Companies House

MR01(ef)

Registration of a Charge

Company name: **ABS (U.K.) LIMITED**

Company number: **02685351**

Received for Electronic Filing: **16/03/2018**

X71UGG4Q

Details of Charge

Date of creation: **23/02/2018**

Charge code: **0268 5351 0002**

Persons entitled: **MICHAEL BRANFORD**
MICHAELA BRANFORD

Brief description: **LEASEHOLD PROPERTY AT NEWCOMBE MILL ROSEMOUNT ESTATES, HUDDERSFIELD ROAD, ELLAND, WEST YORKSHIRE, ENGLAND, HX5 0EE,**

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **FORBES SOLICITORS**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2685351

Charge code: 0268 5351 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd February 2018 and created by ABS (U.K.) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th March 2018 .

Given at Companies House, Cardiff on 20th March 2018

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006

Companies House

THE OFFICIAL SEAL OF THE REGISTRAR OF COMPANIES

DATED 23 February 2018

DEBENTURE

between

MICHAEL BRANFORD AND MICHAELA BRANFORD

and

ABS (UK) LIMITED

forbessolicitors.

THIS DEED is dated 23 February 2018

PARTIES

(1) **ABS (UK) LIMITED** incorporated and registered in England and Wales with company number 02685351 whose registered office is at Newcombe Mill Rosemount Estates, Huddersfield Road, Elland, West Yorkshire, HX5 0EE (the **Buyer**); and

(2) **MICHAEL BRANFORD AND MICHAELA BRANFORD** both of 35 Spinney Rise, Tong, Bradford, BD4 0TX (the **Sellers**).

BACKGROUND

(A) The Buyer has agreed to buy and the Sellers have agreed to sell the entire issued share capital of the Company.

(B) In accordance with the share purchase agreement dated 23 February 2018 (**SPA**) between the Buyer and the Sellers, the Buyer agreed to pay £250,000 (**Purchase Price**) to the Sellers as consideration for the Sale Shares.

(C) The parties have agreed that £130,000 of the Purchase Price (**Deferred Payments**) shall be paid to the Sellers in instalments, post Completion, in accordance with clause 3.1 of the SPA.

(D) Under this deed, the Buyer has agreed to provide security for the Deferred Payments.

IT IS AGREED THAT

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions**

The following definitions apply in this deed:

Administrator: an administrator appointed to manage the affairs, business and property of the Buyer pursuant to *clause 13.6*.

Book Debts: all present and future book and other debts, and monetary claims due or owing to the Buyer, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Buyer in relation to any of them.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Company: Crest IT Solutions Limited, a company incorporated and registered in England and Wales with company number 05933858, whose registered office is at Titan Business Centre, Room 23 Roydsdale Way Euroway Industrial Estate, Bradford, West Yorkshire, BD4 6SE.

Deferred Payments: all present and future monies, obligations and liabilities of the Buyer to the Sellers, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the SPA or this deed (including, without limitation, those arising under *clause 29.3.2*), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

Delegate: any person appointed by the Sellers or any Receiver pursuant to *clause 18* and any person appointed as attorney of the Sellers, Receiver or Delegate.

Designated Account: any account of the Buyer agreed between the Buyer and the Sellers as a designated account for the purposes of this deed.

Disruption Event: either or both of:

(a) an event (not caused by, and outside the control, of either party) that materially disrupts the systems for payment or communication or the financial markets needed, in each case, to enable either payment to be made or transactions to be carried out under the SPA;

(b) any other event (not caused by, and outside the control of, the party whose operations are disrupted), that results in disruption (of a technical or systems-related nature) to the treasury or payments operations of a party which prevents either or both parties from (i) performing its payment obligations under the SPA; or (ii) communicating with the other party as required by the terms of the SPA.

Environment: the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

Environmental Law: all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

Equipment: all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Buyer, including any part of it and all spare parts, replacements, modifications and additions.

Event of Default: Each of the events or circumstances set out in this clause is an **Event of Default:**

(a) the Buyer fails to pay any sum payable by it under the SPA when due, unless its failure to pay is caused solely by:

i) an administrative error or technical problem and payment is made within three Business Days of its due date; or

ii) a Disruption Event and payment is made within 14 Business Days of its due date;

(b) the Buyer fails to comply with any provision of the SPA and such default is not remedied within 14 days of the earlier of:

i) the Seller notifying the Buyer of the default and the remedy required; and

ii) the Buyer becoming aware of the default; or

(c) any event or circumstance listed in clause 3.5 of the SPA.

Financial Collateral: has the meaning given to that expression in the Financial Collateral Regulations.

Financial Collateral Regulations: the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

Insurance Policy: each contract and policy of insurance effected or maintained by the Buyer from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Properties or the Equipment).

Intellectual Property: the Buyer's present and future patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Investments: all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Buyer, including any:

1.1.1 dividend, interest or other distribution paid or payable in relation to any of the Investments; and

1.1.2 right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

LPA 1925: the Law of Property Act 1925.

Properties: all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Buyer, or in which the Buyer holds an interest (which for the purpose of this Debenture shall mean the leasehold property at Newcombe Mill Rosemount Estates, Huddersfield Road, Elland, West Yorkshire, England, HX5 0EE, the **Property).**

Receiver: a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Sellers under *clause 16.*

Secured Assets: all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

Security Financial Collateral Arrangement: has the meaning given to that expression in the Financial Collateral Regulations.

Security: any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

Security Period: the period starting on the date of this deed and ending on the date on which the Sellers is satisfied that all the Deferred Payments have been unconditionally and

irrevocably paid and discharged in full and no further Deferred Payments are capable of being outstanding.

1.2 **Interpretation**

In this deed:

1.2.1 clause headings shall not affect the interpretation of this deed;

1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);

1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;

1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;

1.2.8 a reference to **writing** or **written** includes fax but not email;

1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;

1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;

1.2.11 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

1.2.12 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);

1.2.13 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

1.2.14 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;

1.2.15 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been waived;

1.2.16 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and

1.2.17 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 **Clawback**

If the Sellers considers that an amount paid by the Buyer in respect of the Deferred Payments is capable of being avoided or otherwise set aside on the liquidation or administration of the Buyer or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

1.4 **Nature of security over real property**

A reference in this deed to a charge or mortgage of or over any Property includes:

1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;

1.4.2 the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;

1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Buyer in respect of that Property, and any monies paid or payable in respect of those covenants; and

1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the SPA and of any side letters between any parties in relation to the SPA are incorporated into this deed.

1.6 **Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

2. COVENANT TO PAY

The Buyer shall, on demand, pay to the Sellers and discharge the Deferred Payments when it become due, in accordance with the terms of the SPA.

3. GRANT OF SECURITY

3.1 **Legal mortgage**

As a continuing security for the payment and discharge of the Deferred Payments, the Buyer with full title guarantee charges to the Sellers, by way of first legal mortgage, the Property.

3.2 **Fixed charges**

As a continuing security for the payment and discharge of the Deferred Payments, the Buyer with full title guarantee charges to the Sellers by way of first fixed charge:

3.2.1 all Properties acquired by the Buyer in the future;

3.2.2 all present and future interests of the Buyer not effectively mortgaged or charged under the preceding provisions of this *clause 3* in, or over, freehold or leasehold property;

3.2.3 all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;

3.2.4 all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Buyer's business or the use of any Secured Asset, and all rights in connection with them;

3.2.5 all its present and future goodwill;

3.2.6 all its uncalled capital;

3.2.7 all the Equipment;

3.2.8 all the Intellectual Property;

3.2.9 all the Book Debts;

3.2.10 all the Investments;

3.3 **Floating charge**

As a continuing security for the payment and discharge of the Deferred Payments, the Buyer with full title guarantee charges to the Sellers, by way of first floating charge, all the undertaking, property, assets and rights of the Buyer at any time not effectively mortgaged, charged or assigned pursuant to *clause 3.1* to *clause 3.2**Error! Reference source not found.*** inclusive.

3.4 **Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by *clause 3.3*.

3.5 **Automatic crystallisation of floating charge**

The floating charge created by *clause 3.3* shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

3.5.1 the Buyer:

3.5.1.1 creates, or attempts to create, without the prior written consent of the Sellers, Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed or the SPA); or

3.5.1.2 disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);

3.5.2 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or

3.5.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Buyer.

3.6 **Crystallisation of floating charge by notice**

The Sellers may, in its sole discretion, at any time and by written notice to the Buyer, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Sellers in that notice.

3.7 **Assets acquired after any floating charge has crystallised**

Any asset acquired by the Buyer after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a floating charge under this deed, shall (unless the Sellers confirms otherwise to the Buyer in writing) be charged to the Sellers by way of first fixed charge.

4. LIABILITY OF THE BUYER

4.1 **Liability not discharged**

The Buyer's liability under this deed in respect of any of the Deferred Payments shall not be discharged, prejudiced or affected by:

4.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Sellers that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;

4.1.2 the Sellers renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

4.1.3 any other act or omission that, but for this *clause 4.1*, might have discharged, or otherwise prejudiced or affected, the liability of the Buyer.

4.2 **Immediate recourse**

The Buyer waives any right it may have to require the Sellers to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Buyer.

5. REPRESENTATIONS AND WARRANTIES

5.1 **Representations and warranties**

5.1.1 The Buyer makes the representations and warranties set out in this *clause 5* to the Sellers.

5.1.2 Warranties qualified by the expression **so far as the Buyer is aware** (or any similar expression) are deemed to be given to the best knowledge, information and belief of the Buyer after it has made all reasonable enquiries.

5.2 **Ownership of Secured Assets**

The Buyer is the sole legal and beneficial owner of the Secured Assets.

5.3 **No Security**

The Secured Assets are free from any Security other than the Security created by this deed.

5.4 **No adverse claims**

The Buyer has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

5.5 **No adverse covenants**

So far as the Buyer is aware there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

5.6 **No breach of laws**

So far as the Buyer is aware there is no breach of any law or regulation that materially and adversely affects the Secured Assets.

5.7 **No interference in enjoyment**

So far as the Buyer is aware, no facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

5.8 **No overriding interests**

So far as the Buyer is aware, nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

5.9 **Avoidance of security**

So far as the Buyer is aware, no Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Buyer or otherwise.

5.10 **Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Buyer, and is, and will continue to be, effective security overall and every part of the Secured Assets in accordance with its terms.

5.11 **Investments**

5.11.1 The Investments are fully paid and are not subject to any option to purchase or similar rights.

5.11.2 No constitutional document of an issuer of an Investment, nor any other agreement:

5.11.2.1 restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or

5.11.2.2 contains any rights of pre-emption in relation to the Investments.

5.11.3 The Buyer has complied with all notices relating to all or any of the Investments received by it pursuant to sections 790D and 790E of the Companies Act 2006.

5.11.4 No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Investments.

5.12 **Times for making representations and warranties**

The representations and warranties set out in *clause 5.2* to *clause 5.11* are made by the Buyer on the date of this deed.

6. GENERAL COVENANTS

6.1 **Negative pledge and disposal restrictions**

The Buyer shall not at any time, except with the prior written consent of the Sellers:

6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed.

6.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or

6.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

6.2 **Preservation of Secured Assets**

The Buyer shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Sellers, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

6.3 **Compliance with laws and regulations**

6.3.1 The Buyer shall not, without the Sellers's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.

6.3.2 The Buyer shall:

6.3.2.1 comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;

6.3.2.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and

6.3.2.3 promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

6.4 **Enforcement of rights**

The Buyer shall use its best endeavours to:

6.4.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Buyer's counterparties (including each counterparty in respect of an agreement and each insurer in respect of an Insurance Policy); and

6.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Sellers may require from time to time.

6.5 **Notice of misrepresentation and breaches**

The Buyer shall, promptly on becoming aware of any of the same, notify the Sellers in writing of:

6.5.1 any representation or warranty set out in *clause 5* which is incorrect or misleading in any material respect when made or deemed to be repeated; and

6.5.2 any breach of any covenant set out in this deed.

6.6 **Insurance**

6.6.1 The Buyer shall insure and keep insured the Secured Assets against:

6.6.1.1 loss or damage by fire or terrorist acts;

6.6.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Buyer; and

6.6.1.3 any other risk, perils and contingencies as the Sellers may reasonably require.

6.6.2 Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Sellers, and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Secured Assets (meaning in the case of any premises on any Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation);

6.6.3 The Buyer shall, if requested by the Sellers, produce to the Sellers each policy, certificate or cover note relating to the insurance required by *clause 6.6.1*;

6.7 **Insurance premiums**

The Buyer shall:

6.7.1 promptly pay all premiums in respect of each insurance policy maintained by it in accordance with *clause 6.6.1* and do all other things necessary to keep that policy in full force and effect; and

6.7.2 (if the Sellers so requires) produce to, or deposit with, the Sellers the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with *clause 6.6.1*[(or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Buyer is entitled to obtain from the landlord under the terms of the relevant lease).

6.8 **No invalidation of insurance**

The Buyer shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with *clause 6.6.1*.

6.9 **Information**

The Buyer shall:

6.9.1 give the Sellers such information concerning the location, condition, use and operation of the Secured Assets as the Sellers may reasonably require;

6.9.2 permit any persons designated by the Sellers and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and

6.9.3 where such action, claim, notice or demand may seriously affect the likelihood of the Buyer being able to meet its obligations regarding the Deferred Payments, promptly notify the Sellers in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Buyer's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Sellers's prior approval, implement those proposals at its own expense.

6.10 **Payment of outgoings**

The Buyer shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Sellers.

7. PROPERTY COVENANTS

7.1 **Maintenance**

The Buyer shall keep all premises and fixtures and fittings on each Property in good and substantial repair and condition.

7.2 **Conduct of business on Properties**

The Buyer shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in that trade or business.

7.3 **Compliance with covenants and payment of rent**

The Buyer shall:

7.3.1 observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or may be subjected, and (if the Sellers so requires) produce evidence sufficient to satisfy the Sellers that those covenants, stipulations and conditions have been observed and performed;

7.3.2 diligently enforce all covenants, stipulations and conditions benefiting each Property and shall not (and shall not agree to) waive, release or vary any of the same; and

7.3.3 (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.

7.4 **Payment of rent and outgoings**

The Buyer shall:

7.4.1 where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and

7.4.2 pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier.

7.5 **Maintenance of interests in Properties**

The Buyer shall not, without the prior written consent of the Sellers:

7.5.1 grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise, or agree to exercise, the statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the Law of Property Act 1925; or

7.5.2 in any other way dispose of, surrender or create, or agree to dispose of surrender or create, any legal or equitable estate or interest in the whole or any part of any Property.

7.6 **Registration restrictions**

If the title to any Property is not registered at the Land Registry, the Buyer shall procure that no person (other than itself) shall be registered under the Land Registration Acts 1925 to 2002 as proprietor of all or any part of any Property without the prior written consent of the Sellers. The Buyer shall be liable for the costs and expenses of the Sellers in lodging cautions against the registration of the title to the whole or any part of any Property from time to time.

7.7 **Environment**

The Buyer shall:

7.7.1 comply with all the requirements of Environmental Law both in the conduct of its general business and in the management, possession or occupation of each Property; and

7.7.2 obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law.

7.8 **Inspection**

The Buyer shall permit the Sellers, any Receiver and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice.

7.9 **Property information**

The Buyer shall inform the Sellers promptly of any acquisition by the Buyer of, or contract made by the Buyer to acquire, any freehold, leasehold or other interest in any property.

7.10 **Registration at the Land Registry**

The Buyer consents to an application being made by the Sellers to the Land Registrar for the following restriction in Form P to be registered against its title to each Property:

"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 [DATE] in favour of Michael Branford and Michaela Branford referred to in the charges register [or [their conveyancer or specify appropriate details]]"

8. INVESTMENTS COVENANTS

8.1 **Dividends and voting rights before enforcement**

8.1.1 Before the security constituted by this deed becomes enforceable, the Buyer may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Sellers or any of its nominees, the Sellers will hold all those dividends, interest and other monies received by it for the Buyer and will pay them to the Buyer promptly on request.

8.1.2 Before the security constituted by this deed becomes enforceable, the Buyer may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Sellers of any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:

8.1.2.1 it shall not do so in any way that would breach any provision of the SPA or this deed or for any purpose inconsistent with the SPA or this deed; and

8.1.2.2 the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Sellers's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Sellers's security under this deed.

8.1.3 The Buyer shall indemnify the Sellers against any loss or liability incurred by the Sellers (or its nominee) as a consequence of the Sellers (or its nominee) acting in respect of the Investments at the direction of the Buyer.

8.1.4 The Sellers shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Sellers considers prejudicial to, or impairing the value of, the security created by this deed.

8.2 **Dividends and voting rights after enforcement**

After the security constituted by this deed has become enforceable:

8.2.1 all dividends and other distributions paid in respect of the Investments and received by the Buyer shall be held by the Buyer on trust for the Sellers and immediately paid into a Designated Account or, if received by the Sellers, shall be retained by the Sellers; and

8.2.2 all voting and other rights and powers attaching to the Investments shall be exercised by or at the direction of the Sellers and the Buyer shall, and shall procure that its nominees shall, comply with any directions the Sellers may give in their absolute discretion, concerning the exercise of those rights and powers.

8.3 **Calls on Investments**

Notwithstanding the security created by this deed, the Buyer shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Buyer acknowledges that the Sellers shall not be under any liability in respect of any such calls, instalments or other payments.

8.4 **Preservation of Investments**

The Buyer shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of the Investments that is not a public company shall not:

8.1 consolidate or subdivide any of the Investments, or re-organise, exchange, repay or reduce its share capital in any way;

8.2 issue any new shares or stock; or

8.3 refuse to register any transfer of any of the Investments that may be lodged with it for registration by, or on behalf of, the Sellers or the Buyer in accordance with this deed.

9. EQUIPMENT COVENANTS

9.1 **Maintenance of Equipment**

The Buyer shall:

9.1.1 maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;

9.1.2 at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and

9.1.3 not permit any Equipment to be:

9.1.3.1 used or handled other than by properly qualified and trained persons; or

9.1.3.2 overloaded or used for any purpose for which it is not designed or reasonably suitable.

9.2 **Payment of Equipment taxes**

The Buyer shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Sellers.

10. BOOK DEBTS

The Buyer shall be entitled, in the ordinary course of business, to release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

11. AGREEMENTS COVENANTS

The Buyer shall comply with the terms of any agreement, document or arrangement comprising the Secured Assets (other than the Insurance Policies).

12. INTELLECTUAL PROPERTY COVENANTS

12.1 Preservation of rights

The Buyer shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.

13. POWERS OF THE SELLERS

13.1 Power to remedy

13.1.1 The Sellers shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Buyer of any of its obligations contained in this deed.

13.1.2 The Buyer irrevocably authorises the Sellers and its agents to do all things that are necessary or desirable for that purpose.

13.1.3 Any monies expended by the Sellers in remedying a breach by the Buyer of its obligations contained in this deed shall be reimbursed by the Buyer to the Sellers on a full indemnity basis and shall carry interest in accordance with *clause 20.1*.

13.2 Exercise of rights

13.2.1 The rights of the Sellers under *clause 13.1* are without prejudice to any other rights of the Sellers under this deed.

13.2.2 The exercise of any rights of the Sellers under this deed shall not make the Sellers liable to account as a mortgagee in possession.

13.3 Power to dispose of chattels

13.3.1 At any time after the security constituted by this deed has become enforceable, the Sellers or any Receiver may, as agent for the Buyer, dispose of any chattels or produce found on any Property.

13.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under *clause 13.3.1*, the Buyer shall indemnify the Sellers and any Receiver against any liability arising from any disposal made under *clause 13.3.1*.

13.4 Sellers has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Sellers in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

13.5 Indulgence

The Sellers may, at their discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Buyer) in respect of any of the Deferred Payments, or of any other security for them without prejudice either to this deed or to the liability of the Buyer for the Deferred Payments.

13.6 **Appointment of an Administrator**

13.6.1 The Sellers may, without notice to the Buyer, appoint any one or more persons to be an Administrator of the Buyer pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

13.6.2 Any appointment under this *clause 13.6* shall:

13.6.2.1 be in writing signed by a duly authorised signatory of the Sellers; and

13.6.2.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

13.6.3 The Sellers may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this *clause 13.6* appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

13.7 **Further advances**

The Sellers covenant with the Buyer that it shall perform its obligations to make advances under the SPA (including any obligation to make available further advances).

14. WHEN SECURITY BECOMES ENFORCEABLE

14.1 **Security becomes enforceable on Event of Default**

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

14.2 **Discretion**

After the security constituted by this deed has become enforceable, the Sellers may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

15. ENFORCEMENT OF SECURITY

15.1 **Enforcement powers**

15.1.1 For the purposes of all powers implied by statute, the Deferred Payments are deemed to have become due and payable on the date of this deed.

15.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under *clause 14.1.*

15.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

15.2 **Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Sellers and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Buyer, to:

15.2.1 grant a lease or agreement to lease;

15.2.2 accept surrenders of leases; or

15.2.3 grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Buyer, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Sellers or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

15.3 **Access on enforcement**

15.3.1 At any time after the Sellers has demanded payment of the Deferred Payments or if the Buyer defaults in the performance of its obligations under this deed or the SPA, the Buyer will allow the Sellers or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Sellers or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Buyer for, or by any reason of, that entry.

15.3.2 At all times, the Buyer must use its best endeavours to allow the Sellers or its Receiver access to any premises for the purpose of *clause 15.3.1* (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

15.4 **Protection of third parties**

No purchaser, mortgagee or other person dealing with the Sellers, any Receiver or Delegate shall be concerned to enquire:

15.4.1 whether any of the Deferred Payments have become due or payable, or remain unpaid or undischarged;

15.4.2 whether any power the Sellers, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or

15.4.3 how any money paid to the Sellers, any Receiver or any Delegate is to be applied.

15.5 **Privileges**

Each Receiver and the Sellers is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

15.6 **No liability as mortgagee in possession**

Neither the Sellers, any Receiver, any Delegate nor any Administrator shall be liable, by reason of entering into possession of a Secured Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

15.7 **Conclusive discharge to purchasers**

The receipt of the Sellers, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in

making any acquisition in the exercise of their respective powers, the Sellers, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

15.8 **Right of appropriation**

15.8.1 To the extent that:

15.8.1.1 the Secured Assets constitute Financial Collateral; and

15.8.1.2 this deed and the obligations of the Buyer under it constitute a Security Financial Collateral Arrangement,

the Sellers shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Deferred Payments in any order that the Sellers may, in its absolute discretion, determine.

15.8.2 The value of any Secured Assets appropriated in accordance with this clause shall be:

15.8.2.1 in the case of cash, the amount standing to the credit of each of the Buyer's accounts with any bank, financial institution or other person, together with all interest accrued but unposted, at the time the right of appropriation is exercised; and

15.8.2.2 in the case of Investments, the price of those Investments at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Sellers may select (including independent valuation).

15.8.3 The Buyer agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

16. RECEIVER

16.1 **Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Buyer, the Sellers may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

16.2 **Removal**

The Sellers may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

16.3 **Remuneration**

The Sellers may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

16.4 **Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Sellers under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

16.5 **Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Sellers despite any prior appointment in respect of all or any part of the Secured Assets.

16.6 **Agent of the Buyer**

Any Receiver appointed by the Sellers under this deed shall be the agent of the Buyer and the Buyer shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Buyer goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Sellers.

17. POWERS OF RECEIVER

17.1 **General**

17.1.1 Any Receiver appointed by the Sellers under this deed shall, in addition to the powers conferred on it by statute, have the powers set out in *clause 17.2* to *clause 17.23*.

17.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

17.1.3 Any exercise by a Receiver of any of the powers given by *clause 17* may be on behalf of the Buyer, the directors of the Buyer (in the case of the power contained in *clause 17.16*) or itself.

17.2 **Repair and develop Properties**

A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

17.3 **Surrender leases**

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that it thinks fit.

17.4 **Employ personnel and advisers**

A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit. A Receiver may discharge any such person or any such person appointed by the Buyer.

17.5 **Make VAT elections**

A Receiver may make, exercise or revoke any value added tax option to tax as it thinks fit.

17.6 **Remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Sellers may prescribe or agree with it.

17.7 **Realise Secured Assets**

A Receiver may collect and get in the Secured Assets or any part of them in respect of which it is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

17.8 **Manage or reconstruct the Buyer's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Buyer.

17.9 **Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

17.10 **Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Buyer.

17.11 **Sell Book Debts**

A Receiver may sell and assign all or any of the Book Debts in respect of which it is appointed in any manner, and generally on any terms and conditions, that it thinks fit.

17.12 **Valid receipts**

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

17.13 **Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Buyer and any other person that it may think expedient.

17.14 **Bring proceedings**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as it thinks fit.

17.15 **Improve the Equipment**

A Receiver may make substitutions of, or improvements to, the Equipment as it may think expedient.

17.16 **Make calls on Buyer members**

A Receiver may make calls conditionally or unconditionally on the members of the Buyer in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Buyer on its directors in respect of calls authorised to be made by them.

17.17 **Insure**

A Receiver may, if it thinks fit, but without prejudice to the indemnity in *clause 20*, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Buyer under this deed.

17.18 **Powers under the LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if it had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

17.19 **Borrow**

A Receiver may, for any of the purposes authorised by this *clause 17*, raise money by borrowing from the Sellers (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Sellers consents, terms under which that security ranks in priority to this deed).

17.20 **Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Buyer, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

17.21 **Delegation**

A Receiver may delegate his powers in accordance with this deed.

17.22 **Absolute beneficial owner**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

17.23 **Incidental powers**

A Receiver may do any other acts and things that it:

17.23.1 may consider desirable or necessary for realising any of the Secured Assets;

17.23.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

17.23.3 lawfully may or can do as agent for the Buyer.

18. DELEGATION

18.1 Delegation

The Sellers or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under *clause 21.1*).

18.2 Terms

The Sellers and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

18.3 Liability

Neither the Sellers nor any Receiver shall be in any way liable or responsible to the Buyer for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

19. APPLICATION OF PROCEEDS

19.1 Order of application of proceeds

All monies received by the Sellers, a Receiver or a Delegate pursuant to this deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

19.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Sellers (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;

19.1.2 in or towards payment of or provision for the Deferred Payments in any order and manner that the Sellers determines; and

19.1.3 in payment of the surplus (if any) to the Buyer or other person entitled to it.

19.2 Appropriation

Neither the Sellers, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Deferred Payments.

19.3 Suspense account

All monies received by the Sellers, a Receiver or a Delegate under this deed:

19.3.1 may, at the discretion of the Sellers, Receiver or Delegate, be credited to any suspense or securities realised account;

19.3.2 shall bear interest, if any, at the rate agreed in writing between the Sellers and the Buyer; and

19.3.3 may be held in that account for so long as the Sellers, Receiver or Delegate thinks fit.

20. COSTS AND INDEMNITY

20.1 **Costs**

The Buyer shall, within five Business Days of demand, pay to, or reimburse, the Sellers, any Receiver and any Delegate on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Sellers, any Receiver or any Delegate in connection with:

20.1.1 this deed or the Secured Assets;

20.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Sellers's, a Receiver's or a Delegate's rights under this deed;

20.1.3 taking proceedings for, or recovering, any of the Deferred Payments;

20.1.4 any default or delay by the Buyer in performing any of its obligations under this deed

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Buyer) at the rate and in the manner specified in the SPA.

20.2 **Further assurance**

20.3 The Buyer shall, at its own expense, take whatever action the Sellers or any Receiver may reasonably require for:

20.3.1 creating, perfecting or protecting the security intended to be created by this deed;

20.3.2 facilitating the realisation of any Secured Asset; or

20.3.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Sellers or any Receiver in respect of any Secured Asset,

20.4 including, without limitation (if the Sellers or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Sellers or to its nominee) and the giving of any notice, order or direction and the making of any registration.

21. POWER OF ATTORNEY

21.1 **Appointment of attorneys**

By way of security, the Buyer irrevocably appoints the Sellers, every Receiver and every Delegate separately to be the attorney of the Buyer and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

21.1.1 the Buyer is required to execute and do under this deed; or

21.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Sellers, any Receiver or any Delegate.

21.2 **Ratification of acts of attorneys**

The Buyer ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in *clause 21.1*.

22. RELEASE

22.1 Subject to *clause 29.3*, on the expiry of the Security Period (but not otherwise), the Sellers shall, at the request and cost of the Buyer, take whatever action is necessary to:

22.1.1 release the Secured Assets from the security constituted by this deed; and

22.1.2 reassign the Secured Assets to the Buyer.

23. ASSIGNMENT AND TRANSFER

23.1 **Assignment by Sellers**

23.1.1 At any time, without the consent of the Buyer, the Sellers may assign or transfer any or all of its rights and obligations under this deed.

23.1.2 The Sellers may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Buyer, the Secured Assets and this deed that the Sellers considers appropriate.

23.2 **Assignment by Buyer**

The Buyer may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

24. SET-OFF

24.1 **Sellers's right of set-off**

The Sellers may at any time set off any liability of the Buyer to the Sellers against any liability of the Sellers to the Buyer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Sellers may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Sellers of its rights under this *clause 24* shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

24.2 **No obligation to set off**

The Sellers are not obliged to exercise its rights under *clause 24.1*. If, however, it does exercise those rights it must promptly notify the Buyer of the set-off that has been made.

24.3 **Exclusion of Buyer's right of set-off**

All payments made by the Buyer to the Sellers under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

25. AMENDMENTS, WAIVERS AND CONSENTS

25.1 **Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

25.2 **Waivers and consents**

25.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

25.2.2 A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Sellers shall be effective unless it is in writing.

25.3 **Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

26. SEVERANCE

26.1 **Severance**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

27. COUNTERPARTS

27.1 **Counterparts**

27.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

27.1.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

28. THIRD PARTY RIGHTS

Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

29. FURTHER PROVISIONS

29.1 Independent security

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Sellers may hold for any of the Deferred Payments at any time. No prior security held by the Sellers over the whole or any part of the Secured Assets shall merge in the security created by this deed.

29.2 Continuing security

The security constituted by this deed shall remain in full force and effect as a continuing security for the Deferred Payments, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Sellers discharges this deed in writing.

29.3 Discharge conditional

Any release, discharge or settlement between the Buyer and the Sellers shall be deemed conditional on no payment or security received by the Sellers in respect of the Deferred Payments being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

29.3.1 the Sellers or its nominee may retain this deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Sellers deems necessary to provide the Sellers with security against any such avoidance, reduction or order for refund; and

29.3.2 the Sellers may recover the value or amount of such security or payment from the Buyer subsequently as if the release, discharge or settlement had not occurred.

29.4 Certificates

A certificate or determination by the Sellers as to any amount for the time being due to it from the Buyer under this deed and the SPA shall be, in the absence of any manifest error, conclusive evidence of the amount due.

29.5 Consolidation

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

29.6 Small company moratorium

Notwithstanding anything to the contrary in this deed, neither the obtaining of a moratorium by the Buyer under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Buyer with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:

29.6.1 an event under this deed which causes any floating charge created by this deed to crystallise;

29.6.2 an event under this deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Buyer; or

29.6.3 a ground under this deed for the appointment of a Receiver.

30. NOTICES

30.1 **Delivery**

Each notice or other communication required to be given to a party under or in connection with this deed shall be:

30.1.1 in writing;

30.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service; and

30.1.3 sent to:

30.1.3.1 the Buyer at:

Newcombe Mill Rosemount Estates, Huddersfield Road, Elland, West Yorkshire, HX5 0EE

Attention: Paul Lees

30.1.3.2 the Sellers at:

35 Spinney Rise, Tong, Bradford, BD4 0TX

Attention: Michael and Michaela Branford

or to any other address or fax number as is notified in writing by one party to the other from time to time.

30.2 **Receipt by Buyer**

Any notice or other communication that the Sellers gives to the Buyer shall be deemed to have been received:

30.2.1 if delivered by hand, at the time it is left at the relevant address;

30.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

A notice or other communication given as described in *clause 30.2.1* or *clause 31.2.2* on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

30.3 **Receipt by Sellers**

Any notice or other communication given to the Sellers shall be deemed to have been received only on actual receipt.

30.4 **Service of proceedings**

This *clause 30* does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

30.5 **No notice by email**

A notice or other communication given under or in connection with this deed is not valid if sent by email.

31. GOVERNING LAW AND JURISDICTION

31.1 Governing law

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

31.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Sellers to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

31.3 Other service

The Buyer irrevocably consents to any process in any legal action or proceedings under *clause 31.2* being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This deed has been entered into on the date stated at the beginning of it.

Signed as a deed by **MICHAEL BRANFORD** in the presence of:

Sign here [redacted]

Signature of Witness [redacted]

Name (in BLOCK CAPITALS) RACHEL MARSDEN

Address 39 SPINNEY RISE
BRADFORD, BD4 0TX

Signed as a deed by **MICHAELA BRANFORD** in the presence of:

Sign here [redacted]

Signature of Witness [redacted]

Name (in BLOCK CAPITALS) RACHEL MARSDEN

Address 39 SPINNEY RISE
BRADFORD, BD4 0TX

Signed as a deed by **ABS (UK) LIMITED** acting by a director in the presence of:

Sign here

Director

Signature of Witness _____

Name (in BLOCK CAPITALS) _____

Address _____

_____

Signed as a deed by **MICHAEL BRANFORD** in the presence of:

Sign here

Signature of Witness

Name (in BLOCK CAPITALS)

Address

Signed as a deed by **MICHAELA BRANFORD** in the presence of:

Sign here

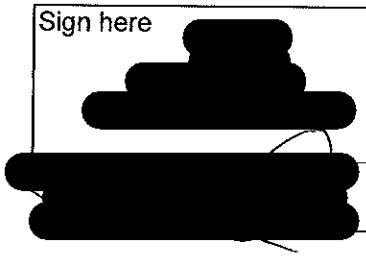
Signature of Witness

Name (in BLOCK CAPITALS)

Address

Signed as a deed by **ABS (UK) LIMITED** acting by a director in the presence of:

Sign here



Director

Signature of Witness

Name (in BLOCK CAPITALS)

DEBORAH ANNE MELLUISH

Address

SOLICITOR
EATON SMITH LLP

HUDDERSFIELD