



**Registration of a Charge**

Company name: **1860 GEL LIMITED**

Company number: **10382395**

Received for Electronic Filing: **05/12/2016**



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**Details of Charge**

Date of creation: **30/11/2016**

Charge code: **1038 2395 0001**

Persons entitled: **POSITIVE CASHFLOW FINANCE LTD**

Brief description: **I. ALL PRESENT AND FUTURE FREEHOLD AND LEASEHOLD PROPERTY (INCLUDING, WITHOUT LIMITATION, THE PROPERTY SPECIFIED IN THE SCHEDULE) AND ALL LIENS, CHARGES, OPTIONS, AGREEMENTS, RIGHTS AND INTERESTS IN OR OVER LAND OR THE PROCEEDS OF SALE OF LAND AND ALL BUILDINGS, FIXTURES (INCLUDING TRADE FIXTURES) AND FIXED PLANT AND MACHINERY FOR THE TIME BEING ON SUCH PROPERTY OR LAND TOGETHER WITH ALL RIGHTS, EASEMENTS AND PRIVILEGES APPURTENANT TO, OR BENEFITING, THE SAME; II. ALL PATENTS, PATENT APPLICATIONS, TRADE MARKS AND SERVICE MARKS (WHETHER REGISTERED OR NOT), TRADE MARK APPLICATIONS, SERVICE MARK APPLICATIONS TRADE NAMES, REGISTERED DESIGNS, DESIGN RIGHTS, COPYRIGHTS, COMPUTER PROGRAMMES, KNOW-HOW AND TRADE SECRETS AND ALL OTHER INDUSTRIAL OR INTANGIBLE PROPERTY OR RIGHTS AND ALL LICENCES, AGREEMENTS AND ANCILLARY AND CONNECTED RIGHTS RELATING TO, INTELLECTUAL AND INTANGIBLE PROPERTY.**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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## Authentication of Form

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

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## Authentication of Instrument

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

Certified by: **ANN BALDWIN**



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

Company number: 10382395

Charge code: 1038 2395 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th November 2016 and created by 1860 GEL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th December 2016 .

Given at Companies House, Cardiff on 6th December 2016

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 30<sup>th</sup> NOVEMBER 2016

1860 GEL LIMITED (1)  
as Chargor

and

POSITIVE CASHFLOW FINANCE LIMITED (2)  
as Chargee

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DEBENTURE

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THIS DEBENTURE is made as a deed on 30<sup>th</sup> NOVEMBER 2016.

BETWEEN:

- (1) **1860 GEL LIMITED** (Co. Reg. No. 10382395) whose registered office is at 5 Brook Avenue, Swinton, Manchester, M27 5WG (the "Chargor"); and
- (2) **POSITIVE CASHFLOW FINANCE LIMITED** (Co. Reg. No. 06263602) whose registered office is at Castlefield House 48 Liverpool Road, Manchester, M3 4SB ("Positive")

IT IS AGREED as follows:

**1 Definitions and Interpretation**

**1.1 Definitions**

In this Deed, unless the context otherwise requires:

"**Banking Day**" means a day (other than Saturday or Sunday) on which banks are generally open for business in London for dealings in Sterling;

"**Charged Assets**" means all the undertaking, goodwill, property, assets and rights of the Chargor described in clauses 3.1 and 3.2;

"**Clearing Bank**" means NatWest Bank Plc or such other bank as the Chargor and Positive shall from time to time agree;

"**Collateral Instruments**" means negotiable and non-negotiable instruments, guarantees, indemnities and other assurances against financial loss any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any liabilities of any person and includes any document or instrument creating or evidencing an Encumbrance;

"**Debt**" has the meaning ascribed to it in Positive's Standard Conditions of Invoice Finance;

"**Default Rate**" means ten per cent (10%) per annum above the base lending rate for the time being of NatWest Bank Plc;

"**Disposal**" includes any sale, lease, sub-lease, assignment or transfer, the grant of an option or similar right, the grant of any easement, right or privilege, the creation of a trust or other equitable interest in favour of a third party, a sharing or parting with possession or occupation whether by way of licence or otherwise and the granting of access to any other person over any intellectual property, and "dispose" and "disposition" shall be construed accordingly;

"**Encumbrance**" mean any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, trust arrangement or security interest of any kind securing any obligation of any person or any other type of preferential arrangement (including without limitation title transfer and/or retention arrangements having a similar effect) but does not include liens arising in the ordinary course of trading by operation of law and not by way of contract;

"**Enforcement Date**" means the date on which all or any part of the Secured Obligations become due for payment or discharge (whether by demand by Positive or otherwise);

**"Floating Charge Assets"** mean the assets of the Chargor for the time being expressed to be charged by this Deed by way of floating charge pursuant to clause 3.2;

**"Invoice Finance Agreement"** means the agreement subject to Positive's Standard conditions of Invoice Finance made between Positive and the Chargor on or about the date of this Deed (and as may be varied and amended from time to time);

**"Insurances"** means all present and future contracts or policies of insurance (including life policies) in which the Chargor from time to time has an interest;

**"Intellectual Property Rights"** means the assets of the Chargor described in clause 3.1(g);

**Non-Vesting Debts:** all Debts that are intended to, but which do not for any reason, vest absolutely and effectively in Positive under the Invoice Finance Agreement together with all rights related to such Debts;

**Other Debts:** all present and future book and other debts of the Chargor, all moneys from time to time standing to the credit of any account of the Chargor and all moneys whether arising under contracts or in any other manner due, owing or incurred to the Chargor (and including owing to Positive) other than:

- (i) Debts absolutely and effectively vested in Positive under the Invoice Finance Agreement; and
- (ii) Non-Vesting Debts

**"Properties"** means the assets of the Chargor described in clause 3.1(a) and all present and future heritable and leasehold property of the Chargor situate in Scotland (including, without limitation, the properties specified in the Schedule) and all liens, charges, options, agreements, rights and interests in or over land or the proceeds of sale of land situate in Scotland and all other immovable property of the Chargor and all buildings, fixtures (including trade fixtures) and fixed plant and machinery for the time being on such property or land together with all rights, easements, servitudes and privileges appurtenant to, or benefitting, the same, in all cases both present and future;

**"Receiver"** means any one or more receivers and/or managers appointed by Positive pursuant to this Deed in respect of the Chargor or over all or any of the Charged Assets;

**"Secured Obligations"** means all monies, obligations and liabilities covenanted to be paid or discharged by the chargor under or pursuant to clause 2;

**"Securities"** means the assets of the Chargor described in clause 3.1(c);

**"Sterling" or "£"** means the lawful currency for the time being of the United Kingdom; and

**"Subsidiary"** means a subsidiary within the meaning of section 1159 Companies Act 2006 and a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

## 1.2 Successors and assigns

The expressions **"Positive"** and **"Chargor"** include where the context admits, their respective successors in title and, in the case of Positive, its transferees and assignees, whether immediate or derivative.

### 1.3 Headings

Clause headings and the contents page are inserted for convenience of reference only and shall be ignored in the interpretation of this Deed.

### 1.4 Construction of certain terms

In this Deed, unless the context otherwise requires:

- (a) references to clauses are to be construed as references to the clauses of this Deed;
- (b) references to (or to specific provisions of) this Deed, or any other document shall be construed as references to this Deed, that provision or that document as in force for the time being and as amended, novated, supplemented, varied, renewed, extended or replaced in accordance with the terms of such document, as the case may be, with the agreement of the relevant parties and (where such consent is, by the terms of this Deed, or the relevant document, required to be obtained as a condition to such amendment, novation, supplement variation, renewal, extension or replacement being permitted) the prior written consent of Positive;
- (c) references to a "regulation" include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any agency, authority, central bank or government department or any self-regulatory or other national or supra national authority;
- (d) words importing the plural shall include the singular and vice versa;
- (e) references to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated body of persons or any State or any agency of such State;
- (f) references to a "guarantee" include references to an indemnity or other assurance against financial loss including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any indebtedness; and
- (g) references to any enactment or statutory provision shall include subordinate legislation and European Union regulations and directives and shall be construed as references to such enactment or provision as re-enacted, amended, replaced, consolidated or extended from time to time.

### 1.5 Effect as a deed

This Deed is intended to take effect as a deed notwithstanding that Positive may have executed it under hand only.

## 2 Secured Obligations

### 2.1 Covenant to pay

The Chargor covenants that it will on demand pay to Positive all monies and discharge all obligations and liabilities now or at any time after the date of this Deed due, owing or incurred by it to Positive in each case when the same become due for payment or discharge whether by acceleration or otherwise, and whether such monies, obligations or

liabilities are express or implied, present, future or contingent, joint or several, incurred as principal or surety, originally owing to Positive or purchased or otherwise acquired by it, denominated in Sterling or in any other currency, incurred on any account or in any other manner.

## 2.2 Interest

The Chargor agrees to pay interest on each amount demanded of it under this Deed from the date of such demand until payment (as well after as before judgment) at the Default Rate calculated on a day to day basis. Such interest shall be compounded at the end of each period determined for this purpose by Positive in the event of it not being paid when demanded, but without prejudice to Positive's rights to require payment of such interest.

## 2.3 No set-off or counterclaim

All payments to be made by the Chargor under this Deed shall be made in full, without any set-off or counterclaim and free and clear of any deductions or withholdings, in Sterling and on the due date to such account as Positive may from time to time specify. If the Chargor is required by law to make a tax deduction, the sum payable by the Chargor shall be increased to the extent necessary to ensure that, after the making of such deduction, the recipient of such sum receives and retains a net sum equal to the sum which it would have received and retained had no such deduction been made or required to be made.

## 3 Charges

### 3.1 Fixed Charges

The Chargor charges to Positive with full title guarantee and by way of first fixed charge (and as regards all those parts of the freehold and leasehold property in England and Wales now vested in the Chargor by way of first legal mortgage) as a continuing security for the payment and discharge of the Secured Obligations the following assets, both present and future, from time to time owned by the Chargor or in which the Chargor may from time to time have an interest:

#### (a) Properties

all present and future freehold and leasehold property (including, without limitation, the property specified in the Schedule) and all liens, charges, options, agreements, rights and interests in or over land or the proceeds of sale of land and all buildings, fixtures (including trade fixtures) and fixed plant and machinery for the time being on such property or land together with all rights, easements and privileges appurtenant to, or benefiting, the same;

#### (b) Plant and machinery

all plant, machinery, vehicles, computers and office and other equipment and the benefit of all contracts and warranties relating to the same;

#### (c) Securities

all stocks, shares, bonds and securities of any kind whether marketable or otherwise and all other interests (including, but not limited to, loan capital) in any person, including all allotments, rights, benefits and advantages 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 of such Securities;

(d) Non-Vesting Debts and Other Debts

all Non-Vesting Debts and all Other Debts together with the full benefit of any Encumbrances, Collateral Instruments and any other rights relating to such Encumbrances or Collateral Instruments (including, without limitation, reservations of proprietary rights, rights of tracing and unpaid vendor's liens and associated rights);

(e) Insurances

all monies from time to time payable to the Chargor under or pursuant to the Insurances including, without limitation, the refund of any premiums;

(f) Goodwill and uncalled capital

all goodwill and uncalled capital; and

(g) Intellectual Property Rights

all patents, patent applications, trade marks and service marks (whether registered or not), trade mark applications, service mark applications trade names, registered designs, design rights, copyrights, computer programmes, know-how and trade secrets and all other industrial or intangible property or rights and all licences, agreements and ancillary and connected rights relating to, intellectual and intangible property.

3.2 Floating Charge

The Chargor charges to Positive with full title guarantee and by way of first floating charge as a continuing security for the payment and discharge of the Secured Obligations its undertaking and all its property, assets and rights both present and future, other than any property or assets from time to time effectively charged by way of legal mortgage or fixed charge pursuant to 3.1 or otherwise pursuant to this Deed but including but not including (without limitation) any of its property and assets situated in Scotland.

3.3 Automatic conversion of floating charge

Notwithstanding anything expressed or implied in this Deed, upon occurrence of any of the following events:

- (a) without the prior written consent of Positive, a meeting is convened by the Chargor for the purpose of passing any resolution to purchase, reduce or redeem any of its share capital; or
- (b) any petition is presented or other step is taken for the purpose of winding up the Chargor or an order is made or resolution passed for the winding-up of the Chargor or a notice is issued convening a meeting for the purpose of passing any such resolution; or
- (c) any application is made or other step is taken for the purpose of the appointment of an administrator of the Chargor (or Positive believes, acting reasonably, that any such application or other step is imminent) or an administration order is made in relation to the Chargor;

(d) the Chargor creates or attempts to create an Encumbrance over any of its assets; or

(e) the Chargor ceases to carry on business or to be a going concern,

the floating charge created by clause 3.2 shall automatically without notice be converted into a fixed charge.

#### 3.4 Conversion of floating charge by notice

Without prejudice to clause 3.4, Positive shall be entitled at any time on or after the Enforcement Date by giving notice in writing to that effect to the Chargor to convert the floating charge over all or any part of the Floating Charge Assets into a fixed charge as regards the assets specified in such notice.

#### 3.5 H.M. Land Registry

The Chargor:

(a) in relation to each register of title of any present and future freehold or leasehold land of the Chargor which is charged to Positive under this Deed or pursuant to clause 6 (*Further Assurance*), consents to Positive (or its solicitors) at any time):

(i) submitting a form RX1 (*application to register a restriction*) in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date] in favour of Positive Cashflow Finance Limited, referred to the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer "; and

(b) covenants to submit an application to the appropriate Land Registry for the first registration of any unregistered freehold or leasehold land in England and Wales mortgaged by clause 3.1(a) (*Fixed Charges*) at its own expense, immediately following its execution of this Deed.

#### 4 Set-off

The Chargor agrees that Positive may at any time without notice, combine or consolidate all or any of its then existing accounts and set off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of its Secured Obligations which, to the extent not then payable, shall automatically become payable to the extent necessary to effect such set-off.

#### 5 Non-Vesting Debts and Other Debts

The Chargor undertakes with Positive that during the continuance of this security the Chargor will:

(a) get in and realise the Other Debts in the ordinary course of its business in a proper and efficient manner and pay on receipt into a current account or a separate designated account (as Positive may require) of the Chargor with the Clearing Bank all monies which it may receive in respect of the Other Debts and

pay or otherwise deal with such monies standing in such account in accordance with any directions from time to time given in writing by Positive and not, without the prior written consent of Positive, seek to compromise compound vary or discharge, postpone, release or otherwise deal with any of the Other Debts or waive its right of action in connection with such Other Debts or do anything which may delay or prejudice the full recovery of such Other Debts.

- (b) Prior to any demand for the payment or discharge of the Secured Obligations being made and in the absence of any directions from Positive, any monies received by the Chargor and paid into such account in respect of the Other Debts shall upon such payment stand released from the fixed charge on such Other Debts created by this Deed. Any such release shall in no respects derogate from the subsistence and continuation of the fixed charge on all other Other Debts for the time being outstanding;
- (c) if called upon to do so by Positive execute a legal assignment of the Other Debts in favour of Positive in such terms as Positive may require and give notice of such legal assignment to the debtors from whom the Other Debts are due, owing or incurred and take such other steps as Positive may require to perfect such legal assignment;
- (d) deal with the Other Debts in accordance with any directions from time to time given in writing by Positive and in default of and subject to any such direction deal with the same only in ordinary course of getting in and realising the same (but not sell assign factor or discount the same in any way);
- (e) give notice to the Clearing Bank of the fixed charge on the Other Debts created by this Deed require the Clearing Bank to agree with Positive to waive any rights of set off which it may have in respect of the Other Debts and permit the Clearing Bank to furnish directly to Positive from time to time upon request full statements and particulars of all the Chargor's accounts with the Clearing Bank;
- (f) not, without the prior written consent of Positive, seek to compromise compound, vary discharge, postpone or release any of the Other Debts or waive its rights of action in connection therewith or do or omit anything which may delay or prejudice the full recovery thereof; and
- (g) only deal with the Non-Vesting Debts as if they were Debts purchased by Positive under the Invoice Finance Agreement and in particular will not bank or deal with any payments (by whatever method) in respect of the Non-Vesting Debts except by dealing with them in accordance with the Invoice Finance Agreement.

## **6 Further Assurance**

The Chargor shall if and when at any time required by Positive execute such Encumbrances and assurances in favour of Positive (prepared by Positive, in form and substance satisfactory to Positive, at the expense of the Chargor) and do all such acts and things as Positive shall from time to time require over or in relation to all or any of the charged Assets to secure the Secured Obligations or to perfect or protect the security intended to be created by this Deed over all or any part of the Charged Assets or to facilitate the realisation of the same.

## **7 Undertakings**

7.1 The Chargor shall not do or agree to do any of the following without the prior written consent of Positive:

- (a) create or permit to subsist any Encumbrance on any Charged Assets except an Encumbrance which is permitted by the Invoice Finance Agreement;
- (b) sell, transfer, lease, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not) the whole or any part of its interest in any Charged Asset except for the sale at full market value of stock in trade in the usual course of trading as conducted by the Chargor at the date of this deed.

7.2 The Chargor shall:

- (a) permit Positive (or its designated representatives) on reasonable written notice:
  - (i) access during normal office hours to any documents and records relating to the Charged Assets; and
  - (ii) to inspect, take extracts from, and make photocopies of, the same, and to provide (at the expense of the Chargor), such clerical and other assistance which Positive may reasonably require to do this;
- (b) notify Positive of every notice, order, application, requirement or proposal given or made by any competent authority:
  - (i) in relation to any Charged Assets, immediately on receipt; and
  - (ii) within 14 days of receipt of every notice, order, application, requirement or proposal given or made in relation to any Charged Assets,and (if required by Positive) immediately provide it with a copy of the same and either (A) comply with such notice, order, application, requirement or proposal or (B) make such objections to the same as Positive may require or approve;
- (c) duly and punctually pay all rates, rents, taxes and other outgoings owed by it in respect of the Charged Assets;
- (d) in addition to any provisions of the Invoice Finance Agreement or this Deed relating to specific Charged Assets:
  - (i) comply in all material respects with all obligations in relation to the Charged Assets under any present or future law, regulation, order or instrument or under any bye-laws, regulations or requirements of any competent authority or other approvals, licences or consents;
  - (ii) comply with all material covenants and obligations affecting the Charged Assets (or their manner of use);
  - (iii) not, except with the prior written consent of Positive, enter into any onerous or restrictive obligation affecting any Charged Asset;
  - (iv) provide Positive with all information which it may reasonably request in relation to the Charged Assets; and

- (v) not do, cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any Charged Asset (or make any omission which has such an effect).

7.3 The Chargor shall, immediately upon a request by Positive by way of security for the Secured Obligations:

- (a) deposit with Positive or, as Positive may direct, all certificates and other documents of title or evidence of ownership to all or any of the Securities; and
- (b) execute and deliver to Positive pre-stamped instruments of transfer in respect of all or any of the Securities (executed in blank and left undated) and/or such other documents as Positive shall require to enable it (or its nominees) to be registered as the owner of or otherwise to acquire a legal title to all or any of the Securities (or to pass legal title to any purchaser).

7.4 Until the Enforcement Date, the Chargor shall be entitled to:

- (a) receive and retain all dividends, distributions and other monies paid on or derived from its Securities; and
- (b) exercise all voting and other rights and powers attaching to its Securities, provided that it must not do so in a manner which (A) has the effect of changing the terms of such Securities (or any class of them) or of any Securities Rights or (B) which is prejudicial to the interests of Positive.

At any time following the occurrence of an Event of Default which is continuing, Positive may complete the instrument(s) of transfer for all or any Securities on behalf of the Chargor in favour of itself or such other person as it may select.

7.5 Unless Positive is of the opinion that the relevant Intellectual Property Rights are of minor importance to the Chargor, the Chargor shall:

- (a) do all acts as are reasonably practicable to maintain, protect and safeguard (including, without limitation, registration with all relevant authorities) its Intellectual Property Rights and not discontinue the use of any of its Intellectual Property Rights; and
- (b) take all such reasonable steps, including the commencement of legal proceedings, as may be necessary to safeguard and maintain the validity, reputation, integrity, registration or subsistence of its Intellectual Property Rights.

7.6 At all times during the continuance of this Deed, the Chargor undertakes:

- (a) to keep all such items included in the Properties as are tangible in a good state of repair and proper working order;
- (b) to keep all items included in the Properties fully insured to their replacement value with an insurer approved by Positive against all risks for which insurance cover is usual in a business of the nature of that carried on by the Chargor and promptly to pay all premiums and other sums payable for this purpose and if so required to produce the receipts for such payments to Positive. In the event that the Chargor fails to pay any insurance premium then Positive may pay such premium or sum and recover it from the Chargor and it will be included in the Secured Obligations;

- (c) to hold on trust for Positive all the rights of the Chargor and any sums received under any such policy of insurance and to keep such sums received separate from the Chargor's own moneys and to pay them to Positive on demand;
- (d) at all times during the continuance of this Deed to comply in all material respects (in so far as it may affect any of the Properties) with all applicable laws and regulations including (without intending to limit) all environmental laws, legislation relating to public health, town & country planning, control and handling of hazardous substances or waste, fire precautions and health and safety at work;
- (e) at all times to promptly pay or cause to be paid and indemnify Positive and any Administrator against all present and future rent, rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever payable in respect of any of the Properties; and
- (f) not to make any structural or material alteration to or to the user of any of its properties included in the Properties or do or permit to be done anything which is a "development" within the meaning of the Town and Country Planning Acts from time to time (or any orders or regulations under such Acts) or do or permit to be done any act, matter or thing where to do so would have a material and adverse effect on the value of any of such properties or on the marketability of any of such Properties.

## **8 Certain Powers of Positive: Enforcement**

### **8.1 Powers on enforcement**

At any time on or after the Enforcement Date or if requested by the Chargor, Positive may, without further notice, without the restrictions contained in section 103 of the Law of Property Act 1925 and whether or not a Receiver or administrator shall have been appointed, exercise all the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this Deed and all the powers and discretions conferred by this Deed on a Receiver either expressly or by reference.

### **8.2 Subsequent Encumbrances**

If Positive receives or is deemed to have received notice of any subsequent Encumbrance affecting the Charged Assets or any part thereof, Positive may open a new account or accounts for the Chargor. If it does not do so then, unless Positive gives express written notice to the contrary to the Chargor, it shall nevertheless be treated as if it had opened a new account or accounts at the time when it received or was deemed to have received such notice and as from that time all payments made by or on behalf of the Chargor to Positive shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount due from the Chargor to Positive.

### **8.3 Statutory power of leasing**

Positive shall have the power to lease and make agreements for leases at a premium or otherwise, to accept surrenders of leases and to grant option on such terms as Positive shall consider expedient and without the need to observe any of the provisions of section 99 and 100 of the Law of Property Act 1925.

### **8.4 Redemption of prior charge**

At any time on or after the Enforcement Date, Positive may pay off any prior ranking Encumbrance over any of the Charged Assets and take a transfer of the benefit of any such prior ranking Encumbrance or redeem the same, and the money so expended by Positive and all costs of the incidental to the transaction incurred by Positive shall be repayable by the Chargor to Positive on demand and shall bear interest at the Default Rate from the date of payment by Positive.

#### **8.5     Appropriations**

Until all amounts which may be or become payable by the Chargor to Positive have been irrevocably paid in full, Positive (or any trustee or agent on its behalf) may without affecting the liability of the Chargor under this Deed:

- (a)     refrain from applying or enforcing any other monies, security or rights held or received by Positive (or any trustee or agent on its behalf) against those accounts; or apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and
- (b)     hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.

#### **8.6     Sales of assets**

The Chargor irrevocably authorises Positive and any Receiver at any time on or after the enforcement Date to sell or concur in selling either by private treaty or at public auction or by the inclusion in any letting, all plant, machinery, fittings and equipment both present and future then or at any time after the Enforcement Date on the Properties or at any other location.

### **9       Appointment of Receiver or administrator**

#### **9.1     Appointment**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to this Debenture. At any time on or after the Enforcement Date or if requested by the Chargor, Positive may (unless precluded by law) appoint any qualified person (or persons) to be a Receiver of all or any part of the Charged Assets or an administrator or administrators of the Chargor, as Positive may choose in its entire discretion. Positive may (subject, where relevant, to Section 45 of the Insolvency Act 1986) remove any Receiver so appointed and appoint another in his place.

#### **9.2     Receiver as agent**

A Receiver shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and for his remuneration.

#### **9.3     Power of Receiver**

A Receiver shall have all powers conferred from time to time on receivers by statute (in the case of powers conferred by the Law of Property Act 1925, without the restrictions contained in section 103 of that Act) and power on behalf of and at the expense of the Chargor (notwithstanding liquidation of the Chargor) to do or omit to do anything which the Chargor could do or omit to do in relation to all or any part of the Charged Assets. In particular (but without limitation) a Receiver shall have power to do all or any of the following acts as and things:

- (a) Take possession: take possession of, collect and get in all or any of the Charged Assets and exercise in respect of the Securities all voting or other powers or rights;
- (b) Carry on business: carry on, manage, develop, reconstruct amalgamate or diversify all or any part of the business of the Chargor or concur in so doing; lease or otherwise acquire and develop or improve properties or other assets without being responsible for loss or damage;
- (c) Borrow money: raise or borrow any money from or incur any other liability to Positive or others on such terms with or without security as he may think fit and so that any such security may be or include a charge on the whole or any part of the Charged Assets ranking in priority to this security or otherwise;
- (d) Dispose of assets: without the restriction imposed by section 103 of the Law of Property Act 1925 or the need to observe any of the provision of Sections 99 and 100 of such Act, dispose of or deal with all or any of the Charged Assets or concur in doing in such manner for such consideration and generally on such terms and conditions as he may think fit with full power to deal with such Charged Assets in the name and on behalf of the Chargor or otherwise and so that covenants and contractual obligations may be granted and assumed in the name of and so as to bind the Chargor (or other the estate owner) if he shall consider it necessary or expedient so to do. Any such disposition may be for such valuable consideration and be payable immediately or by instalments as he shall think fit and so that any consideration received or receivable shall *ipso facto* forthwith be and become charged with the payment of all the Secured Obligations; plant, machinery and other fixtures may be severed and sold separately from the premises containing them and the Receiver may apportion any rent and the performance of any obligations affecting the premises sold without the consent of the Chargor
- (e) Form subsidiaries: promote the formation of companies with a view to the same becoming a Subsidiary of the Chargor and purchasing, leasing licensing or otherwise acquiring interests in all or any of the Charged Assets or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license, or otherwise acquire all or any of the Charged Assets on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;
- (f) Compromise contracts: make any arrangement or compromise or enter into or cancel any contracts which he shall think expedient;
- (g) Repair and maintain assets: make and effect such repairs, renewals and improvements to the Charged Assets or any part thereof as he may think fit and maintain, renew, take out or increase insurances;
- (h) Appoint employees: appoint managers, agents, officers and employees for any of the purposes referred to in this clause 8.3 or to guard or protect the Charged Assets at such salaries and commissions and for such periods and on such terms as he may determine and dismiss the same;
- (i) Make calls: make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital;
- (j) Exercise statutory leasehold powers: without any further consent by or notice to such Chargor exercise for and on behalf of the Chargor all the powers and provisions conferred on a landlord or a tenant by the Landlord and Tenant Acts, the Rent Acts, the Housing Acts or the Agricultural Holdings Act or any other



relevant legislation for the time being in force in any relevant jurisdiction in respect of any part of the Properties but without any obligation to exercise any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;

- (k) Legal proceedings: institute, continue, enforce, defend, settle or discontinue any actions, suits or proceedings in relation to all or any part of the Charged Assets or submit to arbitration as he may think fit;
- (l) Execute documents: sign any document, execute any deed and use the name of such Chargor for any purpose considered by him to be incidental or conducive to any of the matters or powers referred to in this clause 8.3 or to the realisation of the security created by or pursuant to this Deed;
- (m) Insolvency Act powers: do all the acts and things described in schedule 1 to the insolvency Act 1986 as if the words "he" and "him" referred to the Receiver and "company" referred to the Chargor; and
- (n) Other powers: do all such other acts and things as may be considered by him to be incidental or conducive to any of the matters or powers set out above or to the realisation of the security created by or pursuant to this Deed.

#### 9.4 Remuneration

Positive may from time to time determine the remuneration of any Receiver and section 109(6) of the Law of Property Act 1925 shall be varied accordingly. A Receiver shall be entitled to remuneration appropriate to the work and responsibilities involved upon the basis of charging for the time being adopted by the Receiver in accordance with the current practice of his firm.

### 10 Application of Proceeds; Purchasers

#### 10.1 Application of proceeds

All monies received by Positive or by any Receiver shall be applied, after the discharge of the remuneration and expenses of the Receiver and all liabilities having priority to the Secured Obligations, in or towards satisfaction of such of the Secured Obligations and in such order as Positive in its absolute discretion may from time to time conclusively determine, except that Positive may credit the same to a suspense account for so long and in such manner as Positive may from time to time determine and the Receiver may retain the same for such period as he and Positive consider expedient.

#### 10.2 Insurance proceeds

All monies receivable by virtue of any of the Insurances shall be paid to Positive (or if not paid by the insurers directly to Positive shall be held on trust for Positive) and shall at the option of Positive be applied in replacing, restoring or reinstating the property or assets destroyed, damaged or lost (any deficiency being made good by the Chargor) or (except where the relevant Chargor is obligated (as landlord or tenant) to lay out such insurance monies under the provisions of any lease of any of the Charged Assets) in reduction of the Secured Obligations.

#### 10.3 Protection of purchasers

No purchaser or other person shall be bound or concerned to see or enquire whether the right of Positive of any Receiver to exercise any of the powers conferred by this Deed has

arisen or be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of such powers.

## **11 Indemnities; Costs and Expenses**

### **11.1 Enforcement costs**

The Chargor undertakes to Positive to pay on demand all costs, charges and expenses reasonably and properly incurred by Positive or by any Receiver in the enforcement, preservation or attempted preservation of any of the security created by or pursuant to this Deed or any of the Charged Assets on a full indemnity basis, together with interest at the Default Rate from the date on which such costs, charges or expenses are so incurred until the date of payment by the Chargor (both before and after judgment).

11.2 Neither Positive nor any Receiver shall be liable to account as mortgagee or heritable creditor in possession in respect of all or any of the Charged Assets or be liable for any loss upon realisation or for any neglect or default of any nature for which a mortgagee or heritable creditor in possession may be liable as such.

### **11.3 Indemnity from Charged Assets**

Positive and any Receiver, attorney, agent or other person appointed by Positive under this Deed and Positive's officers and employees (each an "Indemnified Party") shall be entitled to be indemnified out of the Charged Assets in respect of all costs, losses, actions, claims, expenses, demands or liabilities whether in contract, tort, delict or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against, any of them at any time relating to or arising directly or indirectly out of or as consequence of anything done or omitted in the exercise or purported exercise of the powers contained in this Deed, any breach by the Chargor of any of its obligations under this Deed or any liability of an Indemnified Party which would not have arisen if this Deed had not been executed.

## **12 Power of Attorney**

### **12.1 Power of attorney**

The Chargor by way of security irrevocably appoints each of Positive and any Receiver severally to be its attorney in its name and on its behalf:

- (a) to execute and complete any documents or instruments which Positive or such Receiver may require for perfecting the title of Positive to the Charged Assets or for vesting the same in Positive, its nominees or any purchaser;
- (b) to sign, execute, seal and deliver and otherwise perfect any further security document referred to in clause 6; and
- (c) otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on Positive or a Receiver under this Deed or which may be deemed expedient by Positive or a Receiver in connection with any exercise of any power under this Deed.

### **12.2 Recovery of Non-Vesting Debts and Other Debts**

Positive and any officer of Positive is irrevocably empowered to receive all Non-Vesting Debts and all Other Debts and on payment to give an effectual discharge for the same and on non payment to take all steps and proceedings either in the name of the Chargor or in the name of Positive for the recovery of any Non-Vesting Debts or Other Debts and also to agree accounts and to make allowances and to give time to any surety. Positive shall have no liability or responsibility of any kind to the Chargor (except as a result of its gross negligence or wilful default) arising out of the exercise or non-exercise of such rights and shall not be obliged to make any enquiry as to the sufficiency of any sums received by it in respect of any Non-Vesting Debts or Other Debts, or to make any claims or take any other action to collect or enforce the same.

### 12.3 Ratification

The Chargor ratifies and confirms and agrees to ratify and confirm all acts and things which any attorney as is mentioned in clause 12.1 shall do or purport to do in the exercise of his powers under such clause.

## 13 Continuing Security and Other Matters

### 13.1 Continuing security

This Deed and the obligations of the Chargor under this Deed shall:

- (a) secure the ultimate balance from time to time owing to Positive by the Chargor and shall be a continuing security notwithstanding any settlement of account or other matter whatsoever; and
- (b) be in addition to (and not merge with or be in any way prejudiced or affected by the existence of) any present future Collateral Instrument, Encumbrance, right or remedy held by or available to Positive or by the same being or becoming wholly or in part void, voidable or unenforceable on any ground or by Positive dealing with the same, or giving time for payment or indulgence or compounding with any other person liable.

### 13.2 Suspense accounts and Appropriation

Any money received by Positive in connection with the Secured Obligations may be placed to the credit of a suspense account with a view to preserving the rights of Positive to prove for the whole of its claims against the Chargor

Positive may apply all payments received in respect of the Secured Obligations in reduction of any part of the Secured Obligations as it thinks fit. Any such appropriation shall override any appropriation by the Chargor.

### 13.3 Collateral Instruments

Positive shall not be obliged to resort to any Collateral Instrument or other means of payment now or after the date of this Deed held by or available to it before enforcing this Deed and no action taken or omitted by Positive in connection with any such Collateral Instrument or other means of payment shall discharge, reduce, prejudice or affect the liability of the Chargor nor shall Positive be obliged to account for any money to other property received or recovered in consequence of any enforcement or realisation of any such Collateral Instrument or other means of payment.

### 13.4 Settlements conditional

Any release, discharge or settlement between the Chargor and Positive shall be conditional upon no security, disposition or payment to Positive by the Chargor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation, administration or insolvency or for any other reason and, if such condition shall not be fulfilled, Positive shall be entitled to enforce this Deed subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

## **14     Miscellaneous**

### **14.1   Remedies cumulative**

The obligations of the Chargor under this Deed will not be affected by any act, omission or thing which, but for this provision would reduce, release or prejudice any of its obligations under this Deed (whether or not known to it or Positive). This includes:

- (a) any time or waiver granted to, or composition with, any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, any person;
- (d) any non-presentation, non-observance of any formality or other requirements in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity, lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any document or security;
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any document or security or the failure by any person to enter into or be bound by any document or security; or
- (h) any insolvency or similar proceedings.

### **14.2   Immediate recourse**

The Chargor waives any rights it may have of first requiring Positive (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any other person before claiming from the Chargor under this Deed.

### **14.3   Statutory power of leasing**

During the continuance of this security the statutory and any other powers of leasing letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrender of leases or tenancies shall not be exercisable by the Chargor in relation to all or any part of the charged Assets or any part.

14.4 Successors and assigns

Any appointment or removal of a Receiver under clause 8 and any consents under this Deed may be made or given in writing signed or sealed by any successors or assigns of Positive and accordingly the Chargor irrevocably appoints each successor and assign of Positive to be its attorney in the terms and for the purposes set out in clause 11.

14.5 Consolidation

Section 93 of the Law of Property Act 1925 shall not apply to the security created by this Deed or to any security given to Positive pursuant to this Deed.

14.6 Reorganisation of Positive

This Deed shall remain binding on the Chargor notwithstanding any change in the constitution of Positive or its absorption in, or amalgamation with, or the acquisition of all part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind.

14.7 Unfettered discretion

Any liability or power which may be exercised or any determination which may be made under this Deed by Positive may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons in respect of such liability, power or determination.

14.8 Provisions severable

Each of the provisions of this Deed is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired by such invalidity, illegality or unenforceability.

14.9 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of the Law of Property (Miscellaneous Provisions) Act 1989 any provisions of the Invoice Finance Agreement or any other deed or agreement for the time being in force between Positive and the Chargor relating to any disposition of an interest in land shall be deemed to be incorporated in this Deed.

14.10 Third Party Rights

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no rights under the Contracts (Right of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of this Deed, the consent of any person who is not a party to this Deed is not required to rescind or vary this Deed at any time.

14.11 Retention

Positive shall be entitled to retain this Deed after as well as before the payment and discharge of all the Secured Obligations for such period as Positive may determine.

**15     Changes to the Parties**

The Chargor may not assign any of its rights under this Deed. Positive may assign or transfer all or any part of its rights under this Deed. The Chargor shall, immediately upon being requested to do so by Positive, enter into such documents as may be necessary or desirable to effect such assignment or transfer.

**16     Notices**

**16.1   Mode of Service**

Any notice or demand for payment by Positive under this Deed shall, without prejudice to any other effective mode of making the same, be deemed to have been properly served on the Chargor if served on any one of its directors or on its secretary or delivered or sent by first class pre-paid letter or facsimile to the Chargor at its registered office or any of its principal places of business for the time being.

**16.2   Time of service**

Any such notice or demand shall be deemed to have been served, subject as otherwise provided in this Deed, in the case of a letter at the time of delivery when delivered personally or 2 days after it has been put into the post and, in the case of facsimile, when a complete and legible copy is received by the addressee (provided that, if the date of despatch is not a Banking Day or if the time of despatch is after the normal close of business of the addressee, it shall be deemed to have been received at the opening of business on the following Banking Day).

**17     Counterparts**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures (and seals, if any) on the counterparts were on a single copy of this Deed.

**18     Law and Jurisdiction**

This Deed shall be governed by and shall be construed in accordance with English Law and the Chargor submits to the jurisdiction of the English courts.

IN WITNESS whereof this Deed has been executed and delivered as a deed on the date stated at the beginning of this Deed.

**The Schedule**

**Properties**

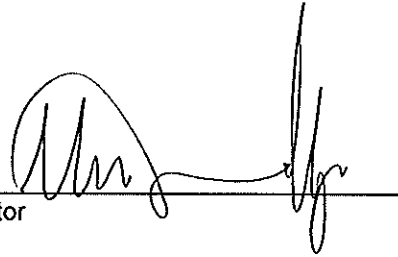
**Address**

**Country/District/London Borough**

**Title Number  
or Root of Title**

EXECUTED and DELIVERED as a DEED  
By 1860 GEL LIMITED  
acting by a Director in the presence of:

)  
)  
) Director



Witness Signature X. R. B. Berry

Witness Name LINUS BERRY

Address 70 SOVEREIGN HOUSE

STOCKPORT ROAD

CHEADLE SK8 2EA

Occupation COMPANY DIRECTOR

SIGNED for and on behalf of  
POSITIVE CASHFLOW FINANCE LIMITED by  
its duly authorised signatory in the presence of:

)  
)  
) Authorised Signatory



Witness Signature A. E. Baldwin

Witness Name ANN ELIZABETH BALDWIN

Address 55 HODGE ROAD, WORSLEY

MANCHESTER M28 3AU

Occupation SALES CO-ORDINATOR