

Dated 23 September 2022

Open Text Corporation

as the Charging Company

and

Barclays Bank PLC

as Collateral Agent

SHARE CHARGE

This Share Charge is subject to the Pari Passu Intercreditor Agreement

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THIS DEED is dated 23 September 2022

BETWEEN:

- (1) **OPEN TEXT CORPORATION** a corporation incorporated and existing under the laws of Canada, having its registered office at 275 Frank Tompa Drive, Waterloo, Ontario, Canada (the “**Charging Company**”) as the Charging Company; and
- (2) **BARCLAYS BANK PLC** as Collateral Agent.

RECITALS:

- (A) The Lenders agreed to make certain credit facilities available to Open Text Corporation on the terms and conditions contained in the Bridge Facilities Agreement.
- (B) Pursuant to Section 2.11(3)(a) of the Bridge Facilities Agreement , the Charging Company shall execute and deliver a share charge over its shares in Open Text UK Holding Limited in favour of the Collateral Agent as security for the payment and performance of the obligations and liabilities of any nature of the Loan Parties’ obligations under the Bridge Facilities Agreement and the other Credit Documents to which it is a party.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions:**

In this Deed:

“**Administrator**” means an administrator appointed under Schedule B1 of the Insolvency Act 1986;

“**Bridge Facilities Agreement**” means the facilities agreement dated 25 August 2022 (as amended, restated, supplemented and/or valued from time to time) among, *inter alios*, Open Text Corporation as borrower, various financial institutions named therein as Lenders, Barclays Bank PLC as sole Administrative Agent and Collateral Agent and Barclays Bank PLC, BMO Capital Markets Corp., RBC Capital Markets, Citicorp North America, Inc. and Citibank, N.A. as joint lead arrangers and bookrunners;

“**Business Day**” means any day of the year, other than a Saturday, Sunday or other day on which banks are required or authorized to close in London, United Kingdom, New York, New York or Toronto, Ontario.

“**Charged Assets**” means the assets of the Charging Companies from time to time which are the subject of any Security created or purported to be created by or pursuant to this Deed and, where the context permits, the proceeds of sale of such assets;

“**Charges**” means Security from time to time created or expressed to be created by or pursuant to this Deed;

“**Collateral Agent**” means Barclays Bank PLC as Collateral Agent for the Lenders under the Bridge Facilities Agreement and any successor or trustee appointed under the Bridge Facilities Agreement and shall, for the avoidance of doubt, include the Collateral Agent acting in its capacity as security trustee in relation to the Charges created hereunder pursuant to Clause 21 (*Security Trust*) and the other provisions of this Deed and the Bridge Facilities Agreement;

“**Delegate**” means a delegate or sub-delegate appointed, directly or indirectly, pursuant to Clause 8.3 (*Delegation*);

“**Finance Parties**” means each of the Lenders in its capacity as Lender, the Administrative Agent and the Collateral Agent;

“**Group**” means, at any time, Open Text Corporation and its Subsidiaries at that time;

“**Investment**” means;

- (a) any debenture, bond, share, stock, certificate of deposit or other security or investment now or in the future owned at law or in equity by the Charging Company in the issued share capital of Open Text UK Holding Limited; and
- (b) all dividends, interest and other moneys paid or payable in respect thereof and all rights, moneys and assets related to or accruing or offered or arising thereon from time to time, whether by way of redemption, conversion, exercise of option rights, substitution, exchange, preference, bonus or otherwise;

“**LPA**” means the Law of Property Act 1925;

“**Pari Passu Intercreditor Agreement**” means the intercreditor agreement dated 16 January 2014 between, *inter alios*, Barclays Bank PLC, as intercreditor agent, Barclays Bank PLC, as authorised representative under the 2014 Credit Agreement (as defined therein), Barclays Bank PLC as authorised representative under the 2011 Credit Agreement (as defined therein) relating to Open Text Corporation;

“**Party**” means a party to this Deed.

“**Receiver**” means an administrative receiver, receiver and manager or other receiver appointed in respect of the Charged Assets by the Collateral Agent pursuant to this Deed or otherwise and that term will include any appointee made under a joint and/or several appointment;

“**Release Date**” has the meaning ascribed thereto in Clause 15.7 (*Redemption*);

“**rights**” shall be construed as including rights, benefits, privileges, consents, authorities, discretions, remedies and powers and “**right**” shall be construed accordingly;

“**Secured Liabilities**” means all debts, liabilities and obligations of any nature of the Borrower or the Guarantors at any time and from time to time, present and future, direct or indirect, absolute and contingent, matured or not matured, liquidated or unliquidated, whether incurred solely or jointly and/or severally or in any other capacity whatsoever, due, owing or incurred under or in connection with the Bridge Facilities Agreement or any other Credit Document (or any of them) to the Finance Parties and/or any Receiver including, without limitation, under any amendments, restatements, replacements, renewals, extensions, or supplements and continuations, and whether as principal or surety, of any Credit Documents or in relation to any new or increased advances or utilisations or any extension of any date for payment or repayment thereunder whether originally owed to all or any of the Finance Parties and/or the Receiver or any other person or persons and whether as principal or surety, in any currency or currencies, including all interest accruing thereon (calculated in accordance with Clause 2.3 (*Interest*)), after as well as before judgment, and all costs, charges and expenses (to the extent payable by the relevant Loan Party pursuant to the terms of the Credit Documents) incurred in connection therewith, and “**Secured Liability**” shall be construed accordingly;

“**Security**” means any mortgage, charge (fixed or floating), pledge, lien, assignment by way of security or other security interest, or trust arrangement for the purpose of securing any obligation of any person or any other agreement or arrangement having a similar effect;

“**Term Loan Agreement**” means the term loan agreement dated 25 August 2022 among, *inter alios*, Open Text Corporation as borrower, the guarantors party thereto, the lenders named therein as lenders and Barclays Bank PLC as sole administrative agent and collateral agent and

“**Term Loan Security**” means:

- (a) the guarantee and debenture dated on or around the date of this Deed granted by Open Text UK Holding Limited in favour of Barclays Bank PLC in its capacity as collateral agent under the Term Loan Agreement; and
- (b) the share charge dated on or around the date of this Deed granted by Open Text Corporation in favour of Barclays Bank PLC in its capacity as collateral agent under the Term Loan Agreement in relation to its shareholding in Open Text UK Holding Limited.

“**this Deed**” means this charge as varied, amended or supplemented from time to time.

1.2 **Bridge Facilities Agreement:** Unless otherwise expressly defined in this Deed, words and expressions defined in the Bridge Facilities Agreement shall have the same meaning in this Deed.

1.3 **Construction:**

- (a) Unless a contrary indication appears, any reference in this Deed to:
- (i) an “**agreement**” includes any legally binding agreement, arrangement, concession, contract, deed or franchise (in each case whether oral or written);
 - (ii) an “**amendment**” includes any amendment, supplement, variation, waiver, novation, modification, replacement, restatement or re-enactment, and “**amend**” and “**amended**” is to be construed accordingly;
 - (iii) “**assets**” includes present and future property, revenues and rights of even kind;
 - (iv) the words “**including**” and “**in particular**” shall be construed as illustrative and not as limiting the generality of any preceding words;
 - (v) a “**person**” includes any person, firm, joint venture, company, corporation or other body corporate, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality), or two or more of the foregoing;
 - (vi) “**winding-up**” of any person includes its dissolution and/or termination and/or any equivalent or analogous proceedings under the law of any jurisdiction to which that person is subject or under which such proceedings are carried out;
 - (vii) a Party to this Deed includes a reference to that Party's successors and permitted assignees or permitted transferees but does not include that Party if it has ceased to be a Party to this Deed; and
 - (viii) “**with full title guarantee**” is to be construed as provided for in the Law of Property (Miscellaneous Provisions) Act 1994.
- (b) A reference to “**Secured Liabilities**” includes any liabilities which would be treated as such but for the liquidation or dissolution or similar event affecting a Loan Party.
- (c) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived or an Event of Default is “**continuing**” if it has not been waived.

1.4 **Other References:**

Unless a contrary intention appears, in this Deed:

- (a) references to Clauses, paragraphs and Schedules are references to, respectively, clauses or paragraphs of and schedules to this Deed, and references to this Deed include its Schedules;

- (b) a reference to any agreement, deed or instrument (including, without limitation, any of the Credit Documents) is to be construed as a reference to that agreement, deed or instrument as it may from time to time be amended, novated, supplemented, extended or restated provided that no such changes shall be made which are contrary to any prohibition on making such changes referred to in any of the Credit Documents;
- (c) a reference to any provision of law is a reference to that provision as amended, re-enacted or extended and includes subordinate legislation;
- (d) a reference to a time of day is a reference to London time unless otherwise specified;
- (e) the index to and the headings in this Deed are to be ignored in construing this Deed; and
- (f) words importing the plural shall include the singular and vice versa.

1.5 **Law of Property (Miscellaneous Provisions) Act 1994:** The obligations of the Charging Company under this Deed and any document entered into pursuant to this Deed shall be in addition to the covenants deemed to be included in this Deed or such other document by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

1.6 **Deed:** This document is to take effect as a deed notwithstanding that the Collateral Agent has executed it under hand only.

1.7 **Investments:** Any failure to state any Investments of the Charging Company on the date of this Deed will not affect any Charges over such assets.

1.8 **Covenants and Representations:**

- (a) Each covenant of the Charging Company contained in this Deed remains in force until the Release Date.
- (b) The representations and warranties set out in this Deed are made on the date of this Deed and are, unless otherwise stated herein, deemed to be repeated by the Charging Company on the date of each Accommodation with reference to the circumstances existing at the time of repetition.

2. **COVENANT TO PAY**

2.1 **Charging Company's Obligations Continuing:** The Charging Company's obligations under this Clause 2 and the Charges shall constitute and be continuing obligations and will extend to the ultimate balance of Secured Liabilities payable by the Charging Company and will remain in full force and effect until no Secured Liabilities remain outstanding, unsatisfied or capable of arising under the Credit Documents regardless of any intermediate discharge in whole or in part.

- 2.2 **Covenant to Pay:** The Charging Company covenants with the Collateral Agent (for the benefit of itself and the other Secured Creditors) that it will on demand pay or discharge the Secured Liabilities when they fall due in the manner provided for in the Credit Documents.
- 2.3 **Interest:** If the Charging Company fails to pay any Secured Liabilities on the date on which they fall due for payment by it, the Charging Company shall on demand pay to the Collateral Agent, interest on all such amounts from the due date until the date of payment (both before and after judgment) calculated and payable in accordance with the rate and in the manner specified in section 3.05(3) (*Default Interest*) of the Bridge Facilities Agreement. Any such interest not paid when due shall be compounded and bear interest calculated as provided above.
- 2.4 **Term Loan Security:** The Charging Company has granted the Term Loan Security in favour of Barclays Bank PLC. This Deed is subject to the provisions of the Pari Passu Intercreditor Agreement and the Charges hereby granted shall rank pari passu with the security created pursuant to the Term Loan Security. The parties agree that nothing contained in the Term Loan Security shall constitute a breach of this Deed.
- 2.5 **Other Security:** This security is to be in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other security (including, without limitation, the Term Loan Security) or other right which the Collateral Agent and/or any other Finance Party may now or after the date of this Deed hold for any of the Secured Liabilities, and this security may be enforced against the Charging Company without first having recourse to any other rights of the Collateral Agent.

3. SECURITY INTERESTS

- 3.1 **Creation of Charges:** All Charges are:
- (a) made in favour of the Collateral Agent (for the benefit of itself and the other Finance Parties);
 - (b) made with full title guarantee; and
 - (c) security for the payment, discharge and performance of all the Secured Liabilities.
- 3.2 **Investments:** The Charging Company charges by way of fixed charge all present and future Investments belonging to it or held by any nominee on its behalf.
- 3.3 **Retention of Documents:** The Collateral Agent shall be entitled to continue to retain any document delivered to it under this Deed relating to a Charged Asset until the Charges over such Charged Asset are released in accordance with this Deed. If, for any reason, it ceases to hold any such document before such time, it may by notice to the Charging Company require that the relevant document be redelivered to it and the Charging Company shall as soon as reasonably practicable comply with that requirement or procure that it is complied with. If and to the extent that any original document (of which there is only one copy)

required to be delivered under or in connection with this Deed in relation to a Charged Asset is or has been delivered to the Collateral Agent under or in connection with the terms of the Term Loan Security, the Charging Company shall be treated as having also delivered such document pursuant to and for the purposes of this Deed and having discharged any corresponding obligation under this Deed to deliver the relevant document.

3.4 **Security Trust:** The Collateral Agent holds the benefit of this Deed and the Security created by or pursuant to it on trust for and on behalf of the Finance Parties on the terms of the Credit Documents.

3.5 **Permitted Encumbrance:** The Collateral Agent acknowledges and agrees that this Deed is a “Security Document” for the purposes of the Bridge Facilities Agreement and a “Permitted Encumbrance” for the purposes of the Bridge Facilities Agreement, the Term Loan Security and this Deed.

4. **OTHER OBLIGATIONS**

4.1 **General Restrictions and Obligations:**

Except with the consent of the Collateral Agent, the Charging Company shall not:

- (a) create or permit to be outstanding any Security over any Charged Assets other than Permitted Encumbrances; or
- (b) unless required to do so by law, sell, transfer, assign, lease, hire out, grant, lend or otherwise dispose of any of the Charged Assets or the equity of redemption therein or permit any person to do any such thing except as permitted under the terms of the Bridge Facilities Agreement or permitted pursuant to any Permitted Encumbrance;

4.2 **Investments:**

- (a) **Deposit of Documents:** The Charging Company shall as soon as reasonably practicable and, in any event, within 15 Business Days from and including the date of this Deed (or such other date as agreed by the Collateral Agent) or otherwise, if different, on the date required in accordance with the Bridge Facilities Agreement or, if later, within 15 Business Days upon its becoming entitled to the relevant Investment, deliver to the Collateral Agent (except to the extent the Collateral Agent notifies the Charging Company to the contrary):
 - (i) all certificates and other documents of title or evidencing title in respect of each of the Charged Assets belonging to it;
 - (ii) all stock transfer forms and other documents which the Collateral Agent may reasonably request to vest title in the Charged Assets in the Collateral Agent or its nominees and in the case of such stock transfer form it shall be undated and shall have the name of the transferee left blank; and

- (iii) such declarations of trust in relation to any Investments in which the Charging Company has an interest but which are not held in its sole name as the Collateral Agent may reasonably require.

All documents required by this Clause 4.2(a) shall be in such form as the Collateral Agent shall reasonably require.

(b) **Voting Rights and Distributions:**

- (i) Until the Charges have become enforceable, the Charging Company shall be entitled to:
 - (A) receive and retain all dividends, distributions and other amounts paid on or derived from any shares or stock comprised in its Charged Assets; and
 - (B) exercise or direct the exercise of the voting rights and other rights and powers attached to its Charged Assets in any manner which it sees fit other than in a manner which:
 - (1) is materially prejudicial to the value of any of the Charged Assets or the interests of the Finance Parties in the Charges or in breach of any Credit Document; or
 - (2) would cause the Collateral Agent or its nominee to incur any cost or expense or render itself subject to any liability for which it has not previously been indemnified to its satisfaction); or
 - (3) may cause a variation of the rights attaching to the Charged Assets or the payment of a dividend in kind.
- (ii) After the Charges have become enforceable the Collateral Agent shall be entitled to:
 - (A) complete all instruments of transfer referred to in Clause 4.2(a) (*Deposit of Documents*) in relation to the Charged Assets on behalf of the Charging Company in favour of itself or such other person as it shall select and otherwise have any Charged Assets registered in its name or the name of its nominee;
 - (B) receive and retain all dividends, distributions and other moneys paid on the Charged Assets; and
 - (C) exercise or direct the exercise in the name of the Charging Company of the voting rights and any other rights and powers attached to any Charged Assets in such manner as it considers fit as if it were the

sole beneficial owner of the Charged Asset (including all powers given to trustees under Part II of the Trustee Act 2000).

- (iii) After the Charges have become enforceable the Charging Company shall:
 - (A) comply, or procure the compliance, with any directions of the Collateral Agent in respect of the exercise of any rights and powers exercisable in relation to such Charged Assets; and
 - (B) if the Collateral Agent so requests, promptly deliver to the Collateral Agent a form of proxy or other authority (in each case, in such form as the Collateral Agent shall reasonably require) appointing such person as the Collateral Agent shall select to be the proxy of the Charging Company or otherwise enabling such person as the Collateral Agent shall select to exercise such voting rights and other rights and powers as shall be specified (whether generally or specifically) in the relevant notice.

(c) **Collateral Agent's option to waive voting rights:**

- (i) The Collateral Agent may, in its absolute discretion and without any consent or authority from the Charging Company, by notice to the Charging Company (which notice shall be irrevocable) elect to give up the right to exercise (or refrain from exercising) all voting rights in respect of the Charged Assets conferred or to be conferred on the Collateral Agent pursuant to paragraph 4.2(b)(ii) above. The Finance Parties unconditionally waive any rights they may otherwise have to require the Collateral Agent not to make such election or to indemnify, compensate or otherwise make them good as a consequence of making such election.
- (ii) Once a notice has been issued by the Collateral Agent under sub-paragraph (i) of this paragraph 4.2(c) on and from the date of such notice the Collateral Agent shall cease to have the rights to exercise or refrain from exercising voting rights in respect of the Charged Assets conferred or to be conferred on it pursuant to paragraph 4.2(b)(ii) above or any other provision of this Deed and all such rights will be exercisable by the Charging Company. The Charging Company shall be entitled on and from the date of such notice, to exercise all voting rights in relation to the Charged Assets subject only to the restrictions contained in paragraph 4.2(b)(i) above.

- (d) **Information:** The Charging Company undertakes that it shall, promptly following receipt, deliver to the Collateral Agent a copy of every document received by it or its nominee in connection with or from any of the Investments comprising part of its Charged Assets or from the issuer of any of those Investments which relates to any matter which would reasonably be expected to prejudice the legality, validity or enforceability of the charges created under this Deed or the rights of the Finance

Parties hereunder, save to the extent that such documents have already been delivered to the Collateral Agent or its nominee pursuant to the equivalent provision of the Term Loan Security.

- (e) **Calls:**
 - (i) The Charging Company shall promptly pay all calls or other payments which may at any time become due in respect of any of its Charged Assets.
 - (ii) If the Charging Company fails to comply with paragraph (i) above the Collateral Agent may pay the calls or other payments on behalf of the Charging Company. The Charging Company must promptly on request from the Collateral Agent reimburse the Collateral Agent for any such payment.
- (f) **Offers:** If any Investments are offered for subscription or purchase by way of rights in respect of any of the Investments comprising part of the Charged Assets then:
 - (i) if those Investments are vested in the Charging Company or its nominee, the Charging Company shall forthwith notify the Collateral Agent of the offer and if the Collateral Agent so requires by notice to the Charging Company, the Charging Company shall accept or procure the acceptance of the offer and make any payments required in connection with such acceptance; or
 - (ii) if those Investments are vested in the Collateral Agent or its nominee and if the Collateral Agent so requires by notice to the Charging Company, the Charging Company shall immediately put the Collateral Agent in funds to enable it or its nominee to accept the offer and make any payments required in connection with such acceptance.
- (g) **PSC Register**
 - (i) In respect of any Investments, the Charging Company shall promptly:
 - (A) notify the Collateral Agent of its receipt of, any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 and provide to the Collateral Agent a copy of the same;
 - (B) respond to that notice within the prescribed timeframe; and
 - (C) provide to the Collateral Agent a copy of the response sent and/or received in respect of such notice.
 - (ii) For the purposes of withdrawing any restrictions notice or for any application to the court under Schedule 1B of the Companies Act 2006, each Charging Company shall provide such assistance as the Collateral Agent

may reasonably request in respect of any Charged Investments and provide the Collateral Agent with all information, documents and evidence that it may reasonably request and that are required in connection with the same.

4.3 **General Representations:** The Charging Company represents and warrants to the Collateral Agent on the date of this Deed that:

- (a) **Incorporation and Qualification.** It is duly incorporated or formed, continued or amalgamated as the case may be, and validly existing under the laws of the jurisdiction of its organisation and is duly qualified, licensed or registered to carry on business under the Laws applicable to it and where failure to be so qualified, licensed, registered, duly incorporated, formed or continued or amalgamated would have a Material Adverse Effect.
- (b) **Corporate Power.** It (i) has all requisite corporate or other power and authority to own and operate its properties and Charged Assets and to carry on the business carried on by it and any other business as now being conducted by it, except to the extent that any failure of the foregoing would not reasonably be expected to have a Material Adverse Effect; and (ii) has all requisite corporate or other power and authority to enter into and perform its obligations under this Deed.
- (c) **Conflict with Other Instruments.** The execution and delivery of this Deed and the performance of its obligations hereunder and compliance with the terms, conditions and provisions thereof, will not conflict with or result in a breach of any of the terms, conditions or provisions of (i) its constitutional documents, (ii) any applicable law, (iii) any material contractual restriction binding on or affecting it or its properties, or (iv) any judgment, injunction, determination or award which is binding on it.
- (d) **Authorisation, Governmental Approvals, etc.** The execution and delivery of this Deed and the performance of its obligations hereunder have been duly authorized by all necessary, corporate partnership or analogous action and no Authorisation is or was necessary therefor or to perfect the same under any applicable law.
- (e) **Execution and Binding Obligation.** This Deed has been duly executed and delivered by the Charging Company and constitutes the legal, valid and binding obligations of the Charging Company enforceable against it in accordance with its terms, subject only to any limitation under applicable laws relating to (i) bankruptcy, insolvency, reorganisation, moratorium or creditors' rights generally; and (ii) general equitable principles including the discretion that a court may exercise in the granting of equitable remedies.

4.4 **Representations regarding Investments:** The Charging Company represents and warrants to the Collateral Agent that:

- (a) it is the sole legal and beneficial owner of the Investments;

- (b) such Investments are free from all Security, options and other third party rights (except as created by this Deed) save for any Permitted Encumbrances ranking *pari passu* with the Security; and
- (c) its Investments are fully paid;
- (d) it has not issued and does not intend to issue any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 in respect of any Investments, except as required by law or to the extent otherwise disclosed to the Collateral Agent pursuant to Clause 4.2(g) (*PSC Register*); and
- (e) it has not received any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 in respect of any Charged Investments, except to the extent otherwise disclosed to the Collateral Agent pursuant to Clause 4.2(g) (*PSC Register*).

5. ENFORCEMENT

5.1 **Power of Sale:** The Collateral Agent and any Receiver may exercise the statutory power of sale and shall have all other rights, powers and protections conferred by the LPA on mortgagees and receivers appointed under the LPA (as varied and extended by this Deed) free from the restrictions imposed by section 103 of the LPA, which shall not apply to the Charges.

5.2 **Enforceability of Security:**

- (a) For the purposes of all powers implied by the LPA or any other applicable statute, the Secured Liabilities shall be deemed to have become due and payable upon the date of this Deed.
- (b) Save as provided in paragraph (c) below, the Charges given by the Charging Company shall become enforceable upon:
 - (i) the occurrence of an Event of Default which is continuing;
 - (ii) a step or proceeding being taken (including the giving of notice of an intention to appoint an administrator under paragraph 15 or 26 of Schedule B1 of the Insolvency Act 1986) for the appointment of an Administrator, liquidator or provisional liquidator or with a view to seeking a moratorium;
 - (iii) the insolvency, winding-up, administration, receivership or the commencement of any other insolvency procedure under the laws of any jurisdiction in relation to the Charging Company or the making of any arrangement or composition with or for the benefit of creditors by the Charging Company other than a solvent liquidation or reorganisation of the Charging Company, provided that this paragraph 5.2(b)(iii) shall not apply

to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement; or

- (iv) the Charging Company requesting the Collateral Agent to appoint a Receiver or Administrator or the Collateral Agent appointing a Receiver or Administrator,

and the power of sale conferred by section 101 of the LPA as extended by this Deed shall be exercisable in relation to the Charges and the Collateral Agent may take possession of any Charged Asset at any time after the Charges have become enforceable.

- (c) The Charges will not become enforceable solely as a result of:

- (i) the obtaining of a moratorium by the Charging Company; or
- (ii) anything done with a view to obtaining a moratorium;

under section 1A and Schedule A1 of the Insolvency Act 1986, as inserted by the Insolvency Act 2000, Section 1, Schedule 1, Paragraphs 1, 2 and 4.

- 5.3 **Assistance:** The Charging Company shall provide to the Collateral Agent and its representatives all assistance requested by the Collateral Agent to enforce all or any rights in or in respect of the Charged Assets.
- 5.4 **No Liability as mortgagee in possession:** Neither the Collateral Agent nor any Receiver will be liable, by reason of entering upon or into possession of a Charged Asset, to account as mortgagee in possession or for any loss on realisation or for any neglect, default or omission for which a mortgagee in possession might be liable.
- 5.5 **Privileges:** The Collateral Agent and each Receiver is entitled to all the rights, powers, privileges and immunities conferred by law (including the LPA) on mortgagees and receivers duly appointed under any law (including the LPA).
- 5.6 **Contingencies:** If the Charges are enforced at a time when no amount is due under the Credit Documents but at a time when amounts may or will become due, the Collateral Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account or such number of suspense accounts as it considers appropriate.
- 5.7 **Renewal of Deposits:** Without prejudice to any right of set-off any Finance Party may have under any other Credit Document or otherwise, if any time deposit matures on any account the Charging Company has with any Finance Party prior to the Release Date when:
 - (a) the Charges have become enforceable; and
 - (b) no Secured Liability is at that time due and payable,

that time deposit will automatically be renewed for any further period which that Finance Party considers appropriate.

6. APPOINTMENT AND RIGHTS OF RECEIVERS AND ADMINISTRATORS

6.1 Appointment of Receivers and Administrators:

- (a) If:
 - (i) so requested by the Charging Company;
 - (ii) the Charges given by the Charging Company shall have become enforceable; or
 - (iii) a petition is presented or application made for the appointment of an administrator in respect of the Charging Company or notice is given of the intention to appoint an Administrator,

the Collateral Agent may, subject to paragraph (e) below, by deed under seal or in writing under the hand of any officer of the Collateral Agent appoint any one or more persons to be Receiver of any Charged Assets of the Charging Company or, when permitted by law, may appoint an Administrator of the Charging Company pursuant to paragraph 14 of Schedule B1 of the Insolvency Act 1986.

- (b) The Collateral Agent may by writing under hand (except subject to any requirement for a court order under the Insolvency Act 1986 or any other applicable insolvency law) similarly remove any Receiver and may, whenever it thinks fit, appoint one or more persons to be a Receiver in the place of any Receiver whose appointment may for any reason have terminated.
- (c) If more than one person is appointed Receiver or Administrator of any assets, each Receiver or Administrator may act either jointly or severally unless the document of appointing him states otherwise.
- (d) Section 109(1) of the LPA does not apply to this Deed.
- (e) The Collateral Agent is not entitled to appoint a Receiver solely as a result to the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under the Insolvency Act 2000, except with the leave of the court.
- (f) The Collateral Agent is not entitled to appoint an administrative receiver if prohibited from doing so under section 72A of the Insolvency Act 1986.

- 6.2 **Scope of Appointment:** Any Receiver may be appointed either Receiver of all the Charged Assets (subject to any applicable restrictions under the Insolvency Act 1986) or Receiver of such part thereof as may be specified in his appointment and, in the latter case, the rights conferred on a Receiver by this Deed shall have effect as though every reference

therein to the Charged Assets were a reference to the part of such assets so specified or any part thereof.

6.3 **Rights of Receivers:** Any Receiver appointed pursuant to this Clause shall have all the rights, powers and discretions conferred on a receiver or, provided the Collateral Agent is entitled to appoint an administrative receiver under the Insolvency Act 1986, an administrative receiver under the Insolvency Act 1986, the LPA and any other applicable law. In addition, a Receiver shall be entitled (either in his own name or in the name of the Charging Company or any trustee or nominee for the Charging Company) and in such manner and upon such terms and conditions as the Receiver thinks fit:

- (a) **Take possession:** to take possession of the Charged Assets, to require directors to the Charging Company to call up unpaid share capital and to take action to enforce payment of unpaid calls;
- (b) **Deal with Charged Assets:** to sell, transfer, assign, exchange, hire out, lend or otherwise dispose of, convert into money or realise the Charged Assets either by public offer or auction, tender or private contract to any person in any manner and on any terms and for a consideration of any nature he thinks fit and generally to exercise, in the name of and on behalf of and at the cost of the Charging Company all the powers and rights of an absolute owner of the Charged Assets and do or omit to do anything which the Charging Company could do or omit to do;
- (c) **New Subsidiary:**
 - (i) to form or procure the formation of any new corporation, trust or partnership (a “**new vehicle**”);
 - (ii) to acquire any investment in such new vehicle;
 - (iii) to transfer or transfer any right in or grant any lease or licence in any Charged Assets to such new vehicle; and
 - (iv) to sell, transfer, assign, exchange or otherwise dispose of any such investments or deferred consideration or any rights attaching thereto;
- (d) **Borrowings:** to borrow or raise money either unsecured or on the security of the Charged Assets either in priority to the Charges or otherwise and on such terms as he thinks fit;
- (e) **Covenants and guarantees:** to enter into bonds, covenants, commitments, guarantees, indemnities or like matters and to make all requisite payments to effect, maintain or satisfy the same;
- (f) **Proceedings and Claims:** to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets;

- (g) **Compromise of Claims:** to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Charging Company or relating in any way to the Charged Assets;
- (h) **Redemption of Security:** to redeem any Security (whether or not having priority to the Charges) over the Charged Assets and to settle the accounts of encumbrancers;
- (i) **Employment:** to appoint and discharge officers, employees, agents and advisors and others for the purposes of this Deed and to discharge any person appointed by the Charging Company;
- (j) **Receipts:** to give a valid receipt for any moneys and execute any document which is necessary or desirable for realising any Charged Assets;
- (k) **Insolvency Act 1986:** to exercise all powers set out in Schedule 1 or Schedule B1 or (in the case of a Scottish Receiver) Schedule 2 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1, Schedule B1 or Schedule 2, as the case may be, after the date of this Deed; and
- (l) **Other Powers:** to do all such other acts and things the Receiver may consider necessary or expedient for preserving, improving or realising the Charged Assets or incidental to the exercise of any of the rights, powers and discretions conferred on the Receiver under or by virtue of this Deed or by law.

Each of the powers specified in each of the above paragraphs shall (except as otherwise provided) be distinct and shall not be in any way limited by reference to any other paragraph or the order in which they appear. If there is more than one Receiver holding office at the same time; each Receiver may (unless the document appointing him/her/them states otherwise) exercise all the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

6.4 **Agent of Charging Company:** Any Receiver shall be deemed to be the agent of the Charging Company for all purposes and, subject to any applicable law, the Charging Company alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him. No Finance Party shall incur any liability by reason of the appointment of a Receiver or for any other reason whatsoever.

6.5 **Remuneration:** The Collateral Agent may from time to time determine the remuneration of any Receiver and the maximum rate specified in section 109(6) of the LPA will not apply. The Collateral Agent may direct payment of such remuneration out of moneys accruing to the Receiver but the relevant Charging Company alone shall be liable for the payment of such remuneration and for all other costs, charges and expenses of the Receiver.

7. DISTRIBUTION

7.1 **Application:** All moneys from time to time received by the Collateral Agent or a Receiver shall, subject to the payment of any liabilities having priority to the Secured Liabilities and save insofar as otherwise determined by the Collateral Agent (as permitted by the Credit Documents), be applied in the following order:

- (a) in or toward the payment of or provision for all costs, losses, liabilities and expenses incurred by the Collateral Agent or any Receiver under or in connection with this Deed or the Receiver's appointment and the Receiver's remuneration due in connection with this Deed;
- (b) in or toward discharge of the Secured Liabilities in accordance with the Bridge Facilities Agreement and subject to the provisions of the Pari Passu Intercreditor Agreement; and
- (c) in payment of any surplus to the Charging Company or other person entitled thereto.

7.2 **Partial Application:** All moneys from time to time received by the Collateral Agent from the Charging Company or any person liable to pay the same or from any Receiver or otherwise on the realisation or enforcement of the Charges may, subject to Clause 7.1 (*Application*), be applied by the Collateral Agent either as a whole or in such proportion as the Collateral Agent shall think fit to any account or item of account or any transaction to which the same may be applicable.

8. COLLATERAL AGENT'S RIGHTS

8.1 **General Rights:** All or any of the rights which are conferred by this Deed (either expressly or impliedly) or by law upon a Receiver may be exercised after the Charges become enforceable by the Collateral Agent irrespective of whether the Collateral Agent shall have taken possession or appointed a Receiver of the Charged Assets.

8.2 **Redemption of Prior Security:**

- (a) The Collateral Agent may at any time redeem any Security having priority to any Charges or procure the transfer of that Security to itself and may settle the accounts of the prior encumbrancer and any accounts so settled shall, in the absence of manifest error, be conclusive and binding on the Charging Company.
- (b) The Charging Company shall on demand of the Collateral Agent pay to the Collateral Agent all the costs and expenses incurred by it in connection with any such redemption or transfer.
- (c) All the rights conferred by a prior charge upon the chargee or any receiver thereunder shall be exercisable by the Collateral Agent or a Receiver in like manner

as if the same were expressly included herein and the Collateral Agent shall be entitled to exercise all the rights of a receiver appointed thereunder.

8.3 Delegation:

- (a) The Collateral Agent or any Receiver may delegate in any manner to any person it may think fit any right, power or discretion exercisable by it under this Deed.
- (b) Any such delegation may be made upon such terms, consistent with the terms of the Credit Documents (including power to sub-delegate) as the Collateral Agent may think fit.
- (c) The Collateral Agent shall not be in any way liable to the Charging Company or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any Delegate save in the case of its gross negligence or wilful misconduct.

8.4 Continuation of Accounts: At any time following the commencement of the winding-up of the Charging Company or any Finance Party becoming aware of any subsequent Security affecting the Charged Assets, that Finance Party may open a new account with it in the name of the Charging Company. If that Finance Party does not open a new account, it shall nevertheless be treated as if it had done so at the time when the winding-up commenced or that Finance Party received, or was deemed to have received, notice of such subsequent Security. No payments made thereafter by the Charging Company to that Finance Party shall discharge or reduce the Secured Liabilities but such payments shall be credited, to the extent a new account has been opened, or be treated as having been credited to that account.

8.5 Custody: The Collateral Agent shall be entitled to keep all certificates and documents of title relating to the Charged Assets in safe custody at any of its branches or otherwise provide for their safe custody by third parties and shall not be responsible for any loss or damage occurring to or in respect thereof unless such loss or damage shall be caused by its own gross negligence or wilful default.

9. RESPONSIBILITIES OF COLLATERAL AGENT

9.1 No Obligation to Remain in Possession: If the Collateral Agent, any Receiver or any Delegate shall take possession of the Charged Assets, it may from time to time in its absolute discretion relinquish such possession.

9.2 Collateral Agent's Obligation to Account: The Collateral Agent shall not (either by reason of taking possession of the Charged Assets or for any other reason and whether as mortgagee in possession or on any other basis):

- (a) be liable to account to the Charging Company or any other person for anything except the Collateral Agent's own actual receipts which have not been distributed

or paid to the Charging Company or the persons entitled (or at the time of payment believed by the Collateral Agent to be entitled) thereto; or

- (b) be liable to the Charging Company or any other person for any costs, losses, liabilities or expenses arising from or connected with any realisation by the Collateral Agent of the Charged Assets or from any act, default, omission or misconduct of the Collateral Agent, its Delegates, officers, employees or agents in relation to the Charged Assets or from any exercise or non-exercise by the Collateral Agent of any right exercisable by it under the Credit Documents unless they shall be caused by the Collateral Agent's own gross negligence or wilful default.

9.3 **Receiver's and Delegate's Obligation to Account:** All the provisions of Clause 9.2 (*Collateral Agent's Obligation to Account*) shall apply in respect of the liability of any Receiver or Delegate as though every reference in Clause 9.2 (*Collateral Agent's Obligation to Account*) to the Collateral Agent were instead a reference to the Receiver or, as the case may be, Delegate.

10. FURTHER ASSURANCE

The Charging Company shall, at its own expense, promptly do all such acts and things as the Collateral Agent may require for:

- (a) creating, registering, perfecting, maintaining or protecting the Charges or any of the Charged Assets; or
- (b) facilitating the realisation of any Charge after the Charge has become enforceable or the exercise of any right, power or discretion in relation to any Charged Asset or Charge vested in the Collateral Agent, any Receiver or any Delegate,

including, without limitation, the execution (including by sealing) of any transfer, assignment, mortgage, charge or Security or any document required to enable the Collateral Agent or its nominee to obtain legal title to any Charged Assets in circumstances in which it is entitled to obtain such legal title under this Deed or the giving of any notice, order or direction.

11. POWER OF ATTORNEY

11.1 **Appointment:** The Charging Company by way of security irrevocably appoints the Collateral Agent, every Receiver and every Delegate severally to be its attorney:

- (a) to do all acts and things which the Charging Company is obliged to do under this Deed but has failed to do, including, without limitation, to fill in the name of the transferee and to date and complete any instrument of transfer in respect of any Charged Assets which has been executed in blank by the Charging Company and, in the case of registered Charged Assets, to procure the registration of the transferee

as the holder of the relevant Charged Assets in circumstances in which the Charged Assets are to be transferred under the terms of this Deed;

- (b) to transfer any interest in any Charged Assets in the circumstances in which such transfer may be required under this Deed including on an enforcement of the Charges over such Charged Assets;
- (c) in its name and on its behalf to exercise any right conferred on the Collateral Agent, any Receiver or any Delegate in relation to the Charged Assets or under this Deed or by law after such right has become exercisable; and
- (d) to register or renew registration of the existence of the Charges or the restrictions on dealing with the Charged Assets in any register in which a Charging Company is obliged (but has failed) to effect or maintain registration under the terms of this Deed.

11.2 **Ratification:** The Charging Company agrees to ratify and confirm whatever any such attorney shall do or purport to do in the exercise or purported exercise of the power of attorney granted by Clause 11.1 (*Appointment*). All moneys expended by any such attorney shall be deemed to be expenses incurred by the Collateral Agent under this Deed.

12. PROTECTION OF THIRD PARTIES

12.1 **No Duty to Enquire:** No person dealing with the Collateral Agent, any Receiver, Administrator or any Delegate shall be concerned to enquire:

- (a) whether any power which the Collateral Agent or any Receiver or Administrator is purporting to exercise or which is conferred by or pursuant to this Deed has become exercisable or is being properly exercised;
- (b) whether the Secured Liabilities have become payable or any amount remains outstanding under the Credit Documents; or
- (c) as to the application of any money paid to the Collateral Agent or any Receiver, Administrator or Delegate.

12.2 **Statutory Protection:** All the protection to purchasers contained in sections 104 and 107 of the LPA, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Collateral Agent, any Receiver or any Delegate.

12.3 **Tacking:** Each Finance Party shall comply with its obligations under the Credit Documents (including any obligation to make further advances).

13. **EXPENSES, STAMP DUTY AND INDEMNITIES**

- 13.1 **Expenses:** The Charging Company will on demand pay to and reimburse the Collateral Agent or any other Finance Party, Receiver or Delegate on the basis of a full indemnity, all costs and expenses (including legal fees and other out of pocket expenses and any VAT incurred by the Collateral Agent or any other Finance Party, Receiver or Delegate in connection with this Deed and will indemnify them against any failure to pay such amounts including any amounts arising from any actual or alleged breach of any law.
- 13.2 **Stamp Duties:** The Charging Company will on demand pay to and indemnify the Collateral Agent, each other Finance Party and any Receiver or Delegate from and against any liability for any stamp duty, stamp duty reserve, documentary or registration or similar Taxes or notarial fees (“**Relevant Costs**”) which are or may subsequently become payable in connection with the entry into, performance, execution or enforcement of this Deed or to which this Deed may otherwise be or become subject or give rise. The Charging Company will in addition on demand indemnify the Collateral Agent, each other Finance Party, any Receiver or Delegate, from and against any losses or liabilities which they incur as a result of any delay or omission by the Charging Company to so pay any such Relevant Costs.
- 13.3 **Taxes:** The provisions of section 8.02 (*Taxes*) of the Bridge Facilities Agreement shall apply to any payments owing to the Collateral Agent, any Receiver or any Delegate as if set out in full in this Deed.

14. **PAYMENTS**

- 14.1 **Demands:** Any demand for payment made by a Finance Party shall be valid and effective even if it contains no statement of the relevant Secured Liabilities or an inaccurate or incomplete statement of them.
- 14.2 **Certificates:** A certificate, determination, notification or opinion of the Collateral Agent or any other Finance Party as to the amount of the Secured Liabilities or any other matter connected with this Deed or the Charges shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.
- 14.3 **Payments:** All payments under or pursuant to this Deed (including damages in respect of breaches hereof) shall be made in accordance with the Bridge Facilities Agreement and subject to the provisions of the Pari Passu Intercreditor Agreement (or in such other manner as the Collateral Agent may agree and direct).

15. **AVOIDANCE OF SECURITY**

- 15.1 **Avoidance of Payments:** If:
- (a) any payment is made by the Charging Company; or

- (b) any discharge is given by a Finance Party (whether in respect of the obligations of any Charging Company or any Security for those obligations or otherwise); or
- (c) any settlement is made in whole or in part on the basis of any payment, security or other disposition, which is avoided or reduced as a result of insolvency or any similar event:
 - (i) the liability of the Charging Company shall continue as if the payment, discharge, settlement, avoidance or reduction had not occurred;
 - (ii) each Finance Party shall be entitled to recover the value or amount of that payment, discharge, security or settlement from each Charging Company, as if the payment, discharge, settlement, avoidance or reduction had not occurred together with any other cost, loss, expense or liability incurred by such Finance Party as a result of such avoidance or discharge; and
 - (iii) the Charging Company shall on demand indemnify the Collateral Agent against any funding or other cost, loss, liability or expense (including loss of profit) incurred by the Collateral Agent as a result of the Collateral Agent being required for any reason to refund all or part of any amount received by it in respect of any of the Secured Liabilities.

15.2 Waiver of Defences: As between the Charging Company and the Finance Parties but without affecting the obligations of any Borrower, the Charging Company shall be liable under Clause 2 (*Covenant to Pay*) as if it were the principal debtor and not merely a surety. Neither the Charges nor the obligations of the Charging Company under this Deed shall be discharged or affected by (and the Charging Company hereby irrevocably waives any defences it may now or hereafter acquire in any way relating to) any act, omission, matter or thing which, but for this Clause 15, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to the Charging Company or any Finance Party) including:

- (a) any time, waiver or consent given to, or any composition with, any Loan Party or any other person;
- (b) the release of any other Loan Party or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) any amendment (however fundamental) to or replacement of any Credit Document or any other Security, guarantee or document or any increase in the amount of the facilities provided thereunder;
- (d) the taking, perfection, enforcement, variation, compromise, exchange, renewal, release of, or the refusal or neglect to take, perfect or enforce, any rights against, or Security over, assets of, or any guarantee or undertaking given by, any Loan Party 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;

- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or constitution or status of an Loan Party, Finance Party or any other person;
- (f) the illegality, invalidity or unenforceability of any obligation of any person under, or expressed to arise under, any Credit Document or other document;
- (g) the insolvency, winding-up, administration, receivership or the commencement of any other insolvency procedure under the laws of any jurisdiction in relation to any Loan Party, any Finance Party or any other person or the making of any arrangement or composition with or for the benefit of creditors by any other Loan Party, any Finance Party or any other person;
- (h) any Finance Party ceasing or refraining from giving credit or making loans or advances to or otherwise dealing with any Loan Party or any other person (but without prejudice to any rights which the Charging Company may have against a Finance Party by reason of default by that Finance Party under the Credit Documents);
- (i) the failure of any Finance Party to disclose to the Charging Company any information relating to the business, assets, financial condition or prospects of any other Loan Party now or hereafter known to such Finance Party (the Charging Company waiving any duty on the part of the Finance Parties to disclose such information);
- (j) the existence of any claim, set-off or other right which the Charging Company may at any time have against the Collateral Agent or any other person; or
- (k) the making or absence of any demand for payment of any Secured Liabilities or other obligations on the Charging Company or any other person, whether by the Collateral Agent or any other person.

15.3 **Loan Parties:** It is specifically acknowledged and agreed that the Finance Parties may from time to time make any arrangement, compromise, waiver or other dealing with the Charging Company in relation to any guarantee or other obligations under the Credit Documents which such Finance Parties may think fit and no such arrangement, compromise, waiver or other dealing shall exonerate or discharge any other Loan Party from its obligations under the Credit Documents.

15.4 **Appropriations:** Until all Secured Liabilities have been irrevocably and unconditionally paid and discharged in full, each Finance Party (or any trustee or agent on its behalf) may without affecting the liability of the Charging Company under this Deed:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Charging Company shall not be entitled to the benefit of the same;
- (b) to the extent that any of the Charged Assets constitute “financial collateral” and this Deed and the obligations of the Charging Company hereunder constitute a “security financial collateral arrangement” (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2 Regulations 2003 (SI 2003 No. 3226)) as amended and supplemented by the Financial Collateral Arrangements (Amendment) Regulations 2010 (SI 2010/2993) (the “**Regulations**”)), the Collateral Agent shall have the right following enforcement of this Deed to appropriate all or any part of such financial collateral in or towards discharge of the Secured Liabilities. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be, in the case of Investments, the market price of such Investments determined by the Collateral Agent by reference to a public index or by such other process as the Collateral Agent may select, including independent valuation. In each case, the parties agree that the method of valuation provided for in the Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations; and
- (c) hold in an interest-bearing suspense account any moneys received from the Charging Company or on account of the Charging Company’s liability under this Deed.

15.5 **Exercise of Charging Company’s Rights:** Until all Secured Liabilities have been irrevocably and unconditionally paid and discharged in full or the Collateral Agent otherwise directs:

- (a) the Charging Company will not exercise any rights which it may have (by reason of performance of any of its obligations under the Credit Documents):
 - (i) to be indemnified by any other Loan Party; or
 - (ii) to claim any contribution or payment from any other Charging Company or surety of any Loan Party’s obligations under the Credit Documents; or
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Finance Parties under the Credit Documents or of any other Security or guarantee taken pursuant to, or in connection with, the Credit Documents by any Finance Party; or

- (iv) to claim, rank, prove or vote as creditor of any Loan Party or its estate in competition with any Finance Party (or any trustee or agent on its behalf); or
 - (v) to claim or take the benefit of any payment or distribution for or on account of any Loan Party or to exercise any right of set-off against any Loan Party; and
- (b) the Charging Company shall hold any amount received or recovered by it as a result of any exercise of any such right on trust for the Finance Parties and shall pay an amount equal to the amount received or recovered forthwith to the Collateral Agent.

Provided that no rights referred to in paragraph (a) above shall arise or exist, which if they did exist would constitute a right to be indemnified by, to prove in the winding-up of, to take the benefit of any Security or guarantee granted by, or to exercise any rights of contribution against, any member of the Group are charged to the Collateral Agent pursuant to this Deed and the Charging Company waives all its entitlement and rights to or in respect of any such rights.

15.6 **Consolidation:** Section 93 of the LPA (restricting the right of consolidation of the Charges with any other Security) shall not apply to the Charges and the Collateral Agent may consolidate all or any of the Charges with any other Security to the extent lawful.

15.7 **Redemption:**

- (a) The Collateral Agent shall on the date on which it is satisfied (acting reasonably) that all the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and no further Secured Liabilities are capable of becoming, outstanding (the “**Release Date**”) or following receipt of a notice under paragraph (b) below, take all reasonable steps to release and/or re-assign the Charged Assets from the Charges.
- (b) If the Charging Company is entitled to under the terms of the Facilities Agreement and wishes to, require the release of the Charges, it shall give the Collateral Agent not less than 7 Business Days’ prior notice in writing requesting release of the Charges.
- (c) All documents which are necessary in connection with the redemption of the Charges or the transfer of the Charged Assets back to the Charging Company shall be in such form as the Collateral Agent shall reasonably require.

15.8 **Security Retention:** No amount paid to a Finance Party under a Credit Document will be considered irrevocably or unconditionally discharged for any purpose of this Deed if the Collateral Agent, acting reasonably, considers that such amount is capable of being avoided or otherwise set aside under any laws relating to insolvency or otherwise and the Collateral Agent shall be entitled to retain the Charges securing any such amount in such circumstances provided that the maximum length of time pursuant to which the Collateral

Agent may retain this Deed on the grounds that an amount is capable of being avoided or otherwise set aside under any laws relating to insolvency is the maximum length of time set down by law during which the payment may be avoided plus one month.

- 15.9 **Redemption of Investments:** On any release of Investments hereby charged or any part of them from this Deed at a time when the Charges are enforceable, the Collateral Agent shall not be bound to return or re-transfer to the Charging Company the identical Investments deposited with it or transferred to it or its nominee or nominees but the Charging Company will accept Investments of the same class and denomination or other Investments (as the case may be).
- 15.10 **Additional Security:** The security constituted by this Deed is in addition to and is not in any way prejudiced by any other guarantee or security subsequently held by any other Finance Party.

16. **RIGHTS, AMENDMENTS, WAIVERS AND CONSENTS**

- 16.1 **Failure to Exercise Rights:** No failure by the Collateral Agent to exercise or delay in the exercise of any right or remedy under this Deed will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.
- 16.2 **Cumulative Rights:** The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- 16.3 **Grant of Waivers:** A waiver given or consent granted by the Collateral Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

17. **PARTIAL INVALIDITY**

If at any time any provision of this Deed is or becomes invalid, illegal or unenforceable in any respect (or any of the Charges intended to be created by or pursuant to this Deed is ineffective) in any jurisdiction, that shall not affect the legality, validity or enforceability of:

- (a) the remaining provisions or the effectiveness of any of the remaining Charges in that jurisdiction; or
- (b) that or any other provision or the effectiveness of such Charges in any other jurisdiction.

18. **SET-OFF**

- 18.1 **Set-Off:** After an Event of Default has occurred and for so long as it is continuing the Collateral Agent and each other Finance Party may (without notice to the Charging Company) set off or otherwise apply any deposits at any time held and any other

indebtedness matured or unmatured, owing by it to or for the account of the Charging Company against any indebtedness, matured or unmatured, owing to the Collateral Agent or such other Finance Party by the Charging Company under the Credit Documents, regardless of the place of payment, booking branch or currency of either obligation or the terms of any deposit held by any Finance Party.

18.2 **Currency Conversion:** A Finance Party may exercise such rights notwithstanding that the obligations concerned may be expressed in different currencies and each Finance Party is authorised to convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

18.3 **Set-Off Rights Cumulative:** This Clause 18 (*Set-Off*) shall be in addition to and without prejudice to any rights of set-off or any other rights or remedies which a Finance Party may have.

19. COMMUNICATIONS

19.1 **Mode of Service:** Any communication to be made under or in connection with this Deed:

(a) may, unless otherwise stated, be made in person or by letter or facsimile or, in the circumstances permitted under Article 13 of the Bridge Facilities Agreement, email; and

(b) shall be made in writing.

19.2 **Addresses:** The address and facsimile number and the person or department (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 shown immediately after its name on the signature page of this Deed or any substitute address, facsimile number, person or department as the relevant Charging Company may notify the Collateral Agent (or, in the case of a change made by the Collateral Agent, the Collateral Agent to the other parties) by not less than five Business Days' notice.

19.3 **Delivery:**

(a) Subject to Clause 19.3(c), any communication or document made or delivered by one person to another under or in connection with this Deed will only be effectively made or delivered:

(i) if sent by fax, when first received in legible form; or

(ii) if sent by post, three Business Days (or ten Business Days in the case of airmail) after being deposited in the post, postage prepaid, in a correctly addressed envelope; or

(iii) if delivered in person, at the time of delivery; or

(iv) if sent by electronic communication, when first received,

and, if a particular department or officer is specified as part of its address details provided under Clause 19.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document given under paragraph (a) which is received after 5 p.m. in the place of receipt or on a day which is not a Business Day shall be deemed to have been received at 9 a.m. on the following Business Day
- (c) Any communication or document to be made or delivered to the Collateral Agent under or in connection with this Deed will only be effectively made or delivered when actually received by the Collateral Agent and then only if it is expressly marked for the attention of the department or officer identified with the Collateral Agent's signature below (or any substitute department or officer as the Collateral Agent shall specify for this purpose).

20. **THIRD PARTIES**

Save as expressly stated 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 to enjoy the benefit of any term of this Deed.

21. **SECURITY TRUST**

The Collateral Agent shall act as security trustee for the purposes of this Deed and shall hold the Charges hereby created on trust for the Finance Parties on the terms contained in the Bridge Facilities Agreement and this Deed.

22. **GOVERNING LAW AND SUBMISSION TO JURISDICTION**

22.1 **Governing Law:** This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

22.2 **Jurisdiction:**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute relating to the existence, validity or termination of this Deed (or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- (b) 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.
- (c) Notwithstanding paragraphs (a) and (b) above, no Secured Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Creditors may take concurrent proceedings in any number of jurisdictions.

22.3 **Service of process:** Without prejudice to any other mode of service allowed under any relevant law, the Charging Company:

- (a) irrevocably appoints Open Text UK Holding Limited as its agent for service of documents starting proceedings before the English courts in connection with this Deed or any documents required to be served in relation to such proceedings;
- (b) agrees that failure by a process agent to notify the Charging Company of any process will not invalidate the proceedings concerned; and
- (c) agrees that if the entity nominated by it in paragraph (a) is unable to act as its agent for service of process for any reason, it will immediately appoint another process agent on the same terms or other terms acceptable to the Collateral Agent, failing which the Collateral Agent may select a replacement process agent for such purpose.

23. COUNTERPARTS

23.1 **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 the Deed.

23.2 **Non-signatories:** Failure by one or more Parties (“**Non-Signatories**”) to execute this Deed on the date hereof will not invalidate the provisions of this Deed as between the other parties who do execute this Deed. Such Non-Signatories may execute this Deed (or a counterpart thereof) on a subsequent date and will thereupon become bound by its provisions.

24. ASSIGNMENT

24.1 **Assignment:** This Deed is binding on the Charging Company and its successors and assigns, and enures to the benefit of the Collateral Agent, each other Finance Party and their respective successors (by operation of law or pursuant to the Facilities Agreement) and assigns permitted pursuant to the Bridge Facilities Agreement, in their respective capacities as Collateral Agent and Lenders. This Deed may be assigned by the Collateral Agent to another person in accordance with the terms of the Bridge Facilities Agreement and, in such event, such person will be entitled to all of the rights and remedies of the Collateral Agent as set forth in this Deed or otherwise. In any action brought by such an assignee to enforce any such right or remedy, the Charging Company will not assert against the assignee any claim or defence which the Charging Company now has or may have against the Collateral Agent or any of the other Finance Parties. The Charging Company may not assign, transfer or delegate any of its rights or obligations under this Deed without the prior written consent of the Collateral Agent.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be duly executed as a deed but it shall not be treated as being delivered until the date first written above.

SIGNATORIES

EXECUTED AS A DEED by **Open Text Corporation**, a company incorporated under the laws of Canada acting by:

, being a person who, in accordance with the laws of Canada, is acting under the authority of the company



Authorised signatory

Notice Details

Address: 

Attention: Open Text Corporation

EXECUTED by **Barclays Bank PLC**
the Collateral Agent
acting by [REDACTED]

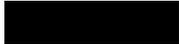


Notice Details

Address: Barclays Bank PLC, as Collateral Agent



Attention:



Email:



Phone:



Group Email:

