

MR01

Particulars of a charge

7 11586 / 13

IRIS Laserform

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

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

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

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

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

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

☒ You **must** enclose a certified copy of the instrument with this form. This will  
be scanned and placed on the public record

WEDNESDAY



A26 04/06/2014 #387  
COMPANIES HOUSE

**1 Company details**

Company number 0 6 7 0 9 6 2 6

Company name in full BARRPRESS LIMITED

0001 For official use

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

All fields are mandatory unless  
specified or indicated by \*

**2 Charge creation date**

Charge creation date 0 3 0 6 2 0 1 4

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

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

Name TRUSTEES OF BARRPRESS LIMITED SSAS

Name

Name

Name

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

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

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**Description**

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

**Continuation page**

Please use a continuation page if you need to enter more details

Description

NONE

5

**Fixed charge or fixed security**

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☐ Yes

☒ No

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☒ Yes Continue

☐ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

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Particulars of a charge

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**Trustee statement ①**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X  3/6/2014

X

This form must be signed by a person with an interest in the charge

**MR01****Particulars of a charge****Presenter information**

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name **PETER SKINNER**

Company name **BLACK NORMAN**

Address **67/71 CORONATION ROAD**

**CROSBY**

Post town **LIVERPOOL**

County/Region **MERSEYSIDE**

Postcode **L 2 3 5 R E**

Country **ENGLAND**

DX **DX20403 CROSBY**

Telephone **0151 931 2777**

**Certificate**

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

**Checklist**

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

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

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

**Important information**

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

**How to pay**

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

Make cheques or postal orders payable to 'Companies House'

**Where to send**

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

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

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

**For companies registered in Scotland:**

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

**For companies registered in Northern Ireland:**

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

**Further information**

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

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



**FILE COPY**

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

Company number: 6709626

Charge code: 0670 9626 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 3rd June 2014 and created by BARRPRESS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th June 2014

Given at Companies House, Cardiff on 10th June 2014

DX



**Companies House**



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

Full name Debenture

**DATED**

*3rd June 2014*

**DEBENTURE**

between

**BARRPRESS LIMITED**

and

**TRUSTEES OF BARRPRESS LIMITED SSAS**

We hereby certify that  
this is a true copy of the  
original document

Signed *Black Norman*

Black Norman Solicitors

*3rd June 2014*

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THIS DEED is dated 3rd day of June 2014

## **PARTIES**

- (1) BARRPRESS LIMITED incorporated and registered in England and Wales with company number 06709626 whose registered office is at Edward House, North Mersey Business Centre, Woodward Road, Liverpool L 33 7UY (**Borrower**)
- (2) THE TRUSTEES OF BARRPRESS LIMITED SSAS of Platinum SSAS, Trafford House, Chester Road, Manchester M32 0RS (**Lender**).

## **BACKGROUND**

- (A) The Lender has agreed, pursuant to the terms of an agreed loan application dated the 3rd of June 2014 (the Facility Agreement) to provide the Borrower with loan facilities on a secured basis
- (B) Under this deed, the Borrower provides security to the Lender for the loan facilities made available under the Facility Agreement

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

Terms defined in the Facility Agreement shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed

**Administrator:** an administrator appointed to manage the affairs, business and property of the Borrower pursuant to clause 9.8

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

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

**Delegate:** any person appointed by the Lender or any Receiver pursuant to clause 14 and any person appointed as attorney of the Lender, Receiver or Delegate

**Designated Account:** any account of the Borrower nominated by the Lender as a designated account for the purposes of this deed

**Equipment:** all present and future equipment, plant, machinery for the time being owned by the Borrower, including any part of it and all spare parts, replacements, modifications and additions



**Event of Default:** has the meaning given to that expression in the Facility Agreement

**Facility Agreement:** the facility agreement dated *3rd June 2014* between the Borrower and the Lender for the provision of the loan facilities secured by this deed

**Financial Collateral:** shall have the meaning given to that expression in the Financial Collateral Regulations

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

**Excluded Properties:** all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Borrower, or in which the Borrower holds an interest.

**Receiver:** a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Lender under clause 12.

**Relevant Agreement:** each agreement as may be specified in this deed

**Secured Assets:** all the assets for the time being subject to the Security created by, or pursuant to, this deed

**Secured Liabilities:** all present and future monies, obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 26 3(b)), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities

**Security Financial Collateral Arrangement:** shall have the meaning given to that expression in the Financial Collateral Regulations

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

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

## 12 Interpretation

In this deed

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

person's personal representatives, successors, permitted assigns and permitted transferees],

- (b) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular,
- (c) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders,
- (d) a reference to a party shall include that party's successors, permitted assigns and permitted transferees,
- (e) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (f) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision,
- (g) a reference to **writing** or **written** includes fax but not e-mail,
- (h) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (i) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time,
- (j) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed [and a reference to a paragraph is to a paragraph of the relevant Schedule],
- (k) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms,
- (l) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly),
- (m) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description,
- (n) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution,
- (o) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been [remedied or] waived,
- (p) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it, and
- (q) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any

governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation

The provisions of the Facility Agreement apply to this deed as if they were set out in full in this deed, except that each reference in that clause to the Facility Agreement shall be read as a reference to this deed

**1 3 Clawback**

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

**1 4 Perpetuity period**

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

**1 5 Schedule**

The Schedule forms part of this deed and shall have effect as if set out in full in the body of this deed Any reference to this deed includes the Schedule

**2. COVENANT TO PAY**

The Borrower shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due

**3. GRANT OF SECURITY**

**3 1 Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charge to the Lender by way of first fixed charge

- (a) All the equipment
- (b) All its rights in respect of each Relevant Agreement and all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under clause 3 thereof

**3 2 Floating charge**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charge to the Lender, by way of first floating charge, all the stock of the Borrower at any time not effectively mortgaged, charged or assigned pursuant to clause 3 2 hereof

**3 3 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3 2.

**3 4 Leasehold security restrictions**

- (a) Subject to clause 3 4(b) to clause 3 4(d), the security created by clause 3 1 shall not apply to an Excluded Property until the Borrower obtains any relevant consent, or waiver of any prohibition, to the creation of security over that Excluded Property
- (b) In relation to each Excluded Property, the Borrower undertakes to
  - (i) apply for the relevant consent or waiver of prohibition within [five] Business Days of the date of this deed, and to use its best endeavours to obtain that consent or waiver as soon as possible,
  - (ii) keep the Lender informed of its progress in obtaining that consent or waiver, and
  - (iii) immediately on receipt of the consent or waiver, provide the Lender with a copy of that consent or waiver
- (c) Immediately on receipt by the Borrower of the relevant consent or waiver, that Excluded Property shall become the subject of a mortgage or charge (appropriate) pursuant to clause 3 1 hereof
- (d) If required by the Lender at any time following receipt of that consent or waiver, the Borrower shall, at its own cost, prepare and execute any further documents and take any further action the Lender may require, in its absolute discretion, for perfecting its security over that Excluded Property.

**3 5 Automatic crystallisation of floating charge**

The floating charge created by clause 3 2 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if

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

- (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised),
- (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets, or
- (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Borrower

### **3 6 Crystallisation of floating charge by notice**

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

### **3 7 Assets acquired after any floating charge has crystallised**

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

## **4. LIABILITY OF THE BORROWER**

### **4 1 Liability not discharged**

The Borrower's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground,
- (b) the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person, or
- (c) any other act or omission that, but for this clause 4 1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower

### **4 2 Immediate recourse**

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

**5. REPRESENTATIONS AND WARRANTIES**

**5.1 Representations and warranties**

The Borrower makes the representations and warranties set out in this clause 5 to the Lender

**5.2 Ownership of Secured Assets**

The Borrower is the legal and beneficial owner of the Secured Assets

**5.3 No Security**

The Secured Assets are free from any Security other than [Permitted Security and] the Security created by this deed

**5.4 No adverse claims**

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

**5.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets

**5.6 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Secured Assets.

**5.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use

**5.8 No overriding interests**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property

**5 9 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Borrower or otherwise

**5 10 No prohibitions or breaches**

There is no prohibition on assignment in any Insurance Policy or Relevant Agreement and the entry into this deed by the Borrower does not, and will not, constitute a breach of any Insurance Policy, Relevant Agreement or any other agreement or instrument binding on the Borrower or its assets

**5 11 Environmental compliance**

The Borrower has, at all times, complied in all material respects with all applicable Environmental Law

**5 12 Enforceable security**

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

**5 13 Investments**

- (a) The Investments are fully paid and are not subject to any option to purchase or similar rights
- (b) No constitutional document of an issuer of an Investment, nor any other agreement
  - (i) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed, or
  - (ii) contains any rights of pre-emption in relation to the Investments

**5 14 Times for making representations and warranties**

The representations and warranties set out in clause 5 2 to clause 5 13 are made by the Borrower on the date of this deed and the representations and warranties contained herein are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition

## **6. GENERAL COVENANTS**

### **6.1 Negative pledge and disposal restrictions**

The Borrower shall not at any time, except with the prior written consent of the Lender

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed,
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge), or
- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party

### **6.2 Preservation of Secured Assets**

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

### **6.3 Compliance with laws and regulations**

- (a) The Borrower shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law
- (b) The Borrower shall
  - (i) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them,
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset, and
  - (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets

### **6.4 Enforcement of rights**

The Borrower shall use its best endeavours to

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower's counterparties (including each



counterparty in respect of a Relevant Agreement and each insurer in respect of an Insurance Policy), and

- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Lender may require from time to time

#### **6 5 Notice of misrepresentation and breaches**

The Borrower shall, promptly on becoming aware of any of the same, give the Lender notice in writing of

- (a) any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated, and
- (b) any breach of any covenant set out in this deed

#### **6 6 Title documents**

The Borrower shall, as so required by the Lender, deposit with the Lender and the Lender shall, for the duration of this deed be entitled to hold

- (a) all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title),
- (b) copies of any Relevant Agreements, certified to be true copies by either a director of the Borrower or by the Borrower's solicitors

#### **6 7 Insurance**

- (a) The Borrower shall insure and keep insured the Secured Assets against
  - (i) loss or damage by fire or terrorist acts,
  - (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower, and
  - (iii) any other risk, perils and contingencies as the Lender may reasonably require.

Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender, and must be for not less than the replacement value of the relevant Secured Assets

- (b) The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to the insurance required by clause 6 7(a) [(or where, in the case of any leasehold property, that insurance is

effected by the landlord, such evidence of insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease)]

- (c) The Borrower shall, if requested by the Lender, procure that [a note of the Lender's interest is endorsed upon each insurance policy maintained by it or any person on its behalf in accordance with clause 6 7(a) and that the terms of each such insurance policy require the insurer not to invalidate the policy as against the Lender by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Lender

#### **6 8 Insurance premiums**

The Borrower shall

- (a) promptly pay all premiums in respect of each insurance policy maintained by it in accordance with clause 6 7(a) and do all other things necessary to keep that policy in full force and effect, and
- (b) (if the Lender so requires) produce to, or deposit with, the Lender the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with clause 6 7(a)

#### **6 9 No invalidation of insurance**

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with clause 6 7(a)

#### **6 10 Proceeds of insurance policies**

All monies received or receivable by the Borrower under any insurance policy maintained by it in accordance with clause 6 7(a) (including all monies received or receivable by it under any Insurance Policy) at any time (whether or not the security constituted by this deed has become enforceable) shall:

- (a) immediately be paid to the Lender or into a Designated Account,
- (b) if they are not paid directly to the Lender by the insurers, be held by the Borrower as trustee of the same for the benefit of the Lender (and the Borrower shall account for them to the Lender), and
- (c) at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities

#### **6 11 Notices to be given by the Borrower**

The Borrower shall

- (a) on the execution of this deed and if applicable as so requested by the Lender from time to time
  - (i) give notice to each counterparty to any Relevant Agreement in the form set out in Part 1 of Schedule 1, and
  - (ii) procure that each counterparty promptly provides to the Lender [within five Business Days] an acknowledgement of the notice in the form set out in Part 2 of Schedule 1;
- (b) on the execution of this deed and as so requested by the Lender from time to time
  - (i) give notice to each insurer under an Insurance Policy and
  - (ii) procure that each insurer promptly provides to the Lender [within five Business Days] an acknowledgement of the notice and
- (c) on the execution of this deed and as so requested by the Lender from time to time
  - (i) give notice to each bank, financial institution or other person (other than the Lender) with whom the Borrower holds an account (including each Designated Account) and
  - (ii) procure that each such bank, financial institution or other person promptly provides to the Lender [within five Business Days] an acknowledgement of the notice

## **6 12 Information**

The Borrower shall

- (a) give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require;
- (b) permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice, and
- (c) promptly notify the Lender in writing of any action, claim or demand made by or against it in connection with any Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim or demand, together with, in each case, the Borrower's proposals for settling, liquidating, compounding or contesting any such action, claim or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

## **6 13 Payment of outgoings**

The Borrower shall promptly pay all (if any) taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Lender

**6 14 Appointment of accountants**

- (a) The Borrower shall
  - (i) at its own cost, if at any time so required by the Lender, appoint an accountant or firm of accountants nominated by the Lender to investigate the financial affairs of the Borrower and report to the Lender, and
  - (ii) co-operate fully with any accountants so appointed and immediately provide those accountants with all information requested
- (b) The Borrower authorises the Lender to make an appointment as it shall think fit at any time, without further authority from the Borrower. In every case, the Borrower shall pay, or reimburse the Lender for, the fees and expenses of those accountants

**7. EQUIPMENT COVENANTS**

**7 1 Maintenance of Equipment**

The Borrower shall

- (a) maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules,
- (b) at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value, and
- (c) not permit any Equipment to be
  - (i) used or handled other than by properly qualified and trained persons, or
  - (ii) overloaded or used for any purpose for which it is not designed or reasonably suitable

**7 2 Payment of Equipment taxes**

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

### **7 3 Notice of charge**

#### **The Borrower**

- (a) shall, if so requested by the Lender, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording.

"NOTICE OF CHARGE

This [DESCRIBE ITEM] and all additions to it [and ancillary equipment] are subject to a fixed charge dated [DATE] in favour of [LENDER]."

- (b) shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 7 3(a)

## **8. RELEVANT AGREEMENTS COVENANTS**

### **8 1 Relevant Agreements**

- (a) The Borrower shall, unless the Lender agrees otherwise in writing, comply with the terms of any Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets (other than the Insurance Policies)
- (b) The Borrower shall not, unless the Lender agrees otherwise in writing
  - (i) amend or vary or agree to any change in, or waive any requirement of,
  - (ii) settle, compromise, terminate, rescind or discharge (except by performance), or
  - (iii) abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty to a Relevant Agreement or other person in connection with,

any Relevant Agreement or any other document, agreement or arrangement comprising the Secured Assets

## **9 POWERS OF THE LENDER**

### **9 1 Power to remedy**

- (a) The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed
- (b) The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose

- (c) Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 16.1

**9.2 Exercise of rights**

- (a) The rights of the Lender under clause 9.1 are without prejudice to any other rights of the Lender under this deed.
- (b) The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession

**9.3 Power to dispose of chattels**

- (a) At any time after the security constituted by this deed has become enforceable, the Lender or any Receiver may, as agent for the Borrower, dispose of any chattels or produce found on any Property
- (b) Without prejudice to any obligation to account for the proceeds of any disposal made under clause 9.3(a), the Borrower shall indemnify the Lender and any Receiver against any liability arising from any disposal made under clause 9.3(a)

**9.4 Lender has Receiver's powers**

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

**9.5 Conversion of currency**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 9.5) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit
- (b) Any such conversion shall be effected at the then prevailing spot selling rate of exchange for such other currency against the existing currency
- (c) Each reference in this clause 9.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency

**9 6 New accounts**

- (a) If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Borrower in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 9 6(a), then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

**9 7 Indulgence**

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

**9 8 Appointment of an Administrator**

- (a) The Lender may, without notice to the Borrower, appoint any one or more persons to be an Administrator of the Borrower pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.
- (b) Any appointment under this clause 9 8 shall
  - (i) be in writing signed by a duly authorised signatory of the Lender, and
  - (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (c) The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 9 8 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

**9 9 Further advances**

The Lender covenants with the Borrower that it shall perform its obligations to make advances under the Facility Agreement (including any obligation to make available further advances)

**10. WHEN SECURITY BECOMES ENFORCEABLE**

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

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

**10.2 Discretion**

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

**11. ENFORCEMENT OF SECURITY**

**11.1 Enforcement powers**

- (a) The power of sale shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this deed, but the Lender shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 10.1
- (b) At any time after the Lender has demanded payment of the Secured Liabilities or if the Borrower defaults in the performance of its obligations under this deed or the Facility Agreement, the Borrower will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Borrower for, or by any reason of, that entry

**11.2 Access on enforcement**

- (a) At any time after the Lender has demanded payment of the Secured Liabilities or if the Borrower defaults in the performance of its obligations under this deed or the Facility Agreement, the Borrower will allow the



Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Borrower for, or by any reason of, that entry

- (b) At all times, the Borrower must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 11.1(b) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same

### **11.3 Prior Security**

At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Lender may

- (a) redeem that or any other prior Security,
- (b) procure the transfer of that Security to it, and
- (c) settle and pass any account of the holder of any prior Security

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Lender, be due from the Borrower to the Lender on current account and shall bear interest [at the default rate of interest specified in the Facility Agreement] and be secured as part of the Secured Liabilities

### **11.4 Protection of third parties**

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

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged,
- (b) whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable, or
- (c) how any money paid to the Lender, any Receiver or any Delegate is to be applied

### **11.5 Privileges**

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

**11.6 No liability as mortgagee in possession**

Neither the Lender, any Receiver, any Delegate nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such

**11.7 Conclusive discharge to purchasers**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

**11.8 Right of appropriation**

(a) To the extent that

- (i) the Secured Assets constitute Financial Collateral; and
- (ii) this deed and the obligations of the Borrower under it constitute a Security Financial Collateral Arrangement,

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

- (b) The value of any Secured Assets appropriated in accordance with this clause shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Lender may select (including independent valuation)
- (c) The Borrower agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations

**12. RECEIVER**

**12.1 Appointment**

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

**12 2 Removal**

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

**12 3 Remuneration**

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

**12 4 Power of appointment additional to statutory powers**

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

**12 5 Power of appointment exercisable despite prior appointments**

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

**12 6 Agent of the Borrower**

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

### **13. POWERS OF RECEIVER**

#### **13.1 General**

- (a) Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in this clause
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver
- (c) Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Borrower, the directors of the Borrower (in the case of the power contained in clause 13.14) or himself

#### **13.2 Employ personnel and advisors**

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

#### **13.3 Make VAT elections**

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

#### **13.4 Remuneration**

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

#### **13.5 Realise Secured Assets**

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

#### **13.6 Manage or reconstruct the Borrower's business**

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

**13 7    Dispose of Secured Assets**

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

**13 8    Sever fixtures and fittings**

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

**13 9    Sell Book Debts**

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

**13 10    Valid receipts**

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

**13 11    Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person that he may think expedient

**13 12    Bring proceedings**

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

**13 13    Improve the Equipment**

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

**13 14 Make calls on Borrower members**

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

**13 15 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 16, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed

**13 16 Borrow**

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

**13 17 Redeem prior Security**

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

**13 18 Delegation**

A Receiver may delegate his powers in accordance with this deed

**13 19 Absolute beneficial owner**

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

**13 20 Incidental powers**

A Receiver may do any other acts and things

- (a) that he may consider desirable or necessary for realising any of the Secured Assets,
- (b) that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law, or
- (c) that he lawfully may or can do as agent for the Borrower

**14. DELEGATION**

**14 1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 18 1)

**14 2 Terms**

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

**14 3 Liability**

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

**15. APPLICATION OF PROCEEDS**

**15 1 Order of application of proceeds**

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

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

- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines, and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it

## **15.2 Appropriation**

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

## **15.3 Suspense account**

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

- (a) may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account,
- (b) shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower, and
- (c) may be held in that account for so long as the Lender, Receiver or Delegate thinks fit

## **16. COSTS AND INDEMNITY**

### **16.1 Costs**

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

- (a) this deed or the Secured Assets,
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed, or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities,

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



**16 2 Indemnity**

The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets,
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed, or
- (c) any default or delay by the Borrower in performing any of its obligations under this deed

Any past or present employee or agent may enforce the terms of this clause 16 2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999

**17. FURTHER ASSURANCE**

**17 1 Further assurance**

The Borrower shall, at its own expense, take whatever action the Lender or any Receiver may reasonably require for

- (a) creating, perfecting or protecting the security intended to be created by this deed,
- (b) facilitating the realisation of any Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

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

**18 POWER OF ATTORNEY**

**18 1 Appointment of attorneys**

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

- (a) the Borrower is required to execute and do under this deed, or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate

**18 2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 18 1

**19. RELEASE**

Subject to clause 26 3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to

- (a) release the Secured Assets from the security constituted by this deed, and
- (b) reassign the Secured Assets to the Borrower

**20. ASSIGNMENT AND TRANSFER**

**20 1 Assignment by Lender**

- (a) At any time, without the consent of the Borrower, the Lender may assign or transfer any or all of its rights and obligations under this deed
- (b) The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Secured Assets and this deed that the Lender considers appropriate

**20 2 Assignment by Borrower**

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

**21. SET-OFF**

**21 1 Lender's right of set-off**

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 21 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

**21.2 No obligation to set off**

The Lender is not obliged to exercise its rights under clause 21.1. If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

**22. AMENDMENTS, WAIVERS AND CONSENTS**

**22.1 Amendments**

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

**22.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

**22.3 Rights and remedies**

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

**23. SEVERANCE**

**23.1 Severance**

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

**24. COUNTERPARTS**

**24.1 Counterparts**

- (a) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- (b) Transmission of an executed counterpart of this deed (but for the avoidance of doubt not just a signature page) by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- (c) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**25. THIRD PARTY RIGHTS**

**25.1 Third party rights**

- (a) Except as expressly provided in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- (b) The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

**26. FURTHER PROVISIONS**

**26.1 Independent security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities.

at any time No prior security held by the Lender over the whole or any part of the Secured Assets shall merge in the security created by this deed

**26.2 Continuing security**

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

**26.3 Discharge conditional**

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

- (a) the Lender or its nominee may retain this deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund, and
- (b) the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred

**26.4 Certificates**

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower under this deed [and the Facility Agreement] shall be, in the absence of any manifest error, conclusive evidence of the amount due

**26.5 Consolidation**

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

**27. NOTICES**

**27.1 Delivery**

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

- (a) in writing,
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax, and
- (c) sent to
  - (i) the Borrower at  
[ADDRESS]  
Fax [NUMBER]  
Attention [NAME]
  - (ii) the Lender at.  
[ADDRESS]  
Fax [NUMBER]  
Attention [NAME]

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

#### **27.2 Receipt by Borrower**

Any notice or other communication that the Lender gives to the Borrower shall be deemed to have been received

- (a) if delivered by hand, at the time it is left at the relevant address,
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting, and
- (c) if sent by fax, when received in legible form

A notice or other communication given as described in clause 27.2(a) or clause 27.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day

#### **27.3 Receipt by Lender**

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

#### **27.4 Service of proceedings**

This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

**27.5 No notice by e-mail**

A notice or other communication given under or in connection with this deed is not valid if sent by e-mail

**28. GOVERNING LAW AND JURISDICTION**

**28.1 Governing law**

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

**28.2 Jurisdiction**

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

**28.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 28.2 being served on it in accordance with the provisions of this deed relating to service of notices Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law

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

## **Schedule 1 Notice and acknowledgement - Relevant Agreement**

### **Part 1. Form of notice**

*[On the letterhead of the Borrower]*

[NAME OF COUNTERPARTY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [BORROWER] and [LENDER]**

We refer to the [DESCRIBE RELEVANT AGREEMENT] (Contract)

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have [charged **OR** assigned, by way of security,] to [LENDER] (Lender) all our rights in respect of the Contract

We confirm that

- We will remain liable under the Contract to perform all the obligations assumed by us under the Contract
- None of the Lender, any delegate appointed by the Lender or any receiver will at any time be under any obligation or liability to you under or in respect of the Contract

Neither the Debenture nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Contract

Subject to the above, we will remain entitled to exercise all our rights, powers and discretions under the Contract and you may continue to deal with us in relation to the Contract and give notices under the Contract to us unless and until you receive written notice to the contrary from the Lender. Thereafter, all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Lender or as it directs and we will cease to have any right to deal with you in relation to the Contract and you must deal only with the Lender

Please note that we have agreed that we will not amend or waive any provision of or terminate the Contract without the prior written consent of the Lender



The instructions in this notice may only be revoked or amended with the prior written consent of the Lender

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Lender at [ADDRESS OF LENDER], with a copy to us

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

Yours faithfully,

[NAME OF BORROWER]

## **Part 2. Form of acknowledgement**

*[On the letterhead of the counterparty]*

[NAME OF LENDER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [BORROWER] and [LENDER]**

We confirm receipt from [BORROWER] (Borrower) of a notice (Notice) dated [DATE] of [a charge **OR** an assignment, by way of security,] of all the Borrower's rights under [DESCRIBE RELEVANT AGREEMENT] (Contract)

[Terms defined in the Notice shall have the same meaning when used in this acknowledgement ]

We confirm that

- We accept the confirmations and instructions contained in the Notice and agree to comply with the Notice
- There has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract

- We will not cancel, avoid, release or otherwise allow the Contract to lapse without giving the Lender at least 30 days' prior written notice
- We have not, as at the date of this acknowledgement, received notice that the Borrower has assigned its rights under the Contract to a third party, or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party
- The Lender will not in any circumstances have any liability in relation to the Contract
- The Contract shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender

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

Yours faithfully,

[COUNTERPARTY]

Executed as a deed by BARRPRESS  
LIMITED acting by COLIN  
PEMBERTON, a director, in the  
presence of

*C. Pemberton.*  
COLIN PEMBERTON  
Director

Signed *D. E. Lyne.*  
Name *D. E. LYNE*

Address *TALL TREES, NEW RD, TONRETON, CONGLETON*  
*CHES. CW12 4RX*  
Occupation *RETIRED.*

Executed as a deed by COLIN  
PEMBERTON acting as Trustee of  
BARRPRESS LIMITED SSAS  
In the presence of

*C. Pemberton.*  
COLIN PEMBERTON  
Trustee

Signed *D. E. Lyne.*  
Name *D. E. LYNE.*

Address *TALL TREES, NEW RD, TONRETON, CONGLETON*  
*CHES, CW12 4RX.*  
Occupation *RETIRED.*

Executed as a deed by  
acting as Trustee of  
BARRPRES LIMITED SSAS  
in the presence of

*NC*  
Trustee

Signed

Name

Address

Occupation