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In accordance with Sections 859A and 859J of the Companies Act 2006

MR01

Particulars of a charge

A fee is payable with this form.
Please see 'How to pay' on the last page

You can use the WebFiling service to file this form online
Please go to www.companieshouse.gov.uk

What this form is for
You may use this form to register a charge created or evidenced by an instrument

What this form is NOT for
You may not use this form to register a charge where there is an instrument. Use form MR08

WEDNESDAY



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LD3

07/01/2015

#105

COMPANIES HOUSE

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery

You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record. **Do not send the original.**

1 Company details

Company number: 0 3 9 0 7 2 7 6

Company name in full: Tiscali UK Holdings Limited

For official use

→ **Filing in this form**
Please complete in typescript or in bold black capitals
All fields are mandatory unless specified or indicated by *

2 Charge creation date

Charge creation date: d² d³ m¹ m² y² y⁰ y¹ y⁴

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees entitled to the charge

Name: Wilmington Trust (London) Limited as security agent

Name

Name

Name

If there are more than four names, please supply any four of these names then tick the statement below

I confirm that there are more than four persons, security agents or trustees entitled to the charge

MR01

Particulars of a charge

4	Brief description	
	Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument	Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument" Please limit the description to the available space
Brief description	None	
5	Other charge or fixed security	
	Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box	
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
6	Floating charge	
	Is the instrument expressed to contain a floating charge? Please tick the appropriate box	
	<input type="checkbox"/> Yes Continue <input checked="" type="checkbox"/> No Go to Section 7	
	Is the floating charge expressed to cover all the property and undertaking of the company?	
	<input type="checkbox"/> Yes	
7	Negative Pledge	
	Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box	
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
8	Trustee statement ¹	
	You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge	1 This statement may be filed after the registration of the charge (use form MR06)
	<input type="checkbox"/>	
9	Signature	
	Please sign the form here	
Signature	Signature X <i>James A. Co</i> X	
	This form must be signed by a person with an interest in the charge	

MR01

Particulars of a charge



Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name Richard Saville/ref RJS/LP/BRERA

Company name Saville & Co

Address One Carey Lane

Post town London

County/Region

Postcode E C 2 V 8 A E

Country England

DX

Telephone 020 7920 0000



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- The company name and number match the information held on the public Register
- You have included a certified copy of the instrument with this form
- You have entered the date on which the charge was created
- You have shown the names of persons entitled to the charge
- You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- You have given a description in Section 4, if appropriate
- You have signed the form
- You have enclosed the correct fee
- Please do not send the original instrument, it must be a certified copy



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'.



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

For companies registered in England and Wales.
The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ
DX 33050 Cardiff

For companies registered in Scotland.
The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post)

For companies registered in Northern Ireland
The Registrar of Companies, Companies House,
Second Floor, The Linnenhall, 32-38 Linnenhall Street,
Belfast, Northern Ireland, BT2 8BG
DX 481 N R Belfast 1



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquires@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number. 3907276

Charge code: 0390 7276 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd December 2014 and created by TISCALI UK HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th January 2015

P

Given at Companies House, Cardiff on 12th January 2015



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

SUPPLEMENTAL CHARGE OVER ACCOUNTS

dated 23 December 2014

created by

TISCALI UK HOLDINGS LIMITED

(Registered No 03907276)

as the Chargor
in favour of

WILMINGTON TRUST (LONDON) LIMITED

acting as Security Agent

This deed is subject to the terms of a Collateral Sharing Agreement (as defined herein)

TRUE COPY OF ORIGINAL

*Less redacted signatures
7 January 2015.*

Linklaters

Ref L-231904

Linklaters LLP

Saville

Notary Public London, England (Richard J. Saville)



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THIS DEED is dated 23 December 2014 and made between

- (1) **TISCALI UK HOLDINGS LIMITED**, a company incorporated under the laws of England and Wales with company number 03907276, whose registered office is at 25 Moorgate, London, EC2R 6AY (the "Chargor"), and
- (2) **WILMINGTON TRUST (LONDON) LIMITED**, a company incorporated under the laws of England and Wales with company number 05650152, whose registered office is at 1 King's Arms Yard, London, EC2R 7AF, acting as security agent for the Secured Creditors pursuant to the Collateral Sharing Agreement (the "**Security Agent**")

Background

- (A) On 23 December 2014, *inter alios*, the Parent, the Chargor, the Facility A Lenders and the Facility B Lenders entered into an amendment and restatement agreement relating to the Group Facilities Agreement (the "**Amendment and Restatement Agreement**"), whereby, *inter alia*
 - (i) the outstanding indebtedness pursuant to the Group Facilities Agreement has been restructured in the following facilities and restructured as follows (A) facility A1 for an amount of euro 42,444,179 51 and facility A2 for an amount of euro 42,444,179 51, governed by the terms and conditions set out in the First Facilities Agreement (as defined below), and (B) facility B for an amount of euro 55,136,333 99, governed by the terms and conditions set out in the Second Facilities Agreement (as defined below), and
 - (ii) the terms and conditions of the Group Facilities Agreement have been superseded and replaced by the First Facilities Agreement and the Second Facilities and the terms and conditions of the Original Collateral Sharing Agreement have been superseded and replaced by the terms of the Collateral Sharing Agreement
- (B) Whilst the Original Security Agreement remains in full force and effect, the Chargor is entering into this Deed in connection with the terms of the Restatement Documents
- (C) The board of directors of the Chargor is satisfied that entering into this Deed is for the purposes and to the benefit of the Chargor and its business
- (D) The Security Agent and the Chargor intend this document to take effect as a deed (even though the Security Agent only executes it under hand)
- (E) The Security Agent holds the benefit of this Deed on trust for the Secured Creditors on the terms of the Secured Documents

IT IS AGREED as follows

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless a contrary indication appears, terms used in the Collateral Sharing Agreement have the same meaning and construction and

"Accounts" means the following accounts of the Chargor held with Intesa Sanpaolo S p A - London Branch

Account Number	Account Name	IBAN
	Prepayment Holding Account (Euro) – Blocked	
	Prepayment Holding Account (Sterling) – Blocked	

"Charged Assets" means the assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets

"Charges" means all or any of the Security created or expressed to be created by or pursuant to this Deed

"Collateral Sharing Agreement" means the Original Collateral Sharing Agreement, as amended and restated pursuant to the terms of the Amendment and Restatement Agreement and attached to the Amendment and Restatement Agreement as Schedule 5 (*Form of Amended Collateral Sharing Agreement*)

"Currency of Account" means the currency in which the relevant indebtedness is denominated or, if different, is payable

"Delegate" means a delegate or sub-delegate appointed under Clause 10 2 (*Delegation*)

"Event of Default" means Events of Defaults as defined in the First Facilities Agreement and in the Second Facilities Agreement

"First Facilities Agreement" means the Group Facilities Agreement as amended and restated pursuant to the terms of the Amendment and Restatement Agreement and attached to the Amendment and Restatement Agreement as Schedule 3 (*Form of First Facilities Agreement*)

"Group Facilities Agreement" means the group facilities agreement dated 2 July 2009 between the Chargor, the lenders (named therein), the guarantors (named therein), J P Morgan Europe Limited as GFA agent and Intesa Sanpaolo S p A – London Branch as security agent

"Insolvency Act" means the Insolvency Act 1986

"LPA" means the Law of Property Act 1925

"Obligor" has the meaning given to that term in the First Facilities Agreement and the Second Facilities Agreement

"Original Collateral Sharing Agreement" means the agreement dated 13 September 2007 between, amongst others, the Borrower, the Company, certain subsidiaries of Tiscali S p A named therein as guarantors, the Senior Bridge Agent and the Security Agent (each as defined in the Group Facilities Agreement) (as further amended, supplemented and otherwise modified from time to time)

"Original Charge Over Accounts" means the English law charge over accounts entered into between Tiscali UK Holdings Limited and Intesa Sanpaolo S p A – London Branch dated 30 November 2009

"Original Secured Liabilities" has the meaning given to the term "Secured Liabilities" in the Original Charge Over Accounts

"Original Security Agreement" means

- (a) the English law fixed and floating security agreement entered into between Tiscali UK Holdings Limited (previously Tiscali UK Holdings PLC) and Intesa Sanpaolo S p A – London Branch dated 3 July 2009,
- (b) the English law fixed and floating security agreement entered into on or about the date hereof between Tiscali UK Holdings Limited and Wilmington Trust (London) Limited,
- (c) the English law charge over accounts entered into between Tiscali UK Holdings Limited and Intesa Sanpaolo S p A – London Branch dated 30 November 2009

"Party" means a party to this Deed

"Receiver" means a receiver and manager or other receiver appointed in respect of the Charged Assets and shall, if allowed by law, include an administrative receiver

"Restatement Documents" means, collectively, the First Facilities Agreement, the Second Facilities Agreement and the Collateral Sharing Agreement

"Restatement Facilities Agreements" means, collectively, the First Facilities Agreement and the Second Facilities Agreement

"Second Facilities Agreement" means the Group Facilities Agreement as amended and restated pursuant to the terms of the Amendment and Restatement Agreement and attached to the Amendment and Restatement Agreement as Schedule 4 (*Form of Second Facilities Agreement*)

"Secured Creditors" means the Secured Parties as defined in the Collateral Sharing Agreement

"Secured Document" means the Facility A Finance Documents and Facility B Finance Documents as defined in the Collateral Sharing Agreement

"Secured Liabilities" means the Secured Obligations as defined in the Collateral Sharing Agreement

"Winding-up" means winding up, amalgamation, reconstruction, administration, dissolution, liquidation, merger or consolidation or any analogous procedure or step in any jurisdiction

12 Construction

Any reference in this Deed to a "Secured Document" or any other agreement or instrument is a reference to that Secured Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced and includes any change in the purpose of, any extension of or any increase in any

facility or the addition of any new facility under that Secured Document or other agreement or instrument

The other provisions in clause 1.2 (*Construction*) of the Collateral Sharing Agreement apply to this Deed with all necessary changes

1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in a Secured Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Deed
- (b) Notwithstanding any term of any Secured Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time

2 CONFIRMATION OF EXISTING SECURITY

The Chargor confirms that the Original Security Agreement remains in full force and effect and continues to secure all of the Original Secured Liabilities in favour of the Security Agent (as security trustee for the Secured Creditors) (as further described in, and upon the terms of, the Original Security Agreement)

3 UNDERTAKING TO PAY

3.1 Payment of Secured Liabilities

The Chargor shall pay the Secured Liabilities when due in accordance with their terms or, if they do not specify a time for payment, immediately on demand by the Security Agent

3.2 Proportionate payment

Each sum appropriated by the Security Agent in accordance with the Secured Documents in or towards payment of a particular part of the Secured Liabilities shall to the extent of that appropriation discharge the Chargor's obligations in respect of that part of the Secured Liabilities both to any Secured Creditors to which the same is owed, and to the Security Agent

4 ACCOUNT CHARGE

Only to the extent not charged under the Original Security Agreement, the Chargor, with full title guarantee and as security for the payment of all Secured Liabilities, charges in favour of the Security Agent (as trustee for the Secured Creditors) by way of fixed charge, the Accounts, all its present and future right, title and interest in or to the Accounts and all amounts (including interest) now or in the future standing to the credit of or accrued or accruing on the Accounts

5 RESTRICTIONS AND FURTHER ASSURANCE

5.1 Negative pledge

The Chargor shall not create or permit to subsist any Security including any set off or right of combination (other than the Original Security Agreement) over any Charged Asset

5.2 Disposal

The Chargor shall not (nor agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to transfer, assign or otherwise dispose of any Charged Asset

5.3 Withdrawals

Other than in accordance with clause 10.12 (*Holding Account*) of the First Facilities Agreement, or clause 7.12 (*Holding Account*) of the Second Facilities Agreement (as applicable), the Security Agent shall not be required to pay to the Chargor any amounts standing to the credit of the Accounts until the Security Agent has executed a formal release in accordance with Clause 17.1 (*Final redemption*), and then shall only be required to pay any balance then remaining after making all withdrawals, debits, applications and set-offs and exercising all other rights which the Security Agent is expressed to be entitled to make or exercise under this Deed

5.4 Restriction on Accounts

The Chargor must maintain its Accounts with Intesa Sanpaolo S p A – London Branch

5.5 Documents

The Chargor shall promptly execute and/or deliver to the Security Agent such documents relating to the Accounts as the Security Agent requires

5.6 Further assurance

The Chargor shall promptly do and/or procure the doing of whatever is required or which the Security Agent requires

- (a) to create, perfect or protect the Charges or the priority of the Charges, or
- (b) to facilitate the realisation of the Charged Assets or the exercise of any rights vested in the Security Agent or any Receiver, or
- (c) to create and perfect security in favour of the Security Agent (equivalent to the security intended to be created by this Deed) over any assets of the Chargor located in any jurisdiction outside England and Wales,

including executing any transfer, charge, assignment or assurance of the Charged Assets (whether to the Security Agent or its nominees or otherwise), making any registration and giving any notice, order or direction

6 GENERAL UNDERTAKINGS

The Chargor shall not do, or permit to be done, anything which could prejudice the Charges

7 REPRESENTATIONS AND WARRANTIES

The Chargor makes the representations and warranties set out in this Clause 7 to the Security Agent on the date of this Deed

7 1 Restatement Facilities Agreements

The Chargor makes the representations and warranties in clause 18 (*Representations and warranties*) of the First Facilities Agreement and in clause 15 (*Representations and warranties*) of the Second Facilities Agreement to the Security Agent on the date of this Deed

7 2 Beneficial Owner of the Charged Assets

Except as provided in this Deed, the Chargor has not assigned, transferred or otherwise disposed of the Charged Assets (or its right, title and interest to or in the Charged Assets), either in whole or in part, nor agreed to do so, and will not at any time do so or agree to do so. The Chargor is and will at all times be the sole, absolute, legal and beneficial owner of the Charged Assets

7 3 No existing Security

Except for the Security created pursuant to the Original Security Agreement, no Security exists on or over the Charged Assets

8 ENFORCEMENT

8 1 When enforceable

- (a) This Security will become immediately enforceable if an Event of Default has occurred and is continuing
- (b) After this Security has become enforceable, the Security Agent may enforce all or any part of this Security either in accordance with the terms of the Collateral Sharing Agreement

8 2 Power of sale

- (a) The statutory power of sale, of appointing a Receiver and the other statutory powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed
- (b) For the purposes of all powers implied by law, the Secured Liabilities are deemed to have become due and payable on the date of this Deed
- (c) Any restriction imposed by law on the power of sale (including under section 103 of the LPA) or the right of a mortgagee to consolidate mortgages (including under section 93 of the LPA) does not apply to this Security
- (d) Any powers of leasing conferred on the Security Agent by law are extended so as to authorise the Security Agent to lease, make agreements for leases, accept surrenders of leases and grant options as the Security Agent may think fit and without the need to comply with any restrictions conferred by law (including under section 99 or 100 of the LPA)

8 3 No liability as mortgagee in possession

Neither the Security Agent nor any Receiver will be liable, by reason of entering into possession of a Charged Asset

- (a) to account as mortgagee in possession or for any loss on realisation or
- (b) for any default or omission for which a mortgagee in possession might be liable

8 4 Privileges

Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by law (including the LPA) on mortgagees and receivers duly appointed under any law (including the LPA)

8 5 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

- (a) whether the Secured Liabilities have become payable,
- (b) whether any power which the Security Agent or a Receiver is purporting to exercise has become exercisable or is being properly exercised,
- (c) whether any money remains due under the Secured Documents, or
- (d) how any money paid to the Security Agent or to that Receiver is to be applied

8 6 Redemption of prior mortgages

(a) At any time after this Security has become enforceable, the Security Agent may

- (i) redeem any prior Security against any Charged Asset, and/or
- (ii) procure the transfer of that Security to itself, and/or
- (iii) 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

(b) The Chargor must pay to the Security Agent, immediately on 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

8 7 Contingencies

If this Security is enforced at a time when no amount is due under the Secured 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 such number of suspense accounts as it considers appropriate

9 APPOINTMENT AND RIGHTS OF RECEIVERS

9 1 Appointment of receivers

If

- (a) requested by the Chargor, or
- (b) any other Event of Default is continuing (whether or not the Security Agent has taken possession of the Charged Assets),

without any notice or further notice, the Security Agent may, by deed, or otherwise in writing signed by any officer or manager of the Security Agent or any person authorised for this purpose by the Security Agent, appoint one or more persons to be a Receiver. The Security Agent may similarly remove any Receiver and appoint any person instead of any Receiver

If the Security Agent appoints more than one person as Receiver, the Security Agent may give those persons power to act either jointly or severally

9 2 Multiple Receivers

If the Security Agent appoints more than one person as Receiver, the Security Agent may give those persons power to act either jointly or severally

9 3 Removal

The Security Agent may by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver) 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

9 4 Scope of appointment

Any Receiver may be appointed Receiver of all of the Charged Assets or Receiver of a part of the Charged Assets specified in the appointment. In the latter case, the rights conferred on a Receiver as set out in SCHEDULE 1 (*Rights of Receivers*) shall have effect as though every reference in that Schedule to any Charged Assets were a reference to the part of those assets so specified or any part of those assets

9 5 Rights of Receivers

Any Receiver appointed pursuant to this Clause 9 shall have the rights, powers, privileges and immunities conferred by the Insolvency Act on administrative or other receivers duly appointed under the Insolvency Act, and shall also have the rights set out in SCHEDULE 1 (*Rights of Receivers*)

9 6 Agent of Chargor

Any Receiver shall be the agent of the Chargor for all purposes. The Chargor alone shall be responsible for the Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by the Receiver

9 7 Remuneration

The Security Agent, acting reasonably, may determine the remuneration of any Receiver and direct payment of that remuneration out of moneys he receives as Receiver. The Chargor alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver

10 SECURITY AGENT'S RIGHTS

10 1 Same rights as Receiver

Without prejudice to Clause 10 4 (*Acknowledgment*) below, any rights conferred by any Secured Document upon a Receiver may be exercised by the Security Agent, or to the extent permitted by law, an Administrator after the Charges become enforceable, whether or not the Security Agent shall have taken possession or appointed a Receiver of the Charged Assets

10.2 Delegation

The Security Agent may delegate in any manner to any person any rights exercisable by the Security Agent under any Secured Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Agent thinks fit.

10.3 Financial collateral arrangement

To the extent that this Deed constitutes a "financial collateral arrangement" (as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "Regulations")) the Security Agent shall have the right

- (a) to use and dispose of any Charged Asset which constitutes "financial collateral" (as defined in the Regulations ("Financial Collateral")), in which case the Security Agent shall comply with the requirements of the Regulations as to obtaining "equivalent financial collateral" (as defined in the Regulations), and
- (b) (at any time after the Charges become enforceable) to appropriate any Charged Asset which constitutes Financial Collateral in or towards satisfaction of the Secured Liabilities in accordance with the Regulations.

10.4 Acknowledgement

The Security Agent has agreed to become a party to this Deed for the purpose of obtaining the benefit of any representations, warranties and covenants that may be contained herein and for the better preservation and enforcement of its rights and, save as specifically set out herein, under no circumstances shall the Security Agent be deemed to have undertaken any obligations hereunder or by virtue of its entry into this Deed and shall not incur any loss or liability in connection with this Deed. The parties acknowledge that the Security Agent has been appointed pursuant to the Collateral Sharing Agreement and will exercise its rights under this Deed in accordance with the terms of the Collateral Sharing Agreement. As between the parties hereto, the rights, powers, authorities, duties, discretions and protections (including indemnities) given to the Security Agent under the Collateral Sharing Agreement will apply to this Deed.

11 ORDER OF DISTRIBUTIONS

All amounts received or recovered by the Security Agent or any Delegate in exercise of their rights under this Deed shall, subject to the rights of any creditors having priority, be applied in accordance with clause 15 (*Application of Proceeds*) of the Collateral Sharing Agreement.

12 LIABILITY OF SECURITY AGENT, RECEIVERS AND DELEGATES

12.1 Possession

If the Security Agent, any Receiver or any Delegate takes possession of the Charged Assets, it or he may at any time relinquish possession. Without prejudice to Clause 12.2 (*Security Agent's liability*), the Security Agent shall not be liable as a mortgagee in possession by reason of viewing or repairing any of the present or future assets of the Chargor.

12.2 Security Agent's liability

None of the Security Agent, any Receiver or Delegate shall (either by reason of taking possession of the Charged Assets or for any other reason and whether as mortgagee in

possession or otherwise) be liable to the Chargor, any Secured Creditor or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Charged Assets or from any act, default, omission or misconduct of the Security Agent, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Charged Assets or in connection with the Secured Documents except to the extent caused by its or his own gross negligence or wilful misconduct

13 DELEGATION

13.1 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. The Security Agent or any Receiver shall notify the Chargor of any such delegation, for information purposes only.

13.2 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.

13.3 Liability

Neither the Security Agent nor any Receiver shall be bound to supervise or 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.

14 POWER OF ATTORNEY

14.1 Appointment

The Chargor by way of security irrevocably appoints the Security Agent, every Receiver and every Delegate severally its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit.

- (a) to do anything which the Chargor is obliged to do (but has not done) under any Secured Document to which it is party (including to execute charges over, transfers, conveyances, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets), and
- (b) to exercise any of the rights conferred on the Security Agent, any Receiver or any Delegate in relation to the Charged Assets or under any Secured Document, the LPA or the Insolvency Act.

14.2 Ratification

The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 14.1 (*Appointment*).

15 PROTECTION OF THIRD PARTIES

15.1 No duty to enquire

No person dealing with the Security Agent, any other Secured Creditor, any Receiver or any Delegate shall be concerned to enquire

- (a) whether the rights conferred by or pursuant to any Secured Document are exercisable,
- (b) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with,
- (c) otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights, or
- (d) as to the application of any money borrowed or raised

15.2 Protection to purchasers

All the protection to purchasers contained in Sections 104 and 107 of the LPA, Section 42(3) of the Insolvency Act or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any other Secured Creditor, any Receiver or any Delegate

16 SAVING PROVISIONS

16.1 Continuing Security

Subject to Clause 17 (*Discharge of Security*), the Charges are 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

16.2 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or any Obligor 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, then

- (a) the liability of the Chargor and each Obligor and the Charges shall continue or be reinstated as if the payment, discharge, release or arrangement had not occurred, and
- (b) each Secured Creditor will be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred

16.3 Waiver of defences

Neither the obligations of the Chargor under this Deed nor the Charges will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Secured Document or any of the Charges (without limitation and whether or not known to it or any Secured Creditor) including

- (a) any time, waiver or consent granted to, or composition with, the Chargor, any Obligor or other person,

- (b) the release of the Chargor, any Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group,
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Chargor, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security,
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor, any Obligor or any other person,
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Secured Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Secured Document or other document or security,
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Secured Document or any other document or security,
- (g) any insolvency or similar proceedings, or
- (h) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of any Obligor or other person under any Secured Document resulting from any insolvency liquidation or dissolution proceedings or from any law, regulation or order

16.4 Immediate recourse

The Chargor waives any right it may have of first requiring any Secured Creditor (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 any provision of a Secured Document to the contrary.

16.5 Appropriations

Until all the Secured Liabilities have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated, each Secured Creditor (or any trustee or agent on its behalf) may

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Creditor (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same, and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed

16.6 Deferral of Chargor's rights

Until all the Secured Liabilities have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated and unless 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 the Secured Documents or by reason of any amount being payable, or liability arising, under this Deed

- (a) to be indemnified by an Obligor,
- (b) to claim any contribution from any other provider of Security or guarantor of any Obligor's obligations under the Secured Documents,
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Creditors under the Secured Documents or of any other guarantee or security taken pursuant to, or in connection with, the Secured Documents by any Secured Creditors, and/or
- (d) 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,
- (e) to exercise any right of set-off against any Obligor, and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Secured Creditor

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Creditors by the Obligors under or in connection with the Secured Documents to be repaid in full on trust for the Secured Creditors and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 11 (*Order of distributions*)

16.7 Additional Security

The Charges are in addition to and are not in any way prejudiced by any other guarantees or security (other than the Original Security Agreements) now or subsequently held by any Secured Creditor

16.8 Security held by Chargor

The Chargor may not, without the prior consent of the Security Agent, hold any security from any other Obligor in respect of the Chargor's liability under this Deed. The Chargor will hold any security held by it in breach of this provision on trust for the Security Agent

16.9 Tacking

Each Secured Creditor shall comply with its obligations under the Secured Documents (including any obligation to make further advances)

17 DISCHARGE OF SECURITY

17.1 Final redemption

Subject to Clause 17.2 (*Retention of security*), if the Security Agent is satisfied that all the Secured Liabilities have been irrevocably paid in full and that all facilities which might give rise to Secured Liabilities have terminated, the Security Agent shall at the request and cost of the Chargor release, reassign or discharge (as appropriate) the Charged Assets from the Charges

17.2 Retention of security

If the Security Agent considers that any amount paid or credited to any Secured Creditor under any Secured Document is capable of being avoided or otherwise set aside on the Winding-up of the Chargor or any other person, or otherwise, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably paid

17.3 Consolidation

Section 93 of the LPA shall not apply to the Charges

18 ENFORCEMENT EXPENSES

18.1 Expenses

The Chargor must

- (a) within 5 Business Days of written demand, pay to the Security Agent the amount of all costs, losses, liabilities and expenses (including legal and notarial fees) incurred by any Secured Creditor, any Receiver, any Delegate, attorney, manager, agent or other person appointed by the Security Agent under or in relation to this Deed and any Debt Document (including the administration, protection, realisation, enforcement or preservation of any rights under or in connection with this Deed, or any consideration by the Security Agent as to whether to realise or enforce the same, and/or any amendment, waiver, consent or release of any Debt Document and/or any other document referred to in this Deed), and
- (b) keep each of those persons indemnified against any failure or delay in paying those costs and expenses

18.2 Stamp taxes

Clause 13.6 (*Stamp taxes*) of the First Facilities Agreement (with any necessary consequential amendments) and clause 10.6 (*Stamp taxes*) of the Second Facilities Agreement (with any necessary consequential amendments) (as applicable) shall apply also to any amount payable under any Secured Document to any Delegate

18.3 Value Added Tax

Clause 13.7 (*VAT*) of the First Facilities Agreement (with any necessary consequential amendments) and clause 10.7 (*VAT*) of the Second Facilities Agreement (with any necessary consequential amendments) (as applicable) shall apply also to any amount payable under any Secured Document to any Receiver or Delegate

18 4 Survival

The indemnity contained in this Clause 18 shall survive the termination or discharge of the Secured Documents and the resignation and replacement of the Security Agent

19 PAYMENTS

19 1 Demands

Any demand for payment made by any Secured Creditor shall be valid and effective even if it contains no statement of the relevant Secured Liabilities or an inaccurate or incomplete statement of them

19 2 Payments

All payments by the Chargor under this Deed (including damages for its breach) shall be made in the Currency of Accounts and to such account, with such financial institution and in such other manner as the Security Agent may direct

19 3 Continuation of accounts

(a) At any time after

- (i) the receipt by any Secured Creditor of notice (either actual or otherwise) of any subsequent Security affecting the Charged Assets, or
- (ii) the presentation of a petition or the passing of a resolution in relation to the Winding-up of the Chargor,

any Secured Creditor may open a new account in the name of the Chargor with that Secured Creditor (whether or not it permits any existing account to continue) If that Secured Creditor does not open such a new account, it shall nevertheless be treated as if it had done so when the relevant event occurred No moneys paid into any account, whether new or continuing, after that event shall discharge or reduce the amount recoverable pursuant to any Secured Document to which the Chargor is party

- (b) For the avoidance of doubt, the Security Agent (as security trustee for, and on behalf of, the Secured Creditors) confirms that the receipt by any Secured Creditor of notice of the Security created pursuant to this Deed shall not constitute the receipt of notice under paragraph (a) of Clause 18 3 (*Continuation of accounts*) of the Original Charge Over Accounts

20 RIGHTS, WAIVERS AND DETERMINATIONS

20 1 Ambiguity

Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to any Secured Document, the terms of that Secured Document shall prevail

20 2 Exercise of rights

No failure to exercise, nor any delay in exercising, on the part of any Secured Creditor, Receiver or Delegate, any right or remedy under any Secured Document shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy The rights and remedies provided in the Secured

Documents are cumulative and not exclusive of any rights or remedies provided by law, including the right to appoint an Administrator under the Insolvency Act

20.3 Determinations

Any certification or determination by or certificate of any Secured Creditor or any Receiver or Delegate under any Secured Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates

21 SEPARATE AND INDEPENDENT OBLIGATIONS

The Security created by the Chargor by or in connection with any Secured Document is separate from and independent of any other Security created or intended to be created by any other provider of Security by or in connection with any Secured Document

22 INDEMNITIES

Each indemnity in each Secured Document shall

- (a) constitute a separate and independent obligation from the other obligations in that or any other Secured Document,
- (b) give rise to a separate and independent cause of action,
- (c) apply irrespective of any indulgence granted by any Secured Creditor,
- (d) continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any Secured Liability or any other judgment or order, and
- (e) apply whether or not any claim under it relates to any matter disclosed by the Chargor or otherwise known to any Secured Creditor

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

This Deed has been delivered on the date stated at the beginning of this Deed.

SCHEDULE 1
RIGHTS OF RECEIVERS

Any Receiver appointed pursuant to Clause 9 (*Appointment and rights of Receivers*) shall have the right, either in its own name or in the name of the Chargor or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person

(a) **Enter into possession**

to take possession of, get in and collect the Charged Assets, and to require payment to him or to any Secured Creditor of any credit balance on any Account,

(b) **Carry on business**

to manage and carry on any business of the Chargor,

(c) **Contracts**

to enter into any contract or arrangement and to perform, repudiate, rescind or vary any contract or arrangement to which the Chargor is a party,

(d) **Deal with Charged Assets**

to sell, transfer, assign, exchange or otherwise dispose of or realise the Charged Assets to any person,

(e) **Hive down**

to form a new company and to subscribe for or acquire (for cash or otherwise) any investment in or of the new company and to sell, transfer, assign, exchange and otherwise dispose of or realise any such investments or part thereof or any rights attaching thereto,

(f) **Subsidiaries**

to form a Subsidiary of the Chargor and transfer to that Subsidiary any Charged Asset,

(g) **Borrow money**

to borrow or raise money either unsecured or on the security of the Charged Assets (either in priority to the Charges or otherwise),

(h) **Lending**

to lend money or advance credit to any customer of the Chargor,

(i) **Covenants and guarantees**

to enter into bonds, covenants, guarantees, indemnities and other commitments and to make all payments needed to effect, maintain or satisfy them,

(j) **Protection of assets**

to

(i) effect any repair of insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect and improve any Charged Asset,

- (ii) commence and/or complete any building operation, and
- (iii) apply for and maintain any planning permission, building regulation approval or any other authorisation,

in each case as he thinks fit

(k) **Claims**

to release any claim (including any claim and/or right of the Obligor against any other member of the Group, including, without limitation, in respect of subrogation, contribution, indemnity and any other right of a surety against a principal borrower and/or other surety), settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating to the Charged Assets,

(l) **Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets or any business of the Chargor,

(m) **Redemption of Security**

to redeem any Security (whether or not having priority to the Charges) over the Charged Assets and to settle the accounts of any person with an interest in the Charged Assets,

(n) **Rights of ownership**

to manage and use the Charged Assets and to exercise and do (or permit the Chargor or any nominee of it to exercise and do) all such rights and things as the Receiver would be capable of exercising or doing if it were the absolute beneficial owner of the Charged Assets,

(o) **Insolvency Act**

to exercise all powers set out in Schedule 1 or Schedule B1 to the Insolvency Act as now in force (whether or not in force at the date of exercise and whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1 after the date of this Deed,

(p) **Receipts**

to give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Charged Asset,

(q) **Delegation**

to delegate his powers in accordance with this Deed, and

(r) **Other powers**

to do anything else it may think fit for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of any Secured Document to which the Chargor is party, the LPA or the Insolvency Act (including, but not limited to, the exercise in relation to any Charged Asset of all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of the Charged Asset and using the name of the Chargor for any of the above purposes)

The Chargor

SIGNED as a DEED by Tiscali UK Holdings
Limited acting by *JANA DERSKA*
its authorised signatory in the presence of



Authorised signatory

Witness

Name

Notary Public London, England (Richard J. Saville)

Address



Occupation

The Security Agent

SIGNED as a DEED by Wilmington Trust
(London) Limited acting by *ANA ISABEL RANOS
RODRIGUEZ*
its authorised signatory in the presence of



Authorised signatory

Witness

Name

Notary Public London, England (Richard J. Saville)

Address



Occupation