



**Registration of a Charge**

Company name: **CPB GW LTD**

Company number: **11450017**

Received for Electronic Filing: **04/09/2018**



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**Details of Charge**

Date of creation: **23/08/2018**

Charge code: **1145 0017 0002**

Persons entitled: **C P BERRY GROUNDWORKS LIMITED (IN ADMINISTRATION)**

Brief description:

**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 SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**WALKER MORRIS LLP**



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

Company number: 11450017

Charge code: 1145 0017 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd August 2018 and created by CPB GW LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th September 2018 .

Given at Companies House, Cardiff on 6th September 2018

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 23 August 2018

C P BERRY GROUNDWORKS LIMITED (IN ADMINISTRATION) (1)

and

CPB GW LIMITED (2)

and

RUTH ELIZABETH HARRIS and NICOLA JANE KIRK (3)

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DEBENTURE

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WALKER MORRIS LLP  
Kings Court  
12 King Street  
LEEDS  
LS1 2HL  
Tel: 0113 2832500  
Fax: 0113 2459412  
Ref: DBL/OPR/ABB00329.26

THIS DEBENTURE is dated 23 August 2018

**BETWEEN:**

- (1) **C P BERRY GROUNDWORKS LIMITED (IN ADMINISTRATION)** (company number 04568904) whose registered office is at c/o Abbey Taylor Limited, Unit 6, Twelve O'clock Court, Attercliffe Road, Sheffield, S4 7WW (the Seller) acting by its Administrators as agents **RUTH ELIZABETH HARRIS** and **NICOLA JANE KIRK** of Abbey Taylor Limited, Unit 6, Twelve O'clock Court, Attercliffe Road, Sheffield, S4 7WW; and
- (2) **CPB GW LIMITED** (company number 11450017) whose registered office is at The Quadrant, 99 Parkway Avenue, Sheffield, S9 4WG (the Buyer); and
- (3) **RUTH ELIZABETH HARRIS** and **NICOLA JANE KIRK** aforesaid (the Administrators).

**1 RECITALS**

- 1.1 On 20 August 2018 the Administrators were appointed as joint administrators of the Seller.
- 1.2 The Seller, the Administrators and the Buyer agreed to the transfer of various assets as are defined therein on the terms and subject to the Sale Agreement.
- 1.3 As a result of completing the Sale Agreement, the Buyer owes the Debts to the Seller and has agreed to execute this Debenture to secure the payment of the Debts to the Seller.
- 1.4 The Administrators are joined as parties to this Debenture merely for the purposes of receiving the benefit of the waivers and exclusions of liability and indemnities in their favour contained in this Debenture.
- 1.5 For the sake of convenience, some words and phrases in this Debenture have been given special meanings. These are as follows:

"Charged Property"	at any time, all property which is at that time the subject of any mortgage or charge created under this Debenture;
"Debts"	any part of the Price due under clause 3 of the Sale Agreement which is left outstanding at Completion
"Enforcement Events"	are the events and circumstances listed in clause 7.2

**"Floating Charge Property"** at any time, all property which is at that time the subject of the floating charge created under this Debenture

**"Land"** any estate or interest in real property and any related rights

**"Sale Agreement"** an agreement for the sale and purchase of the business assets of C P Berry Groundworks Limited entered into by the Seller and the Buyer at the same time as this Debenture.

1.6 There are some other explanatory provisions in clause 8.7.

## 2 CREATING THE SECURITY

### 2.1 Mortgages and charges

The Buyer creates the following mortgages and charges in favour of the Seller in order to secure the payment of the Debts:

2.1.1 an equitable mortgage of Land to be acquired by the Buyer in future;

2.1.2 fixed charges of:

- (a) the Buyer's plant and machinery (not including any computers or their peripherals or any other office equipment);
- (b) the Buyer's goodwill;
- (c) the Buyer's rights and interest in intellectual property of any kind (including all related property and materials in any medium);
- (d) the Buyer's uncalled share capital;
- (e) the Buyer's rights and interest in shares and other securities; and
- (f) the Buyer's rights and interest in contracts (including contracts of insurance);

- 2.1.3 a floating charge of all the Buyer's property and undertaking other than that which is effectively mortgaged or charged under any other provision of this Debenture.

### **3 PROVISIONS RELATING TO THE SECURITY**

#### **3.1 Present and future property**

In each case, the fixed and floating charges created under this Debenture apply to both present and future property of the relevant type.

#### **3.2 Where there are limitations on the creation of security**

3.2.1 This clause 3.2.1 applies where, on the date of this Debenture, there is property which is subject to a term prohibiting the Buyer from creating a charge (or, in the case of Land, a mortgage) over it in accordance with under this Debenture:

- (a) the Buyer represents that it has notified the Seller of the existence of all such property and has given the Seller all the information it requires with regard to it;
- (b) the Buyer does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so.

3.2.2 This clause 3.2.2 applies where, on the date of this Debenture, there is property which is subject to a term permitting the Buyer to create a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture only with the consent of another person.

- (a) The Buyer represents that it has notified the Seller of the existence of all such property and has given the Seller all the information it requires with regard to it.
- (b) The Buyer does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so except in accordance with clause 3.2.2(e).
- (c) The Buyer must use its reasonable endeavours to obtain the relevant person's consent.

- (d) The Buyer must notify the Seller as soon as it has obtained that consent.
- (e) If, at any time after it has obtained that consent, the Seller requests the Buyer to create such a charge (or mortgage) over the relevant property, the Buyer must do so on terms acceptable to the Seller (and at its own expense).

3.2.3 This clause 3.2.3 applies where the Buyer intends to acquire property which is (or will be) subject to a term prohibiting the Buyer from creating a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture.

- (a) The Buyer must notify the Seller of its intention and give the Seller all the information it requires with regard to the relevant property and the proposed acquisition.
- (b) The Buyer may acquire the relevant property only if the Seller consents.
- (c) The Buyer does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so.

3.2.4 This clause 3.2.4 applies where the Buyer intends to acquire property which is (or will be) subject to a term permitting the Buyer to create a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture only with the consent of another person.

- (a) The Buyer must notify the Seller of its intention and give the Seller all the information it requires with regard to the relevant property and the proposed acquisition.
- (b) The Buyer may acquire the relevant property only if the Seller consents.
- (c) The Buyer does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so except in accordance with clause 3.2.4(d)(iii).
- (d) If the Buyer does acquire the relevant property:
  - (i) it must use its reasonable endeavours to obtain the relevant person's consent;



- (ii) it must notify the Seller as soon as it has obtained that consent; and
- (iii) if, at any time after it has obtained that consent, the Seller requests the Buyer to create such a charge (or mortgage) over the relevant property the Buyer must do so on terms acceptable to the Seller (and at its own expense).

### **3.3 Contracts**

In the case of a contract, the Buyer charges to the Seller under this Debenture all payments received under the contract even if, for any reason, it does not create an effective charge of its rights against the other parties to the contract.

### **3.4 Independent security and Lender's Discretion**

3.4.1 The mortgages and charges created under this Debenture and the rights of the Seller under this Debenture are independent of any other security or any other right which the Seller has at any time in respect of any Debts.

3.4.2 The Seller may decide:

- (a) whether and, if so, when and how:
  - (i) to exercise its rights under this Debenture; and
  - (ii) to exercise any other rights it might have in respect of any Debts; and
- (b) when and how to apply any payments received by it under this Debenture or any other payments in respect of any Debts;

and the Buyer has no right to control or restrict the Seller's exercise of this discretion. In particular the Buyer may not insist that the Seller seeks payment from any other person, exercises any other right it might have or takes any other step before exercising its rights under this Debenture.

### **3.5 Continuing Security**

The mortgages and charges created under this Debenture constitute continuing security. This means that they secure the full amount of the Debts at any time even if, at some other time;

3.5.1 the amount of the Debts has been less than the amount at the relevant time; or

3.5.2 there have been no Debts outstanding.

### **3.6 Further advances**

The mortgages and charges created under this Debenture together secure any further advances made by the Seller.

### **3.7 Crystallisation of floating charge (by notice)**

3.7.1 Clauses 3.7.2 and 3.7.3 specify cases in which the Seller is entitled to crystallise the floating charge created under this Debenture (converting it into a fixed charge or a number of fixed charges).

Crystallisation will occur when the Seller gives notice to this effect to the Buyer.

3.7.2 The first case is where the Seller believes that crystallisation is necessary in order to avoid or mitigate any circumstances which could:

- (a) reduce the value of all or any part of the Floating Charge Property;
- (b) have an adverse effect on all or any part of the Floating Charge Property; or
- (c) jeopardise the Seller's position.

3.7.3 The second case is where there is an Enforcement Event other than one which results in automatic crystallisation (see clause 3.8);

3.7.4 If, at any time, the Seller crystallises the floating charge in relation to just part of the relevant Floating Charge Property, that will not prevent its exercising its powers under this clause 3.7 again.

### **3.8 Crystallisation of floating charge (automatic)**

3.8.1 Clauses 3.8.2 to 3.8.4 specify cases in which the floating charge created under this Debenture will automatically crystallise (without the Seller having to give notice to the Buyer). There are other circumstances in which, by operation of law, a floating charge will crystallise.

3.8.2 The first case is where there is an Enforcement Event under clause 7.2.1 or 7.2.2 which is caused by the Buyer's failure to comply with any of the following restrictions in relation to Floating Charge Property:

- (a) clause 4.2 (Prohibition on disposal of property);
- (b) clause 4.3 (Prohibition on creation of further security interests);
- (c) clause 4.4 (Prohibition on cancellation of rights);
- (d) clause 4.5 (General prohibition); or
- (e) clause 4.6.4 (Dealing with bank accounts and receivables).

If the Enforcement Event relates to just part of the Floating Charge Property, then crystallisation will affect only that part; the rest of the Floating Charge Property will be unaffected.

3.8.3 The second case is where there is an Enforcement Event under clause 7.2.6. The floating charge will crystallise over all of the Floating Charge Property.

3.8.4 The third case is where there is an Enforcement Event under clause 7.2.7. If the Enforcement Event relates to just part of the Floating Charge Property, then crystallisation will affect only that part; the rest of the Floating Charge Property will be unaffected.

3.8.5 In each case, the floating charge will crystallise as soon as the relevant Enforcement Event occurs.

### **3.9 Release of security**

3.9.1 Immediately upon the Seller being satisfied that:

- (a) all the Debts then due for payment have been paid;

- (b) there are no other Debts which have not yet become due to be paid;
- (c) there is no significant risk that, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, any payment previously made to the Seller in respect of any Debts will be required to be repaid or will be void, set aside or otherwise affected; and
- (d) the Seller is not obliged to enter into any arrangement under which the Buyer might incur further liabilities to the Seller

the Seller shall release the Charged Property from the mortgages and charges created by this Debenture at no cost to the Buyer.

3.9.2 If the Seller does release any security under clause 3.9.1, that will not mean that the Seller has waived any right it might then have, or any remedy it might then be entitled to, in respect of any past breach of this Debenture.

3.9.3 The mortgages and charges created under this Debenture will not be discharged in any way other than in accordance with clause 3.9.1.

3.9.4 Clause 3.9.6 applies where:

- (a) there has been a release of security under clause 3.9.1; and
- (b) as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason:
  - (i) any payment made to the Seller in respect of any Debts is required to be repaid; or
  - (ii) any such payment is void, is set aside or is otherwise affected.

3.9.5 The mortgages and charges created under this Debenture continue in effect as if:

- (a) there has been no such release; and
- (b) the relevant payment had not been made.

#### 4 PROVISIONS RELATING TO THE BUYER AND THE CHARGED PROPERTY

##### 4.1 Representations and warranties

4.1.1 The Buyer makes the following representations and warranties:

- (a) It is duly incorporated in England.
- (b) It has the power to own its assets and to carry on business as it is being conducted.
- (c) The obligations expressed to be assumed by it in this Debenture are legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary).
- (d) Entering into this Debenture and performing its obligations do not cause a conflict with:
  - (i) any law or regulation applicable to it;
  - (ii) its constitutional documents; or
  - (iii) any agreement or instrument binding upon it or any of its assets.
- (e) It has the power and authority to enter into this Debenture and to perform its obligations.
- (f) The Charged Property is subject to no security or other interest, except:
  - (i) the charges listed in Schedule 1, if applicable;
  - (ii) any which has been created or is permitted under this Debenture.

4.1.2 There are no covenants, conditions, restrictions or other things affecting any part of the Charged Property which could reduce its value or otherwise have an adverse effect on it or jeopardise the Seller's position, except:

- (i) those contained in the Sale Agreement;
- (ii) any which has been notified to the Seller as required by clause 3.2; and
- (iii) any which has been created or is permitted under this Debenture.

## **4.2 Prohibition on disposal of property**

4.2.1 The Buyer must not dispose of all or any part of the Charged Property or create any right or interest in relation to it (or attempt to do any of those things), whether by way of sale, lease, licence or otherwise. However, there are the following exceptions to this prohibition.

- (a) There is an exception where such a disposal or the creation of such a right or interest is required or permitted by this Debenture.
- (b) There is an exception where the Seller gives its prior consent.
- (c) There are exceptions in the following circumstances for property which is Floating Charge Property at the time of the disposal:
  - (i) where a disposal is made in the ordinary course of the Buyer's day-to-day business and on normal commercial terms; and
  - (ii) where property is disposed of because it is broken or no longer required (whether or not it is replaced).

4.2.2 The prohibition in clause 4.2.1 overrides section 99 of the Law of Property Act 1925, which contains provisions about the making of leases by mortgagors.

## **4.3 Prohibition on creation of further security interests**

Apart from the mortgages and charges created under this Debenture or those disclosed in Schedule 1, the Buyer must not create any security or similar interest in respect of the Charged Property (or attempt to do so) and it must not permit any such interest to exist. However, there are the following exceptions to this prohibition.

4.3.1 There is an exception where such an interest is required or permitted by this Debenture.

4.3.2 There is an exception where the Seller gives its prior consent.

- 4.3.3 There is an exception where such an interest arises in the ordinary course of the Buyer's business, either by operation of law or by virtue of a retention-of-title clause, and is subsequently discharged in the ordinary course of the Buyer's business.

#### 4.4 Prohibition on cancellation of rights

- 4.4.1 The Buyer must not cancel, waive or vary its rights (or allow them to lapse) in respect of all or any part of the Charged Property and it must not permit any other person to do so. However, there are the following exceptions to this prohibition.
- (a) There is an exception where such action is required or permitted by this Debenture.
  - (b) There is an exception where the Seller gives its prior consent.
  - (c) There is an exception for property which is Floating Charge Property, where the relevant event occurs in the ordinary course of the Buyer's day-to-day business.
  - (d) The prohibition in clause 4.4.1 overrides section 100 of the Law of Property Act 1925, which contains provisions about mortgagors' acceptance of the surrender of leases.

#### 4.5 General prohibition

- 4.5.1 As well as complying with the specific prohibitions and restrictions in other clauses, the Buyer must not do anything that could:
- (a) reduce the value of all or any part of the Charged Property;
  - (b) have an adverse effect on all or any part of the Charged Property; or
  - (c) jeopardise the Seller's position,
- and it must not permit any other person to do so.
- 4.5.2 However, there are the following exceptions to the prohibition in clause 4.5.1.

- (a) There is an exception where the action is required or permitted by this Debenture.
- (b) There is an exception where the Seller gives its prior consent.

**4.6 Dealing with bank accounts and receivables**

4.6.1 In this clause 4.6, the word "receivables" is used to refer to the Buyer's book debts and other debts due to it (other than in respect of credit balances on bank accounts) and its rights and interest in guarantees and other security relating to those debts.

4.6.2 Unless clause 4.6.3 applies, the Buyer:

- (a) may operate its bank accounts in the ordinary course of its day-to-day business;
- (b) must realise and (if applicable) enforce payment in respect of its receivables in the ordinary course of its day-to-day business; and
- (c) may apply the proceeds of its receivables in the ordinary course of its day-to-day business.

4.6.3 This clause 4.6.3 applies if the floating charge is crystallised in respect of the Buyer's bank accounts or its receivables (clauses 3.7 and 3.8 deal with crystallisation). With effect from the date of crystallisation, the Buyer:

- (a) must realise and (if applicable) enforce payment in respect of its receivables only as agent of the Seller;
- (b) must credit all money received by it in respect of its receivables to a bank account specified by the Seller for this purpose (or arrange for debtors to make payment directly to such account); and
- (c) must not debit any money to that or any other bank account (except with the Seller's prior consent).

4.6.4 Both before and after crystallisation, the Buyer must not deal with the receivables (or attempt to do so) in any way other than as provided by this clause 4.6.



**4.7 Shares and securities - voting and payments**

4.7.1 Until an Enforcement Event occurs, only the Buyer may exercise the voting rights and other rights in respect of the shares and other securities charged under this Debenture. It must not do so in a way which could:

- (a) reduce the value of the shares or securities;
- (b) have an adverse effect on the shares or securities; or
- (c) jeopardise the Seller's position.

4.7.2 Until an Enforcement Event occurs, only the Buyer is entitled to receive payments made in respect of the shares and other securities charged under this Debenture.

4.7.3 Once an Enforcement Event occurs, only the Seller will have these rights.

**4.8 Maintaining the Charged Property**

4.8.1 The Buyer must keep all its buildings, fixtures, plant and machinery and all its computers and peripherals and other office equipment in a good state of repair and condition.

4.8.2 Unless the Seller gives its consent, the Buyer must not demolish any of its buildings or make any alterations to them or do anything constituting a development for the purposes of section 55 of the Town and Country Planning Act 1990.

4.8.3 The Buyer must do whatever is necessary to preserve, maintain and renew its rights and interest in intellectual property.

4.8.4 If the Buyer fails to comply with this clause 4.8, the Seller or any receiver may arrange for the appropriate measures to be taken to put right the Buyer's failure.

#### 4.9 Insuring

- 4.9.1 At all times, the Buyer must insure against all those risks in respect of which a prudent company carrying on a business similar to the Buyer's would normally maintain insurance. In each case, the following conditions must be met.
- (a) The insurer must be acceptable to the Seller.
  - (b) The terms of the insurance must be acceptable to the Seller.
  - (c) At all times there must be a level of cover which is at least equal to the full replacement or reinstatement value of the relevant property plus adequate provision to cover associated costs and losses (and to cover any other amounts required by the Seller to be covered).
  - (d) The policy must be in the joint names of the Buyer and the Seller, unless the Seller consents to simply having its interest noted on the policy.
- 4.9.2 The Buyer must pay all insurance premiums promptly.
- 4.9.3 The Buyer must provide the Seller, on request, with a copy of each of the Buyer's insurance policies and evidence that the premiums have been paid.
- 4.9.4 The Buyer must hold on trust for the Seller all money received by virtue of any insurance policies. The Buyer must apply that money in accordance with the Seller's instructions (either in making good the relevant loss or damage or in full or partial payment of the Debts). This clause 4.9.4 does not apply where the money paid under a policy is paid in respect of a liability owed to another person.
- 4.9.5 This clause 4.9.5 applies where the Buyer is the tenant of leasehold Land and the lease requires the landlord (and not the Buyer) to insure that Land. For so long as the landlord complies with its insuring obligations under the lease, the Buyer will be deemed to have complied with its obligations in relation to that Land under clause 4.9.1.
- 4.9.6 If the Buyer fails to comply with this clause 4.9, the Seller (or any receiver) may arrange appropriate insurance on such terms as it (or he) thinks fit.

- 4.9.7 Sections 108 and 109(7) of the Law of Property Act 1925 specify restrictions in relation to the powers of mortgagees and receivers to effect insurance. Those restrictions do not apply.

**4.10 Other requirements**

- 4.10.1 The Buyer must comply with all statutory, contractual and other conditions and requirements affecting it or the Charged Property. If there are non-binding codes of practice or guidance notes (or similar things) or industry practices affecting those engaged in the same type of business as the Buyer and which are generally accepted and applied, then the Buyer must also comply with those.
- 4.10.2 If the Buyer fails to comply with this clause 4.10, the Seller or any receiver may arrange for the appropriate measures to be taken to put right the Buyer's failure.

**5 PROTECTING THE SELLER'S POSITION**

**5.1 Power of attorney and delegation**

- 5.1.1 The Buyer appoints the Seller as its attorney to do whatever the Buyer is (or may be) required to do under this Debenture. The Seller, in its capacity as attorney, may act independently of each other attorney appointed by the Buyer and need not act jointly with them. The Buyer must ratify any action taken by the Seller in its capacity as attorney.
- 5.1.2 The power of attorney in clause 5.1.1 is irrevocable and given by way of security. Therefore, the Powers of Attorney Act 1971 applies. This means that the Buyer cannot revoke the power of attorney without the Seller's consent and that it will not be revoked by the Buyer's winding-up or dissolution.
- 5.1.3 The Seller may delegate to any other person the exercise of its rights and powers in connection with this Debenture, including its rights and powers as the Buyer's attorney.

**5.2 Indemnify**

The Buyer must indemnify the Seller on demand in respect of all expenses, losses and liabilities it incurs in connection with this Debenture.

### 5.3 Accounts and set-off

- 5.3.1 This clause 5.3.1 applies if, at any time, the Seller becomes aware of the creation in favour of a third party of any security interest affecting the Charged Property or if the mortgages and charges created under this Debenture cease to constitute continuing security (see clause 3.5) for any reason. The Seller may open in its books a new account for the Buyer. Even if it does not open a new account, then all payments by the Buyer to the Seller after that time will be treated as being credited to such a new account and not as being paid in reduction of the Debts due at the relevant time.
- 5.3.2 The Seller may, at any time, credit to a suspense account any money received by it under this Debenture pending its application towards paying the Debts.
- 5.3.3 The Seller may, at any time, set off any liability owed by the Seller to the Buyer against any amount due in respect of the Debts. The Seller must notify the Buyer if it does so (unless an Enforcement Event has occurred). If any amount is in a different currency from the amount against which it is to be set off, the Seller may convert either amount (or both):
- (a) at any time it thinks appropriate; and
  - (b) using the middle exchange rate on the London foreign exchange market as at close of business on the relevant day.

### 5.4 Delivery of documents

- 5.4.1 The Buyer must deposit with the Seller all documents of title, certificates, evidence of ownership, policy documents and other materials comprising or relating to the Charged Property (or such of them as the Seller requires). This requirement applies to the delivery or transfer of information which exists in electronic form as well as to the deposit of paper documents. The Seller is entitled to retain all such documents, materials and information until the mortgages and charges created under this Debenture are released. Section 96 of the Law of Property Act 1925 gives a mortgagor certain rights to inspect and copy documents of title held by a mortgagee.

- 5.4.2 In respect of all certificated shares forming part of the Charged Property, the Buyer must deliver to the Seller appropriate, un-dated instruments of transfer executed by the Buyer.

**5.5 Land Registry applications**

- 5.5.1 In respect of the Land mortgaged under clause 2.1.1 the Buyer must apply to the Land Registry for the entry of 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 in favour of C P Berry Groundworks Limited – In Administration referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its duly authorised officer.

- 5.5.2 The Buyer must also make such an application in relation to Land acquired by it in future which is (or is required to be) registered at the Land Registry.

- 5.5.3 In each case, the Buyer must:

- (a) submit the relevant application no later than the date of submission of the application for registration of the mortgage of the relevant Land; and
- (b) pay the expenses incurred in connection with the application.

- 5.5.4 The Seller, in its discretion, may make any of the applications referred to in clauses 5.5.1 and 5.5.2 in place of the Buyer. In such a case, the Buyer:

- (a) consents to the entry of the relevant restriction.

- 5.5.5 The Buyer (at its own expense) must do whatever the Seller requests in connection with:

- (a) any application by the Seller to have this Debenture designated an exempt information document under rule 136 of the Land Registration Rules 2003; and

- (b) any person's application under rule 137 of the Land Registration Rules 2003 for disclosure of this Debenture following its designation as an exempt information document.

5.5.6 The Buyer shall notify the Seller in writing:

- (a) before making any application to have this Debenture designated an exempt information document under rule 136 of the Land Registration Rules 2003;
- (b) as soon as it receives notice of any person's application under rule 137 of the Land Registration Rules 2003 for disclosure of this Debenture following its designation as an exempt information document; and
- (c) before making any application under rule 138 of the Land Registration Rules 2003 for removal of any such designation.

## 5.6 Other obligations of the Buyer

5.6.1 The Buyer (at its own expense) must do whatever the Seller or any receiver requests:

- (a) to render effective and valid any mortgage, charge, right or power intended to be created under this Debenture but which is or may be ineffective or invalid;
- (b) to perfect, protect or improve the mortgages and charges created under this Debenture or to facilitate their enforcement or realisation;
- (c) to protect or improve the Seller's position under this Debenture; or
- (d) in connection with the Seller's (or any receiver's) exercise of any of its (or his) rights or powers under this Debenture.

5.6.2 The Buyer must promptly notify the Seller if it acquires any Land or any other significant asset (unless it has already notified the Seller about it in accordance with clause 3.2).

5.6.3 This clause 5.6.3 applies where the Buyer acquires leasehold Land. The Buyer must use its best endeavours to ensure that the landlord agrees:

- (a) to notify the Seller if any rights of forfeiture under the lease become exercisable because of a breach of its terms by the Buyer; and
- (b) not to exercise its rights of forfeiture until the Seller has had an opportunity to remedy the Buyer's breach.

5.6.4 The Buyer must permit any authorised representatives of the Seller at all reasonable times to enter upon any part of the Buyer's Land to carry out any inspection (including an inspection of books of account and other books and documents), survey or valuation or to ascertain whether there has been any breach of this Debenture. The Seller or its representatives must give the Buyer two business days' notice, unless the Seller believes that it is necessary to enter sooner than that.

5.6.5 the Buyer must promptly notify the Seller about each notice, demand, order or other communication received by the Buyer in relation to itself, its business or any part of the Charged Property, unless it is immaterial as regards the mortgages and charges created under this Debenture and as regards the Seller's position under this Debenture.

**5.7 Seller's calculations**

The Seller's calculation of the amount payable by the Buyer under this Debenture at any time will be conclusive (unless it has made an obvious mistake).

**6 PROVISIONS RELATING TO PAYMENTS**

**6.1 The Debts**

The Buyer must, on demand, pay the Debts when they are due.

**6.2 Default interest**

If the Buyer fails to pay on its due date any amount payable by it under this Debenture, it must pay interest on that amount. Interest will be calculated and paid in accordance with the terms of the Sale Agreement.

**6.3 No withholding or set-off**

- 6.3.1 The Buyer must not make any withholding on account of tax from any payment due to the Seller or any receiver under this Debenture, unless it is required by law to do so. If it is required by law to do so, it must increase the amount of the relevant payment so that, after the withholding, the payee receives the appropriate amount. It must notify the Seller if these circumstances arise.
- 6.3.2 The Buyer must not exercise any right of set-off or counterclaim it might have in respect of any payment due to the Seller or to any receiver under this Debenture.

**7 PROVISIONS RELATING TO ENFORCEMENT**

**7.1 When the security is enforceable**

- 7.1.1 The mortgages and charges created under this Debenture will become enforceable at any time once an Enforcement Event has occurred (clause 7.2 lists the Enforcement Events). The Seller may then enforce all or any part of those mortgages and charges in whatever manner it thinks appropriate.
- 7.1.2 Section 101 of the Law of Property Act 1925 confers various powers on a mortgagee in relation to mortgaged property (including a power to sell it). For the purposes of this Debenture, the following provisions will not apply:
- (a) the conditions specified in section 101 of the Law of Property Act 1925 as to when such powers arise;
  - (b) the additional conditions specified in section 103 of the Law of Property Act 1925 which must be satisfied before the statutory power of sale can be exercised; and
  - (c) the condition specified in section 109(1) of the Law of Property Act 1925 as to when a receiver may be appointed.

**7.2 Enforcement Events**

Each of the following events or circumstances is an Enforcement Event.



7.2.1 There is an Enforcement Event if the Buyer fails to do something that it is required to do under this Debenture. In this case, the Enforcement Event occurs when the act is required to be done.

7.2.2 There is an Enforcement Event if the Buyer takes any step in connection with anything which is prohibited under this Debenture (or permits any other person to take such a step). In this case, the Enforcement Event occurs when the first step is taken.

7.2.3 There is an Enforcement Event if any representation or statement made (or deemed to be made) by the Buyer under this Debenture is incorrect or misleading in any respect when made (or deemed to be made). In this case, the Enforcement Event occurs when the representation or statement is made (or deemed to be made).

7.2.4 In this clause 7.2.4, the phrase "finance debts" means liabilities incurred by the Buyer in connection with the financing of its business

(but not debts owed to trade creditors which are incurred in the day-to-day operation of the Buyer's business).

(a) There is an Enforcement Event if any finance debt is not paid when due (or within any originally applicable grace period, if there is one). In this case, the Enforcement Event occurs on the payment's due date (or when the grace period expires).

(b) There is an Enforcement Event if any finance debt is declared to be (or otherwise becomes) due and payable before its specified maturity as a result of an event of default. In this case, the Enforcement Event occurs when the finance debt is declared to be (or otherwise becomes) due and payable.

(c) There is an Enforcement Event if any creditor of the Buyer cancels or suspends a commitment in respect of any finance debt as a result of an event of default. In this case, the Enforcement Event occurs when the commitment is cancelled or suspended.

- (d) There is an Enforcement Event if any creditor of the Buyer becomes entitled to declare any finance debt due and payable before its specified maturity as a result of an event of default. In this case, the Enforcement Event occurs when the creditor becomes entitled to do that.

7.2.5 There is an Enforcement Event if:

- (a) the Buyer is unable (or admits that it is unable) to pay its debts as they fall due; or
- (b) the value of the assets of the Buyer is less than its liabilities (taking into account contingent and prospective liabilities).

In this case, the Enforcement Event occurs when the relevant circumstances first exist.

7.2.6 There is an Enforcement Event if any person takes any step in connection with any of the following:

- (a) a suspension of payments by the Buyer, a moratorium of any indebtedness of the Buyer or a re-scheduling of any of the Buyer's debts;
- (b) a composition, assignment or arrangement with any creditor of the Buyer;
- (c) a re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise) by the Buyer;
- (d) the appointment of a liquidator, receiver, administrative receiver, administrator or other similar officer in respect of the Buyer or any of its assets;
- (e) the dissolution of the Buyer; or
- (f) enforcement of any security over any assets of the Buyer.

In this case, the Enforcement Event occurs when the first step is taken.

- (g) There is an Enforcement Event if any person takes any step in connection with expropriation, attachment, sequestration, distress or execution affecting any asset of the Buyer.

In this case, the Enforcement Event occurs when the first step is taken.

7.2.7 There is an Enforcement Event if it is unlawful for the Buyer to perform any of its obligations under this Debenture or any other obligations owed to the Seller. In this case, the Enforcement Event occurs when these circumstances first exist.

7.2.8 There is an Enforcement Event if the Buyer repudiates this Debenture or the Seller believes that it intends to do so. In this case, the Enforcement Event occurs when these circumstances first exist.

7.2.9 There is an Enforcement Event if the Buyer requests the Seller to appoint an administrator of the Buyer or to appoint a receiver in respect of the Buyer or the Charged Property. In this case, the Enforcement Event occurs when the Seller receives the request.

### **7.3 Appointment of administrator**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created under this Debenture. This means that, at any time after an Enforcement Event has occurred, the Seller may appoint an administrator of the Buyer under the Insolvency Act 1986.

### **7.4 Appointment of receiver**

At any time after an Enforcement Event has occurred the Seller may:

7.4.1 appoint any number of receivers in respect of the Charged Property;

7.4.2 appoint alternative or additional receivers in respect of the Charged Property;  
and

7.4.3 remove from office any receiver.

## **7.5 General provisions relating to receivers**

- 7.5.1 Only the Seller may fix the terms of each receiver's appointment. Section 109(6) of the Law of Property Act 1925 restricts the amount of a receiver's remuneration but that section does not apply to this Debenture.
- 7.5.2 If, at any time, there are two or more receivers in office, each individually may exercise all the powers conferred on a receiver under this Debenture (unless the Seller specifies that they must act jointly).
- 7.5.3 Each receiver will be the Buyer's agent. The Buyer must pay to each receiver his remuneration. Only the Buyer will be responsible for each receiver's acts and defaults. The Seller will have no liability in respect of the acts or defaults of any receiver or otherwise in relation to the appointment of any receiver (except as may be agreed between the Seller and any receiver).
- 7.5.4 The Buyer must indemnify each receiver on demand in respect of all expenses, losses and liabilities incurred by him in connection with this Debenture.
- 7.5.5 The Buyer appoints each receiver as its attorney to do whatever the Buyer is (or may be) required to do under this Debenture. Each receiver, in his capacity as attorney, may act independently of each other attorney appointed by the Buyer and need not act jointly with them. The Buyer must ratify any action taken by a receiver in his capacity as an attorney.
- 7.5.6 The power of attorney in clause 7.5.5 is irrevocable and given by way of security. Therefore, the Powers of Attorney Act 1971 applies. This means that the Buyer cannot revoke the power of attorney without the receiver's consent and that it will not be revoked by the Buyer's winding-up or dissolution.
- 7.5.7 Each receiver may delegate to any other person the exercise of his rights and powers in connection with this Debenture, including his rights and powers as the Buyer's attorney.

## **7.6 Powers of receivers**

In connection with the enforcement of the mortgages and charges created by this Debenture, each receiver may do whatever he considers appropriate in relation to the Buyer and its business and the Charged Property. In this respect, each receiver has all

the powers conferred on receivers by the Law of Property Act 1925 (even if he is not appointed under the Law of Property Act 1925) and all the powers conferred on administrative receivers by the Insolvency Act 1986 (even though he is not an administrative receiver).

## **7.7 Application of money**

7.7.1 Subject to section 176A of the Insolvency Act 1986 (which, in certain circumstances requires part of a company's property to be made available for satisfaction of unsecured debts) all proceeds of enforcement of the mortgages and charges created under this Debenture must be applied in or towards discharging the following liabilities in the order listed:

- (a) claims ranking in priority with regard to the Charged Property;
- (b) the expenses, losses and liabilities incurred by each receiver in connection with this Debenture;
- (c) each receiver's remuneration;
- (d) the Debts (in whatever order the Seller wishes); and
- (e) claims of any person entitled to the surplus.

7.7.2 Sections 105, 107(2) and 109(8) of the Law of Property Act 1925 provide for the application of proceeds of enforcement of security in certain circumstances but those sections do not apply to this Debenture.

7.7.3 Any distribution by an administrator appointed by the Seller under clause 7.3 will be made in accordance with the requirements of the Insolvency Act 1986.

## **7.8 Miscellaneous provisions relating to enforcement**

7.8.1 Any right or power exercisable by a receiver appointed for the purposes of this Debenture may be exercised by the Seller at any time after an Enforcement Event has occurred, whether or not it has appointed a receiver.

7.8.2 Sections 99 and 100 of the Law of Property Act 1925 contain provisions as to the grant and surrender of leases. To the extent that those sections would otherwise restrict the Seller's (or any receiver's) exercise of its (or his) powers or rights in respect of the Charged Property, they do not apply.

7.8.3 After an Enforcement Event has occurred, the Seller or any receiver may sever any fixture from the property to which it is attached and dispose of it separately.

7.8.4 If the Seller (or any receiver) enters into possession of any part of the Charged Property, it (or he) will not be liable to account as mortgagee in possession.

7.8.5 The Seller and each receiver will not be liable to each other (except as may be agreed between them), to the Buyer or to any other person for:

- (a) any expense, loss or liability relating to the enforcement of any mortgages or charges created under this Debenture or to the realisation of any Charged Property; or
- (b) any expense, loss or liability arising in any other way in connection with this Debenture.

However, this exclusion of liability does not apply if the expense, loss or liability arises from the gross negligence, fraud or wilful misconduct of the Seller or (as applicable) the relevant receiver.

7.8.6 Any person dealing with the Seller or any receiver (or the agents or delegates of any of them) may assume that:

- (a) the Debts have become payable;
- (b) a valid demand has been served upon the Buyer;
- (c) an Enforcement Event has occurred;
- (d) any power being exercised has arisen and become exercisable and is being properly exercised; and
- (e) any money received by the Seller or any receiver will be applied in accordance with law and with the terms of this Debenture.

## **8 PROVISIONS RELATING TO THIS DEBENTURE**

### **8.1.1 Notices**

Any notice required to be given by this Debenture is ineffective if given orally and must be made by letter which is delivered personally, by fax or by e-mail or other electronic

means in permanent written form at the addresses given in clause 8.1.2 or such alternative address notified in writing. Such notice will only be effective when actually received by the recipient;

The contact details for this purpose are as set out in the Sale Agreement.

## **8.2 Partial invalidity**

If any provision of this Debenture is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect;

8.2.1 the legality, validity or enforceability of the other provisions of this Debenture; or

8.2.2 the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

## **8.3 Rights and remedies**

8.3.1 If the Seller (or a receiver) fails to exercise any right or remedy under this Debenture or delays its exercise of any right or remedy, this does not mean that it (or he) waives that right or remedy.

8.3.2 If the Seller (or a receiver) exercises a right or remedy once, this does not mean that it (or he) cannot do so again.

8.3.3 If the Seller (or a receiver) partly exercises a right or remedy, this does not mean that it (or he) cannot exercise that right or remedy again.

8.3.4 The rights and remedies provided in this Debenture are in addition to (not instead of) rights or remedies under the law.

## **8.4 Assignment**

The Seller may at any time assign or otherwise deal with its rights under this Debenture.

## **8.5 Governing law**

This Debenture is governed by English law.

## **8.6 Jurisdiction**

- 8.6.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture (including a dispute regarding the existence, validity or termination of this Debenture).
- 8.6.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle disputes and accordingly no party will argue to the contrary.
- 8.6.3 This clause 8.6 is for the benefit of the Seller and the Administrator only. As a result, the Seller and the Administrator will not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by law, the Seller and the Administrator may take concurrent proceedings in any number of jurisdictions.

## **8.7 Other general provisions**

These provisions apply throughout this Debenture.

- 8.7.1 Each reference to the Buyer or the Seller includes the relevant person's successors-in-title.
- 8.7.2 The word "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not it has separate legal personality).
- 8.7.3 The word "receiver" means a receiver, or a receiver and manager (but not an administrative receiver).
- 8.7.4 The Legislation referred to in this Debenture is the Contracts (Rights of Third Parties) Act 1999, the Insolvency Act 1986, the Land Registration Rules 2003, the Law of Property Act 1925, the Law of Property (Miscellaneous Provisions) Act 1994, the Powers of Attorney Act 1971
- 8.7.5 Where there is a list of things introduced by the word "including" or followed by the phrase "or otherwise", the intention is to state examples and not to be exhaustive (and the same applies where other, similar words or phrases are used).



8.7.6 Each heading in this Debenture is for convenience only. It does not affect the meaning of the words which follow it.

8.7.7 Wherever this Debenture states that the Buyer must not take a particular step without the Seller's consent, the Seller has discretion whether to give its consent and can impose conditions on any such consent it gives.

8.7.8 Each receiver, though not party to this Debenture, is entitled to exercise the powers and to enforce the rights conferred on it. Any other person who is not party to this Debenture has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or to enjoy the benefit of any term of this Debenture.

8.7.9 It is not necessary for the Buyer and Seller to seek the consent of any other person before rescinding or varying this Debenture (unless a receiver is in office, in which case his consent will be required).

**8.8 Ownership of this Debenture**

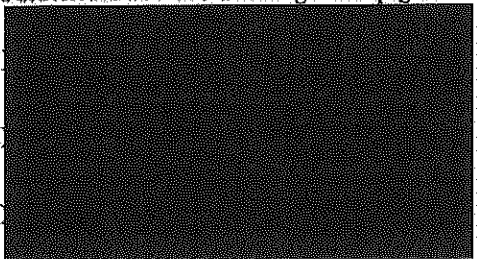
This Debenture is the Seller's property

**8.9 Execution by the Administrators**

The Administrators are party to this Debenture in their own capacity solely for receiving and enforcing the obligations, undertakings, waivers and indemnities on the part of the Buyer. The parties agree that Administrators have entered into and signed this Debenture as administrators for and on behalf of the Seller and the Administrators incur and shall incur no personal liability whatsoever whether on their own part or in respect of any failure on the part of the Seller to observe, perform or comply with any of its or his obligations under this Debenture or under or in relation to any associated arrangements or negotiations whether such liability would arise under section 99 of Schedule B1 of the Insolvency Act 1986 or otherwise howsoever.

THIS DEBENTURE is made and delivered as a deed on the date given on page 1.

EXECUTED AS A DEED by



for and on behalf of

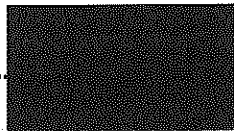
the SELLER )

by the Administrators as agent )

without personal liability )

in the presence of: )

Witness signature.....



Witness name..... TRACY TAYLOR

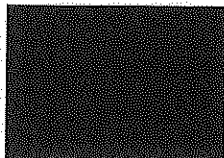
Occupation..... INSOLVENCY PRACTITIONER

Address..... UNIT 6 TWELVE O'CLOCK COURT  
ATTERCLIFFE ROAD  
SHEFFIELD  
S4 7UU

EXECUTED AS A DEED by )



)

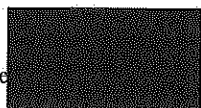


for and on behalf of )

the BUYER )

in the presence of: )

Witness signature



Witness name...CARL DAVID JONES

Occupation...SOLICITOR - ADVOCATE

Address.....MD Law  
Broom Hall  
8-10 Broomhall Road  
Sheffield  
S10 2DR

EXECUTED AS A DEED by )

)

for and on behalf of )

the ADMINISTRATORS )

In the presence of: )

Witness signature

Witness name.....TRACY TAYLOR

Occupation.....INSOLVENCY PRACTITIONER

Address.....UNIT 6.....TWELVE O'CLOCK COURT  
ATTERCLIFFE ROAD  
SHEFFIELD  
S4 7WW

