



**Registration of a Charge**

Company name: **5TH TIER LIMITED**

Company number: **03774129**



X49D5Q3V

Received for Electronic Filing: **11/06/2015**

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**Details of Charge**

Date of creation: **02/06/2015**

Charge code: **0377 4129 0006**

Persons entitled: **SISM INVESTMENTS LIMITED**

Brief description: **ALL THOSE PATENTS AND PATENT APPLICATIONS LISTED AT  
SCHEDULE 6 TO THE DEBENTURE**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **GELDARDS LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 3774129

Charge code: 0377 4129 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 2nd June 2015 and created by 5TH TIER LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th June 2015 .

Given at Companies House, Cardiff on 12th June 2015

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

June 2

2015

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**DEBENTURE**

Between

**5th Tier Limited**

and

**SISM Investments Limited  
(as Security Trustee)**

RPC  
Tower Bridge House  
St Katharine's Way  
London  
E1W 1AA

C:4363287v2

Ref: DM01/PJ01/SMA24.1

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THIS DEED is made on *June 2* 2015

**Between:**

- (1) **5TH TIER LIMITED**, a company incorporated in England and Wales (registered number 03774129) whose registered office is at Craven House, 16 Northumberland Avenue, London WC2N 5AP (the **Chargor**); and
- (2) **SISM INVESTMENTS LIMITED**, a company incorporated in England and Wales (registered number 08831339) whose registered office is at Craven House, 16 Northumberland Avenue, London WC2N 5AP (the **Security Trustee**) as Security Trustee for the Noteholders (as defined below).

**Whereas:**

- (A) The Chargor enters into this debenture in connection with the Instrument (as defined below).
- (B) This debenture provides security which the Chargor has agreed to give the Security Trustee for the Notes under the Instrument.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The definitions and rules of interpretation in this clause apply in this debenture.

**Business Day:** a day (other than a Saturday, Sunday or public holiday in the United Kingdom) when banks are generally open in London for normal business.

**Charged Property:** all the assets, property and undertaking for the time being subject to the security interests created by this debenture (and references to the Charged Property shall include references to any part of it).

**Chargor's IP:** all Intellectual Property owned by the Chargor now or at any time in the future including all patents and patent applications which are set out in Schedule 6 and granted patents issuing from such applications and any other patents, patent applications (including divisional patent applications and divisional patents) which derive from the inventions disclosed in the aforementioned patents/patent applications.

**Costs:** all costs, charges, expenses and liabilities of any kind including, without limitation, costs and damages in connection with litigation, professional fees, disbursements and any value added tax charged on Costs.

**Encumbrance:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, hypothecation, lien, assignment, right of set-off, priority or other security interest including, without limitation, any "hold back" or flawed asset arrangement together with any trust agreement, declaration of trust or trust arising by operation of law, any option or agreement for any of the foregoing, or any other agreement or arrangement which has substantially the same effect as the creation of security.

**Event of Default:** has the meaning given to such term in the Instrument.

**Intellectual Property:** patents, rights to inventions, copyright and related rights (including rights in computer software and/or source code), 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 and all fees, royalties and other rights derived from, or incidental to, these rights.

**Instrument:** the loan note instrument created by Smartpipe, and executed on or about the date of this debenture, for the provision of Notes secured by this debenture.

**Noteholders:** the Noteholders as defined in the Instrument.

**Notes:** up to £2,500,000 secured convertible loan notes of Smartpipe to be constituted by the Instrument.

**Receiver:** a receiver and/or manager of any or all of the Charged Property appointed under paragraph 6 of Schedule 4.

**Secured Liabilities:** all present and future monies, obligations and liabilities owed by Smartpipe to the Noteholders, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity together with all commission, fees, Costs and other charges and interest (including, without limitation, default interest) accruing in respect of such monies or liabilities.

**Security Documents:** this debenture and any other present or future document in favour of the Security Trustee creating or evidencing a guarantee or Encumbrance for, or in respect of, all or any of the Secured Liabilities (each a **Security Document**).

**Security Period:** the period starting on the date of this debenture and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**Smartpipe:** Smartpipe Holdings Limited, a company incorporated in England and Wales (registered number 08722684) whose registered office is at Craven House, 16 Northumberland Avenue, London WC2N 5AP, being the holding company of the Chargor.

## 1.2 Interpretation

Unless the context otherwise requires, in this debenture:

- 1.2.1 a reference to a statute or statutory provision includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and to any former statute or statutory provision which it consolidated or re-enacted before the date of this debenture;
- 1.2.2 a reference to one gender includes a reference to the other gender;
- 1.2.3 words in the singular include the plural and in the plural include the singular;
- 1.2.4 a reference to a clause or Schedule is to a clause of, or Schedule to, this debenture and references to paragraphs are to paragraphs of the relevant Schedule;

- 1.2.4 a reference to a clause or Schedule is to a clause of, or Schedule to, this debenture and references to paragraphs are to paragraphs of the relevant Schedule;
- 1.2.5 a reference to this debenture (or any specified provision of it) or any other document shall be construed as a reference to this debenture, that provision or that document as in force for the time being and as amended or novated from time to time;
- 1.2.6 a reference to a person shall include a reference to an individual, firm, corporation, unincorporated body of persons, or any state or any agency of a person;
- 1.2.7 a reference to an amendment includes a supplement, variation, novation or re-enactment (and amended shall be construed accordingly);
- 1.2.8 a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.9 a reference to an authorisation includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- 1.2.10 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; and
- 1.2.11 clause, schedule and paragraph headings shall not affect the interpretation of this debenture.

### **1.3 Clawback**

If the Security Trustee considers that an amount paid by Smartpipe and/or the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of Smartpipe and/or the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this debenture.

### **1.4 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 Instrument and of any side letters between any parties in relation to the Instrument are incorporated into this debenture.

### **1.5 Third party rights**

A third party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this debenture.

### **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).

### **1.7 Schedules**

The schedules form part of this debenture and shall have effect as if set out in full in the body of this debenture. Any reference to this debenture includes the schedules.

## **2. GRANT OF SECURITY**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Security Trustee, by way of first fixed charge, all the Chargor's IP.

## **3. SECURITY STATUS**

### **3.1 Security not discharged**

The security created under this debenture shall not be discharged, prejudiced or affected by:

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

3.1.2 the Noteholders 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

3.1.3 any other act or omission, which but for this clause 3.1 might have discharged, or otherwise prejudiced or affected, the liability of Smartpipe.

### **3.2 Immediate recourse**

The Chargor waives any right it may have to require the Security Trustee to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this debenture against the Chargor.

## **4. REPRESENTATIONS AND WARRANTIES**

The Chargor represents and warrants to the Security Trustee in the terms set out in Schedule 1. The representations and warranties set out in Schedule 1 are made on the date of this debenture and shall be deemed to be made on each day of the Security Period with reference to the facts and circumstances then existing.

## **5. COVENANTS**

The Chargor covenants with the Security Trustee in the terms set out in Schedule 2.

## **6. POWERS OF THE SECURITY TRUSTEE**

The Security Trustee shall have the powers set out in Schedule 3.

## **7. ENFORCEMENT**

### **7.1 Enforcement events**

The security constituted by this debenture shall be immediately enforceable in any of the circumstances set out in paragraph 1 of Schedule 4 occurs. The parties to this debenture agree that the provisions of Schedule 4 shall apply to this debenture and shall be binding between them.



## **7.2 Receiver's powers**

A Receiver shall have, in addition to the powers conferred on receivers by statute, the further powers set out in Schedule 5.

## **8. COSTS AND INDEMNITY**

### **8.1 Costs**

The Chargor shall pay to, or reimburse, the Security Trustee and any Receiver on demand, on a full indemnity basis, all Costs incurred by the Security Trustee and/or any Receiver in relation to:

8.1.1 this debenture or the Charged Property;

8.1.2 protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Security Trustee's or Receiver's rights under this debenture; and/or

8.1.3 suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in relation to this debenture or the Secured Liabilities), together with interest on any amount due under clause 8.1.2 and clause 8.1.3 at the default rate of interest specified in the Instrument.

### **8.2 Indemnity**

The Security Trustee and any Receiver, and their respective employees and agents, shall be indemnified on a full indemnity basis out of the Charged Property in respect of all actions, liabilities and Costs incurred or suffered whether directly or indirectly in or as a result of:

8.2.1 the exercise, or purported exercise, of any of the powers, authorities or discretions vested in them under this debenture;

8.2.2 any matter or thing done, or omitted to be done, in relation to the Charged Property under those powers; or

8.2.3 any default or delay by the Chargor in performing any of its obligations under this debenture.

## **9. RELEASE**

Subject to clause 11.3, on the expiry of the Security Period (but not otherwise), the Security Trustee shall, at the request and cost of the Chargor, take whatever action is necessary to release the Charged Property from the security constituted by this debenture.

## **10. ASSIGNMENT AND TRANSFER**

### **10.1 Assignment by Security Trustee**

At any time, without the consent of the Chargor, the Security Trustee may assign or transfer the whole or any part of the Security Trustee's rights and/or obligations under this debenture to any person.

## **10.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its obligations, under this debenture or enter into any transaction which would result in any of those rights or obligations passing to another person.

## **11. FURTHER PROVISIONS**

### **11.1 Independent security**

This debenture shall be in addition to, and independent of, every other security or guarantee which the Security Trustee may hold for any of the Secured Liabilities at any time. No prior security held by the Security Trustee over the whole or any part of the Charged Property shall merge in the security created by this debenture.

### **11.2 Continuing security**

This debenture shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Security Trustee discharges this debenture in writing.

### **11.3 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Security Trustee shall be deemed conditional on no payment or security received by the Security Trustee in respect of the Secured Liabilities 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:

11.3.1 the Security Trustee or its nominee may retain this debenture and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Property, for such period as the Security Trustee deems necessary to provide the Security Trustee with security against any such avoidance, reduction or order for refund; and

11.3.2 the Security Trustee may recover the value or amount of such security or payment from the Chargor subsequently as if such release, discharge or settlement had not occurred.

### **11.4 Certificates**

A certificate or determination by the Security Trustee as to any amount for the time being due to it from the Chargor shall (in the absence of any manifest error) be conclusive evidence of the amount due.

### **11.5 Rights cumulative**

The rights and powers of the Security Trustee conferred by this debenture are cumulative, may be exercised as often as the Security Trustee considers appropriate, and are in addition to its rights and powers under the general law.

### **11.6 Waivers**

Any waiver or variation of any right by the Security Trustee (whether arising under this debenture or under the general law) shall only be effective if it is in writing and signed by

the Security Trustee and applies only in the circumstances for which it was given, and shall not prevent the Security Trustee from subsequently relying on the relevant provision.

#### **11.7 Further exercise of rights**

No act or course of conduct or negotiation by or on behalf of the Security Trustee shall, in any way, preclude the Security Trustee from exercising any right or power under this debenture or constitute a suspension or variation of any such right or power.

#### **11.8 Delay**

No delay or failure to exercise any right or power under this debenture shall operate as a waiver.

#### **11.9 Single or partial exercise**

No single or partial exercise of any right under this debenture shall prevent any other or further exercise of that or any other right.

#### **11.10 Consolidation**

The restriction on the right of consolidation contained in section 93 of the Law of Property Act 1925 shall not apply to this debenture.

#### **11.11 Partial invalidity**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this debenture under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

#### **11.12 Counterparts**

This debenture may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

### **12. NOTICES**

#### **12.1 Service**

Any notice or other communication given under this debenture shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first-class post or by fax to the address or fax number, and for the attention, to:

##### **12.1.1 the Chargor at:**

Craven House  
16 Northumberland Avenue  
London WC2N 5AP

Fax: 0207 306 9120

Attention: Tobin Ireland; and

##### **12.1.2 the Security Trustee at:**

Craven House  
16 Northumberland Avenue  
London WC2N 5AP

Fax: 0207 306 9120

Attention: Svante Pahlson-Moller,

or to any other addresses or fax numbers that are notified in writing by one party to the other from time to time.

## **12.2 Receipt**

Receipt of any notice given under clause 12.1, shall be deemed to be received:

12.2.1 if delivered personally, at the time of delivery; or

12.2.2 in the case of pre-paid first-class post, 48 hours from the time of posting; or

12.2.3 in the case of a fax, when received in legible form.

## **12.3 Deemed receipt**

If deemed receipt under clause 12.2 occurs:

12.3.1 before 9:00 am on a Business Day, the notice shall be deemed to have been received at 9:00 am on that day; or

12.3.2 after 5:00 pm on a Business Day, or on a day that is not a Business Day, the notice shall be deemed to have been received at 9:00 am on the next Business Day.

## **12.4 Proof of service**

In proving service of a notice, it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party as set out in 12.1 (or as otherwise notified by that party under clause 12.1) and delivered either:

12.4.1 to that address; or

12.4.2 into the custody of the postal authorities as a pre-paid recorded delivery first-class letter.

## **12.5 E-mails invalid**

Notice given under this debenture shall not be validly served if sent by e-mail.

## **13. GOVERNING LAW AND JURISDICTION**

### **13.1 Governing law**

This debenture and any dispute arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

### **13.2 Jurisdiction**

The parties to this debenture irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising out of or in connection with this debenture. Nothing in this clause shall limit the right of the Security Trustee to take proceedings against the Chargor 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.

### **13.3 Other service**

The Chargor irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this debenture being served on it in accordance with the provisions of this debenture relating to service of notices. Nothing contained in this debenture shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE 1  
REPRESENTATIONS AND WARRANTIES**

**1. OWNERSHIP OF CHARGED PROPERTY**

The Chargor is the legal and beneficial owner of the Charged Property.

**2. NO ENCUMBRANCES**

The Charged Property is free from any Encumbrance other than the Encumbrances created by the Security Documents.

**3. ADVERSE CLAIMS**

The Chargor has not received or acknowledged notice of any adverse claim by any person in respect of the Charged Property or any interest in it.

**4. ADVERSE COVENANTS**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever, which materially adversely affect the Charged Property.

**5. NO BREACH OF LAWS**

There is no breach of any law or regulation which materially adversely affects the Charged Property.

**6. AVOIDANCE OF SECURITY**

No Encumbrance expressed to be created under this debenture is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

## **SCHEDULE 2 COVENANTS**

### **PART 1 – General covenants**

#### **1. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

The Chargor shall not at any time, except with the prior written consent of the Security Trustee:

- 1.1 create, purport to create or permit to subsist any Encumbrance on, or in relation to, the Charged Property other than the Security Documents; or
- 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 Charged Property; or
- 1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

#### **2. PRESERVATION OF CHARGED PROPERTY**

The Chargor shall not do, or permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Security Trustee or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this debenture.

#### **3. ENFORCEMENT OF RIGHTS**

The Chargor shall use its best endeavours to:

- 3.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Chargor's counterparties; and
- 3.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property which the Security Trustee may require from time to time.

#### **4. NOTICE OF BREACHES**

The Chargor shall promptly on becoming aware of any of the same give the Security Trustee notice in writing of any breach of:

- 4.1 any representation or warranty set out in Schedule 1; and
- 4.2 any covenant set out in this Schedule 2.

#### **5. FURTHER ASSURANCE**

- 5.1 The Chargor, at its own cost, shall prepare and execute such further legal or other mortgages, charges or transfers (containing a power of sale and such other provisions as the Security Trustee may reasonably require) in favour of the Security Trustee as the Security Trustee, in its absolute discretion, requires from time to time over all or any part of the Charged Property and give all notices, orders and directions which the Security Trustee may require in its absolute discretion for perfecting, protecting or facilitating the realisation of its security over the Charged Property.

- 5.2 Pending the execution and delivery of any such assignment the Chargor shall hold such Charged Property or part on trust for the Security Trustee subject to the provisions of this debenture.

## **PART 2 - Intellectual Property covenants**

### **1. PRESERVATION OF RIGHTS**

The Chargor shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Chargor's IP including (without limitation), observing all covenants and stipulations relating to such rights and paying all applicable renewal fees, licence fees and other outgoings.

### **2. REGISTRATION OF INTELLECTUAL PROPERTY**

The Chargor shall use all reasonable efforts to effect registration of applications for registration of any Intellectual Property and keep the Security Trustee informed of all matters relating to such registration.

### **3. MAINTENANCE OF INTELLECTUAL PROPERTY**

The Chargor shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.



**SCHEDULE 3  
POWERS OF THE SECURITY TRUSTEE**

**1. POWER TO REMEDY**

The Security Trustee shall be entitled (but shall not be bound) to remedy a breach at any time by the Chargor of any of its obligations contained in this debenture and the Chargor irrevocably authorises the Security Trustee and its agents to do all such things as are necessary or desirable for that purpose.

**2. EXERCISE OF RIGHTS**

The rights of the Security Trustee under paragraph 1 of this Schedule 3 are without prejudice to any other rights of the Security Trustee under this debenture. The exercise of those rights shall not make the Security Trustee liable to account as a mortgagee in possession.

**3. PRIOR ENCUMBRANCES**

- 3.1 At any time after the security constituted by this debenture has become enforceable, or after any powers conferred by any Encumbrance having priority to this debenture shall have become exercisable, the Security Trustee may:

3.1.1 redeem such or any other prior Encumbrance, or procure its transfer to itself; and

3.1.2 settle any account of the holder of any prior Encumbrance.

- 3.2 The settlement of any such account shall be conclusive and binding on the Chargor. All monies paid by the Security Trustee to an encumbrancer in settlement of such an account shall, as from its payment by the Security Trustee, be due from the Chargor to the Security Trustee on current account and shall bear interest at the default rate of interest specified in the Instrument and be secured as part of the Secured Liabilities.

**4. INDULGENCE**

The Security Trustee may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person or persons not being a party to this debenture (whether or not such person or persons is jointly liable with Smartpipe) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this debenture or to the liability of Smartpipe for the Secured Liabilities.

## **SCHEDULE 4 ENFORCEMENT**

### **1. ENFORCEMENT EVENTS**

This debenture shall be enforceable if:

- 1.1 an Event of Default occurs; or
- 1.2 any of the Secured Liabilities are not paid or discharged when the same ought to be paid or discharged by Smartpipe (whether on demand, at scheduled maturity, or by acceleration or otherwise, as the case may be); or
- 1.3 Smartpipe is in breach of any of its obligations under the Instrument or the Security Documents; or
- 1.4 the Chargor is in breach of any of its obligations under the Security Documents or any other agreement between the Chargor and the Security Trustee; or
- 1.5 Smartpipe and/or the Chargor:
  - 1.5.1 becomes unable to pay its debts as they fall due (and/or the value of its/their assets is less than the amount of its liabilities, taking into account its/their contingent and prospective liabilities); or
  - 1.5.2 commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness; or
  - 1.5.3 makes a general assignment for the benefit of, or a composition with, its creditors; or
- 1.6 Smartpipe and/or the Chargor passes any resolution or takes any corporate action, or a petition is presented or proceedings are commenced, or any action is taken by any person for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of it or of any or all of its revenues or assets; or
- 1.7 a distress, execution, attachment or other legal process is levied, or enforced on or sued against all or any part of the assets of Smartpipe and/or the Chargor and remains undischarged for seven days; or
- 1.8 any event occurs in relation to Smartpipe and/or the Chargor that is analogous to those set out in paragraph 1.3, paragraph 1.4 or paragraph 1.5 of this Schedule 4; or
- 1.9 any representation, warranty or statement made or deemed to be made by the Chargor under this debenture is or proves to have been incorrect or misleading when made or deemed to be made;

and in any such event (whether or not the event is continuing), without prejudice to any other rights of the Security Trustee:

- (a) the powers of sale under the Law of Property Act 1925 shall immediately be exercisable and the Security Trustee may, in its absolute discretion, enforce all or any part of the security created by this debenture as it sees fit; and
- (b) the Chargor shall:

- (i) enter into such validly executed assignment documents as are required to assign all of the Chargor's IP to the Security Trustee; and
- (ii) take all necessary steps and execute all further documents required by law or which the Security Trustee requests to vest in the Security Trustee the full benefit of the right, title and interest in the Chargor's IP including registration of the Security Trustee as applicant for, or proprietor of, the Chargor's IP at the relevant registries of any relevant jurisdiction.

## **2. STATUTORY POWER OF SALE**

The statutory powers of sale conferred by the Law of Property Act 1925 shall, as between the Security Trustee and a purchaser from the Security Trustee, arise on and be exercisable at any time after the execution of this debenture, but the Security Trustee shall not exercise such power of sale until the security constituted by this debenture has become enforceable under paragraph 1 of this Schedule 4.

## **3. EXTENSION OF STATUTORY POWERS**

The statutory powers of sale, leasing and accepting surrenders conferred upon mortgagees under the Law of Property Act 1925 and/or by any other statute shall be exercisable by the Security Trustee under this debenture and are extended so as to authorise the Security Trustee, whether in its own name or in that of the Chargor, to grant a lease or agreement to lease, accept surrenders of lease or grant any option of the whole or any part of the freehold and leasehold property of the Chargor with whatever rights relating to other parts of it, containing whatever covenants on the part of the Chargor, generally on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) and whether or not at a premium as the Security Trustee thinks fit.

## **4. PROTECTION OF THIRD PARTIES**

No purchaser, mortgagee or other person dealing with the Security Trustee or any Receiver shall be concerned:

- 4.1 to enquire whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged, or whether the power the Security Trustee or a Receiver is purporting to exercise has become exercisable; or
- 4.2 to see to the application of any money paid to the Security Trustee or any Receiver.

## **5. NO LIABILITY AS MORTGAGEE IN POSSESSION**

Neither the Security Trustee nor any Receiver shall be liable to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

## **6. APPOINTMENT OF RECEIVER**

- 6.1 At any time after the security constituted by this debenture has become enforceable, the Security Trustee may, without further notice:

6.1.1 appoint under seal or by writing under hand of a duly authorised officer of the Security Trustee, any one or more person or persons to be a receiver, or a receiver and manager, of all or any part of the Charged Property; and

6.1.2 (subject to section 45 of the Insolvency Act 1986) from time to time, under seal or by writing under hand of a duly authorised officer of the Security Trustee, remove any person appointed to be Receiver and may, in a similar manner, appoint another in his place.

Where more than one person is appointed Receiver, they shall have power to act separately (unless the appointment by the Security Trustee specifies to the contrary).

6.2 The Security Trustee may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the Law of Property Act 1925 and the remuneration of the Receiver shall be a debt secured by this debenture which shall be due and payable immediately upon its being paid by the Security Trustee.

## **7. POWER OF SALE ADDITIONAL**

7.1 The powers of sale and appointing a Receiver conferred by this debenture shall be in addition to all statutory and other powers of the Security Trustee under the Insolvency Act 1986, the Law of Property Act 1925 or otherwise, and shall be exercisable without the restrictions contained in Sections 103 and 109 of the Law of Property Act 1925 or otherwise.

7.2 The power to appoint a Receiver (whether conferred by this debenture or by statute) shall be, and remain, exercisable by the Security Trustee despite any prior appointment in respect of all or any part of the Charged Property.

## **8. AGENT OF THE CHARGOR**

Any Receiver appointed by the Security Trustee under this debenture shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts and remuneration, as well as for any defaults committed by him.

## **9. POWERS OF RECEIVER**

Any Receiver appointed by the Security Trustee under this debenture shall, in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986, have the power to do all such acts and things as an absolute owner could do in the management of such of the Charged Property over which the Receiver is appointed and, in particular, the powers set out in Schedule 5.

## **10. ORDER OF APPLICATION OF PROCEEDS**

All monies received by the Security Trustee or a Receiver in the exercise of any enforcement powers conferred by this debenture shall be applied:

10.1 first in paying all unpaid fees, costs and other liability incurred by or on behalf of the Security Trustee (and any Receiver, attorney or agent appointed by it);

10.2 second in paying the remuneration of any Receiver (as agreed between the Receiver and the Security Trustee);

10.3 third in or towards discharge of the Secured Liabilities in such order and manner as the Security Trustee determines; and

10.4 finally in paying any surplus to the Chargor or any other person entitled to it.

**11. APPROPRIATION**

Neither the Security Trustee nor any Receiver shall be bound (whether by virtue of section 109(8) of the Law of Property Act 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 Secured Liabilities.

**12. SUSPENSE ACCOUNT**

All monies received by the Security Trustee or a Receiver under this debenture may, at the discretion of the Security Trustee or Receiver, be credited to any suspense or securities realised account and shall bear interest at such rate, if any, as may be agreed in writing between the Security Trustee and the Chargor, and may be held in such account for so long as the Security Trustee or Receiver thinks fit.

**13. POWER OF ATTORNEY**

By way of security, the Chargor irrevocably appoints the Security Trustee and every Receiver separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things which:

13.1 the Chargor is required to execute and do under this debenture; and/or

13.2 any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this debenture or by law on the Security Trustee or any Receiver.

**14. RATIFICATION OF ACTS OF ATTORNEY**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in paragraph 13 of this Schedule 4.

**SCHEDULE 5  
FURTHER POWERS OF A RECEIVER**

**1. POWER TO EMPLOY PERSONNEL AND ADVISORS**

A Receiver may provide services and employ, or engage, such managers, contractors and other personnel and professional advisors on such terms as he deems expedient.

**2. POWER TO MAKE VAT ELECTIONS**

A Receiver may make such elections for value added tax purposes as he thinks fit.

**3. POWER TO CHARGE FOR REMUNERATION**

A Receiver may charge and receive such sum by way of reasonable remuneration (in addition to all costs, charges and expenses incurred by him) as the Security Trustee may prescribe or agree with him.

**4. POWER TO REALISE CHARGED PROPERTY**

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

**5. POWER TO MANAGE OR RECONSTRUCT THE CHARGOR'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 Chargor.

**6. POWER TO DISPOSE OF CHARGED PROPERTY**

A Receiver may grant options and licences over all or any part of the Charged Property, sell or concur in selling, assign or concur in assigning, lease or concur in leasing and accept or concur in accepting surrenders of leases of, all or any of the property of the Chargor in respect of which he is appointed in such manner and generally on such terms and conditions as he thinks fit (fixtures and plant and machinery may be severed and sold separately from the premises in which they are contained without the consent of the Chargor), and to carry any such sale, assignment, leasing or surrender into effect. Any such sale may be for such consideration as the Receiver thinks fit and he may promote, or concur in promoting, a company to purchase the property to be sold.

**7. POWER TO MAKE SETTLEMENTS**

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person which he may think expedient.

**8. POWER TO MAKE CALLS ON CHARGOR MEMBERS**

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of the uncalled capital with such and the same powers for that purpose, and for the purpose of enforcing payments of any calls so made, as are conferred by the Articles of Association of the Chargor on its directors in respect of calls authorised to be made by them.

**9. POWER TO APPOINT**

A Receiver may appoint managers, officers, servants, workmen and agents for the purposes of this Schedule 5 at such salaries, for such periods and on such terms as he may determine.

**10. POWER TO INSURE**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 8, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, such insurance.

**11. POWERS UNDER LAW OF PROPERTY ACT 1925**

A Receiver may exercise all powers provided for in the Law of Property Act 1925 in the same way as if he had been duly appointed under that act, and exercise all powers provided for an administrative receiver in Schedule 1 of the Insolvency Act 1986.

**12. POWER TO BORROW**

A Receiver may for any of the purposes authorised by this Schedule 5 raise money by borrowing from the Security Trustee (or from any other person) on the security of all or any of the Charged Property in respect of which he is appointed on such terms as he shall think fit (including, if the Security Trustee consents, terms under which such security ranks in priority to this debenture).

**13. POWER TO REDEEM PRIOR ENCUMBRANCES**

A Receiver may redeem any prior Encumbrance and settle and pass the accounts to which the Encumbrance relates. Any accounts so settled and passed shall be conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by him.

**14. INCIDENTAL POWERS**

A Receiver may do all such other acts and things as he may consider incidental or conducive to any of the matters or powers in this Schedule 5, or which he lawfully may or can do as agent for the Chargor.

**15. SCOPE OF POWERS**

Any exercise of any of the powers given by this Schedule 5 may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in paragraph 8 of this Schedule 5) or himself.

**SCHEDULE 6  
THE PATENTS**

Country	Publication no.	Application no.	Date filed	Date granted	Title
UK	EP1027787 <sup>1</sup>	EP99943070.5	27 August 1999	21 May 2003	Computer Network Information Use Monitoring
US	6763383 <sup>1</sup>	09529744	27 August 1999	13 July 2004	Computer Network Information Use Monitoring
US	8533221	11896227 Ref no 2009/0063491	30 August 2007	10 Sep 2013	Provision of Targeted Content
US		13/961,690	30 August 2007	Pending	Continuation - Content Amendment
US		13/961,696	30 August 2007	Pending	Continuation - Remote Insertion of Content
US		13/961,698	30 August 2007	Pending	Continuation - User Identification (Cookies)
US		13/961,708	30 August 2007	Pending	Continuation - Display Space Creation
PCT		PCT/GB2013/051660	24 June 2013	Pending	Six Inventions Catch-all
UK		1211172.0	22 June 2012	Pending	Modifying Browser Session Traffic
UK		1211173.8	22 June 2012	Pending	Modifying Browser Session Traffic Using Subscriber Data
UK		1211174.6	22 June 2012	Pending	Event Driven Content Delivery
UK		1211175.3	22 June 2012	Pending	Modifying Advertisement Content Traffic
UK		1211176.1	22 June 2012	Pending	Initiating Content Delivery Using Subscriber Browsing Data
UK		1211177.9	22 June 2012	Pending	Network Provisioning Using Subscriber Browsing Data

<sup>1</sup> Confirmation of 5th Tier Ltd as patent owner of these patents has been completed per the enclosed pdf documents from US Patent Office and UK Intellectual Property Office, respectively.



**EXECUTED** by the parties as a deed on the date first mentioned above

SIGNED as a deed and DELIVERED by )  
5TH TIER LIMITED )  
acting by )  
in the presence of )

*Blair Beland*

Witness:

Signature:

Name:

Address:

*[Signature]*  
*Jingbo Ruolayte*  
*78 Warwick Avenue*  
*London*  
*W9 2PU*

Occupation:

*Consultant*

SIGNED as a deed and DELIVERED by )  
SISM INVESTMENTS LIMITED )  
acting by )  
in the presence of )

*F. Mapar Kda*

Witness:

Signature:

Name:

Address:

*[Signature]*  
*Jingbo Ruolayte*  
*78 Warwick Avenue*  
*London*  
*W9 2PU*

Occupation:

*Consultant*