

**Date 14 March 2019**

**EQUITY FOR GROWTH (SECURITIES) LIMITED**

as Security Trustee

**MIXG LIMITED**

as Issuer

**TRUST DEED (“the Deed”)**

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**THIS TRUST DEED ("the Deed")** is made the 28<sup>th</sup> January 2019.

**BETWEEN:**

- (1) **EQUITY FOR GROWTH (SECURITIES) LIMITED** (the "**Security Trustee**") a company registered in England and Wales with registration number 05410446 and whose registered office is at International House 24 Holborn Viaduct, City of London, London, England, EC1A 2BN, in its capacity as trustee for the Secured Parties; and
- (2) **MIXG LIMITED** (the "**Issuer**") a limited liability company registered in England and Wales with registration number **11602211** and whose registered office is at C/O Magna Asset Management Ltd, Berkeley Square House, Berkeley Square, London W1J 6BD United Kingdom.

**IT IS AGREED** as follows:

**1. Definitions and interpretation.**

**1.1. Definitions**

In this Deed:

**"Affiliate"** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

**"Company"** as defined in the Bond Instrument dated 14 March 2019;

**"Conditions"** as defined in the Bond Instrument dated 14 March 2019;

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Security Trustee;

**"Event of Default"** shall have the meaning given to that term in Clause 9 in the Instrument;

**"Fee Letter"** means any letter or letters dated on or about the date of this Deed between the Security Trustee and the Issuer setting out any of the fees referred to in Clause 7.1;

**"Finance Document"** means any Bonds (including the terms and conditions of the Bonds), any Fee Letter, the Instrument, this Deed, the Security Agreement and any other document designated as a 'Finance Document' by the Issuer and the Security Trustee;

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary;

**"Insolvency"** includes any form of insolvency, bankruptcy, liquidation, receivership, administration, suspension of payments or arrangement or composition with creditors under any corporate or insolvency law in the United Kingdom;

**"Instrument"** means the Bond Instrument constituting the Bonds dated and executed by the Issuer on 14 March 2019 in Exhibit 1.

**"Noteholder"** means any registered holder of the Bonds at any one time;

**"Noteholder Resolution"** means a special resolution of the Bondholders passed in accordance with Conditions 16, 17 and 18 of the Instrument.

**"Notes"** means up to £20,000,000 36 Month Fixed Rate Secured Loan Notes 2022 at fixed rate of 10% - 18% per annum, issued or to be issued by the Issuer pursuant to the instruments;

**"Party"** means a party to this Deed;

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Property;

**"Secured Obligations"** has the meaning given to that term in the Security Agreement;

**"Secured Parties"** means:

- (a) the Security Trustee; and
- (b) the Noteholders;

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**"Security Property"** means:

- (a) the Security expressed to be granted pursuant to the Security Agreement in favour of the Security Trustee as trustee for the Secured Parties and all proceeds of that Security; and
- (b) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Trustee is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties;

**"Security Agreement"** means the security agreement dated on or about the date of this Deed between the Issuer and the Security Trustee over all assets and undertakings of the Issuer;

**"Special Resolution"** has the meaning given to that term in the conditions of the Notes in Exhibit 2;

**"Subsidiary"** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

## **1.2. Construction**

(a) Any reference in this Deed to:

- (i) this **"Deed"**, **"Security Agreement"** and **"Finance Document"** or any other **agreement** or **instrument** is a reference to this Deed, Security Agreement, such Finance Document or such other agreement or instrument as the same may have been, or may from time to time be, amended, varied, supplemented, novated, extended or restated;
- (ii) the **"Issuer"**, the **"Security Trustee"**, or the **"Secured Parties"** or any other person includes its respective successors in title, permitted assigns and/or permitted transferees;

- (iii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or any other entity (whether or not having a separate legal personality);
- (iv) a provision of law is a reference to that provision as amended or re-enacted and includes any subordinate legislation; and
- (v) words in the singular include the plural and vice versa and words in one gender include any other gender.
- (vi) a reference to writing or written includes e-mail

### **1.3. Third party rights**

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (c) Any Receiver, Delegate, any Noteholder or any other person described in paragraph (b) of Clause 2.9 (*Exclusion of Liability*) may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

## **2. The Security Trustee**

### **2.1. Security Trustee as trustee**

- (a) The Security Trustee declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Deed.
- (b) The Issuer irrevocably and unconditionally authorises the Security Trustee to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Trustee under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **2.2. Instructions**

- (a) The Security Trustee shall:
  - (i) subject to paragraphs (d) and (6) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Trustee in accordance with any prior instructions given to pursuant to a Noteholder Resolution; and
  - (ii) not be liable to anyone whatsoever for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Security Trustee shall be entitled to request instructions, or clarification of any instruction, (by calling a meeting or circulating a written resolution in accordance with Schedule 3 of the Instrument) from the Noteholders as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the

Security Trustee may refrain from acting unless and until it receives those instructions or that clarification to its satisfaction and is satisfied that they were passed in accordance with Schedule 3 of the Instrument and shall not be liable for any loss resulting from any delay in acting (or not acting) whilst seeking such instructions, clarification or instruction.

(c) Paragraph (a) above shall not apply:

- (i) where a contrary indication appears in a Finance Document;
- (ii) where a Finance Document requires the Security Trustee to act in a specified manner or to take a specified action; and
- (iii) in respect of any provision which protects the Security Trustee's own position in its personal capacity as opposed to its role of Security Trustee for the Secured Parties including, without limitation, Clauses 2.5 (*No duty to account*) to Clause 2.9 (*Exclusion of Liability*), Clause 2.11 (*Confidentiality*) to Clause 2.15 (*Custodians and nominees*) and Clause 2.18 (*Acceptance of title*) to Clause 2.21 (*Disapplication of Trustee Acts*).

(d) In exercising any discretion to exercise a right, power or authority under the Finance Documents where it has not received any instructions as to the exercise of that discretion, the Security Trustee shall do so having regard to the interests of all the Secured Parties.

(e) The Security Trustee may refrain from acting in accordance with any instructions of any Noteholder;

- (i) until it has received such indemnification and/or security and/or prefunding that it may in its absolute discretion require which may be greater in extent than that contained in the Finance Documents and which may include payment in advance for any cost, expense, loss or liability together with any applicable VAT which it may incur in complying with those instructions; and
- (ii) in the case of any instruction to modify the terms of this Deed or any other Finance Document to which it is a party, the Security Trustee shall not be required to make such modification if, in the sole opinion of the Security Trustee, making such modification would impose new or additional obligations on, release the rights or protections of, or alter the obligations, rights and protections of, the Security Trustee under this Deed, any other Finance Document or otherwise.

(f) Without prejudice to the remainder of this Clause 2.2, in the absence of instructions pursuant to a Noteholder Resolution, the Security Trustee may act or refrain from acting as it considers in its discretion to be appropriate and shall not incur any liability to anyone whatsoever for so acting or not acting as the case may be.

### **2.3. Duties of the Security Trustee**

- (a) The Security Trustee's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) If the Security Trustee receives notice from the Issuer referring to any Finance Document, describing an Event of Default and stating that the circumstance described is an Event of Default, it shall promptly send written notice to the Noteholders.

- (c) The Security Trustee shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **2.4. No fiduciary duties to the Issuer**

Nothing in this Deed or under any Finance Document constitutes the Security Trustee as an agent, trustee or fiduciary of the Issuer.

#### **2.5. No duty to account**

The Security Trustee shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

#### **2.6. Rights and discretions**

- (a) The Security Trustee may refrain from acting in accordance with any instructions of any Noteholder;

- (i) rely on any representation, warranty, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

- (ii) assume that:

- (A) any instructions received by it pursuant to a Noteholder Resolution, are duly given in accordance with the terms of the Finance Documents and shall have no duty to verify any signature on any document;

- (B) unless it has received notice of revocation, that those instructions have not been revoked; and

- (C) if it receives any instructions to act in relation to the Security Agreement, that all applicable conditions under the Finance Documents for so acting have been satisfied; and

- (iii) rely on a certificate from any person:

- (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

- (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Security Trustee may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:

- (i) no Event of Default has occurred;

- (ii) no Security has become enforceable; and

- (iii) any right, power, authority or discretion vested in any Party or any group of Noteholders has not been exercised.
- (c) The Security Trustee may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Trustee may at any time engage and pay for the services of any lawyer to act as independent counsel to the Security Trustee and so separate from any lawyer and/or lawyers instructed by any Noteholder if the Security Trustee in its reasonable opinion deems this to be desirable.
- (e) The Security Trustee may rely on the advice or services of any lawyer, accountant, tax adviser, surveyor or other professional adviser or expert whether obtained by the Security Trustee or by the Issuer and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Security Trustee, any Receiver and any Delegate may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the respective Security Trustee's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Deed expressly specifies otherwise, the Security Trustee may disclose to the issuer and to any person engaged by it any information it reasonably believes it has received as security trustee under this Deed or any Finance Document.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee is not obliged to do or omit to do anything if it would, or might in its opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality and the Security Trustee may do anything which is, in its opinion, necessary to comply with any law, directive or regulation.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Security Trustee is not obliged to expend or risk its own funds or otherwise incur any financial liability and/or indebtedness in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

## **2.7. Responsibility for documentation**

None of the Security Trustee nor any of its officers, employees or agents, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information whether oral or written supplied by the Issuer or any other person in connection with any Finance Document or



the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

## **2.8. No duty to monitor**

The Security Trustee shall not be bound to enquire:

- (a) whether or not any Event of Default has occurred;
- (b) as to the performance, default or any breach by the Issuer of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

## **2.9. Exclusion of liability**

- (a) Without limiting paragraph (b) below and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Trustee, any Receiver or Delegate, none of the Security Trustee, any Receiver nor any Delegate will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Security Property;
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) Neither the Issuer or any Secured Party may take any proceedings against any officer, employee or agent of the Security Trustee, a Receiver or a Delegate in respect of any claim it might have against the Security Trustee, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Security Trustee, a Receiver or a Delegate may rely on this Clause subject to the terms of Clause 1.3 (*Third Parties Rights*) and the provisions of the Third Parties Act.

(c) Nothing in this Deed shall oblige the Security Trustee to carry out:

- (i) any "know your customer" or other checks in relation to any person; or
- (ii) any check on the extent to which any transaction contemplated by this Deed might be unlawful for any Noteholder,

on behalf of any Noteholder and each Noteholder confirms to the Security Trustee that each Noteholder is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Trustee.

(d) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Trustee, any Receiver or Delegate, any liability of the Security Trustee, any Receiver or Delegate arising under or in connection with any Finance Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered as determined by reference to the date of default of the Security Trustee, Receiver or Delegate or, if later, the date on which the loss arises as a result of such default but without reference to any special conditions or circumstances known to the Security Trustee, any Receiver or Delegate at any time which increase the amount of that loss.

(e) In no event shall the Security Trustee, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Trustee, the Receiver or Delegate has been advised of the possibility of such loss or damages.

## **2.10. Resignation of the Security Trustee**

(a) The Security Trustee may resign and appoint one of its Affiliates as successor by giving notice to the Noteholders and the Issuer.

(b) Alternatively, the Security Trustee may resign by giving 60 days' notice to the Noteholders and the Issuer, in which case the Noteholders acting by Special Resolution may appoint a successor Security Trustee.

- (c) If the Noteholders acting by Special Resolution have not appointed a successor Security Trustee in accordance with paragraph (b) above within 40 days after notice of resignation was given, the retiring Security Trustee may appoint a successor Security Trustee.
- (d) The retiring Security Trustee shall make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under the Finance Documents. The Issuer shall reimburse the retiring Security Trustee for property incurred and documented costs incurred by the retiring Security Trustee in making such documents available or providing such assistance.
- (e) The Security Trustee's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Trustee shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 2.19 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 2 and Clause 7. Any Security Trustee fees for the account of the retiring Security Trustee shall cease to accrue from (and shall be payable on) that date. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Noteholders acting by Special Resolution may, by notice to the Security Trustee, require it to resign in accordance with paragraph (b) above. In this event, the Security Trustee shall resign in accordance with paragraph (b) above.

## **2.11. Confidentiality**

- (a) In acting as trustee for the Secured Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Security Trustee, it may be treated as confidential to that division or department and the Security Trustee shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee is not obliged to disclose to any other person:
  - (i) any confidential information; or
  - (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of fiduciary duty

## **2.12. Information from the Issuer**

The Issuer shall supply the Security Trustee with any information that the Security Trustee may reasonably specify as being necessary or desirable to enable the Security Trustee to perform its functions as Security Trustee.

### **2.13. No responsibility to perfect Security**

The Security Trustee shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of the Issuer to any of the Security Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Security Agreement;
- (c) register, file or record or otherwise protect the Security Agreement under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Security Agreement or to otherwise perfect the Security;
- (d) take, or to require the Issuer to take, any step to perfect its title to any of the Security Property or to render the Security Agreement effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to the Security Agreement.

### **2.14. Insurance by Security Trustee**

(a) The Security Trustee shall not be obliged:

- (i) to insure any of the Security Property;
- (ii) to require any other person to maintain any insurance; or
- (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Trustee shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Trustee is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Noteholders request it to do so in writing and the Security Trustee fails to do so within fourteen days after receipt of that request.

### **2.15. Custodians and nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Trustee may determine, including for the purpose of depositing with a custodian this Deed or any document relating to the trust created under this Deed and the Security Trustee 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 person appointed by it under this Deed or be bound to supervise the proceedings or acts of any person.

### **2.16. Delegation by the Security Trustee**

- (a) Each of the Security Trustee, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions and subject to any restrictions that the Security Trustee, that Receiver or that Delegate may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Trustee, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

#### **2.17. Additional Security Trustees**

- (a) The Security Trustee may at any time appoint and subsequently remove any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties;
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Trustee deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction.

and the Security Trustee shall give prior notice to the Noteholders of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Trustee under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the Instruments of appointment.
- (c) The remuneration that the Security Trustee may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Deed, be treated as costs and expenses incurred by the Security Trustee.

#### **2.18. Acceptance of Title**

The Security Trustee shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that the Issuer may have to any of the Security Property and shall not be liable for, or bound to require the Issuer to remedy, any defect in its right or title.

#### **2.19. Winding up of trust**

If the Security Trustee is satisfied that all of the Secured Obligations have been fully and finally discharged, then:

- (a) the trusts set out in this Deed shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Security created by the Security Agreement and the rights of the Security Trustee under the Security Agreement; and
- (b) any Security Trustee which has resigned pursuant to Clause 2.10 (*Resignation of the Security Trustee*) shall release, without recourse or warranty, all of its rights under the Security Agreement.

## **2.20. Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Trustee under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Trustee by law or regulation or otherwise.

## **2.21. Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relations to the trusts constituted by this Deed. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Deed, the provisions of this Deed shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Deed shall constitute a restriction or exclusion for the purposes of that Act.

## **3. Issue of Notes**

- (a) Where Notes are issued by the Issuer, the Security Trustee may assume, without investigation or enquiry, that such issue of Notes is duly constituted, within the capacity of the Issuer and within the limits prescribed by the Instrument, and has been duly authorised by the Issuer; and, that the Notes will be duly executed and will constitute the valid, binding and enforceable obligations of the Issuer and will be secured by the Security Agreement.
- (b) As and when the Notes become due to be redeemed or any other payment becomes due to Noteholders in accordance with the Instrument, the Issuer shall unconditionally pay or procure to be paid to or to the order of the Security Trustee in Pounds Sterling in immediately available funds the principal amount in respect of the Notes becoming due for redemption on that date and shall (subject to the provisions of the Conditions) in the meantime and until redemption in full of the Notes (including whether before or after any judgment or other order of any court of competent jurisdiction) unconditionally pay or procure to be paid to or the order of the Security Trustee as aforesaid interest on the nominal amount of the Notes then outstanding at rates in amounts calculated from time to time in accordance with the Instrument and on the dates provided for therein, provided that:
  - (i) every payment of principal or interest or other sum due in respect of the Notes made by the Issuer directly to the Noteholders shall be in satisfaction pro-tanto of the relevant covenant by the Issuer contained in this Clause in relation to the Notes; and
  - (ii) in any case where payment of the whole or any part of the principal amount of any Notes or any other sums due is improperly withheld or refused, interest shall accrue on the principal amount of such Notes and any other sums due at the rates and/or in the amounts provided in the Instrument from the date of such withholding or refusal until the date on which payment of the full amount including interest as aforesaid in Pounds Sterling is made or if earlier the day after notice is given to the relevant Noteholder that the full amount including interest as

aforesaid in Pounds Sterling is available for payment, provided that such payment is made.

- (c) At any time after an Event of Default has occurred and is continuing or the Security Trustee has received any money which it proposes to pay under Clause 5 (*Application of moneys received by the Security Trustee*) to the relevant Noteholders, the Security Trustee may, by notice in writing to the Issuer, require it to make all subsequent payments in respect of the Notes to or to the order of the Security Trustee.
- (d) All payments in respect of, under and in connection with this Deed and the Notes to the relevant Noteholders shall be made in Pounds Sterling.

#### **4. Covenant to observe provisions of the Finance Documents**

The Issuer hereby covenants with the Security Trustee that it will comply with those provisions of each Finance Document which are expressed to be binding on it and to perform and observe the same. The Notes shall be held subject to the provisions contained in the Finance Documents, all of which shall be binding upon the Issuer, the Security Trustee and the Noteholders and all persons claiming through or under them. The provisions contained in such documents shall have full effect in the like manner as if the same had been incorporated herein.

#### **5. Application of moneys received by the Security Trustee**

The Security Trustee shall hold the moneys received by it under any Finance Document upon trust to apply the same:

- (a) first, in payment or satisfaction of the costs, charges, fees, expenses and liabilities properly incurred by the Security Trustee, Receiver or any Delegate in or about the preparation and execution of the trusts of this Deed or otherwise incurred by the Security Trustee. Receiver or any Delegate under the provisions of the Notes, or any Finance Document in carrying out its duties under or in connection with the Notes, or any Finance Document including, without limitation, unpaid remuneration of the Security Trustee or any receiver or administrator together with any interest accrued thereon;
- (b) second, in or towards payment to the Noteholders without any preference or priority of all arrears of interest remaining unpaid on the Notes held by them respectively *paripassu* and rateably according to the amount of such interest due to them;
- (c) third, in or towards payment to the Noteholders without any preference or priority of all principal moneys unpaid in respect of the Notes held by them respectively *paripassu* and rateably according to the amount of such principal due to them;
- (d) fourth, in or towards payment to the Noteholders without any preference or priority of all other sums due to them under the Notes held by them respectively *paripassu* and rateably according to the nominal amount of Notes held by them; and
- (e) finally, in payment of the balance to the Issuer, or if it is in liquidation, its liquidator, trustee in bankruptcy or other analogous person for the time being of the Issuer.

#### **6. Covenants by, and representations and warranties of, the Issuer**

**6.1.** The Issuer hereby covenants with the Security Trustee that, until such time as the Security Trustee is satisfied that the Secured Obligations have been fully and finally discharged, it shall:

- (a) at all times keep proper books of account and, at any time after the occurrence of an Event of Default which is continuing, to the extent permitted by applicable law, to allow the Security Trustee and any persons appointed by the Security Trustee access to such books of account at all reasonable times during normal working hours;
- (b) give notice in writing to the Security Trustee of the occurrence of any Event of Default immediately upon becoming aware thereof and without waiting for the Security Trustee to take any further action;
- (c) so far as permitted by applicable law, at all times give to the Security Trustee such information as it shall reasonably require for the purpose of the discharge of the duties, powers, trusts, authorities and discretions vested in it under this Deed or by operation of law;
- (d) so far as permitted by applicable law, at all times execute all such further documents and do all such further acts and things as may be necessary at any time or times to give effect to the terms and conditions of this Deed;
- (e) send to the Security Trustee the form of every notice or document to be given to the Noteholders and, following the despatch thereof by the Issuer, a copy of each such notice;
- (f) in the event of the unconditional payment to the Security Trustee of any sum due in respect of any of the Notes being made after the due date for payment thereof, forthwith, if the Security Trustee determines such notice is necessary, cause notice to be given to the Noteholders that such payment has been made;
- (g) deliver to the Security Trustee as soon as practicable after being so requested in writing by the Security Trustee confirmation of the nominal amount of Notes for the time being outstanding; and
- (h) at all times keep at its registered office or at such other place as may be approved by the Security Trustee an accurate register showing the amount of the Notes for the time being issued and the date of issue and all subsequent transfers or changes of ownership thereof and the names and addresses of the Noteholders. The Issuer shall on demand by the Security Trustee promptly deliver to the Security Trustee a copy of such register. The Security Trustee and any receiver and the Noteholders or any of them and any person authorised in writing by any of such persons shall be at liberty at all reasonable times during office hours to inspect the said register, to take copies of and extracts from the same or any part thereof and to rely on such register as being accurate.

**6.2.** The Issuer represents and warrants to the Security Trustee that:

- (a) this Deed constitutes legally binding and enforceable obligations of the Issuer, and the directors of the Issuer have all necessary powers under the memorandum and articles of association of the Issuer, the Companies Act, all other applicable laws and all agreements, obligations and commitments binding upon them to enter into and perform this Deed, and there are no consents, authorisations, approvals or licences required by the Issuer or its directors (including, without limitation, any sanction or consent of the



members of the Issuer or any class of them) for the Issuer to enter into and comply with its obligations under this Deed;

(b) the entry into of this Deed will not cause any limit placed on the powers of the Issuer or its directors to be exceeded; and

(c) the issue of the Notes and the borrowing represented thereby is within the power of the Issuer and its directors.

**6.3.** Each of the warranties and representations in Clause 6.2 is to be construed independently and is not limited by a provision of this Deed or another warranty or representation.

**6.4.** The Issuer acknowledges that the Security Trustee has entered into this Deed in reliance upon, *inter alia*, the warranties and representations in Clause 6.2.

## **7. Remuneration and indemnification of the Security Trustee**

### **7.1. Remuneration**

**7.1.1.** The Issuer shall pay the Security Trustee, as remuneration for its services as Security Trustee, such sums on such dates agreed in a Fee Letter.

**7.1.2.** If:

(a) an Event of Default has occurred and is continuing; or

(b) the Security Trustee finds it expedient or necessary or is requested by the Issuer to undertake duties which they both agree to be of an exceptional nature or beyond the scope of the Security Trustee's normal duties under this Deed,

the Security Trustee shall be entitled to be paid additional remuneration as may be agreed between the Issuer and the Security Trustee from time to time. For the avoidance of doubt, any duties of the Security Trustee undertaken under or in connection with Noteholder Resolutions, investments, the granting of consents, waivers, modifications and/or Event of Default, the taking of any enforcement action and/or accelerating redemption of any Notes shall be deemed to be of an exceptional nature.

**7.1.3.** If the Security Trustee and the Issuer fail to agree upon the nature of the duties, or upon the additional remuneration referred to in Clause 7.1.2 or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by investment bank or other professional services provider (acting as an expert and not as an arbitrator) selected by the Security Trustee and approved by the Issuer or, failing approval, nominated (on the application of the Security Trustee) by the President for the time being of the Law Society of England and Wales (the costs of the nomination of such bank or other professional services provider being payable by the Issuer) and the determination of any such bank or other professional services provider shall be final and binding upon the parties.

**7.1.4.** Any sums payable to the Security Trustee pursuant to this Clause 7.1 shall be paid free and clear of deduction, withholding, set-off or counter-claim on account of taxation.

## **7.2. Expenses**

The Issuer will, on demand by the Security Trustee and any Receiver or Delegate, pay or discharge all costs, charges, liabilities and expenses incurred by the Security Trustee and any Receiver or Delegate (including but not limited to all properly incurred legal fees) in the preparation and execution of this Deed and the performance of its functions under, and in any other manner in relation to, this Deed and any other Finance Document, but not limited to, expenses incurred seeking legal or financial advice to discharge its duties, legal and travel expenses, and any stamp, documentary or other taxes or duties paid or payable by the Security Trustee in connection with any action or legal proceeding brought or contemplated by the Security Trustee against the Issuer to enforce any provision of this Deed or the conditions of the Notes.

## **7.3. Indemnity**

**7.3.1.** The Issuer shall promptly indemnify the Security Trustee and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of: (i) the taking, holding, protection or enforcement of the Security Property; or (ii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Trustee and each Receiver and Delegate by the Finance Documents, the Security Property or by law; and (iii) any default by the Issuer in the performance of any of the obligations expressed to be assumed by it in any of the Finance Documents.

**7.3.2.** Any sums payable to the Security Trustee pursuant to this Clause 7.3 shall be paid free and clear of deduction, withholding, set-off or counter-claim on account of taxation.

**7.3.3.** Neither the Issuer nor any Noteholder may take proceedings against the Security Trustee or any Delegate in respect of any claim it might have against the Security Trustee or any Delegate, or in respect of any act or omission of any kind by the Security Trustee or any Delegate, this Deed or any Security Document, save to the extent directly caused by the fraud, gross negligence or wilful misconduct of the Security Trustee or Delegate respectively and without limitation to the foregoing to the fullest extent permitted by law the Security Trustee and any Delegate shall not be liable for:

- (a) any loss or damage including consequential damage arising out of the exercise of or failure to exercise any rights under the Notes or any Finance Document;
- (b) any failure, interruption or delay in the performance of the Security Trustee or Delegate's obligations hereunder resulting from acts, events or circumstances not reasonably within its control including, without limitation natural disaster; war, riot or act of terrorism; industrial dispute; act, regulation or order of any governmental or supranational body or authority; or breakdown, failure or malfunction of any telecommunications or computer service;
- (c) any delay in the payment of monies or crediting of accounts;
- (d) the legality, enforceability or effectiveness of the Notes or any Finance Document;

- (e) the non-performance of the Issuer;
- (f) any shortfall in recoveries or realisations in respect of the Security Property;  
or
- (g) where acting in accordance with the instructions of the Noteholder Majority.

**7.3.4.** The Security Trustee and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Property in respect of, and pay and retain. All sums necessary to give effect to the indemnity in this clause 7.3 and shall have a lien on the Security Agreement and the proceeds of the enforcement of the Security Agreement for all moneys payable to it.

**7.3.5.** To the extent that the Issuer or any Noteholder has any claim or potential claim against the Security Trustee or any Delegate in respect of any Finance Document it shall not bring such claim directly against any of the respective directors, employees or agents of the Security Trustee or the Delegate, provided that nothing in this Clause 7.3 shall limit any person's liability for their own fraud.

**7.3.6.** The Third Parties Act applies to this Clause 7.3.

#### **7.4. Continuing effect**

Clauses 7.2 and 7.3 shall continue in full force and effect as regards the Security Trustee, even if it is no longer the security trustee under this Deed, or the Notes are no longer outstanding, or this Deed has been discharged or terminated.

### **8. Enforcement**

**8.1.1.** At any time after an Event of Default has occurred and is continuing, the Security Trustee may, at its discretion and without further notice, take such proceedings against the Issuer as it may think fit to enforce the provisions of the Finance Documents, but it will not be bound to take any such proceedings unless:

- (a) it shall have been so instructed in writing by a Special Resolution; and
- (b) it shall have been indemnified and/or prefunded and/or secured to its satisfaction.

**8.1.2.** No Noteholder will be entitled to proceed directly against the Issuer, unless the Security Trustee, having become bound to do so, fails to do so and such failure shall have continued for a period of 60 days and no direction inconsistent with such Special Resolution has been given to the Security Trustee during such 60-day period by further Special Resolution of the Noteholders.

### **9. Opening of New Accounts**

If for any reason this Deed ceases to be a continuing security, the Security Trustee may open a new account for the Issuer. If the Security Trustee does not open a new account, it shall nevertheless be treated as if it had done so at the time this Deed ceased to be a continuing security. As from that time all payments made to the Security Trustee will be credited or treated as having been credited to the new account.

### **10. Suspense Account**

The Security Trustee may at any time place and keep to the credit of a separate interest-bearing suspense account any monies received under this Deed for so long and in such manner as the Security Trustee may determine without any obligation to apply such monies or any part of them in or towards the discharge of the Issuer's obligations and liabilities under the Finance Documents. In the event of any proceedings in or analogous to bankruptcy, liquidation, administration, composition or arrangement of or concerning the Issuer, the Security Trustee may notwithstanding any payment made under this Deed prove for a claim and agree to accept any dividend or composition in respect of the whole or any part of the Issuer's obligations and liabilities under the Finance Documents as if this Deed had not been given.

## **11. Modification**

The Security Trustee may from time to time and at any time without any consent or sanction of the Noteholders (unless the Security Trustee considers such consent or sanction to be desirable) concur with the Issuer in making any modification to any Finance Document which in the opinion of the Security Trustee is not materially prejudicial to the interests of the Noteholders or is of a formal, minor or technical nature. Any such modification shall be binding on the Noteholders and, unless the Security Trustee otherwise agrees, the Issuer shall cause notice of such modification to be given to the Noteholders as soon as practicable thereafter.

## **12. Miscellaneous**

### **12.1. Provision of documents**

The Issuer shall provide the Security Trustee with a copy of each document it has sent to the Noteholders under this Deed and any Finance Document. The Security Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it receives. Save for any notice received in accordance with Clause 2.3(b), the Security Trustee may assume that any document it receives in accordance with this Clause 12.1 has been sent to all of the Noteholders by the Issuer.

### **12.2. Notices**

- (a) Any notice under or in connection with this Deed must be in writing.
- (b) Any such notice addressed as provided in paragraph (c) below will be deemed to have been duly given or made as follows:
  - (i) if sent by prepaid first-class post or recorded delivery, on the second Business Day after being deposited in the post in a correctly addressed envelope;
  - (ii) if delivered personally, at the time of delivery;
  - (iii) if sent by registered airmail, on the fifth Business Day after being deposited in the post in a correctly addressed envelope;
  - (iv) if sent by e-mail, when received in legible form; or

- (v) if sent by fax, when received in legible form on the date of transmission shown on a transmission report produced by the fax machine of the sender (or its agent) which indicates that the entire notice was transmitted successfully.

provided that any notice received on a day which is not a Business Day or after 5 pm (local time at the place of receipt) on any day will be deemed to have been given or made at 10 am on the next Business Day.

(c) Any such notice must be sent or transmitted as follows:

- (i) if to the Issuer, at the following address or numbers or to such other address in the United Kingdom or numbers as the Issuer may from time to time notify in writing to the Security Trustee as being the Issuer's address and email address for service of notices under and in connection with this Deed:

Address: C/O Magna Asset Management Ltd, Berkeley Square  
House, Berkeley Square, London W1J 6BD United  
Kingdom

Attn: **Sam Sanders – Finance Dept**

e-mail: **loannote@magnagroup.co.uk**

- (ii) if to the Security Trustee, at the following address or numbers or to such other address in the United Kingdom or numbers as the Security Trustee may from time to time notify in writing to the Issuer as being the Security Trustee's address, email address or fax number for service of notices under and in connection with this Deed:

Address: Equity for Growth (Securities) Limited, International House,  
24 Holborn Viaduct, City of London, London, EC1A 2BN

Attn: Timothy Baldwin

e-mail: [tim.baldwin@equityforgrowth.com](mailto:tim.baldwin@equityforgrowth.com)

- (d) In proving service of a notice or document it shall be sufficient to prove that delivery was made in person or that the envelope containing the notice or document was properly addressed and posted (either by first class post, recorded delivery or by registered airmail, as the case may be, in accordance with the requirements of this Clause and with all postage prepaid in full) or that the fax message or e-mail was properly addressed and transmitted as the case may be.

### **12.3. Additional security**

This Deed is in addition to and is not in any way prejudiced by any bill, note, guarantee, mortgage, charge or other security now or subsequently held by the Security Trustee for any of the Issuer's obligations and liabilities under the Finance Documents.

### **12.4. Remedies and waivers**

No delay or omission of the Security Trustee in exercising any right or remedy under this Deed or otherwise available to it at law shall impair such right or remedy, or be construed as a waiver of such right or remedy nor shall any single or partial exercise of any such right or remedy preclude its further exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

**12.5. Severability**

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of such provision in any other jurisdiction.

**12.6. Certificates and determination**

A certificate or determination by the Security Trustee of the amount of the Issuer's obligations and liabilities under the Finance Documents outstanding at any time, in the absence of manifest error, conclusive evidence for all purposes of this Deed.

**12.7. Counterparts**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same Instruments.

**12.8. Property of the Security Trustee**

This Deed is and will at all times remain the property of the Security Trustee.

**13. No assignment**

No Party may assign or transfer all or any part of its rights and obligations under this Deed without the prior written consent of each other party to this Deed.

**13.1. English language**

Any notice given under or in connection with this Deed must be in English.

**14. Governing law and jurisdiction**

- (a) This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
- (b) The issuer and the Security Trustee irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed including as to enforceability, validity or interpretation, and in respect of any non-contractual disputes arising in connection with this Deed and irrevocably submits to the jurisdiction of such courts and agrees that accordingly any

suit, action or proceeding (together referred to as "**Proceedings**") arising out of or in connection with this Deed may be brought in such courts.

- (c) Each of the Issuer and the Security Trustee irrevocably waives any objection which it may have now or after the date of this DoC to the laying of the venue of any Proceedings in any such court as is referred to in this Clause and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a final judgment in any Proceedings brought in the English courts shall be conclusive and binding and may be enforced in the courts of any other competent jurisdiction.

**EXECUTED** as a Deed and delivered on the date stated at the beginning of this document.

**Security Trustee**

**EXECUTED** as a **DEED** by **EQUITY FOR GROWTH (SECURITIES) LIMITED** acting by a director in the presence of:

.....  
Signature of a director

.....  
Name of a director

Witness Signature: .....

Witness Name: .....

Witness Address: .....

.....

.....

Witness Occupation: .....

**Issuer**

**EXECUTED** as a **DEED** by **MIXG LIMITED** acting by a director in the presence of:

.....  
Signature of director

.....  
Name of director

Witness Signature: .....

Witness Name: .....

Witness Address: .....

.....

.....

Witness Occupation: .....



Exhibit 1.