

## Debenture

**Dated:** \_\_\_\_\_

### BETWEEN:

- (1) \_\_\_\_\_  
("you/your/yours"); and
- (2) **Cynergy Bank plc** (Company Registration Number 04728421), of 4th Floor, One New Change, London EC4M 9AF ("we/our/us").

## 1. Definitions and Interpretation

### 1.1 In this Debenture the expression:

"Account" means any credit balance from time to time on any account opened or maintained by you with us or any other financial institution.

"Assets" means your Property, business, assets and undertakings present and future.

"Borrower" means \_\_\_\_\_

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Confidential Information" has the meaning given to it in a Facility Letter or any conditions expressed to be incorporated into that Facility Letter.

"Contract" means those contracts specified in Schedule 1 (*Contracts*) together with any other contract entered into by you after the date of this Debenture and designated as such.

"Enforcement Event" means the occurrence of an Event of Default which is continuing.

"Facility Document" has to the meaning set out in a Facility Letter or any conditions expressed to be incorporated into that Facility Letter.

"Facility Letter" means any facility letter between each Borrower and us as lender.

"Insurance Policies" means any policy for insurance (including life insurance or assurance) in which you may from time to time have an interest together with all amounts payable to you under or in connection with such policies.

"Lease" means, in relation to any of the Property which is leasehold, the lease or leases pursuant to, and in accordance with which, you hold such Property, and any instrument supplemental to it or which is expressed to be collateral to it or entered into pursuant to or in accordance with its terms.

"Liabilities" means all of your and each Borrower's present and future obligations and liabilities of any kind and in any currency (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) to us together with all costs, charges and expenses incurred by us in connection with the protection, preservation or enforcement of our rights, including but not limited to obligations and

liabilities under the Facility Documents or any other document evidencing or securing any such liabilities.

“Property” means all of your freehold and leasehold property and any part or parts of it, together with:

- (a) all buildings and fixtures (including trade fixtures) and fixed plant and machinery at any time thereon;
- (b) all easements, rights, agreements, powers, benefits, warranties, remedies, security, guarantees and indemnities in respect thereof;
- (c) all rights under any license, agreement for sale or agreement for lease in respect of any of the Property;
- (d) all proceeds of sale of any of the Property; and
- (e) the benefit of all covenants rights, guarantees, Security, claims, causes of action, remedies and indemnities of any nature enjoyed or held in relation to that Property or the Leases,

and “Property” shall mean any of them.

“Party” means a party to this Debenture.

“Receiver” means an administrative receiver, receiver and manager or a receiver, in each case appointed under this Debenture.

“Security” means any mortgage, charge, pledge, lien, assignment by way of security or any other security interest securing any obligation of any person or any arrangement having similar effect.

“Security Period” means the period beginning on the date of this Debenture and ending on the date on which we are satisfied that the Liabilities have been irrevocably and unconditionally discharged in full and all Facilities have been cancelled in full.

**1.2** Unless a contrary indication appears, a reference in this Debenture to:

- 1.2.1 us, you or any other person shall be construed so as to include, where relevant, our/its successors in title, permitted assigns and permitted transferees;
- 1.2.2 a clause or Schedule, is to a Clause of, or a Schedule to, this Debenture;
- 1.2.3 a Facility Document or any other agreement or instrument is a reference to that Facility Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally) or replaced;
- 1.2.4 a provision of law is a reference to a provision of any statute, treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced whether before or after the date of this Debenture and all subordinate legislation made from time to time under that statute or other provision of law;
- 1.2.5 a regulation includes any regulation, rule, official derivative, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or

supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

1.2.6 one gender shall include a reference to the other genders;

1.2.7 assets includes present and future properties, revenues and rights of every description;

1.2.8 a charge or mortgage of any freehold or leasehold property or of any property held under a lease or sub-lease includes all premises and fixtures (excluding tenant's fixtures in relation to property sublet to a third party) on that property, the proceeds of sale of any part of that property, and the benefit of any covenants for title (or any monies paid or payable in respect of them) given or entered into by you in title in respect of that property; and

1.2.9 a time of day is a reference to London time.

**1.3** The terms of the other Facility Documents and of any side letters between the Parties in relation to the Facility Documents are incorporated in this Debenture to the extent required for any actual or purported disposition of the Property in this Debenture to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

**1.4** Every disposition effected by this Debenture in respect of the Property is made with full title guarantee. The other terms of this Debenture do not limit or extend any of the covenants implied by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 but create separate and independent obligations having effect cumulatively with those implied covenants.

**1.5** Each of the charges in Clause 3.1 over each category of the assets, each asset and each sub-category of each asset specified in such clause shall be read and construed separately, as though each such category, asset and sub-category were charged independently and separately of each other and shall apply both to present and future assets.

**1.6** Clause and Schedule headings are for ease of reference only.

**1.7** Words importing the plural shall include the singular and vice versa.

**1.8** Words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

**1.9** This Debenture is an unregulated agreement for the purposes of the Financial Services and Markets Act 2000 and related legislation and, as a result, you understand that you are not entitled to the regulatory protections that would otherwise apply if this Debenture was regulated by such legislation.

## **2. Your agreement to pay**

You agree with us to pay, discharge and satisfy all the Liabilities when due in accordance with their respective terms (or, if the relevant terms do not specify time for payment, immediately on written demand by us) and to indemnify us against any losses, costs, charges, expenses and liabilities arising from any breach of any Facility Document or failure to pay, discharge and satisfy the Liabilities in accordance with their respective terms.

### 3. Charging Provisions

3.1 You grant us with full title guarantee Security over all your Assets. In our favour you:

3.1.1 charge by way of first legal mortgage all of your rights, title and interest in the Property (whether registered at the Land Registry or not);

3.1.2 assign by way of security all of your rights in respect of any Insurance Policies, any Leases, the Accounts and all proceeds paid or payable thereunder, the Contracts and all guarantees, warranties and indemnities issued in relation to any Contract;

3.1.3 charge by way of a fixed charge:

3.1.3.1 your goodwill;

3.1.3.2 (to the extent that they are not the subject of a mortgage under Clause 3.1.1 above) all other present and future Property owned by you or in which you have an interest;

3.1.3.3 all present and future plant, machinery, vehicles, tools, computers, equipment, furniture and other chattels attached to Property and any renewals or replacements of them together with the benefit of all warranties, guarantees, maintenance contracts, consents and licences relating to them (together the "**Plant and Machinery**");

3.1.3.4 all and any interests you have or later acquire in land and the proceeds of the sale of that land;

3.1.3.5 your uncalled capital;

3.1.3.6 all stocks, shares, debentures, bonds, warrants, coupons, investments, securities, interests in any collective investment schemes, proceeds of sale and all other securities and investments of any kind whatsoever (each an "**Investment**") (whether in certificated or uncertificated form and whether or not marketable) at any time owned by you whether at law or in equity and all dividends and distributions of any kind, interest and any other income received or receivable in relation to any of the Investments (the "**Dividends**");

3.1.3.7 all your current and future debts including book debts, all your existing and future rights and claims against third parties that can be satisfied by the payment of money (other than rights and claims charged under Clause 3.1.3.9) and the benefit of all rights, securities and guarantees of any nature now or at any time for the duration of this Debenture held by you;

3.1.3.8 all existing and future rights and interests owned by you or arising from any present or future agreements in relation to the following:

- (a) patents and patent applications, trade marks and trade mark applications (and all goodwill associated with it);
- (b) brand and trade names;
- (c) copyrights and rights in the nature of copyright or registered designs, applications for registered designs and inventions; and
- (d) trade secrets and know-how and all other intellectual property

rights and interests whether registered or unregistered (together, "**Intellectual Property**");

3.1.3.9 (to the extent that they are not the subject of an assignment by way of security under Clause 3.1.2 above) all the benefit of your current and future rights and interest in and claims under all Insurance Policies and assurance you hold now or in the future during the duration of this Debenture, any Accounts and the Contracts; and

3.1.3.10 your beneficial interest, claim or entitlement in any pension fund and in relation to any Tax or VAT (whether a claim in respect of a refund or return of Tax or VAT or otherwise); and

3.1.4 charge by way of a floating charge, all the Assets which have not been effectively mortgaged or charged by way of fixed charge under this Clause 3.1.

**3.2** We may by prior written notice to you convert the floating charge created by Clause 3.1.4 into a fixed charge in relation to all or any such of your Assets specified in the notice if:

3.2.1 we have reasonable grounds for considering that those Assets are in jeopardy, by legal process or otherwise; or

3.2.2 an Enforcement Event has occurred.

**3.3** If we give you a notice under Clause 3.2 in relation to any class of Asset this shall not be construed as a waiver or abandonment of our rights to give other similar notices in respect of any other class of Asset.

**3.4** Subject to the Insolvency Act 1986 and Clause 3.2, the floating charge created by Clause 3.1.4 will automatically and immediately (without notice) convert into a fixed charge over all of your Assets if:

3.4.1 an administrator or liquidator is appointed in respect of you or a person entitled to appoint an administrator or liquidator in respect of you gives notice of its intention to do so or files a notice of appointment with a court;

3.4.2 you cease to carry on business or to be a going concern or any corporate action legal proceedings or other procedure or step is taken in relation to the suspension of payments, winding-up, dissolution or re-organisation of you other than a winding-up petition which is stayed within 14 days of its commencement; or

3.4.3 the holder of any other security interest over the Assets whether ranking in priority or *pari passu* with the Security in our favour or you appointing, or requesting the appointment of, an administrator or receiver, provided that if a request is made by any other holder of security and that request is vexatious such request shall not give rise to automatic crystallisation as set out in this Clause 3.4.

**3.5** Subject to the Insolvency Act 1986 and Clause 3.2, the floating charge created by Clause 3.1.4 will automatically and immediately (without notice) convert into a fixed charge over the specific Asset concerned if:

3.5.1 you grant or attempt to grant Security over an Asset in favour of another; and/or

3.5.2 you dispose of an Asset and the disposal is not part of the ordinary course of your business.

**3.6** Any specific Security that you create over any Asset at a later date in our favour shall have priority over the floating charge unless we inform you otherwise.

**3.7** Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to this Debenture.

**3.8** The floating charge created by Clause 3.1.4 may not be converted into a fixed charge solely by reason of:

3.8.1 the obtaining of a moratorium; or

3.8.2 anything done with a view to obtaining a moratorium,  
under the Insolvency Act 1986.

#### **4. Negative Pledge**

**4.1** Without our prior written consent, you must not:

4.1.1 create in anyone else's favour any Security over any of the Assets;

4.1.2 take any action that will allow any entity to take or hold any of the Assets as payment of a debt or take priority over our charge on the Assets; or

4.1.3 sell, lease, transfer, assign or otherwise dispose of any part of such undertaking and Assets except by way of sale in the ordinary course of trading.

**4.2** Any Security you create after signing this Debenture (other than in our favour) shall be expressed to be subject to this Debenture.

#### **5. Security documents**

**5.1** You agree that on the date of this Debenture you will give us all deeds, documents of title and Insurance Policies relating to the Assets. If a prior mortgagee holds any such documents you must arrange for the prior mortgagee to supply us with any such deeds, documents of title and/or Insurance Policies within five Business Days of the date of this Debenture, or by such other date agreed in writing between us.

**5.2** We may ask you to sign the following documents at your cost:

5.2.1 a legal mortgage in such form as we may require over any Property that you acquire;  
or

5.2.2 any other Security in such form as we may require over any of the Assets together with any other document which we may require for securing the payment or discharge to us of the Liabilities.

#### **6. General representations, warranties and covenants**

**6.1** For the duration of the Security Period you agree that you will:

- 6.1.1 give us copies of your and your subsidiaries' trading and profit and loss account and balance sheet not later than 120 days from the end of each financial year. We may write to inform you that we have appointed a person to examine at reasonable times all books, accounts and documents relating to your business and to investigate your affairs or the business and/or affairs of your subsidiaries. You should provide the appointed person with all the information he may require;
- 6.1.2 if required by us, maintain an estimated aggregate value of your book debts (excluding debts owing by any subsidiary of yours) and cash in hand as appearing in your books and of your stock at a sum to be fixed by us. We may ask your managing director, or if there is no managing director then one of your directors, to give us a certificate showing the said aggregate value;
- 6.1.3 collect as our agent the debts (including book debts) and claims charged in this Debenture and pay into the account you have with us or into any other account we have asked you to pay them into, until we tell you otherwise;
- 6.1.4 hold all monies that you receive on trust for us. You must not without our written permission agree to charge, factor, discount, assign, postpone, release or waive any debts or claims in favour of any other person or purport to do so. If we ask, you must assign to us all or any such debts and claims in a form we require;
- 6.1.5 at all times comply with the terms of any Facility Document or any other agreement between us;
- 6.1.6 keep all Confidential Information confidential and you will not disclose any Confidential Information to anyone except with our prior written consent; and
- 6.1.7 to inform us as soon as you acquire any Property and at your own cost, take such steps as we (acting reasonably) may require to create or perfect Security over such Asset.

**6.2** For the duration of the Security Period you represent that:

- 6.2.1 this Debenture creates the Security it purports to create and it is not liable to be avoided or otherwise set aside on liquidation, bankruptcy, insolvency or administration or otherwise;
- 6.2.2 this Debenture is your legal, valid and binding obligation and is enforceable against you in accordance with its terms;
- 6.2.3 if you are not an individual, you have the power to own the Assets and carry on your business as it is being conducted;
- 6.2.4 if you are not an individual, the entry into and performance by you of, and the transactions contemplated by, this Debenture do not and will not conflict with any law or regulation applicable to you or your constitutional documents or any agreement or instrument binding on you or any of your Assets or constitute a default or termination event (however described) under any such agreement or instrument;
- 6.2.5 if you are not an individual, you have the power to enter into, perform and deliver, and have taken all necessary action to authorise entry into, performance and delivery of this Debenture and the transactions contemplated by this Debenture;

- 6.2.6 if you are not an individual, no limit on your powers will be exceeded as a result of creating any Security or giving any indemnity contemplated by this Debenture;
- 6.2.7 unless otherwise agreed by us, this Debenture creates first ranking Security in our favour; and
- 6.2.8 except for Security constituted by this Debenture or otherwise agreed by us, no Security in favour of anyone else exists in respect of any of the Assets.

**6.3** If we decide to release, waive or postpone our rights in respect of debts including book debts secured under this Debenture, to allow you to factor or assign them to a third party, the Security will remain in full force and effect. All amounts becoming due to you from the third party and any book debts and other debts reassigned, or due to be re-assigned, by the third party to you will be subject to the fixed charge created by sub-clause 3.1.3.7, subject only to any defences or rights of set-off which the third party may have against you.

**6.4** You shall not take any action (or permit any action to be taken) which results or could result in any of your rights relating to any Asset being impaired or which could prejudice the Security constituted or expressed to be constituted by this Debenture.

## **7. Property and environmental covenants**

**7.1** With regard to any Property, for the duration of the Security Period you agree:

- 7.1.1 to keep all buildings, plant, machinery, fixtures, fittings and other effects charged under this Debenture in good repair, working order and condition (fair wear and tear excepted). You agree that if we give you reasonable notice we can inspect them at a reasonable time;
- 7.1.2 that nothing has arisen or has been created or is subsisting which would be an overriding interest or an unregistered interest which overrides first registration or registered dispositions over any of your Property and which would be reasonably likely to affect materially its value or use;
- 7.1.3 that all facilities (including access) necessary for the enjoyment and use of any of the Property (including those necessary for the carrying on of its business at the Property) are enjoyed by the relevant Property and none of those facilities are on terms entitling any person to terminate or curtail its use or on terms which conflict with or restrict its use, where the lack of those facilities would be reasonably likely to affect materially its value or use;
- 7.1.4 not to part with possession of any land or share the occupation of it with any other person, or agree to do so, without our prior written consent, unless any lease, tenancy or licence granted to you comes to an end;
- 7.1.5 to provide us with documents and information that we ask you for;
- 7.1.6 to pay all rents, rates, taxes, duties, impositions, assessments and other outgoings or charges of any sort relating to the Property on time and indemnify us against any claim for those amounts. If we ask you to, you must show us the receipts for such payment. If you do not pay any rate, tax or charge relating to the Property or you do not show us the receipt we have asked for, we may make the appropriate payment and add the cost to the amount of the Liabilities;



- 7.1.7 to perform all the material terms on your part contained in any Lease, agreement for lease, licence or other agreement or document which gives you a right to occupy or use property comprised in the Property;
  - 7.1.8 to duly and punctually comply with all material covenants and stipulations affecting the Property or the facilities (including access) necessary for the enjoyment and use of the Property and indemnify us in respect of any breach of those covenants and stipulations;
  - 7.1.9 to comply with all laws currently in force, all notices, orders and requirements of any competent authority (statutory or otherwise) and all directives and codes of practice affecting any land, your business, the Assets or relating to the protection of the environment or health and safety;
  - 7.1.10 to comply with the terms and conditions of all permits, licences, authorisations, consents or approvals required by any laws, regulations, codes of practice or guidance relating to the protection of the environment or health and safety; and
  - 7.1.11 to inform us immediately when you receive any claim, notice or other communication alleging that you have not complied with any matter referred to in this Clause 7 or any indication given to you that any Asset is or may be listed in a register of contaminated land or contaminative use or similar register or that any environmental or other condition exists which could have a material effect on the value of the Assets or your business.
- 7.2** To keep us, our employees and agents fully indemnified against any claim, liability, loss or expense incurred by any of them, directly or indirectly, as a result of any failure by you to comply with any covenant contained in Clause 7.1 or as a result of any liability attaching by virtue of any laws, regulations, codes of practice or guidance to any of the Assets.
- 7.3** You will:
- 7.3.1 notify us immediately if you acquire any freehold or leasehold or other interest in property or of any property held under a lease or sub-lease (and for the purposes of this Clause 7.3 the date of exchange of contracts for such an acquisition shall be deemed to be the date of acquisition);
  - 7.3.2 at your cost execute and deliver to us on demand a legal mortgage in favour of us of any freehold or leasehold or other interest in property or of any property held under a lease or sub-lease which becomes vested in you after the date of this Debenture; and
  - 7.3.3 in any event, if applicable, give The Land Registry written notice of this Debenture and procure that notice of it be duly noted in the Registers to each such title.

## **8. Investments and Dividends**

### **8.1 Investments**

For the duration of the Security Period you represent and warrant to us that:

- 8.1.1 the Investments are duly authorised, validly issued and fully paid and are not subject to any option to purchase or similar right; and
- 8.1.2 you are the sole legal and beneficial owner of the Investments.

## **8.2 Certificated Investments**

As soon as possible after your acquisition of any certificated Investment, you:

- 8.2.1 must promptly take any action and execute and deliver to us any stock transfer form or other document which may be requested by us in order to enable the transferee to be registered as the owner or otherwise obtain legal title to that Investment, including:
  - 8.2.1.1 delivering executed stock transfer forms in our favour or any of our nominees as transferee or, if we so direct, with the transferee left blank; and
  - 8.2.1.2 procuring that those stock transfer forms are registered by the company in which the Investments are held.

For the avoidance of doubt, we will not require any Investment to be transferred into our name as owner or otherwise obtain a legal title to an Investment prior to the Security becoming enforceable in accordance with Clause 16 (*Enforcement of Security*) of this Debenture.

## **8.3 Changes to rights**

You may not (except to the extent permitted by the Facility Documents) take or allow the taking of any action on your behalf which may result in the rights attaching to any of your Investments being altered.

## **8.4 Calls**

- 8.4.1 You must pay all calls and other payments due and payable in respect of any of the Investments.
- 8.4.2 If you fail to do so, we may pay those calls or other payments on your behalf. You must immediately on request reimburse us for any payment made by us under this 7.4.2 and, pending reimbursement, that payment will constitute part of the Liabilities.

## **8.5 Other obligations in respect of Investments**

- 8.5.1 You must comply with all requests for information which is within your knowledge and which are made under any law or regulation or by any listing or other authority or any similar provision contained in any articles of association or other constitutional document relating to any of your Investments. If you fail to do so, we may elect to provide any information which we may have on your behalf.
- 8.5.2 You must promptly supply a copy to us of any information referred to in Clause 8.5.1 above.
- 8.5.3 You must comply with all other conditions and obligations assumed by you in respect of any of your Investments.
- 8.5.4 We will not be required in any manner to:
  - 8.5.4.1 perform or fulfil any of your obligations;
  - 8.5.4.2 make any payment;

8.5.4.3 make any enquiry as to the nature or sufficiency of any payment received by us or you; or

8.5.4.4 present or file any claim or take any other action to collect or enforce the payment of any amount;

in respect of any Investment.

## **8.6 Voting rights and dividends**

8.6.1 Subject to Clause 8.7 (*Voting Rights*) below, prior to the occurrence of an Enforcement Event, you shall be entitled to:

8.6.1.1 receive all dividends, interest and other monies arising from the Investments; and

8.6.1.2 exercise all voting rights in relation to the Investments.

8.6.2 At any time after the occurrence of an Enforcement Event, we may, at our discretion, (in your name or otherwise and without any further consent or authority from you):

8.6.2.1 exercise (or refrain from exercising) any voting rights in respect of the Investments;

8.6.2.2 apply all dividends, interest and other monies arising from the Investments in accordance with Clause 19 (*Order of application*);

8.6.3 transfer the Investments into our name or such nominee(s) as we shall require; and

8.6.4 exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Investments, including the right, in relation to any company whose shares or other securities are included in the Investments, to concur or participate in:

8.6.4.1 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);

8.6.4.2 the release, modification or variation of any rights or liabilities attaching to such shares or securities; and

8.6.4.3 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 we think fit, and the proceeds of any such action shall form part of the Investments.

## **8.7 Voting Rights**

You shall not exercise your voting rights in relation to the Investments in any manner, or otherwise permit or agree to (i) any variation of the rights attaching to or conferred by all or any part of the Investments, or (ii) any increase in the issued share capital of any company whose shares are charged pursuant to this Debenture, which would prejudice the value of, or our ability to realise, the Security created by this Debenture.

## **8.8 Clearance systems**

8.8.1 You must, if so requested by us:

8.8.1.1 instruct any clearance system to transfer any Investment held by it for you or your nominee to our account or our nominee's account with that clearance system; and

8.8.1.2 take whatever action we may request for the dematerialisation or rematerialisation of any Investments held in a clearance system.

8.8.2 Without prejudice to the rest of this Clause 8.8 we may, at your expense, take whatever action is required for the dematerialisation or rematerialisation of the Investments as necessary.

## **8.9 Custodian arrangements**

You must:

8.9.1 promptly give notice of this Debenture to any custodian of any Investment in any form which we may reasonably require; and

8.9.2 use reasonable endeavours to ensure that the custodian acknowledges that notice in any form which we may reasonable require.

## **9. Intellectual Property**

### **9.1 Preservation.**

You must promptly, if requested to do so by us, sign or procure the signature of, and comply with all of our instructions in respect of, any document required to make entries in any public register of Intellectual Property (including the United Kingdom Trade Marks Register) which either record the existence of this Debenture or the restrictions on disposal imposed by this Debenture.

## **10. Accounts**

### **10.1 Undertakings**

You shall:

10.1.1 except as regards any Account maintained with us, deliver to us details of each Account maintained by you promptly upon the opening of a new Account, the creation of any sub-account or any redesignation or change in account details affecting any Account;

10.1.2 promptly upon request by us, supply us with copies of all mandate letters, bank statements and other agreements relating to the Accounts;

10.1.3 not permit or agree to any variation of the terms and conditions relating to any Account or close any Accounts; and

10.1.4 not open any new Account with any other financial institution without our prior written consent.

## **10.2 Operation of Accounts**

10.2.1 Prior to the occurrence of an Enforcement Event, you shall be entitled to withdraw or transfer any sum standing to the credit of any such Account.

10.2.2 After the occurrence of an Enforcement Event, you shall not be entitled to make any withdrawals or transfers from any Account without our prior written consent.

## **11. Plant and machinery**

### **11.1 Maintenance**

You must keep your Plant and Machinery in good working order and condition (reasonable wear and tear excepted).

### **11.2 Nameplates**

After the occurrence of an Enforcement Event, you must take any action which we may reasonably require to evidence our interest in your Plant and Machinery; this includes fixing a nameplate on your Plant and Machinery in a prominent position stating that:

11.2.1 the Plant and Machinery is charged in favour of us; and

11.2.2 the Plant and Machinery must not be disposed of without our prior consent unless permitted under the Facility Documents.

## **12. Insurances**

### **12.1 Rights**

12.1.1 Subject to our rights under Clause 12.1.2 below, you must, to the extent commercially reasonable, diligently pursue your rights under each of your Insurance Policies, but only if and to the extent that the exercise of those rights in the manner proposed would not result in an Event of Default under the terms of the Facility Documents.

12.1.2 After the occurrence of an Enforcement Event:

12.1.2.1 we may exercise (without any further consent or authority on your part) any of your rights in connection with any amounts payable to us under any of your Insurance Policies;

12.1.2.2 you must take such steps (at your own cost) as we may require to enforce those rights; this includes initiating and pursuing legal or arbitration proceedings in your name; and

12.1.2.3 you must hold any payment received by you under any of your Insurance Policies (excluding proceeds of any third party liability insurances paid to you to meet third party claims) on trust for us.

## **13. Contracts**

### **13.1 Representations**

You represent and warrant to us that:

- 13.1.1 each Contract to which you are a party is in full force and effect and constitutes legal, valid, binding and enforceable obligations on you;
- 13.1.2 your execution and performance of the Contracts to which you are party does not conflict with any law or regulation applicable to you, your constitutional documents or any agreement or instrument binding on you or constitute a default or termination event (however described) under any such agreement or instrument;
- 13.1.3 you are not in default, nor for so far as you are aware, is any counterparty to a Contract in default, under any Contract to which you are a party;
- 13.1.4 all payments due to you by any other party under the Contracts to which you are party are not subject to any right of set-off or similar right; and
- 13.1.5 there is no prohibition on assignment in the Contracts to which you are party.

## **13.2 Covenants**

Until the security constituted by this Debenture has become enforceable, you shall be entitled to continue to deal with the Contracts and the counterparties to each of them on a basis otherwise consistent with the Facility Documents.

## **14. Provisions as to Security**

- 14.1** The covenants set out in Sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to the fixed charges and floating charges constituted under Clause 3 (*Charging provisions*).
- 14.2** It shall be implied in respect of Clause 3 (*Charging provisions*) that you are disposing of the Assets free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

## **15. Security Notices**

### **15.1 Notice of Security: Insurance Policies**

You will:

- 15.1.1 Promptly on our request give notice to such insurer counterparties to any Insurance Policies as we direct of the Security constituted under this Debenture by sending a notice substantially in the form set out in Part I (*Notice of Assignment to Insurer*) of Schedule 2 (*Insurance Policies*); and
- 15.1.2 use all reasonable endeavours to procure that each such insurer delivers a letter undertaking to us in the form set out in Part II (*Acknowledgement of Assignment*) of Schedule 2 (*Insurance Policies*) within 14 Business Days of the date of service of any notice under Clause 15.1.1.

### **15.2 Notice of Security: Leases**

You will:

- 15.2.1 promptly on our request give notice to such landlords, tenants and other persons which are parties to any Leases as we direct of the Security constituted under this

Debenture in respect of any such Lease, any such notice being in the form set out in Part I (*Notice of Assignment: Leases*) of Schedule 3 (*Leases*); and

15.2.2 use all reasonable endeavours to procure from each of the landlords, tenants, and other persons referred to in Clause 15.2.1 above an acknowledgement in the form set out in Part II (*Acknowledgement of Assignment*) of Schedule 3 (*Leases*) or otherwise in the form set out in the relevant notice of assignment within 14 Business Days of the date of service of any notice under Clause 15.2.1.

### **15.3 Notice of Security: Accounts**

You will:

15.3.1 promptly upon the date of this Debenture in relation to each Account, other than any account maintained with us, or if later, upon the opening of any other Account to which we have given our prior written consent, give notice to the relevant bank, building society, financial institution or other person of the Security constituted under this Debenture, the notice being in the form set out in Part I (*Notice of Assignment to Account Bank*) of Schedule 4 (*Accounts*); and

15.3.2 use all reasonable endeavours to procure from the relevant bank, building society or other financial institution, an acknowledgement of receipt of such notice in the form set out in Part II (*Acknowledgement of Security by Account Bank*) of Schedule 4 (*Accounts*) within 14 Business Days of the date of service of any notice under Clause 15.3.1.

### **15.4 Notice of Security: Contracts**

You will:

15.4.1 promptly upon the date of this Debenture in relation to each Contract, or, if later, the date such Contract is designated as such, give notice to the relevant counterparty to such Contract of the Security constituted under this Debenture, the notice being in the form set out in Part I (*Notice of Assignment of a Contract*) of Schedule 5 (*Contracts*); and

15.4.2 use all reasonable endeavours to procure from the relevant counterparty, an acknowledgement of receipt of such notice in the form set out in Part II (*Acknowledgement of Assignment of Contract counterparty*) of Schedule 5 (*Contracts*) within 14 Business Days of the date of service of any notice under Clause 15.4.1.

## **16. Enforcement of Security**

### **16.1 Timing**

The Security created by this Debenture will be immediately enforceable at any time on or after:

16.1.1 the occurrence of an Enforcement Event; or

16.1.2 a request being made by you to us that we exercise any of our powers under this Debenture.

## 16.2 Enforcement

After the Security created by this Debenture has become enforceable, we may, without notice to you or prior authorisation from any court, in our absolute discretion:

- 16.2.1 enforce all or any part of that Security (at the times, in the manner and on the terms we think fit) and take possession of and hold or dispose of all or any part of the Assets;
- 16.2.2 whether or not we have appointed a Receiver, exercise all or any of the rights, powers, authorisations and discretions conferred by the Law of Property Act 1925 (as varied and extended by this Debenture) on mortgagees, by this Debenture on any Receiver, or conferred by the Insolvency Act 1986 or any other law on mortgagees and Receivers;
- 16.2.3 exercise all our rights, powers and remedies as assignee or chargee in respect of the Accounts and, in particular, the right to:
  - 16.2.3.1 demand and receive any interest or other monies payable in respect of any credit balance on any Account; and
  - 16.2.3.2 withdraw sums standing to the credit of any account (or, by notice to the bank with whom such Account is maintained, block the withdrawal of any such sums) and otherwise exercise all rights in relation to each of your Accounts as you may exercise (or, but for this Debenture) might exercise; and
- 16.2.4 apply, transfer or set-off any or all of the balances from time to time standing to the credit of the Accounts in or towards the payment or other satisfaction of all or part of the Liabilities then due but unpaid in accordance with Clause 19 (*Order of application*).

## 16.3 Statutory powers

- 16.3.1 The statutory power of sale or other right of disposal conferred on us 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 Liabilities shall be deemed due and payable for that purpose) on execution of this Debenture.
- 16.3.2 The statutory powers of leasing may be exercised by us at any time on or after this Debenture becoming enforceable and such powers are extended by this Debenture so as to authorise us to lease, make agreements for lease, accept surrenders of leases and grant options on such terms as we may think fit and without the need to comply with any restrictions imposed by law (including under section 99 or section 100 of the Law of Property Act 1925).
- 16.3.3 For the purposes of section 99 and 100 of the Law of Property Act 1925, the expression "Mortgagor" will include any incumbrancer deriving title under you and neither sub-section (18) of section 99 nor sub-section (12) of section 100 of the Law of Property Act 1925 will apply.
- 16.3.4 You shall not have, at any time up until the Liabilities have been irrevocably discharged in full and no further Liabilities are capable of arising at the end of the Security Period, the power pursuant to section 99 of the Law of Property Act 1925 to



make any lease in respect of any present or future Property without our prior written consent.

16.3.5 The restrictions contained in section 93 and section 103 of the Law of Property Act 1925 shall not apply to this Debenture, to the exercise by us of our rights 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 its power of sale and such powers of consolidation or sale are exercisable by us without notice to you, on or at any time after this Debenture has become enforceable as herein provided.

## **17. Effectiveness of Security**

**17.1** The Security constituted by this Debenture shall remain in full force and effect as continuing Security for the Liabilities until they have been irrevocably discharged in full and no further Liabilities are capable of arising and shall not be released before then by an intermediate payment, discharge of all or any of the Liabilities or for any other reason.

### **17.2 Cumulative rights**

The Security created by or pursuant to this Debenture and our rights, powers and remedies under this Debenture shall be cumulative and shall be in addition to and independent of every other Security, right, power or remedy which we may at any time have in connection with the Liabilities, including all rights, powers and remedies provided by law, and accordingly, we shall not be obliged before exercising any such rights, powers or remedies:

17.2.1 to make any demand of, or take any action or obtain any judgment in any court against, you;

17.2.2 to make for file any claim or proof in winding-up or dissolution in respect of you; or

17.2.3 to enforce or seek to enforce any other Security held by us in respect of the Liabilities.

### **17.3 No merger of Security**

No prior Security held by us over the whole or any other part of the Assets shall merge into the Security constituted by this Debenture.

### **17.4 No prejudice**

The Security created by or pursuant to this Debenture shall not be prejudiced by any enforceability or invalidity of any other agreement or document or by any time or indulgence granted to you or any person, or us or by any variation of the terms of the trust upon which we hold the Security created by or pursuant to this Debenture or by any other thing which might otherwise prejudice that Security.

### **17.5 Remedies and waivers**

17.5.1 No failure to exercise, nor any delay in exercising, on our part of any rights or remedy under this Debenture shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent and further or other exercise of right or remedy.

17.5.2 No election to affirm this Debenture on our part shall be effective unless in writing.

## **17.6 Partial invalidity**

17.6.1 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 nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

17.6.2 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 constituted under this Debenture.

## **17.7 Waiver of defences**

The obligations of, and the Security created by you under this Debenture will not be affected by any act, omission or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under, or the Security created by, this Debenture and whether or not known to you or us including:

17.7.1 any time, waiver or consent granted or agreed to be granted to, or composition with you or any other person;

17.7.2 the release of you or any other person under the terms of any composition or arrangement with any of your creditors;

17.7.3 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 your assets 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;

17.7.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of you or any other person;

17.7.5 any amendment, novation supplement, extension (whether at maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature, and whether or not onerous) or replacement of a Facility Document or of any document or Security or of the Liabilities (including any change in the purpose of, any extension of, or any variation or increase in any Facility or amount made available under any Facility or the addition of any new Facility under any Facility Document or other documents);

17.7.6 any unenforceability, illegality or invalidity of any obligation of any person under any Facility Document or any other document or security or of the Liabilities; or

17.7.7 any insolvency or similar proceedings relating to you or any other person.

## **17.8 Immediate recourse**

You waive any right you may have of first requiring us (or any trustee or agent on our behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from you under this Debenture. This waiver applies irrespective of any law or provision of this Debenture to the contrary.

## **17.9 Further assurance**

17.9.1 You shall promptly, at your own cost, do whatever we or any Receiver may require:

- 17.9.1.1 to create, perfect, better perfect, protect and/or better protect the Security created or intended be created by this Debenture;
- 17.9.1.2 to create, perfect, better perfect, protect and/or better protect the priority of the Security created or intended be created by this Debenture;
- 17.9.1.3 to facilitate the exercise of any rights, powers and remedies vested in us or any Receiver by this Debenture and/or by law; and/or
- 17.9.1.4 to facilitate realisation of the Assets.

17.9.2 In order to satisfy your obligations under Clause 17.9.1 above, you shall immediately, upon request execute any transfer, conveyance, mortgage, charge, assignment or assurance over all or any of the assets constituting, or intended to constitute, the Assets (whether in favour of us or nominee or otherwise) and make any registration or notarisation and give any notice, instructions, order or direction in respect of such Assets.

## **18. Consolidation**

Section 93 of the Law of Property Act 1925, which restricts the right to consolidate (add together) mortgages, does not apply to this Debenture.

## **19. Order of application**

### **19.1 Application of proceeds**

Unless otherwise determined by us or a Receiver, all amounts received or recovered by us or any Receiver in exercise of their rights under this Debenture will, subject to the rights of any creditors having priority, be applied in the order provided in Clause 19.2 (*Order of application*).

### **19.2 Order of application**

The order referred to in Clause 19.1 (*Application of proceeds*) is:

- 19.2.1 in or towards payment of, or the provision for, all the costs, expenses and losses incurred, and payments made, by us and/or any Receiver under or in connection with this Debenture and all remuneration due to any Receiver under or in connection with this Debenture;
- 19.2.2 in or towards the payment or discharge of the Liabilities; and
- 19.2.3 in payment of any surplus to you or any other person entitled to it.

**19.3** This Clause 19 (*Order of application*) applies and cannot be excluded by any other agreement you have with us unless the agreement specifically refers to the exclusion of this Clause 19.

## **20. Appointing a Receiver**

- 20.1** If you have asked us to, or at any time after this Debenture has become enforceable in accordance with Clause 16 (*Enforcement of Security*), we may appoint someone as a Receiver when we choose over all or any part of the Assets. We may appoint different Receivers to deal with different Assets. If we appoint more than one Receiver, they will act jointly or separately at our discretion. The Receiver may be an officer of ours. The Receiver's role and powers are explained in Clause 20.3 below.
- 20.2** We may (subject to the provisions of Section 45 of the Insolvency Act 1986) remove the Receiver. Once he has vacated office or stopped acting we may at any time appoint another in his place over all or any part of the Assets.
- 20.3** We may from time to time decide the Receiver's fees. The Receiver shall not at any time act as an agent for us and we will not incur any liability by reason of the appointment of a Receiver or for any other reason. For all purposes each Receiver is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Law of Property Act 1925. Every Receiver shall be your agent and you will be personally liable for the Receiver's actions and costs. If you go into liquidation the Receiver will no longer be your agent and will become the principal.
- 20.4** In addition to those conferred by the Law of Property Act 1925 on any receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this Debenture. The powers, authorities and discretions conferred by or pursuant to this Debenture in relation to the Assets or us or any Receiver shall be in addition to, and not in substitution for, the powers conferred on mortgagees or receivers under the Law of Property Act 1925, and, where there is any ambiguity or conflict between the powers, authorities and discretions contained in that Act and those conferred by or pursuant to this Debenture, the terms of this Debenture shall prevail.
- 20.5** A Receiver may, in your name, if he so wishes:
- 20.5.1 do all other acts and things which he may consider necessary or desirable for realising any Assets or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Debenture; and
  - 20.5.2 do and exercise in relation to any Assets all the powers, authorities and things which he would be capable of exercising as if he were its absolute beneficial owner.
- 20.6** A Receiver may:
- 20.6.1 sever any fixtures from the Property;
  - 20.6.2 sell, let, exchange, grant rights, options, easements, lease or license all or part of the Assets (or agree to do any of these things);
  - 20.6.3 change the terms of, surrender or allow someone else to accept surrenders of any leases, tenancies or licences;
  - 20.6.4 proceed with any sale for cash payable by instalments, shares or securities for another company;
  - 20.6.5 set up or agree to set up a company to purchase the Assets sold;
  - 20.6.6 make or arrange for any repairs and improvements of the Asset he thinks necessary;

20.6.7 exercise all voting and other rights attached to stocks shares and other securities you own;

20.6.8 pay off those with a prior encumbrance (such as a first legal charge) and provide a receipt as if it was from you so that the encumbrance can be discharged or removed; and

20.6.9 take any action he deems necessary for the improvement, realisation or preservation of the Assets unless we write to inform him otherwise.

**20.7** At any time after the Security created under this Debenture has become enforceable in accordance with Clause 16 (*Enforcement of Security*), and subject to the provisions of the Insolvency Act 1986, we may appoint one or more qualified persons to be your administrator, to act individually (and to the exclusion of any other administrator) or together with any other administrators so appointed or substituted. For the purposes of this Clause 20, a "qualified person" is a person qualified to act as an administrator under the Insolvency Act 1986.

**20.8** The powers given to us in Clause 20.1 and 20.3 and all the rights below will apply:

20.8.1 whether or not we have entered or taken possession of the Asset; and

20.8.2 whether or not we have given you enough or any time to satisfy any demand.

## **21. Power to sell, lease and accept surrenders**

**21.1** Our legal rights to sell, lease out or accept surrenders of Leases subject to this Debenture are extended to authorise us to grant a Lease or Leases of the whole or part of the Property under any terms and conditions we see fit. We can exercise any of these powers in our name or yours without becoming liable as mortgagee in possession.

**21.2** No person dealing with us or with our appointed Receiver of the Assets or any part of it is required to enquire whether any of the powers, authorities and discretions given to us under this Debenture have become exercisable. All the protection to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925 apply to any person purchasing from or dealing with us or the Receiver as if the statutory powers of sale and of appointing the Receiver in relation to the Assets or any part had not been varied or extended by this Debenture.

## **22. Power of attorney**

**22.1** By way of Security for the performance of your obligations under this Debenture you irrevocably appoint us and each Receiver as your attorney (that is to act for you). You do so whether or not we have appointed a Receiver under Clause 19. You also, as a separate appointment, appoint each Receiver to act as your attorney. We and any such Receiver can, either in your name or in our own or the Receiver's name, negotiate and enter into and sign or execute any deed, assurance, agreement or other document necessary under this Debenture and may carry out any other action under this Debenture.

**22.2** We may exercise all powers that the Receiver has whether or not we are acting as your attorney and whether or not a Receiver has been appointed.

**22.3** You shall ratify and confirm all things done and all documents executed by any attorney in the exercise or the purported exercise of all or any of its powers.

**22.4** You covenant (for the purpose of the irrevocable nature of the power of attorney granted in this Clause 22) with each Receiver appointed under this Debenture, to join in and concur with the exercise by such Receiver of any powers of such Receiver to act on your behalf.

**23. Giving you more time to pay**

If we see fit, we may grant you more time or make any arrangements or variations to pay any Liabilities. We may also release any person(s) (whether or not they are jointly and separately liable) from any Liabilities secured under this Debenture. We can do this without it affecting this Debenture or any money you owe us and any liabilities it secures.

**24. Investigation**

If requested by us you must, at your own cost, appoint an accountant or a firm of accountants chosen by us to investigate your financial affairs and/or any subsidiary or subsidiary undertaking of yours and report to us. The appointment will be made on your behalf. We can make or guarantee payment of the fees and expenses or ask you to pay at the time of the appointment.

**25. Generally**

In no circumstances will we or the Receiver be liable to you for any monies which either we or the Receiver do not actually receive.

**26. Using money received by us or the Receiver**

**26.1** Any money we or the Receiver recover or receive will be used in the following order:

26.1.1 first to pay all costs, charges and expenses we have incurred and any payments we or the Receiver have made and the Receiver's fee;

26.1.2 then to pay off the amount owed by you and secured by this Debenture;

26.1.3 and finally, if any amount is left, to pay the person(s) entitled to it.

**27. Our costs**

**27.1** You are responsible for paying all costs, charges, losses and expenses and other amounts we or any Receiver incur or have to pay or will have to pay in connection with this Debenture. This includes the cost of taking any action against you in relation to the Liabilities, any administrative costs and the cost of using a Receiver under Clause 20. All legal costs will be charged on a full indemnity basis. You must pay our costs immediately on demand. Also, we may add our costs to the amount you owe without first giving you notice and we will charge you interest on those amounts.

**27.2** If you request an amendment, waiver or consent in connection with this Debenture, you shall within three Business Days of demand, reimburse us for the amount of all costs and expenses (including but not limited to legal fees) reasonably incurred by us or by any Receiver in responding to evaluating, negotiating or complying with that request or requirement.

**27.3** You shall within three Business Days of demand, pay to us the amount of all costs and expenses (including legal fees) incurred by us in connection with the enforcement or preservation of any rights under this Debenture and with any proceedings instituted by or against us as a consequence of taking or holding the Security constituted by this Debenture or enforcing those rights.

## **28. Indemnity**

**28.1** You shall promptly indemnify us and every Receiver against any cost, loss or liability incurred by any of us as a result of:

28.1.1 the taking, holding, protection or enforcement of the Security constituted by this Debenture;

28.1.2 the exercise of any of the rights, powers, discretions and remedies vested in us as lender, each Receiver and any delegates thereof or by law; or

28.1.3 any default by you in the performance of any of the obligations expressed to be assumed by this Debenture.

## **29. Assignment and transfer**

**29.1** You consent to the assignment and/or transfer by us of any one or more of our rights and/or obligations under this Debenture.

**29.2** You may not assign or transfer any one or more of your rights and/or obligations under this Debenture.

**29.3** We shall be entitled to disclose such information relating to you or this Debenture as we consider appropriate to (a) any person proposing to take an assignment and/or transfer from us; and (b) enter into contractual relations with us with respect to this Debenture.

## **30. Unregistered or Registered land**

**30.1** If any Property or any part of it, is or becomes registered under the Land Registration Act 2002 no person can be registered as the proprietor (owner) without our agreement in writing and you will not, as regards any Property, create or permit to arise any overriding interest within the meaning of the Land Registration Act 2002 or the Land Registration Rules 2003.

**30.2** If the Property or any part of it is or becomes registered under the Land Registration Act 2002 (or any legislation which replaces that Act) we have the power to apply to the Land Registry for the following restriction to be entered on the register of the title or titles relating to the Property:

*"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of this charge in favour of Cynergy Bank plc referred to in the Charges Register"*

**30.3** You authorise us and/or any solicitors or other agent acting on our behalf to complete, execute and deliver on your behalf (at your cost) to the Land Registry any form, document or other information requested by the Land Registry with regard to any applications referred to in this Clause 30.

## **31. Notices**

**31.1** Any notice, request, demand for payment or other demand we make under this Debenture may be made by any manager or officer of ours and delivered by the following methods:

31.1.1 by hand;

31.1.2 by fax;

31.1.3 by post; or

31.1.4 by electronic communication, such as e-mail.

**31.2** The notice, request or demand must be in writing and addressed to you at the last contact address, fax number or e-mail address you provided to us. If you provided to us more than one such address or number we can send or deliver the demand, request or notice to any one of the addresses or numbers you gave us.

**31.3** Any notice, request or demand will be considered to have been delivered to you as follows:

31.3.1 if delivered by hand, on the day of actual delivery;

31.3.2 if sent by post, on the Business Day following the day on which it was dispatched by pre-paid post;

31.3.3 if given or made by fax or other electronic communication and sent before 5:00 pm, at the time of transmission; or

31.3.4 if given or made by fax or other electronic communication and sent after 5:00 pm, on the following Business Day.

## **32. Validity**

**32.1** This Debenture will remain enforceable valid and binding for all purposes whether any of the Parties, their successors or assignees in the course of running their business:

32.1.1 changes their name;

32.1.2 amalgamates or consolidates with another company;

32.1.3 becomes absorbed by another company; or

32.1.4 changes their constitution.

## **33. 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.

## **34. Third party rights**

**34.1** Unless expressly provided to the contrary in a Facility Document, a person who is not a party to this Debenture has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Debenture.

**34.2** Notwithstanding any term of any Facility Document, the consent of any person who is not a Party is not required to rescind or vary this Debenture at any time.

**34.3** Any Receiver may enforce and enjoy the benefit of any Clause which expressly confers rights on it, subject to paragraph 34.2 above and the provisions of the Contracts (Rights of Third Parties) Act 1999.



### **35. Variations**

No variation of the terms of this Debenture shall be valid unless such variation is in writing and signed by all parties to this Debenture.

### **36. Release of Security**

Following the date on which all of the Liabilities have been irrevocably discharged in full and no further Liabilities are capable of arising and the Security Period has ended, we shall at your request and cost release and cancel the Security constituted by this Debenture and procure the reassignment to you of the Assets assigned to us pursuant to this Debenture, in each case without recourse to, or any representation or warranty by us. If we are of the opinion that any payment made in or towards the discharge of any of the Liabilities is capable of being avoided or set aside under any law applicable to liquidation, administration, receivership or insolvency, we may defer taking the action contemplated by this Clause 36 for such period as we may deem appropriate.

### **37. Preservation of Security**

This Debenture is in addition to any other rights or Security, now and in the future, held by us in respect of the Liabilities and will not merge with or prejudice or be prejudiced by any such rights or Security.

### **38. Set-off**

We may set-off any matured obligation due from you under this Debenture against any matured obligation owed by us to you, regardless of the place of payment, booking branch or currency of either obligation.

### **39. Governing Law**

- 39.1** This Debenture and any non-contractual obligations arising out of or in connection with it are governed by, and shall continue to be construed in accordance with, English law.
- 39.2** 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) (a "Dispute"). The Parties to this Debenture agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party to this Debenture will argue to the contrary.
- 39.3** This Clause 39 is for our benefit. We will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, we may take concurrent proceedings in any number of jurisdictions.

**THIS DEBENTURE** has been executed by you as a Deed and signed by us and is delivered and will take effect on the date set out on the first page.

Schedule 1  
**CONTRACTS**

Name	Other parties	Contract type

Schedule 2  
**INSURANCE POLICIES**

Part I  
**Notice of Assignment to Insurer**

To: \_\_\_\_\_

Date: \_\_\_\_\_

Dear Sirs,

We give you notice that, by a debenture dated \_\_\_\_\_ (the "**Debenture**"), we have assigned to Cynergy Bank plc (the "**Bank**") all of our rights, interests and benefits in, to and under the \_\_\_\_\_ policy number \_\_\_\_\_ effected by us or whomsoever in relation to the risk to

\_\_\_\_\_ (including all monies payable thereunder, proceeds of all claims, awards and judgments) and all other insurances entered into supplemental to or in replacement of such policy of insurance (the "**Policy**").

We will remain liable to perform all our obligations under the Policy and the Bank is under no obligation of any kind whatsoever under the Policy nor under any liability whatsoever in the event of any failure by us to perform our obligations under the Policy.

We irrevocably instruct and authorise you to pay all payments under or arising under the Policy to our account called "**\_\_\_\_\_ Account**", Account number \_\_\_\_\_ sort code \_\_\_\_\_. It is very important that you make all immediate arrangements for all sums payable by you under the Policy to be paid to this account.

Please note that:

1. all remedies provided for under the Policy or available at law or in equity are exercisable by the Bank;
2. all rights to compel performance of the Policy are exercisable by the Bank; and
3. all rights, interests and benefits whatsoever accruing to or for the benefit of us arising under the Policy belong to the Bank.

This letter is governed by and shall continue to be construed in accordance with the laws of England. Would you please confirm your agreement to the above by sending the enclosed acknowledgement to the Bank with a copy to us.

Yours faithfully

.....  
\_\_\_\_\_

Part II

**Acknowledgement of Assignment**

To: Cynergy Bank plc (the "Bank")

Date: \_\_\_\_\_

Dear Sirs

We confirm receipt from \_\_\_\_\_ (the "Chargor") of a notice dated \_\_\_\_\_ of an assignment upon the terms of a debenture dated \_\_\_\_\_ (the "Debenture") to Cynergy Bank plc of all the Chargor's right, interest and benefit in, to and under the Policy (as specified in that notice) to which we are a party.

We confirm that we have not received notice of:

- (a) any assignment or charge of or over any of the rights, interests and benefits specified in such notice; or
- (b) the interest of any third party in any of the rights, interests and benefits specified in such notice.

We further confirm that:

1. no amendment, waiver or release of any such rights, interests and benefits will be effective without the prior written consent of the Bank;
2. no termination of such rights, interests or benefits will be effective unless we have given the Bank 21 days' written notice of the proposed termination and specifying the action necessary to avoid such termination;
3. the Chargor will remain liable to perform all its obligations under the Policy and the Bank is under no obligation of any kind whatsoever under the Policy nor under any liability whatsoever in the event of any failure by the Chargor to perform its obligations under the Policy; and
4. no breach or default on the part of the Chargor of any of the terms of such Policy will be deemed to have occurred unless we have given notice of such breach to the Bank specifying how to make good such breach.

We confirm that we have made all necessary arrangements for all future payments payable under such Policy to be made into the account specified in the notice.

We unconditionally and irrevocably waive all rights of set-off, lien, combination of accounts and similar rights (however described) which we may have now or in the future to the extent that such rights relate to amounts owed to us by the Chargor (and the proceeds thereof) and we will send you copies of all statements, orders and notices given by us relating to such debt.

This letter is governed by and shall continue to be construed in accordance with the laws of England.

Yours faithfully

.....

\_\_\_\_\_

cc. \_\_\_\_\_

Schedule 3  
**LEASES**

Part I  
**Notice of Assignment: Leases**

To: \_\_\_\_\_

Date: \_\_\_\_\_

Dear Sirs,

We give you notice that, by a debenture dated \_\_\_\_\_ (the "**Debenture**"), we have assigned to Cynergy Bank plc (the "**Bank**") all our right, interests and benefits in, to and under the \_\_\_\_\_ dated \_\_\_\_\_ between \_\_\_\_\_ relating to \_\_\_\_\_ (including all monies payable thereunder and the proceeds of all claims and judgments for breach of covenant) (the "**Lease**").

We will remain liable to perform all our obligations under the Lease and the Bank is under no obligation of any kind whatsoever under the Lease nor under any liability whatsoever in the event of any failure by us to perform our obligations under the Lease.

We irrevocably instruct and authorise you to pay all payments under or arising under the Lease to our account called " \_\_\_\_\_ Account", Account number \_\_\_\_\_ sort code \_\_\_\_\_. It is very important that you make all immediate arrangements for all sums payable by you under the Lease to be paid to this account.

Please note that:

1. all remedies provided for under the Lease or available at law or in equity are exercisable by the Bank;
2. all rights to compel performance of the Lease are exercisable by the Bank; and
3. all rights, interests and benefits whatsoever accruing to or for the benefit of us arising under the Lease belong to the Bank.

This letter is governed by and shall continue to be construed in accordance with the laws of England. Would you please confirm your agreement to the above by sending the enclosed acknowledgement to the Bank with a copy to us.

Yours faithfully

.....  
\_\_\_\_\_

Part II

**Acknowledgement of Assignment**

To: Cynergy Bank plc (the "**Bank**")

Date: \_\_\_\_\_

Dear Sirs

We confirm receipt from \_\_\_\_\_ (the "**Chargor**") of a notice dated \_\_\_\_\_ of an assignment upon the terms of a debenture dated \_\_\_\_\_ (the "**Debenture**") to Cynergy Bank plc of all the Chargor's right, interest and benefit in, to and under the Lease (as specified in that notice) to which we are a party.

We confirm that we have not received notice of:

- (a) any assignment or charge of or over any of the rights, interests and benefits specified in such notice; or
- (b) the interest of any third party in any of the rights, interests and benefits specified in such notice.

We further confirm that:

- 1. no amendment, waiver or release of any such rights, interests and benefits will be effective without the prior written consent of the Bank;
- 2. no termination of such rights, interests or benefits will be effective unless we have given the Bank 21 days' written notice of the proposed termination and specifying the action necessary to avoid such termination;
- 3. the Chargor will remain liable to perform all its obligations under the Lease and the Bank is under no obligation of any kind whatsoever under the Lease nor under any liability whatsoever in the event of any failure by the Chargor to perform its obligations under the Lease; and
- 4. no breach or default on the part of the Chargor of any of the terms of such Lease will be deemed to have occurred unless we have given notice of such breach to the Bank specifying how to make good such breach.

We confirm that we have made all necessary arrangements for all future payments payable under such Lease to be made into the account specified in the notice.

We unconditionally and irrevocably waive all rights of set-off, lien, combination of accounts and similar rights (however described) which we may have now or in the future to the extent that such rights relate to amounts owed to us by the Chargor (and the proceeds thereof) and we will send you copies of all statements, orders and notices given by us relating to such debt.

This letter is governed by and shall continue to be construed in accordance with the laws of England.

Yours faithfully

.....

\_\_\_\_\_

cc. \_\_\_\_\_

Schedule 4  
**ACCOUNTS**

Part I  
**Notice of Assignment to Account Bank**

To: \_\_\_\_\_

Date: \_\_\_\_\_

Dear Sirs

We give you notice that, by a debenture dated \_\_\_\_\_ (the "**Debenture**"), we have assigned and granted a fixed charge (to the extent that such assignment has failed) to Cynergy Bank plc (the "**Bank**") any accounts and all monies (including interest) from time to time standing to the credit of those accounts with any bank, building society, financial institution or other person and the debt or debts represented thereby.

The account[s] maintained with your \_\_\_\_\_ [is/are]:

Account Name[s]: \_\_\_\_\_

Sort Code[s]: \_\_\_\_\_

Account No[s]: \_\_\_\_\_

We irrevocably instruct and authorise you to disclose to the Bank 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 [any] account[s] maintained with you from time to time as the Bank may request you to disclose to it.

We confirm that the Bank authorises you to permit us to withdraw and otherwise deal with funds standing to the credit of the above named account(s) until:

- (a) you receive notice in writing to the contrary from the Bank;
- (b) a petition is presented for a winding-up order in respect of us or an application is made for an administration order in respect of us,

(whichever occurs first).

This letter is governed by and shall continue to be construed in accordance with the laws of England.

Would you please confirm your agreement to the above by sending the enclosed acknowledgement to the Bank with a copy to us.

Yours faithfully

.....  
\_\_\_\_\_

Part II

**Acknowledgement of Security by Account Bank**

To: Cynergy Bank plc (the "**Bank**")

Date: \_\_\_\_\_

Dear Sirs

We confirm receipt from \_\_\_\_\_ (the "**Chargor**") of a notice dated \_\_\_\_\_ of an assignment and fixed charge upon the terms of a debenture dated \_\_\_\_\_ (the "**Debenture**") of all moneys (including interest) from time to time standing to the credit of the Chargor's account[s] (as specified therein) (the "**Account[s]**") which [is/are] maintained with us and the debt or debts represented thereby.

We unconditionally and irrevocably waive all rights of set-off, lien, combination or consolidation of accounts, security in respect of any Account[s] and similar rights (however described) which we may have now or in the future in respect of [each of] the Account[s] or the balance thereon to the extent that such rights relate to amounts owed to us by the Chargor other than the amounts owed in connection with the operation of the Account[s] referred to below:

Account Name[s]: \_\_\_\_\_

Sort Code[s]: \_\_\_\_\_

Account No[s]: \_\_\_\_\_

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

This letter is to be governed by and will be construed in accordance with the laws of England.

Yours faithfully

.....

\_\_\_\_\_

cc. \_\_\_\_\_



Schedule 5  
**CONTRACTS**

Part I  
**Notice of Assignment of a Contract**

To: \_\_\_\_\_

Date: \_\_\_\_\_

Dear Sirs,

We hereby give you notice that we have assigned to Cynergy Bank plc (the "**Bank**") pursuant to a debenture entered into by us in favour of the Bank dated \_\_\_\_\_ (the "**Debenture**") all our right, title and interest in and to \_\_\_\_\_ (the "**Contract**") including all monies which may be payable in respect of the Contract.

With effect from your receipt of this notice:

1. all payments by you to us under or arising from the Contract should be made to us until such time as you receive notice from the Bank instructing you otherwise ("**Payment Notice**"). Upon receipt of a Payment Notice we instruct you to comply with all payment instructions in respect of any payments to be made under or arising from the Contract as set out in the Payment Notice;
2. and upon your receipt of notice from the Bank that the Security (as defined in the Debenture) has become enforceable, all remedies provided for in the Contract or available at law or in equity are exercisable by the Bank (provided that the Bank shall have no greater rights under this letter than we have under the Contract);
3. and upon your receipt of notice from the Bank that the Security has become enforceable, all rights to compel performance of the Contract are exercisable by the Bank although the Company shall remain liable to perform all the obligations assumed by it under the Contract;
4. and upon your receipt of notice from the Bank that the Security has become enforceable, all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Contract belong to the Bank to the exclusion of the Company and no changes may be made to the terms of the Contract otherwise than as provided for in any Facility Document (as defined in the Debenture);
5. you are authorised and instructed, without requiring further approval from us, to provide the Bank with such information relating to the Contract as it may from time to time request; and
6. these instructions may not be revoked, nor may the terms of the Contract be amended, varied or waived without the prior written consent of the Bank.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to the Bank at \_\_\_\_\_ marked for the attention of \_\_\_\_\_.

This letter is governed by and shall be construed in accordance with the laws of England.

Yours faithfully,

.....

for and on behalf of

\_\_\_\_\_

Part II

**Acknowledgement of Assignment by Contract counterparty**

To: \_\_\_\_\_

We acknowledge receipt of a notice in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the rights, interests and benefits in and to the Contract and that we will comply with the terms of that notice.

We further confirm that:

no amendment, waiver or release of any of such rights, interests and benefits arising under the Contract shall be effective without the prior written consent of the Bank, unless it is of a minor technical or non-operational nature or in any way which could not be reasonably expected materially and adversely to affect the interests of the Bank;

For and on behalf of \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

cc: Chargor

**EXECUTION PAGE**

EXECUTED as a DEED and DELIVERED )  
by ) .....  
in the presence of: )  
 ) Print name: .....

Signature of witness .....  
Print name (in BLOCK  
CAPITALS): .....  
Address: .....  
.....  
.....  
.....  
Occupation: .....

EXECUTED as a DEED by )  
 ) .....  
 ) Director  
acting by a director in the presence of: ) Print name: .....

Signature of witness .....  
Print name (in BLOCK  
CAPITALS): .....  
Address: .....  
.....  
.....  
.....  
Occupation: .....

**OR**

EXECUTED as a DEED by )  
 ) .....  
acting by a member in the presence ) [Member/duly authorised by [name of corporate  
of: ) member] to sign on its behalf as a Member]  
 ) Print name: .....

Signature of witness .....  
Print name (in BLOCK CAPITALS): .....  
Address: .....  
.....  
.....  
.....  
Occupation: .....

**OR**

EXECUTED as a DEED by )  
 ) .....  
 ) [General] partner /duly authorised by [name of  
acting by its [general] partner in the ) partnership] to sign on its behalf as a [General]  
presence of: ) partner]  
Print name: .....

Signature of witness .....  
Print name (in BLOCK CAPITALS): .....  
Address: .....  
.....  
.....  
.....  
Occupation: .....

SIGNED by  
for and on behalf of  
**Cynergy Bank plc**

)  
) .....  
) Authorised signatory  
) Print name: .....  
)  
) .....  
) Authorised signatory  
) Print name: .....