



**Registration of a Charge**

Company name: **CLS HOLDINGS PLC**

Company number: **02714781**

Received for Electronic Filing: **06/10/2020**



X9F2DTWO

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**Details of Charge**

Date of creation: **29/09/2020**

Charge code: **0271 4781 0046**

Persons entitled: **CBRE LOAN SERVICES LIMITED**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **JOSEPH PLUMB**



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

Company number: 2714781

Charge code: 0271 4781 0046

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th September 2020 and created by CLS HOLDINGS PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th October 2020 .

Given at Companies House, Cardiff on 7th October 2020

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

DATE: 29 September 2020

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**SHAREHOLDER'S SECURITY AGREEMENT**

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Between

**CLS HOLDINGS PLC**

and

**CBRE LOAN SERVICES LIMITED**

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## DEED

DATE: 29 September 2020

### BETWEEN:

- (1) CLS HOLDINGS PLC (registered number 2714781 (the “Chargor”); and
- (2) CBRE LOAN SERVICES LIMITED (the Security Agent) as security trustee for the Secured Parties (as defined in the Facility Agreement defined below).

### BACKGROUND:

- (A) The Chargor enters into this Deed in connection with the Facility Agreement (as defined below).
- (B) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

### IT IS AGREED AS FOLLOWS:

#### 1. INTERPRETATION

##### 1.1 Definitions

In this Deed:

“Act” means the Law of Property Act 1925.

“Facility Agreement” means the £154,300,000 facility agreement dated 25 September 2020 between (among others) the Borrower and the Security Agent, as supplemented by a letter of rectification dated on or about the date hereof between the parties to the facility agreement;

“Obligor” means the Chargor or the Borrower;

“Party” means a party to this Deed;

“Receiver” means a receiver or receiver and manager or administrative receiver, in each case, appointed under this Deed;

“Related Rights” means:

- (a) any dividend or interest paid or payable in relation to any Shares; and
- (b) any right, money or property accruing or offered at any time in relation to any Shares by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;

“Security Assets” means all assets of the Chargor the subject of any security created by this Deed;

“Security Period” means the period beginning on the date of this Deed and ending on the date on which the Security Agent is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full;

“Shares” means all of the shares in the share capital of the Borrower;

##### 1.2 Construction

1.2.1 Capitalised terms defined in the Facility Agreement have, unless expressly defined in this Deed, the same meaning in this Deed.

1.2.2 The provisions of clause 1.2 (Construction) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed except that references to the Facility Agreement will be construed as references to this Deed.

1.2.3 Unless a contrary indication appears, a reference to:

- (a) a Finance Document or Transaction Document or other agreement, instrument or other document shall be construed as a reference to that Finance Document or Transaction Document or that other agreement, instrument or document as the same may have been, or may from time to time be, restated, varied, amended, supplemented, substituted, novated or assigned, whether or not as a result of any of the same:
  - (i) there is an increase or decrease in any facility made available under that Finance Document or other agreement, instrument or document or an increase or decrease in the period for which any facility is available or in which it is repayable;
  - (ii) any additional, further or substituted facility to or for such facility is provided;
  - (iii) any rate of interest, commission or fees or relevant purpose is changed;
  - (iv) the identity of the parties is changed;
  - (v) the identity of the providers of any security is changed;
  - (vi) there is an increased or additional liability on the part of any person; or
  - (vii) a new agreement is effectively created or deemed to be created.
- (b) any “rights” in respect of an asset includes:
  - (i) all amounts and proceeds paid or payable;
  - (ii) all rights to make any demand or claim; and
  - (iii) all powers, remedies, causes of action, security, guarantees and indemnities,in each case in respect of or derived from that asset;
- (c) any “share”, “stock”, “debenture”, “bond” or “other security” or “investment” includes:
  - (i) any dividend, interest or other distribution paid or payable;
  - (ii) any right, money or property accruing or offered at any time by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise,in each case in respect of that share, stock, debenture, bond or other security or investment;
- (d) the term “this Security” means any security created by this deed; and
- (e) a reference to any asset includes present and future properties, revenues and rights of every description.

1.2.4 Any covenant of the Chargor under this Deed (other than a payment obligation) remains in force during the Security Period.

- 1.2.5 If the Security Agent acting in good faith considers that an amount paid to a Secured Party under Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
- 1.2.6 Unless the context otherwise requires, a reference to a Security Asset includes the proceeds of sale of that Security Asset.
- 1.2.7 Any references within the Finance Documents to the Agent or the Security Agent providing approval or consent or making a request, or to an item or a person being acceptable to, satisfactory to, to the satisfaction of or approved by the Agent or the Security Agent, are to be construed, unless otherwise specified, as references to the Agent or Security Agent taking such action or refraining from acting on the instructions of the Majority Lenders or in the case of those matters where all Lender consent is expressly required by the Facility Agreement on the instructions of all Lenders.
- 1.2.8 Any references in the Finance Documents to:
- (a) the Agent or Security Agent acting reasonably;
  - (b) a matter being in the reasonable opinion of the Agent or Security Agent;
  - (c) the Agent's or Security Agent's approval or consent not being unreasonably withheld or delayed; or
  - (d) any document, report, confirmation or evidence being required to be reasonably satisfactory to the Agent or Security Agent,
- are to be construed, unless otherwise specified in the Finance Documents, as the Agent or Security Agent acting on the instructions of the Majority Lenders or, as the case may be, all Lenders who are acting reasonably.
- 1.2.9 Where the Agent or Security Agent is obliged to consult under the terms of the Finance Documents, unless otherwise specified, the Majority Lenders or, as the case may be, all Lenders must instruct the Agent or Security Agent to consult in accordance with the terms of the relevant Finance Document and the Agent or Security Agent must carry out that consultation in accordance with the instructions it receives from the Majority Lenders or, as the case may be, all Lenders.

## **2. THIRD PARTY RIGHTS**

- 2.1 Unless expressly provided to the contrary in a Finance Document a person who is not party to a Finance Document has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or enjoy the benefit of any term of that Finance Document.
- 2.2 Notwithstanding any term of any Finance Document the consent of any person who is not a Party to that Finance Document is not required to rescind or vary that Finance Document at any time.
- 2.3 Any Receiver may enforce and enjoy the benefit of any Clause which expressly confers rights on it, subject to clause 2.2 above and the provisions of the Third Parties Act.

## **3. CREATION OF SECURITY**

### **3.1 General**

- 3.1.1 All the security created under this Deed:
- (a) is created in favour of the Security Agent;
  - (b) is created over present and future assets of the Chargor;

- (c) is security for the payment and satisfaction of all the Secured Liabilities ; and
- (d) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

3.1.2 The Security Agent holds the benefit of this Deed on trust for the Secured Parties.

## 3.2 Shares

The Chargor charges by way of a first fixed charge:

3.2.1 all the Shares owned by it or held by any nominee on its behalf; and

3.2.2 all Related Rights.

## 4. REPRESENTATIONS

### 4.1 Representations

The Chargor makes the representations and warranties set out in this clause to each Secured Party.

### 4.2 Status

4.2.1 It is a limited liability company, duly incorporated and validly existing under the laws of the jurisdiction of its incorporation.

4.2.2 It has the power to own its assets and carry on its business as it is being conducted.

### 4.3 Binding obligations

4.3.1 The obligations expressed to be assumed by it in this Deed are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

### 4.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:

4.4.1 any law or regulation applicable to it;

4.4.2 its constitutional documents; or

4.4.3 any agreement or instrument which is binding upon it or any of its assets or constitute a default or termination event (howsoever described) under any such agreement or instrument to an extent which would be reasonably expected to have a Material Adverse Effect.

### 4.5 Powers and authority

4.5.1 It has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, this Deed and the transactions contemplated by this Deed.

4.5.2 No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by this Deed.

### 4.6 Validity and admissibility in evidence

All Authorisations required or which it is best practice for a person in the same business as the Chargor to obtain:

4.6.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed; and

4.6.2 to make this Deed admissible in evidence in its jurisdictions of incorporation, have been obtained or effected and are in full force and effect.



#### **4.7 Nature of security**

This Deed creates that Security it purports to create and is not liable to be avoided or otherwise set aside on its liquidation or administration or otherwise.

#### **4.8 Shares**

4.8.1 The Shares are fully paid.

4.8.2 The Shares represent the whole of the issued share capital of the Borrower.

4.8.3 The Chargor is the sole legal and beneficial owner of the Shares.

#### **4.9 Governing law and enforcement**

4.9.1 Subject to the Legal Reservations, the choice of the governing law of this Deed will be recognised and enforced in its Relevant Jurisdictions.

4.9.2 Subject to the Legal Reservations, any judgment obtained in England in relation to this Deed will be recognised and be enforceable by the courts of its Relevant Jurisdictions.

#### **4.10 No filing or stamp taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that this Deed be registered, filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Deed or the transactions contemplated by this Deed except registration of particulars of this Deed at the Companies Registration Office under the Companies Act 2006 and payment of associated fees, which registration and fees will be made and paid promptly after the date of this Deed.

#### **4.11 Times for making representations**

4.11.1 The representations and warranties set out in this Deed are made on the date of this Deed.

4.11.2 Each representation or warranty under this Deed is deemed to be repeated by the Chargor on the date of each Utilisation Request, each Utilisation Date and the first day of each Interest Period.

4.11.3 When a representation or warranty is repeated, it is applied to the circumstances existing at the time of repetition.

### **5. RESTRICTIONS ON DEALINGS**

The Chargor must not:

5.1 create or allow to subsist any Security (other than this Deed) on any Security Asset; or

5.2 sell, transfer, licence, lease or otherwise dispose of any Security Asset.

### **6. SHARES**

#### **6.1 Deposit**

The Chargor must:

6.1.1 immediately deposit with the Security Agent, or as the Security Agent may direct, all certificates and other documents of title or evidence of ownership in relation to any Security Asset and duly executed stock transfer forms or other instruments of transfer duly completed (with the name of the transferee, date and consideration left blank); and

6.1.2 promptly execute and deliver to the Security Agent all signed but undated share transfers and other documents which may be requested by the Security Agent in order to enable the Security Agent or its nominees to be registered as the owner or otherwise obtain a legal title to any Security Asset, provided the Security Agent shall not be entitled to be

registered as the owner of the Investments before an Event of Default has occurred which is continuing.

## 6.2 Changes to rights

The Chargor must not take or allow the taking of any action on its behalf which may result in (a) the rights attaching to any Security Asset being altered or (b) further shares in the Borrower being issued except to the extent to which such further Security Assets are subject to the Security in favour of the Secured Parties and all documents required to be delivered pursuant to clause 6.1 above are delivered in respect thereof.

## 6.3 Calls

6.3.1 The Chargor must pay all calls or other payments due and payable in respect of any Security Asset.

6.3.2 If the Chargor fails to do so, the Security Agent may pay the calls or other payments on behalf of the Chargor. The Chargor must within five Business Days of demand reimburse the Security Agent for any payment made by the Security Agent under this clause.

## 6.4 Other obligations in respect of Security Assets

6.4.1 The Chargor must promptly copy to the Security Agent and comply with all reasonable requests for information which is within its 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 Security Asset. If it fails to do so, the Security Agent may elect to provide such information as it may have on behalf of the Chargor.

6.4.2 The Chargor must comply with all other conditions and obligations assumed by it in respect of any Security Asset.

6.4.3 The Security Agent is not obliged to:

- (a) perform any obligation of the Chargor;
- (b) make any payment;
- (c) make any enquiry as to the nature or sufficiency of any payment received by it or the Chargor; or
- (d) present or file any claim or take any other action to collect or enforce the payment of any amount to which it may be entitled under this Deed,

in respect of any Security Asset.

## 6.5 Financial Collateral

6.5.1 To the extent that the Security Assets mortgaged or charged under this Deed constitute "financial collateral" and this Deed and the obligations of the Chargor under this Deed constitute a "security financial collateral arrangement" (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226)) the Security Agent will have the right after this Security has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Liabilities.

6.5.2 Where any financial collateral is appropriated:

- (a) if the financial collateral is listed or traded on a recognised exchange its value will be taken as the value at which it could have been sold on the exchange on the date of appropriation; or

- (b) in any other case, the value of the financial collateral will be such amount as the Agent reasonably determines having taken into account advice obtained by it from an independent commercial property adviser, investment bank or accountancy firm of national standing selected by it,

and each Secured Party will give credit for the proportion of the value of the financial collateral appropriated to its use.

## 6.6 Voting rights

6.6.1 Before this Security becomes enforceable:

- (a) the voting rights, powers and other rights in respect of the Security Assets must (if exercisable by the Security Agent) be exercised in any manner which the Chargor may direct in writing; and
- (b) all dividends or other income paid or payable in relation to any Security Asset must be paid directly to the Chargor.

6.6.2 The Chargor must indemnify the Security Agent against any loss or liability incurred by the Security Agent as a consequence of the Security Agent acting in respect of the Security Assets on the direction of the Chargor.

6.6.3 After this Security has become enforceable, the Security Agent may exercise (in the name of the Chargor and without any further consent or authority on the part of the Chargor) any voting rights and any powers or rights which may be exercised by the legal or beneficial owner of any Security Asset, any person who is the holder of any Security Asset or otherwise.

## 6.7 People with significant control regime

The Chargor shall:

6.7.1 within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of the Transaction Security; and

6.7.2 promptly provide the Security Agent with a copy of that notice.

## 7. CONSENTS AND RELEASES

7.1 If, during the Security Period, the Security Agent agrees to release any assets from any Security conferred by this Deed in accordance with the terms of the Finance Documents, the Chargor will promptly execute each such release as the Security Agent may reasonably require to permit those assets to be held free from any right conferred by any agreement relating to or evidencing the terms of any intercompany balances (which may have arisen contrary to the terms of the Finance Documents) between itself and the Borrower (the “Intercompany Balances”).

7.2 If the assets being sold or transferred pursuant to Clause 7.1 above are the Shares and the sale or transfer is being effected in circumstances where the Security has become enforceable or in connection with the enforcement of any of the Security, the Chargor shall procure that the undertaking whose shares are sold and all its subsidiary undertakings are released from all liabilities in respect of any Intercompany Balances promptly upon the written demand of the Security Agent on such terms as the Security Agent may direct.

7.3 The Chargor undertakes and agrees to do all such things and execute all such documents as the Security Agent may reasonably require to give effect to Clauses 7.1 and 7.2 above.

7.4 The Security Agent will not be liable to the Chargor for any consent given or deemed to be given under this Clause 7.

7.5 If:

- 7.5.1 the Chargor receives a payment or distribution from an Obligor or any other source other than as allowed under the Finance Documents; or
- 7.5.2 the Chargor receives the proceeds of any enforcement of any Security or any guarantee or other assurance against financial loss from an Obligor,

the Chargor must hold the amount received by it (up to a maximum of an amount equal to the Secured Liabilities) on trust for the Secured Parties and immediately pay that amount (up to that maximum) to the Security Agent for application against the Secured Liabilities.

7.6 During the Security Period, the Chargor may not:

7.6.1 initiate or support or take any steps with a view to:

- (a) any insolvency, liquidation, reorganisation, administration or dissolution proceedings;
- (b) any voluntary arrangement or assignment for the benefit of creditors; or
- (c) any similar proceedings,

involving a Transaction Obligor, whether by petition, convening a meeting, voting for a resolution or otherwise; or

7.6.2 bring or support any legal proceedings against a Transaction Obligor (or any of its Subsidiaries).

## **8. WHEN SECURITY BECOMES ENFORCEABLE**

### **8.1 Event of Default**

This Security will become immediately enforceable if an Event of Default occurs which is continuing.

### **8.2 Discretion**

After this Security has become enforceable, the Security Agent may in its absolute discretion enforce all or any part of this Security in any manner it sees fit or as the Majority Lenders direct.

### **8.3 Statutory powers**

Any power of sale or other powers conferred by section 101 of the Act, as amended by this Deed, will be immediately exercisable at any time after this Security has become enforceable.

## **9. ENFORCEMENT OF SECURITY**

### **9.1 General**

9.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.

9.1.2 Section 103 of the Act (restricting the power of sale) and section 93 of the Act (restricting the right of consolidation) do not apply to this Security.

### **9.2 No liability as mortgagee in possession**

Neither the Security Agent nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

### **9.3 Privileges**

Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers duly appointed under the Act, except that section 103 of the Act does not apply.

#### 9.4 Protection of third parties

No person (including a purchaser) dealing with the Security Agent or a Receiver or its or his agents will be concerned to enquire:

- 9.4.1 whether the Secured Liabilities have become payable;
- 9.4.2 whether any power which the Security Agent or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- 9.4.3 whether any money remains due under the Finance Documents; or
- 9.4.4 how any money paid to the Security Agent or to that Receiver is to be applied.

#### 9.5 Redemption of prior mortgages

- 9.5.1 At any time after this Security has become enforceable, the Security Agent may:
  - (a) redeem any prior Security against any Security Asset; and/or
  - (b) procure the transfer of that Security to itself; and/or
  - (c) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.
- 9.5.2 The Chargor must pay to the Security Agent, within five Business Days of demand, the costs and expenses incurred by the Security Agent in connection with any such redemption and/or transfer, including the payment of any principal or interest.

#### 9.6 Contingencies

If this Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account, provided that if the Security Agent is satisfied in good faith that there are sufficient funds standing to the credit of that suspense account or other account to discharge the Secured Liabilities in full the Security Agent (or the Receiver) will apply such funds for such purpose.

### 10. RECEIVER

#### 10.1 Appointment of Receiver

- 10.1.1 Except as provided below, the Security Agent may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:
  - (a) this Security has become enforceable; or
  - (b) the Chargor so requests the Security Agent in writing at any time.
- 10.1.2 Any appointment under clause 10.1.1 above may be by deed, under seal or in writing under its hand.
- 10.1.3 Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the Act) does not apply to this Deed.
- 10.1.4 The Security Agent is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under section 1A of the Insolvency Act 1986.

## 10.2 **Removal**

The Security Agent may by writing under its hand remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

## 10.3 **Remuneration**

The Security Agent may fix the remuneration of any Receiver appointed by it and the maximum rate specified in section 109(6) of the Act will not apply.

## 10.4 **Agent of the Chargor**

10.4.1 A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver.

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

## 10.5 **Relationship with Security Agent**

To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Security Agent in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

# 11. **POWERS OF RECEIVER**

## 11.1 **General**

11.1.1 A Receiver has all of the rights, powers and discretions set out below in this clause in addition to those conferred on it by any law, this includes all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the Act and the Insolvency Act 1986.

11.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

## 11.2 **Possession**

A Receiver may take immediate possession of, get in and collect any Security Asset.

## 11.3 **Sale of assets**

11.3.1 A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he thinks fit.

11.3.2 The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit.

## 11.4 **Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

## **11.5 Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit.

## **11.6 Receipts**

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

## **11.7 Delegation**

A Receiver may delegate his powers in accordance with this Deed.

## **11.8 Other powers**

A Receiver may:

11.8.1 do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;

11.8.2 exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset; and

11.8.3 use the name of the Chargor for any of the above purposes.

## **12. APPLICATION OF PROCEEDS**

All amounts from time to time received or recovered by the Security Agent or any Receiver pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or part of this Deed will be held and applied in the following order of priority:

12.1 in or towards payments or provision for all costs and expenses incurred by the Security Agent or Receiver under or in connection with this Deed and all remuneration due to any Receiver under or in connection with this Deed;

12.2 in or towards payment of the Secured Liabilities in such order as the Secured Parties may in their absolute discretion decide; and

12.3 in payment of the surplus (if any) to any Chargor or other person entitled to it.

This clause is subject to the payment of any claims having priority over this Security. This clause does not prejudice the right of any Secured Party to recover any shortfall from any Chargor.

## **13. EXPENSES AND INDEMNITY**

The Chargor must:

13.1 immediately on demand pay all costs and expenses (including legal fees) incurred in connection with this Deed by any Secured Party including any arising from any actual or alleged breach by any person of any law or regulation; and

13.2 keep each of them indemnified against any failure or delay in paying those costs or expenses.

## **14. DELEGATION**

### **14.1 Power of Attorney**

The Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed.

## 14.2 Terms

Any such delegation may be made upon any terms (including power to sub-delegate) which the Security Agent or any Receiver may think fit.

## 14.3 Liability

Neither the Security Agent nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

## 15. FURTHER ASSURANCES

The Chargor must, at its own expense, take whatever action the Security Agent or a Receiver may require for:

15.1 creating, perfecting or protecting any security intended to be created by this Deed; or

15.2 following the occurrence of an Event of Default that is continuing, facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Security Agent or any Receiver or any of its delegates or sub-delegates in respect of any Security Asset.

This includes:

15.2.1 the execution of any transfer, conveyance, assignment or assurance of any property, whether to the Security Agent or to its nominee; or

15.2.2 the giving of any notice, order or direction and the making of any registration, which, in any such case, the Security Agent may think expedient.

## 16. POWER OF ATTORNEY

The Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any of its delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed but has not done so. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this clause.

## 17. PRESERVATION OF SECURITY

### 17.1 Continuing security

This Security is a continuing security and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or discharge in whole or in part.

### 17.2 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any member of the Group or any security for those obligations or otherwise) is made in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, the liability of the Chargor under this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.

### 17.3 Waiver of defences

The obligations of the Chargor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice any of its obligations under this Deed including (without limitation and whether or not known to it, an Obligor or any Secured Party):

17.3.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;



- 17.3.2 the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor;
- 17.3.3 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 assets of, any Obligor or any other person;
- 17.3.4 any non-presentation or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- 17.3.5 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- 17.3.6 any amendment of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- 17.3.7 any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security; or
- 17.3.8 any insolvency or similar proceedings.

#### **17.4 Chargor Intent**

Without prejudice to the generality of clause 17.3 (Waiver of defences), the Chargor expressly confirms that it intends that this Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling decisions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **17.5 Immediate recourse**

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

#### **17.6 Appropriations**

Each Secured Party (or any trustee or agent on its behalf) may at any time during the Security Period:

- 17.6.1 refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) against the Secured Liabilities or apply and enforce them in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor will not be entitled to the benefit of such moneys, security or rights; and
- 17.6.2 hold in an interest bearing suspense account any moneys received from the Chargor or on account of the liability of the Chargor under this Deed, provided that if the Security Agent is satisfied in good faith that there are sufficient funds standing to the credit of that suspense account or other account to discharge the Secured Liabilities in full the Security Agent (or the Receiver) will apply such funds for such purpose.

## **17.7 Deferral of Chargor's rights**

Unless the Security Period has expired or the Security Agent otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or by reason of any amount being payable, or liability arising under this clause:

- 17.7.1 to be indemnified by an Obligor;
- 17.7.2 to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- 17.7.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- 17.7.4 to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Chargor has given a guarantee, undertaking or indemnity under this clause;
- 17.7.5 to exercise any right of set-off against any Obligor; and/or
- 17.7.6 to claim or prove as a creditor of any Obligor in competition with any Secured Party.

If the Chargor receives any benefit, payment or distribution in relation to such rights it must hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and must promptly pay or transfer them to the Security Agent or as the Security Agent may direct for application in accordance with clause 12 (Application of proceeds).

## **17.8 Additional security**

This Security is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Secured Party.

## **18. CHANGES TO THE PARTIES**

### **18.1 The Chargor**

The Chargor may not assign or transfer any of its rights or obligations under this Deed without the prior consent of the Security Agent.

### **18.2 The Secured Parties**

- 18.2.1 Any Secured Party may assign or otherwise dispose of all or any of its rights under this Deed in accordance with the Finance Documents to which it is a party.
- 18.2.2 References to the Security Agent in this Deed include any successor Security Agent appointed under the Facility Agreement.

### **18.3 Tacking**

Each Lender must perform its obligations under the Facility Agreement and each Aviva Group Member who is a lender (howsoever described) under a Finance Document must perform its obligations as lender under any Finance Document (as relevant) in (each case, including any obligation to make available further advances).

### **18.4 New Accounts**

- 18.4.1 If any subsequent charge or other interest affects any Security Asset, a Secured Party may open a new account with the Chargor.

18.4.2 If the Secured Party does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.

18.4.3 As from that time all payments made to the Secured Party will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

## **19. RELEASE**

At the end of the Security Period, the Secured Parties must as soon as reasonably practicable, at the request and cost of the Chargor, take whatever action is necessary to release the Security Assets from this Security and return any original documents provided by the Chargor to the Security Agent under clause 6.1 that are in its possession or in that of its advisers.

## **20. NOTICES**

### **20.1 Communications in writing**

Any communication to be made under or in connection with this Deed must be made in writing and, unless otherwise stated, may be made by fax or letter.

### **20.2 Addresses**

20.2.1 The contact details of the Chargor for any communication to be made or delivered under or in connection with this Deed are the same as those set out in the Facility Agreement for the Borrower.

20.2.2 The contact details of the Security Agent for any communication to be made or delivered under or in connection with this Deed are the same as those set out in the Facility Agreement for the Security Agent.

20.2.3 Any Party may change its contact details by giving five Business Days' notice to the Security Agent or (in the case of the Security Agent) to the other Party.

### **20.3 Delivery**

20.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under the Facility Agreement, if addressed to that department or officer.

20.3.2 Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).

20.3.3 Any communication or document which becomes effective, in accordance with clauses 20.3.1 and 20.3.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **20.4 Electronic communication**

20.4.1 Any communication to be made between the Parties under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that the

Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if the Parties:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

20.4.2 Any electronic communication made between the Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or the Security Agent shall specify for this purpose.

20.4.3 Any electronic communication which becomes effective, in accordance with clause 20.4.2 above, after 5.00 p.m. in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

## 20.5 English language

20.5.1 Any communication made under or in connection with this Deed must be in English.

20.5.2 All other documents provided under or in connection with this Deed must be:

- (a) in English; or
- (b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 21. PARTIAL INVALIDITY

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any 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 will in any way be affected or impaired.

## 22. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of any Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

## 23. COUNTERPARTS

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

## 24. GOVERNING LAW

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

## **25. ENFORCEMENT**

### **25.1 Jurisdiction**

- 25.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a Dispute).
- 25.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 25.1.3 This clause is for the benefit of the Secured Parties only. As a result, to the extent allowed by law:
- (a) no Secured Party will be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction; and
  - (b) the Secured Parties may take concurrent proceedings in any number of jurisdictions.

This deed has been entered into as a deed on the date stated at the beginning of this Deed.

SIGNATURE PAGES

Executed as a deed by )  
**CLS Holdings Plc** )  
on being signed by )  
.FREDERIK WIDMANN..... ) Director  
a director, in the presence of: )

Name of witness: KAREN COAD .....

Signature of witness: .....

Address: .....  
.....

16 Tinworth Street  
London  
SE11 5AL

Occupation: SOLICITOR .....

THE SECURITY AGENT

CBRE LOAN SERVICES LIMITED

By:



Address:

Henrietta House,

Henrietta Place,

London,

W1G 0NB

Fax: 00 44 (0) 207 117 1079

Attention:

Dipali Khagram ([Dipali.Khagram@cbre.com](mailto:Dipali.Khagram@cbre.com)) /

Sagar Patel ([Sagar.Patel@cbre.com](mailto:Sagar.Patel@cbre.com))