



Registration of a Charge

Company name: **5N PLUS UK LIMITED**

Company number: **00244498**

Received for Electronic Filing: **29/08/2014**



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Details of Charge

Date of creation: **21/08/2014**

Charge code: **0024 4498 0005**

Persons entitled: **HSBC BANK CANADA**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

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: **NORTON ROSE FULBRIGHT LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 244498

Charge code: 0024 4498 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st August 2014 and created by 5N PLUS UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th August 2014 .

Given at Companies House, Cardiff on 30th August 2014

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

Confidential

I certify that, save for material redacted pursuant to s.859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Norton Rose Fulbright LLP

Sign & Dated 27/08/2014

Dated 21 August 2014

5N PLUS UK LIMITED

as Transferor

and

HSBC BANK CANADA

as Collateral Agent

SECURITY TRANSFER AGREEMENT
(Raumsicherungsübereignung)

 **NORTON ROSE FULBRIGHT**

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THIS SECURITY TRANSFER AGREEMENT is made on 21 August 2014.

BETWEEN:

- 1 **5N PLUS UK LIMITED**, a company organised under the laws of England with registration number 00244498, located at 1-4 Nielson Road, Finedon Road Industrial Estate, Wellingborough, Northamptonshire NN8 4PE (**Transferor (Übereignender)**); and
- 2 **HSBC BANK CANADA**, in its capacity as Collateral Agent (as defined below).

PREAMBLE:

- (A) A credit agreement dated as of 6 August 2014 has been entered into between, amongst others, 5N Plus Inc. and 5N Plus Asia Limited (the **HSBC Borrowers**), as borrowers, the several lenders from time to time party thereto, as lenders (collectively, the **HSBC Lenders**), and HSBC Bank Canada, as administrative agent and collateral agent for the HSBC Lenders (in such capacity, and any successor thereto in such capacity, the **HSBC Administrative Agent**) (as same may be amended, restated, supplemented or otherwise modified from time to time, the **HSBC Credit Agreement**) pursuant to which credit facilities in the aggregate amount of up to approximately US\$150,000,000 have been or shall be made available to the HSBC Borrowers by the HSBC Lenders (collectively, the **HSBC Credit Facilities**).
- (B) A credit agreement dated as of 6 August 2014 has been entered into by and between 5N Plus Belgium SA (the **CBC Borrower**, and together with the HSBC Borrowers, the **Borrowers**), as borrower, and CBC Banque SA, as lender (the **CBC Lender**, and collectively with the HSBC Lenders, the **Lenders**) (as same may be amended, restated, supplemented or otherwise modified from time to time, the **CBC Credit Agreement**, and collectively with the HSBC Credit Agreement, the **Credit Agreements**) pursuant to which credit facilities in the aggregate amount of up to approximately EUR 5,000,000 have been or shall be made available to the CBC Borrower by the CBC Lender (the **CBC Credit Facilities**, and collectively with the HSBC Credit Facilities, the **Credit Facilities**).
- (C) The Secured Parties (as defined below) have appointed HSBC Bank Canada as collateral agent to represent them and act on their behalf, including, without limitation, under the terms hereof, pursuant to that certain collateral agency and intercreditor agreement among the Borrowers, the CBC Lender, the HSBC Administrative Agent and the Collateral Agent dated on or about the same date as this Agreement (as same may be amended, restated, supplemented or otherwise modified from time to time, the **Collateral Agency and Intercreditor Agreement**).
- (D) The Transferor shall on or about the date of this Agreement enter into a guarantee and subordination agreement in connection with the Credit Agreements (as the same may be amended, restated, supplemented or otherwise modified from time to time, the **Guarantee and Subordination Agreement**).
- (E) It is a condition precedent under the Credit Agreements that the Transferor transfers (übereignen) the Collateral (as defined below) as security for the Secured Parties (as defined below) for their respective claims against the Restricted Parties under the Operative Documents (as defined below).

IT IS AGREED as follows:

1 Definitions and Interpretation

1.1 Definitions

The capitalized words and expressions, wherever used in this Agreement, in its Schedules or in any deed or agreement supplemental or ancillary hereto and thereto, unless otherwise defined

herein or unless there be something in the subject or the context inconsistent therewith, shall have the meanings ascribed thereto from time to time in the HSBC Credit Agreement.

In this Agreement:

Derivative Providers shall have the meaning given to the term "Derivative Providers" in the Collateral Agency and Intercreditor Agreement.

Event of Default shall have the meaning given to the term "Event of Default" in the Collateral Agency and Intercreditor Agreement.

Operative Documents refers collectively to the Credit Agreements, the Transaction Security Documents, the Guarantee and Subordination Agreement, the Collateral Agency and Intercreditor Agreement, the ISDA Contracts, any accession letters by which an additional borrower or an additional guarantor accedes to the Operative Documents, any cash management agreement, and Derivative Instrument and any other document, instrument, deed, or other agreement entered into in connection with or pursuant to the Credit Agreements, including without limitation, the "Operative Documents" (as such term is defined in the Collateral Agency and Intercreditor Agreement) and **Operative Document** means any of them.

ISDA Contracts is a collective reference to the Derivative Instruments entered into from time to time between any of the Restricted Parties and any Secured Party.

Secured Obligations means any and all sums and liabilities in whatsoever currency, whether present and future, actual or contingent, solely or jointly with others, whether as primary obligor or surety whether or not for the payment of money (including, without limitation, any obligations owed to the Collateral Agent under the parallel debt undertaking (**Parallel Debt** means the parallel debt undertaking pursuant to clause 9.19 of the Collateral Agency and Intercreditor Agreement) and any obligation or liability to pay damages) which are or may become payable or owing by any Restricted Party to the Collateral Agent, any of the HSBC Lenders, the HSBC Administrative Agent or the Derivative Providers pursuant to or in connection with the Operative Documents or any of them (including, but not limited to, any obligation based on unjust enrichment (*ungerechtfertigte Bereicherung*) or tort (*Delikt*)), including without limitation, the "Secured Obligations" (as such term is defined in the Collateral Agency and Intercreditor Agreement).

Secured Parties shall have the meaning given to the term "Secured Parties" in the Collateral Agency and Intercreditor Agreement;

Subsidiary of any person means any person (i) which is controlled, directly or indirectly by such first person or (ii) a majority of whose voting capital stock or share, on a fully diluted basis, is owned directly or indirectly, beneficially or otherwise, by such first person. A person shall be deemed to be a Subsidiary of another person if it is a Subsidiary of a person that is that other's Subsidiary.

Transaction Security Documents refers collectively to any and all guarantees and security agreements or other documents or instruments entered into in connection with or pursuant to any of the Operative Documents pursuant to which a guarantee or a Lien has been granted by any of the Restricted Parties in favor (directly or indirectly) of the Collateral Agent or any of the Secured Parties to guarantee or secure the payment and performance of the Secured Obligations, including without limitation, the "Security Documents" (as such term is defined in the Collateral Agency and Intercreditor Agreement) and **Transaction Security Document** means any of them.

1.2 Interpretation

- (a) This Agreement is made in the English language only. For the avoidance of doubt, the English version of this Agreement shall prevail over any translation of this Agreement. However, where a German translation of a word or phrase appears in the text of this Agreement, the German translation of such word or phrase shall prevail wherever such

original English word or phrase translated by such German term appears in the text of this Agreement. Wherever a German term has been used in this Agreement, such German term shall be authoritative for the construction and interpretation. Where an English legal term or concept has been used in this Agreement, the related German legal term or concept shall be authoritative for the construction and interpretation of this Agreement, unless specifically provided for otherwise in this Agreement.

- (b) The headings in this Agreement do not affect its interpretation.
- (c) Words importing the singular include the plural and vice versa.
- (d) Any reference in this Agreement to a "Clause", "Paragraph" or a "Schedule" shall, subject to any contrary indication, be construed as a reference to a clause, paragraph or schedule of this Agreement.

- 1.3 Notwithstanding anything herein to the contrary, the security interest granted pursuant to this Agreement and the exercise of any right, recourse or remedy by the Collateral Agent hereunder are subject to the provisions of the Collateral Agency and Intercreditor Agreement. In the event of any inconsistency between the terms of this Agreement and the Collateral Agency and Intercreditor Agreement with respect to any matter specifically dealt with both herein and therein, the provisions of the Collateral Agency and Intercreditor Agreement will govern, unless as a result thereof the security interest created herein or any of the remedies of the Collateral Agent hereunder would be in any way diminished or invalidated, in which case the provisions of this Agreement shall prevail.

2 Purpose of the Transfer of Title (*Sicherungszweck*)

The transfer of title provided for hereunder (**Transfer of Title**) is constituted in order to secure (*zur Besicherung*) the due payment and performance and complete satisfaction of any of the Secured Obligations. The Transfer of Title shall also cover any future extension, prolongation, increase or novation of the Secured Obligations.

3 Transfer of Title

- 3.1 The Transferor transfers by way of security to the Collateral Agent, in its capacity as collateral agent for the benefit of itself and the other Secured Parties, title to all current assets (*Umlaufvermögen*) including, but not limited to the entire stock (*Warenbestand im Sinne des § 266 HGB*) which is currently located at the premises (**Present Collateral**) set out in Schedule 1 (*Map of Premises*) hereto (**Premises**) or will be located at the Premises in the future (**Future Collateral and together with the Present Collateral, Collateral**).
- 3.2 Title to the Present Collateral shall pass over to the Collateral Agent on execution of this Agreement, title to the Future Collateral shall pass over to the Collateral Agent when it is deposited in the Premises.
- 3.3 To the extent that the Transferor has only part ownership (*Miteigentum*) of the Collateral or the Transferor has any remainders (*Anwartschaftsrechte*) in respect of any of the Collateral, the Transferor hereby transfers to the Collateral Agent such part ownership or remainder in respect of the Collateral and it is agreed that the transfer of ownership, part ownership or remainder in respect of the Collateral takes place on the date hereof or on the date the Transferor acquires ownership, part ownership or remainders in respect of such Collateral (together with the Collateral, **Transferred Assets**).
- 3.4 The Transferor is entitled to relocate any of the Transferred Assets to premises other than the Premises in accordance with the terms of:
- (a) the HSBC Credit Agreement; and
 - (b) Clause 10.1 (*Undertakings*) of this Agreement.

- 3.5 Delivery of possession (*Besitzübergabe*) of the Transferred Assets to the Collateral Agent is hereby replaced by the agreement that the Transferor holds the Transferred Assets in gratuitous custody (*unentgeltliche Verwahrung*) for the Collateral Agent. The Transferor hereby further assigns all present and future claims against third parties obtaining actual possession of the Transferred Assets to the Collateral Agent.
- 3.6 The Collateral Agent hereby accepts the transfers and assignments constituted by this Clause 3 (*Transfer of Title*).
- 3.7 The Transferor and the Collateral Agent agree that the transfer of title to the Collateral Agent shall not be affected by any relocation of any of the Transferred Assets to premises other than the Premises. The Transferor undertakes towards the Collateral Agent that upon such relocation it shall immediately notify the Collateral Agent and deliver a list setting out the respective Transferred Assets and a list of the premises in a format which is sufficient to readily identify the Transferred Assets save that such notification and such lists shall not be required for any relocation permitted pursuant to Clause 5 (*Disposal of Transferred Assets*) prior to any revocation of the right of disposal set out therein. Upon receipt of such notice and the respective list showing the exact locations at which such Transferred Assets are stored the relevant locations shall be constitute additional Premises.
- 3.8 Waiving section 418 of the German Civil Code (*Bürgerliches Gesetzbuch*), the parties to this Agreement hereby agree that the security interest created hereunder shall not be affected by any transfer or assumption of the Secured Obligations to, or by, any third party.

4 List of Transferred Assets

- 4.1 The Transferor shall within 30 days after each calendar quarter and for the first time within 30 days after 30 September 2014, and at any time upon the reasonable request of the Collateral Agent deliver to the Collateral Agent lists containing information on the Transferred Assets (**List of Transferred Assets**), on a CD-Rom/ DVD or in such other form as agreed between the Collateral Agent and the Transferor.
- 4.2 The Lists of Transferred Assets are for notification purposes only. If for any reason the relevant Transferred Assets are not or incompletely contained in the List of Transferred Assets, the Transfer of Title of the Collateral pursuant to Clause 3 (*Transfer of Title*) shall not be affected.
- 4.3 If the Transferor employs a third party for its bookkeeping or data-processing, the Transferor hereby authorises the Collateral Agent to obtain the Lists of Transferred Assets directly from such third party at the Transferor expense upon the occurrence of an Event of Default.

5 Disposal of Transferred Assets

- 5.1 The Collateral Agent hereby authorises the Transferor within the meaning of section 185 paragraph 1 of the German Civil Code (*Einwilligung*) to dispose of, and otherwise deal with, the Transferred Assets in accordance with the terms of the Collateral Agency and Intercréditor Agreement and this Agreement (**Authorisation**). The Transferor shall in doing so act with the care of an orderly merchant (*Sorgfalt eines ordentlichen Kaufmanns*).
- 5.2 At any time after the occurrence of an Event of Default, the Collateral Agent shall be entitled to, or request the Transferor to:
- (a) label the Transferred Assets and mark them in the books and records of the Transferor to evidence that the Transferred Assets have been transferred for security purposes to the Collateral Agent; and/ or
 - (b) revoke (*widerrufen*) the Authorisation.
- 5.3 Unless the Collateral Agent has revoked the Authorisation, the Transferor may use the Transferred Assets in its production process, provided that the Collateral Agent shall be

regarded as producer (*Hersteller*) within the meaning of section 950 of the German Civil Code and shall during such production process remain or become owner, part-owner or have a remainder (*Anwartschaftsrecht*) in respect of the goods which are the result of such production process (**New Products**).

- 5.4 If as a result of any of the production processes, the Transferor is no longer owner, part-owner of, or holder of a remainder in the New Product, then as soon as the Transferor regains such rights, such rights shall automatically be transferred to the Collateral Agent. If as a result of any of the aforementioned production processes the Transferor co-mingles goods or materials owned by it with goods or materials owned by third parties and (as a result) the Transferor will become part-owner or holder of the resulting New Product or of any remainder therein, then, as soon as the Transferor has gained any such right, such right shall automatically be transferred to the Collateral Agent.
- 5.5 To the extent that the Transferor has the right to demand transfer of ownership, part-ownership or remainders from a third party in respect of any New Product, the Transferor assigns such rights to demand transfer hereby to the Collateral Agent.
- 5.6 In as far as ownership, part ownership or any remainders in the New Products pass to the Collateral Agent, the transfer of possession in such New Products shall be substituted by the Transferor holding them in gratuitous custody for the Collateral Agent.
- 5.7 If any third party is in, or will acquire, direct possession of any New Product, the Transferor hereby assigns to the Collateral Agent its present and future claims to demand restitution of direct possession from such third party.
- 5.8 The Collateral Agent hereby accepts the transfers and assignments constituted under this Clause 5 (*Disposal of Transferred Assets*).

6 Retention of Title

The Transferor shall terminate any retention of title arrangements (*Eigentumsvorbehalt*) in respect of any of the Transferred Assets in the ordinary course of its business. Upon the occurrence of an Event of Default, the Collateral Agent shall be entitled to terminate such retention of title arrangements by paying the respective purchase price or part thereof on behalf of the Transferor.

7 Statutory Lien

- 7.1 If the Transferred Assets or any part thereof shall become subject to any statutory lien in favour of any third party, the Transferor shall inform the Collateral Agent without undue delay and, if so requested by the Collateral Agent, shall prove to the Collateral Agent the punctual payment of the sums secured by such statutory lien within 15 Business Days after the due date for payment. Upon request of the Collateral Agent, the Transferor shall provide the Collateral Agent with a written confirmation of such third party confirming it has no right to hold back any of the Transferred Assets and that it will inform the Collateral Agent in facsimile without undue delay should the Transferor not pay any of the obligations secured under the statutory lien.
- 7.2 The Collateral Agent shall be entitled:
- (a) at any time after the occurrence of an Event of Default; or
 - (b) if the Transferor does not comply with Clause 7.1 above,

to pay the sums secured under the statutory lien for the account of the Transferor in order to ward off any statutory lien.

8 Bookkeeping and Data-Processing

- 8.1 If proof or documents which are necessary to identify the Collateral have been handed over by the Transferor to a third party, the Transferor hereby assigns to the Collateral Agent, who accepts such assignment, its right to demand from such third party the return of such proof and documents. Upon the occurrence of an Event of Default and upon the Collateral Agent's reasonable request, the Transferor shall instruct the third party to provide to the Collateral Agent such information and documents which are necessary to perfect or enforce the security created hereunder.
- 8.2 If details concerning the Collateral or any part thereof have been stored in an electronic data-processing system, then upon the occurrence of an Event of Default, the Collateral Agent is authorised to access the computer, including the peripheral equipment, and all data concerning the Collateral. The Transferor shall make available software operators and any other assistance required shall be provided to the Collateral Agent. If a third party handles the electronic processing of data, then the Transferor hereby assigns to the Collateral Agent, who accepts such assignment, all rights against such third party relating to these services, and upon the occurrence of an Event of Default instructs such third party to handle the processing of data for the Collateral Agent upon its demand acting reasonably as it did for the Transferor.
- 8.3 At all times prior to the occurrence of an Event of Default, the Collateral Agent authorises the Transferor to exercise the rights assigned to the Collateral Agent under Clause 8.1.

9 Realisation of the Collateral

- 9.1 At any time after the occurrence of an Event of Default which is continuing, the Collateral Agent shall be entitled to revoke the Transferor's rights to dispose of the Collateral as permitted pursuant to Clause 5 (*Disposal of Transferred Assets*) and/or to process the Collateral as permitted pursuant to Clause 5 (*Disposal of Transferred Assets*) and to realise the Collateral as set out below to the extent necessary to satisfy the Secured Obligations, the whole in accordance with the terms and conditions provided under the Collateral Agency and Intercreditor Agreement.
- 9.2 The Collateral Agent shall notify the Transferor no less than five Business Days in advance in writing of its intention to realise the Collateral. Realisation of the Collateral without prior written notice to the Transferor and waiting period shall be permissible if:
- (a) A Restricted Party has ceased to make payments;
 - (b) an application for the commencement of insolvency proceedings is filed by or against any of them; or
 - (c) there is reason to believe that observance of the notice period will adversely affect the security interest of the Secured Parties.
- 9.3 The Collateral Agent is entitled to enforce its rights under this Agreement and to realise the Collateral or part thereof, in particular, but without limitation, by way of a private sale to the extent necessary to satisfy any outstanding Secured Obligations, and may take all measures and enter into all agreements, which it considers necessary or expedient in connection with such realisation.
- 9.4 If and to the extent that the Collateral Agent is entitled to realise the Collateral, it may request the Transferor to sell the Collateral on its own behalf and in strict accordance with the Collateral Agent's directions (including the instruction to require the purchaser to pay directly to the Collateral Agent). The Transferor shall deliver to the Collateral Agent without delay any and all proceeds deriving from such realisation of the Collateral.
- 9.5 For the purpose of realising the Collateral, the Transferor shall, upon the Collateral Agent's request, promptly furnish the Collateral Agent with all documents of title and other relevant

documents, and shall render all necessary assistance, which is necessary or expedient in respect of the realisation of the Collateral.

- 9.6 The proceeds resulting from the realisation of any of the Collateral in accordance with this Clause 9 (*Realisation of the Collateral*) shall upon receipt by the Collateral Agent and, as the case may be, after paying VAT or any other tax, be applied by the Collateral Agent in accordance with the terms of the Collateral Agency and Intercreditor Agreement. If the realisation of the Collateral is subject to VAT and if required by law, the Collateral Agent shall issue a credit note (*Gutschrift*) which is deemed to be an invoice for the items serving as security and corresponds to the requirements of German VAT law (*Umsatzsteuerrecht*).
- 9.7 The Collateral Agent may, in its sole discretion, determine which of several security interests (created under this or other security agreements) shall be used to satisfy the Secured Obligations.
- 9.8 Given the non-accessory nature of this security, the Transferor has no defences of revocation and set-off and no defences based on defences the Restricted Parties might have against the Secured Obligations. The Collateral Agent is not required to proceed against or enforce any other rights or security before enforcing the security created under this Agreement.
- 9.9 Until all Secured Obligations have been unconditionally and irrevocably discharged in full, the Transferor shall not at any time before, on or after enforcement of the security created under this Agreement and as a result of the Transferor entering into this Agreement, be entitled to demand indemnification or compensation from any other Restricted Parties or to assign any of these claims.

10 Undertakings

During the term of this Agreement, the Transferor undertakes to the Collateral Agent unless otherwise expressly agreed in any Operative Document:

- 10.1 subject to Clause 3.7 and Clause 5 (*Disposal of Transferred Assets*), and without the prior written consent of the Collateral Agent, not to transfer the Transferred Assets to any premises other than the Premises;
- 10.2 not to encumber, permit to subsist, create or agree to create any other security interest or third party right in or over the Collateral except as set out in this Agreement;
- 10.3 to take, at its own cost and expense, all such action as is available to it as may be necessary for the purpose of the creation, perfection, protection or maintenance of the security rights created or intended to be created by or pursuant to this Agreement or to achieve or maintain their intended ranking or to facilitate the realisation of such security;
- 10.4 to promptly inform the Collateral Agent, of all events which may adversely affect the security interest of the Collateral Agent created hereunder; and
- 10.5 to promptly inform the Collateral Agent of any attachments (*Pfändung*) in respect of the Collateral or any part thereof or any other measures which may materially impair or jeopardise the Collateral Agent's or the Secured Parties' rights relating thereto. In the event of an attachment, the Transferor undertakes to forward to the Collateral Agent without undue delay a copy of the attachment order (*Pfändungsbeschluss*), the garnishee order (*Überweisungsbeschluss*) and all other documents necessary for a defence against the attachment. The Transferor shall inform the attaching creditor immediately of the Collateral Agent's security interests.

11 Representation and Warranties

The Transferor represents and warrants to the Collateral Agent by way of an independent guarantee in the meaning of section 311 of the German Civil Code (*unabhängiges Garantieversprechen*) that:

- 11.1 it has the corporate power and authority to enter into this Agreement, in particular all necessary corporate authorisations to enable or entitle the Transferor to enter into such documents have been obtained and are in full force and effect and will remain in full force and effect at all times during the subsistence of the security hereby construed;
- 11.2 it is fully entitled to the Collateral transferred pursuant to Clause 3 (*Transfer of Title*) which is unencumbered;
- 11.3 the premises described in Schedule 1 (*Map of Premises*) hereto are a complete compilation of all Premises currently operated by the Transferor. The marking of the site maps in Schedule 1 (*Map of Premises*) hereto correctly defines the location of each of the Premises;
- 11.4 all movable assets of the Transferor located in Germany are located within the Premises;
- 11.5 the Assets Lists are in all material respects correct and complete lists of all of the Transferor's Collateral as at the date of such Asset List;
- 11.6 It has the right to transfer or otherwise freely dispose of the Collateral except for (i) any personal belongings of the employees of the Transferor or any of its suppliers, subcontractors, visitors or customers on the Premises, (ii) any corporeal movable fixed assets of the lessees of the Premises and any of the personal belongings of their employees or any of their suppliers, subcontractors, visitors or customers (with the exception of the Transferor) of Premises and (iii) any corporeal movable fixed assets of the relevant land lord and/or land owner of Premises or any personal belongings of its employees, suppliers, subcontractors, visitors or customers on Premises, the transferor has the right to transfer or otherwise freely dispose of the Collateral as set out in Clause 3 (*Transfer of Title*) without the consent of any person;
- 11.7 it is aware of and familiar with the provisions of the Credit Agreements and the other Operatives Documents; and
- 11.8 subject to any retention of title arrangements, upon execution of this Agreement, the Collateral Agent will have as security for any and all Secured Obligations, a validly perfected first-priority security interest in the Transferred Assets or over the proceeds from any realisation of the Transferred Assets in accordance with Clause 9.1 and the Transfer of Title created under this Agreement is enforceable without enforceable judgment or other instrument (*vollstreckbarer Titel*).

12 Right of Inspection

- 12.1 The Transferor undertakes to provide without undue delay (*unverzüglich*) to the Collateral Agent, upon its reasonable demand, any information and to submit any evidence and documents reasonably required for the examination and enforcement of the Transferred Assets. If electronic data processing facilities are used, the Transferor must print the necessary documents; if no printout is made, the data carriers and the software necessary for this shall be delivered to the Collateral Agent to enable it to make the printout itself.
- 12.2 Upon advance written notice to the Transferor, the Collateral Agent shall have the right to inspect the Transferred Assets and any documents relating thereto, either itself or through a duly authorised agent, at any time during normal business hours.

13 Retransfer of Transferred Assets (*Rückübereignung*)

- 13.1 Upon complete and irrevocable satisfaction of the Secured Obligations, the Collateral Agent shall at the cost and expense of the Transferor retransfer the Transferred Assets to the Transferor and surrender the excess proceeds, if any, resulting from any sale of the Transferred Assets. The Collateral Agent will, however, transfer any of the Transferred Assets to a third person if so required by law.
- 13.2 At any time when the total value of the aggregate security granted by the Transferor and the other Restricted Parties to secure the Secured Obligations (**Security**) which can be expected to be realised in the event of an enforcement of the Security (*realisierbarer Wert*) not only temporarily, exceeds 110 per cent of the Secured Obligations (**Limit**) the Collateral Agent shall on demand of the Transferor release such part of the Security (*Sicherheitsfreigabe*) as the Collateral Agent may in its reasonable discretion determine so as to reduce the realisable value of the Security to the Limit.
- 13.3 For the purpose of calculating the realisable value of the Transferred Assets the following calculation shall apply:
- (a) The value of each Transferred Asset shall be the price for which the Transferor has purchased such Transferred Asset or its cost price for which the Transferor has produced, processed or manufactured the Transferred Asset provided that if the Transferor establishes a higher value of the relevant Transferred Asset in form and substance satisfactory to the Collateral Agent, and the Collateral Agent confirms such higher value in writing, such higher value shall apply.
 - (b) From the so calculated total value of the Transferred Assets, the value of such Transferred Assets shall be deducted which are encumbered with a prior ranking security right (e.g. retention of title, security transfer, pledge), but only in an amount which is equal to the claim(s) which is/ are secured by such security right.

Estimated cost of legal processes, enforcement and deduction resulting from insolvency proceedings shall then be deducted from the nominal value calculated in accordance with this Clause 13.3.

A further security deduction of 25 per cent for a potential shortfall resulting from the risk of enforcement shall then be deducted from the nominal value calculated in accordance with this Clause 13.3.

Each of the parties has the right to demand an adjustment of the deduction different from the deduction specified above, if the previously agreed deduction turns out to be too high or too low because of subsequent changes occurring after the date of this Agreement.

- 13.4 If an amount paid by any Restricted Party to any Secured Party under any Operative Document is capable of being avoided or otherwise set aside on the liquidation, administration, winding-up or other similar proceeding in the jurisdiction of such Restricted Party or otherwise, then such amount shall not be considered to have been finally and irrevocably paid for the purposes hereof.

14 Limitation Language

- 14.1 The Collateral Agent agrees, other than in accordance with the procedure set out in Sections 14.2 to 14.5 below and in accordance with the terms of any of the Operative Documents, not to enforce the Collateral granted by the Transferor, to the extent that:
- (a) such Collateral are for or relate to the obligations or liabilities of
 - (i) a Restricted Party that is not a direct or indirect Subsidiary of the Transferor;

- (ii) a direct or indirect Subsidiary of the Transferor if and to the extent such obligations or liabilities (including guarantees) secure obligations or liabilities of a Restricted Party that is not a direct or indirect Subsidiary of the Transferor;

(an Up-Stream or Cross-Stream Security); and

- (b) the enforcement otherwise would have the effect of reducing the net assets (*Reinvermögen*) (calculated in accordance with the jurisprudence from time to time of the German Federal Supreme Court (*Bundesgerichtshof*) relating to the protection of liable capital under sections 30 and 31 of the German Limited Liability Companies Act (*GmbHG*) (as amended from time to time)) of the Transferor to an amount which is less than the amount required to maintain its stated share capital (*Stammkapital*) or of increasing an existing shortage of its stated share capital, provided that, for the purposes of the calculation of the enforceable amount (if any):
 - (i) the amount of any increase of the stated share capital (*Stammkapital*) of the Transferor after the date of this Agreement which is not permitted under the Operative Documents shall be deducted from the stated share capital;
 - (ii) loans and other contractual liabilities of the Transferor which (1) are subordinated within the meaning of section 39 paragraph 1 no. 5 or section 39 paragraph 2 of the German Insolvency Code (*InsO*) or (2) have been incurred by the Transferor in violation of the provisions of the Operative Documents shall be disregarded; and
 - (iii) to the extent the enforcement of the Collateral deprived the Transferor of the liquidity necessary to fulfil its financial liabilities to its creditors, then for the determination of the net assets the assets of the Transferor shall be calculated at the lower of their book value (*Buchwert*) and their realisation value assuming a negative prognosis for the business continuance (*Liquidationswert bei negativer Fortführungsprognose*); and
- (c) the enforcement would thereby lead to a violation of the capital maintenance requirement as set out in section 30 para 1 of the German Limited Liability Companies Act (*GmbHG*).

14.2 The limitations set out in Section 14.1 shall not apply:

- (a) to any amounts due and payable under this Agreement which correspond to funds that have been borrowed under an Operative Document and have been on-lent to the Transferor and are not repaid at the time the payment referred to is made; and/or
- (b) if and when a domination agreement (*Beherrschungsvertrag*) and/or a profit absorption agreement (*Gewinnabführungsvertrag*) (either directly or through a chain of domination and/or profit absorption agreements) is or becomes effective between such the Transferor and:
 - (i) in case the Transferor is a Subsidiary of the relevant Restricted Party whose obligations are secured by this Agreement, that Restricted Party as dominating entity (*beherrschendes Unternehmen*); or
 - (ii) in case the Transferor is a sister company of the relevant Restricted Party whose obligations are secured by this Agreement, any joint (direct or indirect) parent company of the Transferor and that Restricted Party as dominating entity (*beherrschendes Unternehmen*),

and therefore a violation of Section 30 (*GmbHG*) is excluded by its terms and interpretation by German courts and jurisprudence.

14.3 The limitations set out in Section 14.1 shall only apply if and to the extent:

- (a) within 15 Business Days following the making of a demand against the Transferor under this Agreement or any other Operative Document the Transferor has confirmed in writing to the Collateral Agent (accompanied by conclusive evidence including a pro forma balance sheet and detailed calculations in respect of the net assets (*Reinvermögen*)):
 - (i) to what extent the Collateral are an Up-Stream or Cross-Stream Security; and
 - (ii) the amount of such Up-Stream or Cross-Stream Security which cannot be enforced without causing its net assets to fall below its stated share capital or increase an existing shortage of its stated share capital, taking into account the adjustments set out in Subsections 14.1 (b) above); and
 - (iii) that, or the extent that, the exemptions to the limitations set out in Section 14.1 pursuant to Section 14.2 do not apply (the **Management Determination**).
- (b) If the Collateral Agent (acting in accordance with the terms and conditions of the Collateral Agency and Intercreditor Agreement) contests the Management Determination, within 40 Business Days from the date the Collateral Agent has notified the Transferor that the Collateral Agent, acting in accordance with the Collateral Agency and Intercreditor Agreement have so contested the Management Determination, the Collateral Agent receives a determination by auditors of international standard and reputation (the **Auditor's Determination**) appointed by the Transferor of the amount which, taking into account the provisions of this Section 14, cannot be enforced without causing its net assets to fall below its stated share capital or increase an existing shortage of its stated share capital.

14.4 If the Collateral Agent (acting in accordance with the terms and conditions of the Collateral Agency and Intercreditor Agreement) disagrees with the Auditor's Determination, it shall notify the Transferor accordingly. The Collateral Agent shall only be entitled to enforce the Collateral up to the amount which is undisputed between themselves and the Transferor in accordance with the provisions of Section 14.3 above. In relation to the amount which is disputed by the Collateral Agent, the Collateral Agent shall be entitled to further pursue its claims under this Agreement (if any) in court by claiming and evidencing that the enforcement of the Collateral in respect of the disputed amount does not violate sections 30 and 31 of the German Limited Liability Companies Act (*GmbHG*) (including by evidencing that the Auditor's Determination is incorrect).

14.5 Where the Transferor claims in accordance with the provisions of paragraphs 14.3 and/or 14.4 above that the Collateral can only be enforced in a limited amount, it shall realise, upon request of the Collateral Agent (acting in accordance with the terms and conditions of the Collateral Agency and Intercreditor Agreement) any and all of its assets that are:

- (a) shown in its balance sheet with a book value (*Buchwert*) that is significantly lower than their market value; and
- (b) not necessary for its business (*nicht betriebsnotwendig*).

15 Duration and Independence

15.1 This Agreement shall remain in full force and effect until complete and irrevocable satisfaction of the Secured Obligations. This Agreement shall not cease to exist if the Secured Obligations have only temporarily been discharged.

15.2 This Agreement shall create a continuing security and no change, amendment, restatement or supplement whatsoever in the Operative Documents or in any document or agreement related to any of the Operative Documents shall affect the validity or the scope of neither this Agreement nor the obligations which are imposed on the Restricted Parties pursuant to it.

- 15.3 This Agreement is independent from any other security or guarantee which may have been or will be given to the Collateral Agent or the other Secured Parties. None of such other security shall prejudice, or shall be prejudiced by, or shall be merged in any way with this Agreement.

16 Partial Invalidity; Waiver; Amendments; Miscellaneous

- 16.1 If at any time, any one or more of the provisions hereof is or becomes invalid, illegal or unenforceable in any respect under the law of any relevant jurisdiction, such provision shall as to such jurisdiction, be ineffective to the extent necessary without affecting or impairing the validity, legality and enforceability of the remaining provisions hereof or of such provisions in any other jurisdiction. The invalid or unenforceable provision shall be deemed replaced by such valid, legal or enforceable provision which comes as close as possible to the original intent of the parties and the invalid, illegal or unenforceable provision. The aforesaid shall apply mutatis mutandis to any gap in this Agreement.
- 16.2 No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided hereunder are cumulative and not exclusive of any rights or remedies provided by law.
- 16.3 This Agreement may be amended, modified or waived only in writing in an agreement signed by the Collateral Agent. This also applies to this Clause 16.3.
- 16.4 This Agreement constitutes the entire agreement of the Parties hereto with regard to the Transfer of Title and supersedes all oral, written or other type of agreements in respect thereof.

17 Notices

- 17.1 All notices and communications under or in connection with this Agreement shall be in writing and shall be delivered by letter, posted or delivered by hand, fax or electronic photocopy via e-mail. Each notice or communication shall be given to the relevant party at the address or fax number and marked for the attention of the persons(s) or department from time to time specified in writing by that party to the other. The initial address, fax number and person(s) or department so specified by each party are set out below:

for the Restricted Parties:

C/O 5N PLUS INC.

Address: 4385 Garand Street,
Saint-Laurent (Québec)
H4R 2B4
Fax: +1 514-856-9611
Attention: Richard Perron, Chief Financial
Officer

for the Collateral Agent:

HSBC BANK CANADA

Address: 70 York Street, 3rd Floor,
Toronto (Ontario)
M5J 1S9
Fax: +1 416 868-3816
Attention: Assistant Vice-President

or to such other address as the recipient may notify or may have notified to the other party in writing.

- 17.2 Proof of posting or dispatch of any notice or communication to the Restricted Parties shall be deemed (*widerlegbare Vermutung*) to be proof of receipt:
- (a) in the case of a letter, on the second business day in the country of receipt after posting;
and

(b) in the case of a fax transmission, on the business day in the country of receipt immediately following the date of its dispatch.

17.3 Any notice or other communication under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into the English language. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

18 Indemnity

18.1 The Secured Parties shall not be liable for any loss or damage suffered by the Restricted Parties save in respect of such loss or damage which is suffered as a result of the wilful misconduct or gross negligence of any of the Secured Parties.

18.2 The Restricted Parties will indemnify the Secured Parties and keep the Secured Parties indemnified against any and all damages, losses, actions, claims, expenses, demands and liabilities which may be incurred by, or made against, any of the Secured Parties for anything done or omitted in the exercise or purported exercise of the powers contained herein and occasioned by any breach of the Restricted Parties of any of its obligations or undertakings contained herein other than to the extent that such damages, losses, actions, claims, expenses, demands and liabilities are incurred by, or made against, the Secured Parties as a result of the gross negligence or wilful misconduct of any of the Secured Parties.

19 Costs and Expenses

The Transferor shall bear all costs, charges, fees and expenses (including legal fees) incurred in connection with the preparation, execution, amendments and enforcement of this Agreement.

20 Conclusion of this Agreement

20.1 This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed and delivered, shall be an original but all the counterparts shall together constitute one and the same instrument.

20.2 This Agreement may also be concluded by an exchange of signed signature pages, transmitted by means of telecommunication (*telekommunikative Übermittlung*), by fax or by electronic photocopy.

20.3 If this Agreement is concluded in accordance with Clause 20.2 above, the parties to this Agreement will transmit the executed signature pages of this Agreement to Norton Rose Fulbright LLP, attention Mélanie Dupuis-Giuliani e-mail: melanie.dupuis-giuliani@norotnrosefulbright.com (the **Recipient**). The Agreement shall be considered concluded once a Recipient has actually received the executed signature pages from all parties to this Agreement and at the time of the receipt of the last outstanding signature pages.

20.4 For the purposes of this Clause 20 (*Conclusion of this Agreement*) only, the Transferor and the Collateral Agent appoint each of the Recipients as their proxies (*Empfangsbote*) and expressly permit (*ermächtigen*) each of the Recipients to collect the signed signature pages from all and for all parties to this Agreement.

20.5 For the avoidance of doubt, each Recipient will have no further duties connected with its position as recipient. In particular, each of the Recipients may assume the conformity to the authentic originals of the signature pages transmitted to it by means of telecommunication, the genuineness of all signatures on the original signature pages and the signing authority of the signatories.

21 Applicable Law

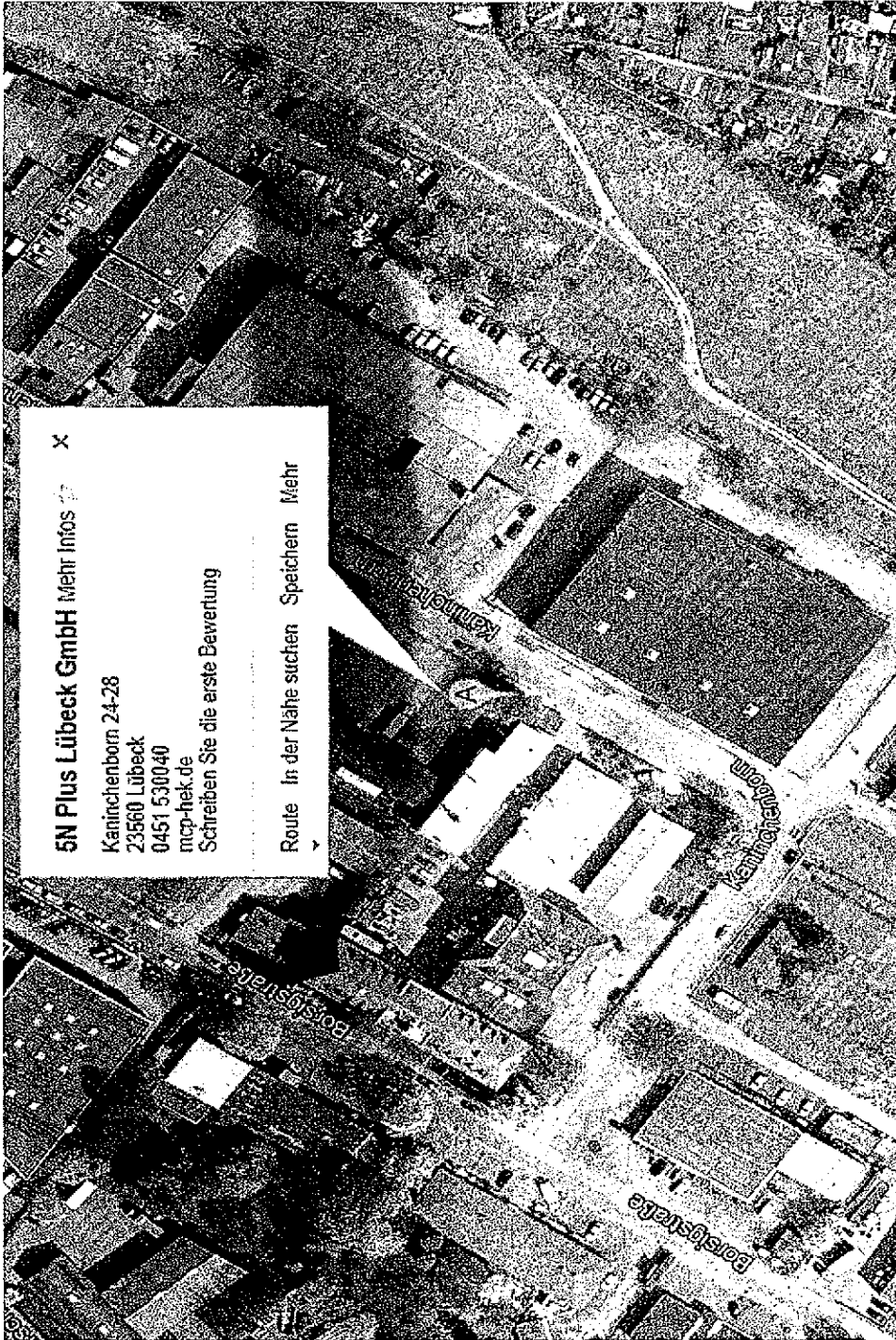
This Agreement and any non-contractual obligations arising out of or in connection with it are governed by German law.

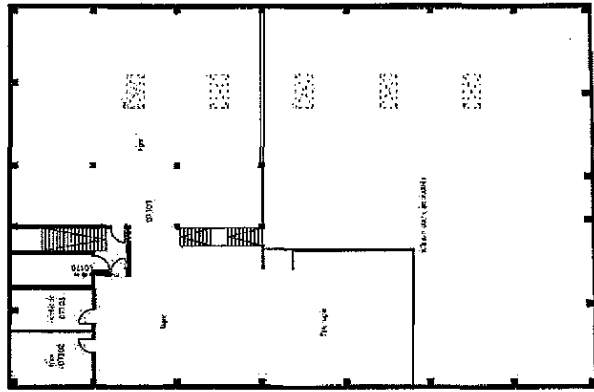
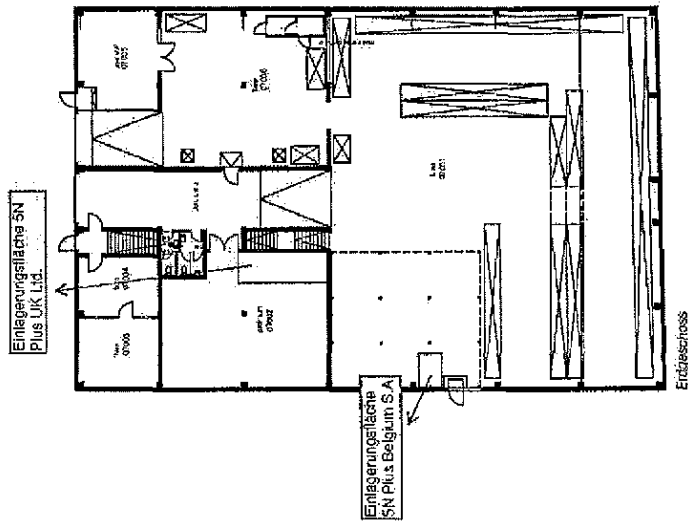
22 Jurisdiction

- 22.1 The courts of Frankfurt am Main, Germany have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) or any non-contractual obligation arising out of or in connection with this Agreement (**Dispute**).
- 22.2 The Parties agree that the courts of Frankfurt am Main, Germany are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 22.3 This Clause 22 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

Schedule 1
Map of Premises

Address: 5N Plus Lübeck GmbH, Kaninchenborn 24-28, 23560 Lübeck, Germany





1.01	1.02	1.03	1.04	1.05	1.06	1.07	1.08	1.09	1.10

EG/1. OG

Architect: Klaus Degner
 Ingenieurbüro: Klaus Degner
 12100 Wien, Austria

The area marked with "5N Plus UK Ltd." represents the position of the Collateral.

THIS SECURITY TRANSFER AGREEMENT has been entered into on the date stated at the beginning by

5N PLUS UK LIMITED (Company number: 00244498)

as Transferor

By:



Name:

ANDRUS WELBYER

Title:

AUTHORIZED SIGNATORY

HSBC BANK CANADA

as Collateral Agent

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

THIS SECURITY TRANSFER AGREEMENT has been entered into on the date stated at the beginning by


5N PLUS UK LIMITED (Company number: 00244498)

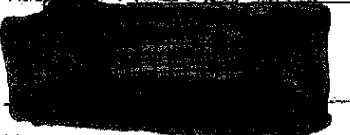
as Transferor

By: _____
Name: _____
Title: _____

HSBC BANK CANADA

as Collateral Agent

By: 
Name: Philip Allen
Title: Associate Director

By: 
Name: Lyndsay Thompson
Title: Assistant Vice President
Debt Finance Origination