



Registration of a Charge

Company name: **LIBERATA UK Limited**

Company number: **01238274**

Received for Electronic Filing: **31/08/2016**



X5EKEQ9K

Details of Charge

Date of creation: **31/08/2016**

Charge code: **0123 8274 0017**

Persons entitled: **SUMITOMO MITSUI BANKING CORPORATION AS LENDER, 1-2,
YURAKUCHO 1-CHOME CHIYODA-KU TOKYO JAPAN**

Brief description: **N/A**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **CLIFFORD CHANCE LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 1238274

Charge code: 0123 8274 0017

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st August 2016 and created by LIBERATA UK Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 31st August 2016 .

Given at Companies House, Cardiff on 1st September 2016

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**

DATED 31 August 2016

LIBERATA UK LIMITED

AS THE CHARGOR

IN FAVOUR OF

SUMITOMO MITSUI BANKING CORPORATION

AS THE LENDER

SECURITY OVER SHARES AGREEMENT

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THIS AGREEMENT is made by way of deed on 31 August 2016

BY

- (1) **LIBERATA UK LIMITED** registered in England and Wales with company number 01238274 (the "**Chargor**"); in favour of
- (2) **SUMITOMO MITSUI BANKING CORPORATION** (the "**Lender**").

RECITALS:

- (A) Further to a facility agreement dated 29 July 2016 between, amongst others, **OUTSOURCING UK Limited** as borrower (the "**Borrower**") and **OUTSOURCING Inc.** as original guarantor, and the Lender as original lender, the Lender has agreed to make a GBP 45 million facility available to the Borrower (the "**Facility Agreement**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acceleration Event" means the Lender exercising any of its rights under clause 24.17 (*Acceleration*) of the Facility Agreement.

"Charged Portfolio" means the Shares and all dividends, interest and other monies at any time payable in respect of the Shares and all other rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, Security, guarantees, indemnities, covenants for title, proceeds of sale and other monies and proceeds in respect of or derived from the Shares (whether by way of redemption, bonus, preference, option, substitution, conversion, compensation or otherwise) held by, to the order of, or on behalf of the Chargor at any time.

"Collateral Rights" means, subject always to the provisions of Clause 7 in relation to the exercise of voting rights, all rights, powers and remedies of the Lender provided by or pursuant to this Agreement or by law.

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

"Secured Obligations" means all present and future obligations and liabilities at any time due, owing or incurred by the Chargor to the Lender under or pursuant to the Finance Documents, whether actual or contingent, whether originally incurred by the Chargor or by any other person and whether incurred solely or jointly and as principal or surety or in any other capacity, including any liability in respect of any further advances made under the Finance Documents, except for any obligation or liability which, if it were included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful, prohibited or invalid by or under any applicable law.

"Security Period" means the period beginning on the date of this Agreement and ending on the date on which the Lender is satisfied that the Secured Obligations have been irrevocably and unconditionally paid or discharged in full and the Lender is under no further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person under any of the Finance Documents.

"Shares" means any stocks, shares, debentures and other securities listed in the Schedule (*Shares*) from time to time held by, to the order or on behalf of the Chargor.

1.2 Terms defined in the Facility Agreement

Unless defined in this Agreement or the context otherwise requires, a term defined in the Facility Agreement has the same meaning in this Agreement or any notice given under or in connection with this Agreement.

1.3 Construction

In this Agreement:

- (a) the rules of interpretation contained in clauses 1.2 (*Construction*) and 1.3 (*Currency Symbols and definitions*) of the Facility Agreement shall apply to the construction of this Agreement, or in any notice given under or in connection with this Agreement;
- (b) any reference to the "Lender", the "Chargor" or the "Borrower" shall be construed so as to include its or their (and any subsequent) successors in title, permitted assigns and permitted transferees in accordance with their respective interests; and
- (c) any reference to "including" and "include" shall mean including and include "without limitation" and any words following such terms shall be construed as illustrative and shall not limit the meaning or scope of the phrase or words preceding such terms;
- (d) references in this Agreement to any Clause or Schedule shall be to a Clause or Schedule contained in this Agreement.

1.4 Incorporation of provisions from Facility Agreement

The provisions of clauses 1.4 (*Third party rights*), 15 (*Tax gross up and indemnities*), 17.1 (*Currency indemnity*), 33 (*Notices*), 34.1 (*Accounts*), 34.2 (*Certificates and determinations*), 37 (*Amendments and waivers*), 40 (*Counterparts*), 41 (*Governing Law*) and 42 (*Enforcement*) of the Facility Agreement are incorporated into this Agreement as if expressly set out in full in this Agreement, but so that references in those clauses to the Facility Agreement are references to this Agreement.

1.5 Present and future assets

- (a) A reference in this Agreement to any Shares or other asset includes, unless the contrary intention appears, present and future Shares and other assets.

- (b) The absence of or incomplete details of any Shares in the Schedule shall not affect the validity or enforceability of any Security under this Agreement.

2. COVENANT TO PAY

2.1 Covenant to pay

The Chargor covenants with the Lender that it shall, on demand of the Lender, pay, discharge and satisfy the Secured Obligations in accordance with their respective terms.

3. DEFAULT INTEREST

If the Chargor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (both before and after judgment) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with, and on the terms set out in, clause 10.3 (*Default interest*) of the Facility Agreement.

4. CHARGE

The Chargor charges, with full title guarantee and by way of first fixed charge in favour of the Lender, as continuing security for the payment and discharge of all of the Secured Obligations, all of its rights, title and interest from time to time in and to the Charged Portfolio.

5. PROVISIONS AS TO SECURITY AND PERFECTION

5.1 Negative pledge and restriction on dealings

Except as permitted under the Facility Agreement, the Chargor shall not at any time during the Security Period create or permit to subsist any Security over all or any part of the Charged Portfolio or dispose of or otherwise deal with any part of the Charged Portfolio.

5.2 Implied covenants for title

- (a) The covenants set out in sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clause 4 (*Charge*).
- (b) It shall be implied in respect of Clause 4 (*Charge*) that the Chargor is disposing of the Charged Portfolio free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

5.3 Deposit of share certificates

The Chargor shall, as soon as reasonably practicable and in any event within five Business Days of the date of this Agreement (and upon its coming into possession thereof at any time), deposit with the Lender (or procure the deposit of) all certificates and other documents of title to the Shares, and stock transfer forms (executed in blank by it or on its behalf) in respect of the Shares.

5.4 Deposit of related assets

The Chargor shall, promptly upon the accrual, offer or issue of any stocks, shares, warrants or other securities in respect of or derived from the Charged Portfolio (or upon acquiring any interest therein) notify the Lender of that occurrence and deposit with the Lender (or procure the deposit of) (i) all certificates and other documents of title representing such assets and (ii) such stock transfer forms or other instruments of transfer (executed in blank by it or on its behalf) in respect thereof as the Lender may require.

5.5 Further advances

Subject to the terms of the Finance Documents, the Lender is under an obligation to make further advances to the Borrower and that obligation will be deemed to be incorporated in this Agreement as if set out in this Agreement.

5.6 Custodians and nominees

The Lender may appoint and pay any person to act as a custodian or nominee on any terms in relation to all or any part of the Charged Portfolio as the Lender may determine and the Lender shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any such person or be bound to supervise the proceedings or acts of any such person.

6. FURTHER ASSURANCE

6.1 Extension of implied covenant

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in Clause 6.2 (*Further Assurance*) below.

6.2 Further assurance

The Chargor shall promptly, at its own cost, take all such action (including making all filings, registrations and notarisations) and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require) in favour of the Lender or its nominee(s):

- (a) to create, perfect, protect and/or maintain the Security created or intended to be created in respect of the Charged Portfolio (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Portfolio) or for the exercise of the Collateral Rights; and/or
- (b) to facilitate the realisation of the Charged Portfolio.

7. VOTING RIGHTS AND DIVIDENDS

7.1 Dividends prior to an Event of Default

Prior to the occurrence of an Event of Default, the Chargor shall be entitled to receive all dividends, interest and other monies arising from the Charged Portfolio.

7.2 Dividends after an Event of Default

Upon the occurrence of an Event of Default, the Lender may, at its discretion, (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor) apply all dividends, interest and other monies arising from the Charged Portfolio as though they were the proceeds of sale under this Agreement.

7.3 Voting rights prior to Lender Notice

Prior to the giving of notice pursuant to Clause 7.4 (*Voting rights after Lender Notice*), the Chargor shall be entitled to exercise all voting rights in relation to the Charged Portfolio.

7.4 Voting rights after Lender Notice

Subject to Clause 7.5 (*Waiver of voting rights by Lender*), upon the occurrence of an Acceleration Event, the Lender may (but without having any obligation to do so) give notice to the Chargor that this Clause 7.4 will apply. With effect from the giving of that notice the Lender may, at its discretion, (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor) or instruct the Chargor to:

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

in each case in the manner and on the terms the Lender thinks fit, and the proceeds of any such action shall form part of the Charged Portfolio.

7.5 Waiver of voting rights by Lender

- (a) The Lender may, in its absolute discretion and without any consent or authority from the Chargor, at any time, by notice to the Chargor (which notice shall be irrevocable), elect to give up the right to exercise (or refrain from exercising) all voting rights and powers in respect of the Charged Portfolio conferred or to be conferred on the Lender pursuant to Clause 7.4 (*Voting rights after Lender Notice*).
- (b) Once a notice has been issued by the Lender under paragraph (a) of this Clause 7.5, on and from the date of such notice the Lender shall cease to have the rights to exercise or refrain from exercising voting rights and powers in respect of the Charged Portfolio conferred or to be conferred on it pursuant to Clause 7.4 (*Voting rights after Lender Notice*) or any other provision of this Agreement and all such rights will be exercisable by the Chargor. The Chargor shall be entitled on and from the date of such notice, to exercise all voting rights and powers in relation to the Charged Portfolio subject only to the proviso contained in Clause 7.6 (*Voting rights generally*).

7.6 Voting rights generally

- (a) The Chargor shall not exercise its voting rights and powers in relation to the Charged Portfolio in any manner, or otherwise permit or agree to, or concur or participate in any:
 - (i) variation of the rights attaching to or conferred by all or any part of the Charged Portfolio;
 - (ii) increase in the issued share capital of any company whose shares are charged pursuant to this Agreement;
 - (iii) exercise, renunciation or assignment of any right to subscribe for any shares or securities; or
 - (iv) reconstruction, amalgamation, sale or other disposal of any company or any of the assets of any company (including the exchange, conversion or reissue of any shares or securities as a consequence thereof) whose shares are charged pursuant to this Agreement,

which, in the opinion of the Lender would prejudice the value of, or the ability of the Lender to realise, the Security created by this Agreement, **provided that** the proceeds of any such action shall form part of the Charged Portfolio.

- (b) The Chargor shall not appoint any third party nominee to exercise any members' rights or information rights in relation to the Charged Portfolio.

8. CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS

8.1 Representations

The Chargor makes the representations and warranties set out in this Clause 8.1 to the Lender on the date of this Agreement.

(a) ***Security***

No Security exists over any present or future Shares other than the Security created pursuant to this Agreement.

(b) ***Transaction Security***

This Agreement validly creates the Security which is expressed to be created pursuant to Clause 4 (*Charge*) and evidences the Security it is expressed to evidence.

(c) ***People with Significant Control Register Regime***

No "warning notice" or "restrictions notice" (in each case as defined in paragraph 1(2) of Schedule 1B of the Companies Act 2006) has been issued to the Chargor in respect of all or any part of the Charged Portfolio and remains in effect.

(d) ***Repetition***

The representations set out in paragraph (c) (*People with Significant Control Register Regime*) of this Clause 8.1 is deemed to be made by the Chargor (by reference to the facts and circumstances then existing) on, the date of each Utilisation Request and the first day of each Interest Period.

8.2 Undertakings

(a) ***Payment of calls***

The Chargor shall pay when due all calls or other payments which may be or become due in respect of any part of the Charged Portfolio, and in any case of default by it in such payment, the Lender may, if it thinks fit, make such payment on behalf of the Chargor. Any sums so paid by the Lender shall be reimbursed by the Chargor to the Lender on demand and shall carry interest from the date of payment by the Lender until reimbursed, such interest to be calculated in accordance with Clause 3 (*Default interest*).

(b) ***People with Significant Control Register Regime***

The Chargor shall:

- (i) comply with any notice served on it by Capacitygrid Limited pursuant to Part 21A of the Companies Act 2006 and within the timeframe specified in the notice; and
- (ii) promptly provide the Lender with a copy of any such notice.

(c) ***Preservation of assets***

The Chargor shall not do or permit to be done any act or thing which might jeopardise the rights of the Lender in the Charged Portfolio or which might adversely affect or diminish the value of the Charged Portfolio.

9. ENFORCEMENT OF SECURITY

Any time after the occurrence of:

- (a) an Event of Default (as long as it is continuing);
- (b) any event or the receipt by the Lender of any information or the coming to the attention of the Lender of any other matter or thing whatsoever which causes the Lender to believe that all or any part of the Charged Portfolio is in danger of seizure, distress or other legal process or that all or any part of the Security created by or pursuant to this Agreement is otherwise, for any reason whatsoever, in jeopardy; or
- (c) a request from the Chargor to the Lender that it exercise any of its powers under this Agreement,

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

- (i) secure and perfect its title to all or any part of the Charged Portfolio (including transferring the Charged Portfolio into the name of the Lender or its nominees);
- (ii) enforce all or any part of the Security at the times, in the manner and on the terms it thinks fit and take possession of and hold or dispose of all or any part of the Charged Portfolio (and any assets of the Chargor which, when got in, would be part of the Charged Portfolio) at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration); and
- (iii) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement) on mortgagees and by this Agreement on any Receiver or otherwise conferred by law on mortgagees or Receivers.

10. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION

10.1 Extension of power of sale

The power of sale or other disposal conferred on the Lender and on any Receiver by this Agreement shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Agreement.

10.2 Restrictions

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the exercise by the Lender of its right to consolidate all or any of the Security created by or pursuant to this Agreement with

any other Security in existence at any time or to its power of sale, which powers may be exercised by the Lender without notice to the Chargor on or at any time after the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 9 (*Enforcement of Security*).

10.3 Right of Appropriation

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 9 (*Enforcement of Security*), to the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended, (the "**Regulations**") apply to the Charged Portfolio, the Lender shall have the right to appropriate all or any part of that Charged Portfolio in or towards the payment or discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of the Charged Portfolio shall be the market value of the Charged Portfolio determined by the Lender by reference to a public index or independent valuation, or by such other process as the Lender may select, including independent valuation. The parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

10.4 Statutory powers

The powers conferred by this Agreement on the Lender are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise by law (as extended by this Agreement) and such powers shall remain exercisable from time to time by the Lender in respect of any part of the Charged Portfolio. In the case of any conflict between the statutory powers contained in any such Acts and those conferred by this Agreement, the terms of this Agreement shall prevail.

11. APPOINTMENT OF RECEIVER

11.1 Appointment and removal

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 9 (*Enforcement of Security*), the Lender may by deed or otherwise (acting through an authorised officer of the Lender without prior notice to the Chargor):

- (a) appoint one or more persons to be a Receiver of the whole or any part of the Charged Portfolio;
- (b) appoint two or more Receivers of separate parts of the Charged Portfolio;
- (c) remove (so far as it is lawfully able) any Receiver so appointed; and
- (d) appoint another person(s) as an additional or replacement Receiver(s).

11.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 11.1 (*Appointment and removal*) shall be:

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

11.3 Statutory powers of appointment

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

12. POWERS OF RECEIVERS

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

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

- (iii) bringing to its hands any assets of the Chargor forming part of, or which when got in would be, Charged Portfolio.

13. APPLICATION OF PROCEEDS

All monies received or recovered and any non-cash recoveries made or received by the Lender or any Receiver pursuant to this Agreement or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied first in the payment or other discharge of the costs, charges and expenses incurred and payments made by the Receiver, the payment or other discharge of its remuneration and the discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of its powers, and thereafter shall be applied by the Lender (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Facility Agreement.

14. PROTECTION OF PURCHASERS

14.1 Consideration

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

14.2 Protection of purchasers

No purchaser or other person dealing with the Lender or any Receiver shall be bound to inquire whether the right of the Lender or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned to inquire whether that power has been properly or regularly exercised by the Lender or such Receiver in such dealings.

15. POWER OF ATTORNEY

15.1 Appointment and powers

The Chargor by way of security irrevocably appoints the Lender and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by this Agreement or any other agreement binding on the Chargor to which the Lender is a party (including the execution and delivery of any deeds, charges, assignments or other Security and any transfers of the Charged Portfolio and perfecting and/or releasing the Security created or intended to be created in respect of the Charged Portfolio); and
- (b) enabling the Lender and any Receiver to exercise, or delegate the exercise of, any of the Collateral Rights (including, after the occurrence of an Event of

Default, the exercise of any right of a legal or beneficial owner of the Charged Portfolio).

15.2 Ratification

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

16. EFFECTIVENESS OF SECURITY

16.1 Continuing security

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

16.2 Cumulative rights

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

16.3 No prejudice

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person by the Lender or by any other thing which might otherwise prejudice that Security or any Collateral Right.

16.4 Remedies and waivers

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

16.5 No liability

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

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

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

16.6 Partial invalidity

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

16.7 Chargor intent

The Chargor expressly confirms that it intends that the Security created under this Agreement, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the 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: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

16.8 Immediate recourse

The Chargor waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or Security or claim payment from any other person before claiming from the Chargor under this Agreement or enforcing the Security created by this Agreement. This waiver applies irrespective of any law or any provision of this Agreement to the contrary.

16.9 Additional Security

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

17. PRIOR SECURITY INTERESTS

17.1 Redemption or transfer

In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any part of the Charged Portfolio or in case of exercise by the Lender or any Receiver of any power of sale or right of appropriation or application under this Agreement, the Lender may redeem such prior security or procure the transfer thereof to itself.

17.2 Accounts

The Lender may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Chargor.

17.3 Costs of redemption or transfer

All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Lender on demand together with accrued interest thereon calculated in accordance with Clause 3 (*Default interest*).

18. SUBSEQUENT SECURITY INTERESTS

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

19. SUSPENSE ACCOUNTS

All monies received, recovered or realised by the Lender under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Lender be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Lender considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Lender's discretion, in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

20. RELEASE OF SECURITY

20.1 Release

Upon the expiry of the Security Period, the Lender shall, at the request and cost of the Chargor, release and cancel the Security created by this Agreement subject to

Clause 20.2 (*Clawback*) and without recourse to, or any representation or warranty by, the Lender or any of its nominees.

20.2 Clawback

If the Lender considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under this Agreement and the Security created by this Agreement shall continue and that amount will not be considered to have been irrevocably paid or credited.

21. ASSIGNMENT

21.1 No assignments or transfers by Chargor

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Agreement.

21.2 Assignments by the Lender

The Lender may assign all or any of its rights under this Agreement. The Lender shall be entitled to disclose such information concerning the Chargor and this Agreement as the Lender considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

21.3 Successors

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

22. EXPENSES, STAMP TAXES, INDEMNITY

22.1 Expenses

The Chargor shall, in the case of paragraph (a) below, promptly on demand of the Lender, and in the case of paragraph (b) below, within three Business Days of demand by the Lender, reimburse the Lender for all the costs and expenses (including legal fees) together with any VAT thereon incurred by it in connection with:

- (a) the negotiation, preparation and execution of this Agreement and the completion of the transactions and perfection of the Security contemplated in this Agreement; and

- (b) the exercise, preservation and/or enforcement of any of the Collateral Rights or the Security contemplated by this Agreement or any proceedings instituted by or against the Lender as a consequence of taking or holding the Security or of enforcing the Collateral Rights,

and shall carry interest from the date of such demand until so reimbursed in accordance with Clause 3 (*Default interest*).

22.2 Stamp Taxes

The Chargor shall pay all stamp, registration, notarial and other taxes and fees to which this Agreement, the Security contemplated in this Agreement or any judgment given in connection with it is or at any time may be subject and shall indemnify the Lender within three Business Days of demand against any cost, loss or liability resulting from any failure to pay or delay in paying any such tax, except those payable on or by reference to or in consequence of the transfer of the whole or part of the rights of the Lender under this Agreement.

22.3 Indemnity

The Chargor shall, within three Business Days of demand, indemnify the Lender, its agents, attorneys and any Receiver against any cost, loss or liability which it may sustain as a consequence of any breach by the Chargor of the provisions of this Agreement, the exercise or purported exercise of any of the rights and powers conferred on them by this Agreement or otherwise relating to the Charged Portfolio.

23. CURRENCY CONVERSION

- (a) For the purpose of or pending the discharge of any of the Secured Obligations the Lender may convert any monies received, recovered or realised by the Lender from one currency to another, at the spot rate at which the Lender is able to purchase the currency in which the Secured Obligations are due with the amount received, recovered or realised.
- (b) The obligations of the Chargor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

24. DISCRETION AND DELEGATION

24.1 Discretion

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

24.2 Delegation

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

subsequent delegation or any revocation of such power, authority or discretion by the Lender or the Receiver itself.

THIS AGREEMENT has been signed by the Lender and executed as a deed by the Chargor and is delivered by it as a deed on the date stated at the beginning of this Agreement.

SCHEDULE 1
SHARES

All of the shares held by the Chargor in Capacitygrid Limited, with registered number 09136356.

EXECUTION PAGE

The Chargor

**EXECUTED AS A DEED by
LIBERATA UK LIMITED**

)
)

Director

Name:


MASAKI MOTEGI

in the presence of

Signature of witness



Name of witness

Yuya Ono

Address of witness

4-20-23 Azamino, Aoba-ku.
Yokohama, Kanagawa, Japan

The Lender

**For and on behalf of
SUMITOMO MITSUI BANKING CORPORATION**

By:

Name:

Title: