



**Registration of a Charge**

Company name: **FRONERI INTERNATIONAL PLC**

Company number: **05777981**



X6Z6QYMM

Received for Electronic Filing: **06/02/2018**

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**Details of Charge**

Date of creation: **31/01/2018**

Charge code: **0577 7981 0020**

Persons entitled: **CREDIT SUISSE AG, LONDON BRANCH, ONE CABOT SQUARE, LONDON, E14 4QJ AS SECURITY AGENT (AS TRUSTEE FOR EACH OF THE SECURED PARTIES)**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC**

**COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION  
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**CLIFFORD CHANCE LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 5777981

Charge code: 0577 7981 0020

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st January 2018 and created by FRONER INTERNATIONAL PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th February 2018 .

Given at Companies House, Cardiff on 8th February 2018

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

EXECUTION VERSION

DATED 31 January 2018

RIVIERA TOPCO LIMITED  
RIVIERA ACQUISITIONS LIMITED  
R&R PIK PLC  
NEW R&R ICE CREAM LIMITED  
FRONERI INTERNATIONAL PLC  
AS THE ORIGINAL CHARGORS

IN FAVOUR OF

CREDIT SUISSE AG, LONDON BRANCH  
AS THE SECURITY AGENT

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DEBENTURE

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THIS DEBENTURE is made by way of deed on 31 January 2018

BY:

- (1) **THE COMPANIES** listed in Schedule 1 (*The Original Chargors*) (each, an "**Original Chargor**"); in favour of
- (2) **CREDIT SUISSE AG, LONDON BRANCH** as trustee for each of the Secured Parties under and as defined in the Intercreditor Agreement (the "**Security Agent**").

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Debenture:

"**Account**" means each of the bank accounts opened or maintained by any Chargor in England and Wales with the Security Agent, any bank, building society, financial institution or other person (including any renewal, redesignation, replacement, subdivision or subaccount of such account) and the debt or debts represented thereby.

"**Charged Assets**" means all of the assets and undertaking of each Chargor which from time to time are the subject of any Security created or expressed to be created by it in favour of the Security Agent by or pursuant to this Debenture.

"**Charged Entity**" means any entity whose Shares are subject to Clause 4.3 (*Fixed charge over Shares*);

"**Chargor**" means each Original Chargor and each company which grants security over its assets in favour of the Security Agent by executing a Security Accession Deed.

"**Collateral Rights**" means all rights, powers and remedies of the Security Agent provided by or pursuant to this Debenture or by law.

"**Debtor**" has the meaning given to that term in the Intercreditor Agreement.

"**Enforcement Event**" means a Senior Acceleration Event, a Senior Secured Notes Acceleration Event, a Second Lien Lender Acceleration Event or a Second Lien Notes Acceleration Event, as such terms are defined in the Intercreditor Agreement.

"**Event of Default**" means any event or circumstance specified as such in the Senior Facilities Agreement, any Permitted Senior Secured Facilities Agreement, a Senior Secured Notes Indenture, a Second Lien Facility Agreement or a Second Lien Notes Indenture, as the context requires, and each as defined in the Intercreditor Agreement.

"**Fixed Security**" means any fixed charge or assignment expressed to be created by or pursuant to Clause 4 (*Fixed Security*) of this Debenture.

**"Holding Company Chargor"** means Riviera Topco Limited, Riviera Acquisitions Limited, R&R PIK plc and New R&R Ice Cream Limited.

**"Intercompany Receivable"** means each intercompany receivable owing by a member of the Group to a Holding Company Chargor.

**"Intercreditor Agreement"** means the intercreditor agreement dated 26 January 2018 between, among others, Froneri International Plc as company, Froneri Limited as holdco and the original subordinated creditor, Credit Suisse AG, London Branch as agent, the Security Agent and the financial institutions named therein as the original senior lenders.

**"Notice of Security"** means a notice of charge in substantially the form set out in Schedule 3 (*Form of Notice of Security to Account Bank*) or in such form as may be specified by the Security Agent.

**"Party"** means a party to this Debenture.

**"Receiver"** means a receiver, receiver and manager or, where permitted by law, an administrative receiver and that term will include any appointee made under a joint or several appointment.

**"Related Rights"** means, in relation to any asset:

- (a) the proceeds of sale or rental of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset.

**"Secured Debt Documents"** has the meaning given to that term in the Intercreditor Agreement.

**"Secured Debt Financing Agreements"** has the meaning given to that term in paragraph (a) of Clause 1.2 (*Terms defined in other Secured Debt Documents*).

**"Secured Obligations"** means all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group or a Third Party Chargor and by each Debtor to any Secured Party under the Secured Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity, subject to, in the case of any Chargor, any limitation, applicable to that Chargor, as set out in the Secured Debt Documents.

**"Secured Parties"** has the meaning given to that term in the Intercreditor Agreement.

**"Security Accession Deed"** means a deed executed by a member of the Group substantially in the form set out in Schedule 4 (*Form of Security Accession Deed*), with those amendments which the Security Agent may approve or reasonably require.

**"Security Period"** means the period beginning on the date of this Debenture and ending on the date on which the Security Agent has received payment of all principal, interest, fees and other amounts owed under the Secured Debt Documents along with evidence that the Secured Creditors are under no further obligations to provide financial accommodation to any of the Debtor or any member of the Group under the Secured Debt Documents.

**"Senior Facilities Agreement"** means the senior facilities agreement dated 26 January 2018 between, among others, Froneri International Plc as company, Citigroup Global Markets Limited, Credit Suisse International, Deutsche Bank AG, London Branch and Goldman Sachs Bank USA as arrangers, Credit Suisse AG, London Branch as agent, the Security Agent and the financial institutions named therein as the original lenders.

**"Shares"** means any stocks, shares and other securities listed in Schedule 2 (*Shares*) and all of each Holding Company Chargor's present and future shares in the capital of any Debtor incorporated in England and Wales from time to time held by, to the order, or on behalf, of that Holding Company Chargor.

## 1.2 Terms defined in other Secured Debt Documents

- (a) Unless defined in this Debenture or the context otherwise requires, a term defined in the Senior Facilities Agreement or in any other Debt Financing Agreement (as defined in the Intercreditor Agreement) which is a Secured Debt Document (a **"Secured Debt Financing Agreement"**) has the same meaning in this Debenture or any notice given under or in connection with this Debenture.
- (b) This Debenture is subject to the Intercreditor Agreement. In the event of any inconsistency between this Debenture and the Intercreditor Agreement, the Intercreditor Agreement shall prevail.

## 1.3 Construction

In this Debenture:

- (a) the rules of construction contained in clauses 1.2 (*Construction*) and 1.4 (*Currency Symbols and Definitions*) of the Intercreditor Agreement shall apply to the construction of this Debenture, or in any notice given under or in connection with this Debenture;
- (b) any reference to the **"Security Agent"**, the **"Secured Parties"**, a **"Chargor"** or any **"Debtor"** shall be construed so as to include its or their (and any subsequent) successors in title, permitted assigns and permitted transferees in accordance with their respective interests and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Intercreditor Agreement; and

- (c) references in this Debenture to any Clause or Schedule shall be to a Clause or Schedule contained in this Debenture.

#### **1.4 Incorporation of provisions from Intercreditor Agreement**

Clause 1.3 (*Third Party Rights*) and clause 25 (*Notices*) of the Intercreditor Agreement are deemed to form part of this Debenture as if expressly incorporated into it and as if all references in those clauses to the Intercreditor Agreement were references to this Debenture.

#### **1.5 Present and future assets**

- (a) A reference in this Debenture to any Charged Asset or other asset includes, unless the contrary intention appears, present and future Charged Assets and other assets.
- (b) The absence of or incomplete details of any Charged Assets in any Schedule shall not affect the validity or enforceability of any Security under this Debenture.

#### **1.6 Separate Security**

Clause 4.1 (*Fixed charge over Accounts*) to Clause 4.3 (*Fixed charge over Shares*) shall be construed as creating a separate and distinct fixed charge over each relevant asset within any particular class of assets defined in this Debenture and the failure to create an effective fixed charge (whether arising out of this Debenture or any act or omission by any party) over any one asset shall not affect the nature or validity of the fixed charge imposed on any other asset whether within that same class of assets or not.

#### **1.7 Security Agent assumes no obligation**

The Security Agent shall not be under any obligation in relation to the Charged Assets as a consequence of this Debenture and each Chargor shall at all times remain liable to perform all obligations in respect of the Charged Assets.

#### **1.8 Security Accession Deeds**

This Debenture and each Security Accession Deed (if any) shall be read together and construed as one instrument so that all references in this Debenture to "this Debenture" shall be deemed to include, where the context so permits, each Security Accession Deed which has from time to time been entered into by a Chargors and all references in this Debenture to any "Security created by this Debenture" or "Security created pursuant to this Debenture" shall be deemed to include any Security created by or pursuant to each such Security Accession Deed, and all the powers and rights conferred on the Security Agent and any Receiver in relation to the Security created by this Debenture shall extend and apply to the Security created by each such Security Accession Deed.

## **2. COVENANT TO PAY**

### **2.1 Covenant to pay**

Each Chargor covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it shall, on demand of the Security Agent pay, discharge and satisfy the Secured Obligations in accordance with the terms of the Secured Debt Documents.

### **2.2 Default interest**

If a Chargor fails to pay any amount payable by it under this Debenture on its due date, interest shall accrue on the overdue amount (both before and after judgment) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with, and on the terms set out in, clause 22.4 (*Interest on demand*) of the Intercreditor Agreement.

## **3. COMMON PROVISIONS**

### **3.1 Common provisions as to all Security**

All the Security created by or pursuant to this Debenture is:

- (a) created with full title guarantee **provided that** the covenant set out in section 3 Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to the Security;
- (b) created in favour of the Security Agent as trustee for the Secured Parties and the Security Agent shall hold the benefit of this Debenture and the Security created by or pursuant to it on trust for the Secured Parties; and
- (c) continuing security for the payment and discharge of all the Secured Obligations.

## **4. FIXED SECURITY**

### **4.1 Fixed charge over Accounts**

Each Chargor charges, by way of first fixed charge, all of its rights, title and interest from time to time in and to its Accounts and all Related Rights.

### **4.2 Fixed charge over Intercompany Receivables**

Each Holding Company Chargor charges, by way of first fixed charge, all of its rights, title and interest from time to time in and to its Intercompany Receivables and all Related Rights.

### **4.3 Fixed charge over Shares**

Each Holding Company Chargor charges, by way of first fixed charge, all of its rights, title and interest from time to time in and to the Shares and all dividends, interest and other monies payable in respect of those Shares and all Related Rights

(whether derived by way of redemption, bonus, preference, options, substitution, conversion, compensation or otherwise).

## **5. FLOATING CHARGE**

### **5.1 Floating charge**

- (a) Each Chargor charges by way of first floating charge in favour of the Security Agent all present and future assets and undertaking of that Chargor.
- (b) The floating charge created pursuant to paragraph (a) above shall be deferred in point of priority to all Fixed Security validly and effectively created by that Chargor under the Secured Debt Documents in favour of the Security Agent as security for the Secured Obligations.
- (c) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to paragraph (a) above.

### **5.2 Crystallisation: by notice**

The Security Agent may, at any time by notice in writing to any Chargor convert the floating charge created pursuant to Clause 5.1 (*Floating Charge*) or pursuant to a Security Accession Deed with immediate effect into a fixed charge as regards any property or assets specified in the notice if:

- (a) an Enforcement Event has occurred;
- (b) all or any part of the Charged Assets may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process, in each case in a manner which would give rise to an Event of Default; or
- (c) any Chargor requests the Security Agent to exercise any of its powers of enforcement under this Debenture,

### **5.3 Crystallisation: automatic**

Notwithstanding Clause 5.2 (*Crystallisation: by notice*) and without prejudice to any law which may have a similar effect, the floating charge created pursuant to Clause 5.1 (*Floating Charge*) or pursuant to a Security Accession Deed will automatically be converted (without notice) with immediate effect into a fixed charge as regards all the assets subject to the floating charge (save, in the case of paragraph (a) below, only in respect of the assets which are purported to be subject to the other Security and, in respect of paragraph (b) only in respect of the assets of the relevant Chargor) if:

- (a) any Chargor voluntarily creates or attempts to voluntarily create any Security (other than any Security permitted or not prohibited under the terms each of the Secured Debt Documents), over any of the Charged Assets;
- (b) any Chargor involuntarily creates any Security (other than any Security permitted or not prohibited under the terms each of the Secured Debt

Documents), over any of the Charged Assets which would constitute an Event of Default; or

- (c) an order is made or a resolution is passed for the winding up or dissolution in respect of any Chargor or any analogous procedure or step is taken in any jurisdiction (other than in respect of a winding up or dissolution approved by the Security Agent or as permitted or not prohibited under the terms of each of the Secured Debt Documents).

## **6. PROVISIONS AS TO SECURITY AND PERFECTION**

### **6.1 Negative pledge and restrictions on dealings**

Except for as permitted or not prohibited under each of the Secured Debt Financing Agreements, no Chargor shall at any time during the Security Period create or permit to subsist any Security over all or any part of the Charged Assets or dispose of any part of the Charged Assets.

### **6.2 No implied covenants for title**

The covenants set out in sections 3(1) and 3(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clauses 4 (*Fixed Security*) or 5 (*Floating charge*).

### **6.3 List of Assets**

Each Chargor shall, if requested by the Security Agent from time to time after the occurrence of an Enforcement Event that is continuing, as soon as reasonably practicable deliver to the Security Agent (or procure the delivery of) a list of all Accounts and any other material assets of that Chargor.

### **6.4 Notice of Security: Accounts**

- (a) Each Chargor shall, if requested by the Security Agent, within 5 Business Days of the date of this Debenture or, if applicable, within 5 Business Days of the date of the relevant Security Accession Deed deliver to the Security Agent a Notice of Security in relation to the Accounts duly executed by, or on behalf of, that Chargor and each such Chargor shall use its reasonable endeavours to procure from each account bank, building society, financial institution or other person with which any Account is opened or maintained, an acknowledgement in the form set out in such Notice of Security within 20 Business Days from the date of service of the Notice of Security. If such acknowledgment has not been obtained within 20 Business Days then the relevant Chargor's obligation to obtain such acknowledgment shall cease on the expiry of that 20 Business Day period.
- (b) Each Chargor shall, if requested by the Security Agent (such request to be made not more than once per calendar year), deliver to the Security Agent, within five (5) Business Days after a request from the Security Agent, a Notice of Security in relation to the Accounts (only if such Accounts have not yet been notified pursuant to paragraph (a) above) duly executed by, or on behalf of, that Chargor and each such Chargor shall use its reasonable endeavours to

procure from each account bank, building society, financial institution or other person with which any Account is opened or maintained, an acknowledgement in the form set out in such Notice of Security within 20 Business Days from the date of service of the Notice of Security. If such acknowledgment has not been obtained within 20 Business Days then the relevant Chargor's obligation to obtain such acknowledgment shall cease on the expiry of that 20 Business Day period.

#### **6.5 Deposit of share certificates**

Each Holding Company Chargor shall:

- (a) as soon as reasonably practicable after the date of this Debenture or, if applicable, within 5 Business Days of the date of the relevant Security Accession Deed (and as soon as reasonably practicable following its coming into possession thereof), deposit with the Security Agent (or procure the deposit of) all certificates or other documents of title to the Shares, and stock transfer forms (executed in blank by it or on its behalf) in respect of the Shares; and
- (b) as soon as reasonably practicable upon the accrual, offer or issue of any stocks, shares, warrants or other securities in respect of or derived from the Shares (or upon acquiring any interest therein), deposit with the Security Agent (or procure the deposit of) (i) all certificates or other documents of title representing such assets and (ii) such stock transfer forms or other instruments of transfer (executed in blank by it or on its behalf) in respect thereof as the Security Agent may request (acting reasonably).

#### **6.6 Further advances**

Subject to the terms of the Secured Debt Documents, the Secured Parties may be under an obligation to make further advances to the Debtors and that obligation will be deemed to be incorporated in this Debenture as if set out in this Debenture.

#### **6.7 Property Restricting Charging**

- (a) There shall be excluded from the security created by Clause 4 (*Fixed Security*) and Clause 5 (*Floating Charge*), from the operation of Clause 6.4 (*Notice of Security: Accounts*), Clause 6.5 (*Deposit of share certificates*) and Clause 7 (*Further Assurance*) and the security created pursuant to each Security Accession Deed:
  - (i) any assets in which a Chargor has an interest in respect of which that Chargor is either absolutely or conditionally (including requiring the consent of any third party) prohibited from creating any charge over its interest in the relevant asset in each case until the relevant condition or waiver has been satisfied or obtained;
  - (ii) any asset or undertaking which, if subject to any such Security, would give a third party the right to terminate or otherwise amend any rights, benefits and/or obligations of a Chargor in respect of that asset or

undertaking or require any Chargor to take any action materially adverse to the commercial interests of the Group or any member thereof; and

- (iii) any asset or undertaking to the extent that the granting of such Security is not within the legal capacity of the relevant Chargor or would conflict with the fiduciary duties of the directors (or other officers) of the relevant Chargor or contravene any legal prohibition or have the potential to result in a material risk of personal or criminal liability on the part of any director (or other officer) of the relevant Chargor.
- (b) For all material assets referred to in paragraph (a)(i) – (ii) above, each relevant Chargor shall, if requested to do so by the Security Agent, use reasonable endeavours to obtain the relevant consent or waiver of prohibition or condition within 20 Business Days of the date of this Debenture or, if applicable, within 20 Business Days of the date of the relevant Security Accession Deed. If such consent has not been given within 20 Business Days then the relevant Chargor's obligation to obtain such consent shall cease on the expiry of that 20 Business Day period.
- (c) For all assets referred to in paragraph (a)(iii) above, each relevant Chargor shall use reasonable endeavours to overcome any such obstacle in connection with the legal capacity of the relevant Chargor or any conflict with the fiduciary duties of the directors (or other officers) of the relevant Chargor or any contravention of any legal prohibition or any material risk of personal or criminal liability on the part of any director (or other officer) of the relevant Chargor.
- (d) Notwithstanding paragraph (b) above, no Chargor shall be required to seek consent if it could or is reasonably expected to materially adversely affect the commercial reputation or interest of the relevant Chargor, or if taking such actions would place commercial relationships with third parties in jeopardy or its ability to conduct its operations and business in the ordinary course as otherwise permitted or not prohibited by each of the Secured Debt Financing Agreements.
- (e) Immediately upon receipt of the relevant waiver or consent, the formerly excluded assets shall stand charged to the Security Agent under Clause 4 (*Fixed Security*) and Clause 5 (*Floating Charge*), as applicable.

## **6.8 Effect of creating security**

For the avoidance of doubt, the creation of Security over the Charged Assets pursuant to this Debenture shall not impact any Chargor's ability to deal with the Charged Assets in accordance with the terms of each of the Secured Debt Financing Agreements.

## **6.9 Non-perfection**

Without limiting Clause 7 (*Further Assurance*), save for the delivery of the relevant notices in accordance with Clause 6.4 (*Notice of Security: Accounts*) and Clause 6.5

*(Deposit of Share Certificates)*, nothing in this Debenture shall require any Chargor, prior to the occurrence of an Enforcement Event which is continuing, to take any steps to perfect and/or protect any Security created or intended to be created in respect of the Charged Assets.

## **7. FURTHER ASSURANCE**

- (a) Subject to the Agreed Security Principles, each Chargor shall at its own expense promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
  - (i) to perfect the Security created or intended to be created under or evidenced by this Debenture (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this Debenture) or for the exercise of any rights, powers and remedies of the Security Agent or the Secured Parties provided by or pursuant to the Secured Debt Documents or by law; and/or
  - (ii) to confer on the Security Agent or confer on the Secured Parties, Security over any property and assets of that Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Debenture (and having regard to the Agreed Security Principles); and/or
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created or expressed to be created in favour of the Security Agent or Secured Parties by or pursuant to this Debenture.
- (b) Subject to the Agreed Security Principles, each Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to this Debenture.

## **8. SHARES**

### **8.1 Shares: Representation and Undertaking**

- (a) As at the date hereof, the shares of each Charged Entity are (or will be on the Closing Date) fully paid and not subject to any option to purchase or similar rights (other than, those arising under applicable law and except as set out in this deed or relevant constitutional documents).
- (b) As at the date hereof, there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or

allotment of, any share or loan capital of each Charged Entity (including any option or right of pre-emption or conversion).

- (c) As at the date hereof, subject to the Agreed Security Principles and unless required by law (in which case any relevant consent has been obtained), the constitutional documents of each Charged Entity do not and could not restrict or inhibit any pledge or transfer of those shares on creation or enforcement of the Security.
- (d) As at the date hereof, no "warning notice" or "restrictions notice" (in each case as defined in paragraph 1(2) of Schedule 1B of Part 21A of the Companies Act 2006) has been issued to a Holding Company Chargor in respect of all or any part of the Shares held in its Charged Entity and remains in effect.
- (e) Each Holding Company Chargor shall:
  - (i) comply with any notice served on its Charged Entity pursuant to Part 21A of the Companies Act 2006 and within the timeframe specified in the notice; and
  - (ii) provide the Security Agent with a copy of any "warning notice" or "restrictions notice" (in each case as defined in paragraph 1(2) of Schedule 1B of Part 21A of the Companies Act 2006) served on it by its Charged Entity promptly following receipt of such notice.

## **8.2 Dividends prior to an Enforcement Event**

Prior to the occurrence of an Enforcement Event, each Holding Company Chargor shall be entitled to receive all dividends, interest and other monies arising from the Shares.

## **8.3 Dividends after an Enforcement Event**

Upon the occurrence of an Enforcement Event that is continuing, the Security Agent may, at its discretion, in the name of the relevant Holding Company Chargor or otherwise and without any further consent or authority from the relevant Holding Company Chargor, apply all dividends, interest and other monies arising from the Shares as though they were the proceeds of sale in accordance with Clause 14 (*Application of Proceeds*).

## **8.4 Voting rights prior to Security Agent Notice**

Prior to the giving of notice pursuant to Clause 8.5 (*Voting rights after Security Agent Notice*), each Holding Company Chargor shall be entitled to exercise all voting rights in relation to the Shares.

## **8.5 Voting rights after Security Agent Notice**

- (a) Subject to Clause 8.6 (*Waiver of voting rights by Security Agent*), upon the occurrence of an Enforcement Event that is continuing, the Security Agent may (but without having any obligation to do so) give notice to the relevant Holding Company Chargor (with a copy to the Agent) that this Clause 8.5 will

apply. With effect from the giving of that notice, the Security Agent may, at its discretion, in the name of the relevant Holding Company Chargor or otherwise and without any further consent or authority from the relevant Holding Company Chargor:

- (i) exercise (or refrain from exercising) any voting rights in respect of the Shares; and
- (ii) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Shares including the right, in relation to any company whose shares or other securities are included in the Shares, to concur or participate in:
  - (A) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
  - (B) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
  - (C) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,

in each case, in the manner and on the terms the Security Agent thinks fit, and the proceeds of any such action shall form part of the Shares.

- (b) Notwithstanding paragraph (a) above, paragraph (f) clause 19.8 (*Security Agent's discretions*) of the Intercreditor Agreement shall apply to all voting rights in relation to the Shares after a notice has been given by the Security Agent under this Clause 8.5.

#### **8.6 Waiver of voting rights by Security Agent**

- (a) The Security Agent may, in its absolute discretion and without any consent or authority from the other Secured Parties or the relevant Holding Company Chargor, at any time, by notice to the relevant Holding Company Chargor (which notice shall be irrevocable), with a copy to the Agent, elect to give up the right to exercise (or refrain from exercising) all voting rights and powers in respect of the Shares conferred or to be conferred on the Security Agent pursuant to Clause 8.5 (*Voting rights after Security Agent Notice*) and the other Secured Parties unconditionally waive any rights they may otherwise have to require the Security Agent not to make such election or to require the Security Agent to indemnify, compensate or otherwise make good for any losses, costs or liabilities incurred by any of them in relation to or as a consequence of the Security Agent making such election.
- (b) Once a notice has been issued by the Security Agent under paragraph (a) of this Clause 8.6, on and from the date of such notice the Security Agent shall cease to have the rights to exercise or refrain from exercising voting rights and powers in respect of the Shares conferred or to be conferred on it pursuant to

Clause 8.5 (*Voting rights after Security Agent Notice*) or any other provision of this Debenture and all such rights will be exercisable by the relevant Holding Company Chargor. Each Holding Company Chargor shall be entitled, on and from the date of such notice, to exercise all voting rights and powers in relation to the Shares.

## **9. ACCOUNTS**

### **9.1 Accounts: Operation before Enforcement Event**

Each Chargor shall, prior to the occurrence of an Enforcement Event, be free to deal with any Account from time to time and any credit balance from time to time on any Account (in each case) subject to the terms of each of the Secured Debt Financing Agreements.

### **9.2 Accounts: Operation after Enforcement Event**

After the occurrence of an Enforcement Event that is continuing, no Chargor shall be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account except with the prior consent of the Security Agent (which shall not be unreasonably withheld or delayed).

### **9.3 Accounts: Application of monies**

The Security Agent shall, upon the occurrence of an Enforcement Event, be entitled without notice to apply, transfer or set-off any or all of the credit balances from time to time on any Account in or towards the payment or other satisfaction of all or part of the Secured Obligations in accordance with Clause 14 (*Application of Proceeds*).

## **10. ENFORCEMENT OF SECURITY**

### **10.1 Enforcement**

Any time after the occurrence of:

- (a) an Enforcement Event which is continuing; or
- (b) a request from any Chargor to the Security Agent that it exercise any of its powers of enforcement under this Debenture,

the Security created by or pursuant to this Debenture is immediately enforceable and the Security Agent may, without notice to any Chargor or prior authorisation from any court, in its absolute discretion:

- (i) enforce all or any part of that Security (at the times, in the manner and on the terms it thinks fit and dispose of all or any part of the Charged Assets, in each case, in accordance with the terms of the Intercreditor Agreement); and
- (ii) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Debenture) on

mortgagees and by this Debenture on any Receiver or otherwise conferred by law on mortgagees or Receivers.

## **10.2 Effect of moratorium**

The Security Agent shall not be entitled to exercise its rights under Clause 10.1 (*Enforcement*) or Clause 5.2 (*Crystallisation: by notice*) where the right arises as a result of an Event of Default occurring solely due to any person obtaining, or taking steps to obtain, a moratorium pursuant to Schedule A1 of the Insolvency Act 1986.

## **11. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION**

### **11.1 Extension of powers**

The power of sale or other disposal conferred on the Security Agent and on any Receiver by this Debenture shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Debenture or in respect of Changed Assets secured pursuant to a Security Accession Deed, on the date of the Security Accession Deed.

### **11.2 Restrictions**

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Debenture or to the exercise by the Security Agent of its right to consolidate all or any of the Security created by or pursuant to this Debenture with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Security Agent without notice to any Chargor on or at any time after the Security created by or pursuant to this Debenture has become enforceable in accordance with Clause 10 (*Enforcement of Security*).

### **11.3 Power of leasing**

- (a) The statutory powers of leasing may be exercised by the Security Agent at any time on or after this Debenture has become enforceable in accordance with Clause 10 (*Enforcement of Security*) and the Security Agent and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with sections 99 and 100 of the Law of Property Act 1925.
- (b) For the purposes of sections 99 and 100 of the Law of Property Act 1925, the expression "Mortgagor" will include any incumbrancer deriving title under any Chargor and neither section 99(18) nor section 100(12) of the Law of Property Act 1925 will apply.
- (c) Section 99 of the Law of Property Act 1925 shall not apply so as to confer on any Chargor any additional right to make leases over and above as is permitted pursuant to the remaining terms of this Debenture and the terms of each other Secured Debt Documents.

#### 11.4 **Right of appropriation**

After the Security created by or pursuant to this Debenture has become enforceable in accordance with Clause 10.1 (*Enforcement*) to the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended, (the "**Regulations**") apply to a Charged Asset, the Security Agent shall have the right to appropriate all or any part of that Charged Asset in or towards the payment or discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of that Charged Asset shall be:

- (a) in the case of cash, the amount standing to the credit of each of the Accounts, together with any accrued but unposted interest, at the time of appropriation; and
- (b) in the case of any Shares, the market value of such Shares determined by the Security Agent by reference to a public index or independent valuation, or by such other process as the Security Agent may select, subject to the terms of the Intercreditor Agreement.

In each case, the parties further agree that the method of valuation provided for in this Debenture shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

### 12. **APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

#### 12.1 **Appointment and removal**

After the Security created by or pursuant to this Debenture has become enforceable in accordance with Clause 10.1 (*Enforcement*), the Security Agent may by deed or otherwise (acting through an authorised officer of the Security Agent):

- (a) without prior notice to any Chargor:
  - (i) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets; or
  - (ii) appoint two or more Receivers of separate parts of the Charged Assets; or
  - (iii) remove (so far as it is lawfully able) any Receiver so appointed; or
  - (iv) appoint another person(s) as an additional or replacement Receiver(s); or
  - (v) appoint one or more persons to be an administrator of any Chargor pursuant to paragraph 14 of Schedule B1 of the Insolvency Act 1986; and
- (b) following notice to the relevant Chargor, appoint one or more persons to be an administrator of that Chargor pursuant to paragraph 12 of Schedule B1 of the Insolvency Act 1986.

No Secured Party will incur any liability (either to any Chargor or to any other person) by reason of the appointment of a Receiver or for any acts, defaults or liabilities of the Receiver.

## **12.2 Capacity of Receivers**

Each person appointed to be a Receiver pursuant to Clause 12.1 (*Appointment and removal*) shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) for all purposes deemed to be the agent of each Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Agent; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

## **12.3 Statutory powers of appointment**

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Law of Property Act 1925 (as extended by this Debenture) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any part of the Charged Assets.

## **13. POWERS OF RECEIVERS**

Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of any Chargor) have and be entitled to exercise, in relation to the Charged Assets (and any assets of any Chargor which, when got in, would be Charged Assets) in respect of which he was appointed, and as varied and extended by the provisions of this Debenture (in the name of or on behalf of any Chargor or in his own name and, in each case, at the cost of that Chargor):

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (c) all the powers and rights of an absolute owner and power to do or omit to do anything which any Chargor itself could do or omit to do; and
- (d) the power to do all things (including bringing or defending proceedings in the name or on behalf of any Chargor) which seem to the Receiver to be incidental or conducive to:

- (i) any of the functions, powers, authorities or discretions conferred on or vested in him;
- (ii) the exercise of the Collateral Rights (including realisation of all or any part of the assets in respect of which that Receiver was appointed); or
- (iii) bringing to his hands any assets of any Chargor forming part of, or which when got in would be, Charged Assets.

#### **14. APPLICATION OF PROCEEDS**

All monies received or recovered and any non-cash recoveries made or received by the Security Agent or any Receiver pursuant to this Debenture or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied by the Security Agent in accordance with the terms of the Intercreditor Agreement.

#### **15. PROTECTION OF PURCHASERS**

##### **15.1 Consideration**

The receipt of the Security Agent or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, the Security Agent or any Receiver may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit, in accordance with the terms of the Intercreditor Agreement.

##### **15.2 Protection of purchasers**

No purchaser or other person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Agent or such Receiver in such dealings.

#### **16. POWER OF ATTORNEY**

##### **16.1 Appointment and powers**

Subject to Clause 16.2 (*Use of Powers*) below, each Chargor by way of security irrevocably appoints the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all other documents and do all things which the attorney may reasonably consider to be required for:

- (a) carrying out any obligation imposed on any Chargor by this Debenture (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets and perfecting and/or releasing the Security created or intended to be created in respect of the Charged Assets); and
- (b) enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or

pursuant to this Debenture or by law (including, on or after the date upon which this Debenture has become enforceable in accordance with Clause 10 (*Enforcement of Security*), the exercise of any right of a legal or beneficial owner of the Charged Assets).

## **16.2 Use of powers**

The Security Agent and any Receiver shall only be able to exercise a power of attorney under this Debenture upon:

- (a) the occurrence of an Enforcement Event that is continuing; or
- (b) if a Chargor has failed to comply with the terms of Clause 6 (*Provisions as to Security and Perfection*) and Clause 7 (*Further Assurance*) within five (5) Business Days of being notified of such failure (with a copy of such notice being served on the Parent) and being requested to comply.

## **16.3 Ratification**

Each Chargor shall ratify and confirm all things done and all documents executed by any attorney in the proper exercise of all or any of his powers.

## **17. EFFECTIVENESS OF SECURITY**

### **17.1 Continuing security**

- (a) The Security created by or pursuant to this Debenture shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Agent in writing.
- (b) No part of the Security from time to time intended to be created by this Debenture will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### **17.2 Cumulative rights**

The Security created by or pursuant to this Debenture, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which the Security Agent or any other Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Assets shall merge into the Security created by this Debenture.

### **17.3 No prejudice**

The Security created by or pursuant to this Debenture, and the Collateral Rights, shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to any Chargor or any other person, or

the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security Agent holds the Security or by any other thing which might otherwise prejudice that Security or any Collateral Right.

#### **17.4 Remedies and waivers**

No failure on the part of the Security Agent to exercise, nor any delay on its part in exercising, any Collateral Right, shall operate as a waiver of that Collateral Right or constitute an election to affirm this Debenture. No election to affirm this Debenture on the part of the Security Agent shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

#### **17.5 No liability**

None of the Security Agent, its nominee(s) or any Receiver shall be liable:

- (a) to account as a mortgagee or mortgagee in possession; or
- (b) for any loss arising by reason of taking any action permitted by this Debenture or any neglect or default in connection with the Charged Assets or taking possession of or realising all or any part of the Charged Assets,

except in the case of gross negligence or wilful default upon its part.

#### **17.6 Partial invalidity**

If, at any time, any provision of this Debenture is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Debenture nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Debenture is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

#### **17.7 Waiver of defences**

The obligations assumed, and the Security created, by each Chargor under this Debenture, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 17.7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Debenture (without limitation and whether or not known to that Chargor or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any other Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over

assets of, any Debtor 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;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of, any Debtor or any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatever nature, and whether or not more onerous) or replacement of a Secured Debt Document or any other document or Security or of the Secured Obligations including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Secured Debt Document or other document of Security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Secured Debt Document or any other document or Security or of the Secured Obligations; and
- (g) any insolvency or similar proceedings.

#### **17.8 Chargor intent**

Without prejudice to the generality of Clause 17.7 (*Waiver of Defences*), each Chargor expressly confirms that it intends that the Security created under this Debenture, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Secured Debt Documents and/or any facility or amount made available under any of the Secured Debt Documents for the purposes of or in connection with any of the following: 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.

#### **17.9 Immediate recourse**

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

#### **17.10 Deferral of rights**

Until the end of the Security Period, no Chargor will exercise any rights which it may have by reason of performance by it of its obligations under this Debenture:

- (a) to be indemnified by an Debtor or in respect of any other person;

- (b) to claim any contribution from any guarantor or any other person in respect of any Debtor's obligations under this Debenture;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under this Debenture or of any other guarantee or Security taken pursuant to, or in connection with, this Debenture by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Debtor or other person to make any payment, or perform any obligation, in respect of which any Debtor or any other person has given a guarantee, undertaking or indemnity under any Secured Debt Document;
- (e) to exercise any right of set-off against any Debtor or other person; and/or
- (f) to claim or prove as a creditor of any Debtor or other person in competition with any Secured Party.

If any Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution on trust for the Secured Parties to the extent necessary to enable all amounts which may be or become payable to any Secured Party by the Debtors under or in connection with this Debenture to be repaid in full and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 14 (*Application of Proceeds*).

#### 17.11 Additional Security

The Security created by the Chargor under this Debenture and the Collateral Rights are in addition to and are not in any way prejudiced by any other guarantee or Security now or subsequently held by any Secured Party.

#### 18. PRIOR SECURITY INTERESTS

- (a) In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Charged Assets or in case of exercise by the Security Agent or any Receiver of any power of sale under this Debenture, the Security Agent may redeem such prior Security or procure the transfer thereof to itself.
- (b) If otherwise entitled to do so under this Debenture, the Security Agent may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on each Chargor.
- (c) All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by each Chargor to the Security Agent on demand together with accrued interest thereon calculated in accordance with clause 22.4 (*Interest on demand*) of the Intercreditor Agreement.

## 19. SUBSEQUENT SECURITY INTERESTS

If the Security Agent (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all or any part of the Charged Assets which is prohibited by the terms of any Secured Debt Document, all payments thereafter made by or on behalf of the relevant Chargor to the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties will (in the absence of any express contrary appropriation by that Chargor) be treated as having been credited to a new account of that Chargor and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

## 20. SUSPENSE ACCOUNTS

- (a) All monies received, recovered or realised by the Security Agent under this Debenture (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Security Agent considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Security Agent's discretion, in or towards the discharge of any of the Secured Obligations, **provided that** as soon as the Security Agent has received the full amount of all monies owed to them under this Debenture, all funds standing to the credit of such suspense or impersonal account(s) must be immediately applied towards the discharge of the Secured Obligations.
- (b) Save as provided herein, no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

## 21. RELEASE OF SECURITY

Upon the expiry of the Security Period or as otherwise permitted under the Intercreditor Agreement, the Security Agent shall, at the request and cost of each Chargor, release and cancel the Security created by this Debenture and procure the reassignment to the relevant Chargor of the property and assets assigned to the Security Agent pursuant to this Debenture and without recourse to, or any representation or warranty by, the Security Agent or any of its nominees.

## 22. ASSIGNMENT & CHANGES TO THE PARTIES

### 22.1 No assignments or transfers by Chargor

No Chargor may assign any of its rights or transfer any of its rights or obligations under this Debenture.

### 22.2 Assignments and transfers by the Security Agent

The Security Agent may assign and transfer all or any of its rights and obligations under this Debenture in accordance with the terms of the Intercreditor Agreement. The Security Agent shall be entitled to disclose such information concerning any

Chargor and this Debenture as the Security Agent considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

### 22.3 Successors

This Debenture shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Agent. References to the Security Agent shall include (i) any assignee or successor in title of the Security Agent, (ii) any entity into which the Security Agent is merged or converted or with which it may be consolidated, (iii) any legal entity resulting from any merger, conversion or consolidation to which such Security Agent is a party and (iv) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Security Agent under this Debenture or to which, under such laws, those rights and obligations have been transferred (such person described in (i) to (iv) being a successor to the Security Agent for all purposes under the Secured Debt Documents).

### 22.4 New Debtors

Each Party acknowledges and agrees that any new Debtor incorporated in England and Wales may become a party hereto by executing a Security Accession Deed.

### 22.5 Consent of Chargor

The Original Chargor and, on the date that each new Debtor becomes a Chargor under this Debenture, such Chargors consent each new Debtor incorporated in England and Wales becoming a Chargor as contemplated by Clause 22.4 (*New Debtors*) above.

## 23. DISCRETION AND DELEGATION

### 23.1 Discretion

Any liberty or power which may be exercised or any determination which may be made under this Debenture by the Security Agent or any Receiver may, subject to the terms and conditions of the Intercreditor Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons, **provided that** this Clause 23.1 shall be without prejudice to clause 19.6 (*Instructions to Security Agent and exercise of discretion*) of the Intercreditor Agreement.

### 23.2 Delegation

Each of the Security Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Debenture (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Security Agent or the Receiver itself.

24. **COUNTERPARTS**

This Debenture may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Debenture.

25. **GOVERNING LAW**

This Debenture (including any non-contractual obligations arising out of or in relation to this Debenture) and any dispute or proceeding arising out of or relating to this Debenture shall be governed by English law.

26. **JURISDICTION**

26.1 **Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture (including a dispute relating to the existence, validity or termination of this Debenture) or any non-contractual obligation arising out of or in connection with this Debenture (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.

**THIS DEBENTURE** has been executed as, and is intended to take effect as, a deed by the Original Chargor and has been signed by the Security Agent on the date written on the first page of this Debenture.

**SCHEDULE 1**  
**THE ORIGINAL CHARGORS**

| <b>Name of Chargor</b>               | <b>Registered Number</b>                                                   |
|--------------------------------------|----------------------------------------------------------------------------|
| <b>RIVIERA TOPCO LIMITED</b>         | registered in England & Wales with company<br>registration number 08457505 |
| <b>RIVIERA ACQUISITIONS LIMITED</b>  | registered in England & Wales with company<br>registration number 08457499 |
| <b>R&amp;R PIK PLC</b>               | registered in England & Wales with company<br>registration number 08500749 |
| <b>NEW R&amp;R ICE CREAM LIMITED</b> | registered in England & Wales with company<br>registration number 07411086 |
| <b>FRONERI INTERNATIONAL PLC</b>     | registered in England & Wales with company<br>registration number 05777981 |

**SCHEDULE 2  
SHARES**

| <b>Name of Chargor<br/>which holds the<br/>shares</b> | <b>Name of company<br/>issuing shares</b> | <b>Issued Share Capital</b> | <b>Description and<br/>Number of Shares<br/>Held</b> |
|-------------------------------------------------------|-------------------------------------------|-----------------------------|------------------------------------------------------|
| Riviera Topco<br>Limited                              | Riviera Acquisitions<br>Limited           | £1                          | 1 ordinary share of<br>£1                            |
| Riviera Acquisitions<br>Limited                       | R&R PIK plc                               | £50,000                     | 50,000 ordinary<br>shares of £1 each                 |
| R&R PIK plc                                           | New R&R Ice<br>Cream Limited              | €50,886,373                 | 50,886,373 ordinary<br>shares of €1 each             |
| New R&R Ice<br>Cream Limited                          | Froneri International<br>Plc              | €62,182,504                 | €50,886,372 ordinary<br>shares of €1 each            |
| New R&R Ice<br>Cream Limited                          | Froneri International<br>Plc              | £2                          | 2 ordinary shares of<br>£1 each                      |

**SCHEDULE 3**  
**FORM OF NOTICE OF SECURITY TO ACCOUNT BANK**

To: [Account Bank/other financial institution]

Date: [•]

Dear Sirs

We give you notice that, by a Debenture dated [•] 2018 (the "**Debenture**")\*, we have charged by way of fixed charge to Credit Suisse AG, London Branch (the "**Security Agent**") as trustee for the Secured Parties (as defined in the Debenture) all of our right, title and interest in and to the account[s] listed below (the "**Accounts**") maintained with your [bank/building society/financial institution] (including any renewal, redesignation, replacement, subdivision or subaccount of such account) and the debt or debts represented thereby:

Account Name[s]: [•]

Sort Code[s]: [•]

Account No[s]: [•]

*[repeat list as necessary]*

Until the occurrence of an Enforcement Event (as defined in the Debenture), we shall remain entitled to exercise all rights, powers and discretions under the Accounts.

Following the occurrence of an Enforcement Event (as defined in the Debenture) notified to you by the Security Agent, we irrevocably instruct and authorise you to disclose to the Security Agent without any reference to or further authority from us and without any inquiry by you as to the justification for such disclosure, such information relating to [the]/[any] account[s] maintained with you from time to time as the Security Agent may request you to disclose to it.

This letter and all non-contractual obligations arising out of or in connection with it are governed by and will be construed in accordance with the laws of England and Wales.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to us with a copy to the Security Agent at Credit Suisse AG, London Branch, [•]<sup>1</sup>.

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<sup>1</sup> Security Agent to confirm.

\* Refer to the relevant Security Accession Deed, rather than the Debenture, when using this notice in connection with Security created by a Security Accession Deed.

Yours faithfully,

.....  
for and on behalf of

***[RIVIERA TOPCO LIMITED / RIVIERA ACQUISITIONS LIMITED / R&R PIK PLC /  
NEW R&R ICE CREAM LIMITED / FRONERI INTERNATIONAL PLC]***

**Form of Acknowledgement of Notice of  
Security by Account Bank**

To: Credit Suisse AG, London Branch (the "Security Agent")

Date:

Dear Sirs

We confirm receipt from [Enter Chargor Name] (the "**Chargor**") of a notice dated [•] of a fixed charge upon the terms of a Debenture dated [•] 2018 (the "**Debenture**")\* of all the Chargor's right, title and interest in and to, and all monies (including interest) from time to time standing to the credit of the following account[s] which [is/are] maintained with us and the debt or debts represented thereby:

[List relevant accounts here]

(the "**Account[s]**").

We confirm that we have not received notice of the interest of any third party in [any of] the Account[s].

Following the occurrence of an Enforcement Event (as defined in the Debenture) as notified to us by the Security Agent, we will act only in accordance with the instructions given by persons authorised by the Security Agent and we shall send all statements and other notices given by us relating to the Account[s] to the Security Agent.

[Insert the following if notifying a charge over (operating) Accounts:

We acknowledge that we are further instructed and authorised to act only in accordance with the Security Agent's instructions following receipt by us of a notice of the occurrence of an Enforcement Event issued by the Security Agent. Until such notice is received by us, we are authorised to receive, withdraw or otherwise transfer any credit balance from time to time on any Account as instructed by the Chargor (or any authorised representative on its behalf).]

This letter and all non-contractual obligations arising out of or in connection with it are governed by and will be construed in accordance with English law.

Yours faithfully,

.....  
for and on behalf of

[Account Bank/other financial institution]

cc. [Riviera Topco Limited / Riviera Acquisitions Limited / R&R PIK plc / New R&R Ice Cream Limited / Froneri International Plc]

\* Refer to the relevant Security Accession Deed, rather than the Debenture, when using this notice in connection with Security created by a Security Accession Deed.

**SCHEDULE 4**  
**FORM OF SECURITY ACCESSION DEED**

**THIS SECURITY ACCESSION DEED** is made on [•]

**BETWEEN:**

- (1) [•] **LIMITED**, a company incorporated in England and Wales with registered number [•] (the "**New Chargor**"); and
- (2) **CREDIT SUISSE AG, LONDON BRANCH** as security trustee for itself and the other Secured Parties (the "**Security Agent**").

**RECITAL:**

This deed is supplemental to a debenture dated [•] between the Chargor(s) named therein and the Security Agent, as previously supplemented and amended by earlier Security Accession Deeds (if any) (the "**Debenture**").

**NOW THIS DEED WITNESSES** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

Terms defined in the Debenture shall have the same meaning when used in this deed.

**1.2 Construction**

Clauses 1.2 (*Terms defined in other Secured Debt Documents*) to Clause 1.4 (*Incorporation of provisions from Intercreditor Agreement*) of the Debenture will be deemed to be set out in full in this deed, but as if references in those clauses to the Debenture were references to this deed.

**2. ACCESSION OF NEW CHARGOR**

**2.1 Accession**

The New Chargor agrees to be a Chargor for the purposes of the Debenture with immediate effect and agrees to be bound by all of the terms of the Debenture as if it had originally been a party to it as a Chargor.

**2.2 Covenant to pay**

The New Chargor covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it shall, on demand of the Security Agent pay, discharge and satisfy the Secured Obligations in accordance with the terms of the Secured Debt Documents.

### 2.3 Specific Security

The New Chargor, as continuing security for the payment of the Secured Obligations, charges in favour of the Security Agent the following assets, both present and future, from time to time owned by it or in which it has an interest:

- (a) [by way of first fixed charge, all of its rights, title and interest in and to its Accounts and all Related Rights; ]
- (b) [by way of first fixed charge, all of its rights, title and interest from time to time in and to the Shares and all dividends, interest and other monies payable in respect of those Shares and all Related Rights (whether derived by way of redemption, bonus, preference, options, substitution, conversion, compensation or otherwise);] [and]
- (c) [by way of first fixed charge, all of its rights, claims, title and interest in and to the proceeds of each Intercompany Receivable of the New Chargor and all Related Rights.]

### 2.4 Floating charge

- (a) The New Chargor charges by way of first floating charge in favour of the Security Agent all present and future assets and undertakings of the New Chargor.
- (b) The floating charge created pursuant to paragraph (a) above shall be deferred in point of priority to all Fixed Security validly and effectively created by the New Chargor under the Secured Debt Documents in favour of the Security Agent as security for the Secured Obligations.
- (c) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to paragraph (a) above.

### 2.5 Specific Security

For the avoidance of doubt, this Clause 2 is subject to Clause 6.7 (*Property Restricting Charging*) of the Debenture, which shall apply *mutatis mutandis*.

## 3. CONSENT OF EXISTING CHARGOR(S)

The existing Chargor(s) agree to the terms of this deed and agree that its execution will in no way prejudice or affect the security granted by each of them under (and covenants given by each of them in) the Debenture.

## 4. CONSTRUCTION OF DEBENTURE

The Debenture and this deed shall be read together as one instrument on the basis that references in the Debenture to "this deed" or "this Debenture" will be deemed to include this deed.

**5. NOTICES**

The New Chargor confirms that its address details for notices are as set out in the applicable Accession Deed (or as otherwise updated in accordance with the Intercreditor Agreement)

**6. GOVERNING LAW**

This deed (including any non-contractual obligations arising out of or in relation to this deed) and any dispute or proceedings arising out of or relating to this deed shall be governed by English law.

**IN WITNESS** whereof this deed has been duly executed on the date first above written.

## EXECUTION PAGE TO SECURITY ACCESSION DEED

### THE NEW CHARGOR

EXECUTED AS A DEED by )  
[•] )  
acting by a director )  
in the presence of: )

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

### THE SECURITY AGENT

Signed by )  
**CREDIT SUISSE AG, LONDON BRANCH** )  
for and on its behalf )  
by its duly authorised )

EXECUTION PAGE TO DEBENTURE

The Original Chargors

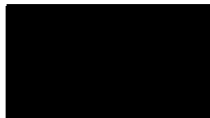
EXECUTED AS A DEED by  
RIVIERA TOPCO LIMITED  
acting by a director  
in the presence of:

)  
)  
)  
) IBRAHIM NAJAFI

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

  
CHONTELLE WRIGHT  
17 POPLAR PLACE, NEWCASTLE UPON  
TYNE, NE3 1DR.

EXECUTED AS A DEED by  
RIVIERA ACQUISITIONS LIMITED  
acting by a director  
in the presence of:

)  
)  
)  
) IBRAHIM NAJAFI

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

  
CHONTELLE WRIGHT  
17 POPLAR PLACE, NEWCASTLE UPON  
TYNE, NE3 1DR.

EXECUTED AS A DEED by  
R&R PIK PLC  
acting by a director  
in the presence of:

)  
)  
)  
) PHILIP GRIFFIN

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

  
CHONTELLE WRIGHT  
17 POPLAR PLACE, NEWCASTLE UPON  
TYNE, NE3 1DR.

**EXECUTED AS A DEED** by  
**NEW R&R ICE CREAM LIMITED**  
acting by a director  
in the presence of:

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)  
)  
)  
  
PHILIP GRIFFIN

Signature of witness:

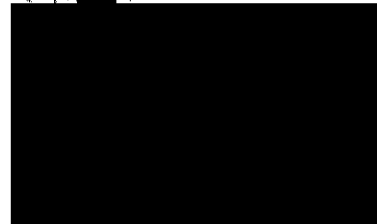


Name (in BLOCK CAPITALS):

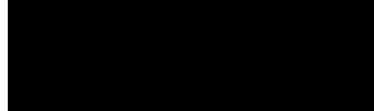
CHONTELLE WRIGHT

Address:

17 POPLAR PLACE, NEWCASTLE UPON  
TYNE, NE3 1DR



**EXECUTED AS A DEED** by  
**FRONERI INTERNATIONAL PLC**  
acting by a director  
in the presence of:

)  
)  
)  
)  
  
DANIEL MARTINEZ

Signature of witness:



Name (in BLOCK CAPITALS):

CHONTELLE WRIGHT

Address:

17 POPLAR PLACE, NEWCASTLE UPON  
TYNE, NE3 1DR.

### The Security Agent

Signed by  
**CREDIT SUISSE AG, LONDON BRANCH**  
for and on its behalf  
by its duly authorised  
officer

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Signed by  
**CREDIT SUISSE AG, LONDON BRANCH**  
for and on its behalf  
by its duly authorised  
officer

)  
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)  
)

**EXECUTED AS A DEED** by )  
**NEW R&R ICE CREAM LIMITED** )  
acting by a director )  
in the presence of: )

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

**EXECUTED AS A DEED** by )  
**FRONERI INTERNATIONAL PLC** )  
acting by a director )  
in the presence of: )

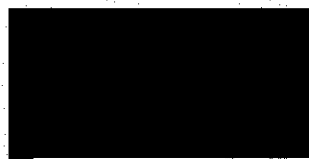
Signature of witness:

Name (in BLOCK CAPITALS):

Address:

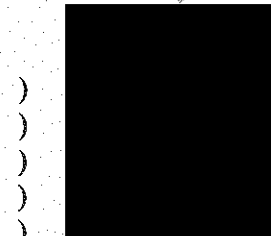
**The Security Agent**

Signed by  
**CREDIT SUISSE AG, LONDON BRANCH**  
for and on its behalf  
by its duly authorised  
officer



) Ian Croft  
) Assistant Vice President  
) Operations

Signed by  
**CREDIT SUISSE AG, LONDON BRANCH**  
for and on its behalf  
by its duly authorised  
officer



Steve Martin  
Vice President