

THIS **MORTGAGE DEED** is made on

**BETWEEN**

- (1) whose principal place of business is at as chargor and assignor (the "**Mortgagor**")
- (2) whose principal place of business is at as chargee and assignee (the "**Lender**")

**WHEREAS**

- (A) The Mortgagor and the Lender has entered into the Facility Agreement.
- (B) As security for the facility under the Facility Agreement, the Mortgagor has agreed to mortgage the Property to the Lender for consideration and upon the terms set out below.

**This Deed Witnesses as follows:**

**1. Interpretation**

**Definitions**

1.1 In this Deed: (a) words and expressions defined in the Facility Agreement shall bear the same respective meanings; and (b) the following words and expressions have the meanings respectively shown opposite below, in each case unless the context otherwise requires:

**Amount Owing.** All money, obligations and liabilities due, owing or incurred by the Mortgagor under the Facility Agreement or the Mortgage now or in the future including any unpaid interest or Expenses due and other amounts payable by the Mortgagor under this Mortgage.

**Expenses.** Any costs and expenses which the Lender or a Receiver reasonably incur in connection with this Mortgage and any Facility Agreement, including interest charged on the Expenses. The Lender gives examples of the Expenses in clause 20 of the Mortgage Conditions.

**Facility Agreement.** The Facility Agreement dated by which the Lender make facilities in a principal amount of not more than available to the Mortgagor and includes any modifications, supplements or replacements made to it with the Mortgagor's agreement in writing.

**Facility Agreement.** The Facility Agreement dated and all existing or future agreements, documents, arrangements or relationships (whether documented in writing or not) by which the Lender make facilities available to the Mortgagor or under which the Mortgagor owes to the Lender any money, obligation or liability (or if there is more than one person named as Mortgagor, only those facilities made available by the Lender to, or money, obligation or liability owing to the Lender by, those persons jointly).

**Mortgage Conditions.** The Mortgage Conditions described in the Schedule of this Mortgage.

**Property.** The property described in Clause 2 of this Mortgage.

1.2 If more than one person is named as the Mortgagor, any reference to the Mortgagor includes reference to all those persons comprising the Mortgagor.

1.3 The meanings and rules of interpretation contained in clause 1 of the Mortgage Conditions apply to this Mortgage Deed.

## **2. Property charged under this Mortgage**

The Property charged under this Mortgage:

## **3. Terms and conditions of this Mortgage**

The Mortgage Conditions in the Schedule form part of this Mortgage. The Mortgagor confirm that, before signing this Mortgage Deed, they have received and reviewed a copy of the Mortgage Conditions.

## **4. Contact details of the parties**

4.1 Any notice or demand for payment under or in connection with, this Deed shall be in writing and signed by or on behalf of the party giving it. Without prejudice to any other effective manner of making the same, such notice or demand shall be deemed to have been properly served if served on any officer/one of the directors or the secretary of the party or by sending it by e-mail to the number set out in clause 4.2 or delivering it by hand, or sending it by prepaid recorded delivery or registered post, to the address set out in clause 4.2 and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with this clause 4.3). Any notice or demand so served by hand, e-mail or post shall be deemed to have been duly given in the case of:

(a) delivery by hand, when delivered;

(b) e-mail, at the time of transmission with delivery receipt;

(c) letter, prepaid recorded delivery or registered post, at 10am on the next business day following the date of posting notwithstanding that it be undelivered or returned undelivered;

provided that in each case where delivery by hand or by e-mail occurs after 6pm or a business day or on a day which is not a business day, service shall be deemed to occur at 9am on the next following business day.

Proof of posting on despatch on any notice, communication or demand shall be deemed to be proof of receipt.

References to time in this clause are to local time in the county of the addressee.

4.2 The addresses and e-mails of the parties for the purposes of clause 4.1 are as follows:

### **Mortgagor**

Address:

E-mail:

For the attention of:

**Lender**

Address:

E-mail:

For the attention of:

4.3 A party may notify the other party to this Deed of a change to its name, relevant address or e-mail for the purpose of this clause 4, provided that such notice shall only be effective on:

(a) the date specified in the notices as the date on which the change is to the place; or

(b) if no date is specified or the date specified is less than five business days after the date on which notice is given, the date following five business days after notice of any change has been given.

## **5. Charge over the Property**

The Mortgagor charges and assigns as beneficial owner all its interest in the Property to the Lender to secure the Amount Owning and performance of the Mortgagor's and the Mortgagor's obligations under this Mortgage, subject to the Mortgagor's right of redemption. The charge created by this Mortgage is a legal charge in so far as the Property is a legal estate.

The Mortgagor assigns to the Lender (and, if the Lender reasonably require it, the Mortgagor will enter into one or more separate assignments in any form the Lender may choose) the sale proceeds, rents or other amounts due now or in the future under any sale agreement, lease, tenancy or other agreement in respect of the whole or any part of the Mortgagor's interest in the Property together with power for the Lender to take proceedings and give valid receipt of discharges for the above in the Mortgagor's name.

## **6. Default interest rate for any unpaid part of the Amount Owning**

The default interest rate for any unpaid part of the Amount Owning is:

(a) in connection with the mortgage loan granted by the Lender to the Mortgagor for which the Property is charged as security under this Mortgage, %; and

(b) in connection with other money secured under this Mortgage (other than the mortgage loan mentioned in (a) above), the default interest rate stated in the terms and conditions of the applicable Facility Agreement.

## **7. Costs for production of certified copies**

When the Mortgagor sells the Property, if the Lender previously assigned or transferred its rights and interests in this Mortgage, the Mortgagor will at its cost obtain certified true copies of

all the assignment and transfer documents executed by the Lender or its assignee(s) and transferee(s) in order to enable the Mortgagor to prove good title.

## **8. No Rights under Contracts for Third Parties**

8.1 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Ordinance to enforce any of its terms.

8.2 The Lender may assign to the Third Party to another person unless this Mortgage Deed expressly provides otherwise; and the Mortgagor, the Mortgagee and the Lender shall be entitled to rescind or vary any term of Mortgage Deed at any time as provided by this Mortgage Deed without the consent Third Party.

## **9. Governing Law and Jurisdiction**

9.1

9.2 The agreement contained in clause 9.1 above is included for the benefit of the Lender on behalf of the Secured Parties. Accordingly, notwithstanding the exclusive agreement in clause 9.1 above, the Lender shall retain the right to bring proceedings in any other court which has jurisdiction.

9.3 The Mortgagor irrevocably waives any objections to the jurisdiction of any courts referred to in this clause 9.

9.4 The Mortgagor irrevocably agrees that a judgment or order of any court referred to in this clause 9 in connection with this Deed is conclusive and binding on it and may be enforced against it in the court of any other jurisdiction.

9.5 The Mortgagor irrevocably consents to service of process or any other document in connection with proceedings in any court by personal service, delivery at any address specified in this Deed or any other usual address, mail or in any other manner permitted by laws of , the law of the place of service or the law of jurisdiction where proceedings are instituted.

## **10. Declaration by The Mortgagor**

The Mortgagor confirms that before signing this Mortgage, it has reviewed and understood the terms and conditions of the Mortgage and, in particular, to the warning that separate independent legal advice should be obtained before entering into this Mortgage.

In witness whereof the parties hereto have caused this Deed to be executed as a deed and it is intended to be and is hereby delivered the day and year first above written.

**SIGNED SEALED and DELIVERED )**

**The Mortgagor**

in the presence of : )

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\*Witness's/Witnessing solicitor's signature

\* Delete as appropriate.

**Signed by**

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## **SCHEDULE 1**

### **Mortgage Conditions**

#### **1. Interpretation**

In these Mortgage Conditions:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) headings are for ease of reference only and do not alter the meaning of these Mortgage Conditions;
- (c) references to any clause or schedule are references to clauses of or schedules to these Mortgage Conditions and include any changes to those clauses or schedules;
- (d) times and dates are times and dates;
- (e) references to a document include any changes made to that document or any documents which replace it;
- (f) references to any statutory provision include any changes to those statutory provisions or to any statutory instrument, order or regulation made under any of them;
- (g) words and expressions defined in the Mortgage Deed shall bear the same respective meanings; and
- (h) any individual, personal representative, company, incorporated or unincorporated body, juridical person, trust, partnership or firm and includes any successors and assigns.

#### **2. Joint and several liability**

2.1 All representations warranties and obligations of the Mortgagor are made or undertaken by them together and by each of them on their own. This means that each of The Mortgagor can be held fully responsible for complying with this Mortgage even if the Mortgage cannot be enforced against the other of them.

2.2 If there is more than one person named as the Mortgagor in the Mortgage Deed, this Mortgage applies to them all together and to each of them on its own. This means that each of them can be held fully responsible for complying with the obligations contained in the Mortgage (to the extent the provisions apply to it) even if the Mortgage cannot be enforced against the other of them.

2.3 The Lender may choose to enforce the Lender's rights against, discharge or reach an agreement with any person named as the Mortgagor without affecting the Lender's rights against any other persons named as the Mortgagor in the Mortgage Deed.

### **3. Payment**

3.1 The Mortgagor and/or the Mortgagor must:

- (a) pay or discharge the Amount Owing as and when it becomes due and payable; and
- (b) pay the Expenses immediately when the Lender demand payment of them.

3.2 The Mortgagor agrees that the Lender are not obliged to demand payment of the Amount Owing from any other person or take any action to obtain payment (such as selling the Property or any other security the Lender hold) before demanding payment of the Amount Owing from The Mortgagor or either of them.

3.3 If the Lender does not receive full payment of any Expenses the Lender demand, the Lender may charge default interest on any unpaid Expenses at the rate set out in the relevant Facility Agreement from the date on which the Expenses were incurred until the date of payment. Default interest is payable on demand.

3.4 All payments under the Mortgage must be paid in full. If a deduction on account of tax or a similar charge is required by law, the Mortgagor must make up the payment so that the Lender receive the full amount due under the Mortgage.

3.5 Neither the Mortgagor nor the Mortgagor may deduct any sums owed by the Lender to either of them from any payments made by either of them under the Mortgage, and must pay the full amount of the Amount Owing as demanded by the Lender at any time.

### **4. Indemnity**

4.1 The Mortgagor agrees to indemnify the Lender (for ourselves and as agent for each of the Lender's directors, officers and employees, each an "Indemnified Person") against all liabilities, reasonable losses and damages, actions, proceedings, demands, claims and reasonable costs and expenses (including legal costs) which any Indemnified Person may suffer as a result of any breach of the Mortgage or any misrepresentation in connection with the Mortgage.

4.2 Any amounts which the Mortgagor must pay the Lender under clause 4.1 will be added to the Expenses.

## **5. Release of the Mortgage**

5.1 When the Amount Owing has been fully paid and all obligations under the Mortgage have been performed, the Lender will at the Mortgagor's cost execute a document to:

(a) acknowledge full receipt of the Amount Owing; and

(b) (i) release or discharge the Mortgage; or

(ii) (if the Mortgagor's interest in the Property is an equitable interest) re-assign the Property to the Mortgagor.

5.2 Any action the Lender take under clause 5.1 is subject to the condition that no money the Lender receive in payment of the Amount Owing will subsequently be returned or reduced under any law.

5.3 If the Lender take any action under clause 5.1 and are later obliged under law to return any money paid to the Lender in payment of the Amount Owing, The Mortgagor will:

(a) remain liable under the Mortgage as if the Lender had never received that money; and

(b) at their cost, execute any document and do any thing necessary to charge (if the Mortgagor's interest in the Property is a legal estate) or assign (if the Mortgagor's interest in the Property is an equitable interest) all the Mortgagor's interest in the Property to the Lender, and the Lender will be entitled to enforce the Mortgage as if none of the matters set out in clause 5.1 had occurred.

5.4 If the Lender agree to release, discharge or re-assign the Property without receiving full payment of the Amount Owing, The Mortgagor will remain liable for any remaining balance.

## **6. Representations and warranties of The Mortgagor**

6.1 The Mortgagor represents and warrants to the Lender that at the date of the Mortgage:

(a) the Mortgagor is the sole beneficial owner of the Property and has a good and marketable title to the Property;

(b) no encumbrance or security exists over the Property and the Property is not subject to any tenancy or licence to occupy (except as already disclosed to and acknowledged by the Lender in writing) in favour of any other person;

(c) by signing the Mortgage, it has not breached any law, rule, regulation, judgment, order, agreement, authorization or obligation applicable to or binding on it;

(d) the particulars of the Property set out in the Mortgage Deed are true, accurate and complete;

- (e) each of the Government Lease and the Deed of Mutual Covenant is valid and in force and no circumstances exist which entitle the Government of to terminate the Government Lease;
- (f) the premium, rent and other money payable in respect of the Property under the Government Lease or the Deed of Mutual Covenant have been fully paid, and the terms and conditions of the Government Lease and the Deed of Mutual Covenant so far as they affect the Property have been observed;
- (e) the Deed of Mutual Covenant is valid and in force and no circumstances exist which entitle the Government of to confiscate the property;
- (f) the premium, rent and other money payable in respect of the Property under the Deed of Mutual Covenant have been fully paid, and the terms and conditions of the Deed of Mutual Covenant so far as they affect the Property have been observed;
- (g) the management fees, rates, taxes and other outgoings and money payable in respect of the Property have been fully paid;
- (h) no litigation, arbitration or administrative proceedings in connection with the Property are currently taking place or threatened;
- (i) no Event of Default and no event which may become an Event of Default if any notice is given or any condition is satisfied or any period of time has lapsed, has happened;
- (j) all the information (including personal data and financial information) supplied to the Lender in connection with the Mortgage, the Amount Owing and the Property is true, accurate and complete;
- (k) all information relevant to the Lender's decision to lend any money or the amount to be lent to the Mortgagor has been given to the Lender;
- (l) each of them has the necessary power, capacity and legal right to sign or execute the Mortgage and to perform its obligations under the Mortgage;
- (m) each of them has obtained all necessary approvals for the signing or execution of the Mortgage and the performance of its obligations under the Mortgage, and that those approvals will remain in force so long as the Mortgage is in force; and
- (n) it is duly incorporated and is validly existing under the laws of the place of its incorporation, and has duly authorized its officers) to sign or execute the Mortgage and has the power to perform all its obligations under the Mortgage.

## **7. Insurance Obligations of the Mortgagor**

7.1 The Mortgagor must insure the Property at all times. The following terms apply to any insurance:

- (a) the Lender have the right to approve the choice of insurer and the terms of the insurance policy;



(b) the Lender's interest in the Property must be noted on the insurance policy, or the insurance must be in the joint names of the Mortgagor and ourselves, or the Lender may ask for the Mortgagor's interest in the policy to be assigned to the Lender;

(c) the insurance policy must:

(i) cover all risks which the Lender reasonably specify; and

(ii) be for an amount as agreed by the Mortgagor and the Lender;

(d) if the Lender require, the original or a copy of the insurance policy must be given to the Lender for the Lender's records; and

(e) the Mortgagor must punctually pay the insurance premium and must give the Lender the original or a copy of the receipt for such payment.

7.2 If the Mortgagor does not insure the Property under clause 7.1 or if the Mortgagor does not keep to the terms of clause 7.1, then the Lender may insure the Property. If the Lender insure the Property, the following terms apply:

(a) the Lender will insure the Property at the Mortgagor's cost and the Lender will be entitled to add that cost to the Expenses; and

(b) the Lender will choose:

(i) the insurer;

(ii) the amount of the insurance;

(iii) whether the insurance is to be in the Lender's name alone, or in the joint names of the Mortgagor and the Lender; and

(iv) the risks to be covered.

7.3 The Mortgagor agrees that the insurance policy for the Property is to provide that the proceeds of any claims made under the policy will be paid directly to the Lender. To the extent that any part of the Amount Owning remains outstanding, the Mortgagor will hold the proceeds paid under any insurance policy on trust for the Lender.

7.4 If the Mortgagor wishes to make a claim under any insurance policy for the Property, it must notify the Lender immediately.

7.5 The Lender have the right to act for the Mortgagor to settle or adjust any claim the Mortgagor may have under the insurance policy for the Property. If the Lender decide to do so, the Mortgagor must sign all documents and do all things the Lender reasonably ask.

7.6 If any money is paid out as a settlement or compensation for a claim under any insurance policy for the Property, the Lender have the right to choose to use that money either to pay or reduce the Amount Owning or to repair or rebuild the Property.

7.7 If the Lender choose to use the money paid out under clause 7.6 to repair or rebuild the Property, the money must be used for that purpose only, and the Mortgagor must make up any shortfall so as to make sure that the repair or rebuilding is done to the same standard as before the damage.

7.8 The Mortgagor must not do, or allow to be done, anything which may:

- (a) reduce the scope of insurance cover or the insured amount for the Property;
- (b) increase the premium of any insurance policy for the Property;
- (c) prevent or hinder any claim being settled in full under any insurance policy for the Property;
- (d) cancel, end or invalidate any insurance policy for the Property; or
- (e) adversely affect any insurance policy for the Property.

## **8. Obligations of the Mortgagor relating to the Property**

8.1 Unless the Lender otherwise agree in writing, the Mortgagor agrees at all times and at its own cost:

- (a) to ensure that it remains the sole beneficial owner of the Property and holds a good and marketable title to the Property;
- (b) to inform the Lender promptly of the existence of any circumstances which entitle the Government of to terminate the Government Lease;
- (c) to keep the Government Lease valid and in force;
- (d) to pay fully and punctually all premiums, rents, management fees, rates, taxes and other outgoings and money payable in respect of the Property or under the Government Lease or the Deed of Mutual Covenant and to provide the Lender promptly with reasonable evidence of that payment on the Lender's demand;
- (e) to observe the terms and conditions of the Government Lease and the Deed of Mutual Covenant;
- (b) to pay fully and punctually all premiums, rents, management fees, rates, taxes and other outgoings and money payable in respect of the Property or under the Deed of Mutual Covenant and to provide the Lender promptly with reasonable evidence of that payment on the Lender's demand;
- (c) to observe the terms and conditions of the Deed of Mutual Covenant;
- (f) to keep the Property in good repair and condition and to allow the Lender and people the Lender appoint to enter the Property to do any necessary repairs if it fails to do so;
- (g) to allow the Lender's or the Receiver's representatives to inspect the Property at all reasonable times on giving reasonable notice (and those persons will not be treated as having

taken possession of the Property by that inspection);

(h) to send the Lender, within 7 days of receipt, a copy of any notice received or left at the Property demanding any overdue payments in respect of the Property or threatening any litigation, arbitration or administrative proceedings in respect of the Property;

(i) to inform the Lender promptly of any dispute or complaint concerning the Property and the outcome of that dispute or complaint, and to send the Lender, within 7 days of receipt, a copy of all notices or papers sent to or by the Mortgagor in connection with that dispute or complaint;

(j) to comply with all laws, rules, regulations, judgments, orders, agreements and authorizations in connection with the Property;

(k) to send to the Lender, within 7 days of receipt, a copy of any judgment or order in respect of the Property and all orders, notices and proposals issued in respect of the Property by any governmental authority or manager of the Building;

(l) to comply with any order, notice or proposal issued in respect of the Property by any governmental authority or manager of the Building;

(m) at the Lender's request, to make or join with the Lender in making a claim, a defence or a response in accordance with the Lender's instructions in any litigation, arbitration or administrative proceedings in respect of the Property;

(n) at the Lender's request, to make or join with the Lender in making an objection, appeal or a response in accordance with the Lender's instructions in connection with any judgment, order, notice or proposal issued in respect of the Property by any court, governmental authority or manager of the Building, or any dispute or complaint concerning the Property;

(o) to keep the Lender informed promptly of any change and any incorrect, inaccurate or incomplete information in the particulars of the Property set out in the Mortgage, and to correct promptly that incorrect, inaccurate or incomplete information;

(p) to deliver to the Lender all documents of title relating to the Property for the Lender's custody;

(q) if at any time the Lender become entitled to exercise the power of sale contained in the Mortgage, at the Lender's written request, to immediately give vacant possession of the Property to the Lender or anyone the Lender nominate; and

(r) at the Lender's request at any time to sign and execute all documents (including a legal charge if the Mortgagor's equitable interest in the Property becomes a legal interest) and do whatever the Lender may reasonably require for perfecting the security intended to be created under the Mortgage.

### **Other Obligations of The Mortgagor**

8.2 Unless the Lender otherwise agree in writing, The Mortgagor agrees at all times and at its own cost:

(a) to observe the terms and conditions of the Facility Agreement;

(b) to provide the Lender promptly with any information about each of them or the Property the Lender may ask at any time for:

(i) enforcing the Mortgage;

(ii) preserving the Property; or

(iii) recovering the Amount Owing;

(c) to inform the Lender promptly of any change in the information (including personal data and financial information) each of them has previously given the Lender in respect of the Mortgage, the Property or the Amount Owing;

(d) to inform the Lender promptly of the happening of any Event of Default, or of any event which may become an Event of Default if any notice is given or any condition is satisfied or any period of time has lapsed;

(e) to pay the Lender all costs and expenses the Lender reasonably incur in complying with requests from the Mortgagor, the Mortgagor or their solicitors, for photocopies, certified copies or originals of any document in connection with the Property or the Mortgage;

(f) to keep the Mortgage and the Facility Agreement valid and in force, to maintain the value of the Property and to enable the Lender and the Receiver to exercise rights and powers under the Mortgage;

(g) to maintain all necessary approvals for the validity of the Mortgage and the Facility Agreement and the performance of the obligations under them;

(h) to sign any document and to do any thing necessary to keep valid and in force all the approvals obtained for the signing or the validity of the Mortgage and the Facility Agreement or the performance of the obligations under them;

(i) to keep proper accounting records in respect of its business; and

(j) to engage a firm of qualified auditors to audit and certify its financial statements, and to provide those audited and certified financial statements to the Lender within the period the Lender require.

## **9. Things the Mortgagor agrees not to do**

Without the Lender's prior written consent, the Mortgagor agrees not to do any of the things listed below:

(a) sell, transfer, sub-divide, dispose of or deal with the Property or any interest in it;

(b) create any rights or interests or impose obligations (including any security) in favour of any other person over the Property;

- (c) use the Property for unlawful or immoral uses or any use not permitted under the Deed of Mutual Covenant or the Government Lease;
- (d) pull down, or make any structural alterations or additions to the Property unless required by law, the Government Lease or the Deed of Mutual Covenant;
- (e) do anything which may decrease the value of the Property or prejudice the Lender's security created under the Mortgage;
- (f) apply for any planning permission, building consent or any grant for improvements or repairs in respect of the Property; and
- (g) vary or give up any term or rights in connection with the Property contained in the Government Lease or the Deed of Mutual Covenant.

- (c) use the Property for unlawful or immoral uses or any use not permitted under the Deed of Mutual Covenant;
- (d) pull down, or make any structural alterations or additions to the Property unless required by law, the Deed of Mutual Covenant;
- (e) do anything which may decrease the value of the Property or prejudice the Lender's security created under the Mortgage;
- (f) apply for any planning permission, building consent or any grant for improvements or repairs in respect of the Property; and
- (g) vary or give up any term or rights in connection with the Property contained in the Deed of Mutual Covenant.

## **10. Occupying the Property**

10.1 Without the Lender's prior written consent, the Mortgagor must not at any time:

- (a) enter into any lease, tenancy or licence agreement in connection with the Property;
- (b) vary or give up any term of any lease, tenancy or licence agreement in connection with the Property;
- (c) accept early termination of any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement; or
- (d) terminate or do anything to terminate any lease, tenancy or licence agreement in connection with the Property in case of any breach by the other party to that lease, tenancy or licence agreement.

10.2 Subject to clause 10.1, the Mortgagor must at its own cost or at the cost of the Mortgagor:

- (a) send the Lender certified copies of any lease, tenancy or licence agreement in connection with the Property and any subsequent variation within 14 days from the date of that lease,

tenancy or licence agreement or variation; and, if any such lease, tenancy or licence agreement has been stamped or adjudicated, a certified copy with stamping or adjudication;

(b) perform all the Mortgagor's obligations under any lease, tenancy or licence agreement in connection with the Property;

(c) do its best in good faith to ensure the performance of any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement;

(d) inform the Lender promptly of any breach of any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement; and

(e) inform the Lender promptly of any request to extend or vary any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement or any modification to any such lease tenancy or licence agreement.

## **11. Renewal, extension and re-grant of the Government Lease**

11.1 If the Government of offers a renewal, extension or re-grant of the Government Lease, the Mortgagor must:

(a) immediately accept that offer;

(b) satisfy promptly all the conditions of that offer and pay promptly any premium and other consideration as demanded;

(c) on completion of the renewal, extension or re-grant, at its own cost execute a mortgage of the Property under the renewed, extended or re-granted Government Lease in the Lender's favour in the same form as the Mortgage with any necessary changes required; and

(d) pending the signing of the mortgage under clause 11.1 (c), hold its interest in the Property under the renewed, extended or re-granted Government Lease on trust for the Lender.

11.2 On expiry of the Government Lease, if the Mortgagor fails to obtain a renewal, extension or re-grant of the Government Lease, The Mortgagor must provide any additional security the Lender require for the Amount Owing.

## **12. Events of Default**

Each of the events listed below in relation to the Mortgagor is an Event of Default:

(a) any failure to observe any term of the Facility Agreement or the Mortgage or any other loan agreement to which it is a party;

(b) any of the representations or warranties made to the Lender in the Facility Agreement, the Mortgage or any other documents based on which the Lender have made available the facilities under the Facility Agreement is breached or found to have been incorrect;

(c) any failure to repay any debt due and payable;

- (d) any admission of inability to repay any debt due and payable;
- (e) any action is taken to enforce any security created by either of them;
- (f) any law, rule, regulation, judgment, order, notice or proposal issued by any governmental authority, suspends, varies, terminates or excuses any obligations under the Facility Agreement or the Mortgage;
- (g) the Property is destroyed or damaged;
- (h) any governmental or other authority re-enters or re-takes or expresses an intention or any proposal to re-enter or re-take possession of the Property;
- (i) the Government Lease is terminated;
- (j) the Property is resumed or acquired (whether or not any compensation is paid);
- (k) the Facility Agreement, the Mortgage or any other security provided to the Lender becomes invalid or unenforceable or is terminated or in default;
- (l) any obligation under the Facility Agreement or the Mortgage becomes impossible to perform;
- (m) any third party applies for a court order in respect of the Property;
- (n) any third party occupies or takes possession of the Property without the Lender's written consent;
- (o) the Mortgagor, the Mortgagee or any other security provider in respect of the Amount Owing enters into or proposes to enter into an arrangement in respect of its debts with or for the benefit of its creditors or that security provider;
- (p) any action taken or omission by it or any other security provider which in the Lender's reasonable opinion might materially and adversely affect its or the security provider's ability to perform their respective obligations under the Facility Agreement or the Mortgage or other security for the Amount Owing;
- (q) a petition for its bankruptcy is presented to the court and is not discharged within 7 days;
- (r) a receiver or similar officer is appointed over any part of its business or assets;
- (s) creditors take possession of any part of its business or assets;
- (t) a legal action is commenced against any part of its business or assets and is not discharged within 7 days of the commencement;
- (u) a petition is presented to the court, or a legal action commenced, or an order made, or a resolution passed, for its winding-up, administration, reorganization or dissolution;
- (v) it disposes of, or expresses an intention to dispose of, any substantial part of its business or assets;

- (w) a substantial part of its business or assets are compulsorily purchased or taken over or acquired (whether or not any compensation is paid);
- (x) it ceases, or expresses an intention to cease, to carry on any substantial part of its business;
- (y) it makes or expresses an intention to make, any significant change to the nature or scope of its business; and
- (z) any material and adverse change in its business or financial condition which, in the Lender's reasonable opinion, might materially or adversely affect the ability to perform its obligations under the Facility Agreement or the Mortgage.

### **13. Enforcement of the Mortgage**

On the happening of an Event of Default, the Mortgage becomes enforceable, the Amount Owing becomes immediately due and payable, and the Lender are entitled to:

- (a) terminate the Facility Agreement and all banking, credit or other facilities or accommodation provided to the Mortgagor under the Facility Agreement so that the Lender's obligations under all of them cease immediately;
- (b) demand payment of the Amount Owing;
- (c) exercise all powers given to the Lender as mortgagee by law (including those under the Ordinance); and
- (d) exercise all powers given to the Lender by the Mortgage.

### **14. Default interest rate and charges**

If either the Mortgagor fails to pay the Amount Owing (except for the unpaid Expenses) in accordance with clause 13(b) or as required under the Facility Agreement, each of them on its own and together will be liable to pay the Lender default interest in accordance with Clause 6 of the Mortgage Deed, together with late charges and other handling fees on the unpaid amount at the rate and on the terms specified in the Facility Agreement.

### **15. Appointment of a Receiver**

15.1 If an Event of Default occurs, the Lender may appoint a Receiver without giving notice to the Mortgagor.

15.2 Subject to clause 16.2, the parties agree that to the appointment of a Receiver.

### **16. Our powers and those of a Receiver**

16.1 If an Event of Default happens, the Lender or the Receiver may:

- (a) sell or otherwise dispose of or deal with the Property, in any manner, at any price (whether in cash or in any other form) and on any terms as the Lender or the Receiver consider appropriate;



- (b) assign the Property either in the Lender's name or in the Mortgagor's name in exercise of the Lender's power under the Mortgage;
- (c) take possession of the Property;
- (d) receive any rent, deposit and profit in respect of the Property, and require the Mortgagor to execute, at the cost of the Mortgagor, an assignment of the rent or profit to the Lender or the Receiver;
- (e) grant any lease, tenancy or licence agreement in connection with the Property on any terms as the Lender or the Receiver consider appropriate;
- (f) sign any document and do anything that the Lender or the Receiver consider appropriate for the sale, lease or tenancy of the Property or the granting of any other right to occupy or possess the Property;
- (g) insure the Property, and to keep the Property insured, against fire and other risks that the Lender or the Receiver may require, for the amount and on the terms that the Lender or the Receiver consider appropriate;
- (h) carry out any repairs, renovations, alterations, improvements and developments to the Property as the Lender or the Receiver consider appropriate;
- (i) appoint any person in connection with the exercise of any of the Lender's or the Receiver's powers and rights under the Mortgage for any remuneration and on any terms as the Lender or the Receiver consider appropriate;
- (j) delegate any of the Lender's or the Receiver's powers and rights under the Mortgage to any person for any remuneration and on any terms as the Lender or the Receiver consider appropriate;
- (k) incur reasonable costs and expenses in the exercise of any of the Lender's or the Receiver's powers and rights under the Mortgage;
- (l) in connection with the exercise of any of the Lender's or the Receiver's powers and rights under the Mortgage, to raise money on any terms as the Lender or the Receiver consider appropriate, including on terms providing the Property as security either in priority to the Mortgage or subject to the Mortgage. However:
- (i) the Receiver will not exercise this power without the Lender's prior written consent and the Lender are not liable for giving or refusing to give that consent; and
- (ii) any person lending money to the Receiver as a result of the exercise of this power is entitled to assume that the Receiver has power to borrow that money and is borrowing that money in accordance with this sub-clause;
- (m) institute or defend any litigation, arbitration or administrative proceedings in respect of the Property;

(n) use the Mortgagor's or the Receiver's name in connection with the exercise of any of the Lender's or the Receiver's powers and rights under the Mortgage; and

(o) do any other lawful act as the Lender or the Receiver consider necessary or incidental to the exercise of any of the Lender's or the Receiver's powers and rights under the Mortgage.

16.2 To the extent permitted by any law, any restriction on the exercise of the Lender's or the Receiver's power to sell the Property under the Mortgage, including those in the Ordinance do not apply.

16.3 In the exercise of the Lender's or the Receiver's powers and rights under the Mortgage, the Lender or the Receiver will be liable to account only for money the Lender or the Receiver have actually received.

16.4 The Lender or the Receiver are not liable for any loss arising from the exercise of any of the Lender's or the Receiver's powers and rights under the Mortgage unless the loss is caused by the Lender's or the Receiver's fraud or gross negligence.

16.5 Any person dealing with the Lender or the Receiver is entitled to assume that:

(a) the Lender or the Receiver are entitled to exercise all or any of the Lender's powers and rights under the Mortgage;

(b) the Lender or the Receiver exercise all or any of the Lender's powers and rights in accordance with the Mortgage;

(c) the Lender or the Receiver use all money received in the exercise of the Lender's powers and rights in accordance with the Mortgage; and

(d) a receipt for all or any of the money paid to the Lender or the Receiver is a good and sufficient discharge to any person paying that money.

## **17. Remedy of the Mortgagor**

Unless the Lender or the Receiver have acted fraudulently or have been grossly negligent, The Mortgagor agrees that its remedy for the unauthorized, improper or irregular exercise by the Lender or the Receiver of the Lender's or the Receiver's powers and rights under the Mortgage is in damages only.

## **18. Application of proceeds of security realization**

Subject to applicable law, the Lender or the Receiver will apply any money the Lender or the Receiver receive under the Mortgage in the following order:

(a) payment of the Expenses;

(b) payment of the Amount Owing (other than the Expenses, and with accrued interest being paid first); and

(c) payment of any remaining balance to the Mortgagor or any other person who is entitled to receive that money.

## **19. Effects of bankruptcy or insolvency laws**

19.1 If the Lender receive any payment or security from the Mortgagor or any other person for the Amount Owing, and are later obliged under any bankruptcy or insolvency laws to restore the Lender's position to what it would have been if that payment or security had not been received, then The Mortgagor shall be liable under the Mortgage as if the Lender had never received that payment or security.

19.2 The Lender will be entitled, before any order under those bankruptcy or insolvency laws is made against the Lender, to agree or settle any claim arising under those laws on any terms as the Lender consider appropriate without the prior consent of the Mortgagor.

19.3 If the Lender agree or settle a claim under clause 19.2, The Mortgagor will be liable under the Mortgage as if a court order had been made containing the terms the Lender have agreed in connection with that claim.

19.4 If the Lender have given a release, discharge or re-assignment of any security (including the Mortgage) given by the Mortgagor in the Lender's favour in return for any payment or security from either the Mortgagor, the Mortgagor or any other person, then that release or discharge will be conditional on no claims being made against the Lender under the bankruptcy or insolvency laws in connection with that payment or security.

## **20. The Expenses**

Examples of the Expenses are:

(a) all reasonable costs and expenses (including legal costs) incurred by the Lender or the Receiver in connection with the Mortgage for the following purposes:

- (i) preparing, negotiating, signing or registering the Mortgage;
- (ii) exercising any of the Lender's or the Receiver's powers under the Mortgage;
- (iii) recovering or attempting to recover the Amount Owing;
- (iv) protecting or enforcing any of the Lender's or the Receiver's rights under the Mortgage;
- (v) preserving or attempting to preserve the Property;
- (vi) making any claim or defending any claim against the Lender or the Receiver in respect of the Amount Owing, the Mortgage or the Property;
- (vii) preparing, signing or registering a release of the Mortgage;
- (viii) certifying receipt of full payment of the Amount Owing;

- (ix) (if the Mortgagor's interest in the Property is an equitable interest), preparing, signing or registering all documents and doing everything necessary to re-assign the Property to the Mortgagor upon full payment of the Amount Owing;
  - (x) giving or refusing to give any consent under the Mortgage;
  - (xi) (if the Mortgagor fails to perform any obligations under the Mortgage), performing those obligations; or
  - (xii) taking possession of, or selling or leasing or granting other rights to occupy or possess the Property under the Mortgage;
- (b) the Receiver's fees as reasonably agreed between the Receiver and the Lender; and
- (c) any amounts which The Mortgagor are liable to pay the Lender under clause 4.1.

## **21. Deductions from other credit balances and lien**

21.1 The Mortgagor agrees that if it fails to pay any part of the Amount Owing due under the Mortgage, the Lender may without giving prior notice to it or any other person:

- (a) use any credit balance in any of its accounts (whether in its own name or in their joint names or in joint names with other persons) with the Lender to pay that unpaid sum to the Lender;
- (b) off set that unpaid sum by any debt or liability the Lender owe them now or in the future;
- (c) exercise a lien on all of its assets or property the Lender hold; and
- (d) sell any of the assets or property the Lender hold at a price and in a manner the Lender decide, and use the proceeds to pay the unpaid sum.

21.2 The Mortgagor agrees to waive all rights to set off against the Amount Owing any debt or liability the Lender owe it or them now or in the future.

## **22. Payment in other currencies**

22.1 Unless the Lender otherwise agree in writing, the Amount Owing must be paid in the currency in which it was incurred ("Original Currency").

22.2 If the Amount Owing is not paid in the Original Currency, the Lender will be entitled to convert the amount paid into the Original Currency within a reasonable period at the best exchange rate reasonably available. If there is any shortfall between the converted amount and the Amount Owing, The Mortgagor remains liable for the shortfall.

## **23. Appointment as attorney**

23.1 The Mortgagor appoints the Lender and (as a separate appointment) the Receiver to act as its attorney either individually or jointly with others to do the following things in its name and on its behalf:

(a) to sign, seal and deliver all documents; and

(b) to do all things the Lender or the Receiver consider appropriate to:

(i) perform any obligations which the Mortgagor fails to perform under the Mortgage;

(ii) exercise any power or right given to the Lender or the Receiver under the Mortgage; or

(iii) give the Lender the full benefit of the Mortgage; and

(c) to appoint another person as attorney for the Mortgagor in replacement for ourselves or the Receiver.

23.2 The Mortgagor agrees to confirm and ratify any document signed or anything done at any time by the Lender or the Receiver or any other person appointed as attorney under clause 23.1.

23.3 This appointment is given by way of security and is irrevocable so long as the Mortgage is in force.

#### **24. Evidence of the Amount Owing**

Unless there is an obvious mistake or fraud, a certificate signed by the Lender's officer as to the amount of the Amount Owing, the Expenses, any interest, default interest, late charge or handling fee is conclusive evidence against The Mortgagor for all purposes.

#### **25. Suspense account**

25.1 If an Event of Default occurs and until the Amount Owing has been paid in full, the Lender may hold any money the Lender receive under the Mortgage (unless the amount wholly satisfies the Amount Owing) in a suspense account in order to preserve the full amount of the Lender's claims against the Mortgagor, the Mortgagor or any other security provider for the Amount Owing.

25.2 If the Lender have not already done so under clause 25.1, the Lender may treat all money the Lender receive under the Mortgage as having been credited to a suspense account in order to preserve the full amount of the Lender's claims against the Mortgagor, the Mortgagor or any other security provider for the Amount Owing, and not in reduction of the amount of the Amount Owing.

25.3 Amounts standing to the credit of a suspense account under clause 25.1, or a deemed suspense account under clause 25.2, will bear interest at the Lender's prevailing rate(s) for deposit accounts with a similar credit balance.

#### **26. Continuing security**

26.1 The Mortgage is a continuing security securing the Amount Owing due at any time by the Mortgagor to the Lender. The Mortgagor's and the Mortgagor's liabilities and obligations under the Mortgage continue until full payment of the Amount Owing, and are not affected by any of the following events:

- (a) the death, mental incapacity, bankruptcy, insolvency, liquidation or change of name of the Mortgagor;
- (b) any change in the Lender's name or constitution;
- (c) (if either or both of the Mortgagor is a partnership or any other organization), any change in its name or membership or constitution of the partnership or organization (in that case, the Mortgage continues to bind those persons who make up the partnership or the organization as so constituted for the time being);
- (d) the Mortgagor being taken over, absorbed by, or merging with any other person;
- (e) the Lender being taken over, absorbed by, or merging with any other bank or institution;
- (f) the appointment of a receiver over the business or assets of the Mortgagor;
- (g) the entry by the Mortgagor into any arrangement with its creditors to repay its debts or other liabilities; and
- (h) any assignment of the Amount Owing, any transfer of the Mortgage or any declaration of trust or other acts affecting the Lender's rights in respect of the Amount Owing or the Mortgage.

26.2 Without affecting any of the Lender's or the Receiver's rights under the Mortgage, the Lender or the Receiver may, at any time:

- (a) give the Mortgagor, the Mortgagor or any other security provider for the Amount Owing more time to pay money due and payable;
- (b) vary, extend, release, reduce, exchange, increase, accelerate, renew or discharge any obligations or liabilities of the Mortgagor or any other security provider for the Amount Owing;
- (c) make any other arrangement, compromise or settlement with the Mortgagor, the Mortgagor any other security provider for the Amount Owing;
- (d) take or deal with any other security or legal commitment for the Amount Owing;
- (e) fail to take any other security or legal commitment for the Amount Owing; or
- (f) neglect, release, enforce or choose not to enforce any of the Lender's rights under the Mortgage or any other security or legal commitment for the Amount Owing.

26.3 The Mortgagor's and the Mortgagor's liabilities under the Mortgage are not and will not be affected by:

- (a) the invalidity of, or irregularity in, entering into the Facility Agreement or the Mortgage;
- (b) the invalidity of any other security or legal commitment for the Amount Owing;
- (c) any lack of power to enter into, or perform any of the Mortgagor's or the Mortgagor's obligations, under the Facility Agreement or the Mortgage; or

(d) any act, omission, event or circumstance which may operate to prejudice, adversely affect or discharge the Mortgage had this clause 26.3 not existed.

## **27. Other general matters**

27.1 Our or the Receiver's rights under these Mortgage Conditions are not lost or limited:

- (a) by any earlier exercise of them;
- (b) by any failure to exercise them;
- (c) by any delay in exercising them; and/or
- (d) by exercising them in part only.

27.2 Our or the Receiver's rights under the Mortgage are in addition to any other rights which the Lender or the Receiver may have under the law.

27.3 The Lender are entitled to employ debt collecting agent(s) to collect any sum due under the Mortgage.

## **28. Unenforceability of certain terms of the Mortgage**

If any term of the Mortgage is or becomes unenforceable under the laws of any place, this will not affect its enforceability under the laws of any other place nor the enforceability of the remaining terms of the Mortgage.

## **29. Amendments and consents to be in writing**

29.1 No change to any term of the Mortgage is binding unless it is in writing and signed by the Lender, The Mortgagor.

29.2 No consent the Lender give will bind the Lender unless it is given in writing and signed by the Lender's authorized officer.

## **30. Further security**

The Lender are entitled to require The Mortgagor to provide further security if, in the Lender's reasonable opinion at any time, the Property is not a sufficient security for the Amount Owing. The Mortgagor agrees to provide promptly further security to the Lender's satisfaction if the Lender demand it.

## **31. Our power to assign or transfer the Lender's rights and obligations**

31.1 The Mortgagor agrees that the Lender may assign or transfer, or agree to assign or transfer, the Facility Agreement, the Mortgage and any other documents based on which the Lender have made available the facilities under the Facility Agreement and any of the Lender's rights or obligations under them to any person at any time.

31.2 For the purpose of any assignment or transfer under clause 31.1, each of The Mortgagor agrees to sign any document or do any thing as the Lender reasonably require.

31.3 On any assignment or transfer under clause 31.1, the assignee or transferee, or its successors and assigns, will be able to enforce the Mortgage and Facility Agreement against the Mortgagor in the same way and to the same extent that the Lender could enforce them before the assignment or transfer.

31.4 Each of the Mortgagor and/or the Mortgagor may not assign or transfer its rights or obligations under the Facility Agreement or the Mortgage without the Lender's prior written consent.

## **32. Disclosure of information**

32.1 The Mortgagor confirms that it has received, read, understood and agreed to the contents of the data privacy statement which the Lender issue to customers and prospective customers. The Mortgagor agrees to allow the Lender to disclose its personal and credit information (including credit reports), subject to the provisions of the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of ), to the persons and for the purposes stated in the Lender's data privacy statement.

32.2 The Mortgagor agrees to allow the Lender to disclose or provide to the Mortgagor or any security provider at any time all information regarding the Mortgage, the Facility Agreement and the Amount Owing (including but not limited to the amount of the current outstanding debts which the Mortgagor owes the Lender and the purpose, amount and terms of each of the banking/credit facilities or additional banking/credit facilities which the Lender have granted to the Mortgagor as secured or to be secured under the Mortgage).

32.3 The Mortgagor agrees to allow the Lender to provide to each other or any security provider for the Amount Owing a copy of the Mortgage, the Facility Agreement and any agreement in connection with the Amount Owing.

## **33. The Mortgage independent of any other guarantee or security**

33.1 The Mortgage is independent of, and is in addition to, any other guarantee or security which the Lender presently have or may have in the future in connection with the Amount Owing.

33.2 If the Lender have any other security for the Amount Owing, the Lender may choose which security the Lender will enforce and the order of enforcement.

33.3 The Lender are not obliged to enforce any other security for the Amount Owing or to take any steps or proceedings before the Lender enforce the Mortgage.

## **34. No right to the Lender's security**

Neither the Mortgagor nor the Mortgagor is entitled to receive any money from the sale or other dealing of any security (including the Property) which the Lender presently hold or may acquire



in the future in respect of the Amount Owing, or to share in any other money received by the Lender to reduce the Amount Owing, until the full Amount Owing has been paid or discharged.

### **35. Postponement of the Mortgagor's and the Mortgagor's rights**

35.1 Until the Amount Owing has been paid or discharged in full, The Mortgagor must not without the Lender's written consent:

- (a) exercise or enforce any right (including any right of set-off) against each other or any other security provider for the Amount Owing;
- (b) pursue any claim against each other or any other security provider for the Amount Owing;
- (c) make a claim in competition with the Lender in the bankruptcy or insolvency of each other or any other security provider for the Amount Owing; or
- (d) receive the benefit of any payment or distribution or security from each other or any other security provider for the Amount Owing.

35.2 The Mortgagor agrees to give the Lender the benefit of each claim and pay

the Lender all money received in breach of clause 35.1 and in the meantime hold them on trust for the Lender.

35.3 If the Mortgagor takes any security referred to in clause 35.1 (d), (whether with or without the Lender's consent), it holds that security on trust for the Lender and must pay the Lender all money it receives in respect of that security.

### **36. Notices and demands**

36.1 All notices or demands given under the Mortgage must be in writing and may be given in any of the following ways:

- (a) by serving the notice or demand in a way which is required by law;
- (b) by post to the address of the relevant party set out in Clause 4 of the Mortgage Deed (or the last address known to the sender). In this case, the notice or demand is treated as given on the second business day after the posting date;
- (c) by hand to the address of the relevant party set out in Clause 4 of the Mortgage Deed (or the last address known to the sender). In this case, the notice or demand is treated as given at the time of delivery; or
- (d) by e-mail to the e-mail number of the relevant party set out in Clause 4 of the Mortgage Deed (or the last e-mail number known to the sender). In this case, the notice or demand is treated as given at the time of dispatch.

36.2 If more than one person is named as the Mortgagor in the Mortgage Deed, service on any one of them is sufficient service on all of them.

36.3 If more than one person is named as the Mortgagor in the Mortgage Deed, service on any one of them is sufficient service on all of them.

36.4 Service after the death of the Mortgagor in accordance with this clause 36 is sufficient service on its personal representative.

36.5 The Mortgagor must notify the Lender in writing of its new contact information within 7 days from any change.

### **37. Governing law and jurisdiction**

37.1

37.2 The Mortgagor agrees to take any legal action in connection with the Mortgage only in . However, the Lender may take legal action against the Mortgagor under the Mortgage in any place where its assets may be located.

### **38. Language**

The Mortgage (including these Mortgage Conditions) is written in English and any translation is for reference purposes only. The English version alone is intended to have legal effect.