

DATED

2021

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**CHARGE OVER SHARES**

between

[ ]

and

[ ]

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This deed is dated

2021

## Parties

- (1) [ ] of \_\_\_\_\_ and [ ] of \_\_\_\_\_  
\_\_\_\_\_ (each a  
**Guarantor and together the Guarantors**)
- (2) [ ] incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (**Lender**).

## BACKGROUND

- (A) The Lender has agreed, pursuant to the Facility Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) Under this deed, the Guarantors provide security to the Lender for the loan facilities made available under the Facility Agreement.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

The following definitions apply in this deed:

**Borrower:** [ ] incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ].

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

**Event of Default:** has the meaning given to that expression in the Facility Agreement.

**Facility Agreement:** the facility agreement dated on or about the date of this deed between the Borrower and the Lender for the provision of the loan facilities secured by this deed.

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

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

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

**Related Rights:** any:

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

**Secured Assets:** all the assets, property and undertaking of the Guarantors which are, or are expressed to be, subject to any Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

**Secured Liabilities:** all present and future obligations and liabilities of the Guarantors and the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 20.3(b)), together with all interest (including, without limitation, default interest) accruing in respect of those obligation or liabilities.

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

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

**Security Period:** the period starting on the date of this deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**Shares:** the 100 shares of £1.00 each in the share capital of the Borrower.

## **1.2 Interpretation**

The provisions of clause 1.2 of the Facility Agreement apply to this deed as if they were set out in full in this deed, except that each reference in that clause to the Facility Agreement shall be read as a reference to this deed.

The liabilities and obligations of the Guarantors under this deed shall be joint and several.

## **1.3 Clawback**

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

## **1.4 Schedules**

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

## **2. Covenant to pay**

### **2.1 Covenant to pay**

The Guarantors shall, on demand, pay to the Lender and discharge the Secured Liabilities.

## **3. Grant of security**

### **3.1 Fixed charge**

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

- (a) all the Shares owned by it; and
- (b) all Related Rights.

## **4. Liability of the Guarantors**

### **4.1 Liability not discharged**

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

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

### **4.2 Immediate recourse**

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

## **5. Representations and warranties**

### **5.1 Times for making representations and warranties**

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

### **5.2 Shares**

- (a) The Shares are fully paid and are not subject to any option to purchase or similar rights.
- (b) The Shares represent the whole of the issued share capital of the Borrower and no person has any option, warrant or other similar right to subscribe for any shares of the Borrower.
- (c) The Guarantors are the sole legal and beneficial owner of the Shares.
- (d) The constitutional documents of the Borrower do not:
  - (i) restrict or inhibit any transfer of the Shares on creation or enforcement of the security constituted by this deed; or
  - (ii) contain any rights of pre-emption.
- (e) The Guarantors have complied with all notices relating to all or any of the Shares received by it pursuant to sections 790D and 790E of the Companies Act 2006.
- (f) No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Shares.

### **5.3 No Security**

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

### **5.4 No adverse claims**

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

### **5.5 No adverse covenants**

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

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

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

#### **5.7 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the bankruptcy of a Guarantors or otherwise.

#### **5.8 Enforceable security**

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

### **6. Covenants**

#### **6.1 Negative pledge and disposal restrictions**

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

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed;
- (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Secured Assets; or
- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

#### **6.2 Preservation of Secured Assets**

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

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

The Guarantors shall comply with the requirements of any law or regulation relating to or affecting the Secured Assets or the use of them or any part of them.

#### **6.4 Enforcement of rights**

The Guarantors shall use its best endeavours to enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Lender may require from time to time.

#### **6.5 Notice of misrepresentations and breaches**

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

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

## **6.6 Title to Secured Assets**

The Guarantors shall on the execution of this deed, or if later, upon it becoming entitled to the relevant Secured Asset, deposit with the Lender, or as the Lender may direct:

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

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

## **6.7 Nominations**

- (a) The Guarantors shall immediately terminate all nominations they may have made in respect of any Secured Asset and, pending such termination, procure that any person so nominated:
  - (i) does not exercise any rights in respect of any Secured Asset without the prior written approval of the Lender; and
  - (ii) immediately upon receipt by it, forward to the Lender all communications or other information received by it in respect of any Secured Asset for which it has been so nominated.
- (b) The Guarantors shall not at any time during the Security Period exercise the right to nominate any person other than the Lender to enjoy or exercise any right relating to any of the Secured Assets.

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

The Guarantors shall:

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

#### **6.9 Calls and other obligations**

- (a) Notwithstanding the security created by this deed, the Guarantors shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any part of the Secured Assets.
- (b) If the Guarantors fails to do so, the Lender may, at its discretion but without obligation, pay the calls, instalments or other payments on behalf of the Guarantors.
- (c) The Guarantors shall, immediately on request by the Lender, reimburse the Lender for any payment made by it under this clause 6.9.
- (d) The Guarantors shall comply with, and shall remain liable to perform, all of the other conditions and obligations assumed by it in respect of all or any part of the Secured Assets.

#### **6.10 Changes to rights**

- (a) The Guarantors shall not take, or allow the taking of, any action on its behalf which may result in the rights attaching to, or conferred by, all or any of the Secured Assets being altered.
- (b) The Guarantors shall not cause or permit:
  - (i) any of the Secured Assets to be consolidated, sub-divided or converted;
  - (ii) any further shares in the share capital of the Borrower to be issued.

#### **6.11 Compliance with requests for information**

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

#### **6.12 Information**

The Guarantors shall:

- (a) promptly following receipt, send to the Lender copies of any notice, circular, report, accounts and any other document received by it that relates to the Secured Assets; and
- (b) promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Guarantors' proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

## **7. Voting rights and dividends**

### **7.1 Voting rights and dividends - before enforcement**

- (a) Before the security constituted by this deed becomes enforceable, the Guarantors may exercise all voting and other rights and powers in respect of the Secured Assets or, if any of the same are exercisable by the Lender or any of its nominees, direct in writing the exercise of those voting and other rights and powers provided that:
  - (i) they shall not do so in any way that would breach any provision of the Facility Agreement or this deed or for any purpose inconsistent with the Facility Agreement or this deed; and
  - (ii) the exercise of, or failure to exercise, those voting rights or other rights and powers would not, in the Lender's opinion, have an adverse effect on the value of any of the Secured Assets or otherwise prejudice the Lender's security under this deed.
- (b) Before the security constituted by this deed becomes enforceable, the Guarantors may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Secured Assets and, if any are paid or payable to the Lender or any of its nominees, the Lender will hold all those dividends, interest and other monies received by it for the Guarantors and will pay them to the Guarantors promptly on request.
- (c) The Guarantors shall indemnify the Lender against any loss or liability incurred by the Lender (or its nominee) as a consequence of the Lender (or its nominee) acting in respect of the Secured Assets at the direction of the Guarantors.
- (d) The Lender shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Secured Assets

which the Lender considers prejudicial to, or impairing the value of, the security created by this deed.

## **7.2 Voting rights and dividends - following an Event of Default**

After the security constituted by this deed has become enforceable, the Lender may at its discretion (in the name of the Guarantors and without any further consent or authority from the Guarantors and irrespective of any direction given by the Guarantors):

- (a) exercise or refrain from exercising (or direct its nominee to exercise or refrain from exercising) all voting rights and any other powers or rights in respect of the Secured Assets, and the Guarantors shall comply, or procure compliance, with any directions the Lender may give, in its absolute discretion, in respect of the exercise of those voting and other rights and powers;
- (b) apply all dividends, interest or other monies paid or payable in respect of the Secured Assets and, if any such dividends, interest or other monies are received by or on behalf of the Guarantors, the Guarantors shall hold all such dividends, interest and other monies on trust for the Lender and shall immediately pay them to the Lender or as it may direct;
- (c) complete all instruments of transfer held by it in relation to the Secured Assets in favour of itself or such other person as it may select and have the Secured Assets transferred into its name or the name of its nominee or, as applicable, into an account in its own name or the name of its nominee; and
- (d) in addition to any other power created under this deed, exercise or refrain from exercising (or direct its nominee to exercise or refrain from exercising) all the powers and rights conferred on or exercisable by the legal or beneficial owner of the Secured Assets.

## **8. Powers of the Lender**

### **8.1 Power to remedy**

- (a) The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Guarantors of any of its obligations contained in this deed.
- (b) The Guarantors irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

### **8.2 Exercise of rights**

- (a) The rights of the Lender under clause 8.1 are without prejudice to any other rights of the Lender under this deed.
- (b) The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

### **8.3 No duties**

The Lender shall not, in respect of any of the Secured Assets, have any duty or incur any liability for:

- (a) ascertaining or taking action in respect of any calls, instalments, conversions, exchanges, maturities, tenders or other matters relating to any Secured Assets or the nature or sufficiency of any payment whether or not the Lender has or is deemed to have knowledge of such matters; or
- (b) taking any necessary steps to preserve rights against prior parties or any other rights relating to any of the Secured Assets.

#### **8.4 Conversion of currency**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 8.4) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.
- (b) Any such conversion shall be effected at the Lender's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this clause 8.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

#### **8.5 New accounts**

- (a) If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Guarantors in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Guarantors in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 8.5(a), then, unless the Lender gives express written notice to the contrary to the Guarantors, all payments made by the Guarantors to the Lender shall be treated as having been credited to a new account of the Guarantors and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

#### **8.6 Indulgence**

The Lender may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person not being a party to this deed (whether or not such person is jointly liable with the Guarantors) in respect of any of the

Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Guarantors for the Secured Liabilities.

## **9. When security becomes enforceable**

### **9.1 Event of Default**

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

### **9.2 Discretion**

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

## **10. Enforcement of security**

### **10.1 General**

- (a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.
- (b) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 9.1.
- (c) Section 103 of the LPA 1925 (restricting the power of sale) does not apply to the security constituted by this deed.

### **10.2 Redemption of prior Security**

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

### **10.3 Protection of third parties**

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

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

#### **10.4 Privileges**

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

#### **10.5 No liability as mortgagee in possession**

The Lender shall not be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

#### **10.6 Conclusive discharge to purchasers**

The receipt of the Lender shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets.

#### **10.7 Right of appropriation**

- (a) To the extent that:
  - (i) the Secured Assets constitute Financial Collateral; and
  - (ii) this deed and the obligations of the Guarantors under it constitute a Security Financial Collateral Arrangement,the Lender shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment and discharge of the Secured Liabilities in any order that the Lender, in its absolute discretion, may from time to time determine.
- (b) The value of any Secured Assets appropriated in accordance with this clause 10.7 shall be determined by any method that the Lender may select, including independent valuation.
- (c) The Guarantors agree that the method of valuation provided for in this clause 10.7 is commercially reasonable for the purposes of the Financial Collateral Regulations.

#### **10.8 Indemnity**

- (a) The Guarantors shall, promptly on demand, indemnify the Lender, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:
  - (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
  - (ii) taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the security constituted by this deed; or
  - (iii) any default or delay by the Guarantors in performing any of their obligations under this deed.
- (b) Any past or present employee or agent may enforce the terms of this clause 10.8 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **11. Further assurance**

### **11.1 Further assurance**

The Guarantors shall promptly, at its own expense, take whatever action the Lender may reasonably require for:

- (a) creating, perfecting or protecting the security created or intended to be created by this deed;
- (b) facilitating the realisation of any of the Secured Assets; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender in respect of any of the Secured Assets,

including, without limitation, the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

## **12. Power of attorney**

### **12.1 Appointment of attorneys**

By way of security, the Guarantors irrevocably appoints the Lender to be the attorney of the Guarantors and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

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

## **12.2 Ratification of acts of attorneys**

The Guarantors ratify and confirm, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 12.1.

## **13. Release**

Subject to clause 20.3, at the end of the Security Period, the Lender shall, at the request and cost of the Guarantors, take whatever action is necessary to release the Secured Assets from the security constituted by this deed.

## **14. Assignment and transfer**

### **14.1 Assignment by Lender**

- (a) At any time, without the consent of the Guarantors, the Lender may assign any of its rights or transfer any of its rights and obligations under this deed.
- (b) The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Guarantors, the Secured Assets and this deed that the Lender considers appropriate.

### **14.2 Assignment by Guarantors**

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

## **15. Set-off**

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

The Lender may at any time set off any liability of the Guarantors to the Lender against any liability of the Lender to the Guarantors, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by

the Lender of its rights under this clause 15 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

#### **15.2 No obligation to set off**

The Lender is not obliged to exercise its rights under clause 15.1. If it does exercise those rights it must promptly notify the Guarantors of the set-off that has been made.

#### **15.3 Exclusion of Guarantors' right of set-off**

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

### **16. Amendments, waivers and consents**

#### **16.1 Amendments**

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

#### **16.2 Waivers and consents**

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

#### **16.3 Rights and remedies**

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

### **17. Partial invalidity**

#### **17.1 Partial invalidity**

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

## **18. Counterparts**

### **18.1 Counterparts**

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

## **19. Third party rights**

### **19.1 Third party rights**

- (a) Except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.
- (b) Notwithstanding any term of this deed, the consent of any person who is not a party to this deed is not required to rescind or vary this deed at any time.

## **20. Further provisions**

### **20.1 Independent security**

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

### **20.2 Continuing security**

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

### **20.3 Discharge conditional**

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

- (a) the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- (b) the Lender may recover the value or amount of such security or payment from the Guarantors subsequently as if the release, discharge or settlement had not occurred.

#### **20.4 Certificates**

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

#### **20.5 Consolidation**

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

### **21. Notices**

#### **21.1 Delivery**

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

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:
  - (i) the Guarantors at:  
Their residential addresses  
Attention: [ ]
  - (ii) the Lender at:  
Its registered office  
Attention: [ ]

or to any other address or fax number as is notified in writing by one party to the other from time to time.

#### **21.2 Receipt by Guarantors**

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

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

A notice or other communication given as described in clause 21.2(a) or clause 21.2(c) on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### **21.3 Receipt by Lender**

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

### **21.4 Service of proceedings**

This clause 21 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **21.5 No notice by email**

A notice or other communication given under or in connection with this deed is not valid if sent by email.

## **22. Governing law and jurisdiction**

### **22.1 Governing law**

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

### **22.2 Jurisdiction**

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

### **22.3 Other service**

The Guarantors irrevocably consents to any process in any legal action or proceedings under clause 22.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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

Signed as deed by [ ], in the presence of:

.....

.....

Signature

Name:.....

Address:.....

Occupation:.....

Signed as deed by [ ], in the presence of:

.....

.....

Signature

Name:.....

Address:.....

Occupation:.....

Executed as deed by [ ] acting by a director, in the presence  
of:

.....

Director

.....

Signature

Name.....

Address.....

Occupation.....