



Registration of a Charge

Company name: **TABITHA SIMMONS UK LTD**

Company number: **06693376**



X6L1UKE3

Received for Electronic Filing: **11/12/2017**

Details of Charge

Date of creation: **30/11/2017**

Charge code: **0669 3376 0002**

Persons entitled: **ROSENTHAL & ROSENTHAL, INC.**

Brief description:

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:

HARRY TAYLOR, FOR AND ON BEHALF OF IRWIN MITCHELL LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 6693376

Charge code: 0669 3376 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th November 2017 and created by TABITHA SIMMONS UK LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th December 2017 .

Given at Companies House, Cardiff on 13th December 2017

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

Debenture

Rosenthal & Rosenthal, Inc. (1)

and

Tabitha Simmons UK Ltd (2)

DATE OF DEBENTURE: November 30, 2017

2017

PARTIES

- (1) ROSENTHAL & ROSENTHAL, INC.**, a New York corporation with its principal office at 1370 Broadway, New York, NY 10018 ("**R&R**"); and
- (2) TABITHA SIMMONS UK LTD** a company incorporated and registered under the laws of England and Wales with number 06693376 and with its registered office at Cardinal House, 46 St. Nicholas Street, Ipswich, IP1 1TT (the "**Chargor**").

THIS DEED WITNESSES THAT:

1 INTERPRETATION

1.1 Definitions

In this Deed, including the Schedules, the following words and expressions have the following meanings:

Accounting Records: all:

- (a) books and records needed to be kept by law;
- (b) accounting books, ledgers and records, including computer records and materials about your financial position, purchases and sales; and
- (c) all documents evidencing entries in such accounting books, ledgers and records.

Administrator: an administrator appointed under this Deed.

Associate: a person which, directly or indirectly, controls or is controlled by or is under common control with the Chargor, or a person which beneficially owns or holds, directly or indirectly, 5% or more of any class of voting shares of the Chargor, or a person in which 5% of any class of voting shares is beneficially owned or held directly or indirectly, by the Chargor.

Associated Rights: all Returned Goods and all proceeds of sale thereof and in relation to any Receivable or Returned Goods, all of the following:

- (a) all the rights by law of the Chargor as an unpaid vendor or under the Contract of Sale (but without any obligation on R&R to complete or perform the Contract of Sale) including, without limitation, the Chargor's rights to receive or be paid interest on any unpaid Receivable, whether such interest is statutory interest or arises under any express or implied contractual term;
- (b) all evidence of the Contract of Sale, its performance or any disputes arising;
- (c) all documents of title to Goods, warehouse keepers' receipts, bills of lading, shipping documents, airway bills or similar documents;
- (d) the benefit of all insurances and all rights and powers under insurance policies including any Insurances;

- (e) all Remittances, securities, Encumbrances, bonds, guarantees and indemnities; and
- (f) all accounting records relating to the Receivable.

Charged Assets: all assets, rights and property (including its undertaking and revenues) the subject of any security created by, or pursuant to, this Deed and the proceeds of the disposal of the same.

Collateral: in relation to any person, all property and assets, whether real or personal, tangible or intangible in which that person may at any time have any right, title or interest.

Contract of Sale: a contract in any form, including a purchase order, between the Chargor and a Debtor for the sale or hire of Goods or the provision of services or work done.

Debtor: a person who incurs or may incur any indebtedness under a present or future Contract of Sale.

Default: a Termination Event or any event, fact or circumstance which, with the giving of notice and/or lapse of time and/or fulfilment of any condition or otherwise might lead to a Termination Event.

Default Rate: has the meaning given to that term in the Factoring Agreement.

Encumbrance: any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention, flawed asset agreement, preferential right, trust arrangement or other arrangement for the purpose of and having a similar effect to the granting of security whether by law or agreement or other security interest of any kind.

Environment:

- (a) land, including, without limitation, surface land, sub-surface strata, sea bed and river bed under water (as defined in paragraph (b)) and natural and man-made structures;
- (b) water, including, without limitation, coastal and inland waters, surface waters, aquatic sediment, ground waters and water in drains and sewers;
- (c) air, including, without limitation, air inside buildings and other natural and man-made structures above or below ground; and
- (d) any living systems or organisms supported by the media set out in (a), (b) or (c) above.

Environmental Claim: in relation to the Environment and Environmental Law any written claim, demand, suit or notice from a third party or any order of a court of competent jurisdiction, any suit, claim, demand or notice from any Environmental Regulator any charge or condition imposed by any Environmental Regulator, any notice served by any Environmental Regulator requiring Remediation or any written indication from any Environmental Regulator that a requirement to carry out Remediation will be imposed.

Environmental Law: all European Community, national, state, federal, regional or local laws, common law, statutes, ordinances, directives, directions, regulations, notices, relevant clean-up standards, judgments, decrees or orders, codes of practice, the requirements and conditions of all Environmental Licences both express and implied, covenants, agreements, circulars,

guidance notes (statutory or otherwise), judicial and administrative interpretations of each of the foregoing concerning (without limitation) the protection of human health or the Environment or the conditions of the workplace and worker health and safety and process safety, or the generation, transportation, storage, treatment or disposal of any Relevant Substance, as enacted, amended, replaced or supplemented from time to time.

Environmental Licence: any permits, consents, licences, certificates, notices, filings, lodgements, agreements, directions, declarations, exemptions, variations, renewals and amendments and other authorisations and approvals required or provided under Environmental Law.

Environmental Regulator: any governmental entity or other public or quasi-public authority or privatised utility having responsibility for any matters concerning the Environment or Environmental Law.

Expenses: any of the following:

- (a) all banking, legal and other costs, charges, expenses and/or liabilities (including VAT thereon) paid or, if earlier, incurred, by or on behalf of R&R or any Administrator or Receiver, as the case may be, (in each case on a full indemnity basis):
 - (i) in relation to the Charged Assets;
 - (ii) in protecting, preserving, improving, enforcing or exercising (or considering, or attempting, any of the foregoing) any rights under or pursuant to any of the Financing Documents;
 - (iii) in procuring the payment, performance or discharge of the Secured Obligations; or
 - (iv) in stamping, perfecting or registering any of the Financing Documents (or any Encumbrance or assignment created or purported to be created pursuant thereto); and
- (b) the principal amount of any borrowings, together with interest thereon, and all other expenses and liabilities of R&R or any Administrator or Receiver (as the case may be) paid or incurred from time to time in relation to the exercise of any of their respective rights or powers referred to or contained in any of the Financing Documents.

Factoring Agreement: the factoring agreement entered into between R&R and the Chargor dated on or about the date of this Deed.

Financial Indebtedness: will be construed as a reference to any indebtedness in respect of:-

- (a) moneys borrowed or raised;
- (b) any debenture, bond, note, loan stock, commercial paper or similar instrument;
- (c) any acceptance credit, bill-discounting, note purchase or documentary credit facility;
- (d) any finance lease;

- (e) any receivables purchase, factoring or discounting arrangement under which there is recourse in whole or in part;
- (f) credit (other than normal trade credit for a period not exceeding 90 days) or deferred payment arrangements in respect of the purchase price of assets acquired or services supplied;
- (g) any other transaction having the commercial effect of a borrowing or other raising of money entered into by a person to finance its business or operations or capital requirements; or
- (h) (without double counting) any guarantee or other assurance against financial loss in respect of the indebtedness of any person arising under an obligation falling within (a) to (g) above.

Financing Documents: the following documents:

- (a) the Factoring Agreement;
- (b) this Deed;
- (c) any assignment by way of security;
- (d) any agreement or instrument evidencing or creating an Encumbrance, guarantee, indemnity or other assurance against loss entered into by the Chargor in favour of R&R;
- (e) any deed or agreement governing or regulating the priority of Encumbrances or regulating claims of the Chargor against any person liable to R&R in respect of the Secured Obligations; and
- (f) any agreement, instrument, notice or certificate delivered or entered into in connection with any of the above.

Goods: any merchandise, or where the context admits, any services, in each case the subject of a Contract of Sale.

Group: in relation to any company, that company, each of its holding companies (as defined in Section 1159 of the Companies Act 2006) and all their Subsidiaries (and member of the Group will be construed accordingly).

Insolvent: the happening of any of the following:

- (a) the issue of a notice, petition or application (other than one which is discharged before it is advertised), the calling of a meeting or making proposals for:
 - (i) a resolution for voluntary winding up by reason of Insolvency, a winding up order, the service of notice of intention to appoint an administrator, the appointment of an administrator under the Insolvency Act 1986 or the appointment of a receiver (whether in or out of court) or an administrative receiver of any of its assets or income;
 - (ii) entry into a voluntary arrangement under the Insolvency Act 1986 or any formal or informal arrangement generally for the benefit of creditors, or

- (iii) the taking of any formal steps for the commencement of any proceedings in respect of any of the above matters in part (a) of this definition; or
- (b) any part of its income or assets, being subject to:
 - (i) seizure, distress, diligence;
 - (ii) enforcement of any Encumbrance;
 - (iii) execution of legal process;
 - (iv) sequestration;
 - (v) an injunction restricting dealing with such income or assets;
 - (vi) attachment;
 - (vii) other legal process restricting dealing with such income or assets; or
- (c) the service of any statutory demand under the Insolvency Act 1986 (other than one which is discharged before it is advertised); or
- (d) the entry of any judgment, order or award which shall remain unsatisfied or whose terms shall not be complied with for seven days (except pending any appeal); or
- (e) an application for a garnishee order; or
- (f) the giving of notice of the intended suspension of payments of debts; or
- (g) being deemed by section 123 of the Insolvency Act 1986 to be unable to pay debts as they fall due or, in the reasonable opinion of R&R, being capable of being deemed unable to pay its debts as they fall due; or
- (h) the taking of any formal steps for the commencement of any proceedings in respect of any of the above matters in this definition,

or in each case anything analogous to or having a similar effect to any of the events specified above, and **"Insolvency"** shall be construed accordingly;

Insurances: the policies of insurance in which it is interested details of which are set out in Schedule 4, and any other policies of insurance in which the Chargor may now or hereafter have an interest and **"Insurance"** shall mean each one of the Insurances.

Intellectual Property: all patents (including applications for and rights to apply for patents), trade marks and service marks (whether registered or not) and applications for the same, trade names, registered designs, design rights, semi-conductor topography rights, database rights, copyrights, computer programs, know-how and trade secrets and all other intellectual or intangible property or rights and all licences, agreements and ancillary and connected rights relating to intellectual and intangible property including any renewals, revivals or extensions thereof and wherever in the world subsisting.

Inventory: all inventory and stock now or hereafter acquired by the Chargor, wherever located, including all inventory or stock, merchandise, Goods and other personal property which are held by or on behalf of the Chargor for sale or lease.

Non-Vesting Receivable: any Receivable which either fails to vest absolutely or effectively in R&R under the Factoring Agreement for any reason, including where the assignment of that Receivable to R&R is void or voidable (whether as between R&R and the Chargor or as between R&R any third party).

Other Receivables:

- (a) all present and future book and other Receivables due or owing to the Chargor, the proceeds of the same and all other moneys due and owing to the Chargor or which may become due and owing to it in the future;
- (b) all moneys (including accrued and accruing interest) from time to time standing to the credit of each present and future account of the Chargor with any bank, financial institution or other person and the Receivables represented thereby;
- (c) all present and future sums due or owing by way of grant, subsidy or refund by any person, body, authority or institution; and
- (d) the benefit of all rights, securities, Encumbrances, guarantees and other assurances against loss, indemnities of any nature whatsoever now or at any time enjoyed or held by it in relation to any of the Receivables, proceeds, moneys or sums referred to in any of paragraphs (a), (b) or (c) above,

but excluding:

- (a) Non-Vesting Receivables; and
- (b) any Receivables whilst they remain vested in, or held on trust for, R&R under the Factoring Agreement.

Planning Acts: the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning and Compensation Act 1991.

Plant and Machinery: all now owned and hereafter acquired plant, machinery and other equipment (including the plant and machinery specified in Schedule 3) and other tangible personal property (except Inventory) wherever located and all spare parts, replacements, modifications and additions for or to the same and any manuals, logbooks or registration documents relating thereto.

Real Property: all freehold and leasehold properties and other real property both present and future (including the property or properties specified in Schedule 2 and set opposite its name), including all buildings and other structures from time to time erected thereon and all fixtures (trade or otherwise) from time to time thereon or therein.

Receivable: any obligation (present, future or contingent) of a Debtor to make payment under a Contract of Sale, including:

- (a) the future right to recover sums due following the determination, assessment or agreement of the amount of the obligation;

- (b) VAT; and
- (c) all duties and charges,

and, where the context allows, a part of such obligation.

Receiver: a receiver appointed under this Deed.

Relevant Substance: any natural or artificial substance (in solid or liquid form or in the form of a gas or vapour) whether alone or in combination with any substance capable of causing harm to man or any other living organism supported by the Environment or damaging the Environment or public health or welfare including, but not limited to, any controlled, special, hazardous, toxic or dangerous waste.

Remediation: any and all investigating, sampling, analysing, removing, remedying, cleaning-up, abating, containing or ameliorating the presence in or effect on the Environment of any contamination or pollution including, without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground waters and gases and emissions to air and the obtaining of expert technical and legal advice (including all project management functions) in relation thereto.

Remittances: all cash, cheques, bills of exchange, negotiable and non-negotiable instruments, letters of credit, electronic payments, BACS payments, CHAPS payments and any other form or instrument of payment received by R&R, the Chargor or its agents towards discharge of a Receivable.

Returned Goods: any Goods relating to or purporting to comply with a Contract of Sale which any Debtor will for any reason:

- (a) reject or give notice of rejection; or
- (b) return or attempt to or wish to return to the Chargor or R&R,

or which the Chargor or R&R recovers from a Debtor.

Secured Obligations: all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally, as principal or as surety or in any capacity whatsoever) of the Chargor to R&R on any account whatsoever and howsoever arising (including, without limitation, under the Financing Documents) together with all Expenses.

Securities: all stocks, shares, bonds and securities of any kind whatsoever (including warrants and options to acquire or subscribe any of the same) whether marketable or otherwise (including those details which appear in Schedule 3) and all interests (including but not limited to loan capital) in any person, including all allotments, rights, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to the same and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest, or otherwise in respect thereof.

Subsidiary: a subsidiary within the meaning of section 1159 Companies Act 2006 and, unless the context otherwise requires, a subsidiary undertaking within the meaning of sections 1161-1162 Companies Act 2006.

Termination Event: any of the following:

- (a) the Chargor fails to pay any sum due from it under any of the Financing Documents at the time and in the manner specified in the relevant Financing Document unless such failure is caused solely by a technical error in a funds transmission system outside its control and payment is received within 3 Working Days of the due date for payment;
- (b) any representation or warranty made or deemed to be repeated by the Chargor in any of the Financing Documents or in any document delivered pursuant thereto is not complied with or proves to have been incorrect or misleading when made or deemed to be repeated;
- (c) the Chargor fails duly to perform or comply with any obligation expressed to be assumed by it in any Financing Document;
- (d) any Financial Indebtedness of the Chargor other than under or pursuant to any Financing Document:
 - (i) is not paid when due or within any applicable contractual period of grace; or
 - (ii) is declared to be or otherwise becomes due and payable prior to its specified maturity,
 or any creditor of the Chargor becomes entitled to declare any Financial Indebtedness due and payable prior to its specified maturity;
- (e) a distress, attachment, execution, diligence or other legal process is levied, enforced or sued on or against all or any part of the assets of the Chargor;
- (f) the Chargor:
 - (i) is or becomes Insolvent;
 - (ii) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or any part of its indebtedness; or
 - (iii) makes a general assignment for the benefit of, or composition with, its creditors or a moratorium is agreed or declared in respect of, or affecting, all or any part of its indebtedness; or
 - (iv) takes any corporate action or other steps are taken or legal or other steps are taken or legal or other proceedings are satisfied for its winding up, dissolution or reorganisation other than for the purposes of a bona fide, solvent scheme of reconstruction or amalgamation previously approved in writing by R&R or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officers of it or any or all of its assets;
- (g) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (e) and (f) above shall occur under the laws of any applicable jurisdiction;

- (h) any guarantee, indemnity or other assurance against loss held by, or any Encumbrance granted to R&R in respect of the Secured Obligations fails or ceases in any respect to have full force and effect or to be continuing or is terminated (or has a notice of termination or cancellation given in respect thereof) or is disputed or is, in R&R's reasonable opinion, in jeopardy, invalid or unenforceable;
- (i) any Encumbrance on or over the assets of the Chargor becomes enforceable and any step (including the taking of possession or the appointment of a receiver, administrator or similar person) is taken to enforce that Encumbrance including, but not limited to, any floating charge given by the Chargor being crystallised or becoming converted into a fixed charge;
- (j) save as agreed in writing by R&R, the Chargor ceases to carry on the business it carries on at the date of entering into the Factoring Agreement or enters into any unrelated business;
- (k) at any time any action, condition or thing required to be taken, fulfilled or done in order:
 - (i) to enable the Chargor lawfully to enter into, exercise its rights under and perform and comply with its obligations under any Financing Document and any other document to be entered into pursuant thereto;
 - (ii) to ensure that those obligations are valid, legally binding and enforceable; or
 - (iii) to make any such Financing Document and all such other documents admissible in evidence in England and Wales and, if different, in the Chargor's jurisdiction of incorporation and any jurisdiction in which the Chargor's properties, assets or revenues may be situated,is not taken, fulfilled or done;
- (l) it is not lawful or becomes unlawful for the Chargor to perform or comply with any of its obligations under any of the Financing Documents, or any such obligation ceases to be legal, valid and binding;
- (m) if auditors make any qualification to the Chargor's or an Associate's audited accounts to the effect that such audited accounts do not reflect the financial position of the Chargor or such Associate, as the case may be, to a material degree;
- (n) any step is taken by any person, government or other authority (whether or not having the force of law) with a view to the seizure, compulsory acquisition, expropriation or nationalisation of all or any material part of the shares or assets of the Chargor to the displacement of the management of any such person or the curtailment of the authority of any such person in the conduct of its business or operations;

- (o) any loss, theft, damage or destruction of any one or more assets occurs which (i) materially and adversely affects the operation of the Chargor's business or (ii) is material in amount and is not adequately covered by insurance;
- (p) in R&R's reasonable opinion, a material adverse change occurs in the financial condition, operations or business of the Chargor (or all of them taken together) or R&R determines that the Chargor may not (or may be unable to) perform or comply with its obligations under any of the Financing Documents;
- (q) any change occurs in the ownership, control, constitution, composition or management of the Chargor reasonably considered by R&R to prejudice R&R's position;
- (r) if the Chargor factors or discounts its debts with another party or attempts to do so;
- (s) the termination or breach or threatened breach by the Chargor of any contract between R&R and the Chargor.

Trustee Act: the Trustee Act 1925 as amended by the Trustee Investment Act 1961 and the Trustee Act 2000.

Working Day: any day except Saturday, Sunday, public or bank holidays.

1.2 Interpretation

- (a) Words and phrases which are not defined or construed in this Deed but which are defined or construed in the Law of Property Act 1925 or the Insolvency Act 1986 shall be construed as having the meanings ascribed to them therein.
- (b) In construing this Deed, general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words. In addition, the words "any of" shall be construed as a reference to any one or more (including all) of the rights, assets, liabilities or other things referred to.
- (c) The security constituted by, and the rights of R&R under, this Deed shall be enforceable notwithstanding any change in the constitution of R&R or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person.
- (d) The headings in this Deed are inserted for convenience only and shall not affect its construction or interpretation and references to a Clause or Schedule are (unless otherwise stated) to a Clause in, or a Schedule to, this Deed.
- (e) Any reference in this Deed to "**this Deed**" or to any other agreement or document shall, unless the context otherwise requires, be construed as a reference to this Deed or to such other agreement or document as the same may from time to time be amended, varied, supplemented, novated or replaced and shall include any document which is supplemental to, is expressed to be collateral with, or is entered into pursuant to or in connection with, the terms of this Deed or of such other agreement or document.

- (f) Any reference in this Deed to a person being “**controlled**” by another means that that other (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or otherwise controls or has the power to control the affairs and policies of that person and “**control**” shall be construed accordingly.
- (g) The illegality, invalidity or unenforceability of any provision of this Deed under the law of any jurisdiction shall not affect its validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of any other provision of this Deed.
- (h) Save where the context otherwise requires, the plural of any term includes the singular and vice versa.
- (i) Any reference in this Deed to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision as in force at the date of this Deed and as subsequently re-enacted or consolidated and shall also include all instruments, orders and regulations for the time being made thereunder or deriving validity therefrom.
- (j) In this Deed the expressions “**Chargor**” or “**R&R**” shall, unless the context otherwise requires, include their respective assignees, transferees or successors in title, whether immediate or derivative in relation to their respective interests.

2 COVENANT TO PAY

The Chargor hereby agrees that it will on demand pay, perform and discharge to R&R all the Secured Obligations in accordance with the terms of the relevant Financing Document evidencing or giving rise thereto.

3 CHARGING PROVISIONS

- 3.1 The Chargor, as continuing security for the payment, discharge and performance of all the Secured Obligations in relation to all of the following assets whether now or in future belonging to it, in each case with full title guarantee:

- (a) **Fixed charges:** charges to R&R by way of separate fixed charges:
 - (i) by way of legal mortgage each property specified in Schedule 1 which is set opposite its name;
 - (ii) by way of equitable mortgage its Real Property, other than the property or properties specified in Schedule 1;
 - (iii) all its Plant and Machinery listed in Schedule 2 and the benefit of all its rights and claims against any person in respect of the design, construction, repair or replacement of the same;
 - (iv) all its Plant and Machinery other than that listed in Schedule 2 and the benefit of all its rights and claims against any person in respect of the design, construction, repair or replacement of the same;

- (v) all its goodwill, unpaid and/or uncalled capital;
 - (vi) all its Intellectual Property;
 - (vii) all its Securities;
 - (viii) all loan capital, indebtedness or liabilities on any account or in any manner owing to it from any member of the Chargor's Group;
 - (ix) all amounts realised by an administrator or liquidator of the Chargor upon enforcement or execution of any order of the court under Part VI of the Insolvency Act 1986;
 - (x) all its documents of title which at any time and for any purpose have been or may be deposited with R&R and the property mentioned in such documents;
 - (xi) all of its Non-Vesting Receivables to the extent not effectively assigned by way of security under Clause 3.1(c);
 - (xii) all Associated Rights pertaining to its Non-Vesting Receivables;
 - (xiii) all of its Other Receivables;
 - (xiv) all Associated Rights pertaining to its Other Receivables;
 - (xv) all monies in the accounts specified in Clause 4.2(a) and in any other account in the name of the Chargor under the control of or operated in accordance with the directions of R&R.
- (b) **Floating charge:** charges to R&R by way of a floating charge all of its undertaking, property, rights and assets whatsoever and wheresoever, both present and future (including to the extent that any of such undertaking, property, rights and assets are not effectively charged from time to time by any of the above fixed charges or assigned by way of security under Clause 3.1(c));
- (c) **Assignments by way of security:** assigns and agrees to assign by way of security to R&R all its rights, title and interest in and to:
- (i) the benefits arising under the Insurances;
 - (ii) the Non-Vesting Receivables; and
 - (iii) any contracts relating to or benefitting any of the Charged Assets.

3.2 Conversion of floating charge to a fixed charge

R&R may at any time after a Default has occurred give written notice to the Chargor immediately converting (in whole or in part) the floating charge contained in Clause 3.1(b) into a fixed charge.

3.3 Automatic crystallisation

The floating charge created by the Chargor pursuant to Clause 3.1(b) of this Deed will, unless otherwise agreed by R&R in writing and in addition to any circumstances in which the same will occur under general law, automatically and without notice be converted into a fixed charge:

- (a) if the Chargor fails to comply with its obligations in Clauses 4.1(a) and/or 4.1(o) and/or 4.2(b);
- (b) upon the appointment of a Receiver or an Administrator;
- (c) upon the directors or members of the Chargor resolving to apply for an administration order to be made in relation to it or upon the presentation of a petition for an administration order to be made in relation to it;
- (d) upon any person taking any step with a view to levying distress against any of the Charged Assets of the Chargor or any judgment creditor taking any step with a view to enforcing against any of the Charged Assets of the Chargor a judgment obtained against it whether by a warrant of execution, writ of fieri facias, garnishee order, charging order or otherwise; or
- (e) if any other floating charge created by the Chargor crystallises for any reason.

3.4 Qualifying Floating Charge

The floating charge created by this Deed is a qualifying floating charge for the purpose of paragraph 14 of schedule B1 to the Insolvency Act 1986.

3.5 Further advances

This Deed secures both present and further advances. R&R covenants to make available advances and further advances to the extent (and on the terms) provided for in any agreement from time to time giving rise to the Secured Obligations.

4 UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES

4.1 General Undertakings

The Chargor agrees that, whilst this security exists:

- (a) **No disposals:** without the prior written consent of R&R it will not sell, transfer, assign, lease out, license, lend or otherwise dispose of the whole or any part of its Charged Assets or any interest therein (or agree to do so) save that it may dispose of Inventory by way of sale at arm's length terms for commercial value in the ordinary course of its business;
- (b) **Bank information:** it will (and will procure that each member of its Group will) authorise its bankers to provide to R&R copy statements in respect of all its (and their respective) bank accounts and to disclose all other information available to those bankers about the Chargor's and members of its Group's respective assets and liabilities, whenever requested by R&R;

- (c) **Other information:** it will provide any other information as R&R may reasonably request regarding its affairs and the affairs of any members of its Group;
- (d) **Litigation details:** it will, immediately upon becoming aware, provide R&R with details of any present or future litigation, arbitration or administrative proceedings in progress, pending or to its knowledge threatened against it or against any members of its Group which might have a material adverse effect on its ability to perform its obligations under any of the Financing Documents or result in a liability for it or any member of its Group in excess of £25,000;
- (e) **Access to books:** it will (and will procure that each member of its Group will) permit R&R free access at all reasonable times to inspect and take copies of and extracts from its (and their respective) Accounting Records and will (and will procure that each member of its Group will) provide R&R with all information and facilities which it may require for this purpose;
- (f) **Enquiries:** it will (and will procure that each member of its Group will) on request grant R&R and any agent of R&R all reasonable facilities to enable it or them to carry out, at the Chargor's own expense, such investigation of its title to, and other enquiries (including, without limitation, obtaining valuations) concerning, the whole or any part of its Charged Assets as should be carried out by a prudent mortgagee;
- (g) **Intellectual Property:** it will use its best endeavours to detect any infringement of and to maintain, protect and enforce its rights in respect of its Intellectual Property and, if aware of such infringement or threat to such rights, will immediately give R&R all information available to it about that infringement or threat and the actions taken and to be taken by it in respect thereof;
- (h) **Compliance with laws:** it will comply in all material respects with all laws concerning its Charged Assets and with the requirements of any competent authority and every notice, order, direction, licence, consent, and permission lawfully made or given in respect of it, and will provide R&R immediately after receipt or it first becoming aware thereof with copies and full details of all such notices, orders, directions, licences, consents and permissions;
- (i) **Carrying on business:** it will not, without the prior written consent of R&R, make any material alteration to the nature of its business as carried on at the date of this Deed;
- (j) **Maintaining books:** it will (and will procure that each member of its Group will) maintain proper and up to date Accounting Records and will keep such Accounting Records and all other documents relating to its and their respective affairs at its registered office or at such other place where the same ought to be kept;
- (k) **Payment of Receivables:** it will punctually pay all its Receivables and liabilities becoming due and payable and which would, on its winding-up, have priority over any of the Encumbrances created by this Deed;
- (l) **Outgoings:** it will punctually pay all outgoings payable in respect of its Charged Assets and will promptly produce the receipts for them to R&R upon request;

- (m) **Observing covenants:** it will observe and perform all restrictive and other covenants and stipulations for the time being affecting its Charged Assets or their use or enjoyment;
- (n) **Proprietary interests:** it will not permit any person (including, without limitation, any member of its Group which is not the Chargor) to become entitled to any proprietary right or interest which might affect the value, use or marketability of its Charged Assets and will ensure that no overriding interest arises under the Land Registration Acts 1925-2002;
- (o) **Encumbrances:** it will ensure that no Encumbrances (other than liens arising by operation of law in the ordinary course of business and securing obligations not more than 60 days overdue) will arise on or after the date of this Deed in respect of its Charged Assets without the prior written consent of R&R;
- (p) **Landlord:** it will notify the landlord of any leasehold property forming part of the Charged Assets of the existence of this security forthwith upon this security attaching to such leasehold property; and
- (q) **Moratorium:** it will notify R&R in writing, forthwith upon taking any steps with a view to resolving to initiate a moratorium in respect of itself pursuant to the provisions of the Insolvency Act 2000.
- (r) **Land Registry:** The Chargor and R&R hereby agrees that following completion of this Deed a restriction will be registered at the Land Registry on the title[s] referred to in Schedule 1 of this Deed in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without the written consent signed by the proprietor for the time being of the charge dated [] in favour of [] as referred to in the Charges Register".

4.2 Receivables and Remittances

The Chargor agrees that, whilst this security exists:

- (a) **Getting in Other Receivables:** until other directions are given by R&R in writing it will:
 - (i) only deal with its Other Receivables by way of getting in and realising the same in the ordinary course of its business;
 - (ii) give written instructions to debtors to pay Remittances in respect of its Other Receivables to such bank account, address or person as R&R may specify;
 - (iii) only deal with the monies in such bank account in accordance with the written directions from time to time given by R&R which may include a direction to the Chargor to give written instructions to its bankers that all such monies will be forthwith paid into any other bank account as R&R may specify;

- (iv) not otherwise, except as permitted by R&R, withdraw any credit balance from, or otherwise deal with, any of its bank accounts;
- (b) **Disposals:** it will not sell, discount, factor, create any Encumbrance over, dispose of or, except in accordance with this Deed, otherwise deal with its Other Receivables or the relative Remittances;
- (c) **Non-Vesting Receivables:** it will not deal with, negotiate or pay Remittances in respect of its Non-Vesting Receivables and their Associated Rights into any account other than as specified in the Factoring Agreement in relation to Receivables and will otherwise deal with such Non-Vesting Receivables and their Associated Rights as if they were Receivables that had vested absolutely and effectively in R&R under the Factoring Agreement.

4.3 Securities

The Chargor agrees that, whilst this security exists:

- (a) **Payment of monies:** all Securities will at all times be fully paid but without prejudice to such assurance it will duly and promptly pay all monies which become due in respect of any of the Securities and indemnify R&R in respect of any liability it may incur in respect of the Securities;
- (b) **Deposits:** forthwith upon the execution of this Deed, unless agreed otherwise in writing by R&R, it will deposit with R&R all certificates or documents of title in respect of the Securities;
- (c) **Delivery:** unless R&R agrees otherwise in writing, it will ensure the delivery or payment to R&R of all Securities or the certificates or other documents of title to or representing the same; and
- (d) **Registration:** R&R will at any time be entitled to have any of the Securities or other moneys or property referred to in Clauses 4.3(b) and/or 4.3(c) registered either in its name or in the name of nominees selected by it.

4.4 Real Property and Plant and Machinery

The Chargor agrees that, whilst this security exists:

- (a) **Maintenance:** it will keep all its Real Property in good and substantial repair and will allow R&R free access, at all reasonable times, to view the state and condition of any such Real Property and of any fixed Plant and Machinery from time to time thereon, but without R&R becoming liable to account as a mortgagee in possession;
- (b) **Plant and Machinery:** it will keep all its Plant and Machinery in good and substantial repair and in good working order and condition, normal wear and tear excepted, and will immediately upon request by R&R affix nameplates or other identifying symbols or numbers indicating R&R's interest on its Plant and Machinery and it will not, without R&R's prior written consent, alter or remove any identifying symbol or number on the Plant and Machinery;

- (c) **Covenants:** it will observe and perform all the lessee's covenants in any lease under which any of the Charged Assets may be held and will take no action which might lead to such lease being surrendered or forfeited;
- (d) **Repairs:** it will, at its own expense, allow R&R to carry out repairs or take any action which R&R will reasonably consider necessary should the Chargor fail to observe or perform any of its obligations as a lessee;
- (e) **Leasing:** it will not exercise the powers of leasing or accepting surrenders of leases conferred as a mortgagee in possession by sections 99 and 100 of the Law of Property Act 1925, or any other powers of leasing or accepting surrenders of leases, without the prior written consent of R&R;
- (f) **Exclusion order:** it will make sure that an order of the court is obtained, under section 38(4) of the Landlord and Tenant Act 1954, excluding the security of tenure provisions of that Act, before granting any lease;
- (g) **No alterations:** it will procure that no alteration or addition is made to any of its Real Property and it will not do or allow anything to be done on its Real Property which will be treated as a development or a change of use within the meaning of the Planning Acts unless the prior written consent of R&R has been obtained;
- (h) **Planning:** it will not infringe the Planning Acts in any way which prejudices R&R's security over the Charged Assets;
- (i) **Deposits:** it will deposit with R&R all deeds and documents relating to its Real Property and the Policies relating to the same (subject only to the requirements of any prior Encumbrance agreed by R&R or of its landlord);
- (j) **Environmental Licences:** it will have the benefit of, maintain and comply with all Environmental Licences (if any) needed for its use or occupation of its Charged Assets or for the conduct of any business it is engaged in from time to time;
- (k) **Environmental Laws:** it will comply with all applicable Environmental Laws and will not do or permit to be done any act or omission whereby its Environmental Licences (if any) could be varied or revoked or which could result in any liability being imposed on R&R under any applicable Environmental Law;
- (l) **Environmental audits:** if requested by R&R at any time (but, save in the case where at the time of requesting the environmental audit a Termination Event has occurred or in the opinion of R&R is likely to occur, no more frequently than once in every calendar year) it will forthwith on demand pay for an environmental audit of such type as R&R will specify in relation to the Charged Assets and, in any event, will permit R&R, its agents, employees, and any firm of environmental consultants engaged by it, to have full access to all its properties, assets and Accounting Records for the purpose of carrying out any such environmental audit; and
- (m) **Ongoing obligations:** it will ensure that at all times there is no discharge, spillage, release or emission of any prescribed, dangerous, noxious or offensive substance or any controlled waste on, into or from any of its Charged Assets or any premises adjoining any part of them and no such substances or any controlled waste have been stored or disposed of on or in any part of its Charged

Assets or, so far as it is aware, in any adjoining premises except in accordance with the requirements of the applicable Environmental Laws and/or Environmental Licences.

4.5 Insurances

The Chargor agrees that, whilst this security exists:

- (a) **Insuring:** it will insure and keep insured those parts of the Charged Assets as are of an insurable nature against loss or damage by fire and all other risks usually insured against and such other risks (which may include insurance against acts of terrorism) that R&R shall reasonably require to their full replacement value with insurers approved by R&R and will comply with all policy terms in respect thereof. If it holds property as a tenant or lessee and shall be required by the landlord either to insure or to reimburse the Chargor's landlord for any insurance premium paid by him then the Chargor will be treated as having complied with its insuring obligation under this Deed if it duly and promptly complies with those requirements. However this shall not affect the right of R&R to require the Chargor to produce satisfactory evidence that it has complied with the landlord's requirements;
- (b) **Bank's interest:** it will ensure that all its Insurances are endorsed (in the form set out in Schedule 5) with notice of the interest of R&R in them (or, if required by R&R, with R&R named as a joint insured party though without R&R being liable for payment of premiums or for carrying out any other obligations under the relevant Insurance) and will produce to R&R the receipts for each current premium within fifteen days of its becoming due failing which R&R may effect or renew any such insurance as R&R shall think fit at the Chargor's expense;
- (c) **Dealing with proceeds:** it will ensure that each Insurance contains a provision under which the proceeds of that Insurance are payable to R&R. Without prejudice to this, if any monies are received by the Chargor under any such Insurance in respect of any of the Charged Assets such monies shall be treated as part of the Charged Assets subject only to any rights of third parties having priority and to the requirements of any lease of the Charged Assets and shall be paid forthwith to R&R. Pending payment to R&R, the Chargor shall hold such proceeds on trust for R&R. The proceeds of any such Insurance shall be applied at the discretion of R&R either in reducing the Secured Obligations as have fallen due for payment or towards making good the loss or damage for which the monies became payable;
- (d) **Insurances:** it will punctually pay all premiums and other sums payable under or in relation to each of the Insurances (and, if requested by R&R, produce evidence of payment satisfactory to R&R) and not omit to do or permit anything to be done which may make void, voidable or unenforceable any of the Insurances and not alter the terms of any of the Insurances or allow any of the Insurances to lapse;
- (e) **Retention of Insurances:** it will, immediately upon receiving the same, deliver all original Insurances to R&R and thereafter permit R&R to hold and retain all Insurances; and
- (f) **Notice:** it will immediately give notice of this security in the form set out at the beginning of Schedule 5 to the assurance or insurance company or organisation

issuing any of the Insurances in its favour and obtain and deliver the form of acknowledgement of such notice in the form set out later in Schedule 5.

4.6 Representations and Warranties

The Chargor represents and warrants in favour of R&R as follows (and these representations and warranties shall survive the execution of this Deed):

- (a) **Due execution:** that the execution of this Deed has been duly authorised by a resolution of its board of directors (or by a duly authorised committee of such board) and that it does not breach any provision of its memorandum and/or articles of association or of any other Encumbrance, security or agreement entered into prior to the date of this Deed or the laws of any jurisdiction applying to it;
- (b) **Ownership:** that it is and will at all times be the sole beneficial owner with full title guarantee of all its Charged Assets and that no Encumbrances affect it other than those permitted by R&R;
- (c) **Validity:** that this Deed constitutes its legal, valid, binding and enforceable obligations and is an effective security over all and every part of its Charged Assets in accordance with its terms;
- (d) **Authorisations:** that all necessary authorisations and consents to enable or entitle it to enter into this Deed and create the Encumbrances hereby created or intended to be created have been obtained and these will remain in full force and effect during the existence of this security;
- (e) **Discharges:** that there has been no discharge, spillage, release or emission of any prescribed, dangerous, noxious or offensive substance or any controlled waste on, into or from any Real Property or any premises adjoining any part of them and no such substances or any controlled waste have been stored or disposed of on or in any Real Property or, so far as it is aware, in any adjoining premises except in accordance with the requirements of the applicable Environmental Laws and/or Environmental Licences; and
- (f) **Environmental compliance:** that it is not in breach of, and has not incurred or become subject to, any civil or criminal liability under any Environmental Laws or the terms of any Environmental Licence and that it has not done or omitted to do anything which could impose any liability on R&R under any applicable Environmental Law.

5 FURTHER ASSURANCE AND POWER OF ATTORNEY

5.1 Further assurance

At R&R's request, the Chargor will, at its own expense, immediately sign, seal, execute, deliver and perfect all deeds, debentures and instruments including, without limitation, standard securities, assignments and any other documents needed in relation to assets in Scotland and any other jurisdiction and do all such other acts and things as R&R or any Administrator or Receiver (as the case may be) appointed under this Deed may require in order to perfect, protect or enforce this security in respect of the Chargor or to facilitate the realisation of any of the Charged Assets or to use the powers given to each

of them in this Deed or to enforce the obligations of the Chargor and/or the rights of R&R under this Deed and it will take such steps as R&R shall specify to make such registrations and give such notifications as R&R may consider appropriate (or which may be specified by applicable law) in relation to this Deed and the Chargor authorises R&R to effect the same if R&R so chooses.

5.2 Execution of documents/registration

Without prejudice to Clause 5.1 the Chargor will at the request of R&R and at the Chargor's own expense, execute a legal mortgage, charge or assignment of any part of the Charged Assets of the Chargor, subject to or intended to be subject to any fixed security under this Deed in such form as R&R may require. In every such case the Chargor will then take such other steps as R&R may require to perfect such legal mortgage, charge or assignment including, without limitation, using all reasonable endeavours to obtain the consent of any landlord or other person required for any legal mortgage.

5.3 Power of attorney

The Chargor, by way of security and in order more fully to secure the performance of its obligations hereunder, irrevocably appoints R&R, any directors, officers or managers for the time being of R&R and any other person authorised by the directors of R&R and any Administrator or Receiver (as the case may be) appointed hereunder, jointly and each of them severally, to be the lawful attorneys of the Chargor for the purposes set out in this Clause 5. Such appointment gives each attorney the power in the Chargor's name and on its behalf to act and to carry out all acts and execute all the deeds, debentures, instruments and other documents required by Clauses 5.1 and 5.2 in the event of the relevant Chargor not having done so following the relevant request from R&R. Each attorney so appointed may appoint substitute attorneys to carry out all or any of such purposes. The Chargor agrees to ratify and confirm any instrument, act or thing which any such attorney or substitute attorney may lawfully execute or do in the name or on behalf of the Chargor.

5.4 Power of attorney on Receivables

The Chargor, by way of security and in order more fully to secure the performance of its obligations hereunder, irrevocably appoints R&R, any directors, officers or managers for the time being of R&R and any other person authorised by the directors of R&R and any Administrator or Receiver (as the case may be) appointed hereunder, jointly and each of them severally, to be the lawful attorneys of the Chargor and on its behalf to take any action which it is obliged to take under the Factoring Agreement including:

- (a) execute or sign any deeds or documents (including assignments);
- (b) obtain payment of Receivables;
- (c) complete, deal with, negotiate or endorse Remittances;
- (d) institute, conduct, compromise or defend any legal proceedings;
- (e) settle the Chargor's indebtedness to R&R or to Debtors;

- (f) perform such other lawful acts, as R&R in its absolute discretion, may consider reasonably necessary or expedient.

6 CONSEQUENCES OF A TERMINATION EVENT

Following the occurrence of a Termination Event:

- (a) **Enforceability:** the security constituted by this Deed shall become enforceable; and/or
- (b) **Retentions:** R&R may retain any monies in any account referred to in Clause 4.2(a), for such period as R&R reasonably considers necessary to ensure the Chargor's compliance with the terms of this Deed; and/or
- (c) **Voting rights:** R&R may exercise in the name of the Chargor any voting rights attached to the Securities and all powers given to trustees by the Trustee Act in respect of securities, property subject to a trust and any powers or rights exercisable by the registered holder of any of the Securities or by the bearer of any of the Securities. R&R will not then need any consent or authority from the Chargor.

7 POWER OF POSSESSION AND SALE

At any time after this security has become enforceable, R&R and/or any Receiver or Administrator appointed under this Deed may, in their discretion, enter upon and take possession of the Charged Assets or any part of them. They may also, at their discretion, when exercising their powers given in this Deed, sell, call in, collect and convert into monies the Charged Assets or any part of them. By way of extension of these powers such sale, calling in and conversion may be done for such consideration in such form and upon such terms as to payment and otherwise as R&R or any Receiver or Administrator shall think fit.

8 APPOINTMENT OF RECEIVER OR ADMINISTRATOR AND THEIR POWERS

8.1 Appointment of a Receiver or an Administrator

The restrictions in Section 109 and Section 91(2) of the Law of Property Act 1925 (restricting, inter alia, the power to appoint a receiver, the maximum rate of a receiver's remuneration and the power to apply to court for an order for sale of mortgaged property) shall not apply to this Deed. At any time after:

- (a) this security becomes enforceable (whether as a consequence of a Termination Event occurring or otherwise);
- (b) the Chargor at any time so requests in writing; or
- (c) R&R becomes aware of the intention of any party to apply for an administration order to be made in relation to the Chargor or any such application is made,

R&R may, without further notice to the Chargor appoint any person to be a Receiver or an Administrator of the Chargor (as R&R may in its absolute discretion determine is appropriate) in respect of the Charged Assets of the Chargor. The appointment of a Receiver may extend to the whole or any part of such Charged Assets. R&R may, so far

as the law permits, remove any Receiver. In case of the removal, retirement or death of any Receiver or Administrator, R&R may appoint another in his place. At the time of his appointment (or at any time afterwards) R&R may fix the remuneration of a Receiver on such basis as R&R shall determine.

8.2 Joint and several obligations

R&R may appoint more than one person to act as a Receiver or an Administrator and where it does so those so appointed shall carry out their duties, exercise their rights, and be subject to their obligations jointly as well as severally. References in this Deed to a "Receiver" or an "Administrator" shall be to each and all of them as appropriate.

8.3 Writing

The appointment of a Receiver or an Administrator or the removal or fixing of the remuneration of a Receiver shall be made in writing and may be signed by any director or officer of R&R.

8.4 Appointment of Receiver or Administrator and their powers

- (a) **Appointment:** Any Receiver or Administrator shall be the agent of the Chargor to which such appointment relates. The Chargor to which such appointment relates will, and R&R will not in any way, be responsible for the acts, omissions, losses, misconduct, defaults and remuneration of such Receiver or Administrator; and
- (b) **Powers of a Receiver:** A Receiver shall, without the need for the consent of the Chargor, have all of the powers described in this Clause, unless any such powers shall specifically be excluded by the written terms of his appointment. A Receiver may exercise these powers in such way, at such time and on such terms as he shall think fit, necessary or expedient and whether in his name or the name of the Chargor and without being under any obligation to take or omit to take any action which the Chargor, but for the appointment of the Receiver, would or might have considered to be in its interests. A receiver shall have the powers granted by the Law of Property Act 1925 to any receiver appointed under such Act and all the powers of an administrative receiver under Schedule 1 of the Insolvency Act 1986. A Receiver shall also have the power on behalf and at the cost of the Chargor, and in the Chargor's name or otherwise, to do or omit to do anything which the Chargor could do or omit to do or could have done or omitted to do but for any incapacity or the appointment of a liquidator, administrator or equivalent officer in relation to the Chargor or its Charged Assets.
- (c) **Powers of an Administrator:** An Administrator shall have all the powers conferred from time to time on administrators by law or by statute.

8.5 Bank's powers

Whether or not a Receiver or an Administrator shall be appointed under this Deed, R&R may at any time after this security becomes enforceable, and without giving notice, exercise all or any of the powers, authorities and discretions conferred on a Receiver or an Administrator as set out above.

9 VARIATIONS TO STATUTORY PROVISIONS

9.1 Law of Property Act

Section 103 of the Law of Property Act 1925 (restricting the power of sale) shall not apply to this Deed. However the power of sale and the other powers conferred on mortgagees by that Act shall apply to this security but without the Act's restrictions as to giving notice or otherwise. Accordingly, for the purposes of a sale or other exercise of any such powers, the whole of the Secured Obligations shall be treated as due and payable on the date hereof.

9.2 Non-consolidation

The restrictions on the right of consolidating mortgage securities, which are contained in Section 93 of the Law of Property Act 1925, shall not apply to this security.

9.3 Subsequent encumbrances

If R&R receives, or is treated as having received, notice of any subsequent Encumbrance affecting any of the Charged Assets then R&R may open a new account with the Chargor. If it does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received, or was treated as having received, such notice. From that time all payments made by the Chargor to R&R shall be credited, or be treated as having been credited, to the new account. These payments shall not operate to reduce the amount secured by this Deed when R&R received or was treated as having received such notice.

10 APPLICATION OF MONIES

10.1 Order of payment

All monies received by R&R or by an Administrator or Receiver (as the case may be) under or by virtue of this Deed shall be applied (so far as the law permits) in the following order:

- (a) **Costs and expenses:** in payment of all costs, charges and expenses of or incidental to the appointment of an Administrator or Receiver (as the case may be), the payment of his remuneration and the payment and discharge of any other Expenses incurred by or on behalf of the Administrator or Receiver (as the case may be);
- (b) **Preferential Debts:** in or towards payment of any debts or claims which are by statute payable in preference to the Secured Obligations but only to the extent to which those debts or claims have such preference;
- (c) **Payments to R&R:** in payment to R&R of the Secured Obligations due to R&R in such order as R&R in its absolute discretion thinks fit; and then
- (d) **Surplus:** in payment to the Chargor of any surplus (which shall not carry interest) which may be paid into the Chargor's bank accounts including an account opened specifically for such purpose. R&R shall then have no further liability for the surplus.

10.2 Appropriation

Following the enforcement of this security, any monies received by R&R may be appropriated by R&R in its discretion in or towards the payment and discharge of any part of the Secured Obligations.

10.3 Suspense accounts

R&R or the Administrator or Receiver (as the case may be) may credit any monies to a suspense account for so long and in such manner as R&R may from time to time determine. The Administrator or Receiver (as the case may be) or R&R may retain the same for such period as the Administrator or Receiver (as the case may be) and R&R consider expedient.

11 PROTECTION OF THIRD PARTIES

11.1 Third party payments

No person paying or handing over monies to an Administrator or Receiver (as the case may be) and obtaining a discharge shall have any responsibility or liability to confirm the correct application of such monies.

11.2 Third party dealings

No person dealing with R&R, or an Administrator or Receiver (as the case may be), need enquire:

- (a) **Powers exercisable:** whether any event has happened giving either R&R or the Administrator or Receiver (as the case may be) the right to exercise any of his powers;
- (b) **Propriety of acts:** as to the propriety or regularity of any act purporting or intending to be an exercise of such powers;
- (c) **Validity of appointment:** as to the validity or regularity of the appointment of any Administrator or Receiver (as the case may be) purporting to act or to have been appointed as such; or
- (d) **Satisfaction:** whether any of the Secured Obligations remain unsatisfied.

11.3 Statutory protection

All the protections given to purchasers contained under sections 104 and 107 of the Law of Property Act 1925 shall apply to any person purchasing from or dealing with an Administrator or Receiver (as the case may be) or R&R as if the Secured Obligations had become due and the statutory power of sale and appointment of the Administrator or Receiver (as the case may be) in relation to the Charged Assets had arisen, on the date of this Deed.

11.4 Express notice

No person dealing with R&R or any Administrator or Receiver (as the case may be) shall be affected by express notice that any act is unnecessary or improper.

12 CONTINUING AND ADDITIONAL SECURITY

12.1 Continuing security

This security is a continuing security for all the Secured Obligations notwithstanding any interim settlement of account until a final discharge of this security shall be given by R&R.

12.2 Non-merger

This security is in addition to, and shall not merge or otherwise prejudice or affect, any other right or remedy of R&R or any assignment, bill, note, guarantee, Encumbrance, or other security now or in future in favour of R&R or held by, or available to, R&R (whether created by the Chargor or any third party).

13 EXPENSES AND INDEMNITIES

13.1 Expenses and interest

All Expenses incurred and all payments made by R&R or any Administrator or Receiver (as the case may be) in the lawful exercise of the rights created by this Deed shall carry interest at the Default Rate. Interest under this Deed shall accrue (both before and after judgment) from the date the Expenses were incurred or the sum paid became payable, whichever shall be earlier, until the date the same are paid and discharged in full. R&R may compound unpaid interest with rests at such times as it may consider appropriate. The amount of all Expenses and payments referred to in this Clause 14.1 and any interest thereon shall be payable by the Chargor on demand.

13.2 General indemnity

The Chargor agrees to indemnify R&R (and its nominees) and any Administrator or Receiver (as the case may be) on demand against all losses, actions, claims, expenses, demands and liabilities now or in the future incurred by any of them or by any manager, agent, officer or employee for whose liability, act or omission any of them may be answerable for anything done or omitted in the exercise or purported exercise of the rights contained in this Deed or caused by any breach by the Chargor of any of its obligations under this Deed or in connection with the Charged Assets. R&R (and its nominees) and any Administrator or Receiver (as the case may be) shall also be entitled to be indemnified out of the Charged Assets in respect of all losses, actions, claims, expenses, demands and liabilities incurred by them in the execution, or purported execution, of any of the rights vested in them under this Deed.

13.3 Tax indemnity

The Chargor agrees to indemnify R&R and any Administrator or Receiver (as the case may be) on demand against all present or future stamp or other taxes or duties and any penalties or interest with respect thereto which may be imposed by any competent authority in connection with the execution or enforcement of this Deed or in consequence

of any payment made pursuant to this Deed being challenged or declared void for any reason whatsoever.

13.4 Currency indemnity

- (a) **Conversion:** For the purpose of, or pending, the discharge of any of the Secured Obligations R&R or an Administrator or Receiver (as the case may be) may convert any monies received, recovered or realised under this Deed (including the proceeds of any previous conversion) from their existing currency into such other currency as R&R or such Administrator or Receiver (as the case may be) may think fit. Any such conversion shall be effected at the then prevailing spot selling rate of exchange of R&R's bankers for such other currency against the existing currency.
- (b) **Shortfall indemnity:** The Chargor agrees to indemnify R&R against any shortfall between:
 - (i) any amount received or recovered by R&R in respect of any of the Secured Obligations which is converted in accordance with Clause 13.4(a) into the currency in which such liability was payable; and
 - (ii) the amount payable to R&R under this Deed in the currency of such liability.

14 PAYMENTS, DISCHARGE AND SET-OFF

14.1 Payments without deduction

All payments to be made to R&R under this Deed shall be made free and clear of and (save as required by law) without deduction for or on account of any tax withholding, charges, set-off or counterclaim. All payments shall be made into such account(s) as R&R may from time to time specify for the purpose.

14.2 Set-off

Without prejudice to any right of set-off or combination of accounts contained in any Financing Document, R&R may at any time following the occurrence of a Termination Event without notice to the Chargor combine or consolidate all or any amounts standing to the credit of the Chargor's account or accounts with R&R and/or set off any amount owed by R&R to the Chargor against any obligation (whether or not matured) owed to R&R by the Chargor whether or not each is expressed in the same currency.

14.3 Gross-up and tax receipts

If the Chargor is required by law to make a deduction or withholding from any payment made under this Deed, then the sum payable by the Chargor shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, R&R receives and retains (free from any liability related to such deduction or withholding) a net sum equal to the sum which it would have received and retained had no such deduction or withholding been made or required to be made. The Chargor will pay the amount deducted or withheld to the relevant tax or other authorities within the time allowed for such payment under applicable law and will deliver to R&R within 30 days of making

such payment an original receipt or other evidence issued by the relevant authority showing that payment has been made in full.

14.4 Discharge of security

Upon payment and complete discharge and performance of all the Secured Obligations under or in relation to this Deed, R&R shall, at the request and cost of the Chargor, duly discharge this security and any further security given by the Chargor in accordance with the terms hereof. R&R will also, at the request and cost of the Chargor, transfer to the Chargor any of the Charged Assets which have been assigned or transferred to R&R. If any Charged Assets transferred or assigned to R&R were fungible, R&R may transfer to the Chargor assets of the same class, denomination and quality rather than the identical Charged Assets transferred or assigned to it under this Deed.

14.5 Avoidance of payments

The right of R&R to payment of the monetary obligations comprised in the Secured Obligations or to enforce the terms of this Deed shall not be affected by any payment or any act or thing which is avoided or adjusted under the laws relating to bankruptcy or insolvency or under Part VI of the Insolvency Act 1986. Any release, or discharge given or settlement made by R&R relying on any such payment, act or thing shall be void and of no effect.

15 SERVICE OF NOTICES AND PROCESS

15.1 Chargor's address for service

Unless otherwise provided in this Deed, any written notice from R&R to the Chargor and any proceedings issued by R&R requiring service on the Chargor may be given or served by delivering it at or posting it to:

- (a) the Chargor's address set out under its name at the end of this Deed or to such other address of the Chargor advised to and acknowledged by R&R as being effective for the purposes of service;
- (b) the Chargor's registered office; or
- (c) any address last known to R&R at which the Chargor carried on business.

It may also be handed to any officer of the Chargor. Such notice may also be given by facsimile transmission or electronic medium to the Chargor's number or address acknowledged by R&R for communication by such means.

15.2 Time of service on Chargor

Any such notice or process shall be considered served:

- (a) if delivered – at the time of delivery;
- (b) if sent by post – 48 hours from the time of posting;
- (c) if sent by facsimile transmission or electronic medium – at the time of receipt; or

(d) if handed over – at the time of handing over.

15.3 Service on Bank

Any notice in writing by the Chargor to R&R required hereunder shall take effect at the time it is received by R&R at its registered office or at such other address as R&R may advise in writing to the Chargor for this purpose unless such notice is received on a day which is not a Working Day, in which case, it shall take effect on the next Working Day.

16 TRANSFERS AND DISCLOSURES

16.1 Transfers by Bank

This Deed is freely transferable by R&R to any other party. The Chargor consents to any such transfer (whether by novation, assignment, or otherwise). References in this Deed to "R&R" shall include its successors, assignees and transferees and any person to whom this Deed is novated.

16.2 No transfers by the Chargor

The Chargor may not assign or transfer any of its obligations under this Deed nor may it enter into any transaction which would result in any such obligations passing to another person.

16.3 Disclosure of information

R&R may disclose any information about the Chargor and any member of the Chargor's Group and any other person connected or associated with it to any members of R&R's Group and/or to any person to whom R&R is proposing to transfer or assign, or has transferred or assigned, this Deed and/or any of the Secured Obligations (in each case which is a bank or financial institution or any director, officer, agent or employee thereof or any professional adviser thereto). The Chargor represents and warrants that it has, and (so far as permitted by law) will maintain, any necessary authority by or on behalf of any such persons to agree to the provisions of this Clause.

17 MISCELLANEOUS

17.1 Delays and omissions

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

17.2 Cumulative rights

R&R's rights under this Deed are cumulative. They are not exclusive of any rights provided by law. They may be exercised from time to time and as often as R&R sees fit.

17.3 Waivers

Any waiver by R&R of any terms of this Deed or any consent or approval given by R&R under it shall only be effective if given in writing. Such consent and approval shall then

only apply for the purpose stated and be subject to any written terms and conditions imposed by R&R.

17.4 Illegality

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

17.5 Bank's certificates

Any certificate signed by a director or authorised officer of R&R as to the amount of the monetary obligations comprised in the Secured Obligations at the date of that certificate shall, in the absence of manifest error, be conclusive evidence of that amount and be binding on the Chargor to whom such certificate is addressed.

17.6 Counterparts

This Deed may be executed in any number of counterparts and by different parties on separate counterparts each of which, when executed and delivered, shall constitute an original and all the counterparts together shall constitute but one and the same instrument.

17.7 Paper

The paper on which this Deed is written is, and will remain at all times, the property of R&R, even after the discharge of this security.

17.8 Access and Inspection

For the purpose of gaining access to or inspecting or (following any Termination Event) taking possession of any of the computer equipment, computer data, books, documents and other records included in or relating to the Charged Assets or for the purpose of taking copies of any of such data, books, documents and records any duly authorised official of R&R and any Administrator or Receiver (as the case may be) and any person authorised by such Administrator or Receiver (as the case may be) shall have the right at any time to enter upon any premises at which the Chargor carries on business and upon any other premises in which any part or all of such computer equipment, computer data, books, documents and other records are for the time being kept or stored.

17.9 Contracts (Rights of Third Parties) Act 1999

Other than in relation to the provisions of Clause 14, the terms of this Deed may only be enforced by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

18 LAW AND JURISDICTION

18.1 Law

This Deed shall be governed by, and construed in accordance with, English law.

18.2 Jurisdiction

- (a) **Submission:** The Chargor irrevocably agrees for the benefit of R&R that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Deed and, for such purposes, irrevocably submits to the jurisdiction of such courts.
- (b) **Forum:** The Chargor irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 18.2(a) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Deed and agrees not to claim that any such court is not a convenient or appropriate forum.
- (c) **Other competent jurisdictions:** The submission to the jurisdiction of the courts referred to in Clause 18.2(a) shall not (and shall not be construed so as to) limit the right of R&R 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 jurisdiction, whether concurrently or not.
- (d) **Consent to enforcement:** The Chargor hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Deed to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

IN WITNESS whereof the Chargor has duly executed this Deed as a deed and intends to deliver and hereby delivers the same on the date first above written and, prior to such delivery, this Deed has been duly signed on behalf of R&R, in the manner appearing below.

SCHEDULE 1

Real Property

SCHEDULE 2

Plant and Machinery

SCHEDULE 3

Securities

SCHEDULE 4

Insurances

SCHEDULE 5

Notice of Assignment of Insurances and Form of Acknowledgement and Endorsement

To: [insert name and address of insurer]

[Date]

Dear Sirs

Policy number []

We hereby give you notice that we have assigned by way of security all our rights, title and interest in and to the above policy ("**the Policy**") to Rosenthal & Rosenthal, Inc. of 1370 Broadway, New York, NY 10018 ("**R&R**") to secure monies, obligations and liabilities due, owing or incurred to R&R.

We irrevocably and unconditionally authorise you to disclose to R&R such information relating to the Policy and the proceeds of any claim under it as R&R may at any time request you to disclose and make all payments under or arising from the Policy to R&R or to its order and otherwise to comply with the terms of any written notice or instructions which you receive at any time from R&R in connection with the Policy or any such proceeds. .

Accordingly, we hereby request that, with effect from today's date, R&R be noted on the Policy as assignee and first loss payee.

The terms of and the instructions and authorisations contained in this letter shall remain in full force and effect until R&R gives you notice to the contrary.

Please acknowledge receipt of this letter by signing the attached form of acknowledgement and agreement and returning it to Rosenthal & Rosenthal, Inc., 1370 Broadway, New York, NY 10018, marked for the attention of on fax number [].

Yours faithfully
for and on behalf of

Acknowledgement to notice of assignment of insurances

To: Rosenthal & Rosenthal, Inc.
1370 Broadway
New York, NY 10018

Attn: _____

Fax no:

[Date]

Dear Sirs

We acknowledge receipt of a notice dated and addressed to us by Limited (the "**Assignor**") regarding policy number (the "**Policy**") and acknowledge the instructions and authorisations contained in that notice.

We acknowledge and confirm that:

- (a) we shall forthwith endorse a memorandum on the Policy in the form attached noting your interest as assignee and first loss payee;
- (b) until you notify us in writing to the contrary, all payments in respect of claims under the Policy shall only be paid to you to account [R&R to specify];
- (c) we have not received notice that any third party has or may have any rights, title or interest in or to, or has made or may be making any claim, demand or taking any action in respect of the Policy;
- (d) no change in any of the terms of the Policy shall be effective without the written consent of Rosenthal & Rosenthal, Inc.;
- (e) we shall advise you at least 30 days before any cancellation of the Policy; and
- (f) we shall advise you immediately of any default in the payment of any premium payable in respect of the Policy and shall allow 30 days during which payment of such premium shall be accepted, such that the Policy shall continue in full force and effect if made by Rosenthal & Rosenthal, Inc. on behalf of the Assignor and/or any other insured party.

Yours faithfully
[name of insurer]

Form of Endorsement

Notwithstanding any other provision of this policy, the following endorsement will take effect immediately:

- 1 By an assignment of insurances effected by the insured pursuant to a Debenture dated in favour of Rosenthal & Rosenthal, Inc. ("**R&R**") the insured assigned by way of security to R&R all of its right, title and benefit in and to this policy, the insurance effected thereby and all the benefits thereof.

All claims in respect of loss or damage, if any, payable under this policy shall be paid first to R&R.

THE

SIGNED and delivered as a deed by
TABITHA SIMMONS UK LTD acting by
two directors or by one director and the
secretary:

Director

Signature :

Name :

TABITHA SIMMONS, DIRECTOR

Director/Secretary

Signature :

Name :

R&R

For and on behalf of

ROSENTHAL & ROSENTHAL, INC.

By:

Gary Norman

Address:

Executive Vice President

Fax:

Attention:

THE

SIGNED and delivered as a deed by
TABITHA SIMMONS UK LTD acting by
two directors or by one director and the
secretary:

Director

Signature :

Name :

George Duffield

Director/Secretary

Signature :

Name :

R&R

For and on behalf of

ROSENTHAL & ROSENTHAL, INC.

By

Address:

Fax:

Attention:

GARY NORMAN