



**Registration of a Charge**

Company name: **ANDREW JAMES UK LTD**

Company number: **05604979**

Received for Electronic Filing: **11/10/2019**



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**Details of Charge**

Date of creation: **30/09/2019**

Charge code: **0560 4979 0004**

Persons entitled: **BUSINESS RECOVERY FUNDING LIMITED**

Brief description: **FIXED AND FLOATING CHARGE OVER THE UNDERTAKING AND ALL ASSETS PRESENT AND FUTURE, INCLUDING GOODWILL, BOOK DEBTS, UNCALLED CAPITAL, FIXED PLANT & MACHINERY**

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

**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:

**SEAN LYNCH**



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

Company number: 5604979

Charge code: 0560 4979 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th September 2019 and created by ANDREW JAMES UK LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th October 2019 .

Given at Companies House, Cardiff on 14th October 2019

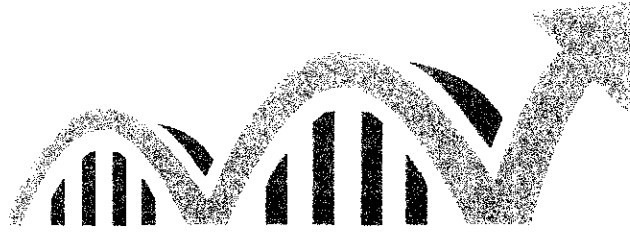
The above information was communicated by electronic means and authenticated  
by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**



# **BUSINESS RECOVERY FUNDING**

*funding your business recovery*

**DEBENTURE**

THIS DEBENTURE is made on

30 September 2019

**BETWEEN:**

- 1 Business Recovery Funding Limited a company incorporated in England and Wales under number 10701531 whose registered office is at Howbery Park, Wallingford, Oxfordshire, OX10 8BA ('the Lender'); and
  - 2 Andrew James UK Ltd a company incorporated in England and Wales under registered number 05604979 whose registered office is at 37-38 Market Street, Ferryhill, County Durham, DL17 8JH ('the Borrower');
- (each of the Lender and the Borrower being a Party and together the Lender and the Borrower are the Parties).

**RECITALS:**

- (A) The Lender has agreed to provide the Borrower with the loan on the terms of the Business Loan Agreement.
- (B) It is a condition precedent to the provision of the loan that the Borrower provides security to the Lender to secure the payment and discharge of the Secured Liabilities.
- (C) The Borrower has agreed to create the security required by entering into this Debenture.

**THE PARTIES AGREE:**

**1 Definitions and interpretation**

- 1.1 Words and expressions defined in the Business Loan Agreement will have the same meanings in this Debenture unless they are expressly defined in this Debenture.

- 1.2 In this Debenture, unless otherwise provided:

<b>Account</b>	means the account referred to in Schedule 1, or such further or other account or accounts as the Lender may at any time stipulate;
<b>Account Bank</b>	means the bank or banks at which the Account is held for the time being;
<b>Administrator</b>	means an Administrator appointed under the Insolvency Act 1986 or the Enterprise Act 2002;
<b>Assets</b>	means all the undertaking, property and assets of the Company whatsoever and wheresoever present or future not including land or interests in land;
<b>Asset Contracts</b>	means all the rights of the Company, now or in the future, arising out of or in connection with any agreement: <ol style="list-style-type: none"><li>(a) for the acquisition of any property (real or personal) by the Company (except to the extent that such rights amount to an interest in land effectively charged by way of legal mortgage or fixed charge by clause 3.1 or 3.2 below) including without limitation any option to acquire property, or</li><li>(b) for the hire, hire purchase, lease or loan of any property (real or personal), to the Company (except as provided above);</li></ol>
<b>Business Loan Agreement</b>	means the Business Loan Agreement dated 23 August 2019 between the Borrower and the Lender;
<b>Charged Assets</b>	means all the assets, goodwill and undertaking of the Borrower present or future for the time being not including land or interests in land subject to the security interests created by this Debenture (including those listed in Schedule 1 and 2);

<b>Debts</b>	means all book and other debts now or in the future owing to the Company (whether alone or jointly with any other person), whenever payable and whether liquidated or unliquidated, certain or contingent, (but excluding credit balances on any account at any bank or financial institution other than the Account) together with all cheques, bills of exchange, negotiable instruments, credits and securities at any time given in relation to, or to secure payment of, any such debt, but <b>Debts</b> does not include any asset or right effectively charged by way of fixed charge under any other provision of clause 3 below;
<b>Default Rate</b>	means 10% per month or part thereof;
<b>Encumbrance</b>	means any mortgage, charge, pledge, lien or other security interest of any kind, and any right of set off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having similar effect to the provision of security, other than liens arising by operation of law in the ordinary course of the Borrower's business;
<b>Environmental Law</b>	means all laws, including without limitation common law, statutes, delegated legislation, legislation of the European Union or any of its institutions, and codes of practice and guidance issued by any relevant authority or agency in relation to any matter affecting the environment, human health or the storage, handling or disposal of any waste or other substance;
<b>Fixed Plant and Equipment</b>	means all plant machinery or equipment of any kind (including without limitation all cables, pipes, switchgear, heating, lighting, electrical, water and gas apparatus) which does not for any reason constitute a Fixture, but is now or at any time directly or indirectly attached by any means and for any purpose to any land or building, whether or not it is removable or intended to form part of the land or building;
<b>Fixtures</b>	means all things of any kind now or at any time affixed to land for any purpose, including without limitation trade and tenants' fixtures;
<b>Group Company</b>	means any company which is at any relevant time a subsidiary company or a holding company of the Company, or a subsidiary of any such holding company, or a company which is controlled by persons who control the Company;
<b>Insurances</b>	means all the right, title and interest of the Company, now or in the future, in or under any policy of insurance or assurance or to the proceeds of it;
<b>Insurance</b>	means each contract or policy of insurance to which the Borrower is a party or in which it has an interest (including those listed in Schedule 2);
<b>Intellectual Property</b>	means all the right title and interest of the Company (now or in the future) in or to any of the following: <ul style="list-style-type: none"> <li>(a) any registered intellectual property right in any territory, including without limitation patents, trade marks, service marks, registered designs, and any similar right in any territory and any applications or right to apply for any of the above,</li> <li>(b) any invention, copyright, design right or performance right,</li> <li>(c) any trade secrets, know-how and confidential information, and</li> <li>(d) the benefit of any agreement or licence for the use (by the Company and any other</li> </ul>

	<p>person) of any such right;</p> <p>(e) the right to sue in passing off, get-up, database right, customer lists, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case:</p> <p>(i) whether registered or not,</p> <p>(ii) including any applications to protect or register such rights,</p> <p>(iii) including all renewals and extensions of such rights or applications,</p> <p>(iv) whether vested, contingent or future,</p> <p>(v) to which the Borrower is or may be entitled and</p> <p>(vi) wherever existing and the benefit of any agreement or any licence for the use of any such right;</p>
<b>Lender</b>	includes persons deriving title under the Lender;
<b>Loose Plant and Equipment</b>	means all plant, machinery, equipment and motor vehicles now or at any time owned by the Company as a capital asset which is not a Fixture or Fixed Plant and Equipment, (including without limitation any moulds, patterns, tools (other than hand tools and consumable tooling) dies and jigs);
<b>Other Claims</b>	means all rights, claims or obligations of any kind whatsoever now or at any time owed to the Company capable of being satisfied by the payment of money, which are not effectively charged by way of fixed charge by any other provision of this Debenture;
<b>Receiver</b>	means a receiver appointed pursuant to this Debenture or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and an administrative receiver (if the Lender is permitted to appointed such administrative receiver);
<b>Rents</b>	<p>means any sum payable to the Company (and any right to recover any such a sum):</p> <p>(a) by way of rent, service charge or otherwise under any lease of Land, or as mesne profits, licence fee, or otherwise howsoever for the use or occupation of or trespass upon Land, or other income arising from any Land, and</p> <p>(b) by way of rent or otherwise for or in connection with the possession or use of; or in respect of any trespass to or conversion of, any chattel,</p> <p>except in so far as the same is effectively charged by way of fixed charge by clause 3.1 or 3.2 below;</p>
<b>Secured Liabilities</b>	means the liabilities of the Borrower to the Lender under or pursuant to the Business Loan Agreement and Security Documents and any interest, commission, costs, charges and expenses of the Lender and all money, liabilities and obligations now or in the future owned or incurred by the Borrower to the Lender (including those under the Business Loan Agreement or this Debenture) whether actual or contingent, sole or joint, as principal or as surety, including (without limitation) any liability of the Borrower to a third party which subsequently becomes payable to the Lender by assignment or otherwise and any interest, commission, costs, charges and expenses of the Lender;
<b>Securities</b>	means all right, title and interest of the Borrower, now or in the future, in any (i) stocks, (ii) shares, (ii) instruments creating or (iv) acknowledging any debt or other securities issued

by any person, and

**Security Period** the period starting on the date of this debenture and ending on the day 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.

- 1.3 Unless the context otherwise requires:
  - 1.3.1 each gender includes the other;
  - 1.3.2 the singular and the plural are interchangeable;
  - 1.3.3 references to clauses, schedules or appendices mean to clauses or schedules of and appendices to this Debenture;
  - 1.3.4 references to this Debenture include its Schedule and Appendices, as amended;
  - 1.3.5 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
  - 1.3.6 including means including without limitation;
  - 1.3.7 clause headings do not affect their interpretation; and
  - 1.3.8 words and phrases defined in the Insolvency Act 1986, the Enterprise Act 2002 and the Companies Act 2006 have the same meaning in this Agreement;
  - 1.3.9 references to legislation include any modification or re-enactment before the date of this Agreement and exclude any re-enactment or modification after the date of this Agreement to the extent they make any party's obligations more onerous.
- 1.4 Writing includes manuscript, facsimiles, emails and communications in Braille.

## **2 Borrower's obligation to pay**

- 2.1 The Borrower covenants with the Lender that it will pay and discharge to the Lender the Secured Liabilities on demand when due.
- 2.2 The making of one demand under this Debenture will not stop the Lender making any further demands.
- 2.3 The Lender will not make any demand unless it is entitled to do so.
- 2.4 To pay interest to the Lender upon any sum so demanded until payment (both before and after any judgment) at 3% per month or any part thereof.

## **3. Charges**

As security for payment of the Secured Liabilities the Company (with full title guarantee) charges to the Lender:

- 3.1 by way of separate first fixed charges:
  - 3.1.1 all the goodwill and uncalled capital of the Company, present or future,
  - 3.1.2 the Securities,
  - 3.1.3 the Insurances,
  - 3.1.4 the Intellectual Property,
  - 3.1.5 the Debts,
  - 3.1.6 the Rents,
  - 3.1.7 the Asset Contracts,
  - 3.1.8 the Other Claims,



- 3.1.9 the Fixed Plant and Equipment,
- 3.1.10 the Loose Plant and Equipment, and
- 3.1.11 the amount from time to time standing to the credit of the account; and
- 3.4 by way of first floating charge all those Assets (excluding land) which are not for any reason effectively charged by this Debenture by way of fixed charge.

### **3 Creation of security**

- 3.1 As continuing security for the payment and discharge of the Secured Liabilities the Borrower charges to the Lender with full title guarantee:
  - 3.1.1 by way of first fixed charge the assets set out in Schedule 1; and
  - 3.1.2 by way of first floating charge the Borrower's bank accounts and other assets not otherwise effectively charged by clauses 3.1.1.

### **4 Crystallisation**

- 4.1 The floating charge created by clause 3.1.2 will crystallise into a fixed charge:
  - 4.1.1 by notice in writing given by the Lender to the Borrower at any time after the security constituted by this Debenture becomes enforceable, specifying the Charged Assets over which the crystallisation will take effect and if no Charged Assets are specified, the notice shall take effect over all the Charged Assets of the Borrower; or
  - 4.1.2 automatically and instantly without notice if the Borrower resolves, without the Lender's prior written consent, to take or takes any step to:
    - (a) create an Encumbrance over any or all of the Charged Assets;
    - (b) create a trust over any or all of the Charged Assets;
    - (c) dispose of any or all of the Charged Assets, except if such disposal is in the ordinary course of the Borrower's business;
  - 4.1.3 automatically and instantly without notice if any person resolves, without the Lender's prior written consent, to take or takes any step to levy any distress, execution, sequestration or other process against any or all of the Charged Assets; or
  - 4.1.4 automatically and instantly without notice if an Event of Default occurs.
- 4.2 Any asset acquired by the Borrower after crystallisation has occurred under clause 4.1 which would be subject to a floating charge if crystallisation had not occurred will be charged by way of a fixed charge, unless the Lender confirms otherwise in writing].
- 4.3 Any charge by the Borrower that has crystallised under clause 4.1 may, by notice in writing given at any time by the Lender to the Borrower, be reconverted into a floating charge in relation to the Charged Assets specified in the notice and if no Charged Assets are specified, the notice shall take effect over all the Charged Assets of the Borrower.

### **5 Borrower's representation and warranties**

- 5.1 The Borrower represents and warrants to the Lender as follows:
  - 5.1.1 **Ownership:** The Borrower is the legal and beneficial owner of the Charged Assets free from any Encumbrance other than the Encumbrances created by this Debenture.

- 5.1.2 **Adverse claims and covenants:** The Borrower has not received or acknowledged notice of any adverse claim by any person in respect of the Charged Assets and there are no covenants, agreements, conditions, interests rights or other matters which may adversely affect the Charged Assets.
- 5.1.3 **Breach of law or regulation:** The Borrower has at all times complied in all respects with all applicable laws and regulations and has not breached any law or regulation which would adversely affect the Charged Assets.
- 5.1.4 **Third Party Rights:** The Charged Assets are not subject to terms entitling a third party to terminate or limit the use of any facility necessary for the enjoyment and use of the Charged Assets.
- 5.1.5 **Liquidation or administration:** No Encumbrance expressed to be created by this Debenture is liable to be avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise.
- 5.2 The Borrower repeats the representations and warranties in clause 5.1 above on each day during the Security Period.

## **6 Borrower's undertakings and covenants**

- 6.1 The Borrower covenants not, without the prior written consent of the Lender, to:
  - 6.1.1 (except in the case of assets charged by way of floating charge only which the Borrower may deal with in the ordinary course of its business) part with possession of, or transfer, sell, lease, assign or otherwise dispose of all or any of the Charged Assets, or attempt or agree to do so;
  - 6.1.2 create, attempt to create, allow to subsist any mortgage, debenture, charge or pledge, increase the amount secured by the Debenture, permit any lien (except a lien arising by operation of law in the ordinary course of trading) or other encumbrance to arise on or affect all or any of the Charged Assets;
  - 6.1.3 permit any person to be registered as proprietor of any of the Charged Assets or create or permit to arise any unregistered interest which overrides first registration affecting such property, to become entitled to any proprietary right or interest which might affect the value of any fixtures or fixed plant and machinery charged by this Debenture;
  - 6.1.4 redeem or purchase its own shares or pay dividends of an unusual amount;
  - 6.1.5 cancel, assign or allow to lapse its interest under any credit sale, hire purchase, leasing, rental, licence or similar agreement and to produce proof of payments due under such agreements on request from the Lender;
  - 6.1.6 do or allow any act or omission which may prejudice the value to the Lender of the Charged Assets; or
  - 6.1.7 create any subsidiaries.
- 6.2 The Borrower covenants that it will, unless, in any case, the Lender has given its written consent otherwise:
  - 6.2.1 carry on its business properly and efficiently and not materially change how it conducts its business;
  - 6.2.2 supply to the Lender within the stated periods:
    - (a) a copy of its audited accounts or financial statements for the last financial period within one week of approval and signature by the board of directors of the Borrower;
    - (b) a copy of its management accounts within two weeks of the end of each month of the Borrower's financial year;
    - (c) such other information relating to the Borrower's business, assets and liabilities as the Lender may require;
  - 6.2.3 notify the Lender in writing of any breach of this Debenture, the Business Loan Agreement or any other Security Document, immediately on it becoming aware of such breach;
  - 6.2.4 within fourteen days, give notice to:

- (a) any contracting party to an agreement to be assigned to the Lender of the Lender's interest in such agreement and procure that such contracting party acknowledge the Lender's interest; and
  - (b) any bank or financial institution with whom the Borrower holds an account of the Lender's interest in such account.
- 6.2.5 get in and realise, in the ordinary course of business, all book and other debts and other assets charged under clause 3, on receipt pay all monies received in respect of such assets into the account as the Lender may specify prior to which the Borrower will hold such monies on trust for the Lender and execute such assignment of any such asset as the Lender may require;
  - 6.2.6 maintain all plant, machinery, fixtures, fittings, vehicles, computers and office and other equipment part of the Charged Assets in good working order and condition;
  - 6.2.7 in relation to the Intellectual Property part of the Charged Assets observe all covenants and obligations and maintain and renew all relevant registrations, permits and licences;
  - 6.2.8 institute, pursue and defend proceedings relating to the Charged Assets as required to protect their value and apply monies from such proceedings in discharge of sums due to the Lender;
  - 6.2.9 at its own expense, keep insured any of the Charged Assets to their full replacement value including professional fees and other expenses with reputable insurers against risks normally insured for assets of that type in the name of the Borrower or, at the Lender's request, the joint names of the Borrower and the Lender;
  - 6.2.10 punctually pay all insurance premiums, and] produce the insurance documents including any receipt on request of the Lender and apply monies received from insurance in discharge of its obligations under this Debenture. If the Borrower does not maintain insurance, the Lender may do so at the Borrower's expense;
  - 6.2.11 punctually pay, and indemnify the Lender against, all monies due in respect of the Charged Assets;
  - 6.2.12 comply with all statutory, regulatory and other requirements applying to the Charged Assets except where actually or potentially adverse to the Lender's interest, when the Borrower will immediately consult the Lender and make or join the Lender in making such representations as the Lender may request;
  - 6.2.13 deposit with the Lender or its nominee all certificates and documents of title relating to the Securities and such blank documents, signed by the registered holder, as the Lender may request to perfect or vest in itself its title to the Securities and all other documents relating to the Charged Assets as the Lender may request; or
  - 6.2.14 if requested by the Lender, ensure that each subsidiary of the Borrower guarantees to the Lender payment of all monies covenanted to be paid under this Debenture and charge its undertaking, property and assets to secure such payment in such manner as the Lender may request.

## **7 Liability of borrower**

- 7.1 The Borrower's liability in respect of the Secured Liabilities shall not be discharged or prejudiced by:
  - 7.1.1 the renewal, determination, variation or increase of the loan under the Business Loan Agreement or the acceptance or variation of any compromise, arrangement or settlement or the omission to claim or enforcement of payment from any other person by the Lender; or
  - 7.1.2 any security, guarantee, indemnity, remedy or other right held by or available to the Lender being or becoming wholly or partially illegal, void or unenforceable on any ground; or
  - 7.1.3 any other act or omission except where such act or omission is the Lender's act or omission which but for this provision might have discharged or otherwise prejudiced the liability of the Borrower.
- 7.2 The Borrower may not require the Lender to:

- 7.2.1 enforce any security or other right; or
  - 7.2.2 claim any payment from; or
  - 7.2.3 otherwise proceed;
- against any other person before enforcing this Debenture against the Borrower.

## **8. Demand and enforcement**

- 8.1 This Debenture shall become enforceable:
  - 8.1.1 after the occurrence of an Event of Default;
  - 8.1.2 after the floating charge has crystallised under clause 4;
  - 8.1.3 there has occurred any event which in the Lender's opinion is actually or potentially adverse to the Borrower;  
or
  - 8.1.4 there has occurred any other event which in the Lender's opinion actually or potentially jeopardises the security created by this Debenture.
  - 8.1.5 upon any demand being made by the Lender for payment of any of the Secured Liabilities;
  - 8.1.6 upon any request being made by the Company to the Lender for the appointment of an Administrator or a Receiver or for the Lender to exercise any other power or right available to it;
  - 8.1.7 upon the occurrence of any event referred to in clause 4, or any event causing the floating charge created by this Debenture to become fixed in relation to any Assets;
  - 8.1.8 upon the passing of any resolution, or the presentation of a petition for winding up in relation to the Company not already disclosed by the Borrower;
  - 8.1.9 upon the Company going into administration, or any application being made for an administration order, or any notice being given (by any person to any person) of an intention to appoint an Administrator, in relation to the Company; or
  - 8.1.10 upon any moratorium coming into effect in respect of all or any of the company's debts, or the Company taking any step with a view to obtaining such a moratorium.
- 8.2 Any demand for payment, and any other notice to be given by the Lender under this Debenture, shall be in writing and may be signed by any official of the Lender, and may be made or given at any place of business of the Company or at its registered office:
  - 8.2.1 by delivering it to any such place; or
  - 8.2.2 by sending it by first class post to any such place (in which case it shall be deemed received at 10.00 am on the next business day after posting, and proof of posting shall be proof of delivery); or
  - 8.2.3 by sending it by fax to any of the Company's fax numbers (in which case it shall be deemed received when sent, and proof of sending shall be proof of receipt).
  - 8.2.4 by sending it by email to any of the Company's email addresses.

## **9 Appointment, powers and removal of Administrator or Receivers**

- 9.1 At any time after the security created by this Debenture becomes enforceable the Lender may without further notice appoint in writing any one or more persons to be an Administrator or Receiver or a receiver and manager. Where more than one Administrator or Receiver is appointed they will have the power to act separately (unless the appointment specifies otherwise).
- 9.2 The Lender may determine the remuneration of the Administrator or Receiver.

- 9.3 The appointment of an Administrator or Receiver will not preclude the Lender from appointing a subsequent Administrator or Receiver over all or any of the Charged Assets whether the previously appointed Administrator or Receiver continues to act or not.
- 9.4 The Receiver will be the agent of the Borrower and the Borrower will be solely liable for the acts, defaults, and remuneration of the Receiver unless and until the Borrower goes into liquidation after which the receiver shall act as principal. In no event will the Receiver become the agent of the Lender.
- 9.5 The Administrator or Receiver will have and be entitled to exercise all the powers set out in Schedule 1 and Schedule 2 of the Insolvency Act 1986 and will also have the power, either in his name or in the name of the Borrower:
- 9.5.1 in connection with any sale or other disposition of the Charged Assets, to receive the consideration in a lump sum or in instalments and to receive shares and loan notes by way of consideration;
- 9.5.2 to grant options, licences or any other whatsoever in the Charged Assets;
- 9.5.3 to sever fixtures from and to repair, improve and make any alterations to, the Charged Assets;
- 9.5.4 to exercise any voting rights appertaining to the Borrower;
- 9.5.5 to do all other acts and things which the Administrator or Receiver may consider desirable or necessary for realising any Charged Assets or incidental or conducive to any of the right, powers or discretion conferred on an Administrator or Receiver under or by virtue of the Debenture; and
- 9.5.6 to exercise in relation to any Charged Assets all the powers, authorities and things which he would be capable of exercising if he was absolute beneficial owner of the same;
- 9.6 Neither the Lender nor the Administrator or Receiver will be liable to account for any money not actually received by the Lender or the Administrator or Receiver.

## **10 Powers of sale**

- 10.1 No person dealing with the Lender or an Administrator or Receiver, its agents or delegates will be concerned with whether this Debenture has become enforceable, whether any power exercised or purported to be exercised has become exercisable, whether any of the Secured Liabilities remain due upon this Debenture, as to the necessity or expediency of any stipulations and conditions subject to which the sale of any Charged Asset is made, as to the propriety or regularity of the sale of any Charged Asset or to see to the application of any money paid to the Lender or the Administrator or Receiver, or its agents or delegates and each dealing shall be deemed to be within the powers conferred by this Debenture and to be valid and effectual accordingly.

## **11 Attorney**

- 11.1 By way of security the Borrower irrevocably appoints the Lender, whether or not an Administrator or Receiver has been appointed, and any Receiver separately as the Borrower's attorney with full power to appoint substitutes and to delegate in its name and on its own behalf and as its act and deed or otherwise at any time after this security has become enforceable to execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document, or perform any act that may be required of the Borrower under this Debenture, or may be deemed by such attorney necessary or desirable for any purpose of this Debenture or to enhance or perfect the security intended to be constituted by the Attorney or to convey or transfer legal ownership of any Charged Assets.

- 11.2 The Borrower will ratify and confirm all transactions entered into by the Lender or Receiver in the proper exercise of their powers in accordance with this Debenture and all transactions entered into by the Lender or the Receiver in signing, sealing, delivering and otherwise perfecting any assignment, mortgage, charge, security, deed, assurance, document or act as aforesaid.

## **12 Application of monies received**

- 12.1 Any money received under this Debenture will, subject to the discharge of any prior-ranking claims, be paid or applied in the following order of priority:
- 12.1.1 in satisfaction of all costs, charges and expenses incurred and payments made by the Lender and/or the Administrator and/or the Receiver and of the remuneration of the Administrator or Receiver;
- 12.1.2 in or towards satisfaction of the Secured Liabilities; and
- 12.1.3 as to the surplus, if any, to the person or persons entitled to it.
- 12.2 The Lender may, in its absolute discretion on or at any time or times after demand and pending the payment to the Lender of the whole of the Secured Liabilities, place and keep to the credit of a separate or suspense account any money received, recovered or realised by the Lender by virtue of this Debenture for so long and in such manner as the Lender may determine without any intermediate obligation to apply it in or towards the discharge of any of the Secured Liabilities.

## **13 Indemnity**

- 13.1 The Borrower will indemnify the Lender against all and any costs, charges and expenses arising:
- 13.1.1 out of any of the assets charged or assigned pursuant to clause 3 resulting in the Borrower or the Lender or the Receiver infringing or allegedly infringing any third party rights; and
- 13.1.2 in relation to any proceedings referable to the Borrower brought against the Lender and/or the Administrator or Receiver or to which the Lender and/or the Administrator or Receiver may be joined whether as the claimant or defendant that relate to any of the Charged Assets.
- 13.2 The Borrower agrees that if it fails to pay any monies in respect of the Charged Assets or to take (or not take) any action which might diminish the value of the Charged Assets to the Lender, the Lender may pay such monies or take such action and recover the cost from the Borrower.
- 13.3 The Borrower indemnifies the Lender and its employees and agents fully at all times against any claim, liability, loss or expense incurred by the Lender directly or indirectly as a result of any delay or failure of the Borrower in complying with clause 6 or with any law, regulation, directive or code of practice applicable to the Borrower or to its business or the Charged Assets or relating to the protection of the environment or to health and safety matters.
- 13.4 Without prejudice to the generality of this clause the costs recoverable by the Lender and/or any Administrator or Receiver under this Debenture shall include:
- 13.4.1 all costs incurred by the Lender in preparing and administering in preparing and administering this Debenture or perfecting the security created by it;
- 13.4.2 all costs, whether or not allowable on an assessment by the Court, of all proceedings for the enforcement of this Debenture or for the recovery or attempted recovery of the Secured Liabilities;
- 13.4.3 all money expended and all costs arising out of the exercise of any power, right or discretion conferred by this Debenture; and

- 13.4.4 all costs and losses arising from any default by the Borrower in the payment when due of any of the Secured Liabilities or the performance of its obligations under this Debenture; and
- 13.4.5 all administrative charges of the Lender based on time spent by its employees and agents in connection with the affairs of the Borrower.
- 13.5 Any overdue amounts secured by the Debenture will carry interest at the Default Rate. Interest will accrue on a day to day basis to the date of repayment in full and, if unpaid, will be compounded with quarterly rests on the Lender's usual quarter days. Interest shall continue to be charged and compounded on this basis after as well as before any demand or judgment.
- 13.6 Money received or held by the Lender pursuant to this debenture may, from time to time after demand of all or any part of the Secured Liabilities has been made, be converted into such currency as the Lender considers necessary or desirable to discharge the Secured Liabilities in that currency at the Lender's then prevailing spot rate of exchange, as conclusively determined by the Lender, for purchasing the currency to be acquired with the existing currency.

#### **14 Release**

- 14.1 Subject to clause 14.2 below, the Lender will, at the request and cost of the Borrower, execute all documents as the Borrower may reasonably require to release the Charged Assets from the security constituted by this Debenture.
- 14.2 Any release, discharge or settlement between the Lender and the Borrower will be conditional upon no payment or security received by the Lender in respect of the Secured Liabilities or Indebtedness being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise and, notwithstanding any such release, discharge or settlement:
- 14.2.1 the Lender or its nominee will be at liberty to retain this Debenture and the security created by or pursuant to this Debenture, including all certificates and documents relating to the whole or any part of the Charged Assets, for such period as the Lender may deem necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- 14.2.2 the Lender will be entitled to recover the value or amount of such security or payment from, the Borrower subsequently as if such release, discharge or settlement had not occurred.

#### **15 Continuing security**

- 15.1 This Debenture will remain as continuing security in favour of the Lender, regardless of the settlement of any account or any other matter whatever and will be without prejudice and in addition to any and all other rights, remedies or security which is or are in place now or in the future in respect of any Charged Assets in favour of the Lender for the payment of an Indebtedness.

#### **16 Further security**

The Borrower will on the demand of the Lender execute and deliver to the Lender at the cost of the Borrower any document that the Lender requires further to secure the payment of the Secured Liabilities, or to create, enhance or perfect any fixed security over any of the Charged Assets or to give full effect to this debenture or to vest title to any of the Charged Assets in the Lender or the Lender's nominee or any purchaser.

## **17 Miscellaneous**

### **17.1 Survival**

Notwithstanding termination of this Agreement, any provisions which have not been fully implemented or performed remain in full force and effect and will continue to bind, and to be enforceable against the relevant party and will not be extinguished or affected by any other event or matter except a specific and duly authorised written waiver or release of the other party to this Agreement.

### **17.2 Variation**

Variations to this Agreement will only have effect when agreed in writing.

### **17.3 Severability**

The unenforceability of any part of this Agreement will not affect the enforceability of any other part.

### **17.4 Waiver**

Unless otherwise agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

### **17.5 Consent**

Consent by a party, where required, will not prejudice its future right to withhold similar consent.

### **17.6 Further assurance**

Each party will, at the cost of the Borrower, do all further acts and execute all further documents necessary to give effect to this Debenture.

### **17.7 Rights of third parties**

This Debenture is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

### **17.8 Assignment and subcontracting**

**17.8.1** The Lender may assign any of its rights under this Debenture or transfer all its rights or obligations by novation. The consent of the Borrower is required for an assignment or transfer by the Lender unless:

- (a) the assignment or transfer is to a subsidiary of the Lender; or
- (b) an Event of Default is continuing.

Any such consent must not be unreasonably withheld or delayed and if not expressly refused within five Business Days shall be deemed given.

**17.8.2** The Borrower may not assign any of its rights or transfer any rights or obligations under this Debenture.

### **17.9 Entire agreement**

This Debenture and documents referred to in it represent the entire agreement between the parties and supersede all previous agreements, term sheets and understandings relating to the Loan made available in this Debenture whether written or oral.

### **17.10 Succession**

This Debenture will bind and benefit each party's successors and assigns.

### **17.11 Counterparts**

This Debenture may be signed in any number of separate counterparts. Each, when executed and delivered by a party, will be an original; all counterparts will together constitute one instrument.

## **18 Notices**

**18.1** Notices under this Debenture will be in writing and sent to the person and address in 18.2. They may be given, and will be deemed received:

**18.1.1** by first-class post: two Business Days after posting;



- 18.1.2 by airmail: seven Business Days after posting;
- 18.1.3 by hand: on delivery;
- 18.1.4 by facsimile: on receipt of a successful transmission report from the correct number;
- 18.1.5 by e-mail: on receipt of a delivery return mail from the correct address.
- 18.2 Notices will be sent:
  - 18.2.1 to the Borrower at:
    - email:
  - 18.2.2 to the Lender at: Business Recovery Funding Limited, Howbery Park, Wallingford, Oxfordshire, OX10 8BA, email: [info@businessrecoveryfunding.co.uk](mailto:info@businessrecoveryfunding.co.uk)
  - 18.2.3 to the Guarantors: Andrew John Tomlinson, Oakland House, North Street, West Rainton, Houghton le Spring, DH4 6NU, email: [andrew.tomlinson@businessrecoveryfunding.co.uk](mailto:andrew.tomlinson@businessrecoveryfunding.co.uk)

## 19 Confidential information

- 19.1 The Lender may disclose:
  - 19.1.1 on a confidential basis to a subsidiary and any actual or potential assignee, transferee or sub-participant of its rights or obligations under this agreement in addition to any publicly available information such information about the Borrower and its subsidiaries and the Guarantor as the Lender shall consider appropriate; and
  - 19.1.2 any information about the Borrower and its subsidiaries and the Guarantor to any person to the extent that it is required to do so by any applicable law, regulation or court order.
- 19.2 Subject to clause 19.1, none of the parties will, without the other's prior written consent, disclose:
  - 19.2.1 the terms of this Agreement;
  - 19.2.2 any information relating to the customers, suppliers, methods, products, plans, finances, trade secrets or otherwise to the business or affairs of the other party which is obviously confidential or has been identified by the other party as such; and
  - 19.2.3 any information developed by either party in performing its obligations under, or otherwise pursuant to this Agreement, together **Confidential Information**.
- 19.3 Neither party will use the other's Confidential Information except to perform this Agreement.
- 19.4 Disclosure of Confidential Information may be made to a party's:
  - 19.4.1 officers;
  - 19.4.2 employees;
  - 19.4.3 professional advisers; and
  - 19.4.4 consultants and other agents,

on condition that the party disclosing is responsible for compliance with the obligations of confidence hereunder.
- 19.5 Confidential Information does not include information which:
  - 19.5.1 is or becomes public other than by breach of this Agreement
  - 19.5.2 was known to the other party before this Agreement without breach of confidence
  - 19.5.3 is independently developed by or becomes available to the other party, or
  - 19.5.4 is required to be disclosed by law or regulatory authority.
- 19.6 A reasonable number of copies of Confidential Information may be made and, subject to this clause 19, used for the purposes of this Agreement.

- 19.7 On termination of this Agreement all confidential information relating to or supplied by a party and which is or should be in the other's possession will be returned by the other or (at the first party's option) destroyed and certified [by an officer of the party destroying] as destroyed.
- 19.8 This clause 19 will remain in force for a period of seven (7) years from the date of the Debenture or three (3) years from termination of this Agreement.

**20 Governing law and jurisdiction**

- 20.1 This Debenture is governed by the laws of England and Wales.
- 20.2 The parties will submit to the non-exclusive jurisdiction of the courts of England and Wales.

**Schedule 1 Assets charged by way of fixed charge**

- 1 All shares held by the Borrower in any other company whether a subsidiary or not.
- 2 All or any stocks, shares (other than those described in paragraph 1 above), bonds and securities of any kind (marketable or otherwise), negotiable instruments, warrants, loan notes and any other financial instruments held by the Borrower.
- 3 All dividends, allotments, options, bonuses, rights issues, offers, benefits and advantages accruing, arising or offered in respect of the shares and investments described in paragraph 1 and 2 above.
- 4 All fixed and moveable plant, machinery, tools, vehicles, computers and office and other equipment of the Borrower and the benefit of any agreements, licences and warranties in respect thereof.
- 5 All book debts of the Borrower arising in the ordinary course of its business and all benefits, security and rights held in or to secure the payment of the book debts.
- 6 All debts and monies due or payable to the Borrower except those referred to in paragraph 5 above including all amount standing credit of the Borrower's bank accounts whether such bank account is with the Lender or a third party.
- 7 All Intellectual Property belonging to the Borrower.
- 8 All present and future goodwill in the Borrower.
- 9 All uncalled capital in the Borrower.
- 10 All rights under any agreement to which the Borrower is a party which has not been assigned to the Lender.

IN WITNESS WHEREOF the Parties have executed and delivered this Deed on the day and year first above written.

EXECUTED AND DELIVERED AS A DEED

BY

Director on behalf of

Andrew James UK Ltd

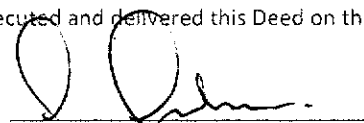
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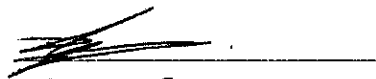
Witness Signature:

Witness Name:

Witness Address:

Witness Occupation





DAVID RAPER

27 HOLBURN PARK, STOCKTON TS19 8BH

ACCOUNTANT

EXECUTED AND DELIVERED AS A DEED

BY

Director on behalf of

Andrew James UK Ltd

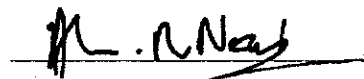
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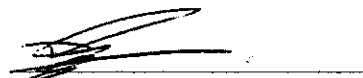
Witness Signature:

Witness Name:

Witness Address:

Witness Occupation





DAVID RAPER

27 HOLBURN PARK, STOCKTON TS19 8BH

ACCOUNTANT

EXECUTED AND DELIVERED AS A DEED

BY

Director on behalf of

Andrew James UK Ltd

In the presence of

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation

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