

**Dated 23 September 2022**

**OPEN TEXT UK HOLDING LIMITED**

**as a Charging Company**

and

**BARCLAYS BANK PLC**

as Collateral Agent

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**GUARANTEE AND DEBENTURE**

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*This Guarantee and Debenture is subject to the Pari Passu Intercreditor Agreement*

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**THIS DEED** is dated 23 September 2022

**BETWEEN:**

- (1) **OPEN TEXT UK HOLDING LIMITED**, a company incorporated under the laws of England and Wales and registered with company number 14311122, as a Charging Company and a Guarantor ("**Open Text UK**"); 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; and
- (B) Pursuant to Section 2.11(3)(a) (*Security*) of the Bridge Facilities Agreement, Open Text UK shall execute and deliver this Deed in favour of the Collateral Agent as security for the payment and performance 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:

"**Account Bank**" means any bank or financial institution with which a Charging Company maintains a bank account;

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

"**Bank Balances**" means the amounts now or subsequently standing to the credit of any account (including the Charged Accounts) which each Charging Company has, or has an interest in, with any person (including any interest and other sums accruing thereon) and the debts represented thereby;

"**Book Debts**" means all book and other debts and monetary claims now or subsequently due or owing to each Charging Company, the proceeds of the same and the benefit of all Investments, Security Interests and guarantees or other rights of any nature now or subsequently enjoyed or held by it in relation thereto (other than Bank Balances);

"**Bridge Facilities Agreement**" means the facilities agreement dated 25 August 2022 (as amended, restated, supplemented and/or valued from time to time) between, *inter alios*, Open Text Corporation as borrower, the 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.

**"Cash Collateral Account"** means any cash collateral account of a Group Company with the Collateral Agent that is subject to a first priority forced security interest in favour of the Collateral Agent (in form and substance satisfactory to the Collateral Agent) and is designated as a Cash Collateral Account by the relevant Charging Company;

**"Charged Accounts"** means any Collection Account, any Cash Collateral Account, and any other present or future account which a Charging Company has, or has any interest in, with any person and includes any replacement substitute or additional account from time to time (including any renewal or re-designation of such accounts), in each case, together with the debt or debts represented thereby;

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

**"Charged Investments"** means Investments forming part of the Charged Assets;

**"Charged Property"** means all freehold and leasehold property forming part of the Charged Assets;

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

**"Charging Companies"** means Open Text UK and any Group Company which accedes to this Deed pursuant to Clause 25 (*Assignment and New Charging Companies*) and each a **"Charging Company"**;

**"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 22 (*Security Trust*) and the other provisions of this Deed and the Bridge Facilities Agreement;

**"Collection Account"** means any account (other than a Cash Collateral Account) maintained by each Charging Company as an account into which moneys are to be paid pursuant to Clause 5.3(c) (*Book Debts*);

**"Delegate"** means a delegate or sub-delegate appointed, directly or indirectly, pursuant to Clause 9.3 (*Delegation*);

**"Fixtures"** means trade and other fixtures and fittings and fixed plant, machinery and other apparatus;

"**Group**" means, at any time, Open Text Corporation and its Subsidiaries at that time and "**Group Company**" means any one of them;

"**Guarantee**" means the guarantee and indemnity set out in Clause 2 (*Guarantee and Covenant to Pay*);

"**Intellectual Property**" means (i) all patents, trademarks (other than any "intent-to-use" trademark applications in the United States to the extent that, and solely during the period in which, the Security Interest therein would impair the validity or enforceability, or result in the cancellation, of such "intent-to-use" trademark applications under applicable federal law), service marks, brand and business names, copyrights (including any rights in computer software), designs, design rights, registered designs, all logos, inventions (including any software and rights in the nature of copyright), topography and similar rights, database rights, domain name rights, all trade secrets, know-how and all other intellectual property rights, in each case, owned by each Charging Company throughout the world ("**Owned Intellectual Property**") and (ii) any interests (including by way of licence) of each Charging Company in any of the foregoing, whether or not registered and including all applications for the same and any associated goodwill and all rights to bring proceedings for infringement thereof and all rights under any agreements entered into by or for the benefit of each Charging Company relating to the use or exploitation of any such rights;

"**Intercompany Loan Agreements**" means the agreements entered into or to be entered into (in a form acceptable to the Collateral Agent (acting reasonably)) between various Group Companies pursuant to which funds are advanced to enable those Group Companies to make payments under the Credit Documents and all other loans between Group Companies in respect of which a Charging Company is the Lender;

"**Investment**" means any debenture, bond, share, stock, warrant, coupon, certificate of deposit or other security or investment (including interests in investment schemes and cash equivalent investments) now or in the future owned at law or in equity by each Charging Company and 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;

"**Material Agreements**" shall have the meaning given to the term in the Bridge Facilities Agreement.

"**Notice of Document Assignment**" means a notice of assignment in the form set out in Part 1 (*Form of Notice of Assignment of Relevant Document*) of Schedule 6;

"**Notice of Insurance Assignment**" means a notice of assignment in the form set out in Part 3 (*Form of Notice of Assignment to Insurers*) of Schedule 6;

"**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.

"**Permitted Encumbrances**" shall have the meaning given to that term in the Bridge Facilities Agreement;

"**Personal Chattels**" means plant, machinery, equipment, goods and other personal chattels (including all spare parts, replacements, modifications and additions) but not Fixtures on Property charged under Clause 3.2(b) (*Property*) or stock in trade or work in progress;

"**Planning Acts**" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004) and any re-enactment, variation or modification of any of them and any orders, regulations or permissions made, issued or granted under or by virtue of the foregoing Acts or any of them;

"**Property**" means freehold and leasehold property in England or Wales and other real estate anywhere in the world (including, without limitation, the Scheduled Property), but excluding in each case Short Leasehold Property, and any reference to any charges over Property or any estate or interest therein includes a charge over:

- (a) the benefit of any covenant for title given or entered into by any predecessor in title of a Charging Company in respect of that Property and any moneys paid or payable in respect of those covenants;
- (b) all rights, easements and privileges from time to time attached or appurtenant to the Property;
- (c) all buildings and Fixtures situated on or forming part of the Property; and
- (d) the proceeds of sale of all or any part thereof,

(the assets referred to in paragraphs (a), (b), (c) and (d) above being "**Related Property Rights**");

"**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;

"**Registered Intellectual Property**" means any Owned Intellectual Property in respect of which ownership or title are registered, recorded or noted with any Governmental Authority pursuant to Law;

"**Release Date**" has the meaning ascribed thereto in Clause 16.7 (*Redemption*);

**"Relevant Account"** means a Charged Account which is not a Cash Collateral Account (including, without limitation, the accounts listed in Schedule 2 (*Details of Relevant Accounts*)), or any account which is designated as such by the Collateral Agent and the relevant Charging Company;

**"Relevant Documents"** means the Intercompany Loan Agreements, the Hedging Agreements and any Material Agreement which is designated to be a Relevant Document by the Collateral Agent under Clause 5.8(e) (*Relevant Documents*);

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

**"Scheduled Intellectual Property"** means the material Registered Intellectual Property described in Schedule 8 (*Details of the Scheduled Intellectual Property*);

**"Scheduled Investments"** means the Investments described in Schedule 1 (*Details of the Scheduled Investments*);

**"Scheduled Property"** means the Property described in Schedule 3 (*Details of the Scheduled Property*);

**"Secured Creditors"** means the Administrative Agent, the Collateral Agent and each of the Lenders in its capacity as Lender;

**"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 Secured Creditors 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 Secured Creditors 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 2.5 (*Interest*)), after as well as before judgment, incurred in connection therewith, and **"Secured Liability"** shall be construed accordingly;

**"Security Accession Deed"** means a deed of accession to this Deed in such form as the Collateral Agent and Open Text Corporation (acting on behalf of the Group Companies) may agree;

**"Security Interest"** means any hypothec, mortgage, pledge, security interest, lien, charge (fixed or floating), assignment by way of security, or trust arrangement for the purposes of creating security, or any encumbrance of any kind that in substance secures payment or performance of an obligation of a person and includes the interest of a vendor or lessor under any conditional sale agreement, capitalised lease or other title retention agreement;



**"Short Leasehold Property"** means all leasehold property for a term of less than 10 years unexpired at the date of acquisition of the lease (whether registered or unregistered) owned by any Charging Company, save where the continuing occupation of the relevant land, or as the case may be, property is required in order to carry on the business and operations of that Charging Company;

**"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 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.

**"this Deed"** means this guarantee and debenture 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, instrument 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) a **"consent"** includes an authorisation, permit, approval, consent, exemption, licence, order, filing, registration, recording, notarisation, permission or waiver;
  - (iv) a **"disposal"** includes any sale, transfer, grant, lease, licence or other disposal, whether voluntary or involuntary and **"dispose"** will be construed accordingly;
  - (v) **"assets"** includes present and future property, revenues and rights of every kind;

- (vi) the words "**including**" and "**in particular**" shall be construed as illustrative and not as limiting the generality of any preceding words;
  - (vii) 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;
  - (viii) "**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;
  - (ix) 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
  - (x) "**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 1989:** The terms of the documents under which the Secured Liabilities arise and of any side letters relating thereto between each Charging Company and any of the Secured Creditors are incorporated in this Deed to the extent required for any purported disposition of the Charged Assets contained in this Deed to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 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 **Law of Property (Miscellaneous Provisions) Act 1994:** The limitations set out in Section 6 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to the covenants implied by virtue of Sections 2(1)(a), 3 and 4 of that Act on the part of a Charging Company by its execution and delivery of this Deed. It shall be implied in respect of Clause 3 (*Security Interests*) that the Charging Company is disposing of the Charged Assets free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment). The covenant in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall apply to the obligations set out in Clause 11 (*Further Assurance*).
- 1.8 **Schedules:** Any failure to include any Investments, Property or Registered Intellectual Property of any Charging Company on the date of this Deed in any of Schedule 1 (*Details of the Scheduled Investments*), Schedule 3 (*Details of the Scheduled Property*) or Schedule 8 (*Details of the Scheduled Intellectual Property*), as the case may be, will not affect any Charges over such assets.
- 1.9 **Covenants and Representations:**
- (a) Each covenant of a 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 a Charging Company on the date of each Accommodation with reference to the circumstances existing at the time of repetition.
- 2. GUARANTEE AND COVENANT TO PAY**
- 2.1 **Guarantee:** Each Charging Company hereby, jointly and severally, and unconditionally and irrevocably:
- (a) guarantees to the Collateral Agent (for the benefit of itself and each other Finance Party) as principal obligor the punctual performance by the Borrower of all Secured Liabilities due, owing or incurred by the Borrower and the Guarantors;
- (b) undertakes with the Secured Creditors that if the Borrower or the Guarantors fail to pay any Secured Liabilities when due from the Borrower or the

Guarantors, it will immediately on demand pay that amount as if it were the principal obligor; and

- (c) indemnifies each Finance Party forthwith on demand against any loss, damage, cost or liability incurred by that Finance Party arising as a result of any Secured Liability being or becoming unenforceable, invalid or illegal. The amount of the loss, damage, cost or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover.

2.2 **Charging Company's Obligations Continuing:** Each 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 such 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.

2.3 **Immediate Rights:** This Deed and each Charging Company's obligations under this Deed are in addition to, and not to be prejudiced by or to be merged with, any other guarantee, indemnity or security at any time existing in favour of any person. Each Charging Company waives any right it may have to require any Finance Party (or any trustee or agent on its behalf) to make demand of, proceed against or enforce any other rights or security or claim payment from any person before claiming against it save for the demand upon it in the circumstances and as provided for in Clause 2.1 (*Guarantee*).

2.4 **Covenant to Pay:** Each 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.

2.5 **Interest:** If a Charging Company fails to pay any Secured Liabilities on the date on which they fall due for payment by it, such 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.

2.6 **Guarantor Intent:** Without prejudice to the generality of Clause 16.2 (*Waiver of Defences*), each Charging Company expressly confirms that it intends that this Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Credit Documents and/or any facility or amount made available under any of the Credit Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings, refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time, and any fees, costs and/or expenses associated with any of the foregoing.

2.7 **Term Loan Security:** The Charging Companies have 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.

### **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 Secured Creditors);
- (b) made with full title guarantee; and
- (c) security for the payment, discharge and performance of all the Secured Liabilities.

#### **3.2 Property:** Each Charging Company charges:

- (a) by way of legal mortgage, all Property in England or Wales now belonging to it; and
- (b) by way of fixed charge, all estates or interests now or subsequently belonging to it in, or in relation to, any Property in England and Wales (except that charged by paragraph (a) above).

#### **3.3 Investments:** Each Charging Company charges by way of fixed charge all of its Investments now or subsequently belonging to it or held by any nominee on its behalf.

#### **3.4 Book Debts:** Each Charging Company charges by way of fixed charge all rights which it may have now or subsequently in respect of any Book Debts.

#### **3.5 Intellectual Property:** Each Charging Company charges by way of fixed charge all rights, title and interests in respect of Intellectual Property now or subsequently belonging to it, including, without limitation, the Scheduled Intellectual Property.

#### **3.6 Bank Balances:** Each Charging Company charges by way of fixed charge all of its Bank Balances.

#### **3.7 Insurance:** Each Charging Company assigns absolutely to the fullest extent capable of assignment subject to a proviso for re-assignment on redemption all benefits, rights and interest of such Charging Company under or in respect of any present or future contract or policy of insurance and any claim or return of premium or proceeds paid or payable in relation thereto.

#### **3.8 Plant and Machinery:** Each Charging Company charges by way of fixed charge all of its Personal Chattels now or subsequently belonging to such Charging Company and its interest in any such Personal Chattels in its possession.

#### **3.9 Contracts:** Each Charging Company charges by way of fixed charge all of its rights (including, without limitation, the right to receive any compensation) now or subsequently of such Charging Company in respect of:

- (a) any Material Agreement;
- (b) any Intercompany Loan Agreement;
- (c) any warranty, bond, guarantee, indemnity, Security Interest or letter of credit issued in its favour; and
- (d) any bill of exchange or any other negotiable instrument held by it,

(to the extent that the same are not otherwise subject to an effective fixed charge pursuant to this Clause 3 (*Security Interests*) or a legal assignment pursuant to Clause 5.8(e) (*Relevant Documents*)).

3.10 **Pension Fund:** Each Charging Company charges (to the extent not prohibited to do so by the terms applicable to such interests, claims or rights) by way of fixed charge any interest, claim or right which it has now or subsequently in respect of any pension fund or plan.

3.11 **Other Charges:** Each Charging Company charges by way of fixed charge:

- (a) all its uncalled capital;
- (b) all its goodwill; and
- (c) any authorisation, licence or consent in relation to any Charged Assets (including the right to receive compensation in respect thereof).

3.12 **Floating Charge:**

- (a) Each Charging Company charges by way of floating charge its undertaking and all its assets both present and future not otherwise effectively mortgaged, charged or assigned by this Deed. The floating charge created by each Charging Company under this Clause shall:
  - (i) except as otherwise agreed in writing by the Collateral Agent, rank in priority to any other Security Interest which shall subsequently be created or permitted to arise by such Charging Company or any Security Interest created by a Receiver appointed under this Deed; and
  - (ii) be a qualifying floating charge for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986.
- (b) Save as provided in paragraph (c) below, the Collateral Agent may by notice to any Charging Company convert the floating charge created by a Charging Company pursuant to this Clause into a fixed charge as regards such assets as may be specified (whether generally or specifically) in such notice if:
  - (i) an Event of Default is has occurred and is continuing; or
  - (ii) the Collateral Agent considers those assets to be in jeopardy of being seized or sold pursuant to any distress, attachment, execution, sequestration or other legal process; or

- (iii) a resolution is passed or a petition or application is presented or order made for the winding-up or administration in relation to any Charging Company which is not discharged within 14 days (in the case of a winding-up petition) or 2 days (in the case of a petition or application for an administrative order) or in any event before such petition or application is heard or a resolution is passed for a creditors' voluntary winding-up or a creditors' involuntary winding-up is commenced; or
  - (iv) an Administrator or Receiver is appointed in respect of a Charging Company or the Collateral Agent receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 of the Insolvency Act 1986 in respect of such Charging Company.
- (c) Notwithstanding any other provision of this Deed (and without prejudice to the circumstances in which the floating charge created under this Clause 3 (*Security Interests*) will crystallise under general law) but subject to paragraph (d) below:
- (i) if any person presents or makes an application for a writ of execution, writ of *feri facias*, garnishee order or charging order or otherwise levies or attempts to levy any distress, execution, attachment, expropriation, sequestration or other legal process against any of the assets which are charged by way of the floating charge of a Charging Company; or any Charging Company creates or attempts to create any Security Interest or trust over any of the Charged Assets secured by the floating charge created by this Clause 3; or
  - (ii) any Charging Company breaches Clause 5.1(a) (*General Restrictions and Obligations*); or
  - (iii) a resolution is passed or a petition or application is presented or order made for the winding-up or administration in relation to any Charging Company which is not discharged within 14 days (in the case of a winding-up petition) or 2 days (in the case of a petition or application for an administration order) or in any event before such petition or application is heard or a resolution is passed for a creditors' voluntary winding-up or a creditors' voluntary winding-up is commenced; or
  - (iv) an Administrator or Receiver is appointed in respect of a Charging Company or the Collateral Agent receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 of the Insolvency Act 1986 in respect of such Charging Company,
- then with immediate effect and without notice the floating charge shall automatically convert into a fixed charge as regards the Charged Assets secured by such floating charge.
- (d) No floating charge created by this Clause 3 may be converted into a fixed charge or otherwise crystallise solely by reason of:
- (i) the obtaining of a moratorium by such 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.

(e) Any charge which has crystallised under paragraph (b) or (c) above may be reconverted into a floating charge by notice given at any time by the Collateral Agent to a Charging Company concerned in relation to the assets specified in such notice.

3.13 **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 relevant Charging Company require that the relevant document be redelivered to it and the relevant 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 any Permitted Encumbrance, the relevant 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.

3.14 **Fixed and Floating Security:** If for any reason any Security Interest in respect of any asset created or purported to be created pursuant to this Clause 3 as a fixed charge or assignment does not, or ceases to, take effect as a fixed charge or assignment, then it shall take effect as a floating charge in respect of such asset. However it is the intent of the parties that the Security Interest over other Charged Assets shall remain unaffected.

3.15 **Excluded Assets:** If the rights of any Charging Company under any instrument or agreement cannot be the subject of any Charges which this Deed purports to create under Clause 3.4 (*Intellectual Property*), 3.6 (*Bank Balances*), 3.9 (*Contracts*), 3.10 (*Pension Fund*) or 3.11(c) (*Other Charges*) without the consent of another party and details of such instrument or agreement have been provided to the Collateral Agent:

- (a) the Charging Company concerned shall notify the Collateral Agent promptly;
- (b) this Deed will charge all damages, compensation, remuneration, profit, rent or other amounts which the Charging Company may receive, or has received, under that document; and
- (c) if the Collateral Agent so requires, the relevant Charging Company will use all reasonable endeavours to promptly obtain the consent of the relevant third party for such rights to be charged or assigned (as the case may be) under this Deed and shall, if such consent is obtained, promptly provide a copy of such consent to the Collateral Agent and, until such consent is obtained, such rights will be excluded from the Charges.

Each Charging Company will use reasonable endeavours to ensure that instruments and agreements which it enters into after the date of this Deed do not contain restrictions



which would cause them to be excluded from the charges pursuant to paragraph (c) above.

3.16 **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 Secured Creditors on the terms of the Credit Documents.

#### 4. PROPERTY OBLIGATIONS

##### 4.1 Acquisition of Property:

- (a) Each Charging Company shall promptly notify the Collateral Agent of any acquisition by it or on its behalf of any Property after the date of this Deed (other than any Short Leasehold Property) ("**After-acquired Property**").
- (b) If title to the relevant After-acquired Property is or is to be registered at the Land Registry, the Charging Company shall as soon as reasonably practicable notify the Collateral Agent of the relevant title number and will make the necessary Land Registry enter:
  - (i) a notice of the legal mortgage referred to in paragraph (c) below on the charges register; and
  - (ii) the restriction set out in Clause 4.5(a) (*Registered Land*) (as repeated in the said legal mortgage) on the proprietorship register,

of, in each case, the registered title of the relevant After-acquired Property. In the case of any other After-acquired Property in England or Wales, a Charging Company shall apply to register this Deed at the Land Charges Registry if, for any reason, the title deeds and documents relating thereto are not deposited with the Collateral Agent. In relation to any After-acquired Property anywhere else in the world, such Charging Company shall take such equivalent action as the Collateral Agent shall deem appropriate.

- (c) Each Charging Company shall, promptly on request of the Collateral Agent and at the cost of the relevant Charging Company, execute and deliver to the Collateral Agent a legal mortgage in favour of the Collateral Agent over any After-acquired Property acquired by it.
- (d) If the consent of the landlord in whom the reversion of any lease comprised in any After-acquired Property is vested is required for a Charging Company to create any fixed charge or legal mortgage that Charging Company will:
  - (i) use all reasonable endeavours to obtain such landlord's consent;
  - (ii) notify the Collateral Agent in writing upon receipt of such consent; and
  - (iii) not be required to create a fixed charge or legal mortgage over such After-acquired Property until it has received the landlord's consent.

4.2 **Delivery of Title Documents:** Subject to Clause 3.13, each Charging Company shall immediately upon the execution of this Deed or, if later, upon receipt, deposit with the

Collateral Agent all deeds and documents of title relating to any estate or interest in any Charged Property including After-acquired Property which at any time belongs to such Charging Company and all share certificates and similar documents received by it. If any such deeds or documents are at the relevant time at the Land Registry, such Charging Company shall promptly following a demand by the Collateral Agent provide or procure the provision to the Collateral Agent of such undertakings and such letters addressed to the Land Registry as the Collateral Agent may reasonably require.

**4.3 Leasing and Other Undertakings:** Each Charging Company shall (whether in exercise of any statutory power or otherwise):

- (a) not grant, or agree to grant, any lease or tenancy of all or any part of any Charged Property or confer or agree to confer upon any person any contractual licence or right to occupy or use any Charged Property save as permitted under the Bridge Facilities Agreement;
- (b) not determine or extend or renew on substantially different terms or accept any surrender of any lease, tenancy, licence or right to occupy comprised in the Charged Property or agree to do any of these things save as permitted under the Bridge Facilities Agreement;
- (c) comply with the provisions of Schedule 5 (*Property Undertakings*);
- (d) comply with all laws or material regulations, directives, consents, authorisations, covenants or planning permissions relating to or affecting any Charged Property;
- (e) comply with all material obligations imposed on it and enforce the performance of all material obligations owed to it by any person under any lease, licence or other agreement comprised in the Charged Property and shall not do anything or permit anything to be done which could result in the termination of any such lease, licence or other agreement;
- (f) promptly deliver a copy of any material communication received by it which has been given with respect to any Charged Property and take such steps as the Collateral Agent shall reasonably require in relation thereto; and
- (g) permit the Collateral Agent and any person nominated by it at all reasonable times and with reasonable prior notice to enter any of its Charged Property to view its condition.

**4.4 Property Representations and Warranties:** Each Charging Company represents and warrants to the Collateral Agent that:

- (a) at the date of this Deed, it is the sole legal and beneficial owner of all the Scheduled Property listed against its name in Schedule 3 (*Details of the Scheduled Property*);
- (b) no other person has any Security Interest in any part of the Charged Property (other than as disclosed to and approved by the Collateral Agent or otherwise permitted pursuant to the Bridge Facilities Agreement);

- (c) no part of the Charged Property is subject to any Security Interest other than as permitted pursuant to the terms of the Bridge Facilities Agreement;
- (d) there subsists no material breach of any Planning Acts, regulations, by-laws or local authority or statutory requirements which materially and adversely affects or which materially or adversely affects the value of the business of any Charging Company;
- (e) the Charged Property or any part of it is free from any lease, tenancy, licence or right to occupy other than as disclosed to and approved by the Collateral Agent or as otherwise permitted pursuant to the terms of the Bridge Facilities Agreement; and
- (f) except for the Scheduled Property, the Charging Companies do not own any estate or interest in any Property save as disclosed to and approved by the Collateral Agent from time to time.

#### 4.5 **Registered Land:**

- (a) Each Charging Company shall apply to the Land Registry for a restriction in the following terms to be entered on the registers of the title of such of the Charged Property as is now or hereafter registered at the Land Registry under the Land Registration Act 2002:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the Charge dated [•] in favour of Barclays Bank PLC referred to in the Charges Register or if appropriate signed on such proprietor's behalf by its authorised signatory."

- (b) To the extent that the Secured Creditors are under an obligation to make further advances each Charging Company shall also make an application to the Land Registry for a note of such obligation to be entered on such registers referred to in paragraph (a) above.
- (c) Each Charging Company hereby certifies, in respect of any part of its Charged Property title to which is registered at the Land Registry, that the Charges created by this Deed do not contravene any of the provisions of the Memorandum or Articles of Association of such Charging Company.

#### 4.6 **Right to Remedy:** If a Charging Company fails to perform any obligation affecting its Charged Property, that Charging Company on reasonable notice must allow the Collateral Agent or its agents and contractors:

- (a) to enter any part of its Charged Property and carry out any repairs or other works which the Charging Company has failed to do; and
- (b) to comply with or object to any notice served on that Charging Company in respect of its Charged Property.

## 5. OTHER OBLIGATIONS

### 5.1 General Restrictions and Obligations:

- (a) Subject to Clause 5.3 (*Book Debts*), except with the consent of the Collateral Agent, each Charging Company shall not:
  - (i) create or permit to be outstanding any Security Interest over any Charged Assets other than Permitted Encumbrances; or
  - (ii) 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 Bridge Facilities Agreement or pursuant to any Permitted Encumbrances;
- (b) Each Charging Company undertakes that it shall keep all buildings on the Charged Property in good and substantial repair and shall keep all Fixtures and other Personal Chattels from time to time on or in any Charged Property belonging to it or any of its Subsidiaries and all other Personal Chattels belonging to it in good and substantial repair and good working order.

### 5.2 Investments:

- (a) **Deposit of Documents:** Subject to Clause 3.13, each 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, 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 relevant Charging Company to the contrary):
  - (i) all certificates and other documents of title or evidencing title in respect of each of the Scheduled Investments listed against its name in Schedule 1 (*Details of the Scheduled Investments*) and each of the other Charged Investments belonging to it;
  - (ii) all stock transfer forms and other documents which the Collateral Agent may reasonably request to vest title in the Charged Investments 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 a 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 5.2(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 relevant 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 Investments; and
  - (B) exercise or direct the exercise of the voting rights and other rights and powers attached to its Charged Investments 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 Secured Creditors 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 Investments 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 5.2(a) (*Deposit of Documents*) in relation to the Charged Investments of each Charging Company on behalf of each Charging Company in favour of itself or such other person as it shall select and otherwise have any Charged Investments registered in its name or the name of its nominee;
  - (B) receive and retain all dividends, distributions and other moneys paid on the Charged Investments; and
  - (C) exercise or direct the exercise in the name of the relevant Charging Company of the voting rights and any other rights and powers attached to any Charged Investments in such manner as it considers fit (including all powers given to trustees under Part II of the Trustee Act 2000).
- (iii) After the Charges have become enforceable such 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 Investments; 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 such 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) **Information:** Each 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 Secured Creditors hereunder;
- (d) **Calls:**
  - (i) Each Charging Company shall promptly pay all calls or other payments which may at any time become due in respect of any of its Charged Investments.
  - (ii) If a 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 concerned. Such Charging Company must promptly on request from the Collateral Agent reimburse the Collateral Agent for any such payment.
- (e) **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 any Charging Company or its nominee, such Charging Company shall forthwith notify the Collateral Agent of the offer and if the Collateral Agent so requires by notice to such Charging Company, such 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 such Charging Company, such 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.
- (f) **PSC Register**
  - (i) In respect of any Charged Investments, each 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 is required in connection with the same.
- (g) **Representations regarding Investments:** Each Charging Company represents and warrants to the Collateral Agent that:
- (i) it is the sole legal and beneficial owner of the Scheduled Investments listed against its name in Schedule 1 (*Details of the Scheduled Investments*);
  - (ii) such Investments are free from all Security Interests, options and other third party rights (except as created by this Deed) save for any Permitted Encumbrances ranking *pari passu* with the Security;
  - (iii) its Scheduled Investments and, where applicable, its other Investments are fully paid;
  - (iv) 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 Charged Investments, except as required by law or to the extent otherwise disclosed to the Collateral Agent pursuant to Clause 5.2(f) (*PSC Register*); and
  - (v) 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 5.2(f) (*PSC Register*).

### 5.3 **Book Debts:**

- (a) Save as permitted by the Bridge Facilities Agreement, each Charging Company shall not release, sell, transfer, assign, factor, discount or otherwise deal in any way with any of the Book Debts or vary or agree to any variation in their terms except as required by Clause 5.3(b) below.
- (b) Each Charging Company shall collect on behalf of the Collateral Agent all its Book Debts or other securities held by way of temporary investment when the same mature and all income arising from its Intellectual Property promptly in

the ordinary course of its business and, until payment into an account as provided below, shall hold the proceeds of such collection on trust for the Collateral Agent.

- (c) Prior to the Charges becoming enforceable in accordance with Clause 6.2(b) (*Enforceability of Security*), each Charging Company shall immediately pay all moneys received by it from any source whatsoever into any of its Collection Account(s) from time to time and after the Charges have become enforceable in accordance with Clause 6.2(b) (*Enforceability of Security*) each Charging Company shall immediately pay all monies received by it from any source whatsoever into each of its Collection Account(s) nominated by the Collateral Agent (it being agreed that the Collateral Agent may nominate different accounts for different moneys).
- (d) Except when the Charges are enforceable in accordance with Clause 6.2(b) (*Enforceability of Security*), any moneys in respect of the Book Debts received by any Charging Company shall upon crediting to a Charged Account be released from the fixed charge created by Clause 3.4 (*Book Debts*) and only be subject to the floating charge created by Clause 3.12 (*Floating Charge*) and the relevant Charging Company shall be free to apply those moneys as it sees fit subject to any applicable restrictions set out in the Bridge Facilities Agreement.
- (e) Each Charging Company shall, upon the Charges becoming enforceable, give notice to the debtors of any of its Book Debts or other Charged Assets referred to in Clause 5.3(b) above of the Security Interest created by this Deed in such form as the Collateral Agent may require.

#### 5.4 **Bank Balances and Collection Account(s):**

- (a) Each Charging Company shall:
  - (i) promptly deliver to the Collateral Agent a duly completed notice (attaching a form acknowledgement of notice) in respect of each Relevant Account in the form set out in Part 1 of Schedule 4 (*Form of Notice for a Relevant Account to Account Bank*) as applicable or such other form as the Parties agree; and
  - (ii) use all reasonable endeavours to procure the prompt delivery to the Collateral Agent of a duly completed acknowledgement in respect of such Relevant Account in the form set out in Part 2 of Schedule 4 (*Form of Acknowledgment of Notice for a Relevant Account to Account Bank*) as applicable or such other form as the parties agree.
- (b) The Collateral Agent (or its Receiver) may (subject to the payment of any claims with priority to the Charges) withdraw amounts standing to the credit of the Charged Accounts to meet any amount due and payable under the Credit Documents to the Secured Creditors when it is due and payable but unpaid.
- (c) Each Charging Company shall not release, sell, transfer, assign, factor, discount or otherwise deal in any way with the Bank Balances in a manner prohibited by the Credit Documents.



## 5.5 Cash Collateral Accounts:

- (a) The relevant Charging Company shall:
  - (i) promptly deliver to the Collateral Agent a duly completed notice and acknowledgement in respect of each Cash Collateral Account in the form set out in Part 1 of Schedule 4 (*Form of Notice for a Relevant Account to Account Bank*) as applicable or such other form as the parties agree; and
  - (ii) use all reasonable endeavours to procure the prompt delivery to the Collateral Agent of a duly completed acknowledgement in respect of such Cash Collateral Account in the form set out in Part 2 of Schedule 4 (*Form of Acknowledgment of Notice for a Relevant Account to Account Bank*) as applicable or such other form as the parties agree.
- (b) No Charging Company may withdraw all or any monies from time to time standing to the credit of the Cash Collateral Account in a manner prohibited by the Credit Documents.

## 5.6 Intellectual Property:

- (a) Each Charging Company undertakes that it shall in respect of its material Intellectual Property, ensure compliance with the obligations in respect of material Intellectual Property contained in the Bridge Facilities Agreement and:
  - (i) solely with respect to its material Registered Intellectual Property apply to register (to the extent registrable) the existence of the Charges or the restrictions on dealing with such material Registered Intellectual Property recorded or registered with the Canadian Intellectual Property Office, the United States Patent and Trademark Office or the United States Copyright Office created by this Deed at the Canadian Intellectual Property Office, the United States Patent and Trademark Office or the United States Copyright Office (as applicable)) if so requested by the Collateral Agent; and
  - (ii) make and renew all registrations, pay all relevant fees and other amounts and do all other acts necessary for maintaining its material Registered Intellectual Property in force and not permit any such material Registered Intellectual Property to be abandoned or liable to any claim for abandonment or be cancelled or lapse or be used in such a way that it is put at risk of becoming generic.
- (b) Each Charging Company represents and warrants to the Collateral Agent at the date of this Deed that:
  - (i) it is the sole legal and beneficial owner of the Scheduled Intellectual Property listed against its name in Schedule 8 (*Details of the Scheduled Intellectual Property*) and all other Intellectual Property (other than Intellectual Property owned by customers of a Charging Company or licensed by a Charging Company from third parties or which a Charging

Company otherwise has the rights to use) necessary for it to carry on its business as it is presently carried on free from all Security Interests, options and other rights (other than Permitted Encumbrances) in favour of third Parties (except as created by this Deed), save in the case of each of the foregoing, as would not reasonably be expected to have a Material Adverse Effect; and

- (ii) it does not have actual knowledge of any infringement or threatened infringement of its Intellectual Property, save as would not reasonably be expected to have a Material Adverse Effect.

#### 5.7 **Relevant Documents:**

- (a) Each Charging Company:
  - (i) shall perform all its obligations under the Relevant Documents;
  - (ii) shall not amend or vary or waive any material provision of any Relevant Documents or agree to do so and shall not rescind or terminate any of the Relevant Documents;
  - (iii) shall enforce and diligently pursue its rights under the Relevant Documents and give notice to the Collateral Agent forthwith in writing of any breach by the other parties to the Relevant Documents of their obligations under the Relevant Documents or right of rescission or termination arising thereunder together with such Charging Company's proposals for causing any breach to be remedied and, subject to the Collateral Agent's approval of such proposals, forthwith implement them at such Charging Company's expense to the satisfaction of the Collateral Agent; and
  - (iv) shall promptly serve (with a copy to the Collateral Agent) a Notice of Document Assignment on each of the other parties to each Relevant Document and each Charging Company shall use all its reasonable endeavours to procure the prompt delivery to the Collateral Agent of a duly completed acknowledgement in the form set out in Part 2 of Schedule 6 (*Form of Acknowledgement of Notice of Assignment of Relevant Document*) from each party served with such Notice of Document Assignment provided that the relevant Charging Company shall not be required to deliver a Notice of Document Assignment until the occurrence of an Event of Default in the case of any Material Document (which is not, for the avoidance of doubt, a Hedging Agreement or Intercompany Loan Agreement).
- (b) This Deed constitutes notice in writing to each Charging Company of any Security Interest over any debt owed by that Charging Company to any other Group Company or over any contract or agreement between that Charging Company and any other Group Company whether created under this Deed or any other Security Document; and

- (c) Until the Charges have become enforceable any payments received by the Collateral Agent under or in respect of the Relevant Documents by virtue of this Deed shall be paid by the Collateral Agent to the relevant Charging Company for application subject to and in accordance with the Credit Documents save to the extent required by the terms of the Credit Documents to be applied against any of the Secured Liabilities.
- (d) The Collateral Agent has the right, no more frequently than once in each quarter of each year, to require each Charging Company to produce a schedule of all Material Agreements.
- (e) Each Charging Company shall, promptly on request of the Collateral Agent and at the cost of the relevant Charging Company, execute and deliver to the Collateral Agent a legal assignment in favour of the Collateral Agent over any Material Agreement which the Collateral Agent designates by notice to each Charging Company to be a "**Relevant Document**".

#### 5.8 Insurance:

- (a) Each Charging Company shall comply with any obligations imposed on it by any tenancy agreement or lease to insure or to reimburse the landlord under any tenancy or lease for any costs of insurance incurred by such landlord.
- (b) Each Charging Company shall promptly following execution of this Deed serve (with a copy to the Collateral Agent) a Notice of Insurance Assignment to the brokers or underwriters of the insurances comprised in the Charged Assets and each Charging Company shall use all its reasonable endeavours to procure the prompt delivery to the Collateral Agent of a duly completed acknowledgement in the form set out in Part 4 of Schedule 6 (*Form of Acknowledgement of Notice of Assignment to Insurers*).
- (c) Subject as provided herein or by the terms of the Bridge Facilities Agreement, all moneys received by or on behalf of each Charging Company by virtue of any insurance shall be deemed part of the Charged Assets.
- (d) Any moneys received by or on behalf of such Charging Company or the Collateral Agent or otherwise received by the Collateral Agent, by virtue of any such insurance shall be applied in accordance with the Bridge Facilities Agreement.
- (e) Any moneys received by or on behalf of each Charging Company by virtue of any insurance shall be immediately paid into a Charged Account and shall be held on trust for the Collateral Agent until applied in accordance with Clause 5.9(d) above.
- (f) Each Charging Company must, promptly on demand by the Collateral Agent, produce to the Collateral Agent the policy, certificate or cover note relating to any insurance policy and the receipt for the payment of any premium for any insurance policy or such other evidence to prove to the satisfaction of the Collateral Agent that such Charging Company has complied with its obligations in relation to insurance under this Deed. If a Charging Company fails to comply

with its obligations under this paragraph (f) the Collateral Agent may effect such insurance as it thinks fit and the relevant Charging Company shall reimburse the Collateral Agent on demand for the cost of effecting such insurance with interest.

## **6. ENFORCEMENT**

**6.1 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.

### **6.2 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 a Charging Company shall become enforceable upon:
  - (i) the occurrence of an Event of Default which is continuing; or
  - (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; or
  - (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/or 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 such Charging Company; or

- (ii) anything done with a view to obtaining a moratorium;

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

- (d) The statutory power of leasing conferred upon the Collateral Agent shall be extended so as to authorise the Collateral Agent to lease, make agreements for leases, accept surrenders of leases and grant options as the Collateral Agent thinks fit and without the need to comply with any of the provisions of sections 99 and 100 of the LPA and any lease granted will bind any holder of a subsequent Security Interest deriving title under the Collateral Agent.

6.3 **Assistance:** Each Charging Company shall provide to the Collateral Agent and its representatives all reasonable assistance requested by the Collateral Agent to enforce all or any rights in or in respect of the Charged Assets.

6.4 **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.

6.5 **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).

6.6 **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.

6.7 **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 a 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.

## 7. APPOINTMENT AND RIGHTS OF RECEIVERS AND ADMINISTRATORS

### 7.1 Appointment of Receivers and Administrators:

- (a) If:
  - (i) so requested by the relevant Charging Company; or
  - (ii) the Charges given by the relevant 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 relevant 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 relevant Charging Company or, when permitted by law, may appoint an Administrator of the relevant 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 of 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.

7.2 **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.

7.3 **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 relevant Charging Company or any trustee or nominee for the relevant Charging Company) and in such manner and upon such terms and conditions as the Receiver thinks fit:

- (a) **Take possession:** to enter upon, take possession of, get in and collect the Charged Assets, to require directors of such Charging Company to call up unpaid share capital and to take action to enforce payment of unpaid calls;

- (b) **Carry on business:** to manage or carry on any business of such Charging Company;
- (c) **Deal with Charged Assets:** to sell, transfer, assign, exchange, hire out, lend or otherwise dispose of, convert into money or realise the Charged Assets (including any Fixtures, other than landlord's fixtures, which may be severed and sold separately from the Property containing them) 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 such 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;
- (d) **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;
- (e) **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;
- (f) **Covenants and guarantees:** to lend money or advance credit to any customer of any Charging Company, enter into bonds, covenants, commitments, guarantees, indemnities or like matters and to make all requisite payments to effect, maintain or satisfy the same;
- (g) **Leases and tenancies:** to lease or licence any Charged Assets to any person on any terms and for any rent or fee, to agree to any change to such terms or rent and to accept any surrender of such lease or licence on any terms (including the payment of any surrender premium), in each case it shall think fit and to exercise all rights and powers as the Receiver would be capable of exercising if he were the absolute beneficial owner of the Charged Assets;
- (h) **Repairs:** to effect any repairs, improvements or insurance or do any act which he may think desirable to protect, or improve, any Charged Asset or any business of any Charging Company or make it more productive, to carry out and/or complete any building operations and to apply for and maintain any planning permissions, building regulation approvals and other consents, in each case as he thinks fit;
- (i) **Proceedings and Claims:** to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets or the business of any Charging Company;

- (j) **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 such Charging Company or relating in any way to the Charged Assets;
- (k) **Redemption of Security:** to redeem any Security Interest (whether or not having priority to the Charges) over the Charged Assets and to settle the accounts of encumbrancers;
- (l) **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 such Charging Company;
- (m) **Receipts:** to give a valid receipt for any moneys and execute any document which is necessary or desirable for realising any Charged Assets;
- (n) **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
- (o) **Other Powers:** to do all such other acts and things the Receiver may consider necessary or expedient for preserving, protecting, 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.

7.4 **Agent of Charging Company:** Any Receiver shall be deemed to be the agent of the relevant Charging Company for all purposes and, subject to any applicable law, the relevant 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.

7.5 **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.



## 8. DISTRIBUTION

8.1 **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 relevant Charging Company or other person entitled thereto.

8.2 **Partial Application:** All moneys from time to time received by the Collateral Agent from any 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 8.1 (*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.

## 9. COLLATERAL AGENT'S RIGHTS

9.1 **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.

9.2 **Redemption of Prior Security:**

- (a) The Collateral Agent may at any time redeem any Security Interest having priority to any Charges or procure the transfer of that Security Interest 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 each Charging Company.
- (b) Each 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.

9.3 **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 any 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.

9.4 **Continuation of Accounts:** At any time following the commencement of the winding-up of any Charging Company or any Finance Party becoming aware of any subsequent Security Interest affecting the Charged Assets, the Finance Party may open a new account with it in the name of such Charging Company. If the 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 the Finance Party received, or was deemed to have received, notice of such subsequent Security Interest. No payments made thereafter by a 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.

9.5 **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.

9.6 **Recovery of Debts:** The Collateral Agent and any manager or officer of the Collateral Agent or of any branch is hereby irrevocably empowered on or after the date the Charges are first enforced to receive all Book Debts and on payment to give an effectual discharge therefore and on non-payment to take (if the Collateral Agent in its sole discretion so decides) all steps and proceedings either in the name of each Charging Company or in the name of the Collateral Agent for the recovery therefore and also to agree accounts and to make allowances and to give time to any surety. Neither the Collateral Agent nor any Receiver shall be obliged to make any enquiry as to the sufficiency of any sums received in respect of any Book Debts or to make any claims or take any other action to collect or enforce the same.

## 10. RESPONSIBILITIES OF COLLATERAL AGENT

10.1 **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.

10.2 **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 any Charging Company or any other person for anything except the Collateral Agent's own actual receipts which have not been distributed or paid to such 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 such 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.

10.3 Receiver's and Delegate's Obligation to Account: All the provisions of Clause 10.2 (*Collateral Agent's Obligation to Account*) shall apply in respect of the liability of any Receiver or Delegate as though every reference in Clause 10.2 (*Collateral Agent's Obligation to Account*) to the Collateral Agent were instead a reference to the Receiver or, as the case may be, Delegate.

## 11. FURTHER ASSURANCE

Each 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;
- (b) at any time after the occurrence of an Event of Default or the Charges shall have otherwise become enforceable, a legal assignment of Book Debts; or
- (c) 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 Interest 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.

## 12. POWER OF ATTORNEY

12.1 **Appointment:** Each 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 such 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 Investments which has been executed in blank by such Charging Company and, in the case of registered Charged Investments, to procure the

registration of the transferee as the holder of the relevant Charged Investments in circumstances in which the Charged Investments 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.

12.2 **Ratification:** Each 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 12.1 (*Appointment*). All moneys expended by any such attorney shall be deemed to be expenses incurred by the Collateral Agent under this Deed.

### 13. PROTECTION OF THIRD PARTIES

13.1 **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.

13.2 **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.

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

### 14. EXPENSES, STAMP DUTY AND INDEMNITIES

14.1 **Expenses:** Each 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.

- 14.2 **Stamp Duties:** Each 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. Each 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 such Charging Company to so pay any such Relevant Costs.
- 14.3 **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.

## 15. PAYMENTS

- 15.1 **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.
- 15.2 **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.
- 15.3 **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.

## 16. AVOIDANCE OF SECURITY

- 16.1 **Avoidance of Payments and other matters:** If:
- (a) any payment is made by any 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 Interest 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 each 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) each 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.

16.2 **Waiver of Defences:** As between each Charging Company and the Secured Creditors but without affecting the obligations of any Borrower, each Charging Company shall be liable under Clause 2 (*Guarantee and Covenant to Pay*) as if it were the principal debtor and not merely a surety. Neither the Charges nor the obligations of each Charging Company under this Deed shall be discharged or affected by (and each 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 16, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to such 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 Interest, 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 Interest 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 Interest;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or constitution or status of a 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 any 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 any 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 Secured Creditors to disclose such information);
- (j) the existence of any claim, set-off or other right which any 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 any Charging Company or any other person, whether by the Collateral Agent or any other person.

16.3 **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 any Charging Company in relation to any guarantee or other obligations under the Credit Documents which such Secured Creditors may think fit and no such arrangement, compromise, waiver or other dealing shall exonerate or discharge any other Charging Company from its obligations under the Credit Documents.

16.4 **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 any Charging Company under this Deed):

- (a) refrain from applying or enforcing any other moneys, Security Interests 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 no Charging Company shall 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 any 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 (i) in the case of cash, the amount standing to the credit of each of the

Charged Accounts, together with any accrued but unposted interest, at the time the right of appropriation is exercised; and (ii) 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 any Charging Company or on account of any Charging Company's liability under this Deed.

**16.5 Deferral 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) no Charging Company will 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 Secured Creditors under the Credit Documents or of any other Security Interest 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) such 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 Secured Creditors 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 Interest or guarantee granted by, or to exercise any rights of contribution against, any member of the Group whose shares are charged to the Collateral Agent pursuant to this Deed and each Charging Company waives all its entitlement and rights to or in respect of any such rights.



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

16.7 **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 Bridge Facilities Agreement and wish to require the release of the Charges, they 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 relevant Charging Company shall be in such form as the Collateral Agent shall reasonably require.

16.8 **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.

16.9 **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 relevant Charging Company the identical Investments deposited with it or transferred to it or its nominee or nominees but the relevant Charging Company will accept Investments of the same class and denomination or other Investments (as the case may be).

16.10 **Additional Security:** The Security Interests and guarantee granted pursuant to 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.

16.11 **Release of Guarantors' right of contribution:**

If any Guarantor granting a guarantee hereunder (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Credit Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Credit Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Credit Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Creditors under any Credit Document or of any other security taken pursuant to, or in connection with, any Credit Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

## **17. RIGHTS, AMENDMENTS, WAIVERS AND CONSENTS**

- 17.1 **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.
- 17.2 **Cumulative Rights:** The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- 17.3 **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.

## **18. 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.

## **19. SET-OFF**

- 19.1 **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 relevant 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 relevant Charging Company against any indebtedness, matured or unmatured, owing to the Collateral Agent or such other Finance Party by that 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.

19.2 **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.

19.3 **Set-Off Rights Cumulative:** This Clause 19 (*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.

## 20. COMMUNICATIONS

20.1 **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.

20.2 **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:

(a) in the case of the Collateral Agent and each Charging Company, that shown immediately after its name on the signature page of this Deed; or

(b) in the case of each Charging Company which accedes to this Deed in accordance with Clause 25 (*Assignment and New Charging Companies*), that set out in the Accession Document by which it became a party hereto,

or any substitute address, facsimile number, telex 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.

20.3 **Delivery:**

(a) Subject to Clause 20.3(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 20.2(b) (*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).

## **21. 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.

## **22. 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 Secured Creditors on the terms contained in the Bridge Facilities Agreement and this Deed.

## **23. GOVERNING LAW AND SUBMISSION TO JURISDICTION**

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

### **23.2 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.

## 24. COUNTERPARTS

- 24.1 **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.
- 24.2 **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.

## 25. ASSIGNMENT AND NEW CHARGING COMPANIES

- 25.1 **Assignment:** This Deed is binding on each 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 Bridge 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, no Charging Company will assert against the assignee any claim or defence which that Charging Company now has or may have against the Collateral Agent or any of the other Secured Creditors. No Charging Company may assign, transfer or delegate any of its rights or obligations under this Deed without the prior written consent of the Collateral Agent.
- 25.2 **Accession:** Each Charging Company will procure that any new Subsidiary of it which is required to do so by the terms of the Bridge Facilities Agreement executes a Security Accession Deed and thereby charges its assets and undertaking contemplated by this Deed to the Collateral Agent.
- 25.3 **Consent:** Each Charging Company consents to new Subsidiaries becoming Charging Companies as contemplated by Clause 25.2 (*Accession*) and each new Subsidiary by so acceding to this Deed irrevocably appoints Open Text UK Holding Limited as its agent for the purpose of executing Security Accession Deeds on its behalf.

**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.

**SCHEDULE 1**

**DETAILS OF THE SCHEDULED INVESTMENTS**

**Charging Company**

**Shares held in**

Open Text UK Holding Limited

[None at date of this Deed]

**SCHEDULE 2**

**DETAILS OF RELEVANT ACCOUNTS**

***DN: TO BE CONFIRMED.***

<b>Account Holder</b>	<b>Bank</b>	<b>Account Number</b>	<b>Currency</b>
Open Text UK Holding Limited	[None at the date of this Deed]	[None at the date of this Deed]	[None at the date of this Deed]

**SCHEDULE 3**

**DETAILS OF THE SCHEDULED PROPERTY**

Registered Land

<b>Charging Company</b>	<b>Details</b>	<b>Address or Description</b>	<b>Title No.</b>
-------------------------	----------------	-------------------------------	------------------

[None at the date of this Deed]

Unregistered Land

<b>Charging Company</b>	<b>Details</b>	<b>Address or Description</b>
-------------------------	----------------	-------------------------------

[None at the date of this Deed]



## SCHEDULE 4

### FORM OF NOTICE OF ASSIGNMENT FOR A RELEVANT ACCOUNT TO ACCOUNT BANK

#### Part 1

##### Form of Notice for a Relevant Account to Account Bank

To: [name of Account Bank][address]

Dated: [•]

Dear Sirs

[•] (the "**Charging Company**")

[number and description of the relevant account] the "**Specified Accounts**"; guarantee and debenture dated [•] made between, amongst others, the Charging Company and [•] as Collateral Agent (the "**Deed**").

1. Notwithstanding, and without prejudice to, any notice that we may have previously served on you in relation to the Term Loan Security (as defined in the Deed) which, for the avoidance of doubt, will continue in full force and effect, pursuant to the Deed the Charging Company has charged (subject to the provisions of the Pari Passu Intercreditor Agreement) by way of fixed charge in favour of the Collateral Agent all its rights to, and interest in, the balance standing from time to time to the credit of the Specified Accounts and any other bank account maintained with you and the debts represented by them (the "**Accounts**"). A copy of the Deed is enclosed. The Deed prohibits any dealing with the Accounts except with the consent of the Collateral Agent as provided in the Deed.
2. The Charging Company hereby irrevocably and unconditionally instructs and authorises you:
  - (a) to disclose to the Collateral Agent any information relating to the Accounts which the Collateral Agent requests you to disclose;
  - (b) to pay or to release any moneys standing to the credit of the Accounts, in accordance with any instructions which you receive from the Collateral Agent;
  - (c) [following notice from the Security Agent that the Security created under the Deed has become enforceable,] not to permit any withdrawal by the Charging Company of any moneys standing to the credit of the Accounts, without the prior written consent of the Collateral Agent and to hold all such moneys to the order of the Collateral Agent; and
  - (d) to comply with the terms of any written notices or instructions relating to the Deed and/or the Accounts and the debts represented by them which you receive from the Collateral Agent.

3. The Collateral Agent hereby confirms that it consents to the following transactions in relation to the Accounts [*in accordance with the terms of the mandates relating to such Accounts*] [*subject to paragraph 4*]:
  - (a) you may collect and pay to the credit of any Specified Accounts the proceeds of credits for the account of the Charging Company;
  - (b) you may make payments to third Parties or to other Accounts in the name of the Charging Company on the instructions of the Charging Company and debit the amounts involved to any Accounts;
  - (c) you may debit to any Account amounts due to you from the Charging Company for operating such account [*subject to the provisions of the Bridge Facilities Agreement*]; and
  - (d) in order to enable you to make available net overdraft facilities on the [*Accounts*] you may set off debit balances against credit balances on any of the following Accounts:

[*Specify accounts and account numbers*]

4. [You shall transfer amounts standing to the credit of the Specified Accounts into another Account and shall not otherwise, without the prior written consent of the Collateral Agent, make any payments or transfers from the Specified Accounts.]
5. The Collateral Agent may by notice to you amend or withdraw the consents given in paragraph 3.
6. [*If the consent referred to in paragraph 3(d) above is withdrawn, you may immediately set off debit balances and credit balances on the Accounts existing immediately prior to the receipt by you of the notice of such withdrawal.*]
7. The instructions and authorisations which are contained in this letter shall remain in full force and effect until the Charging Company and the Collateral Agent together give you notice in writing revoking or amending them. You may comply with the instructions contained in this letter without further authority from the Charging Company.
8. The instructions and authorisations in this letter supersede any instructions and authorisations to the contrary given to you by or on behalf of any Charging Company.
9. This letter is governed by English law.
10. [*Please acknowledge your acceptance of the instructions and authorisations contained in this notice by signing the attached Form of Acknowledgement and returning it to the Collateral Agent at [•] copied to us.*]

Yours faithfully

[*name of Charging Company*]

[*name of Collateral Agent*]

By .....  
Authorised Signatory

By .....  
Authorised Signatory

## Part 2

### Form of Acknowledgement of Notice for a Relevant Account to Account Bank

To: [name of Collateral Agent]

Copy: [Charging Company]

Dear Sirs

#### Guarantee and Debenture dated [•] between [•] (the "Deed")

We hereby acknowledge receipt of the notice (a copy of which is attached hereto) dated [•] and addressed to us by you regarding the Accounts and confirm that we:

- (a) understand that the notice is being served on us notwithstanding the fact that we may have previously received notices pursuant to the Term Loan Security and we acknowledge that such notices received pursuant to the Term Loan Security are to continue in full force and effect;
- (b) accept the instructions and authorisations contained in the notice and agree to comply with the terms thereof;
- (c) do not have, and will not make or exercise, any claims or demands, any rights of counterclaim, Security Interests, rights of set off or rights against the Charging Company in respect of the Accounts and/or the debts represented by them [*other than in respect of fees for operating the accounts*];
- (d) have not received notice of any interest of any third party in any Account and/or the debts represented by them; and
- (e) [*shall not permit any amount to be withdrawn from any Account save as permitted by the notice or with your prior written consent.*]

We agree that, in the event that we become aware at any time that any person other than yourselves has or will have any right or interest in the Accounts and/or the debts represented by them, we will promptly notify you.

The only Account[s] maintained with us [*is*] [*are*] the Specified Account[s] referred to in the notice [*and*] [*•*].

Yours faithfully

.....  
[name of Account Bank]

## SCHEDULE 5

### PROPERTY UNDERTAKINGS

1. **Adverse Rights:** Each Charging Company, save with the consent of the Collateral Agent, shall not create or permit to arise any overriding interest or any easement or right which might be reasonably likely to adversely affect in any material respect the value of the Charged Property or of any Fixtures thereon.
2. **Registration:** Each Charging Company must promptly provide, if so requested by the Collateral Agent:
  - (a) a clear Land Charges Registry search against each Charging Company or clear Land Registry priority search results in favour of the Collateral Agent on the appropriate Land Registry forms against all of the registered titles comprising each Charging Company's interests comprised within the Charged Property and giving not less than 28 days priority;
  - (b) appropriate Land Registry application forms duly completed accompanied by all necessary Land Registry fees; and
  - (c) notice to the reversioner of the assignment/transfer of any headlease to the relevant Charging Company and the charging of that headlease to the Collateral Agent, together with the appropriate registration fees, where such notification is required under those headleases.
3. **Enforcement of Lessee's Covenants:** Each Charging Company shall:
  - (a) not accelerate or defer payment of any moneys due or agree to any reduction in rent or waive or vary any obligation under the terms of any lease or other property agreement and duly and promptly implement any rent review under the same but not agree to the reviewed rent or appoint or agree to the appointment of a third Party to determine the same without the prior written approval of the Collateral Agent; and
  - (b) give prompt notice in writing to the Collateral Agent if any tenant, lessee or licensee shall withhold rent or exercise any right of set-off against sums payable under any property agreement or purports, attempts or threatens to do so.
4. **Compulsory Acquisition:** Each Charging Company shall not without the consent of the Collateral Agent enter into any negotiations with any competent agency of any state with regard to the compulsory acquisition of any Charged Assets nor consent to the compulsory acquisition thereof. However, if so requested by the Collateral Agent, such Charging Company shall permit the Collateral Agent or its representatives to conduct such negotiations or give such consent on such Charging Company's behalf.
5. **Affixing of Charged Assets:** Each Charging Company shall not fix or permit the affixing of the Charged Assets to any Property other than Charged Properly.
6. **Rent Reviews:** Each Charging Company shall comply with any rent review procedures in leases comprised within Charged Property and not agree to any revised rent without the prior written consent of the Collateral Agent.

7. **Planning:** No Charging Company shall without the prior written consent of the Collateral Agent carry out or permit to be carried out on any part of its Charged Property any development (within the meaning of that expression in the Planning Acts) nor to make any application for planning permission for the development or change of use or its Charged Property or carry out any work for which planning permission has been granted or enter into any agreement under section 106 of the Town and Country Planning Act 1990, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or any other agreement with any local government, planning or other regulatory authority to build roads, amenities or carry out other works.
8. **VAT:** No Charging Company shall elect to charge value added tax or to transfer the right to recover or levy value added tax or to treat supplies made by it as taxable supplies for the purposes of value added tax or fail to do any of the foregoing without the prior written consent of the Collateral Agent.
9. **Repair:** Each Charging Company shall keep all buildings on its Charged Property in good and substantial repair and shall keep all Fixtures and other Personal Chattels from time to time on or in any Charged Property belonging to it or its Subsidiaries in good and substantial repair and in good working order and will not, without the prior written consent of the Collateral Agent, alter, pull down, remove or dispose of any of them, except in the ordinary course of repair, maintenance or improvement or as otherwise expressly permitted by the Bridge Facilities Agreement.
10. **Building operations:** Each Charging Company shall complete with reasonable expedition any building operations approved by the Collateral Agent, to the reasonable satisfaction of the Collateral Agent and any competent authority and in conformity with all requisite planning and by-law consents.
11. **Valuation reports:** Each Charging Company shall promptly on receipt, cause a copy of each professional valuation report which it obtains in relation to its Charged Property to be provided to the Collateral Agent.
12. **No Building:** No Charging Company shall without the prior written consent of the Collateral Agent, save in the ordinary course of business where such works do not adversely affect the value of such Charged Property or as required by law or regulation, carry out any building work on its Charged Property, or make any structural alteration to any building on its Charged Property, or at any time sever, remove or dispose of any fixture on it.
13. **No Onerous Obligations:** No Charging Company shall without the prior written consent of the Collateral Agent enter into onerous or restrictive obligations affecting its Charged Property or create or permit to arise any overriding interest or any easement or right whatever in or over it which would be reasonably likely to adversely affect its value or the value of the security constituted by this Deed over it.
14. **User:** Each Charging Company shall use its Charged Property only for such purpose or purposes as may from time to time be authorised as the permitted use or user thereof under or by virtue of the Planning Acts.
15. **Investigation of Title:** Each Charging Company shall grant the Collateral Agent or its lawyers on request all facilities within the power of the Charging Company to enable

such lawyers to carry out investigations of title of all or any part of the Charging Company's Property which is or may become charged by it under this Deed and enquiries into such matters in connection therewith at the expense of the Charging Company.

16. **Certificate of Title:** Each Charging Company shall promptly on demand by the Collateral Agent provide to the Collateral Agent at the expense of the Charging Company a certificate of title in such form as the Collateral Agent may reasonably require addressed to the Secured Creditors or any of them or the Collateral Agent for and on behalf of the Secured Creditors in relation to any of its Property which is or may become charged by it under this Deed.

## SCHEDULE 6

### NOTICES OF ASSIGNMENT

#### Part 1

##### Form of Notice of Assignment of Relevant Document

To: [insert name and address of counterparty]

[•]

Dear Sirs,

Re: [identify the Relevant Document] (the "**Document**")

We give notice to you that [insert name of relevant Charging Company] (the "**Company**") has [assigned (subject to a proviso for re-assignment on redemption) to/charged] in favour of [insert name of Collateral Agent] (the "**Collateral Agent**") for the benefit of itself and certain other banks and financial institutions (the "**Secured Creditors**") all its right, title and interest in the Document as security for certain obligations owed by the Company to the Secured Creditors pursuant to a guarantee and debenture dated [•] made between [•] (the "**Deed**").

1. Notwithstanding, and without prejudice to, any notice that we may have previously served on you in relation to the guarantee and debenture dated on or about the date of the Deed between Open Text UK Holding Limited and Barclays Bank PLC in its capacity as collateral agent under 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 (the "**Term Loan Security**") which, for the avoidance of doubt, will continue in full force and effect (subject to provisions of the Pari Passu Intercreditor Agreement (as defined in the Deed)), we further notify you that:
  - (a) you may continue to deal with the Company in relation to the Document until you receive written notice to the contrary from the Collateral Agent. Thereafter the Company will cease to have any right to deal with you in relation to the Document and therefore from that time you should deal only with the Collateral Agent;
  - (b) you are authorised to disclose information in relation to the Document to the Collateral Agent on request;
  - (c) following notice from the Collateral Agent that the Charges created under the Deed have become enforceable you must hold all sums from time to time due and payable by you to the Company under the Document to the order of the Collateral Agent;
  - (d) you will pay or release all moneys to which the Company is entitled under the Document [to such persons only as the Collateral Agent shall direct] [to the Company until the Collateral Agent directs otherwise];



- (e) the provisions of this notice may only be revoked with the written consent of the Collateral Agent;
  - (f) you must send copies of all notices and other information under the Document to the Collateral Agent; and
  - (g) the Company will remain liable to perform all its obligations under the Document and neither the Collateral Agent nor any receiver, delegate or sub-delegate appointed by it shall have any liability under the Document.
2. Please sign and return the enclosed copy of this notice to the Collateral Agent (with a copy to the Company) by way of confirmation that:
- (a) you understand that the notice is being served on you notwithstanding the fact that you may have previously received notices from us pursuant to the Term Loan Security and you acknowledge that such notices received pursuant to the Term Loan Security are to continue in full force and effect (subject to provisions of the Pari Passu Intercreditor Agreement (as defined in the Deed));
  - (b) you agree to the terms set out in this notice and to act in accordance with its provisions;
  - (c) you have not received notice that the Company has assigned its rights under the Document to a third party or created any other interest (whether by way of security or otherwise) in the Document in favour of a third party;
  - (d) you will pay any sums payable to the Company or any other person under or pursuant to the Document as directed by or pursuant to this notice or by the Collateral Agent; and
  - (e) you do not have and will not exercise any rights of counterclaim or set-off in respect of any Document.

The provisions of this notice are governed by English law.

Yours faithfully

.....

for and on behalf of

*[insert name of Company]*

**Part 2**

**Form of Acknowledgement of Notice of Assignment of Relevant Document**

To:                [*insert name and address of Collateral Agent*]

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

We hereby acknowledge receipt of the above notice and confirm the matters set out in paragraphs 2(a) to 2(d) above.

.....

for and on behalf of

[*insert name of Counterparty*]

Dated:

### Part 3

#### Form of Notice of Assignment to Insurers

To: [insert name and address of insurance company]

[•]

Dear Sirs,

Re: [identify the relevant insurance policy(ies)] (the "**Policies**")

1. We hereby notify you that [insert name of relevant Charging Company] (the "**Company**") has [assigned (subject to a proviso for re assignment on redemption) to/charged] in favour of [insert name of Collateral Agent] (the "**Collateral Agent**") for the benefit of itself and certain other banks and financial institutions (the "**Secured Creditors**") all its right, title and interest in the Policies as security for certain obligations owed by the Company to the Secured Creditors.
2. Notwithstanding, and without prejudice to, any notice that we may have previously served on you in relation to the guarantee and debenture dated on or about the date of the Deed between Open Text UK Holding Limited and Barclays Bank PLC in its capacity as collateral agent under the term loan agreement dated 25 August 2022 among, inter alia, 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 (the "**Term Loan Security**") which, for the avoidance of doubt, will continue in full force and effect (subject to provisions of the Pari Passu Intercreditor Agreement (as defined in the Deed)), we further notify you that:
  - (a) the Company may not agree to amend, modify or terminate the Policies without the prior written consent of the Collateral Agent;
  - (b) subject to paragraph (a) above you may continue to deal with the Company in relation to the Policies until you receive written notice to the contrary from the Collateral Agent. Thereafter the Company will cease to have any right to deal with you in relation to the Policies and therefore from that time you should deal only with the Collateral Agent;
  - (c) you are authorised to disclose information in relation to the Policies to the Collateral Agent on request;
  - (d) you must hold all sums from time to time due and payable by you to us under the Policies to the order of the Collateral Agent;
  - (e) you will pay or release all moneys to which the Company is entitled under the Policies [in excess of [•]] to such persons as the Collateral Agent shall direct;
  - (f) [you will notify the Collateral Agent promptly of any claim, or notification likely to result in a claim, under any Policy for an amount in excess of [•]]; and
  - (g) the provisions of this notice may only be revoked with the written consent of the Collateral Agent.

3. Please sign and return the enclosed copy of this notice to the Collateral Agent (with a copy to the Company) by way of confirmation that:

- (i) you understand that the notice is being served on you notwithstanding the fact that you may have previously received notices from us pursuant to the Term Loan Security and you acknowledge that such notices received pursuant to the Term Loan Security are to continue in full force and effect (subject to provisions of the Pari Passu Intercreditor Agreement (as defined in the Deed));
- (ii) you agree to the terms set out in this notice and to act in accordance with its provisions;
- (iii) you have noted the Collateral Agent's interest [*as joint insured*] [*as assignee/chargee*] on the Policies;
- (iv) you will not cancel, avoid, release or otherwise allow the Policies to lapse without giving the Collateral Agent at least 30 days written notice;
- (v) you have not received notice that the Company has assigned its rights under the Policies to a third party or created any other interest (whether by way of security or otherwise) in the Policies in favour of a third party;
- (vi) you shall not permit any sums to be paid to the Company or any other person under or pursuant to the Policies without the prior written consent of the Collateral Agent;
- (vii) the Collateral Agent shall not in any circumstances be liable for the premiums in relation to the Policies; and
- (viii) [*the Policies shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Collateral Agent.*]

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

Yours faithfully

.....

for and on behalf of  
[*insert name of Company*]

**Part 4**

**Form of Acknowledgement of Notice of Assignment to Insurers**

To:            [*insert name and address of Collateral Agent*]

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

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

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

Dated:

**SCHEDULE 7**

**RELEVANT DOCUMENTS**

[None at date of this Deed]

**SCHEDULE 8**

**DETAILS OF THE SCHEDULED INTELLECTUAL PROPERTY**

[None at date of this Deed]

**SIGNATORIES**

**EXECUTED AS A DEED** by )  
**Open Text UK Holding Limited** )

)

Signature of Director [Redacted]  
Name of Director [Redacted]

in the presence of [Redacted]  
Signature of Witness [Redacted]

Name of Witness [Redacted]

Address of Witness [Redacted]

Occupation of Witness [Redacted]

**Notice Details**

Address: [Redacted]

Attention: c/o Open Text Corporation



**EXECUTED by** )  
**Barclays Bank PLC** )  
The Collateral Agent )  
Acting by: [REDACTED] )



**Notice Details**

Address: Barclays Bank PLC, as Collateral Agent



Attention: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

Group Email: [REDACTED]