

MR01

Particulars of a charge

Laserform

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

**You can use the WebFiling service to file this form online.**  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

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

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where there is no  
instrument Use form MR08

For further information, please  
refer to our guidance at  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

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

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

FRIDAY



A35 \*A3KO6297\*  
14/11/2014 #14  
COMPANIES HOUSE

**1 Company details**

Company number 0 0 0 0 7 6 3 3

Company name in full William Sinclair Horticulture Limited ✓

For official use

→ **Filing in this form**  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

**2 Charge creation date**

Charge creation date d0 d7 m1 m1 y2 y0 y1 y4 ✓

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

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

Name Leumi ABL Limited ✓

Name

Name

Name

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

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

MR01

Particulars of a charge

<b>4</b>	<b>Brief description</b>	<p>Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument</p>	<p>Please submit only a short description if there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"</p> <p>Please limit the description to the available space</p>
	Brief description	<p>Debenture - over freehold and leasehold property wherever situate (other than any heritable property in Scotland), and includes all liens, charges, options, agreements, rights and interests in or over such property or the proceeds of sale of such property and all buildings and fixtures thereon and other assets</p>	
<b>5</b>	<b>Other charge or fixed security</b>	<p>Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	
<b>6</b>	<b>Floating charge</b>	<p>Is the instrument expressed to contain a floating charge? Please tick the appropriate box</p> <p><input checked="" type="checkbox"/> Yes Continue</p> <p><input type="checkbox"/> No Go to <b>Section 7</b></p> <p>Is the floating charge expressed to cover all the property and undertaking of the company?</p> <p><input checked="" type="checkbox"/> Yes</p>	
<b>7</b>	<b>Negative Pledge</b>	<p>Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	
<b>8</b>	<b>Trustee statement <sup>1</sup></b>	<p>You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge</p> <p><input type="checkbox"/></p>	<p><sup>1</sup> This statement may be filed after the registration of the charge (use form MR06)</p>
<b>9</b>	<b>Signature</b>	<p>Please sign the form here</p> <p>Signature</p> <p>X Squire Patton Boggs (UK) LLP X</p> <p>This form must be signed by a person with an interest in the charge</p>	

MR01

## Particulars of a charge

**Presenter information**

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

Contact name Peter Stanley

Company name Squire Patton Boggs (UK) LLP

Address Rutland House

148 Edmund Street

Post town Birmingham

County/Region

Postcode B 3 2 J R

Country England

DX 708610 Birmingham 17

Telephone +44 (0)121 222 3000

**Certificate**

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

**Checklist**

**We may return forms completed incorrectly or with information missing**

**Please make sure you have remembered the following:**

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

**Important information**

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

**How to pay**

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

Make cheques or postal orders payable to 'Companies House'

**Where to send**

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

**For companies registered in England and Wales:**

The Registrar of Companies, Companies House, Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland**

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

**For companies registered in Northern Ireland:**

The Registrar of Companies, Companies House, Second Floor, The Linenhall, 32-38 Linenhall Street, Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1

**Further information**

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



FILE COPY

## CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7633

Charge code: 0000 7633 0019

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th November 2014 and created by WILLIAM SINCLAIR HORTICULTURE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th November 2014

Given at Companies House, Cardiff on 20th November 2014



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Save for material redacted  
pursuant to S.854 G of the  
Companies Act 2006

We hereby certify that this is a  
true and correct copy of the original  
Dated 13/11/2014

Squire Patton Boggs (UK) LLP  
SQUIRE PATTON BOGGS (UK) LLP  
RUTLAND HOUSE  
148 EDMUND STREET  
BIRMINGHAM  
B3 2JR

DATED 7<sup>th</sup> November 2014

WILLIAM SINCLAIR HORTICULTURE (1)  
LIMITED

LEUMI ABL LIMITED (2)

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**FULL FORM DEBENTURE**

Comprising Fixed and Floating Charges over the  
whole or substantially the whole of the Company's  
business, assets and undertaking

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DATE OF FULL FORM DEBENTURE

7<sup>th</sup> November

2014

**PARTIES**

- (1) **WILLIAM SINCLAIR HORTICULTURE LIMITED** of Firth Road, Lincoln, Lincolnshire, LN6 7AH (Company Registry Number 00007633) whose registered office is at Firth Road, Lincoln, Lincolnshire, LN6 7AH (the '**Company**')
- (2) **LEUMI ABL LIMITED** (Company Number 00620951) whose registered office is at 126 Dyke Road, Brighton, East Sussex BN1 3TE ('**Leumi**')

**INTRODUCTION**

**IT IS AGREED THAT**

**1 DEFINITIONS**

- 1 1 In this deed any words whose meaning is defined in the Agreement shall have the same meaning
- 1 2 In this deed all and any references to "**you**" shall each be a reference to the party appearing at (1) above and "**your**" shall be construed accordingly
- 1 3 In this deed all and any references to "**we**" shall each be a reference to the party appearing at (2) above and "**us**", "**our**" and similar shall be construed accordingly
- 1 4 In this deed the following words shall have the meaning set out after each of them

"**Administrator**" - means any person appointed under Schedule B1 of the Insolvency Act 1986 to manage your affairs, business and property

"**Agreement**" - means any receivable finance agreement or other agreement for the sale and purchase of Receivables and/or any other type of agreement between you and us (including without limitation the agreements, details of which are set out in Schedule 1) from time to time, and any amendments or alterations to it or them and any replacements for or supplements to the same, from time to time

"**Associated Rights**" - has the same meaning as in the Agreement

"**Deed of Priority**" means the deed of priority between (1) Leumi (2) Michael John Airey, Stewart Lesley McCarthy, Caroline Isobel Murray and Eric O'Hern as trustees for the time being of the William Sinclair Holdings Plc Pension Fund and (3) the Company, dated on or around the date of this deed

"**Encumbrance**" – means any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention, flawed asset agreement, preferential right, trust arrangement or other security arrangement, whether by law or agreement, or any right conferring a priority of payment

"**Enforcement Date**" – means the date on which

- (a) we receive from any person notice of intention to appoint an Administrator,
- (b) you request us to appoint an Administrator or any Receiver,
- (c) a petition is filed for the appointment of an Administrator in respect of you,
- (d) an application is made for the appointment of an Administrator in respect of you,

- (e) an application is made for an administration order in respect of you,
- (f) an Administrator is appointed in relation to you, or
- (g) a winding up order has been made or a resolution for winding up has been passed or a provisional liquidator has been appointed in respect of you

**"Environmental Laws"** – means all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the United Kingdom or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health, including without limitation the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or the rectification thereof or any related matters

**"Environmental Licence"** – means any permit, licence, authorisation, consent or other approval required by any Environmental Law

**"Equipment"** - means machinery, equipment, furniture, furnishings, fittings and fixtures and other tangible personal property (other than inventory), including, without limitation, data processing hardware and software, motor vehicles, aircraft, dies, tools, jigs and office equipment, together with all present and future additions thereto, replacements or upgrades thereof, components and auxiliary parts and supplies used or to be used in connection therewith and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto wherever any of the foregoing is located and any other asset which would be treated as a fixed asset under GAAP

**"Event of Default"** – means in relation to you - any event set out in clause 8 1,

**"Fixtures"** - means, in relation to a Property, all fixtures and fittings (including trade fixtures and fittings), fixed plant and machinery and other items attached to that property, whether or not constituting a fixture at law

**"GAAP"** - means accounting principles and practices which are for the time being generally acceptable in the United Kingdom

**"Group"** – means in relation to any company, that company, its Subsidiaries, its holding company (as defined in Section 1159 of the Companies Act 2006) and the Subsidiaries of that holding company

**"Insolvent"** – means the happening of any of the following events in relation to you



- (a) a distress or execution being levied on or issued against any of the Mortgaged Property,
- (b) entering or seeking to enter into any formal scheme of arrangement of your affairs or composition in satisfaction of your debts with your creditors in accordance with the Insolvency Act 1986,
- (c) your taking any action for your winding up, dissolution or re-organisation (otherwise than for the purposes of an amalgamation or reconstruction while solvent on terms previously approved in writing by us) or for the appointment of a Receiver, Administrative Receiver, Administrator, trustee or similar officer to or in respect of all or any part of your revenue or assets,
- (d) a petition being presented or an order being made for your winding up,
- (e) an administration order being made or applied for,
- (f) a court application being made for the appointment of a Receiver or such a Receiver being appointed,
- (g) a notice of intention to appoint an Administrator being given by an person or an Administrator being appointed,
- (h) a meeting of creditors being called for your winding up or for any other purpose referred to in the Insolvency Act 1986,
- (i) if you are an LLP, your Partners resolving to present a petition for an administration or bankruptcy order,
- (j) a statutory demand under the Insolvency Act 1986 being served,
- (k) an encumbrancer taking possession of any part of your undertaking or property,
- (l) entering into any informal arrangement or composition with or for the benefit of your general body of creditors,
- (m) being unable to pay your debts as they become due,
- (n) being deemed insolvent under the Insolvency Act 1986,
- (o) if you are an LLP, you becoming the subject of any insolvency proceedings as provided for in the Limited Liability Partnerships Act 2000,
- (p) taking any steps towards a Moratorium

**"Intellectual Property"** – means all patents (including applications, improvements, prolongations, extensions and right to apply therefor) designs (whether registered or unregistered) copyrights, design rights, trade marks and service marks (whether registered or unregistered) utility models, trade and business names, know-how, formulae, inventions, confidential information, trade secrets and computer software programs and systems (including the benefit of any licences or consents relating to any of the above) and all fees, royalties or other rights derived therefrom or incidental thereto in any part of the world

**"LLP"** has the same meaning as in the Agreement

**"Moratorium"** – means a moratorium coming into effect pursuant to Schedule A1 of the Insolvency Act 1986 or pursuant to paragraph 1A of Schedule 1 to the Insolvent Partnerships Order 1994

**"Mortgaged Property"** – means the subject matter of the mortgages and charges (or any part of them, if the context so allows) created by this deed and set out at clause 4

**"Non Vesting Receivables"** – means all or any Receivables purchased or purported to be purchased by us pursuant to the Agreement but which fail to vest absolutely and effectively in us for any reason, together with the Associated Rights to such Receivables

**"Other Receivables"** - all sums due and owing or accruing due and owing to you whether or not on account of your trading both present and future except

- (a) Non-Vesting Receivables, and
- (b) any Receivables whilst they remain absolutely and effectively vested in or held on trust for us under the Agreement and whether such vesting results from a legal or equitable assignment

**"Partner"** has the same meaning as in the Agreement and **"Partners"** shall be construed accordingly

**"Property"** - means freehold and leasehold property wherever situate (other than any heritable property in Scotland), and includes all liens, charges, options, agreements, rights and interests in or over such property or the proceeds of sale of such property and all buildings and Fixtures thereon and all rights, easements and privileges appurtenant to, or benefiting, the same and **"Properties"** means all or any of the same, as the context requires

**"Receivables"** - has the same meaning as in the Agreement

**"Receiver"** - includes a receiver and/or manager not being an **administrative receiver** (as defined in Section 29(2) of the Insolvency Act 1986) of the Receivership Property

**"Receivership Property"** – means such part or parts of the Mortgaged Property not being the whole or substantially the whole of your property and assets within the meaning of section 29(2) of the Insolvency Act 1986

**"Remittances"** – means cash, cheques, bills of exchange, negotiable and non-negotiable instruments, letters of credit, orders, drafts, promissory notes, electronic payments and any other instruments, methods or forms of payment or engagement

**"Secured Liabilities"** – means both the Secured Monies and the obligations and liabilities in clause 3.1

**"Secured Monies"** – means all the monies which now or at any time in future may be owing due and/or payable (but remaining unpaid) by you to us in any manner and for any reason on any account, Secured Monies include all such monies due by you, either alone or jointly with any other person or on any partnership account (even though the whole or any part of such monies is represented or secured by any mortgages, guarantees, trust receipts, bills of exchange, leasing, hire or conditional sale agreements, assignments, agreements for discounting or factoring of Receivables or any other agreements or securities) and whether or not any of them have or has fallen due or become payable and whether or not default shall have been made in respect thereof, Secured Monies also means any of the following items, whether now or in the future

- (a) all monies due or payable under the Agreement (if any) or by virtue of any guarantee or indemnity given by you to us,

- (b) all advances which we have made or shall make to you,
- (c) any indebtedness now or hereafter to be incurred by us for you or at your request, including all monies which we shall pay or become liable to pay for or on account of you or any other person at your request or order or under your authority, either alone or jointly with any other person and whether or not by any of the following
  - (i) us making direct advances, or
  - (ii) us drawing, accepting, endorsing, paying or discounting any Remittance, or
  - (iii) us entering into any bond, guarantee, indemnity or letter of credit, or
  - (iv) us confirming orders, or
  - (v) us otherwise accepting any other liability for you or on your behalf,
- (d) all monies which we can charge to you and all costs charges and expenses incurred by us following default in payment of any such monies or of breach by you of any of the provisions of this deed
- (e) the charges of surveyors and/or solicitors instructed by us in connection with any part of the Mortgaged Property
- (f) all costs and charges and expenses which we may from time to time incur in
  - (i) stamping, perfecting, registering or enforcing this security, or
  - (ii) the negotiations for the preparation and execution of this deed, and the Agreement or any guarantee, indemnity, priority arrangement, waiver or consent in respect of them, or
  - (iii) obtaining payment or discharge of Secured Monies, or
  - (iv) paying any rent, rates, taxes or outgoings for the Mortgaged Property, or
  - (v) insuring, repairing, maintaining, managing or realising any part of the Mortgaged Property, or
  - (vi) the preservation or exercise of any rights under or in connection with this deed or any attempt to do so, or
  - (vii) giving a discharge or release of this security, or
  - (viii) dealing with or obtaining advice about any other matter or question arising out of or in connection with this deed with the intention that we shall be afforded a full complete and unlimited indemnity against all costs, charges and expenses paid or incurred by it and whether arising directly or indirectly in respect of this security or of any other security held by us for the Secured Monies,

- (g) all monies expended by any attorney appointed under clause 7.3 in exercising his powers,
- (h) interest on all monies due and owing to us at such rate as may from time to time be payable pursuant to any agreement or arrangement relating thereto

**"Securities"** – means all stocks, shares, bonds and securities of any kind whatsoever and whether marketable or otherwise and all other interests (including but not limited to loan capital) both present and future held by you in any person and includes all allotments, rights, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to the same and all money or property offered at any time by way of dividend, conversion, redemption, bonus, preference, option or otherwise in respect thereof

**"Subsidiary"** - means

- (a) a subsidiary within the meaning of Section 1159 of the Companies Act 2006, and
- (b) unless the context otherwise requires, a subsidiary undertaking within the meaning of Section 1162 of the Companies Act 2006

## **2 INTERPRETATION**

### **2.1 In the construction and interpretation of this deed**

- (a) the singular shall include the plural and vice versa, reference to one gender shall include a reference to any other genders,
- (b) references to persons shall be treated as including individuals, firms, partnerships, corporations, organs of government, whether local, national or supra national and any other entity recognised by law,
- (c) references to any Act of Parliament shall be treated as including each Act as amended, modified or re-enacted from time to time and all rules, regulations, orders and subordinate legislation made in accordance with it,
- (d) references to clauses and to schedules are to those in this deed,
- (e) where you have an obligation to carry out an act then you shall be fully responsible for the costs and expenses of doing so,
- (f) where we act in accordance with this deed you will indemnify us against all costs and expenses incurred,
- (g) where any discretion is vested in a Receiver or us it shall be treated as an absolute discretion,
- (h) each of the provisions of this deed shall be severable and distinct from one another,
- (i) references to this deed and other documents referred to in it include any supplemental or collateral document to each of them or which is entered into pursuant to each of them and any document varying, supplementing, novating or replacing the same from time to time,

- (j) references to charges shall be treated as references to mortgages and charges created by this deed,
- (k) references to this security shall be treated as reference to the security created by this deed,
- (l) any powers given in this deed to an administrator shall apply to the fullest extent permitted by the Insolvency Act 1986,
- (m) headings to clauses are for reference only and shall not affect the interpretation of this deed,
- (n) the meaning of general words introduced by the word **other** or the word **otherwise** shall not be limited by reference to any preceding word or enumeration indicating a particular class of acts, matters or things,
- (o) all and any references to "**we**", "**us**", "**our**" or similar shall, where the context admits include our officers, agents and representatives
- (p) the words "**other**" and "**otherwise**" are not to be construed ejusdem generis with any foregoing words where a wider construction is possible,
- (q) the words "**including**" and "**in particular**" are to be construed as being by way of illustration or emphasis only and shall not take effect as limiting the generality of any foregoing words

### **3 COVENANT TO PAY**

#### **3 1 You agree with us**

- (a) to pay the Secured Monies, which are now or shall be due, owing and payable to us, in accordance with the terms of the transaction, security, instrument or other obligation giving rise to your indebtedness to us, including those under the Agreement, and
- (b) to discharge all obligations and liabilities, whether actual, accruing or contingent, now or in the future due, owing or incurred to us by you, in whatever currency denominated and on whatever account and howsoever arising, whether alone or jointly and in whatever style, name or form and whether as principal or surety

### **4 CHARGING PROVISIONS**

#### **4 1 As security for the payment of the Secured Monies, you with full title guarantee now give the following mortgages and charges in our favour, namely**

- (a) a legal mortgage on the Properties (if any) specified in Schedule 2 to this deed,
- (b) a legal mortgage on all Properties (other than any Properties specified in Schedule 2) now owned by you or in which you have an interest,
- (c) a fixed charge on all of the following assets, whether now or in future belonging to you

- (i) the freehold and leasehold properties of you not effectively mortgaged under clauses 4.1(a) and 4.1(b) including such as may hereafter be acquired,
  - (ii) all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery in, on or attached to the property subject to the legal mortgages under clauses 4.1(a) and 4.1(b) and all spare parts, replacements, modifications and additions for or to the same,
  - (iii) any other freehold and leasehold property which you shall own together with all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery in, on or attached to such property and all spare parts, replacements, modifications and additions for or to the same,
  - (iv) all Equipment (if any) listed in Schedule 4 and the benefit of all contracts and warranties relating to the same,
  - (v) all Equipment, (other than Equipment specified in Schedule 4), and the benefit of all contracts and warranties relating to the same,
  - (vi) all your goodwill, unpaid and/or uncalled capital,
  - (vii) all your Intellectual Property,
  - (viii) all your Securities,
  - (ix) all loan capital, indebtedness or liabilities on any account or in any manner owing to you from any Subsidiary of yours or a member of your Group,
  - (x) all amounts realised by an administrator or liquidator of yours, upon enforcement or execution of any order of the Court under Part IV of the Insolvency Act 1986
- (d) a fixed charge upon all or any of the following assets, whether now in existence or coming into existence in the future
- (i) all documents of title to any item of property which at any time and for any purpose has been or may be deposited with us,
  - (ii) the assets mentioned in the title documents referred to in the immediately preceding sub-paragraph,
  - (iii) any account in your name under our control or operated in accordance with our directions
- (e) a fixed charge on all your Non-Vesting Receivables, present and future,
- (f) a fixed charge on your Other Receivables, present and future,

- 4 2 you, with full title guarantee, hereby charge to us by way of first floating charge as a continuing security for the payment and discharge of the Secured Monies your undertaking and all your property, assets and rights whatsoever and wheresoever both present and future other than any property or assets from time to time effectively charged by way of legal mortgage or fixed charge or assignment pursuant to clauses 4 1(a) to 4 1(f) above or otherwise pursuant to this deed but including (without limitation and whether or not so effectively charged by way of fixed charge or assignment pursuant to clauses 4 1(a) to 4 1(f) above) any of your property, assets and rights whatsoever situated in Scotland
- 4 3 The provisions of paragraph 14 of Schedule B1 to the Insolvency Act 1986 apply to the floating charge in clause 4 2 which shall be enforceable at any time on or after you failing to meet any demand made under clause 8 of this deed or, if earlier, the Enforcement Date, save that nothing in this deed shall cause any charge to become enforceable whilst you are subject to a Moratorium
- 4 4 If we shall enforce any of the above charges then the floating charges created by this deed shall immediately and without further formality become fixed charges. However, we may also at any time give written notice to you immediately converting all or any of the floating charges into fixed charges in respect of the whole or any part of the Mortgaged Property subject to such floating charges
- 4 5 This deed shall take effect subject to the provisions of the prior Encumbrances over your assets detailed in Schedule 3, except as otherwise varied by any separate deed
- 4 6 So far as permitted by law and notwithstanding anything expressed or implied in this deed, if you
- (a) create or attempt to create any Encumbrance over all or any of the Mortgaged Property without our prior written consent, or
  - (b) if any person levies or attempts to levy any distress, execution, sequestration or other process or does or attempts to do any diligence in execution against any of the Mortgaged Property,
- the floating charge created by clause 4 2 over the property or asset concerned shall thereupon automatically without notice be converted into a fixed charge
- 4 7 So far as permitted by law and notwithstanding anything expressed or implied in this deed, upon the occurrence of any event described at
- (a) clause 8 1(e), or
  - (b) clause 8 1(m)
- the floating charges created by this deed shall, unless otherwise agreed by us in writing, automatically and without notice be converted into fixed charges
- 4 8 Notwithstanding anything expressed or implied in this deed but without prejudice to clauses 4 1(f) and 4 2, we shall be entitled at any time by giving notice in writing to that effect to you to convert the floating charge over all or any part of the Mortgaged Property into a fixed charge as regards the assets specified in such notice

## 5 YOUR OBLIGATIONS

5.1 You agree with us that, whilst this security exists, you

- (a) will deal with the Non-Vesting Receivables and their Associated Rights as if they were Receivables and their Associated Rights purchased by us under the Agreement and in particular will not bank or deal with Remittances in respect of them except by dealing with them in accordance with the Agreement,
- (b) will not sell, transfer, lease, licence or dispose of the Mortgaged Property subject to the floating charges herein, except by way of sale at full value in the ordinary course of its business now being carried on,
- (c) subject to the terms of the Deed of Priority, will not sell, transfer, lease, license or dispose of the Mortgaged Property subject to the fixed charges herein without our prior written consent but such restriction shall not prohibit the disposal of an asset (other than freehold or leasehold property) for the purpose of its immediate replacement, modification, repair and/or maintenance,
- (d) will collect your Other Receivables in the ordinary course of your business as agent for us in a proper and efficient manner and pay into such account as we may from time to time specify all moneys which you may receive in respect of the Other Receivables forthwith on receipt, you acknowledge that you may not, without our prior written consent, withdraw any such moneys from such account or compromise, compound, vary, discharge, postpone or release any of the Other Receivables or waive your right of action in connection therewith or do or omit to do anything which may delay or prejudice the full recovery thereof,
- (e) in addition to any other restrictions contained in this clause 5.1 will only deal with the Equipment subject to the charge contained in clause 4.1(c)(iv) of this deed on the following terms
  - (i) will not dispose, lease or otherwise deal with such Equipment until you have applied for our consent in the form set out in Part 1 of Schedule 5, and received consent in the form set out in Part 2 of Schedule 5, and
  - (ii) will pay any monies received from the disposition, leasing or other dealing permitted by us in accordance with paragraph (a) above into such bank account under our control as we may specify or as otherwise directed by us,
- (f) will execute an assignment of your Other Receivables in our favour in such form as we require, whenever we so demand,
- (g) will not, charge, sell, discount, factor, dispose of or, except in accordance with this deed, otherwise deal with your Other Receivables unless you have our prior written consent,
- (h) will authorise your bankers from time to time to provide copy statements and full particulars of all your accounts and facilities with them immediately upon our request,
- (i) will provide such other information, as we may reasonably request regarding your affairs,



- (j) will, immediately you become aware, provide us with details of any present or future litigation, arbitration or administrative proceedings in progress, pending or, to your knowledge, threatened against you which might have a material adverse effect on your ability to perform your obligations under this deed,
- (k) will permit us free access at all reasonable times to inspect and take copies of and extracts from your books, accounts and records and such other documents as we may require and will provide us with all information and facilities which we may require,
- (l) will grant us or our solicitors on request all reasonable facilities to enable us or them to carry out, at your expense, such investigation of title to the Mortgaged Property and enquiries about it as would be carried out by a prudent mortgagee,
- (m) will use your best endeavours to detect any infringement of your rights to the Intellectual Property, if aware of such infringement, will immediately give us all information available to you about such infringement and will commence and diligently prosecute (or permit us in your name but at your expense to commence and prosecute) all proceedings necessary to prevent such infringement or to recover damages,
- (n) will do everything needed to ensure that the Intellectual Property, to which you are or may become entitled, is valid and subsisting and remains owned by you and will take all such actions and proceedings as are necessary to protect such Intellectual Property, if any such Intellectual Property shall at any time lapse or become void, will do everything necessary to restore such Intellectual Property to you,
- (o) will comply in all material respects with all laws concerning the Mortgaged Property and every notice, order, direction, licence, consent, permission lawfully made or given in respect of it and likewise with the requirements of any competent authority,
- (p) will duly and promptly pay all monies which may become due in respect of any of the Securities, (it being acknowledged by you that we shall not incur any liability whatsoever for such monies.)
- (q) forthwith upon the execution of this deed will deposit with us all certificates or documents of title in respect of the Securities, together as appropriate with duly executed instruments of transfer or assignments thereof in blank, (it being acknowledged that we shall at any time be entitled to have any of the Securities registered either in our name or the name of any nominee(s) selected by us,)
- (r) will ensure the delivery or payment to us of all stocks, shares, Securities, rights, monies or other property accruing, offered or issued at any time by way of bonus, redemption, exchange, purchase, substitution, conversion, preference, option or otherwise in respect of any Securities or the certificates or other documents of title to or representing the same, together with executed instruments of transfer or assignments in blank, (it being acknowledged that we may arrange for any of them to be registered either in our name or the name of any nominee(s) selected by us),

- (s) will conduct and carry on your business and procure that each of your Subsidiaries conducts and carries on its business so that its centre of main interest for the purposes of Council Regulations (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings including, but not limited to, its headquarter functions is located at all times within England and Wales and not move its centre of main interest to any other jurisdiction without our prior written consent at our sole discretion or otherwise reduce in or divert from England and Wales the substantive management and control of its business or any of its properties,
- (t) (without prejudice to clauses 5 1(b) and 5 1(c) will not sell, transfer, lease licence, part with possession or dispose of or grant any interest in or relating to your goodwill including (without limitation) diverting or encouraging the diversion of any sales following orders from customers, to any of your Subsidiaries or your holding company (as defined in Section 1159 of the Companies Act 2006) or any of your associates (as defined in section 435 of the Insolvency Act 1986) or any other party,
- (u) if you are a limited company, will not reduce your issued share capital, nor write off or release any part of such capital which is uncalled,
- (v) if you are an LLP, will not allow the reduction of the investment in you by your Partners,
- (w) will affix to the fixed plant and machinery (and/or such part of the Mortgaged Property as we may require from time to time) a fireproof notice stating our interest in or to such plant and machinery or Mortgaged Property

## **6 YOUR ADDITIONAL OBLIGATIONS**

**6 1** You agree that, at all times during the continuance of this security, you

- (a) will carry on your business in a proper and efficient manner and will not make any material alteration to your business, constituting a change from that carried on at the date hereof,
- (b) will maintain proper and up to date books of account of your business, will keep such books of account and all other documents relating to your affairs at your registered office or at such other place where the same ought to be kept and will promptly provide copies thereof to us upon request,
- (c) will deliver to us the copies of your audited financial statements and any reports and notes accompanying them within 6 months of each year end,
- (d) will punctually pay all your debts and liabilities becoming due and payable and which would, on your winding up, have priority over the charges created by this deed,
- (e) will punctually pay all outgoings payable in respect of the Mortgaged Property and will promptly produce the receipts for them to us upon request,
- (f) will keep all your freehold and leasehold property in good and substantial repair and will allow us free access, at all reasonable times, to view the state and condition of any such property, but without us becoming liable to account as a mortgagee in possession,

- (g) will observe and perform all the lessee's covenants in any lease under which any of the Mortgaged Property may be held and will take no action which might lead to such lease being surrendered or forfeited,
- (h) will allow us, at your expense, to carry out repairs or take any action which we shall reasonably consider necessary should you fail to observe or perform your obligations as a lessee,
- (i) will not exercise the powers of leasing or accepting surrenders of leases, conferred on a mortgagee in possession by Sections 99 and 100 of the Law & Property Act 1925, or any other powers of leasing or accepting surrenders of leases, without our prior written consent,
- (j) will make sure that an order of the Court is obtained, under Section 38(4) of the Landlord and Tenant Act 1954, excluding the security of tenure provisions of that Act, before granting any lease,
- (k) will insure and keep insured those parts of the Mortgaged Property as are of an insurable nature against loss or damage by fire and other risks usually insured against and such other risks that we shall reasonably require to their full insurable value with insurers approved by us,
- (l) will make sure that all your insurance policies will be endorsed with notice of our interest in them and will produce to us the receipts for each current premium within fifteen days of its becoming due, failing such production we may effect or renew any such insurance as we shall think fit at your expense,
- (m) will observe and perform all restrictive and other covenants and stipulations for the time being affecting the Mortgaged Property or its use or enjoyment,
- (n) will not do or allow anything to be done on your freehold or leasehold property which shall be treated as a development or a change of use within the meaning of the Town and Country Planning Acts unless our prior written consent has been obtained,
- (o) will not infringe the Town and Country Planning Acts in any way which prejudices our security over the Mortgaged Property,
- (p) will deposit with us all deeds and documents of title relating to your freehold and leasehold property and the insurance policies relating to the same, (subject only to the requirements of any prior Encumbrance or of your landlord),
- (q) will not permit any person to become entitled to any proprietary right or interest which might affect the value of the assets subject to the fixed charges herein

6.2 If you hold property as a tenant or lessee and shall be required by the landlord either to insure or to reimburse your landlord for any insurance premium paid by him then you shall be treated as having complied with your insuring obligation under this deed if you duly and promptly comply with such requirements. However this shall not affect our right to require you to produce satisfactory evidence that you have complied with the landlord's requirements

## **7 FURTHER ASSURANCE AND POWER OF ATTORNEY**

- 7 1 At our request, you will at your cost immediately sign, seal, execute, deliver and perfect all deeds and instruments and do all such other acts and things as we or any Receiver appointed hereunder may require in order to perfect or enforce this security or to use the powers given to each of them in this deed or to enforce your obligations and/or our rights under this deed
- 7 2 You will, if called upon by us, execute a legal or equitable assignment of any part of the Mortgaged Property, in such terms as we may require. You will then give notice of such assignment to such persons as we may specify and take such other steps as we may require to perfect such assignment
- 7 3 You, by way of security, hereby irrevocably appoint us and any Receiver severally to be your attorney and in your name and on your behalf
- (a) to execute and complete any documents or instruments which we or such Receiver may require for perfecting our title to all or any part of the Mortgaged Property or for vesting the same in us, our nominees or any purchaser,
  - (b) to sign, execute, seal and deliver and otherwise perfect any further security document referred to in clause 7 1, and
  - (c) otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on us or a Receiver under this deed or which may be deemed expedient by us or a Receiver in connection with any disposition, realisation or getting in by us or a Receiver or in connection with any other exercise of any power under this deed and including, but not limited to, a power in favour of any Receiver to dispose for value of any of your assets over which such Receiver may not have been appointed and which are located at real property over which he has been appointed, without being liable for any losses suffered by you

## **8 ENFORCEMENT**

- 8 1 We shall be entitled to make demand for payment of the Secured Monies at any time on or after the Enforcement Date or at any time after the occurrence and continuance of any of the following events and if such demand is not met in full, (or on or after the Enforcement Date without any demand) we shall be entitled to enforce (in whole or in part) the charges created by this deed (save where a Moratorium is applied for or is in force, when no demand shall be made until any application is rejected or upon the expiry of such moratorium). For the avoidance of doubt if there is any conflict between any of the following paragraphs (a) to (g) inclusive and any termination event set out in Schedule 5 of the Agreement, compliance with the relevant provision of Schedule 5 of the Agreement shall be deemed to constitute compliance with the conflicting provision of this deed
- (a) your breach of any of your obligations under this deed or in the Agreement (subject to application of any applicable grace periods set out in the Agreement),
  - (b) your default in paying any of the Secured Monies as and when they become due,

- (c) your failure to give us such information as may reasonably be requested as to your business, affairs or assets,
- (d) any representation, warranty or undertaking made by you to us at any time, is or was, in our reasonable opinion, incorrect or misleading in any respect or, being an undertaking, shall not be complied with by you,
- (e) your disposing or attempting to dispose of your principal undertaking or a substantial part of it, without our prior written approval,
- (f) you, or if you are an LLP any of your Partners, becoming Insolvent,
- (g) you suspending or threatening to suspend a substantial part of your business or us receiving information, from you or any responsible third party, whether orally or in writing, that you are contemplating or are likely to suspend a substantial part of your business,
- (h) you commencing negotiations with any of your creditors with a view to the general readjustment or rescheduling of your indebtedness,
- (i) your default under any of the following with any party
  - (A) a trust deed,
  - (B) a loan agreement,
  - (C) an Encumbrance,
  - (D) any other agreement or obligation relating to borrowing or financing (including all liabilities in respect of accepting, endorsing or discounting any notes or bills and all liabilities under debt purchase, factoring, discounting and similar agreements),
  - (E) any guarantee or indemnity,
- (j) any borrowing or any other money payable by you
  - (A) becoming payable or is capable of being declared payable prior to its stated date of maturity, or
  - (B) is not paid when due,
- (k) any Encumbrance created by you in favour of another party becoming enforceable,
- (l) any guarantee, indemnity or other security for any of the Secured Liabilities failing or ceasing in any respect to have full force and effect or to be continuing or is terminated or disputed or is in our opinion in jeopardy, invalid or unenforceable,
- (m) if any governmental authority permits, or procures, or threatens any reorganisation, transfer or appropriation (whether with or without compensation) of a substantial part of your business or assets,

- (n) you, without our prior written consent, changing the nature of your business or trading in any way which we consider prejudicial to this security,
- (o) if it is unlawful for you to perform or comply with any of your obligations under this deed or under any other agreement between you and us or your obligations are not or cease to be legally valid, binding and enforceable,
- (p) if, after the date of this deed, control (as defined in Section 435 of the Insolvency Act 1986) or the power to take control of you changes, without our prior written consent, or
- (q) if, in our opinion, a material adverse change occurs in your financial condition, results of operations, or business

8 2 At any time after any Event of Default the Security Holder may exercise in your name any voting rights attached to the Securities and all powers given to trustees by Sections 10(3) and (4) of the Trustee Act 1925 (as amended by Section 9 of the Trustee Investments Act 1961) in respect of securities, property subject to a trust and any powers or rights exercisable by the registered holder of any of the Securities or by the bearer thereof We will not then need any consent or authority from you

## **9 POWER OF POSSESSION AND SALE**

9 1 At any time after this security shall become enforceable, we and/ or any Receiver appointed under this deed may, in our or their discretion, enter upon and take possession of the Receivership Property or any part of it We or they may also at their discretion, when exercising the powers given in this deed, sell, call in, collect and convert into monies the Receivership Property or any part of it By way of extension of these powers such sale, calling in and conversion may be done for such consideration as we or any Receiver shall consider sufficient It is irrelevant whether the consideration shall consist of cash, shares or debentures in some other company or any other property or partly of one and partly of some other type of consideration Such consideration may be immediately payable or payable by instalments or deferred Instalment or deferred payments may be with or without security and on such other terms as we or the Receiver shall think fit

## **10 APPOINTMENT OF RECEIVER AND HIS POWERS**

10 1 Section 109 of the Law of Property Act 1925 (restricting the power to appoint a receiver) shall not apply to this deed At any time after an Event of Default or after any other event, as a result of which this security shall become enforceable or, if you at any time so request in writing, we may without further notice to you appoint any person to be a Receiver of the Receivership Property Any such appointment may be made subject to such qualifications, limitations and/or exceptions (either generally or in relation to specific assets or classes of asset) as may be specified in the instrument effecting the appointment A Receiver shall have the power to do or omit to do on your behalf anything which you yourself could do or omit to do if the Receiver had not been appointed, notwithstanding your liquidation In particular, (but without limitation) a Receiver shall have power to

- (a) enter upon, take possession of, collect and get in the Receivership Property and have possession of all records, correspondence and other documents relating to the Receivership Property and, for that purpose, to take such proceedings as may seem to him expedient,

- (b) do all acts which you might do for the protection or improvement of the Receivership Property or for obtaining income or returns from it,
- (c) allow the whole or any part of the sale monies of the Receivership Property to remain outstanding on mortgage of the property sold or on any other security or even without any security and without being responsible for any loss caused and with full power to buy in and rescind or vary any contract for sale and to resell without being responsible for loss,
- (d) let or let on hire, lease or surrender and accept surrenders of the Receivership Property,
- (e) exercise or permit you or any nominee of yours to exercise any powers or rights incidental to the ownership of the Receivership Property, in such manner as he may think fit,
- (f) give complete discharges in respect of all monies and other assets which may come into the hands of the Receiver in the exercise of his powers,
- (g) carry out and enforce specific performance of or obtain the benefit of all your contracts or those entered into in exercise of the powers or authorities conferred by this deed,
- (h) demand and get in all rents and other income, whether accrued before or after the date of his appointment,
- (i) exercise the powers conferred on a landlord or a tenant under the Landlord and Tenant Acts 1927 and 1954 but without liability for powers so exercised,
- (j) do all things necessary to make sure that you perform or observes all of your obligations to us,
- (k) delegate to any person, for such time as we shall approve, any of the powers conferred upon the Receiver,
- (l) have access to and make use of your premises, plant, equipment and accounting and other records and the services of its staff in order to exercise his powers and duties,
- (m) sell or otherwise dispose of the Receivership Property for cash or on credit, in one lot or in parcels by public auction or private auction or private contract or, in Scotland, to sell, feu, hire out or otherwise dispose of the Receivership Property by public roup or private bargain,
- (n) raise or borrow money and grant security therefor over the Receivership Property,
- (o) appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions,
- (p) bring or defend any action or other legal proceedings in the name and on your behalf,
- (q) refer to arbitration any question affecting you,

- (r) effect and maintain insurances in respect of your business and properties,
- (s) use your seal,
- (t) do all acts and to execute in your name and on your behalf any deed, receipt or other document,
- (u) draw, accept, make and endorse any bill of exchange or promissory note in your name and on your behalf,
- (v) appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and have the power to employ and dismiss employees, agents and/or advisors at such salaries or remuneration and on such terms of service as the Receiver in his discretion may think fit,
- (w) do all such things (including the carrying out of works) as may be necessary for or incidental or conducive to the realisation of the Receivership Property,
- (x) make any payment which is necessary or incidental to the performance of his functions,
- (y) carry on or permit the carrying on of your business,
- (z) establish Subsidiaries of you,
- (aa) transfer to your Subsidiaries the whole or any part of the business or Receivership Property,
- (bb) grant or accept a surrender of a lease or tenancy of any of the Receivership Property, and take a lease or tenancy of any properties required or convenient for your business,
- (cc) make any arrangement or compromise on your behalf in respect of the Receivership Property,
- (dd) call up, or require your directors to call up, any of your uncalled capital,
- (ee) rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to you and to receive dividends, and to accede to trust deeds for the creditors of any such person

He shall also have all powers from time to time conferred on receivers by statute without, in the case of powers conferred by the Law of Property Act 1925, the restrictions contained in Section 103 of that Act

- 10 2 We may from time to time determine the remuneration of any Receiver and section 109(6) Law of Property Act 1925 shall be varied accordingly A Receiver shall be entitled to remuneration appropriate to work and responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of his firm



- 10 3 We may remove any Receiver (except an administrative receiver) In case of such removal or the retirement or death of any Receiver, we may appoint another in his place At the time of his appointment (or at any time afterwards) we may fix the remuneration of the Receiver on such basis as we shall determine This may include a fixed fee or an hourly rate or a commission
- 10 4 We may appoint more than one person to act as the Receiver Where more than one person shall be appointed to act as Receiver, those so appointed shall carry out their duties, exercise their rights, and be subject to their obligations jointly as well as severally References in this deed to the Receiver shall be to each and all of them as appropriate
- 10 5 Any appointment, or fixing of the remuneration of the Receiver or any such removal shall be made in writing and be signed by any director or authorised officer of ours
- 10 6 Any Receiver appointed under this deed shall be your agent He shall be in the same position as a Receiver appointed under the Law of Property Act 1925 You shall be solely responsible for his acts, omissions losses, misconduct, defaults and remuneration We shall not in any way be liable or responsible either to you or to any other person for any of them
- 10 7 We may at any time give up possession of any part of the Receivership Property and/or withdraw from the receivership
- 10 8 Whether or not a Receiver shall be appointed under this deed, we may at any time after this security shall have become enforceable and without giving notice, exercise all or any of the powers, authorities and discretions conferred on a Receiver as set out above

## **11 ADDITIONAL POWERS**

- 11 1 In addition to the powers of leasing or accepting surrenders of leases conferred on mortgagees by Sections 99 and 100 of the Law of Property Act 1925, it shall be lawful for us or any Receiver without the restrictions contained in those Sections
- (a) to grant any lease of all or any part of the Mortgaged Property upon such terms as we or the Receiver shall in our absolute and unfettered discretion think fit, and
  - (b) to accept a surrender of any lease of all or any part of the Mortgaged Property on such terms as we or the Receiver in our or his discretion shall think fit
  - (c) Section 103 of the Law of Property Act 1925 (restricting the power of sale) shall not apply However the power of sale and the other powers conferred on mortgagees by that Act shall apply to this security but without the Act's restrictions as to giving notice or otherwise Accordingly for the purposes of a sale or other exercise of any such powers the whole of the Secured Monies shall be treated as due and payable immediately upon the execution and delivery of this document
  - (d) The restrictions on the right of consolidating mortgage securities, which are contained in Section 93 of the Law of Property Act, shall not apply to this security

- (e) We may, at any time without discharging or in any other way affecting this security or any remedy that we may have, grant to you (or to any other person) time or indulgence or abstain from perfecting or enforcing any remedies, securities, guarantees or rights which we may now or afterwards have from or against you or any other person
- (f) If we receive or are treated as having received notice of any subsequent mortgage or charge affecting any of the Mortgaged Property then we may open a new account with you. If we do not open a new account, we shall nevertheless be treated as if we had done so at the time when we received or were treated as having received such notice. From that time all payments made by you to us shall be credited or be treated as having been credited to the new account. Such payments shall not operate to reduce the amount secured by this deed when we received or were treated as having received such notice

## **12 APPLICATION OF MONIES**

- 12 1 All monies received by us or by the Receiver under or by virtue of this deed shall be applied in the following order,
  - (a) in the discharge of all liabilities having priority to the Secured Monies,
  - (b) in payment of all costs, charges and expenses incurred in or incidental to the exercise or performance (or attempted exercise or performance) of any of the powers or authorities conferred by or in any other way connected with this deed, and then
  - (c) in payment to the Receiver of his remuneration fixed in accordance with clause 10 of this deed, and then
  - (d) any sums due to any person under any applicable statute,
  - (e) in payment to us of the Secured Monies due to us in such order as we in our absolute discretion think fit, and then
  - (f) in payment to you of any surplus
- 12 2 Any surplus shall not carry interest. The Receiver or we may pay any surplus into any of your bank accounts including an account opened specifically for such purpose. We shall then have no further liability for such surplus
- 12 3 Following the enforcement of this security, any monies received by us may be appropriated by us in our discretion in or towards the payment and discharge of any part of the Secured Monies
- 12 4 We or the Receiver may credit any monies to a suspense account for so long and in such manner as we may from time to time determine. The Receiver may retain the same for such period as the Receiver and we consider expedient

- 12 5 All monies received by you under any insurance policy on the Mortgaged Property shall be treated as part of the Mortgaged Property subject only to any rights of third parties having priority and to the requirements of any lease of the Mortgaged Property. They shall be applied at our discretion either in reducing the Secured Monies or towards making good the loss or damage for which the monies became payable. Any monies received by you under any insurance on the Mortgaged Property shall be held on trust for payment to us pending such application.

### **13 PROTECTION OF THIRD PARTIES**

- 13 1 No person paying or handing over monies to the Receiver and obtaining a discharge shall have any responsibility or liability to see to their correct application.
- 13 2 No person dealing with us or the Receiver need enquire
- (a) whether any event has happened giving either us or the Receiver the right to exercise any of his powers,
  - (b) as to the propriety or regularity of any act purporting or intending to be an exercise of such powers,
  - (c) as to the validity or regularity of the appointment of any Receiver purporting to act or to have been appointed as such, or
  - (d) whether any money remains owing upon this security.
- 13 3 All the protection to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925 shall apply to any person purchasing from or dealing with the Receiver or us as if the Secured Monies had become due and the statutory power of sale and appointing a receiver in relation to (to the extent permitted by law) had arisen on the date of this deed.
- 13 4 No person dealing with us or the Receiver shall be affected by express notice that any act is unnecessary or improper.

### **14 LAND REGISTRY**

- 14 1 You will notify us of any freehold or leasehold property which you now own or which you may own after the date of this deed and will, at any time, meet any cost of registering this deed against any property which you may now, or in the future, own at the Land Registry.
- (a) You hereby consent to our application to the Chief Land Registrar in Form RX1 for the registration of the following restriction against each of the registered titles specified in Schedule 2 (and against any title to any unregistered Property specified in Schedule 2 which is or ought to be the subject of a first registration of title at the Land Registry at the date of this deed)

#### **"RESTRICTION**

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ 7<sup>th</sup> November 2014 ] in favour of Leumi ABL Limited (company number 00620951) referred to in the charges register or, if appropriate signed on such proprietor's behalf by its attorney, directors and/or secretary "

- (b) In respect of any property charged pursuant to this deed, title to which is registered at the Land Registry, you hereby represent and warrant that the security created by this deed does not contravene any of the provisions of your memorandum and articles of association or any other constitutional documents

## **15 CONTINUING AND ADDITIONAL SECURITY**

- 15 1 This security is a continuing security. It shall apply to all the Secured Monies despite any interim settlement of account until a final discharge of this security shall be given to you by us
- 15 2 This security is in addition to and shall not merge or otherwise prejudice or affect any other right or remedy of ours or any assignment, bill, note, guarantee, mortgage or other security now or in future in favour of us or held by or available to us, whether created by you or any third party
- 15 3 This security shall not in any way be prejudiced or affected by
  - (a) any guarantee, mortgage or other security now or in future held by or available to us or by the invalidity of any of them or by us now or afterwards dealing with, exchanging, releasing, modifying or abstaining from perfecting or enforcing any of them or any rights which it may now or afterwards have, or
  - (b) by us giving time for payment or indulgence or compounding with you or any other persons

## **16 CURRENCY INDEMNITY**

- 16 1 For the purpose of or pending the discharge of any of the Secured Liabilities secured by this deed we or any Receiver appointed hereunder may convert any monies received, recovered or realised under this deed (including the proceeds of any previous conversion) from their existing currency into such other currency as we or such Receiver may think fit. Any such conversion shall be effected at the then prevailing spot selling rate of exchange, of our bankers, for such other currency against the existing currency
- 16 2 You will indemnify us against any shortfall between
  - (a) any amount received or recovered by us in respect of any of the Secured Liabilities which are converted in accordance with clause 16 1 into the currency in which such liability was payable, and
  - (b) the amount payable to us under this deed in the currency of such liability

## **17 DISCHARGE**

- 17 1 Upon payment and complete discharge and performance of all the Secured Liabilities and of all costs, charges and expenses incurred by us under or in relation to this deed, we shall, at your request and cost, duly discharge this security and any further security given in accordance with its terms. We will also transfer to you any of the Mortgaged Property which has been assigned or transferred to us

- 17 2 Our right to recover the Secured Monies or to enforce the terms of this deed shall not be affected by any payment or any act or thing which may be avoided or adjusted under the laws relating to bankruptcy or insolvency or under Part VI of the Insolvency Act 1986. Any release or discharge given or settlement made by us relying on any such payment, act or thing shall be void and of no effect.

## **18 SERVICE OF NOTICES AND PROCESS**

- 18 1 Except as stated to the contrary herein, any written notice from us to you and any proceedings issued by us requiring service on you may be given or served

- (a) by delivering it at or posting it to your registered office or to such other address advised by you to us and acknowledged by us as being effective for the purposes of this clause, or
- (b) by delivering it at or posting it to any address last known to us at which you carried on business
- (c) by handing it to your officers or any of your Partners,
- (d) by a fax or e-mail to your number or address advised to and acknowledged by us as suitable for communication between the parties

- 18 2 Any such notice or process shall be considered served

- (a) if delivered - at the time of delivery, or
- (b) if sent by post - 48 hours from the time of posting, or
- (c) if sent by fax or e-mail - at the time of transmission, or
- (d) if handed over - at the time of handing over

- 18 3 Any notice in writing by you to us required hereunder shall take effect at the time it is received by us at our address for service or at such other address as we may advise in writing to you for this purpose

## **19 JURISDICTION**

- 19 1 This deed shall be interpreted and shall be governed by the laws of England. You will accept the non-exclusive jurisdiction of the English Courts in connection with any matter arising under this deed.

## **20 YOUR REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

- 20 1 You certify that the execution of this deed has been duly authorised by a resolution of your Board of Directors and that it does not break any of the provisions of your Memorandum and Articles of Association or of any other Encumbrance, security or agreement entered into prior to the date of this deed or the laws of any jurisdiction applying to you.

20 2 You represent and warrant to us that

- (a) you are and will at all times be the sole beneficial owner with full title guarantee of all the Mortgaged Property and that no Encumbrances affect it except the Encumbrances (if any) set out in Schedule 3 and general liens in the ordinary course of business,
- (b) you are and will at all times have the necessary power to enter into and perform your obligations under this deed,
- (c) this deed constitutes your legal, valid, binding and enforceable obligations and is an effective security over all and every part of the Mortgaged Property in accordance with its terms,
- (d) all necessary authorisations and consents to enable or entitle you to enter into this deed have been obtained and these will remain in full force and effect during the existence of this security,
- (e) you have acquired maintained and complied with all Environmental Licences (if any) needed for its use or occupation of the Mortgaged Property or for the conduct of your current business,
- (f) you have complied with all other applicable Environmental Laws and have not done or permitted any act or omission whereby your Environmental Licences (if any) could be varied or revoked,
- (g) so far as you are aware there has been no discharge, spillage, release or emission of any prescribed, dangerous, noxious or offensive substance or any controlled waste on, into or from any of the Mortgaged Property or any premises adjoining any part of it, and no such substances or any controlled waste have been stored or disposed of on or in any part of the Mortgaged Property or, so far as you are aware, in any adjoining premises except in accordance with the requirements of the applicable Environmental Laws,
- (h) you are not in breach of and have not incurred or become subject to any civil or criminal liability under any Environmental Laws or the terms of any Environmental Licence,
- (i) you have obtained and maintained all such insurance policies as would be maintained by prudent companies carrying on business of the type carried on by you at all relevant times and has complied in all material respects with the terms and conditions of such policies
- (j) You undertake that no Encumbrances (other than a general lien in the ordinary course of business) ranking in priority to or pari passu with the charges created by this deed will arise after the date of this deed over the Mortgaged Property

## 21 TRANSFERS AND DISCLOSURES

- 21 1 This deed is freely transferable by us. References in this deed to us or we shall include our successors, assignees and transferees

21 2 You may not assign or transfer any of your obligations under this deed. Nor may you enter into any transaction which would result in any such obligations passing to another person.

21 3 We may disclose any information about you and any member of your Group and any other person connected or associated with you to any member of our Group and/or to any person to whom we are proposing to transfer or assign or have transferred or assigned this deed. You represent and warrant that you have and (so far as permitted by law) will maintain any necessary authority by or on behalf of any such persons to agree to the provisions of this clause.

## **22 MISCELLANEOUS**

22 1 No delay or omission on our part in exercising any right or remedy under this deed shall impair that right or remedy or operate as or be taken to be a waiver of it. Any single, partial or defective exercise of any such right or remedy shall not prevent the further exercise of that or any other right or remedy.

22 2 Our rights under this deed are cumulative. They are not exclusive of any rights provided by law. They may be exercised from time to time and as often as we see fit.

22 3 Any waiver by us of any terms of this deed or any consent or approval given by us under it shall only be effective if given in writing. Such consent and approval shall then only apply for the purpose stated and be subject to any written terms and conditions imposed by us.

22 4 If at any time any one or more of the provisions of this deed is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction then neither the legality, validity or enforceability of the remaining provisions of this deed nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.

22 5 Any certificate signed by a director or authorised officer of ours as to the amount of the Secured Monies at the date of such certificate shall, in the absence of manifest error, be conclusive evidence of such amount and be binding on you.

22 6 This deed may be executed in any number of counterparts. It will then be as effective as if all signatures on the counterparts were on a single copy of this deed.

22 7 The paper on which this deed is written is, and will remain at all times, our property, even after the discharge of this security.

**SCHEDULE 1**  
**Details of Agreement(s)**  
**(Clause 1 (Definition of "Agreement"), Clauses 3.1(a) and 8.1(a))**

The Receivable Finance Agreement entered into between you and us dated  
7<sup>th</sup> November 2004



**SCHEDULE 3**  
**Encumbrances**  
**(Clauses 4.5 and 20 2(a))**

**SCHEDULE 4**  
**(Plant and machinery subject to chattel mortgage hereunder)**  
**(Clause 4.1(c)(iv))**

**SCHEDULE 5**  
**(Disposal of Charged Assets)**  
**(Clause 5.1(e))**

**Part 1**

**Form of letter of Request to dispose of Charged Assets**

To    The Directors  
      Leumi ABL Limited

[date]

Dear Sirs

We refer to the debenture dated [•     ] granted to you by us ("**Debenture**")

We hereby request your consent to dispose of [asset] being part of the Mortgaged Property (as defined in the Debenture) We wish to dispose of [asset] to [purchaser] [describe terms]

Please confirm your consent to the above disposal by signing and returning the enclosed letter

Yours faithfully

for and on behalf of

[Company]

**Part 2**

**Form of letter of consent to dispose of Charged Assets**

To [Company]

[date]

Dear Sirs

We refer to your letter of [date], a copy of which is attached

We hereby consent to the disposal of [asset] to [purchaser] [on terms] [on the condition that [specify conditions of consent to disposal]]

Yours faithfully

for and on behalf of

Leumi ABL Limited

## **ACKNOWLEDGMENT**

The Client acknowledges its understanding that

- a) this legal document imposes significant obligations on the Client which at all times must be complied with, a breach of any obligation by the Client entitles Leumi to enforce the security given in this document and to claim damages for any losses caused, particularly if the Client fails to perform its part
- (b) should the Client and any guarantor or indemnifier be in any doubt about any particular aspect of this and or any other documents governing the proposed facilities, then before signature, they should consider taking independent legal advice to ensure that these obligations are fully understood

IN WITNESS of which the parties have executed this deed on the date set out above

SIGNED and delivered as a deed by  
**WILLIAM SINCLAIR HORTICULTURE  
LIMITED** acting by two directors or by one  
director and the secretary  
acting by

)  
(a Director) )

Signature of Director

and

)  
(a Director/Company Secretary) )

Signature of Director /  
Company Secretary

SIGNED as a deed by

And

  Attorney for **LEUMI ABL LIMITED**

  Attorney for **LEUMI ABL LIMITED**

as attorneys for

**LEUMI ABL LIMITED**

under a power of attorney dated

14th August 2012 in the presence of

Name

Address

Occupation

DATED 7 NOVEMBER 2014

WILLIAM SINCLAIR HORTICULTURE (1)  
LIMITED

LEUMI ABL LIMITED (2)

---

**FULL FORM DEBENTURE**

Comprising Fixed and Floating Charges over the  
whole or substantially the whole of the Company's  
business, assets and undertaking

---

*Save for alterations/redacted  
pursuant to s. 859G of the Companies  
Act 2006*

We hereby certify that this is a  
true and correct copy of the original  
Dated 13/11/2014

*Squire Patton Boggs (UK) LLP*  
SQUIRE PATTON BOGGS (UK) LLP  
RUTLAND HOUSE  
148 EDMUND STREET  
BIRMINGHAM  
B3 2JR

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DATE OF FULL FORM DEBENTURE

7 NOVEMBER

2014

**PARTIES**

- (1) **WILLIAM SINCLAIR HORTICULTURE LIMITED** of Firth Road, Lincoln, Lincolnshire, LN6 7AH (Company Registry Number 00007633) whose registered office is at Firth Road, Lincoln, Lincolnshire, LN6 7AH (the "**Company**")
- (2) **LEUMI ABL LIMITED** (Company Number 00620951) whose registered office is at 126 Dyke Road, Brighton, East Sussex BN1 3TE ("**Leumi**")

**INTRODUCTION**

**IT IS AGREED THAT:**

**1 DEFINITIONS**

- 1.1 In this deed any words whose meaning is defined in the Agreement shall have the same meaning
- 1.2 In this deed all and any references to "**you**" shall each be a reference to the party appearing at (1) above and "**your**" shall be construed accordingly
- 1.3 In this deed all and any references to "**we**" shall each be a reference to the party appearing at (2) above and "**us**", "**our**" and similar shall be construed accordingly
- 1.4 In this deed the following words shall have the meaning set out after each of them

**"Administrator"** - means any person appointed under Schedule B1 of the Insolvency Act 1986 to manage your affairs, business and property

**"Agreement"** - means any receivable finance agreement or other agreement for the sale and purchase of Receivables and/or any other type of agreement between you and us (including without limitation the agreements, details of which are set out in Schedule 1) from time to time, and any amendments or alterations to it or them and any replacements for or supplements to the same, from time to time

**"Associated Rights"** - has the same meaning as in the Agreement

**"Deed of Priority"** means the deed of priority between (1) Leumi (2) Michael John Airey, Stewart Lesley McCarthy, Caroline Isobel Murray and Eric O'Hern as trustees for the time being of the William Sinclair Holdings Plc Pension Fund and (3) the Company, dated on or around the date of this deed

**"Encumbrance"** - means any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention, flawed asset agreement, preferential right, trust arrangement or other security arrangement, whether by law or agreement, or any right conferring a priority of payment

**"Enforcement Date"** - means the date on which

- (a) we receive from any person notice of intention to appoint an Administrator,
- (b) you request us to appoint an Administrator or any Receiver,
- (c) a petition is filed for the appointment of an Administrator in respect of you,
- (d) an application is made for the appointment of an Administrator in respect of you,

- (e) an application is made for an administration order in respect of you,
- (f) an Administrator is appointed in relation to you, or
- (g) a winding up order has been made or a resolution for winding up has been passed or a provisional liquidator has been appointed in respect of you

**"Environmental Laws"** – means all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the United Kingdom or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health, including without limitation the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or the rectification thereof or any related matters

**"Environmental Licence"** – means any permit, licence, authorisation, consent or other approval required by any Environmental Law

**"Equipment"** - means machinery, equipment, furniture, furnishings, fittings and fixtures and other tangible personal property (other than inventory), including, without limitation, data processing hardware and software, motor vehicles, aircraft, dies, tools, jigs and office equipment, together with all present and future additions thereto, replacements or upgrades thereof, components and auxiliary parts and supplies used or to be used in connection therewith and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto wherever any of the foregoing is located and any other asset which would be treated as a fixed asset under GAAP

**"Event of Default"** – means in relation to you - any event set out in clause 8 1,

**"Fixtures"** - means, in relation to a Property, all fixtures and fittings (including trade fixtures and fittings), fixed plant and machinery and other items attached to that property, whether or not constituting a fixture at law

**"GAAP"** - means accounting principles and practices which are for the time being generally acceptable in the United Kingdom

**"Group"** – means in relation to any company, that company, its Subsidiaries, its holding company (as defined in Section 1159 of the Companies Act 2006) and the Subsidiaries of that holding company

**"Insolvent"** – means the happening of any of the following events in relation to you

- (a) a distress or execution being levied on or issued against any of the Mortgaged Property,
- (b) entering or seeking to enter into any formal scheme of arrangement of your affairs or composition in satisfaction of your debts with your creditors in accordance with the Insolvency Act 1986,
- (c) your taking any action for your winding up, dissolution or re-organisation (otherwise than for the purposes of an amalgamation or reconstruction while solvent on terms previously approved in writing by us) or for the appointment of a Receiver, Administrative Receiver, Administrator, trustee or similar officer to or in respect of all or any part of your revenue or assets,
- (d) a petition being presented or an order being made for your winding up,

- (e) an administration order being made or applied for,
- (f) a court application being made for the appointment of a Receiver or such a Receiver being appointed,
- (g) a notice of intention to appoint an Administrator being given by an person or an Administrator being appointed,
- (h) a meeting of creditors being called for your winding up or for any other purpose referred to in the Insolvency Act 1986,
- (i) if you are an LLP, your Partners resolving to present a petition for an administration or bankruptcy order,
- (j) a statutory demand under the Insolvency Act 1986 being served,
- (k) an encumbrancer taking possession of any part of your undertaking or property,
- (l) entering into any informal arrangement or composition with or for the benefit of your general body of creditors,
- (m) being unable to pay your debts as they become due,
- (n) being deemed insolvent under the Insolvency Act 1986,
- (o) if you are an LLP, you becoming the subject of any insolvency proceedings as provided for in the Limited Liability Partnerships Act 2000,
- (p) taking any steps towards a Moratorium

**"Intellectual Property"** – means all patents (including applications, improvements, prolongations, extensions and right to apply therefor) designs (whether registered or unregistered) copyrights, design rights, trade marks and service marks (whether registered or unregistered) utility models, trade and business names, know-how, formulae, inventions, confidential information, trade secrets and computer software programs and systems (including the benefit of any licences or consents relating to any of the above) and all fees, royalties or other rights derived therefrom or incidental thereto in any part of the world

**"LLP"** has the same meaning as in the Agreement

**"Moratorium"** – means a moratorium coming into effect pursuant to Schedule A1 of the Insolvency Act 1986 or pursuant to paragraph 1A of Schedule 1 to the Insolvent Partnerships Order 1994

**"Mortgaged Property"** – means the subject matter of the mortgages and charges (or any part of them, if the context so allows) created by this deed and set out at clause 4

**"Non Vesting Receivables"** – means all or any Receivables purchased or purported to be purchased by us pursuant to the Agreement but which fail to vest absolutely and effectively in us for any reason, together with the Associated Rights to such Receivables

**"Other Receivables"** - all sums due and owing or accruing due and owing to you whether or not on account of your trading both present and future except

- (a) Non-Vesting Receivables, and
- (b) any Receivables whilst they remain absolutely and effectively vested in or held on trust for us under the Agreement and whether such vesting results from a legal or equitable assignment

**"Partner"** has the same meaning as in the Agreement and **"Partners"** shall be construed accordingly

**"Property"** - means freehold and leasehold property wherever situate (other than any heritable property in Scotland), and includes all liens, charges, options, agreements, rights and interests in or over such property or the proceeds of sale of such property and all buildings and Fixtures thereon and all rights, easements and privileges appurtenant to, or benefiting, the same and **"Properties"** means all or any of the same, as the context requires

**"Receivables"** - has the same meaning as in the Agreement

**"Receiver"** - includes a receiver and/or manager not being an **administrative receiver** (as defined in Section 29(2) of the Insolvency Act 1986) of the Receivership Property

**"Receivership Property"** – means such part or parts of the Mortgaged Property not being the whole or substantially the whole of your property and assets within the meaning of section 29(2) of the Insolvency Act 1986

**"Remittances"** – means cash, cheques, bills of exchange, negotiable and non-negotiable instruments, letters of credit, orders, drafts, promissory notes, electronic payments and any other instruments, methods or forms of payment or engagement

**"Secured Liabilities"** – means both the Secured Monies and the obligations and liabilities in clause 3 1

**"Secured Monies"** – means all the monies which now or at any time in future may be owing due and/or payable (but remaining unpaid) by you to us in any manner and for any reason on any account, Secured Monies include all such monies due by you, either alone or jointly with any other person or on any partnership account (even though the whole of any part of such monies is represented or secured by any mortgages, guarantees, trust receipts, bills of exchange, leasing, hire or conditional sale agreements, assignments, agreements for discounting or factoring of Receivables or any other agreements or securities) and whether or not any of them have or has fallen due or become payable and whether or not default shall have been made in respect thereof, Secured Monies also means any of the following items, whether now or in the future

- (a) all monies due or payable under the Agreement (if any) or by virtue of any guarantee or indemnity given by you to us,
- (b) all advances which we have made or shall make to you,
- (c) any indebtedness now or hereafter to be incurred by us for you or at your request, including all monies which we shall pay or become liable to pay for or on account of you or any other person at your request or order or under your authority, either alone or jointly with any other person and whether or not by any of the following
  - (i) us making direct advances, or
  - (ii) us drawing, accepting, endorsing, paying or discounting any Remittance, or

- (iii) us entering into any bond, guarantee, indemnity or letter of credit, or
- (iv) us confirming orders, or
- (v) us otherwise accepting any other liability for you or on your behalf,
- (d) all monies which we can charge to you and all costs charges and expenses incurred by us following default in payment of any such monies or of breach by you of any of the provisions of this deed
- (e) the charges of surveyors and/or solicitors instructed by us in connection with any part of the Mortgaged Property
- (f) all costs and charges and expenses which we may from time to time incur in
  - (i) stamping, perfecting, registering or enforcing this security, or
  - (ii) the negotiations for the preparation and execution of this deed, and the Agreement or any guarantee, indemnity, priority arrangement, waiver or consent in respect of them, or
  - (iii) obtaining payment or discharge of Secured Monies, or
  - (iv) paying any rent, rates, taxes or outgoings for the Mortgaged Property, or
  - (v) insuring, repairing, maintaining, managing or realising any part of the Mortgaged Property, or
  - (vi) the preservation or exercise of any rights under or in connection with this deed or any attempt to do so, or
  - (vii) giving a discharge or release of this security, or
  - (viii) dealing with or obtaining advice about any other matter or question arising out of or in connection with this deed with the intention that we shall be afforded a full complete and unlimited indemnity against all costs, charges and expenses paid or incurred by it and whether arising directly or indirectly in respect of this security or of any other security held by us for the Secured Monies,
- (g) all monies expended by any attorney appointed under clause 7.3 in exercising his powers,
- (h) interest on all monies due and owing to us at such rate as may from time to time be payable pursuant to any agreement or arrangement relating thereto

**"Securities"** – means all stocks, shares, bonds and securities of any kind whatsoever and whether marketable or otherwise and all other interests (including but not limited to loan capital) both present and future held by you in any person and includes all allotments, rights, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to the same and all money or property offered at any time by way of dividend, conversion, redemption, bonus, preference, option or otherwise in respect thereof

**"Subsidiary" - means**

- (a) a subsidiary within the meaning of Section 1159 of the Companies Act 2006, and
- (b) unless the context otherwise requires, a subsidiary undertaking within the meaning of Section 1162 of the Companies Act 2006

**2 INTERPRETATION**

**2 1 In the construction and interpretation of this deed**

- (a) the singular shall include the plural and vice versa, reference to one gender shall include a reference to any other genders,
- (b) references to persons shall be treated as including individuals, firms, partnerships, corporations, organs of government, whether local, national or supra national and any other entity recognised by law,
- (c) references to any Act of Parliament shall be treated as including each Act as amended, modified or re-enacted from time to time and all rules, regulations, orders and subordinate legislation made in accordance with it,
- (d) references to clauses and to schedules are to those in this deed,
- (e) where you have an obligation to carry out an act then you shall be fully responsible for the costs and expenses of doing so,
- (f) where we act in accordance with this deed you will indemnify us against all costs and expenses incurred,
- (g) where any discretion is vested in a Receiver or us it shall be treated as an absolute discretion,
- (h) each of the provisions of this deed shall be severable and distinct from one another,
- (i) references to this deed and other documents referred to in it include any supplemental or collateral document to each of them or which is entered into pursuant to each of them and any document varying, supplementing, novating or replacing the same from time to time,
- (j) references to charges shall be treated as references to mortgages and charges created by this deed,
- (k) references to this security shall be treated as reference to the security created by this deed,
- (l) any powers given in this deed to an administrator shall apply to the fullest extent permitted by the Insolvency Act 1986,
- (m) headings to clauses are for reference only and shall not affect the interpretation of this deed,

- (n) the meaning of general words introduced by the word **other** or the word **otherwise** shall not be limited by reference to any preceding word or enumeration indicating a particular class of acts, matters or things,
- (o) all and any references to **"we"**, **"us"**, **"our"** or similar shall, where the context admits include our officers, agents and representatives,
- (p) the words **"other"** and **"otherwise"** are not to be construed ejusdem generis with any foregoing words where a wider construction is possible,
- (q) the words **"including"** and **"in particular"** are to be construed as being by way of illustration or emphasis only and shall not take effect as limiting the generality of any foregoing words

### **3 COVENANT TO PAY**

#### **3 1 You agree with us**

- (a) to pay the Secured Monies, which are now or shall be due, owing and payable to us, in accordance with the terms of the transaction, security, instrument or other obligation giving rise to your indebtedness to us, including those under the Agreement, and
- (b) to discharge all obligations and liabilities, whether actual, accruing or contingent, now or in the future due, owing or incurred to us by you, in whatever currency denominated and on whatever account and howsoever arising, whether alone or jointly and in whatever style, name or form and whether as principal or surety

### **4 CHARGING PROVISIONS**

#### **4 1 As security for the payment of the Secured Monies, you with full title guarantee now give the following mortgages and charges in our favour, namely**

- (a) a legal mortgage on the Properties (if any) specified in Schedule 2 to this deed,
- (b) a legal mortgage on all Properties (other than any Properties specified in Schedule 2) now owned by you or in which you have an interest,
- (c) a fixed charge on all of the following assets, whether now or in future belonging to you
  - (i) the freehold and leasehold properties of you not effectively mortgaged under clauses 4 1(a) and 4 1(b) including such as may hereafter be acquired,
  - (ii) all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery in, on or attached to the property subject to the legal mortgages under clauses 4 1(a) and 4 1(b) and all spare parts, replacements, modifications and additions for or to the same,
  - (iii) any other freehold and leasehold property which you shall own together with all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery in, on or attached to such property and all spare parts, replacements, modifications and additions for or to the same,



- (iv) all Equipment (if any) listed in Schedule 4 and the benefit of all contracts and warranties relating to the same,
  - (v) all Equipment, (other than Equipment specified in Schedule 4), and the benefit of all contracts and warranties relating to the same,
  - (vi) all your goodwill, unpaid and/or uncalled capital,
  - (vii) all your Intellectual Property,
  - (viii) all your Securities,
  - (ix) all loan capital, indebtedness or liabilities on any account or in any manner owing to you from any Subsidiary of yours or a member of your Group,
  - (x) all amounts realised by an administrator or liquidator of yours, upon enforcement or execution of any order of the Court under Part IV of the Insolvency Act 1986
- (d) a fixed charge upon all or any of the following assets, whether now in existence or coming into existence in the future
- (i) all documents of title to any item of property which at any time and for any purpose has been or may be deposited with us,
  - (ii) the assets mentioned in the title documents referred to in the immediately preceding sub-paragraph,
  - (iii) any account in your name under our control or operated in accordance with our directions
- (e) a fixed charge on all your Non-Vesting Receivables, present and future,
- (f) a fixed charge on your Other Receivables, present and future,
- 4 2 you, with full title guarantee, hereby charge to us by way of first floating charge as a continuing security for the payment and discharge of the Secured Monies your undertaking and all your property, assets and rights whatsoever and wheresoever both present and future other than any property or assets from time to time effectively charged by way of legal mortgage or fixed charge or assignment pursuant to clauses 4 1(a) to 4 1(f) above or otherwise pursuant to this deed but including (without limitation and whether or not so effectively charged by way of fixed charge or assignment pursuant to clauses 4 1(a) to 4 1(f) above) any of your property, assets and rights whatsoever situated in Scotland
- 4 3 The provisions of paragraph 14 of Schedule B1 to the Insolvency Act 1986 apply to the floating charge in clause 4 2 which shall be enforceable at any time on or after you failing to meet any demand made under clause 8 of this deed or, if earlier, the Enforcement Date, save that nothing in this deed shall cause any charge to become enforceable whilst you are subject to a Moratorium

4 4 If we shall enforce any of the above charges then the floating charges created by this deed shall immediately and without further formality become fixed charges. However, we may also at any time give written notice to you immediately converting all or any of the floating charges into fixed charges in respect of the whole or any part of the Mortgaged Property subject to such floating charges

4 5 This deed shall take effect subject to the provisions of the prior Encumbrances over your assets detailed in Schedule 3, except as otherwise varied by any separate deed

4 6 So far as permitted by law and notwithstanding anything expressed or implied in this deed, if you

(a) create or attempt to create any Encumbrance over all or any of the Mortgaged Property without our prior written consent, or

(b) if any person levies or attempts to levy any distress, execution, sequestration or other process or does or attempts to do any diligence in execution against any of the Mortgaged Property,

the floating charge created by clause 4 2 over the property or asset concerned shall thereupon automatically without notice be converted into a fixed charge

4 7 So far as permitted by law and notwithstanding anything expressed or implied in this deed, upon the occurrence of any event described at

(a) clause 8 1(e), or

(b) clause 8 1(m)

the floating charges created by this deed shall, unless otherwise agreed by us in writing, automatically and without notice be converted into fixed charges

4 8 Notwithstanding anything expressed or implied in this deed but without prejudice to clauses 4 1(f) and 4 2, we shall be entitled at any time by giving notice in writing to that effect to you to convert the floating charge over all or any part of the Mortgaged Property into a fixed charge as regards the assets specified in such notice

## **5 YOUR OBLIGATIONS**

5 1 You agree with us that, whilst this security exists, you

(a) will deal with the Non-Vesting Receivables and their Associated Rights as if they were Receivables and their Associated Rights purchased by us under the Agreement and in particular will not bank or deal with Remittances in respect of them except by dealing with them in accordance with the Agreement,

(b) will not sell, transfer, lease, licence or dispose of the Mortgaged Property subject to the floating charges herein, except by way of sale at full value in the ordinary course of its business now being carried on,

- (c) subject to the terms of the Deed of Priority, will not sell, transfer, lease, license or dispose of the Mortgaged Property subject to the fixed charges herein without our prior written consent but such restriction shall not prohibit the disposal of an asset (other than freehold or leasehold property) for the purpose of its immediate replacement, modification, repair and/or maintenance,
- (d) will collect your Other Receivables in the ordinary course of your business as agent for us in a proper and efficient manner and pay into such account as we may from time to time specify all moneys which you may receive in respect of the Other Receivables forthwith on receipt, you acknowledge that you may not, without our prior written consent, withdraw any such moneys from such account or compromise, compound, vary, discharge, postpone or release any of the Other Receivables or waive your right of action in connection therewith or do or omit to do anything which may delay or prejudice the full recovery thereof,
- (e) in addition to any other restrictions contained in this clause 5 1 will only deal with the Equipment subject to the charge contained in clause 4 1(c)(iv) of this deed on the following terms
  - (i) will not dispose, lease or otherwise deal with such Equipment until you have applied for our consent in the form set out in Part 1 of Schedule 5, and received consent in the form set out in Part 2 of Schedule 5, and
  - (ii) will pay any monies received from the disposition, leasing or other dealing permitted by us in accordance with paragraph (a) above into such bank account under our control as we may specify or as otherwise directed by us,
- (f) will execute an assignment of your Other Receivables in our favour in such form as we require, whenever we so demand,
- (g) will not, charge, sell, discount, factor, dispose of or, except in accordance with this deed, otherwise deal with your Other Receivables unless you have our prior written consent,
- (h) will authorise your bankers from time to time to provide copy statements and full particulars of all your accounts and facilities with them immediately upon our request,
- (i) will provide such other information, as we may reasonably request regarding your affairs,
- (j) will, immediately you become aware, provide us with details of any present or future litigation, arbitration or administrative proceedings in progress, pending or, to your knowledge, threatened against you which might have a material adverse effect on your ability to perform your obligations under this deed,
- (k) will permit us free access at all reasonable times to inspect and take copies of and extracts from your books, accounts and records and such other documents as we may require and will provide us with all information and facilities which we may require,

- (l) will grant us or our solicitors on request all reasonable facilities to enable us or them to carry out, at your expense, such investigation of title to the Mortgaged Property and enquiries about it as would be carried out by a prudent mortgagee,
- (m) will use your best endeavours to detect any infringement of your rights to the Intellectual Property, if aware of such infringement, will immediately give us all information available to you about such infringement and will commence and diligently prosecute (or permit us in your name but at your expense to commence and prosecute) all proceedings necessary to prevent such infringement or to recover damages,
- (n) will do everything needed to ensure that the Intellectual Property, to which you are or may become entitled, is valid and subsisting and remains owned by you and will take all such actions and proceedings as are necessary to protect such Intellectual Property, if any such Intellectual Property shall at any time lapse or become void, will do everything necessary to restore such Intellectual Property to you,
- (o) will comply in all material respects with all laws concerning the Mortgaged Property and every notice, order, direction, licence, consent, permission lawfully made or given in respect of it and likewise with the requirements of any competent authority,
- (p) will duly and promptly pay all monies which may become due in respect of any of the Securities, (it being acknowledged by you that we shall not incur any liability whatsoever for such monies,)
- (q) forthwith upon the execution of this deed will deposit with us all certificates or documents of title in respect of the Securities, together as appropriate with duly executed instruments of transfer or assignments thereof in blank, (it being acknowledged that we shall at any time be entitled to have any of the Securities registered either in our name or the name of any nominee(s) selected by us,)
- (r) will ensure the delivery or payment to us of all stocks, shares, Securities, rights, monies or other property accruing, offered or issued at any time by way of bonus, redemption, exchange, purchase, substitution, conversion, preference, option or otherwise in respect of any Securities or the certificates or other documents of title to or representing the same, together with executed instruments of transfer or assignments in blank, (it being acknowledged that we may arrange for any of them to be registered either in our name or the name of any nominee(s) selected by us),
- (s) will conduct and carry on your business and procure that each of your Subsidiaries conducts and carries on its business so that its centre of main interest for the purposes of Council Regulations (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings including, but not limited to, its headquarter functions is located at all times within England and Wales and not move its centre of main interest to any other jurisdiction without our prior written consent at our sole discretion or otherwise reduce in or divert from England and Wales the substantive management and control of its business or any of its properties,

- (t) (without prejudice to clauses 5 1(b) and 5 1(c) will not sell, transfer, lease licence, part with possession or dispose of or grant any interest in or relating to your goodwill including (without limitation) diverting or encouraging the diversion of any sales following orders from customers, to any of your Subsidiaries or your holding company (as defined in Section 1159 of the Companies Act 2006) or any of your associates (as defined in section 435 of the Insolvency Act 1986) or any other party,
- (u) if you are a limited company, will not reduce your issued share capital, nor write off or release any part of such capital which is uncalled,
- (v) if you are an LLP, will not allow the reduction of the investment in you by your Partners,
- (w) will affix to the fixed plant and machinery (and/or such part of the Mortgaged Property as we may require from time to time) a fireproof notice stating our interest in or to such plant and machinery or Mortgaged Property

## **6 YOUR ADDITIONAL OBLIGATIONS**

6 1 You agree that, at all times during the continuance of this security, you

- (a) will carry on your business in a proper and efficient manner and will not make any material alteration to your business, constituting a change from that carried on at the date hereof,
- (b) will maintain proper and up to date books of account of your business, will keep such books of account and all other documents relating to your affairs at your registered office or at such other place where the same ought to be kept and will promptly provide copies thereof to us upon request,
- (c) will deliver to us the copies of your audited financial statements and any reports and notes accompanying them within 6 months of each year end,
- (d) will punctually pay all your debts and liabilities becoming due and payable and which would, on your winding up, have priority over the charges created by this deed,
- (e) will punctually pay all outgoings payable in respect of the Mortgaged Property and will promptly produce the receipts for them to us upon request,
- (f) will keep all your freehold and leasehold property in good and substantial repair and will allow us free access, at all reasonable times, to view the state and condition of any such property, but without us becoming liable to account as a mortgagee in possession,
- (g) will observe and perform all the lessee's covenants in any lease under which any of the Mortgaged Property may be held and will take no action which might lead to such lease being surrendered or forfeited,
- (h) will allow us, at your expense, to carry out repairs or take any action which we shall reasonably consider necessary should you fail to observe or perform your obligations as a lessee,

- (i) will not exercise the powers of leasing or accepting surrenders of leases, conferred on a mortgagee in possession by Sections 99 and 100 of the Law & Property Act 1925, or any other powers of leasing or accepting surrenders of leases, without our prior written consent,

- (j) will make sure that an order of the Court is obtained, under Section 38(4) of the Landlord and Tenant Act 1954, excluding the security of tenure provisions of that Act, before granting any lease,
- (k) will insure and keep insured those parts of the Mortgaged Property as are of an insurable nature against loss or damage by fire and other risks usually insured against and such other risks that we shall reasonably require to their full insurable value with insurers approved by us,
- (l) will make sure that all your insurance policies will be endorsed with notice of our interest in them and will produce to us the receipts for each current premium within fifteen days of its becoming due, failing such production we may effect or renew any such insurance as we shall think fit at your expense,
- (m) will observe and perform all restrictive and other covenants and stipulations for the time being affecting the Mortgaged Property or its use or enjoyment,
- (n) will not do or allow anything to be done on your freehold or leasehold property which shall be treated as a development or a change of use within the meaning of the Town and Country Planning Acts unless our prior written consent has been obtained,
- (o) will not infringe the Town and Country Planning Acts in any way which prejudices our security over the Mortgaged Property,
- (p) will deposit with us all deeds and documents of title relating to your freehold and leasehold property and the insurance policies relating to the same, (subject only to the requirements of any prior Encumbrance or of your landlord),
- (q) will not permit any person to become entitled to any proprietary right or interest which might affect the value of the assets subject to the fixed charges herein

6 2 If you hold property as a tenant or lessee and shall be required by the landlord either to insure or to reimburse your landlord for any insurance premium paid by him then you shall be treated as having complied with your insuring obligation under this deed if you duly and promptly comply with such requirements. However this shall not affect our right to require you to produce satisfactory evidence that you have complied with the landlord's requirements

## **7 FURTHER ASSURANCE AND POWER OF ATTORNEY**

7 1 At our request, you will at your cost immediately sign, seal, execute, deliver and perfect all deeds and instruments and do all such other acts and things as we or any Receiver appointed hereunder may require in order to perfect or enforce this security or to use the powers given to each of them in this deed or to enforce your obligations and/or our rights under this deed

7 2 You will, if called upon by us, execute a legal or equitable assignment of any part of the Mortgaged Property, in such terms as we may require. You will then give notice of such assignment to such persons as we may specify and take such other steps as we may require to perfect such assignment

7 3 You, by way of security, hereby irrevocably appoint us and any Receiver severally to be your attorney and in your name and on your behalf

- (a) to execute and complete any documents or instruments which we or such Receiver may require for perfecting our title to all or any part of the Mortgaged Property or for vesting the same in us, our nominees or any purchaser,
- (b) to sign, execute, seal and deliver and otherwise perfect any further security document referred to in clause 7 1, and
- (c) otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on us or a Receiver under this deed or which may be deemed expedient by us or a Receiver in connection with any disposition, realisation or getting in by us or a Receiver or in connection with any other exercise of any power under this deed and including, but not limited to, a power in favour of any Receiver to dispose for value of any of your assets over which such Receiver may not have been appointed and which are located at real property over which he has been appointed, without being liable for any losses suffered by you

## 8 ENFORCEMENT

8 1 We shall be entitled to make demand for payment of the Secured Monies at any time on or after the Enforcement Date or at any time after the occurrence and continuance of any of the following events and if such demand is not met in full, (or on or after the Enforcement Date without any demand) we shall be entitled to enforce (in whole or in part) the charges created by this deed (save where a Moratorium is applied for or is in force, when no demand shall be made until any application is rejected or upon the expiry of such moratorium) For the avoidance of doubt, if there is any conflict between any of the following paragraphs (a) to (g) inclusive and any termination event set out in Schedule 5 of the Agreement, compliance with the relevant provision of Schedule 5 of the Agreement shall be deemed to constitute compliance with the conflicting provision of this deed

- (a) your breach of any of your obligations under this deed or in the Agreement (subject to application of any applicable grace periods set out in the Agreement),
- (b) your default in paying any of the Secured Monies as and when they become due,
- (c) your failure to give us such information as may reasonably be requested as to your business, affairs or assets,
- (d) any representation, warranty or undertaking made by you to us at any time, is or was, in our reasonable opinion, incorrect or misleading in any respect or, being an undertaking, shall not be complied with by you,
- (e) your disposing or attempting to dispose of your principal undertaking or a substantial part of it, without our prior written approval,
- (f) you, or if you are an LLP any of your Partners, becoming Insolvent,
- (g) you suspending or threatening to suspend a substantial part of your business or us receiving information, from you or any responsible third party, whether orally or



in writing, that you are contemplating or are likely to suspend a substantial part of your business,

- (h) you commencing negotiations with any of your creditors with a view to the general readjustment or rescheduling of your indebtedness,

- (i) your default under any of the following with any party
  - (A) a trust deed,
  - (B) a loan agreement,
  - (C) an Encumbrance,
  - (D) any other agreement or obligation relating to borrowing or financing (including all liabilities in respect of accepting, endorsing or discounting any notes or bills and all liabilities under debt purchase, factoring, discounting and similar agreements),
  - (E) any guarantee or indemnity,
- (j) any borrowing or any other money payable by you
  - (A) becoming payable or is capable of being declared payable prior to its stated date of maturity, or
  - (B) is not paid when due,
- (k) any Encumbrance created by you in favour of another party becoming enforceable,
- (l) any guarantee, indemnity or other security for any of the Secured Liabilities failing or ceasing in any respect to have full force and effect or to be continuing or is terminated or disputed or is in our opinion in jeopardy, invalid or unenforceable,
- (m) if any governmental authority permits, or procures, or threatens any reorganisation, transfer or appropriation (whether with or without compensation) of a substantial part of your business or assets,
- (n) you, without our prior written consent, changing the nature of your business or trading in any way which we consider prejudicial to this security,
- (o) if it is unlawful for you to perform or comply with any of your obligations under this deed or under any other agreement between you and us or your obligations are not or cease to be legally valid, binding and enforceable,
- (p) if, after the date of this deed, control (as defined in Section 435 of the Insolvency Act 1986) or the power to take control of you changes, without our prior written consent, or
- (q) if, in our opinion, a material adverse change occurs in your financial condition, results of operations, or business

8.2 At any time after any Event of Default the Security Holder may exercise in your name any voting rights attached to the Securities and all powers given to trustees by Sections 10(3) and (4) of the Trustee Act 1925 (as amended by Section 9 of the Trustee Investments Act 1961) in respect of securities, property subject to a trust and any powers or rights exercisable by the registered holder of any of the Securities or by the bearer thereof. We will not then need any consent or authority from you.

## **9 POWER OF POSSESSION AND SALE**

- 9 1 At any time after this security shall become enforceable, we and/ or any Receiver appointed under this deed may, in our or their discretion, enter upon and take possession of the Receivership Property or any part of it. We or they may also at their discretion, when exercising the powers given in this deed, sell, call in, collect and convert into monies the Receivership Property or any part of it. By way of extension of these powers such sale, calling in and conversion may be done for such consideration as we or any Receiver shall consider sufficient. It is irrelevant whether the consideration shall consist of cash, shares or debentures in some other company or any other property or partly of one and partly of some other type of consideration. Such consideration may be immediately payable or payable by instalments or deferred. Instalment or deferred payments may be with or without security and on such other terms as we or the Receiver shall think fit.

## **10 APPOINTMENT OF RECEIVER AND HIS POWERS**

- 10 1 Section 109 of the Law of Property Act 1925 (restricting the power to appoint a receiver) shall not apply to this deed. At any time after an Event of Default or after any other event, as a result of which this security shall become enforceable or, if you at any time so request in writing, we may without further notice to you appoint any person to be a Receiver of the Receivership Property. Any such appointment may be made subject to such qualifications, limitations and/or exceptions (either generally or in relation to specific assets or classes of asset) as may be specified in the instrument effecting the appointment. A Receiver shall have the power to do or omit to do on your behalf anything which you yourself could do or omit to do if the Receiver had not been appointed, notwithstanding your liquidation. In particular, (but without limitation) a Receiver shall have power to
- (a) enter upon, take possession of, collect and get in the Receivership Property and have possession of all records, correspondence and other documents relating to the Receivership Property and, for that purpose, to take such proceedings as may seem to him expedient,
  - (b) do all acts which you might do for the protection or improvement of the Receivership Property or for obtaining income or returns from it,
  - (c) allow the whole or any part of the sale monies of the Receivership Property to remain outstanding on mortgage of the property sold or on any other security or even without any security and without being responsible for any loss caused and with full power to buy in and rescind or vary any contract for sale and to resell without being responsible for loss,
  - (d) let or let on hire, lease or surrender and accept surrenders of the Receivership Property,
  - (e) exercise or permit you or any nominee of yours to exercise any powers or rights incidental to the ownership of the Receivership Property, in such manner as he may think fit,
  - (f) give complete discharges in respect of all monies and other assets which may come into the hands of the Receiver in the exercise of his powers,

- (g) carry out and enforce specific performance of or obtain the benefit of all your contracts or those entered into in exercise of the powers or authorities conferred by this deed,
- (h) demand and get in all rents and other income, whether accrued before or after the date of his appointment,
- (i) exercise the powers conferred on a landlord or a tenant under the Landlord and Tenant Acts 1927 and 1954 but without liability for powers so exercised,
- (j) do all things necessary to make sure that you perform or observes all of your obligations to us,
- (k) delegate to any person, for such time as we shall approve, any of the powers conferred upon the Receiver,
- (l) have access to and make use of your premises, plant, equipment and accounting and other records and the services of its staff in order to exercise his powers and duties,
- (m) sell or otherwise dispose of the Receivership Property for cash or on credit, in one lot or in parcels by public auction or private auction or private contract or, in Scotland, to sell, feu, hire out or otherwise dispose of the Receivership Property by public roup or private bargain,
- (n) raise or borrow money and grant security therefor over the Receivership Property,
- (o) appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions,
- (p) bring or defend any action or other legal proceedings in the name and on your behalf,
- (q) refer to arbitration any question affecting you,
- (r) effect and maintain insurances in respect of your business and properties,
- (s) use your seal,
- (t) do all acts and to execute in your name and on your behalf any deed, receipt or other document,
- (u) draw, accept, make and endorse any bill of exchange or promissory note in your name and on your behalf,
- (v) appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and have the power to employ and dismiss employees, agents and/or advisors at such salaries or remuneration and on such terms of service as the Receiver in his discretion may think fit,
- (w) do all such things (including the carrying out of works) as may be necessary for or incidental or conducive to the realisation of the Receivership Property,

- (x) make any payment which is necessary or incidental to the performance of his functions,
- (y) carry on or permit the carrying on of your business,
- (z) establish Subsidiaries of you,
- (aa) transfer to your Subsidiaries the whole or any part of the business or Receivership Property,
- (bb) grant or accept a surrender of a lease or tenancy of any of the Receivership Property, and take a lease or tenancy of any properties required or convenient for your business,
- (cc) make any arrangement or compromise on your behalf in respect of the Receivership Property,
- (dd) call up, or require your directors to call up, any of your uncalled capital,
- (ee) rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to you and to receive dividends, and to accede to trust deeds for the creditors of any such person

He shall also have all powers from time to time conferred on receivers by statute without, in the case of powers conferred by the Law of Property Act 1925, the restrictions contained in Section 103 of that Act

- 10 2 We may from time to time determine the remuneration of any Receiver and section 109(6) Law of Property Act 1925 shall be varied accordingly A Receiver shall be entitled to remuneration appropriate to work and responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of his firm
- 10 3 We may remove any Receiver (except an administrative receiver) In case of such removal or the retirement or death of any Receiver, we may appoint another in his place At the time of his appointment (or at any time afterwards) we may fix the remuneration of the Receiver on such basis as we shall determine This may include a fixed fee or an hourly rate or a commission
- 10 4 We may appoint more than one person to act as the Receiver Where more than one person shall be appointed to act as Receiver, those so appointed shall carry out their duties, exercise their rights, and be subject to their obligations jointly as well as severally References in this deed to the Receiver shall be to each and all of them as appropriate
- 10 5 Any appointment, or fixing of the remuneration of the Receiver or any such removal shall be made in writing and be signed by any director or authorised officer of ours
- 10 6 Any Receiver appointed under this deed shall be your agent He shall be in the same position as a Receiver appointed under the Law of Property Act 1925 You shall be solely responsible for his acts, omissions, losses, misconduct, defaults and remuneration We shall not in any way be liable or responsible either to you or to any other person for any of them

10 7 We may at any time give up possession of any part of the Receivership Property and/or withdraw from the receivership

10 8 Whether or not a Receiver shall be appointed under this deed, we may at any time after this security shall have become enforceable and without giving notice, exercise all or any of the powers, authorities and discretions conferred on a Receiver as set out above

## **11 ADDITIONAL POWERS**

11 1 In addition to the powers of leasing or accepting surrenders of leases conferred on mortgagees by Sections 99 and 100 of the Law of Property Act 1925, it shall be lawful for us or any Receiver without the restrictions contained in those Sections

- (a) to grant any lease of all or any part of the Mortgaged Property upon such terms as we or the Receiver shall in our absolute and unfettered discretion think fit, and
- (b) to accept a surrender of any lease of all or any part of the Mortgaged Property on such terms as we or the Receiver in our or his discretion shall think fit
- (c) Section 103 of the Law of Property Act 1925 (restricting the power of sale) shall not apply. However the power of sale and the other powers conferred on mortgagees by that Act shall apply to this security but without the Act's restrictions as to giving notice or otherwise. Accordingly for the purposes of a sale or other exercise of any such powers the whole of the Secured Monies shall be treated as due and payable immediately upon the execution and delivery of this document
- (d) The restrictions on the right of consolidating mortgage securities, which are contained in Section 93 of the Law of Property Act, shall not apply to this security
- (e) We may, at any time without discharging or in any other way affecting this security or any remedy that we may have, grant to you (or to any other person) time or indulgence or abstain from perfecting or enforcing any remedies, securities, guarantees or rights which we may now or afterwards have from or against you or any other person
- (f) If we receive or are treated as having received notice of any subsequent mortgage or charge affecting any of the Mortgaged Property then we may open a new account with you. If we do not open a new account, we shall nevertheless be treated as if we had done so at the time when we received or were treated as having received such notice. From that time all payments made by you to us shall be credited or be treated as having been credited to the new account. Such payments shall not operate to reduce the amount secured by this deed when we received or were treated as having received such notice

## **12 APPLICATION OF MONIES**

12 1 All monies received by us or by the Receiver under or by virtue of this deed shall be applied in the following order,

- (a) in the discharge of all liabilities having priority to the Secured Monies,

- (b) in payment of all costs, charges and expenses incurred in or incidental to the exercise or performance (or attempted exercise or performance) of any of the powers or authorities conferred by or in any other way connected with this deed, and then
  - (c) in payment to the Receiver of his remuneration fixed in accordance with clause 10 of this deed, and then
  - (d) any sums due to any person under any applicable statute,
  - (e) in payment to us of the Secured Monies due to us in such order as we in our absolute discretion think fit, and then
  - (f) in payment to you of any surplus
- 12 2 Any surplus shall not carry interest. The Receiver or we may pay any surplus into any of your bank accounts including an account opened specifically for such purpose. We shall then have no further liability for such surplus.
- 12 3 Following the enforcement of this security, any monies received by us may be appropriated by us in our discretion in or towards the payment and discharge of any part of the Secured Monies.
- 12 4 We or the Receiver may credit any monies to a suspense account for so long and in such manner as we may from time to time determine. The Receiver may retain the same for such period as the Receiver and we consider expedient.
- 12 5 All monies received by you under any insurance policy on the Mortgaged Property shall be treated as part of the Mortgaged Property subject only to any rights of third parties having priority and to the requirements of any lease of the Mortgaged Property. They shall be applied at our discretion either in reducing the Secured Monies or towards making good the loss or damage for which the monies became payable. Any monies received by you under any insurance on the Mortgaged Property shall be held on trust for payment to us pending such application.

### **13 PROTECTION OF THIRD PARTIES**

- 13 1 No person paying or handing over monies to the Receiver and obtaining a discharge shall have any responsibility or liability to see to their correct application.
- 13 2 No person dealing with us or the Receiver need enquire
- (a) whether any event has happened giving either us or the Receiver the right to exercise any of his powers,
  - (b) as to the propriety or regularity of any act purporting or intending to be an exercise of such powers,
  - (c) as to the validity or regularity of the appointment of any Receiver purporting to act or to have been appointed as such, or
  - (d) whether any money remains owing upon this security

13 3 All the protection to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925 shall apply to any person purchasing from or dealing with the Receiver or us as if the Secured Monies had become due and the statutory power of sale and appointing a receiver in relation to (to the extent permitted by law) had arisen on the date of this deed

13 4 No person dealing with us or the Receiver shall be affected by express notice that any act is unnecessary or improper

#### **14 LAND REGISTRY**

14 1 You will notify us of any freehold or leasehold property which you now own or which you may own after the date of this deed and will, at any time, meet any cost of registering this deed against any property which you may now, or in the future, own at the Land Registry

- (a) You hereby consent to our application to the Chief Land Registrar in Form RX1 for the registration of the following restriction against each of the registered titles specified in Schedule 2 (and against any title to any unregistered Property specified in Schedule 2 which is or ought to be the subject of a first registration of title at the Land Registry at the date of this deed)

#### **"RESTRICTION**

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of Leumi ABL Limited (company number 00620951) referred to in the charges register or, if appropriate signed on such proprietor's behalf by its attorney, directors and/or secretary "

- (b) In respect of any property charged pursuant to this deed, title to which is registered at the Land Registry, you hereby represent and warrant that the security created by this deed does not contravene any of the provisions of your memorandum and articles of association or any other constitutional documents

#### **15 CONTINUING AND ADDITIONAL SECURITY**

15 1 This security is a continuing security It shall apply to all the Secured Monies despite any interim settlement of account until a final discharge of this security shall be given to you by us

15 2 This security is in addition to and shall not merge or otherwise prejudice or affect any other right or remedy of ours or any assignment, bill, note, guarantee, mortgage or other security now or in future in favour of us or held by or available to us, whether created by you or any third party

15 3 This security shall not in any way be prejudiced or affected by

- (a) any guarantee, mortgage or other security now or in future held by or available to us or by the invalidity of any of them or by us now or afterwards dealing with, exchanging, releasing, modifying or abstaining from perfecting or enforcing any of them or any rights which it may now or afterwards have, or
- (b) by us giving time for payment or indulgence or compounding with you or any other persons



## **16 CURRENCY INDEMNITY**

16 1 For the purpose of or pending the discharge of any of the Secured Liabilities secured by this deed we or any Receiver appointed hereunder may convert any monies received, recovered or realised under this deed (including the proceeds of any previous conversion) from their existing currency into such other currency as we or such Receiver may think fit. Any such conversion shall be effected at the then prevailing spot selling rate of exchange, of our bankers, for such other currency against the existing currency.

16 2 You will indemnify us against any shortfall between

- (a) any amount received or recovered by us in respect of any of the Secured Liabilities which are converted in accordance with clause 16 1 into the currency in which such liability was payable, and
- (b) the amount payable to us under this deed in the currency of such liability

## **17 DISCHARGE**

17 1 Upon payment and complete discharge and performance of all the Secured Liabilities and of all costs, charges and expenses incurred by us under or in relation to this deed, we shall, at your request and cost, duly discharge this security and any further security given in accordance with its terms. We will also transfer to you any of the Mortgaged Property which has been assigned or transferred to us.

17 2 Our right to recover the Secured Monies or to enforce the terms of this deed shall not be affected by any payment or any act or thing which may be avoided or adjusted under the laws relating to bankruptcy or insolvency or under Part VI of the Insolvency Act 1986. Any release or discharge given or settlement made by us relying on any such payment, act or thing shall be void and of no effect.

## **18 SERVICE OF NOTICES AND PROCESS**

18 1 Except as stated to the contrary herein, any written notice from us to you and any proceedings issued by us requiring service on you may be given or served

- (a) by delivering it at or posting it to your registered office or to such other address advised by you to us and acknowledged by us as being effective for the purposes of this clause, or
- (b) by delivering it at or posting it to any address last known to us at which you carried on business
- (c) by handing it to your officers or any of your Partners,
- (d) by a fax or e-mail to your number or address advised to and acknowledged by us as suitable for communication between the parties

18 2 Any such notice or process shall be considered served

- (a) if delivered - at the time of delivery, or
- (b) if sent by post - 48 hours from the time of posting, or

(c) if sent by fax or e-mail - at the time of transmission, or

(d) if handed over - at the time of handing over

18 3 Any notice in writing by you to us required hereunder shall take effect at the time it is received by us at our address for service or at such other address as we may advise in writing to you for this purpose

## **19 JURISDICTION**

19 1 This deed shall be interpreted and shall be governed by the laws of England. You will accept the non-exclusive jurisdiction of the English Courts in connection with any matter arising under this deed

## **20 YOUR REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

20 1 You certify that the execution of this deed has been duly authorised by a resolution of your Board of Directors and that it does not break any of the provisions of your Memorandum and Articles of Association or of any other Encumbrance, security or agreement entered into prior to the date of this deed or the laws of any jurisdiction applying to you

20 2 You represent and warrant to us that

(a) you are and will at all times be the sole beneficial owner with full title guarantee of all the Mortgaged Property and that no Encumbrances affect it except the Encumbrances (if any) set out in Schedule 3 and general liens in the ordinary course of business,

(b) you are and will at all times have the necessary power to enter into and perform your obligations under this deed,

(c) this deed constitutes your legal, valid, binding and enforceable obligations and is an effective security over all and every part of the Mortgaged Property in accordance with its terms,

(d) all necessary authorisations and consents to enable or entitle you to enter into this deed have been obtained and these will remain in full force and effect during the existence of this security,

(e) you have acquired, maintained and complied with all Environmental Licences (if any) needed for its use or occupation of the Mortgaged Property or for the conduct of your current business,

(f) you have complied with all other applicable Environmental Laws and have not done or permitted any act or omission whereby your Environmental Licences (if any) could be varied or revoked;

- (g) so far as you are aware there has been no discharge, spillage, release or emission of any prescribed, dangerous, noxious or offensive substance or any controlled waste on, into or from any of the Mortgaged Property or any premises adjoining any part of it, and no such substances or any controlled waste have been stored or disposed of on or in any part of the Mortgaged Property or, so far as you are aware, in any adjoining premises except in accordance with the requirements of the applicable Environmental Laws,
- (h) you are not in breach of and have not incurred or become subject to any civil or criminal liability under any Environmental Laws or the terms of any Environmental Licence,
- (i) you have obtained and maintained all such insurance policies as would be maintained by prudent companies carrying on business of the type carried on by you at all relevant times and has complied in all material respects with the terms and conditions of such policies
- (j) You undertake that no Encumbrances (other than a general lien in the ordinary course of business) ranking in priority to or pari passu with the charges created by this deed will arise after the date of this deed over the Mortgaged Property

## **21 TRANSFERS AND DISCLOSURES**

- 21 1 This deed is freely transferable by us. References in this deed to us or we shall include our successors, assignees and transferees
- 21 2 You may not assign or transfer any of your obligations under this deed. Nor may you enter into any transaction which would result in any such obligations passing to another person
- 21 3 We may disclose any information about you and any member of your Group and any other person connected or associated with you to any member of our Group and/or to any person to whom we are proposing to transfer or assign or have transferred or assigned this deed. You represent and warrant that you have and (so far as permitted by law) will maintain any necessary authority by or on behalf of any such persons to agree to the provisions of this clause

## **22 MISCELLANEOUS**

- 22 1 No delay or omission on our part in exercising any right or remedy under this deed shall impair that right or remedy or operate as or be taken to be a waiver of it. Any single, partial or defective exercise of any such right or remedy shall not prevent the further exercise of that or any other right or remedy
- 22 2 Our rights under this deed are cumulative. They are not exclusive of any rights provided by law. They may be exercised from time to time and as often as we see fit
- 22 3 Any waiver by us of any terms of this deed or any consent or approval given by us under it shall only be effective if given in writing. Such consent and approval shall then only apply for the purpose stated and be subject to any written terms and conditions imposed by us

- 22 4 If at any time any one or more of the provisions of this deed is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction then neither the legality, validity or enforceability of the remaining provisions of this deed nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result
- 22 5 Any certificate signed by a director or authorised officer of ours as to the amount of the Secured Monies at the date of such certificate shall, in the absence of manifest error, be conclusive evidence of such amount and be binding on you
- 22 6 This deed may be executed in any number of counterparts It will then be as effective as if all signatures on the counterparts were on a single copy of this deed
- 22 7 The paper on which this deed is written is, and will remain at all times, our property, even after the discharge of this security

**SCHEDULE 1**  
**Details of Agreement(s)**  
**(Clause 1 (Definition of "Agreement"), Clauses 3.1(a) and 8.1(a))**

The Receivable Finance Agreement entered into between you and us dated  
200[ ]

**SCHEDULE 2**  
**Properties**  
**(Clause 4.1(a))**

**SCHEDULE 3**  
**Encumbrances**  
**(Clauses 4.5 and 20.2(a))**

**SCHEDULE 4**  
**(Plant and machinery subject to chattel mortgage hereunder)**  
**(Clause 4.1(c)(iv))**



**SCHEDULE 5**  
**(Disposal of Charged Assets)**  
**(Clause 5.1(e))**

**Part 1**

**Form of letter of Request to dispose of Charged Assets**

To    The Directors  
      Leumi ABL Limited

[date]

Dear Sirs

We refer to the debenture dated [•     ] granted to you by us ("**Debenture**")

We hereby request your consent to dispose of [asset] being part of the Mortgaged Property (as defined in the Debenture) We wish to dispose of [asset] to [purchaser] [describe terms]

Please confirm your consent to the above disposal by signing and returning the enclosed letter

Yours faithfully

for and on behalf of

[Company]

**Part 2**

**Form of letter of consent to dispose of Charged Assets**

To [Company]

[date]

Dear Sirs

We refer to your letter of [date], a copy of which is attached

We hereby consent to the disposal of [asset] to [purchaser] [on terms] [on the condition that  
[specify conditions of consent to disposal]]

Yours faithfully

for and on behalf of

Leumi ABL Limited

## **ACKNOWLEDGMENT**

The Client acknowledges its understanding that

- a) this legal document imposes significant obligations on the Client which at all times must be complied with, a breach of any obligation by the Client entitles Leumi to enforce the security given in this document and to claim damages for any losses caused, particularly if the Client fails to perform its part
- (b) should the Client and any guarantor or indemnifier be in any doubt about any particular aspect of this and or any other documents governing the proposed facilities, then before signature, they should consider taking independent legal advice to ensure that these obligations are fully understood

**IN WITNESS** of which the parties have executed this deed on the date set out above

**SIGNED** and delivered as a deed by  
**WILLIAM SINCLAIR HORTICULTURE  
LIMITED** acting by two directors or by one  
director and the secretary

acting by [REDACTED] )  
(a Director) )

and [REDACTED] )  
(a Director/Company Secretary) )

[REDACTED]  
Signature of Director

[REDACTED]  
Signature of Director /  
Company Secretary

**SIGNED** as a deed by

Attorney for **LEUMI ABL LIMITED**

And

Attorney for **LEUMI ABL LIMITED**

as attorneys for

**LEUMI ABL LIMITED**

under a power of attorney dated

14th August 2012 in the presence of

Name

Address

Occupation