [relevant] Chargor (and [the/that] Chargor agrees to apply them):
- (a) towards replacement or repair of the Security Asset the subject of the relevant claim under the Insurances; or
  - (b) if that replacement or repair of the Security Asset is not possible, towards reduction of the Secured Liabilities.
- 8.7.7 After a Default occurs any proceeds received under the Insurances shall be applied towards reduction of the Secured Liabilities [or be paid into a Controlled Account as directed by the Secured Party].

## **8.8 [Trade Marks]**

[Each Trade Mark/The] Chargor shall at all times during the Security Period promptly notify the Secured Party if it receives notification, or otherwise becomes aware, of any actual, alleged, threatened or suspected:

- 8.8.1 infringement of any Trade Mark;
- 8.8.2 infringement of any third party's trade marks or other intellectual or other rights arising from the use of any Trade Mark; or
- 8.8.3 cancellation or other legal action in respect of any Trade Mark.]<sup>38</sup>

## **8.9 Payments without deduction**

[The/Each] Chargor covenants with the Secured Party that all payments to be made by it under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

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<sup>38</sup> Add if Chargors have material trade marks.

## **8.10 Deposit of documents, information, access and remedy**

8.10.1 [The/Each] Chargor covenants that, on the date of this Deed and at all times during the Security Period as soon as it receives them (and in any event as soon as the Secured Party so requests), it shall deposit with the Secured Party, in respect of or in connection with the Security Assets:

- (a) all deeds, certificates and other documents of or evidencing title; and
- (b) any other documents which the Secured Party may from time to time reasonably require for perfecting its title, or the title of any purchaser,

all of which will be held by the Secured Party at the expense and risk of the Chargor[s].

8.10.2 [The/Each] Chargor shall promptly deliver to the Secured Party:

- (a) any copy document or other information which the Secured Party may request relating to its business or any Security Asset; and
- (b) any evidence which the Secured Party may request of its compliance with the terms of this Deed.

8.10.3 [The/Each] Chargor shall permit the Secured Party and/or its representatives, agents or contractors free access at all reasonable times to the Security Assets and any books, accounts and records relating to them:

- (a) to examine the state and condition of those assets;
- (b) to inspect and take copies and extracts from those books, accounts and records; and
- (c) to comply with or object to any direction or notice or other matter served on it.

8.10.4 The Secured Party may take any action (including the carrying out of repairs, the provision of information or the payment of money) which it considers necessary or desirable to remedy any failure by [the/a] Chargor to comply with any of its obligations under this Deed.

8.10.5 The Secured Party shall have no obligation to exercise any of its rights under Clause 8.10.4 or otherwise in relation to any Security Asset.

## **9 Negative covenants**

The covenants in this Clause 9 remain in force from the date of this Deed until the end of the Security Period.

### **9.1 Disposals**

9.1.1 Save for any disposal permitted by this Deed or agreed in writing by the Secured Party, [no Chargor shall][the Chargor shall not] enter into a single transaction or a series of transactions (whether related or not), whether

voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, transfer, license, loan or otherwise dispose of any Security Asset, or enter into any agreement to make any such disposal.

- 9.1.2 Provided that no Default has occurred, the restrictions on disposals in Clause 9.1.1 do not apply to a disposal in the ordinary course of the day to day trading activities of [the/a] Chargor of any Security Asset which, at the time of that disposal, is subject to the floating charge created by this Deed.

## **9.2 Negative pledge**

[No Chargor shall/The Chargor shall not] create or permit to subsist any Security over any Security Asset except as agreed in writing by the Secured Party.

## **9.3 Preservation of the Security Assets**

[No/The Chargor shall not], without the prior written consent of the Secured Party:

- 9.3.1 enter into any onerous obligation or restriction affecting any Security Asset;
- 9.3.2 in relation to any land forming part of the Security Assets:
- (a) part with possession of it, confer on any other person any right or licence to occupy it or grant any licence to assign, sub-let or create any Security over it;
  - (b) surrender any Headlease or forfeit, determine or agree to the determination, surrender or termination of any Occupational Lease;
  - (c) grant or agree to grant any Occupational Lease or agree to any amendment of, or to any waiver of rights under, any Headlease or Occupational Lease;
  - (d) agree any rent review;
  - (e) make any structural or material alteration, or do or allow anything to be done which falls within the definition of development in section 55 of the Town and Country Planning Act 1990;
  - (f) sever, unfix or remove any of the fixtures or other plant and machinery (excluding stock-in-trade or work-in-progress) from any of the land which forms part of the Security Assets (except in order to effect necessary repairs or the replacement of the relevant asset with a new or improved model or substitute);
  - (g) make (or permit anybody else to make) any application for planning permission in respect of any of the land which forms part of the Security Assets;
  - (h) permit any other person to be registered at the Land Registry as proprietor of any of such land (or of any interest in it);
  - (i) allow any person other than itself to be registered under the Land Registration Act 2002 as proprietor, or create or permit to arise any

interest which overrides under the Land Registration Act 2002 (and [each/the] Chargor shall reimburse the Secured Party for its costs of lodging:

- (i) a caution against first registration of the title to that land; or
  - (ii) if that land is unregistered, a land charge); or
  - (j) make an application, consent to or acquiesce in the application by any third party, to the Land Registry to enter any matter on the register of title;
- 9.3.3 in relation to any uncalled capital of [the/any] Chargor, call it up or receive it in advance of calls unless the Secured Party otherwise directs, nor apply it, when paid, otherwise than in payment of the Secured Liabilities or as the Secured Party otherwise directs;
- 9.3.4 take any Security in connection with its liability under this Deed from any guarantor of, or provider of Security for, any of the Secured Liabilities; or
- 9.3.5 do, permit or allow to be done anything which might in any way depreciate, jeopardise or otherwise prejudice the Security held by the Secured Party or the value of any of [the/that] Chargor's Security Assets and shall immediately inform the Secured Party of anything which occurs which might have the effect referred to in this Clause 9.3.5.

#### **9.4 [Assigned Agreements] [and] Insurances**

[No Chargor shall/The Chargor shall not], without the prior written consent of the Secured Party

- 9.4.1 make or agree to make any amendments to;
- 9.4.2 waive any of its rights under; or
- 9.4.3 novate, repudiate, rescind or otherwise terminate or permit to be terminated, any of [the Assigned Agreements] [or] the Insurances.

#### **9.5 [Trade Marks**

[No Trade Mark Chargor shall/The Chargor shall not]:

- 9.5.1 permit any Trade Mark to lapse for non-payment of any renewal or other fee necessary to maintain its registration and validity or allow any thing to be done or left undone the effect of which will, or may be to, imperil or prejudice any Trade Mark, its registration, subsistence, validity, reputation or integrity;
- 9.5.2 permit any Trade Mark to fall into disuse or to be used in such a way that they are put at risk by becoming generic or by being identified as disreputable in any way;

- 9.5.3 without the prior written consent of the Secured Party, assign, licence, sub-licence, sever, dispose of or otherwise part with control of a Trade Mark or Trade Mark Application;
- 9.5.4 change the specification of any Trade Mark or permit any disclaimer, condition, restriction or memorandum to be entered on the Register of Trade Marks the effect of which will or may be to detrimentally affect the value of any Trade Mark;
- 9.5.5 fail to continue to prosecute any Trade Mark Application to registration or fail to take any steps necessary to ensure so far as possible that any Trade Mark Application is accepted for registration by the Trade Mark Registry; or
- 9.5.6 do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Secured Party of any Trade Mark Property and/or the Security over any Trade Mark Property created by Clause 4.8 (*Intellectual Property Rights*).

## **9.6 Consents**

For the purposes of Clauses 9.3 (*Preservation of the Security Assets*) to [9.5 (*Trade Marks*)] [(inclusive)], written consent of the Secured Party shall comprise:

- 9.6.1 before commencement of the Assessment Period, consent of the Original Secured Party only;
- 9.6.2 for the duration of the Assessment Period and at any time on and after the PPF has assumed responsibility for the Pension Scheme, consent of the PPF or any of its assignees or transferees.

## **10 Voting and other rights**

### **10.1 Before demand by the Secured Party**

Until such time as the Secured Party makes a demand under Clause 10.2, [the/each] Chargor may exercise any of its voting and other rights and powers attached to the Shares and Investments but shall not do so in a manner which may:

- 10.1.1 have the effect of changing the terms of issue of any of the Shares or Investments (or any class of them) or any of the Distribution Rights relating to them;
- 10.1.2 impair the value of any of the Shares or Investments;
- 10.1.3 prejudice the Security or guarantees created by this Deed; or
- 10.1.4 otherwise prejudice the interests of the Secured Party under the Transaction Documents.

### **10.2 After demand by the Secured Party**

After the Secured Party so demands following the occurrence of a Default, [the/each] Chargor shall:

10.2.1 promptly pay over to the Secured Party all moneys arising from the Distribution Rights relating to the Shares and Investments which it may receive and until that payment is made hold such monies on trust for the Secured Party; and

10.2.2 exercise, or refrain from exercising, all voting and other rights and powers attached to the Shares and Investments in any manner which the Secured Party may direct.

### **10.3 Completion of transfers**

At any time after a Default the Secured Party may, without notice to [the/any] Chargor:

10.3.1 complete and date any of the transfers and other documents referred to in Clauses 8.4.3(b) and 8.4.3(c) (*Shares and Investments*); and

10.3.2 transfer all or any of the Shares or Investments to [itself]/[a third party]/[a nominee].

### **10.4 No nominations**

[No Chargor shall/The Chargor shall not] make any nomination, or permit to continue in effect any nomination it may have made, to permit another person to enjoy or exercise any of its rights in relation to any of its Share or Investments.

## **11 Enforcement**

### **11.1 When Security becomes enforceable**

11.1.1 The Security created by [the/a] Chargor under this Deed shall become immediately enforceable:

(a) on the occurrence of a Default; or

(b) if [the/any] Chargor so requests,

and the Secured Party may enforce this Security, and its rights under this Deed, in the manner and on the terms it thinks fit.

11.1.2 In particular, the Secured Party may without further notice exercise in relation to the Security Assets:

(a) the power of sale and all other powers conferred on mortgagees by the Act or otherwise by law, in each case as extended or otherwise amended by this Deed;

(b) to the extent that Clause 11.6 (*Right of appropriation*) applies, the power to appropriate the relevant Security Assets in accordance with Clause 11.6.2 (*Exercise of right of appropriation*); and

(c) (whether or not it has appointed a Receiver) any or all of the rights which are conferred by this Deed (whether expressly or by implication) on a Receiver.

## **11.2 Law of Property Act 1925**

- 11.2.1 The Secured Liabilities shall be deemed for the purposes of all powers implied by statute to have become due and payable within the meaning of s101 of the Act immediately on the execution of this Deed.
- 11.2.2 The Secured Party and any Receiver is entitled to all of the privileges, immunities and other rights conferred on mortgagees and receivers respectively under the Act.
- 11.2.3 S93(1) (restriction on the consolidation of mortgages), s103 (restricting the power of sale), ss105, 107(2), 109(6) and 109(8) (application of proceeds of sale) and s109(1) (restricting the power to appoint a receiver) of the Act shall not apply to this Security.

## **11.3 Protection of third parties**

- 11.3.1 No purchaser, mortgagee or other person dealing with the Secured Party, any Receiver or any Delegate shall:
  - (a) be bound to enquire whether its entitlement to exercise any of its rights has arisen or become exercisable or whether any Secured Liabilities remain outstanding; or
  - (b) be concerned as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with the Secured Party, that Receiver or that Delegate (as applicable).
- 11.3.2 All of the protection to purchasers contained in ss104 and 107(1) of the Act and s42(3) of the Insolvency Act 1986 shall apply to any person purchasing from or dealing with the Secured Party, any Receiver or any Delegate as if the Secured Liabilities had become due and the statutory powers of sale and of appointing a Receiver in relation to the Security Assets had arisen on the date of this Deed.

## **11.4 Delegation**

- 11.4.1 The Secured Party and (to the extent his or her appointment so permits) a Receiver (the "**Appointor**") may delegate to any person or persons all or any of the rights which are exercisable by it under this Deed. A delegation under this Clause 11.4 may be made in any manner (including by power of attorney) and on any terms (including power to sub-delegate) which the Appointor may think fit.
- 11.4.2 A delegation under Clause 11.4.1 shall not preclude the subsequent exercise of the relevant rights by the Appointor nor preclude the Appointor from making a subsequent delegation of them to another person or from revoking that delegation.
- 11.4.3 Neither the Secured Party nor any Receiver shall be liable or responsible to [the/a] Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

## **11.5 No liability**

11.5.1 None of the Secured Party, any Receiver, any Delegate or any Administrator shall:

- (a) owe any duty to [the/a] Chargor to exercise any of its rights under this Deed;
- (b) be liable or responsible to [the/a] Chargor for any losses (including loss of profit), claims, demands, actions, proceedings, damages and other payments, costs, expenses and other liabilities of any kind arising out of any exercise, purported exercise or non-exercise of any of its rights under this Deed;
- (c) be liable or responsible for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 16 (*Currency*); or
- (d) for the loss or destruction of, or damage to, any of the Security Assets, or to any documents of or evidencing title to them, which are in the possession or held to the order of any such person (and which will be held by such persons at the expense and risk of the Chargor[s]).

11.5.2 None of the Secured Party, any Receiver, any Delegate or any Administrator shall be liable as a mortgagee in possession or otherwise to account in relation to all or any part of the Security Assets for any loss on realisation or for any other action, default or omission for which it might otherwise be liable as a mortgagee in possession.

## **11.6 Right of appropriation**

11.6.1 Application of right of appropriation

This Clause 11.6 applies to the extent the Security Assets constitute "financial collateral" and this Deed constitutes a "financial collateral arrangement" (within the meaning of the Financial Collateral Arrangements (No. 2) Regulations 2003).

11.6.2 Exercise of right of appropriation

- (a) If and to the extent that this Clause 11.6 applies, the Secured Party may appropriate the Security Assets in or towards discharge of the Secured Liabilities in such order as the Secured Party may (subject to any specific provisions of the Transaction Documents in this regard) determine.
- (b) If the Secured Party exercises its right of appropriation then it shall for these purposes value:
  - (i) any relevant Account or other bank account at the amount standing to the credit of that account, together with any

accrued interest not credited to the account, at the time of the appropriation; and

- (ii) any other relevant Security Asset by reference to an independent valuation or other procedure determined by the Secured Party, acting reasonably, at the time of the appropriation.

## **11.7 Receivers**

### 11.7.1 Appointment of Receiver

- (a) Subject to the remainder of this Clause 11.7.1, the Secured Party may appoint one or (at the same or different times) more persons as a receiver of all or any part of the Security Assets if:
  - (i) this Security has become enforceable; or
  - (ii) the [relevant] Chargor so requests in writing at any time.
- (b) No appointment may be made pursuant to Clause 11.7.1:
  - (i) solely as a result of the obtaining of, or with a view to obtaining, a moratorium under s1A of the Insolvency Act 1986; or
  - (ii) of an administrative receiver if that appointment would contravene s72A of the Insolvency Act 1986.
- (c) If at any time two or more persons hold office as Receivers, each of those Receivers shall (subject to the terms of his or her appointment) be entitled to exercise individually all of the rights conferred on Receivers under this Deed to the exclusion of the other or others.

### 11.7.2 Remuneration

The Secured Party may fix the remuneration of any Receiver from time to time, without being limited by the maximum rate specified in s109(6) of the Act.

### 11.7.3 Removal and replacement

The Secured Party may:

- (a) subject to obtaining a court order if required by law, remove any Receiver by written notice; and
- (b) replace (by appointment pursuant to Clause 11.7.1) any Receiver whose appointment has terminated.

### 11.7.4 Agent of the [relevant] Chargor

- (a) Any Receiver appointed under this Deed whether acting solely or jointly shall be deemed to be the agent of the [relevant] Chargor and to be in the same position as a receiver appointed under the Act.

- (b) The [relevant] Chargor shall be solely responsible for the acts, omissions, defaults, losses and misconduct of any Receiver and for his or her remuneration. The Secured Party shall not be in any way liable or responsible either to the [relevant] Chargor or to any other person for any Receiver.

## **11.8 Powers of the Secured Party, any Receiver or Delegate**

### 11.8.1 General

- (a) A Receiver has:
  - (i) all of the rights set out below in this Clause 11.8;
  - (ii) all of the rights granted by the Act to any receiver or mortgagor or mortgagee in possession; and
  - (iii) whether or not it is an administrative receiver, all of the rights granted by the Insolvency Act 1986 to any administrative receiver,in each case as such rights are varied and extended by this Deed.
- (b) The Secured Party has after this Security has become enforceable the rights referred to in Clause 11.8.1(a), whether or not it has appointed a Receiver.
- (c) A Delegate has the rights referred to in Clause 11.8.1(a) to the extent provided in its, his or her appointment.
- (d) Any reference in this Clause 11.8 to any Security Assets includes, in the case of a Receiver or Delegate, only those Security Assets over or in respect of which it, he or she has been appointed.
- (e) The Secured Party, a Receiver or Delegate may exercise its, his or her rights under this Clause 11.8 in such manner and on such terms as it, he or she thinks fit.

### 11.8.2 Collection, leasing and disposal of Security Assets

- (a) The right to enter into, take possession of, give up possession of, get in and collect any Security Asset.
- (b) The right to grant, vary, surrender or accept the surrender of Leases, easements or other rights over or in respect of Security Assets on such terms as the Secured Party, Receiver or Delegate may think fit, without the need to comply with ss99 and 100 of the Act.
- (c) The right to sell or otherwise dispose of any Security Asset on any terms and for any consideration as the Secured Party, Receiver or Delegate may think fit. This consideration may include cash, debentures, obligations, shares or other security and may be payable in a lump sum or instalments.

- (d) The right to sever any plant, machinery or other fixtures from the premises to which they are attached and the right to dispose of them separately in accordance with Clause 11.8.2(c).
- (e) The right, in connection with or to facilitate any disposal, to release or discharge, whether or not for any consideration, any debts comprised in the Security Assets.
- (f) The right to give a valid receipt for any money and execute any discharge, assurance or other document which may be proper or desirable to realise any Security Asset.

#### 11.8.3 Upkeep of Security Assets

- (a) The right to repair, decorate, furnish, maintain, alter, improve, replace, renew or add to the Security Assets.
- (b) The right to develop any Security Asset and for that purpose to apply for any Authorisations, enter into any documents and carry out any works.
- (c) The right to insure any Security Assets.

#### 11.8.4 Carrying on business

- (a) The right to carry on any business of [the/any] Chargor.
- (b) The right to appoint or dismiss officers, employees, agents, contractors, advisors and others.
- (c) The right to purchase, lease or otherwise acquire any assets.
- (d) The right to borrow or otherwise raise money either unsecured or on the security of the Security Assets (whether ranking in priority to, pari passu with or behind this Security).
- (e) The right to lend money or advance credit to any customer of [the/any] Chargor.

#### 11.8.5 Contracts and proceedings

- (a) The right to perform, repudiate, terminate, amend or enter into any contract or other document relating to any Security Asset.
- (b) The right to bring, prosecute, defend, enforce and discontinue any action, suit, arbitration or other proceedings relating to any Security Assets.
- (c) The right to pursue, settle, arrange, compromise or submit to arbitration any claim, account, dispute or demand relating to, or to make any Tax election in respect of, any Security Asset.

#### 11.8.6 Other rights

- (a) The right to form a subsidiary of [the/a] Chargor and the right to lease, license or transfer any Security Asset to it.
- (b) The right to do any other act or thing which the Secured Party, Receiver or Delegate may consider:
  - (i) desirable or necessary to protect, preserve or realise any Security Asset; or
  - (ii) incidental or conducive to any rights conferred on the Secured Party, Receiver or Delegate under or by virtue of this Deed or by law.
- (c) The right to exercise and do in relation to any Security Asset all the rights and things which the Secured Party, Receiver or Delegate would be capable of exercising or doing if it, he or she were the absolute beneficial owner of that Security Asset.
- (d) The right to use the name of [the/a] Chargor to exercise any of the rights referred to in this Clause 11.8.

## **11.9 Appointment of Administrator**

### 11.9.1 Appointment of Administrator

- (a) The Secured Party may without notice appoint any one or more persons to be an administrator of [the/any] Chargor pursuant to Schedule B1, Paragraph 14 of the Insolvency Act 1986 at any time after this Security has become enforceable.
- (b) Clause 11.9.1(a) shall not apply to [the/a] Chargor if Schedule B1, Paragraph 14 of the Insolvency Act 1986 does not permit an administrator of [the/that] Chargor to be appointed.
- (c) Any appointment under Clause 11.9.1(a) shall be made in the prescribed form by the Secured Party.

### 11.9.2 Replacement of an Administrator

The Secured Party may apply to the court for the termination of the appointment of any Administrator and/or the appointment of a replacement for any Administrator whose appointment ends for any reason.

## **11.10 Application of moneys**

11.10.1 The Secured Party or any Receiver or Delegate shall apply moneys received by them under this Deed after the Security created under this Deed has become enforceable in the following order:

- (a) first, in or towards the payment pro rata of, or the provision pro rata for, any unpaid costs and expenses of the Secured Party and any Receiver or Delegate under this Deed or which are incidental to any Receiver's or Delegate's appointment, together with interest at the

Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full;

- (b) second, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Secured Party and any Receiver or Delegate;
- (c) third, in or towards the discharge of all liabilities having priority to the Secured Liabilities;
- (d) fourth, in or towards the discharge of the Secured Liabilities; and
- (e) fifth, in the payment of any surplus to the [relevant] Chargor or other person entitled to it,

and section 109(8) of the Act shall not apply.

11.10.2 Notwithstanding Clause 11.10.1, during the Security Period the Secured Party or any Receiver or Delegate may:

- (a) refrain from applying or enforcing any other monies, Security or other rights held or received by it in respect of the Secured Liabilities or apply and enforce them in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and [no Chargor shall / the Chargor shall not] be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any monies received from [the/a] Chargor or on account of the Secured Liabilities.

11.10.3 This Clause 11.10 does not prejudice the right of the Secured Party to recover any shortfall from [the/any] Chargor.

11.10.4 Clause 11.10.1 will override any appropriation made by [the/any] Chargor.

### **11.11 General indemnity**

11.11.1 [The/Each] Chargor shall indemnify the Secured Party, any Receiver, any Delegate and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities incurred by them in respect of all or any of the following:

- (a) any act or omission by any of them in relation to all or any of the Security Assets;
- (b) any payment relating to or in respect of all or any of the Security Assets which becomes payable at any time by any of them;
- (c) any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
- (d) carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Deed;

- (e) any breach by [the/that] Chargor of any of its covenants or other obligations to the Secured Party,
  - (f) the taking, holding, protection or enforcement of this Security; and
  - (g) acting as Secured Party, Receiver or Delegate under the Transaction Documents or which otherwise relates to any of the Security Assets,
- except in the case of gross negligence or wilful misconduct on the part of that person.

11.11.2 [The/Each] Chargor shall pay interest at the Default Rate on the sums payable under this Clause 11.11 from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

### **11.12 Indemnity out of the Security Assets**

The Secured Party, any Receiver or Delegate and their respective officers and employees shall be entitled to be indemnified out of the Security Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 11.11 (*General indemnity*).

[The Original Secured Party shall hold on trust for the PPF any sums it receives in relation to this indemnity which are to be applied to the PPF at the date it becomes the Secured Party].

## **12 General Security Provisions**

### **12.1 Redemption of prior Security**

The Secured Party may at any time:

- 12.1.1 redeem, or procure the transfer to itself of, any prior Security over any Security Assets; or
- 12.1.2 settle and pass the accounts of the holder of any prior Security. Any accounts so settled and passed shall in the absence of manifest error be conclusive and binding on the [relevant] Chargor.

### **12.2 Subsequent Security**

12.2.1 At any time following:

- (a) the receipt by the Secured Party of notice (either actual or constructive) of any subsequent Security affecting any Security Assets;
- (b) an Insolvency Event occurring in relation to [the/a] Chargor; or
- (c) any disposal of any Security Assets in breach of Clause 9.1 (*Disposals*),

the Secured Party may open a new account or accounts in the name of the [relevant] Chargor (whether or not it permits any existing account to continue). If the Secured Party does not open such a new account, it shall

nevertheless be deemed to have done so at the time of receipt of the notice, the commencement of the Insolvency Event or the disposal.

12.2.2 From that time all payments received by the Secured Party for the account of the [relevant] Chargor shall be credited or treated as having been credited to the new account (or deemed new account) and shall not operate to reduce the amount of the Secured Liabilities at the time of receipt of the notice, the commencement of the Insolvency Event or the disposal.

## **13 Tacking**

For the purposes of section 94(1) of the Act and section 49(3) of the Land Registration Act 2002 the Secured Party confirms it may make further advances to the Chargor[s] on the terms and subject to the conditions of the Transaction Documents.

## **14 Further assurance**

### **14.1 Registration**

[The/Each] Chargor consents to registration of this Deed at Companies House pursuant to [Part 25 of the Companies Act 2006]<sup>39</sup>

### **14.2 Application to Land Registrar**

[The/Each] Chargor shall do all things requested by the Secured Party to facilitate the registration of this Security against any Land Registry title comprised in the land which forms part of the Security Assets from time to time. In particular, each Chargor shall:

14.2.1 apply to the Chief Land Registrar for a restriction to be entered on each such title in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Deed dated [●] in favour of [●] referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer" and

14.2.2 if the Secured Party so requests, certify that the security over the land created by this Deed does not contravene any of the provisions of its constitutional documents.

### **14.3 Further action**

[The/Each] Chargor shall, at its own expense, promptly take any action and sign or execute any further documents which the Secured Party may require in order to:

14.3.1 give effect to the requirements of this Deed;

14.3.2 protect, preserve and perfect the Security intended to be created by or pursuant to this Deed;

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<sup>39</sup> [The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 for Limited Liability Partnerships]

- 14.3.3 protect and preserve the ranking of the Security intended to be created by or pursuant to this Deed with any other Security over any assets of [the/any] Chargor; or
- 14.3.4 facilitate the realisation of all or any of the Security Assets or the exercise of any rights, powers and discretions conferred on the Secured Party, any Receiver or Delegate or any administrator in connection with all or any of the Security Assets,

and any such document may disapply section 93 of the Act.

The action required under this Clause 14.3 may include the execution of any Security, any assignment or transfer over or of any asset, any notice of this Security or any other document.

#### **14.4 [Registration of Trade Marks]**

14.4.1 [Each Trade Mark/The] Chargor shall:

- (a) within [ten] Business Days of the date of this Deed, apply to the Comptroller-General of Patents, Designs and Trade Marks to register the charge created by Clause 4.8 (*Intellectual Property Rights*) pursuant to the provisions of section 25 of the Trade Marks Act 1994; and
- (b) pay all fees necessary to make the registrations required to be made under Clause 14.4.1(a) before the latest time provided for payment.

14.4.2 [Each Trade Mark/The] Chargor acknowledges the right of the Secured Party, or any duly authorised agent of the Secured Party, to apply to the Comptroller-General of Patents, Designs and Trade Marks to register the charge created by Clause 4.8 (*Intellectual Property Rights*) pursuant to the provisions of section 25 of the Trade Marks Act 1994 on or after any failure by the [relevant] Chargor to register the charge pursuant to Clause 14.4.1.]

#### **14.5 Law of Property (Miscellaneous Provisions) Act 1994**

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to the provisions set out in this Clause 14.

#### **15 Power of attorney**

[The/Each] Chargor irrevocably and by way of security appoints each of:

- 15.1.1 the Secured Party;
- 15.1.2 any Receiver; and
- 15.1.3 any Delegate,

jointly and severally as [the/that] Chargor's attorney, in [the/that] Chargor's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit following the occurrence of a Default or following the failure by [the/that] Chargor to comply with a request from the Secured Party to take any action and sign

or execute any further documents which [the/that] Chargor is required to take, sign or execute in accordance with the Transaction Documents. [The/Each] Chargor agrees, promptly on the request of the Secured Party or any Receiver or Delegate, to ratify and confirm all such actions taken and documents signed or executed.

## **16 Currency**

### **16.1 The Spot Rate**

In this Clause 16, "**Spot Rate**" means the spot rate of exchange of [HSBC UK Bank plc] or such other bank as the Secured Party may select for the purchase of any currency with any other currency in the London foreign exchange market.

### **16.2 Conversion of moneys received**

The Secured Party may convert any moneys received, recovered or realised in any currency under this Deed (including the proceeds of any previous conversion under this Clause 16) from their existing currency into any other currency, by purchasing that other currency at the Spot Rate.

### **16.3 Hedging**

If [the/any] Chargor fails to pay any sum [under this Deed on the due date, the Secured Party may, without notice to [the/that] Chargor, purchase at the Spot Rate any currency which the Secured Party considers necessary or desirable to cover the liabilities of [the/that] Chargor to pay that sum.

## **17 Discharge of Security**

### **17.1 Discharge**

At the end of the Security Period, unless any third party has any subrogation or other rights in respect of the Security created by this Deed at that time, the Secured Party shall, or shall procure that its appointees will, at the request and cost of the Chargor[s]:

17.1.1 release the Security Assets from this Deed;

17.1.2 re-assign to the [relevant] Chargor those Security Assets that have been assigned to the Secured Party under Clause 4 (*Creation of Security*), and

17.1.3 register any such release and reassignment with Registrar of Companies and any other asset registry in respect of the Security Asset being released from the Security,

and section 93 of the Act shall not apply to this Deed.

### **17.2 No discharge if payment avoided**

For the purposes of this Clause 17 and the definition of Security Period, a Secured Liability will not be considered to have been irrevocably paid or discharged in respect of the termination of Security Period if the Secured Party, acting reasonably, considers that any payment made in respect of it is capable of being avoided and:

17.2.1 "**avoided**" means avoided, restored or adjusted in whole or part under any law relating to insolvency (and "**avoidance**" shall be construed accordingly); and

17.2.2 "**settlement**" means a release, settlement, discharge, re-assignment or arrangement.

### **17.3 Release of Security**

17.3.1 Any settlement made by the Secured Party in this Clause 17 on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided.

17.3.2 If any avoidance occurs as referred to in Clause 17.3.1, then the settlement given by the Secured Party shall have no effect and shall not prejudice the right of the Secured Party to enforce this Security in respect of the Secured Liabilities. As between the Chargor[s] and the Secured Party, this Security shall (notwithstanding the settlement) be deemed to have remained at all times in effect and held by the Secured Party as security for the Secured Liabilities.

## **18 Costs and expenses**

### **18.1 Transaction expenses**

The Chargor[s] shall promptly on demand pay each of the Secured Party and the PPF the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing, execution, registration and perfection of this Deed and the Transaction Documents and any of the interests in them or arising from them.

### **18.2 Amendment, waiver and management time costs**

If [the/any] Chargor requests an amendment, waiver, consent or release of or in relation to this Deed, the Chargor[s] shall, within three Business Days of demand, reimburse each of the Secured Party and the PPF for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

Any amount payable to the PPF shall include in addition the cost of utilising the management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the PPF shall determine and may notify to the Company from time to time, and is in addition to any other fee paid or payable to the Original Secured Party or the PPF.

### **18.3 Enforcement costs**

The Chargor[s] shall, within three Business Days of demand, pay to the Secured Party or any Receiver or Delegate the amount of all costs and expenses (including legal fees) (together with any applicable Tax) incurred by the Secured Party or any Receiver or Delegate in connection with the enforcement of, or the preservation or release of any rights under this Deed, the investigation of any possible Default and any proceedings instituted by or against the Secured Party or any Receiver or Delegate as a

consequence of taking or holding this Security or enforcing its rights under it. [The Secured Party or any Receiver or Delegate may request all such costs from any of the Chargors.]

#### **18.4 Stamp Taxes**

The Chargor[s] shall pay and, within three Business Days of demand, indemnify the Secured Party against any loss or liability the Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Transaction Document.

#### **18.5 Interest**

If [the/any] Chargor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on a daily basis on the overdue amount from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum). This interest shall accrue at the Default Rate.

### **19 Additional Chargors**

#### **19.1 Delivery of Security Accession Deed**

19.1.1 The Company<sup>40</sup> [or any of the other Chargors] may request that any Subsidiary becomes a New Chargor.

19.1.2 The Company shall ensure that any Subsidiary shall, as soon as possible after becoming a Group Company, become a New Chargor.

19.1.3 A Subsidiary shall become a New Chargor if:

- (a) the Company and that Subsidiary deliver to the Secured Party a duly completed and executed Security Accession Deed;
- (b) the Company and the Subsidiary undertake all registrations required at the Registrar of Companies or any asset register and all other requirements to perfect the Security and guarantees purported to be created under the Security Accession Deed, and
- (c) the Company confirms that no Default is continuing or would occur as a result of the Subsidiary becoming a New Chargor.

#### **19.2 Repetition of representations**

Delivery of a Security Accession Deed constitutes confirmation by the New Chargor that the representations and warranties contain in Clause 7 (*Representations and warranties*) are true and correct to the extent applicable to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

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<sup>40</sup> Again, this assumes "the Company" is main holding company. This provision will need to be changed if it is not.

## **20 Assignment**

### **20.1 Procedure**

- 20.1.1 [The Chargor may not] [No Chargor may] assign, transfer or novate all or any of its rights and obligations under this Deed [or any other Transaction Document].
- 20.1.2 A Secured Party (other than the Original Secured Party) may assign any of its rights under this Deed to any person to whom it assigns or transfers any of its rights or obligations under the Transaction Documents.
- 20.1.3 Subject as follows, the Original Secured Party may not assign or transfer its rights under this Deed [and any other Transaction Documents] to any third party.
- 20.1.4 In the event that the PPF assumes responsibility for the Pension Scheme or any part thereof for the purposes of section 161 of the Pensions Act, it is acknowledged that the Original Secured Party's rights under this Deed (and the Transaction Documents) shall be transferred by operation of law to the PPF.
- 20.1.5 Nothing in this Clause 20 shall purport to restrict any other assignment or transfer of rights, obligations or liabilities, by operation of law or otherwise, from the Original Secured Party to the PPF.

### **20.2 Disclosure of information**

The Secured Party may disclose to any assignee or proposing assignee any information it thinks fit in relation to [the/any] Chargor and any Transaction Document.

## **21 Notices**

### **21.1 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 fax, letter or email.

### **21.2 Addresses**

- 21.2.1 The address and fax number (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 that identified with its name below or any substitute address, fax number, email address or department or officer as either party may notify to the other by not less than five Business Days' notice.
- 21.2.2 The addresses referred to in Clause 21.2.1 are:

(a) **The Company:**

[address]

Attention: [                    ]  
Fax:                    [fax number including international dialling code]  
Email:                    [                    ]

(b) **The Chargors:**

[address]

Attention: [                    ]  
Fax:                    [fax number including international dialling code]  
Email:                    [                    ]

(c) **The Original Secured Party:**

[address]

Attention: [                    ]  
Fax:                    [fax number including international dialling code]  
Email:                    [                    ]

(d) **PPF:**

Renaissance  
12 Dingwall Road  
Croydon  
CR0 2NA

Attention: [Head of Restructuring & Insolvency]  
Email:                    [                    ]

**[Each Original Chargor**

*[Contact details as set out opposite its name in Schedule 1 (Original Chargors)].*

## **21.3 Delivery**

21.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

- (a) if by way of fax or email, when received in legible form; or
- (b) if by way of letter, (i) when it has been left at the relevant address or (ii) three Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 21.2 (*Addresses*), if addressed to that department or officer.

21.3.2 Any communication or document to be made or delivered to the Secured Party will be effective only when actually received by the Secured Party and then only if it is expressly marked for the attention of the department or officer identified with the Secured Party's signature below (or any substitute

department or officer as the Secured Party or its successor/assignee shall specify for this purpose).

21.3.3 [Any communication or document made or delivered to the Company in accordance with this Clause 21.3.3 will be deemed to have been made or delivered to each of the Chargors.]

## **21.4 English language**

21.4.1 Any notice given under or in connection with this Deed must be in English.

21.4.2 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 Secured Party 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.

## **22 Calculations and certificates**

### **22.1 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 Secured Party are in the absence of manifest error prima facie evidence of the matters to which they relate.

### **22.2 Certificates and determinations**

Any certification or determination by the Secured Party of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **22.3 Set-off**

The Secured Party may set off any matured obligation due from [the/a] Chargor under the Transaction Documents (to the extent beneficially owned by the Secured Party) against any matured obligation owed by the Secured Party to [the/that] Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **23 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.

## 24 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Secured Party, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy 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.

## 25 [Chargors' Agent

25.1.1 Each Chargor (other than the Company) by its execution of this Deed irrevocably appoints the Company (acting through one or more authorised signatories) to act on its behalf as its agent (the "**Chargors' Agent**") in relation to any Transaction Document and irrevocably authorises:

- (a) the Company on its behalf to supply all information concerning itself contemplated by this Deed to the Secured Party and the PPF and to give and receive all notices, instructions and other communications, to sign all certificates, to make such agreements and to effect the relevant amendments, supplements, variations and waivers capable of being given, made or effect by any Chargor notwithstanding that they may affect that Chargor, without further reference to or the consent of that Chargor; and
- (b) the Secured Party and the PPF to give any notice, demand or other communication to that Chargor pursuant to the Transaction Documents to the Company,

and in each case the Chargor shall be bound as though the Chargor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

25.1.2 Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice, instruction or other communication given or may be the Chargors' Agent or given to the Chargors' Agent under any Transaction Document on behalf of another Chargor in connection with any Transaction Document (whether or not known to any other Chargor and whether occurring before or after such other Chargor became a Chargor under this Deed) shall be binding for all purposes on that Chargor as if that Chargor had expressly agreed, executed, made, given or concurred with it or received the relevant notice, demand or other communication. If there is any conflict between any notices or other communications of the Chargors' Agent and any other Chargor, those of the Chargors' Agent shall prevail.]<sup>41</sup>

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<sup>41</sup> Do not include if only one Chargor or if this Chargors' agency provision is included in other Transaction Documents. Also consider whether this is required if an obligor's agent has appointed.

## **26 Amendments and waivers**

Subject to Clause 1.7 (*PPF Consents*), any provision of this Deed may be amended or waived only with the written consent of the [Chargor/Company] [(for itself and as Chargors' Agent)], the Secured Party and the PPF.

## **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 Governing law and enforcement**

### **28.1 Governing law**

English law governs this Deed, its interpretation and any non-contractual obligation arising from or connected with it.

### **28.2 Jurisdiction**

28.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed) (a "**Dispute**").

28.2.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

28.2.3 This Clause 28.2 is for the benefit of the Secured Party and the PPF only. As a result, the Secured Party and the PPF shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Party and the PPF may take concurrent proceedings in any number of jurisdictions.

### **28.3 [Service of process]**

28.3.1 Without prejudice to any other mode of service allowed under any relevant law, each Chargor:

- (a) irrevocably appoints the Company as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and
- (b) agrees that failure by a process agent to notify that Chargor of the process will not invalidate the proceedings concerned.

28.3.2 If the Company (on behalf of all the Chargors) is unable for any reason to act as agent for service of process, it must immediately (and in any event within seven days of such event taking place) appoint another agent on terms acceptable to the Secured Party and the PPF. Failing this, the Secured Party and the PPF may appoint another agent for this purpose.]<sup>42</sup>

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<sup>42</sup> Not required unless there are or may be non-English Chargors.

**EXECUTION:**

**The Parties have shown their acceptance of the terms of this Deed by executing it, in the case of [the/each] Chargor as a deed, at the end of the Schedules.**

**Schedule 1**

**The Original Chargor[s]<sup>43</sup>**

<b>Name of Chargor</b>	<b>Registered number (or equivalent, if any)</b>	<b>Registered Office</b>

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<sup>43</sup> Must include issuer of loan note(s)

## Schedule 2

### Land charged by way of legal mortgage

#### Part 1

##### Registered Land

(Freehold (including commonhold) or leasehold property (if any) in England and Wales of which [the/a] Chargor is registered as the proprietor at Land Registry)

Name of Chargor	Description and address	Title number

#### Part 2

##### Unregistered Land

(Freehold or leasehold property (if any) in England and Wales title to which is not registered at Land Registry of which [the/a] Chargor is the owner)

[Details]/[None]<sup>44</sup>.

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<sup>44</sup> Amend as applicable

**Schedule 3**

**Shares**

<b>Name of Chargor</b>	<b>Subsidiary</b>	<b>Number and class of shares</b>	<b>Details of nominees (if any) holding legal title to shares</b>

## Schedule 4

### Form of notice for Assigned Agreements

#### [On relevant Chargor's notepaper]

To: [insert name and address of counterparty]

Attention: [ ]

Date: [date]

Dear Sirs

#### Notice of assignment

- 1 We refer to the [relevant Assigned Agreement] dated [date] between us and you (the "**Agreement**")
- 2 We notify you that:
  - 2.1 under a Deed of guarantee and debenture dated [date] between, among others, us and [insert name of Secured Party] (the "**Secured Party**") we have assigned to the Secured Party all our right, title and interest in and to, and all benefits accruing under, the Agreement (including the right to receive any [For an Occupational Lease only: rental and other] payments due under the Agreement) as security for certain obligations owed to the Secured Party;
  - 2.2 we shall at all times remain solely liable to you for the performance of all of the obligations assumed by us under or in respect of the Agreement;
  - 2.3 we have agreed not to waive any rights under, amend, novate, repudiate, [for an Assigned Agreement other than an Occupational Lease: rescind or otherwise terminate or permit to be terminated the Agreement][for an Occupational Lease: rescind, forfeit, determine or agree to the forfeiture, determination or surrender of the Agreement] without the prior written consent of the Secured Party;
  - 2.4 until you receive written notice to the contrary from the Secured Party, you may continue to deal with us in relation to the Agreement and credit all moneys to which we are entitled under the Agreement to the following account in our name: [insert details of account]. After your receipt of such notice from the Secured Party we will cease to have any right to deal with you in relation to the Agreement and from that time you should deal only with the Secured Party and all of the powers, discretions, remedies and other rights which would, but for the Deed of guarantee and debenture, be vested in us under and in respect of the Agreement shall be exercisable by the Secured Party;
  - 2.5 none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Secured Party's prior written consent; and

2.6 you are authorised to disclose information relating to the Agreement to the Secured Party on request.

3 We request that you:

3.1 after receipt of written notice in accordance with paragraph 2.3, ensure that all moneys to which we are entitled under the Agreement are credited to the account of the Secured Party specified in that notice (and are not paid to us);

3.2 give the Secured Party written notice of any breach of the Agreement as soon as you become aware of it and accept as an adequate remedy for that breach, performance by the Secured Party of those obligations within 30 days of that notice; and

3.3 give the Secured Party not less than [30] days' written notice of your [terminating/giving notice to terminate] the Agreement.

4 Please sign and return the enclosed copy of this notice to the Secured Party (with a copy to the Chargor) to confirm that you:

4.1 consent to the assignment of the Agreement and agree to the terms of this notice and to act in accordance with its provisions;

4.2 have not received any notice that any third party has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of, any of our rights in, to, under, in respect of or derived from the Agreement;

4.3 have not received notice that we have assigned our rights under the Agreement to a third party or created any other interest (whether by way of security or otherwise) in the Agreement in favour of a third party; and

4.4 have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Chargor, any right of set-off, counter-claim or other right relating to the Agreement.

5 The provisions of this notice are governed by English law.

Yours faithfully

.....  
for and on behalf of  
[insert name of Company/ Chargor]

Copy to: Secured Party

[address]

**[On acknowledgement copy]**

To: *[insert name and address of Secured Party]*

Copy to: *[insert name and address of Chargor]*

We acknowledge receipt of the above notice and confirm the matters set out in paragraph 4.

.....

for and on behalf of

*[insert name of counterparty]*

Date: *[date]*

## Schedule 5

### Form of notice for Insurances

#### [On relevant Chargor's notepaper.]

To: [insert name and address of insurance company]

Attention: [ ]

Date: [date]

Dear Sirs

#### Notice of assignment

- 1 We refer to the [specify the relevant insurance policy] dated [date] between us and you (the "**Policy**")
- 2 We notify you that:
  - 2.1 under a Deed of guarantee and debenture dated [date] between, among others, us and [insert name of Secured Party] (the "**Secured Party**") we have assigned to the Secured Party all our right, title and interest in and to, and all benefits accruing under, the Policy (including the right to receive any payments due under the Policy) as security for certain obligations owed to the Secured Party;
  - 2.2 we shall at all times remain solely liable to you for the performance of all of the obligations assumed by us under or in respect of the Policy;
  - 2.3 we have agreed not to waive any rights under, amend, novate, repudiate, rescind or otherwise terminate or permit to be terminated the Policy without the prior written consent of the Secured Party;
  - 2.4 until you receive written notice to the contrary from the Secured Party, you may continue to deal with us in relation to the Policy and credit all moneys to which we are entitled under the Policy to the following account in our name: [insert details of account]. After your receipt of such notice from the Secured Party we will cease to have any right to deal with you in relation to the Policy and from that time you should deal only with the Secured Party and all of the powers, discretions, remedies and other rights which would, but for the Deed of guarantee and debenture, be vested in us under and in respect of the Policy shall be exercisable by the Secured Party;
  - 2.5 none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Secured Party's prior written consent; and
  - 2.6 you are authorised to disclose information relating to the Policy to the Secured Party on request.

- 3 We request that you:
- 3.1 after receipt of written notice in accordance with paragraph 2.3, ensure that all moneys to which we are entitled under the Policy are credited to the account of the Secured Party specified in that notice (and are not paid to us);
  - 3.2 note on the Policy the Secured Party's security interest under the Debenture;
  - 3.3 give the Secured Party written notice of any breach of the Policy as soon as you become aware of it and accept as an adequate remedy for that breach, performance by the Secured Party of those obligations within 30 days of that notice; and
  - 3.4 give the Secured Party not less than [30] day's written notice of your [terminating/giving notice to terminate] the Policy or allowing the Policy to lapse.
- 4 Please sign and return the enclosed copy of this notice to the Secured Party (with a copy to the Chargor) to confirm that you:
- 4.1 consent to the assignment of the Policy and agree to the terms of this notice and to act in accordance with its provisions;
  - 4.2 have not received any notice that any third party has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of, any of our rights in, to, under, in respect of or derived from the Policy;
  - 4.3 have not received notice that we have assigned our rights under the Policy to a third party or created any other interest (whether by way of security or otherwise) in the Policy in favour of a third party; and
  - 4.4 have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Chargor, any right of set-off, counter-claim or other right relating to the Policy.
- 5 The provisions of this notice are governed by English law.

Yours faithfully

.....

for and on behalf of  
[insert name of Chargor]

Copy to: Secured Party

**[On acknowledgement copy]**

To: [insert name and address of Secured Party]

Copy to: [insert name and address of Company] [(on behalf of all the Chargors)]

We acknowledge receipt of the above notice and confirm the matters set out in paragraph 4.

.....  
for and on behalf of  
[insert name of insurance company]

Date: [date]

## Schedule 6

### Form of notice for Derivative Contracts<sup>45</sup>

#### [On relevant Chargor's notepaper.]

To: [insert name and address of counterparty]

Attention: [ ]

Date: [date]

Dear Sirs

#### Notice of assignment

- 1 We refer to the [specify the relevant Derivative Contract] dated [date] between us and you (the "**Derivative Contract**")
- 2 We notify you that:
  - 2.1 under a Deed of guarantee and debenture dated [date] between, among others, us and [insert name of Secured Party] (the "**Secured Party**") we have assigned to the Secured Party all our right, title and interest in and to, and all benefits accruing under, the Derivative Contract (including the right to receive any payments due under the Derivative Contract) as security for certain obligations owed to the Secured Party;
  - 2.2 we shall at all times remain solely liable to you for the performance of all of the obligations assumed by us under or in respect of the Derivative Contract;
  - 2.3 we have agreed not to waive any rights under, amend, novate, repudiate, rescind or otherwise terminate or permit to be terminated the Derivative Contract without the prior written consent of the Secured Party;
  - 2.4 after your receipt of notice from the Secured Party we will cease to have any right to deal with you in relation to the Derivative Contract and from that time you should deal only with the Secured Party and all of the powers, discretions, remedies and other rights which would, but for the Deed of guarantee and debenture, be vested in us under and in respect of the Derivative Contract shall be exercisable by the Secured Party;
  - 2.5 none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Secured Party's prior written consent. and
  - 2.6 you are authorised to disclose information relating to the Derivative Contract to the Secured Party on request.

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<sup>45</sup> Delete if none.

- 3 We request that you:
- 3.1 ensure that all moneys payable to us under the Derivative Contract are credited to an account nominated by the Secured Party (and are not paid to us);
  - 3.2 give the Secured Party written notice of any breach of the Derivative Contract as soon as you become aware of it and accept as an adequate remedy for that breach, performance by the Secured Party of those obligations within 30 days of that notice; and
  - 3.3 give the Secured Party not less than [30] days' written notice of your [terminating/giving notice to terminate] the Derivative Contract.
- 4 Please sign and return the enclosed copy of this notice to the Secured Party (with a copy to the Chargor) to confirm that you:
- 4.1 agree to the terms of this notice and to act in accordance with its provisions; and
  - 4.2 have not received notice that we have assigned our rights under the Derivative Contract to a third party or created any other interest (whether by way of security or otherwise) in the Derivative Contract in favour of a third party.
- 5 The provisions of this notice are governed by English law.

Yours faithfully

.....  
for and on behalf of  
[insert name of Chargor]

Copy to: Secured Party

**[On acknowledgement copy]**

To: [insert name and address of Secured Party]

Copy to: [insert name and address of Chargor]

We acknowledge receipt of the above notice and confirm the matters set out in paragraph 4.

.....  
for and on behalf of  
[insert name of counterparty]

Date: [date]

**Schedule 7**  
**Current Accounts**

<b>Name of Chargor</b>	<b>Account bank</b>	<b>Sort code</b>	<b>Account number</b>

## Schedule 8

### Forms of letter to and from the Account Bank<sup>46</sup>

#### Part 1

#### Notice to Account Bank regarding the Controlled Account(s)<sup>47</sup>

*[On relevant Chargor's notepaper.]*

*[This form of notice is drafted on the basis that the relevant Chargor has a single Controlled Account. If any Chargor has more than one Controlled Account, make appropriate drafting adjustments. Delete this note and any other square bracketed notes in italics below before the notice is signed by the Chargor and sent to the Account Bank.]*

To: [insert name and address of Account Bank]

Date: [date]

Dear Sirs

#### **Deed of guarantee and debenture dated [date] between (among others) [Chargor] and [Secured Party] (the "Deed")**

We refer to the account which we hold with you numbered [number], sort code [sort code], as it may from time to time be re-designated or re-numbered (the "**Controlled Account**").

We are writing to give you notice of certain rights in respect of the Controlled Account that we have granted to the Secured Party (the "**Secured Party**").

Under the Deed we have charged by way of fixed charge in favour of the Secured Party all amounts standing to the credit of the Controlled Account from time to time (the "**Deposit**") and all of our right, title and interest in, and relating to, the Controlled Account.

Regardless of any previous authorisations or instructions which we may have given you and without making any enquiry as to the justification for the matter, we irrevocably authorise and instruct you:

- (a) to disclose to the Secured Party any information relating to us, the Controlled Account and the Deposit which the Secured Party may from time to time request you to disclose to it;
- (b) to hold the Deposit to the order of the Secured Party, and not permit the whole or any part of the Deposit to be withdrawn by us;
- (c) to pay or release all or any part of the Deposit, and generally to act in relation to the Deposit, only in accordance with the written instructions of the Secured Party;
- (d) to comply with the terms of any written notice or instructions in any way relating to or purporting to relate to the Controlled Account or the Deposit which you may receive from the Secured Party (without any reference to or further authority from us and

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<sup>46</sup> These are the forms of letter referred to in Clause 8.3.2

Delete if no controlled accounts

<sup>47</sup> Leave the italicised, square bracketed notes in this form of notice when you produce the deed of guarantee and debenture for your transaction: they make it clear how to complete a notice in different situations.

without any enquiry by you as to the justification for the notice, statement or instruction or the validity of it) [; and

- (e) not, without the prior written consent of the Secured Party, to renew or roll over the Deposit for a fixed period exceeding [three][six] months].

The instructions and authorisations contained in this letter may not be revoked or varied without the written agreement of the Secured Party.

This letter is governed by English law.

Please confirm your agreement to the above by sending an acknowledgement to the Secured Party in the form attached, with a copy to ourselves.

Yours faithfully,

.....

for and on behalf of

[Chargor]

copy: [Secured Party]

[address]

## Part 2

### Notice to Account Bank regarding the Current Accounts

**[On relevant Chargor's notepaper.]**

To: [insert name and address of Account Bank]

Date: [date]

Dear Sirs

#### **Deed of guarantee and debenture dated [date] between (among others) [Chargor] and [Secured Party] (the "Deed")**

- 1 We refer to the follows accounts we hold with you, as they may from time to time be re-designated or re-numbered:
  - 1.1 [insert Account Number/Sort Code for each Current Account held by the relevant Chargor];
  - 1.2 [ ](the "**Current Accounts**").
- 2 We are writing to give you notice of certain rights in respect of the Current Accounts that we have granted to [Secured Party] (the "**Secured Party**").<sup>48</sup>
- 3 Under the Deed we have charged by way of floating charge to the Secured Party all amounts standing to the credit of each Current Account from time to time (each a Deposit and together the Deposits) and all of our right, title and interest in, and relating to, each Current Account.
- 4 We notify you that:
  - 4.1 after you have received notice from the Secured Party under paragraph 6, we may not withdraw any moneys from any Current Account without first obtaining the prior written consent of the Secured Party;
  - 4.2 there is a prohibition in the Deed on the creation of any further Security over any Current Account; and
  - 4.3 you are authorised to disclose information relating to the Current Accounts to the Secured Party on the request of the Secured Party.
- 5 After you have received notice from the Secured Party under paragraph 6, we irrevocably authorise and instruct you to:
  - 5.1 hold all moneys from time to time standing to the credit of each Current Account to the order of the Secured Party; and

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<sup>48</sup> "in its capacities (as applicable) as agent and PPF...". See the note to the equivalent part of the form of notice letter in Part 1 of this Schedule (Notice to Account Bank regarding the Controlled Account).

5.2 pay all or any part of those moneys to the Secured Party (or as it may direct) promptly following receipt of written instructions from the Secured Party to that effect.

6 By counter-signing this notice the Secured Party confirms that you may accept instructions from us to make withdrawals from each Current Account (without prejudice to any restrictions on our right to make such withdrawals permitted by the Deed) until such time as the Secured Party shall notify you (with a copy to us) in writing that its permission is withdrawn.

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

The instructions in this letter may not be revoked or amended without the prior written consent of the Secured Party.

This letter is governed by English law.

Please confirm your agreement to the above by sending an acknowledgement to the Bank in the form attached, with a copy to ourselves.

Yours faithfully,

.....  
[Chargor]

.....  
[Secured Party]

**Part 3**  
**Form of acknowledgements from Account bank<sup>49</sup>**

***[On Account Bank's notepaper]***

*[When preparing the form of acknowledgement letter to attach to a notice, delete/amend the references to "[Controlled Account][Current Accounts]" below as appropriate depending on the Account(s) to which the notice refers. Delete this note and any other square bracketed notes in italics below before the form of acknowledgement is sent to the Account Bank.]*

To: [insert name and address of Secured Party]

Attention: [ ]

Date: [date]

Dear Sirs

**Deed of guarantee and debenture dated [date] between (among others) [Chargor] and [Secured Party] (the "Deed")**

We acknowledge receipt of a notice (the "**Notice**") from [Chargor] (the Chargor) dated [date] of the security granted by the Chargor to the Secured Party over the [Controlled Account][Current Accounts] under the Deed.

Words defined in the Notice have the same meaning in this letter.

We confirm that:

- (a) we consent to the charge of the [Controlled Account][Current Accounts], acknowledge receipt of the Notice and accept the authorisations and instructions contained in the Notice and we undertake to comply with its terms;
- (b) we have not received notice of:
  - (i) any other assignment of or encumbrance over [the Controlled Account/any Current Accounts] or [the][any] Deposit; or
  - (ii) any interest, claim or right in or to them by any third party,and we shall [but without incurring any liability in respect of the obligation] promptly give you notice of any such actual, potential or asserted assignment, encumbrance, interest, claim or right of which we become aware; and
- (c) we do not, and will not, hold or otherwise have the benefit of any Security or other encumbrance over [the Controlled Account/any Current Accounts] or [the][any] Deposit; and
- (d) we will not exercise any right of combination, consolidation, merger or set-off which we may have in respect of [the Controlled Account][the Current Accounts] except for

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<sup>49</sup> This is the form of acknowledgement letter referred to in the forms of notice letter in Part 1 and Part 2 of this Schedule. Leave the italicised, square bracketed notes in this form of acknowledgement when you produce the deed of guarantee and debenture for your transaction: they make it clear what form of acknowledgement is required in respect of each type of notice.

the netting of credit and debit balances pursuant to current account netting arrangements expressly permitted under the Deed or if:

- (i) we exercise that right in respect of an obligation which purports to be secured under the Deed; and
- (ii) we exercise that right pursuant to, or in accordance with, the terms of the Transaction Documents (as that term applies in the Deed).

We are aware that you are relying on this letter in connection with your rights under the Deed.

This letter is governed by English law.

Yours faithfully,

.....  
for and on behalf of  
[Account Bank]

copy: [Chargor]

**Schedule 9  
Trade Marks**

**Part 1  
Trade Marks**

<b>Proprietor</b>	<b>Trade Mark</b>	<b>Class(es)</b>	<b>Registration number</b>

**Part 2  
Trade Mark Applications**

<b>Proprietor</b>	<b>Trade Mark</b>	<b>Class(es)</b>	<b>Application number</b>	<b>Filing date</b>

## Schedule 10

### Form of Security Accession Deed

#### Security Accession Deed

##### Dated

##### Between:

- (1) [ ] Limited, a company incorporated under the laws of [England and Wales] with registered number [●] whose registered office is at [address] (the "**New Chargor**");
- (2) [ ], a company incorporated under the laws of England and Wales with registered number [●] (the "**Company**") for itself and as agent for and on behalf of each of the existing Chargors; and
- (3) [ ] (the "**Secured Party**")<sup>50</sup>.

##### Whereas:

- (A) This deed is supplemental to a Deed of guarantee and debenture dated [date] between the Chargors named in it, the Secured Party and the Board of the Pension Protection Fund (as supplemented and amended from time to time, the "**Deed of Guarantee and Debenture**").

##### This deed witnesses

#### 1 Definitions and interpretation

##### 1.1 Definitions

Words and expressions defined in the Deed of Guarantee and Debenture shall have the same meanings in this Deed.

##### 1.2 Construction

The principles of construction set out in Clause 1.2 (*Construction*) of the Deed of Guarantee and Debenture shall apply to this Deed, insofar as they are relevant to it, as they apply to the Guarantee and Debenture.

##### 1.3 Disposition of land

The terms of the other Transaction Documents and of any side letters between any parties in relation to any Transaction Document are incorporated in this Deed to the extent required to ensure that any purported disposition of an interest in land contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

#### 2 Accession of New Chargor

The New Chargor agrees to be a Chargor for the purposes of the Deed of Guarantee and Debenture with immediate effect and agrees to be bound by all of the terms of

---

<sup>50</sup> Either Original Secured Party or the PPF.

the Deed of Guarantee and Debenture as if it had originally been a party to it as a Chargor, including (without limitation) the obligations contained in Clause [2 (*Guarantee*) and] Clause 4 (*Creation of Security*) of the Deed of Guarantee and Debenture.

### **3 Creation of Security**

The New Chargor mortgages, charges and assigns to the Secured Party all its business, undertaking and assets on the terms of Clause 4 (*Creation of Security*) of the Deed of Guarantee and Debenture, provided that:

- 3.1** the estates and interests in land charged by way of legal mortgage shall be the land referred to in Schedule 1 (*Land*);
- 3.2** the Shares charged by way of fixed charge shall include the Shares referred to in Part 1 of Schedule 2 (*Shares*);
- 3.3** the Investments charged by way of fixed charge shall include the Investments referred to in Part 2 of Schedule 2 (*Investments*);
- 3.4** the Controlled Accounts charged by way of fixed charge shall include those set out in Schedule 3 (*Controlled Accounts*);
- 3.5** the Current Accounts charged by way of floating charge shall include those set out in Schedule 4 (*Current Accounts*);
- 3.6** the Assigned Agreements assigned or (if and to the extent that the assignment does not take effect as an assignment) charged by way of fixed charge shall include the Assigned Agreements set out in Schedule 5 (*Assigned Agreements*);
- 3.7** the Insurances assigned or (if and to the extent that the assignment does not take effect as an assignment) charged by way of fixed charge shall include the Insurances set out in Schedule 6 (*Insurances*);
- 3.8** the Trade Marks charged by way of fixed charge shall include the Trade Marks referred to in Part 1 of Schedule 7 (*Trade Marks*); and
- 3.9** the Trade Mark Applications charged by way of fixed charge shall include the Trade Mark Applications referred to in Part 2 of Schedule 7 (*Trade Mark Applications*).

### **4 Floating charge**

The New Chargor charges by way of floating charge all its present and future business, undertaking and assets.

### **5 Negative pledge**

The New Chargor shall not create or permit to subsist any Security over any Security Asset except as agreed in writing by the Secured Party.

### **6 [Consent of existing Chargors**

The Company (as Chargors' Agent) confirms that the existing Chargors agree to the terms of this Deed and agree that its execution will in no way prejudice or affect the

Security granted by each of them under (and covenants given by each of them in) the Deed of Guarantee and Debenture. ]

## **7 Notices**

The New Chargor confirms that its address details for notices in relation to Clause 21 (*Notices*) of the Deed of Guarantee and Debenture are as follows:

Address: [Address]

Attention: [ ]

Fax: [Fax number including international dialling code]

Email: [ ]

## **8 Law**

English law governs this Deed, its interpretation and any non-contractual obligations arising from or connected with it.

**Executed as a deed and delivered on the date appearing at the beginning of this Deed.**

**Schedule 1 – Land**

**Schedule 2 – Part 1 – Shares**

**Part 2 - Investments**

**Schedule 3 – Controlled Accounts**

**Schedule 4 – Current Accounts**

**Schedule 5 – Assigned Agreements**

**Schedule 6 – Insurances**

**Schedule 7 – Part 1 – Trade Marks**

**Part 2 – Trade Mark Applications**

**Signatories to Security Accession Deed<sup>51</sup>**

**New Chargor**

SIGNED as a deed by [●], Director, duly )  
authorised for and on behalf of [[●] )  
LIMITED/PLC] in the presence of: )

Witness's signature:  
Witness's name  
(in capitals):  
Witness's address:

**Company**

SIGNED as a deed by [●], Director, duly )  
authorised for and on behalf of [[●] )  
LIMITED/PLC] in the presence of: )

Witness's signature:  
Witness's name  
(in capitals):  
Witness's address:

**The Original Secured Party**

**[add execution block for trustees as appropriate]**

**PPF**

**Executed as a deed** and delivered  
when dated, by affixing the common  
seal of **THE BOARD OF THE PENSION  
PROTECTION FUND**  
in the presence of:

..... [Common seal]

signature

Authorised Signatory

<sup>51</sup> This execution blocks do not provide for delivery on the basis that it may not be appropriate for the deed in question to be delivered on execution. However, it is important that the timing of delivery is documented in other ways.

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**Signatories to the Deed of Guarantee and Debenture<sup>52</sup>**

**The Original Chargor[s]**

SIGNED as a deed by [•], Director, duly )  
authorised for and on behalf of [[•] )  
LIMITED/PLC] in the presence of: )

Witness's  
signature:  
Witness's name  
(in capitals):  
Witness's address:

**The Original Secured Party**

**[add execution block for trustees as appropriate]**

**PPF**

**Executed as a deed** and delivered  
when dated, by affixing the common  
seal of **THE BOARD OF THE PENSION  
PROTECTION FUND**  
in the presence of:

..... *[Common seal]*

signature Authorised  
Signatory

.....

[OR]

**Executed as a deed** for and on behalf  
of **THE BOARD OF THE PENSION  
PROTECTION FUND**

<sup>52</sup> This execution blocks do not provide for delivery on the basis that it may not be appropriate for the deed in question to be delivered on execution. However, it is important that the timing of delivery is documented in other ways.

The Common Seal of **THE BOARD OF** )  
**THE PENSION PROTECTION FUND** )  
was hereunto affixed electronically and )  
authenticated by: )

.....

Name:

.....

Title:

.....

Date:

.....