



**FIXED AND FLOATING SECURITY DOCUMENT**

dated **13** August 2004

created by

the Chargors  
as set out in Schedule 1

in favour of

**HSBC BANK PLC**  
acting as Lender

**Linklaters**

Ref: JMS/NXW

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THIS DEED is dated August 2004 and made between:

- (1) THE COMPANIES listed in Schedule 1 as the chargors (the "**Chargors**"); and
- (2) HSBC BANK PLC (the "**Lender**").

#### Background

- (A) Each Chargor is entering into this Deed in connection with the Finance Documents.
- (B) The Board of Directors of each Chargor is satisfied that entering into this Deed is for the purposes and to the benefit of that Chargor and its business.
- (C) The Lender and each Chargor intend this document to take effect as a deed (even though the Lender only executes it under hand).

IT IS AGREED as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

"**Administrator**" means an administrator appointed under Schedule B1 to the Insolvency Act 1986.

"**Amendment and Restatement Agreement**" means the amendment and restatement agreement dated on or about the date of this Deed between the Chargors and the Lender amending and restating the Original Facility Agreement.

"**Bank Accounts**" of a Chargor means all current, deposit or other accounts with any bank or financial institution in which it now or in the future has an interest and (to the extent of its interest) all balances now or in the future standing to the credit of those accounts.

"**Book Debts**" of a Chargor means all book and other debts of any nature, and all other rights to receive money (excluding Bank Accounts), now or in the future due, owing or payable to it and the benefit of all related negotiable instruments, rights, Security, guarantees and indemnities of any kind.

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

"**Charged Property**" means the Real Property described in Schedule 3 (*Real Property*) and any other Real Property which may be agreed between the Lender and the Company as being Charged Property for the purposes of the Finance Documents.

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

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

"**Debenture**" means any debenture stock, loan stock, bonds, notes, certificates of deposit, depositary receipts and commercial paper.

"**Delegate**" means a delegate or sub-delegate appointed under Clause 17.2 (*Delegation*).

"**Enforcement Event**" means an Event of Default.

"**Existing Security**" means the security set out in Schedule 6 (*Existing Security*) of the Facility Agreement.

"**Facility Agreement**" means the means the Original Facility Agreement, as amended by the Amendment and Restatement Agreement, as amended from time to time.

"**Fixtures**" means fixtures, fittings (including trade fixtures and fittings) and fixed plant, machinery and apparatus.

"**Insolvency Act**" means the Insolvency Act 1986.

"**Insurances**" of a Chargor means all contracts and policies of insurance of any kind now or in the future taken out by or on behalf of it or (to the extent of its interest) in which it now or in the future has an interest other than those contracts and policies of insurance that the parties have agreed in writing will not constitute Insurances as defined herein.

"**Intellectual Property**" of a Chargor means all patents, rights in designs, copyrights, rights in trade marks, service marks and trading names and any rights of similar or equivalent effect to any of the foregoing and any interest in any of the foregoing which may subsist anywhere in the world (in each case whether registered or unregistered and including any related licences and sub-licences of the same, applications and rights to apply for the same).

"**Investments**" of a Chargor means:

- (a) shares, stock, Debentures, units in a Unit Trust Scheme; and
- (b) warrants, options or other rights to subscribe for, purchase or otherwise acquire those securities and investments described in sub-paragraph (a) above; and
- (c) all other rights attaching or relating to securities or investments and all cash or other securities or investments in the future deriving from investments or such rights,

in each case now or in the future owned by it or (to the extent of its interest) in which it now or in the future has an interest.

"**Liabilities**" of a Chargor means all present and future moneys, debts and liabilities due, owing or incurred by it to the Lender under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise).

"**LPA**" means the Law of Property Act 1925.

"**Material Intellectual Property**" means the Intellectual Property listed in Schedule 4 (*Intellectual Property*) and any other Intellectual Property which may be agreed between the Lender and the Company as being Material Intellectual Property for the purposes of the Finance Documents.

"Original Facility Agreement" means the facility agreement dated 12 September 2002 between the Company, the Original Revolving Credit Facility Borrowers, the Original Overdraft Borrowers, the Original Guarantors, and the Lender as amended by an amendment and restatement agreement dated 13 February 2003, as further amended by an amendment agreement dated 2 July 2003 and as further amended by an amendment agreement dated 21 January 2004.

"Party" means a party to this Deed (whether at the date of this Deed or subsequently becoming a party).

"Real Property" means freehold and leasehold property in England and Wales and other real property anywhere in the world (in each case including any estate or interest therein, all rights from time to time attached or relating thereto and all Fixtures from time to time therein or thereon).

"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.

"Unit Trust Scheme" has the meaning given in Section 237(1) of the Financial Services and Markets Act 2000.

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

#### 1.2 Construction

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

#### 1.3 Third Party Rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

#### 1.4 Designation

The Company and the Lender hereby designate this Deed as a Finance Document.

### 2. UNDERTAKING TO PAY

Each Chargor shall pay each of its Liabilities when due in accordance with its terms.

### 3. FIXED CHARGES

Each Chargor, with full title guarantee (subject, in respect of the Material Intellectual Property, to any Permitted Licences thereof) and as security for the payment of all Liabilities (whether of that or any other Chargor), charges in favour of the Lender:

- (a) by way of legal mortgage, the Charged Property; and
- (b) by way of fixed charge, all its present and future:
  - (i) Book Debts;
  - (ii) Bank Accounts;
  - (iii) Investments;

- (iv) uncalled capital and goodwill;
- (v) Material Intellectual Property;
- (vi) plant and machinery (except that mortgaged or charged by paragraph (a) of this Clause 3); and
- (vii) Insurances.

The legal mortgage referred to in paragraph (a) above, is subject to the Existing Security.

#### **4. FLOATING CHARGE**

##### **4.1 Creation**

Each Chargor, with full title guarantee (subject to the Existing Security, and in respect of the Material Intellectual Property, to any Permitted Licences thereof) and as security for the payment of all Liabilities (whether of that or any other Chargor), charges in favour of the Lender by way of floating charge its undertaking and all its assets, both present and future (including assets expressed to be charged by Clause 3 (*Fixed charges*)).

##### **4.2 Qualifying Floating Charge**

- (a) The floating Charge created by each Chargor pursuant to Clause 4.1 above (*Creation*) is a "qualifying floating charge" for the purposes of paragraph 14.2(a) of Schedule B1 to the Insolvency Act.
- (b) Paragraph 14 of Schedule B1 to the Insolvency Act shall apply to this Deed and the Security Agent may appoint an Administrator of any Chargor pursuant to that paragraph.

##### **4.3 Ranking**

The floating Charge created by each Chargor ranks:

- (a) behind all the fixed Charges created by that Chargor; but
- (b) in priority to any other Security over the Charged Assets of that Chargor except for Security ranking in priority in accordance with Clause 5 (*Security and disposals*) and paragraph (f) of Schedule 2 (*Rights of Receivers*).

##### **4.4 Conversion by notice**

The Lender may convert the floating Charge over all or any of the Charged Assets into a fixed Charge (either generally or specifically) by notice to the relevant Chargor specifying the relevant Charged Assets:

- (a) if it considers it desirable to do so in order to protect or preserve the Charges over those Charged Assets or the priority of those Charges; or
- (b) while an Enforcement Event is continuing.

##### **4.5 Automatic conversion**

If:

- (a) any Chargor takes any step to create any Security in breach of Clause 5 (*Security and disposals*) over any of the Charged Assets not subject to a fixed Charge; or

- (b) any person takes any step to effect any expropriation, attachment, sequestration, distress or execution against any of those Charged Assets,

the floating Charge over the relevant Charged Assets shall automatically and immediately be converted into a fixed Charge.

## 5. SECURITY AND DISPOSALS

Without the written consent of the Lender, no Chargor may:

- (a) create or allow to exist any Security (other than the Existing Security) over any Charged Asset; or
- (b) voluntarily enter into a single transaction, or series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, sub-lease, license, sub-license, transfer or otherwise dispose of any Charged Asset,

unless otherwise permitted by the Finance Documents.

## 6. FURTHER ASSURANCE

### 6.1 General

Each Chargor shall promptly do whatever the Lender requires:

- (a) to 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 Lender or any Receiver,

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

### 6.2 Material Intellectual Property

Each Obligor which is a proprietor of any Material Intellectual Property appoints the Lender as its agent only to apply for the particulars of this Agreement and of the Lender's interest in the Material Intellectual Property from time to time to be entered on the UK and US registers of trade marks and each Obligor agrees to execute all documents and forms required to enable those particulars to be entered on those registers. Each such Obligor shall pay all registry fees necessary to make the registrations required under this Clause to the Lender within 30 days of receiving a valid demand therefor.

## 7. REAL PROPERTY

### 7.1 Documents

Each Chargor shall deposit with the Lender, and the Lender shall be entitled to hold, all title deeds and documents relating to that Chargor's Charged Property.

### 7.2 Existing Charged Property

In the case of a Chargor's existing Charged Property in England and Wales, that Chargor shall:



- (a) promptly apply to H.M. Land Registry for first registration of that Charged Property (where that Charged Property is not already registered at H.M. Land Registry) and registration of that Chargor as proprietor of that Charged Property; and
- (b) promptly apply to H.M. Land Registry to register the legal mortgage created by paragraph (a) of Clause 3 (*Fixed Charges*) and all other Charges;
- (c) promptly submit to H.M. Land Registry the duly completed Form RX1 requesting a restriction in the form specified by the Lender to be entered on the register of the title to that Charged Property in respect of the Charge created by paragraph (a) of Clause 3 (*Fixed Charges*); and
- (d) promptly pay all appropriate registration fees,

or, if the Lender gives notice to that Chargor that the Lender will submit the relevant forms to H.M. Land Registry, that Chargor shall promptly provide the Lender with all duly completed forms reasonably requested by the Lender and all appropriate registration fees.

### **7.3 Unregistered Charged Property**

In the case of a Chargor's Charged Property in England and Wales, both present and future, which is not registered at H.M. Land Registry and is not required to be so registered, that Chargor will promptly apply to register this Deed and the Charges at the Land Charges Registry if the title deeds and documents are not deposited with the Lender.

### **7.4 Legal charge**

As security for the Liabilities, each Chargor shall promptly execute and deliver to the Lender such legal charge of such of its Charged Property from time to time in England and/or Wales in such form as the Lender reasonably requires. The relevant Chargor shall promptly apply to H.M. Land Registry for registration of any such legal charge in the same way as set out in paragraphs (a) – (d) of Clause 7.2 (*Existing Charged Property*), unless the Lender gives notice to that Chargor in relation to registration of such legal charge in the same way as set out in Clause 7.2 (*Existing Property*).

### **7.5 Title Information Document**

On completion of the registration of any Charge pursuant to this Clause 7, the relevant Chargor shall promptly supply to the Lender a certified copy of the relevant Title Information Document issued by H.M. Land Registry.

### **7.6 Compliance with obligations**

Each Chargor shall comply with any covenants, stipulations, conditions, licences, consents and any other statutory, regulatory or contractual obligations relating to its Charged Property or its use, including those requiring payment of sums in respect of its Charged Property.

### **7.7 Leases**

Each Chargor shall:

- (a) comply with all obligations imposed on it, and enforce the due observance and performance of all obligations of all other persons of which it has the benefit, under any lease of Charged Property; and

- (b) not exercise any of the powers of leasing or agreeing to lease any Charged Property vested in or conferred on mortgagors by the general law.

**7.8 Notices**

Each Chargor shall produce to the Lender within 10 Business Days of receipt by it a copy of every material communication made in connection with any of its Charged Property and comply with the reasonable instructions of the Lender in relation to any such communication.

**8. BOOK DEBTS**

**8.1 Collection**

Each Chargor shall promptly collect all Book Debts and shall hold the proceeds of collection on trust for the Lender.

**8.2 Payment into designated Bank Account(s)**

Each Chargor shall immediately pay all moneys received or receivable by it from any source (including all proceeds of collection of Book Debts) into a Bank Account.

**8.3 Documents**

Each Chargor shall promptly execute and/or deliver to the Lender such documents relating to such of its Book Debts as the Lender requires.

**9. BANK ACCOUNTS**

**9.1 Notification of Bank Accounts**

Whenever a Chargor opens a new Bank Account, it shall notify the Lender.

**9.2 Withdrawals**

No Chargor shall make any withdrawal from any Bank Account except:

- (a) with the prior consent of the Lender; or
- (b) in the ordinary course of business from any operating or current Bank Account.

If an amount is withdrawn from a Bank Account as permitted by this Clause 9.2, that amount shall be automatically released from the fixed Charge on that Bank Account on that withdrawal being made. However, if all or part of that amount is paid into another Bank Account which is in credit or becomes in credit as a result, it shall automatically become subject to the fixed Charge on that Bank Account.

**9.3 Documents**

Each Chargor shall promptly execute and/or deliver to the Lender such documents relating to such of its Bank Accounts as the Lender requires, including any notice to the relevant bank or financial institution of the Charges over them.

## 10. INVESTMENTS

### 10.1 Acquisition

Each Chargor shall promptly notify the Lender of its acquisition of, or agreement to acquire, any Investment with an aggregate value or for an aggregate consideration of over US\$2,500,000 or the equivalent in another currency.

### 10.2 Documents

Each Chargor shall:

- (a) except to the extent the Lender notifies that Chargor from time to time to the contrary, deposit with the Lender, or as it directs, all certificates representing its Investments; and
- (b) execute and/or deliver to the Lender such other documents relating to its Investments, including transfers of Investments executed in blank, as the Lender requires.

### 10.3 Voting before enforcement

Subject to Clause 10.4 (*Voting after enforcement*), each Chargor shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Investment as it sees fit provided that:

- (a) it does so for a purpose not inconsistent with any Finance Document; and
- (b) the exercise of or failure to exercise those rights would not reasonably be expected to have an adverse effect on the value of the relevant Investment or the Charged Assets and would not reasonably be expected to otherwise prejudice the interests of the Lender under any Finance Document.

### 10.4 Voting after enforcement

At any time while an Enforcement Event is continuing:

- (a) the Lender or the Receiver shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Investment in such manner as it or he sees fit; and
- (b) each Chargor shall comply or procure the compliance with any directions of the Lender or the Receiver in respect of the exercise of those rights and shall promptly execute and/or deliver to the Lender or the Receiver such forms of proxy as it or he requires with a view to enabling such person as it or he selects to exercise those rights.

### 10.5 Power of attorney

If any Investment of a Chargor is not held in that Chargor's name, that Chargor shall promptly deliver to the Lender an irrevocable power of attorney, expressed to be given by way of security and executed as a deed by the person in whose name that Investment is held. That power of attorney shall appoint the Lender, each Receiver and each Delegate, as the attorney of the holder and shall be in such form as the Lender requires.

## 10.6 **Communications**

Each Chargor shall promptly execute and/or deliver to the Lender a copy of each circular, notice, report, set of accounts or other document received by it or its nominee in connection with any Investment, as the Lender requires.

## 11. **INSURANCE**

### 11.1 **Documents**

Each Chargor shall promptly:

- (a) execute and/or deliver to the Lender copies of all policies and contracts in respect of Insurances and the related premium receipts, and of such other documents relating to the Insurances, as the Lender requires; and
- (b) procure that the Lender is noted as an interested party.

### 11.2 **Maintenance**

Each Chargor shall maintain such Insurances in respect of its Charged Assets in accordance with Clause 23.11 (*Insurances*) of the Facility Agreement.

### 11.3 **Enforceability**

No Chargor shall do or omit to do or permit to be done or omitted anything which might render any such Insurance void, voidable or unenforceable.

## 12. **GENERAL UNDERTAKINGS**

### 12.1 **Protection of assets**

Save in relation to the refurbishment of the properties comprised in the Charged Assets, each Chargor shall keep or cause to be kept all of its tangible Charged Assets in good repair and good working order.

### 12.2 **Access**

Each Chargor shall ensure that representatives of the Lender (with or without surveyors, workmen and others) are able at all reasonable times to view the condition of any of its tangible Charged Assets.

### 12.3 **No fixing**

No Chargor shall fix or permit the affixing of any tangible Charged Asset to any of its Real Property which is not itself a Charged Asset.

### 12.4 **No other prejudicial conduct**

No Chargor shall do, or permit to be done, anything which would reasonably be expected to prejudice the Charges.

## 13. **REPRESENTATIONS AND WARRANTIES**

Each Chargor makes the representations and warranties set out in clause 20 (*Representations*) of the Facility Agreement to the Lender on the date of this Deed.

## 14. ENFORCEMENT

### 14.1 When enforceable

As between the Chargors and the Lender the Charges shall be enforceable, and the powers conferred by Section 101 of the LPA as varied and extended by this Deed shall be exercisable, while an Enforcement Event is continuing.

### 14.2 Power of sale

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.

### 14.3 Section 103 LPA

Section 103 of the LPA shall not apply to this Deed.

## 15. APPOINTMENT AND RIGHTS OF RECEIVERS

### 15.1 Appointment of receivers

If:

- (a) requested by any Chargor;
- (b) any corporate action, legal proceedings or other procedure or step is taken in relation to the administration of any Chargor; or
- (c) any other Enforcement Event is continuing (whether or not the Lender has taken possession of the Charged Assets),

without any notice or further notice, the Lender may, by deed, or otherwise in writing signed by any officer or manager of the Lender or any person authorised for this purpose by the Lender, appoint one or more persons to be a Receiver. The Lender may similarly remove any Receiver and appoint any person instead of any Receiver. If the Lender appoints more than one person as Receiver, the Lender may give those persons power to act either jointly or severally.

### 15.2 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 2 (*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.

### 15.3 Rights of Receivers

Any Receiver appointed pursuant to this Clause 16 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 2 (*Rights of Receivers*).

#### **15.4 Agent of Chargor**

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

#### **15.5 Remuneration**

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

### **16. LENDER'S RIGHTS**

#### **16.1 Same rights as Receiver**

Any rights conferred by any Finance Document upon a Receiver may be exercised by the Lender after the Charges become enforceable, whether or not the Lender shall have taken possession or appointed a Receiver of the Charged Assets.

#### **16.2 Delegation**

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

### **17. ORDER OF DISTRIBUTIONS**

#### **17.1 Application of proceeds**

All amounts received or recovered by the Lender or any Receiver or Delegate in exercise of their rights under this Deed shall, subject to the rights of any creditors having priority, be applied in the order provided in Clause 17.2 (*Order of distributions*).

#### **17.2 Order of distributions**

The order referred to in Clause 17.1 (*Application of proceeds*) is:

- (a) in or towards the payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver or Delegate and the exercise of any of his rights, including his remuneration and all outgoings paid by him;
- (b) in or towards the payment of the Liabilities in accordance with clause 29.4 (*Partial payments*) of the Facility Agreement; and
- (c) in payment of any surplus to any Chargor or other person entitled to it.

### **18. LIABILITY OF LENDER, RECEIVERS AND DELEGATES**

#### **18.1 Possession**

If the Lender, any Receiver or any Delegate takes possession of the Charged Assets, it or he may at any time relinquish possession. Without prejudice to Clause 18.2 (*Lender's liability*), the Lender shall not be liable as a mortgagee in possession by reason of viewing or repairing any of the present or future assets of any Chargor.

## 18.2 Lender's liability

Neither the Lender nor 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 any Chargor 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 Lender, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Charged Assets or in connection with the Finance Documents except to the extent caused by its or his own gross negligence or wilful misconduct.

## 19. POWER OF ATTORNEY

### 19.1 Appointment

Each Chargor by way of security irrevocably appoints the Lender, 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 that Chargor is obliged to do (but has not done) under any Finance 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 Lender, any Receiver or any Delegate in relation to the Charged Assets or under any Finance Document, the LPA or the Insolvency Act.

### 19.2 Ratification

Each 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 19.1 (*Appointment*).

## 20. PROTECTION OF THIRD PARTIES

### 20.1 No duty to enquire

No person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:

- (a) whether the rights conferred by or pursuant to any Finance 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.

### 20.2 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 Lender, any Receiver or any Delegate.

## **21. SAVING PROVISIONS**

### **21.1 Continuing Security**

Subject to Clause 22 (*Discharge of Security*), the Charges are continuing Security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part.

### **21.2 Reinstatement**

If any payment by a Chargor or any discharge given by the Lender (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Chargor and the Charges shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Lender shall be entitled to recover the value or amount of that security or payment from each Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

### **21.3 Additional Security**

The Charges are in addition to and are not in any way prejudiced by any other guarantees or security now or subsequently held by the Lender.

### **21.4 Tacking**

The Lender shall comply with its obligations under the Finance Documents (including any obligation to make further advances).

## **22. DISCHARGE OF SECURITY**

### **22.1 Release of Part**

To the extent that a Chargor intends to dispose of any Charged Asset and such disposal is in compliance with Clause 23.5 (*Disposals*) of the Facility Agreement, the Lender shall at the request and cost of such Chargor release or discharge (as appropriate) such Charged Asset from the Charges by way of a deed of release substantially in the form set out in Schedule 5.

### **22.2 Final redemption**

Subject to Clause 22.3 (*Retention of security*) and unless otherwise previously released pursuant to this Deed, if the Lender is satisfied that all the Liabilities have been irrevocably paid in full and that all facilities which might give rise to Liabilities have terminated, the Lender shall at the request and cost of the Chargors release, reassign or discharge (as appropriate) the Charged Assets from the Charges.

### **22.3 Retention of security**

If the Lender considers that any amount paid or credited to it under any Finance Document is capable of being avoided or otherwise set aside on the Winding-up of any 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 Liabilities have been irrevocably paid.



#### **22.4 Consolidation**

Section 93 of the LPA shall not apply to the Charges.

### **23. ENFORCEMENT EXPENSES**

#### **23.1 Expenses**

Each Chargor shall, within three Business Days of demand, pay to the Lender the amount of all costs, losses, liabilities and expenses (including legal fees) incurred by the Lender, any Receiver or any Delegate in relation to any Finance Document (including the administration, protection, realisation, enforcement or preservation of any rights under or in connection with this Deed, or any consideration by the Lender as to whether to realise or enforce the same, and/or any amendment, waiver, consent or release of any Finance Document and/or any other document referred to in this Deed).

#### **23.2 Value Added Tax**

Clause 14.6 (*Value added tax*) of the Facility Agreement shall apply also to any amount payable under any Finance Document to any Receiver or Delegate as if references to the Lender were references to the Receiver or Delegate, as the case may be.

### **24. PAYMENTS**

#### **24.1 Payments**

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

#### **24.2 Continuation of accounts**

At any time after:

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

the Lender may open a new account in the name of that Chargor (whether or not it permits any existing account to continue). If the Lender 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 Finance Document to which that Chargor is party.

#### **24.3 Joint and several liability**

The liability of each Chargor under this Deed shall be joint and several. Each agreement and undertaking of any Chargor shall be construed accordingly.

## **25. RIGHTS, WAIVERS AND DETERMINATIONS**

### **25.1 Ambiguity**

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

### **25.2 Exercise of rights**

No failure to exercise, nor any delay in exercising, on the part of the Lender, Receiver or Delegate, any right or remedy under any Finance 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 Finance 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.

### **25.3 Determinations**

Any certification or determination by the Lender or any Receiver or Delegate under any Finance Document is, in the absence of manifest error, prima facie evidence of the matters to which it relates.

## **26. SEPARATE AND INDEPENDENT OBLIGATIONS**

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

## **27. INDEMNITIES**

### **27.1 Environmental indemnity**

Each Chargor shall indemnify the Lender against any and all costs, losses, liabilities or expenses together with any associated VAT incurred by the Lender (except as a result of the Lender's wilful default or gross negligence) arising (directly or indirectly) out of or in connection with:

- (a) any breach or potential breach of or liability (whether civil and/or criminal) under any Environmental Law; or
- (b) any responsibility on the part of the Lender in respect of any clean-up, repair or other corrective action.

### **27.2 Indemnities separate**

Each indemnity in each Finance Document shall:

- (a) constitute a separate and independent obligation from the other obligations in that or any other Finance Document;
- (b) give rise to a separate and independent cause of action;
- (c) apply irrespective of any indulgence granted by the Lender;
- (d) continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any Liability or any other judgment or order; and

- (e) apply whether or not any claim under it relates to any matter disclosed by any Chargor or otherwise known to the Lender.

**28. 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.

**29. GOVERNING LAW**

This Deed is governed by English law.

**In witness** whereof this Deed has been duly executed as a deed on the date stated at the beginning of this Deed.

**SCHEDULE 1  
THE CHARGORS**

<b>Name of Chargor</b>	<b>Registration number (or equivalent, if any)</b>
A&G UK Limited	04144024
Asprey Holdings Limited	103844
Garrard Holdings Limited	4144080
Asprey London Limited	1004355
Asprey Polo Limited	1601691
Garrard & Co. Limited	57545
Garrard (UK) Group Limited	5022969
A & G International Holdings Limited	498824
Asprey Worldwide Holdings Limited	446820
A & G Services Limited	498819
Garrard Worldwide Holdings Limited	446821
A & G Services USA Ltd	725 Fifth Avenue, New York 10022 USA
Asprey Ltd	725 Fifth Avenue, New York 10022 USA
Garrard USA Ltd	725 Fifth Avenue, New York 10022 USA

**SCHEDULE 2**  
**RIGHTS OF RECEIVERS**

Any Receiver appointed pursuant to Clause 16 (*Appointment and rights of Receivers*) shall have the right, either in his own name or in the name of the relevant 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 the Lender of any Book Debts or credit balance on any Bank Account;

(b) **Carry on business**

to manage and carry on any business of that Chargor;

(c) **Contracts**

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

(d) **Deal with Charged Assets**

to sell, transfer, assign, exchange, hire out, lend, license or sub-license or otherwise dispose of or realise the Charged Assets (including any Fixtures, which may be sold separately from the related Real Property) to any person (including a new company formed pursuant to paragraph (e) (*Hive down*)) either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);

(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) **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);

(g) **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;

(h) **Dealings with tenants**

to grant leases, tenancies, licences and rights of user, grant renewals and accept surrenders of leases, tenancies, licences or rights of user, and otherwise to reach agreements and make arrangements with, and to make allowances to, any lessees, tenants or other persons (including a new company formed pursuant to paragraph (e) (*Hive down*)) from whom any rents and profits

may be receivable (including those relating to the grant of any licences, the review of rent in accordance with the terms of, and the variation of, the provisions of any leases, tenancies, licences or rights of user affecting the Charged Assets);

**(i) Rights of ownership**

to manage and use the Charged Assets and to exercise and do (or permit that 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 he were the absolute beneficial owner of the Charged Assets;

**(j) Insurance, repairs, improvements etc.**

to insure the Charged Assets, to carry out decorations, repairs, alterations, improvements and additions to the Charged Assets (including the development or redevelopment of any Real Property) and to purchase or otherwise acquire or do anything in connection with the Charged Assets;

**(k) Claims**

to 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 that 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 that 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) Employees etc.**

to appoint, hire and employ officers, employees, contractors, agents, advisors and others and to discharge any such persons and any such persons appointed, hired or employed by that Chargor;

**(o) Insolvency Act**

to exercise all powers set out in Schedule 1, Schedule B1 or (in the case of a Scottish Receiver) Schedule 2 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 or Schedule 2, as the case may be, after the date of this Deed; and

**(p) Other powers**

to do anything else he 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 Finance Document to which the relevant Chargor is party, the LPA or the Insolvency Act.

**SCHEDULE 3  
REAL PROPERTY**

<b>Property</b>	<b>Title Number</b>	<b>Registered Proprietor</b>	<b>Type of Title in Asprey's Interest</b>	<b>Charge in Favour of</b>
165 New Bond Street	260753	Asprey Holdings Limited (formerly known as Asprey & Garrard Limited)	Registered with Good Leasehold Title	Midland Bank plc
166 New Bond Street	260753	Asprey Holdings Limited (formerly known as Asprey & Garrard Limited)	Registered with Good Leasehold Title	Midland Bank plc
166 New Bond Street	NGL523847	Asprey Holdings Limited (formerly known as Asprey & Garrard Limited)	Registered with Good Leasehold Title	Midland Bank plc
167 New Bond Street	260753	Asprey Holdings Limited (formerly known as Asprey & Garrard Limited)	Registered with Good Leasehold Title	Midland Bank plc
Part of 22 Albemarle Street	260753	Asprey Holdings Limited (formerly known as Asprey & Garrard Limited)	Registered with Good Leasehold Title	Midland Bank plc
22 Albemarle Street	NGL827040	Asprey Holdings Limited (formerly known as Asprey & Garrard Limited)	Registered with Good Leasehold Title	Midland Bank plc
23/24 Albemarle Street and 16a-c Grafton Street	259990	Asprey Holdings Limited (formerly known as Asprey & Garrard Limited)	Registered with Good Leasehold Title	

**SCHEDULE 4  
INTELLECTUAL PROPERTY**

**Registrations**

Proprietor	Trade Mark	Designated Country	Filing Date	Registration No.	Classes	Renewal Date
Asprey Holdings Limited	ASPREY	UK	8 March 1971	972001	14	8 March 2006
Asprey Holdings Limited	ASPREY	US	27 September 1982	1378032	14,18,21	14 January 2006
Garrard Holdings Limited	GARRARD	UK	1 April 1980	1131335	14	1 April 2011
Garrard Holdings Limited	CROWN & G LOGO	UK	16 February 2002	2293013	3, 8, 9, 11, 13, 14, 16, 18, 20, 21, 25, 28, 33, 34, 35	16 February 2012
Asprey Holdings Limited	GARRARD	US	16 September 2003	2831186 (Application No. 76/237679)	8, 14, 16, 18, 21	16 September 2013
Garrard Holdings Limited	CROWN & G LOGO	US	16 September 2003	2,763,828 (Application No. SB 76/439109)	14	16 September 2013



**SCHEDULE 5**  
**FORM OF DEED OF RELEASE**

This Deed of Release is made on [ \_\_\_\_\_ ] between:

- (1) **[Chargor]**, a company incorporated in [     ] (Registered No. [     ]) having its registered office at [     ] (the "Company"); and
- (2) **HSBC Bank PLC** (the "Lender", which expression includes its successors and assigns).

**Background**

- (A) By a Fixed and Floating Charge Security Document dated • 2004 (the "Debenture") between the Company and the Lender, the Company gave certain undertakings for payment and indemnities to, and created certain security in favour of, the Lender.
- (B) The Lender has been requested by the Company to release the part of the Charged Property listed in the attached schedule (the "Released Property") from the Security created pursuant to the Debenture.

Now this Deed of Release witnesses and it is agreed as follows:

**1 Definitions**

Terms defined or references construed in the Debenture shall have the same meaning and construction in this Deed.

**2 Release**

- 2.1 The Lender hereby releases the Released Property which was subject to the fixed and floating charges granted by the Company under Clause 3 (*Fixed Charges*) and Clause 4 (*Floating Charge*) of the Debenture, to the intent that the same shall, subject to Clause 22.3 (*Retention of security*) of the Debenture, henceforth be held, freed and discharged from such security created by, and all claims arising under, the Debenture.
- 2.2 The Lender undertakes, at the cost of the Company, to do all things reasonably necessary to give effect to the release and discharge of the Released Property referred to in Clause 2.1 above.

**3 Preservation of Rights**

Except as expressly stated in Clause 2 (*Release*), nothing in this Deed shall in any way affect or prejudice the provisions of the Debenture or the obligations of the Company with respect to the Liabilities or under any Finance Document.

**4 Expenses**

The Company shall promptly on demand pay to the Lender all costs and expenses (including legal fees) incurred by the Lender in connection with the negotiation, preparation, printing and execution of this Deed.

**5 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.

**6 Governing Law**

This Deed is governed by English law.

In witness whereof this Deed has been duly executed as a deed on the date stated at the beginning.

**The Schedule  
(Details of the Released Property)**

**SIGNED as a DEED by**

**Signature of Director**

**[CHARGOR] acting by [name of Director] a Director  
and [name of Director] or [Secretary] [a Director]  
[the Secretary]**

**Signature of Director or Secretary**

**Address:**

**Fax No:**

**Attention:**

**SIGNED by [name of authorised signatory] for and  
on behalf of **HSBC Bank PLC** in the presence of:**

**Signature of authorised signatory**

.....

**Address:**

**Fax No:**

**Attention:**

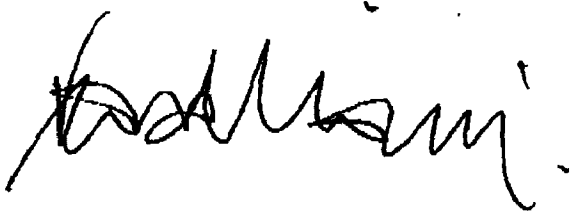
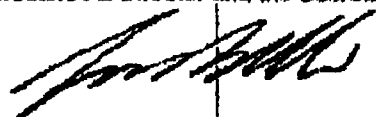
**THE CHARGORS**

**SIGNED as a DEED by**

**A&S UK LIMITED**

acting by

two Directors / a Director and the Secretary



Address: 23 Albemarle Street  
London  
W1S 4AS

Fax No: +44 20 7758 6558

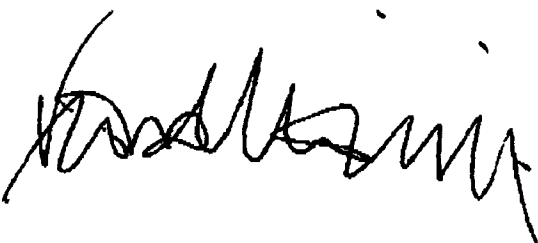
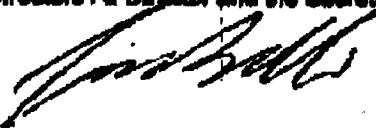
Attention: Patricia deSantis  
cc: Fiona Morrison

**SIGNED as a DEED by**

**ASPREY HOLDINGS LIMITED**

acting by

two Directors / a Director and the Secretary



Address: 167 New Bond Street  
London  
W1S 4AR

Fax No: +44 20 7758 6559

Attention: Patricia deSantis  
cc: Fiona Morrison

SIGNED as a DEED by

**GARRARD HOLDINGS LIMITED**

acting by

two Directors / a Director and the Secretary

Address: 23 Abchurch Lane  
London  
WC1A 3BS

Fax No: +44 20 7788 8559

Attention: Patricia deSantis  
cc: Fiona Morrison

SIGNED as a DEED by

**ASPREY LONDON LIMITED**

acting by

two Directors / a Director and the Secretary

Address: 167 New Bond Street  
London  
W1S 4AR

Fax No: +44 20 7788 8559

Attention: Patricia deSantis  
cc: Fiona Morrison

**SIGNED as a DEED by**

**ASPREY POLO LIMITED**

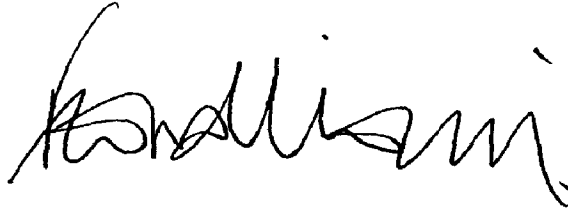
acting by

two Directors / a Director and the Secretary

Address: 23 Albemarle Street  
London  
W1S 4AS

Fax No: +44 20 7758 8559

Attention: Patrizia deSantis  
cc: Fiona Morrison

A handwritten signature in black ink, appearing to read 'Kandisani', written in a cursive style.

**SIGNED as a DEED by**

**GARRARD & CO. LIMITED**

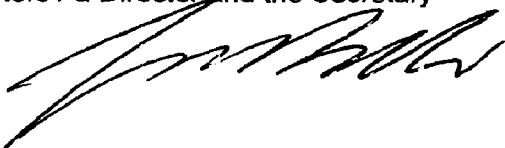
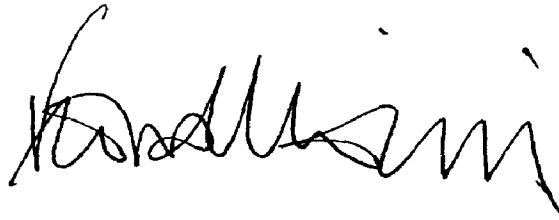
acting by

two Directors / a Director and the Secretary

Address: 23 Albemarle Street  
London  
W1S 4AS

Fax No: +44 20 7758 8559

Attention: Patrizia deSantis  
cc: Fiona Morrison

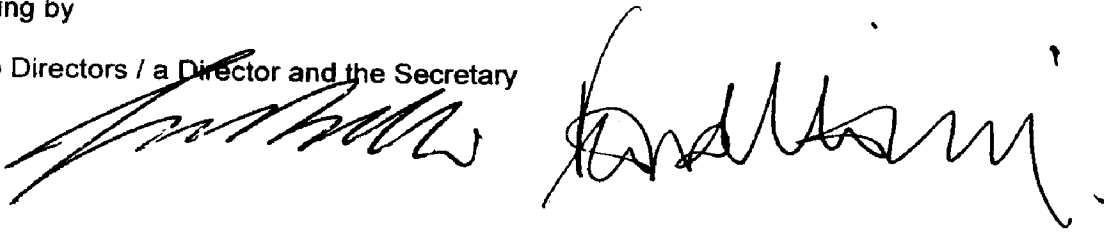
A handwritten signature in black ink, appearing to read 'Kandisani', written in a cursive style.A handwritten signature in black ink, appearing to read 'Kandisani', written in a cursive style.

**SIGNED as a DEED by**

**GARRARD (UK) GROUP LIMITED**

acting by

two Directors / a Director and the Secretary



Address: 23 Albemarle Street  
London  
W1S 4AS

Fax No: +44 20 7758 8559

Attention: Fiona Morrison

**THE COMMON SEAL of**

**A&G INTERNATIONAL HOLDINGS LIMITED**

was hereunto affixed by

a Director

in the presence of:

Director

Witness

Address: PO Box 957  
Incorporations Centre  
Road Town  
Tortola  
BVI

Fax No: 00 852 2785 7012

Attention: Margaret Chou



**SIGNED as a DEED by**

**GARRARD (UK) GROUP LIMITED**

acting by

two Directors / a Director and the Secretary

Address: 23 Albemarle Street  
London  
W1S 4AS

Fax No: +44 20 7758 8559

Attention: Fiona Morrison

**THE COMMON SEAL of**

**A&G INTERNATIONAL HOLDINGS LIMITED**

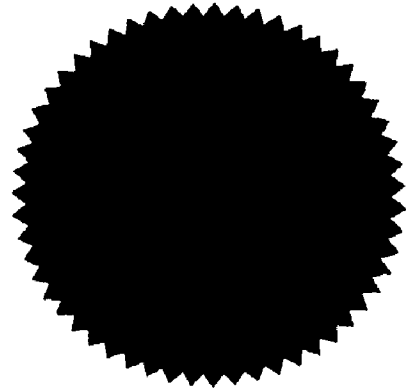
was hereunto affixed by Mang-Yin Ma,

a Director

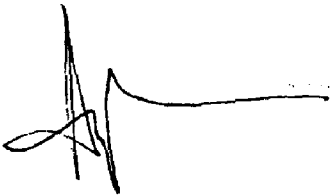
in the presence of: Augustine Kin-Keung Tse



Director



Witness



Address: PO Box 957  
Incorporations Centre  
Road Town  
Tortola  
BVI

Fax No: 00 852 2785 7012

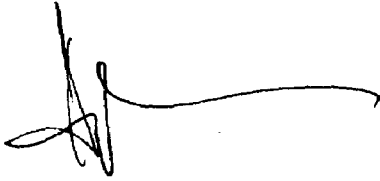
Attention: Margaret Chou

**THE COMMON SEAL of  
ASPREY WORLDWIDE HOLDINGS LIMITED**

was hereunto affixed by Mang-Yin Ma,  
a Director

in the presence of: Augustine Kin-Keung Tse

Witness



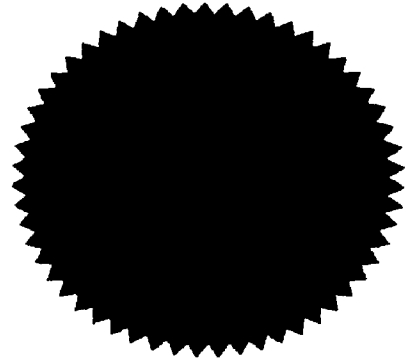
Address: PO Box 957  
Incorporations Centre  
Road Town  
Tortola  
BVI

Fax No: 00 852 2785 7012

Attention: Margaret Chou



Director



**THE COMMON SEAL of  
A&G SERVICES LIMITED**

was hereunto affixed by Mang-Yin Ma,  
a Director

in the presence of: Augustine Kin-Keung Tse

Witness



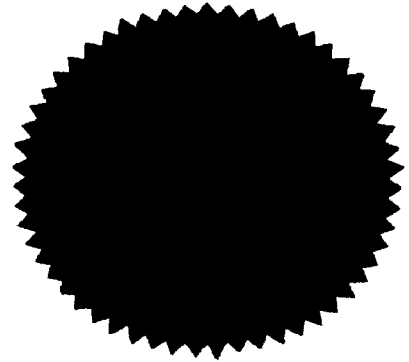
Address: PO Box 957  
Incorporations Centre  
Road Town  
Tortola  
BVI

Fax No: 00 852 2785 7012

Attention: Margaret Chou



Director



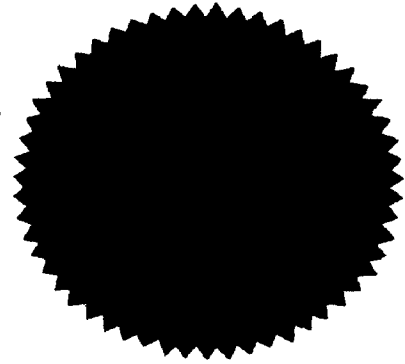
**THE COMMON SEAL of  
GARRARD WORLDWIDE HOLDINGS LIMITED**

was hereunto affixed by Mang-Yin Ma,  
a Director

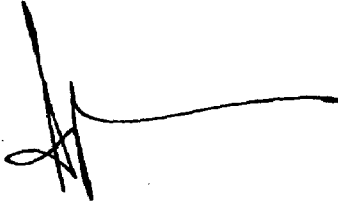
in the presence of: Augustine Kin-Keung Tse



Director



Witness



Address: PO Box 957  
Incorporations Centre  
Road Town  
Tortola  
BVI

Fax No: 00 852 2785 7012

Attention: Margaret Chou

SIGNED by  
on behalf of **A&G SERVICES USA LIMITED**  
and thereby executed by it as a **DEED**

Address: 725 Fifth Avenue  
New York  
10022  
USA

Fax No: +44 20 7758 8559

Attention: Patrizia deSantis  
cc: Fiona Morrison



A04229810/0.8/03 Aug 2004

- 31 -

**TRADEMARK**  
**REEL: 003046 FRAME: 0662**

**THE COMMON SEAL of**

**GARRARD WORLDWIDE HOLDINGS LIMITED**

was hereunto affixed by

a Director

in the presence of:

Director

Witness

Address: PO Box 957  
Incorporations Centre  
Road Town  
Tortola  
BVI

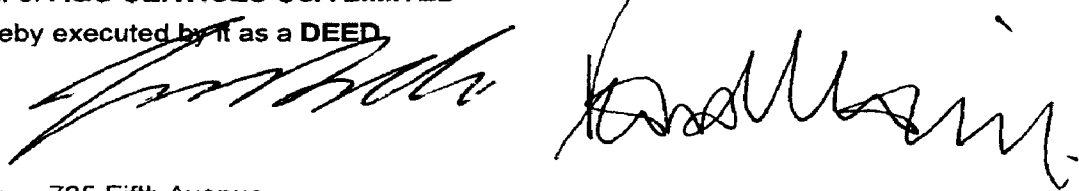
Fax No: 00 852 2785 7012

Attention: Margaret Chou

SIGNED by

on behalf of **A&G SERVICES USA LIMITED**

and thereby executed by it as a **DEED**

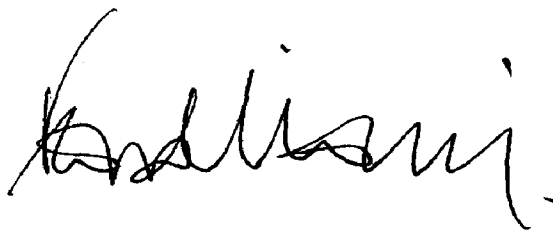
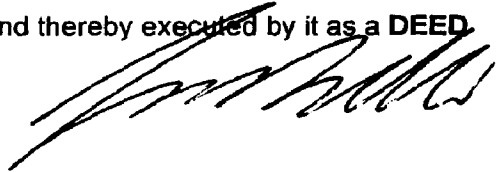


Address: 725 Fifth Avenue  
New York  
10022  
USA

Fax No: +44 20 7758 8559

Attention: Patrizia deSantis  
cc: Fiona Morrison

SIGNED by  
on behalf of **ASPREY LTD**  
and thereby executed by it as a **DEED**

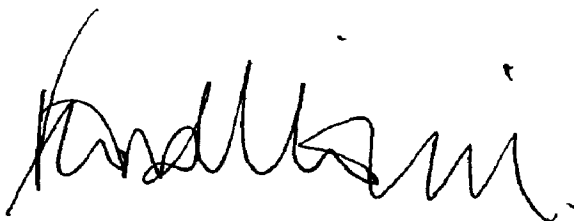
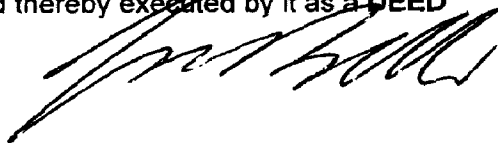


Address: 725 Fifth Avenue  
New York  
10022  
USA

Fax No: +44 20 7758 8559

Attention: Patrizia deSantis  
cc: Fiona Morrison

SIGNED by  
on behalf of **GARRARD USA LTD**  
and thereby executed by it as a **DEED**



Address: 725 Fifth Avenue  
New York  
10022  
USA

Fax No: +44 20 7758 8559

Attention: Patrizia deSantis  
cc: Fiona Morrison