



**Registration of a Charge**

Company name: **A. SMITH GT. BENTLEY LIMITED**

Company number: **01112118**



X738MW00

Received for Electronic Filing: **05/04/2018**

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**Details of Charge**

Date of creation: **29/03/2018**

Charge code: **0111 2118 0011**

Persons entitled: **MB HARE**

Brief description:

**Contains fixed charge(s).**

**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: **SAHRA MAGNIN (COMPANY SECRETARY AND SOLICITOR)**



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

Company number: 1112118

Charge code: 0111 2118 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th March 2018 and created by A. SMITH GT. BENTLEY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th April 2018 .

Given at Companies House, Cardiff on 9th April 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**

# CHATTEL CHARGE

DATED 29<sup>TH</sup> MARCH 2018

BETWEEN

A. SMITH GT. BENTLEY LIMITED

AND

MB HARE

This deed is dated 29<sup>th</sup> March 2018

## **PARTIES**

**(1)** A. Smith Gt. Bentley Ltd incorporated and registered in England and Wales with company number **01112118** whose registered office is at Centre Park, Clacton Road, Frating, Colchester, Essex CO7 7DL (**Borrower**)

**(2)** Maurice Barrington Hare of Apartment One, Suffolk House, Lower Baxter Street, Bury St Edmunds, Suffolk IP33 1ET (**Lender**)

## **BACKGROUND**

**(A)** The Lender has agreed, pursuant to the Facility Agreement, to provide the Borrower with short term loan facilities on a secured basis.

**(B)** Under this deed, the Borrower provides security to the Lender for the loan facilities made available under the Facility Agreement.

## **AGREED TERMS**

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

**1.1 DEFINITIONS** The following definitions apply in this deed:

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

**Chattel:** the Laminar Flow Unit described in Schedule 1 (including any component parts from time to time held by the Borrower (whether or not attached to the asset)), together with all additions, alterations, substitutions, replacements, renewals or modifications of or to those assets from time to time, and all accessories to those assets from time to time (including maintenance and other records, manuals, handbooks, data, drawings and schematics relating to those assets or documents relating to warranties and patent indemnities given by manufacturers or suppliers of those assets).

**Delegate:** any person appointed by the Lender or any Receiver pursuant to Clause 12, and any person appointed as attorney of the Lender, Receiver or Delegate.

**Environment:** the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Law:** all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes insofar as they relate to or apply to the Environment.

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

**Facility Agreement:** the facility agreement dated 29<sup>th</sup> March 2018 between the Borrower and the Lender for the provision of the loan facilities secured by this deed.

**Insurance Policies:** all the contracts and policies of insurance effected or maintained from time to time in respect of the Chattels.

**LPA 1925:** the Law of Property Act 1925.

**Permitted Security:** means the debenture dated 23rd July 2004 between Royal Bank of Scotland and the Borrower which attaches a floating charge to the Chattel and the Chattel Charges dated 5<sup>th</sup> February 2018 and 19<sup>th</sup> March 2018 between the Borrower and the Lender.

**Receiver:** a receiver, receiver and manager or administrative receiver of the Chattel appointed by the Lender under Clause 10.

**Secured Liabilities:** monies owed by the Borrower to the Lender under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under Clause 24.3(b)), together with all interest (including, without limitation, default interest) accruing in respect of such monies, obligations or liabilities.

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

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

## **1.2 INTERPRETATION** In this deed:

**(a)** clause, Schedule and paragraph headings shall not affect the interpretation of this deed;

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

**(c)** unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

**(d)** unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

**(e)** a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors and permitted assigns;

**(f)** a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

**(g)** a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;

**(h)** a reference to **writing** or **written** includes fax but not email;

- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed [and a reference to a paragraph is to a paragraph of the relevant Schedule];
- (l) where any statement is qualified by the expression **so far as [PARTY] is aware or to [PARTY]'s knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry;
- (m) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (n) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (o) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (p) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (q) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been [remedied or] waived;
- (r) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (s) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

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

**1.4 SCHEDULES** The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

## **2. COVENANT TO PAY**

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

## **3. GRANT OF SECURITY**

**3.1 FIXED CHARGE** As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender by way of fixed charge:

- (a) the Chattel
- (b) all its rights in each Insurance Policy, including the proceeds of any claims under any Insurance Policy;
- (c) the benefit of all other contracts, guarantees, appointments, warranties relating to the Chattel and other documents to which the Borrower is a party, which are in its favour or of which it has the benefit (including, in each case, but without limitation, the right to demand and receive all monies whatsoever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatsoever accruing to or for its benefit arising from any of them; and
- (d) all authorisations (statutory or otherwise) held or required in connection with the use of the Chattel, and all rights in connection with them.

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

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

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground;
- (b) the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this Clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

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

#### **5. REPRESENTATIONS AND WARRANTIES**

**5.1 REPRESENTATIONS AND WARRANTIES** The Borrower makes the representations and warranties set out in this Clause 5 to the Lender.

**5.2 OWNERSHIP OF THE CHATTEL** The Borrower is the sole legal and beneficial owner of, and has good, valid and marketable title to the Chattel.

**5.3 NO SECURITY** The Chattel is free from any Security other than the Permitted Security and the Security created by this deed.

**5.4 NO ADVERSE CLAIMS** The Borrower has not received, or acknowledged notice of, any adverse claim by any person in respect of the Chattel or any interest in it.

**5.5 NO FIXING** Neither the Chattel nor any part of it is or will be treated as being fixed to any land, premises or other property.

**5.6 NO ADVERSE COVENANTS** There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Chattel.

**5.7 TIMES FOR MAKING REPRESENTATIONS AND WARRANTIES** The representations and warranties set out in Clause 5.2 to Clause 5.6 are made by the Borrower on the date of this deed.

## **6. COVENANTS**

**6.1 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS** The Borrower shall not at any time, except with the prior written consent of the Lender:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, the Chattel other than any Security created by this deed or any Permitted Security;
- (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Chattel; or
- (c) create or grant (or purport to create or grant) any interest in the Chattel in favour of a third party.

**6.2 PRESERVATION OF SECURED ASSETS** The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or diminish the value of the Chattel (except for expected fair wear and tear) or the effectiveness of the security created by this deed.

**6.3 BORROWER'S WAIVER OF SET-OFF** The Borrower waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Borrower under this deed).

### **6.4 COMPLIANCE WITH LAWS AND REGULATIONS**

(a) The Borrower shall not, without the Lender's prior written consent, use or permit the Chattel to be used in any way contrary to law.

(b) The Borrower shall:

- (i) comply with the requirements of any law and regulation relating to or affecting the Chattel or the use of it or any part of it;
- (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Chattel or its use or that are necessary to preserve, maintain or renew the Chattel; and
- (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Chattel.

**6.5 ENFORCEMENT OF RIGHTS** The Borrower shall use its best endeavours to:

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower's counterparties; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to the Chattel that the Lender may require from time to time.

**6.6 NOTICE OF MISREPRESENTATIONS AND BREACHES** The Borrower shall, promptly on becoming aware of any of the same, notify the Lender in writing of:



(a) any representation or warranty set out in Clause 5 that is incorrect or misleading in any material respect when made or deemed to be repeated; and

(b) any breach of any covenant set out in this deed.

**6.7 NOTICE OF CHARGE** The Borrower:

(a) shall, if so requested by the Lender, affix to and maintain on the Chattel in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF FIXED CHARGE

This Laminar Flow Unit and all additions to it are subject to a fixed charge dated [DATE] in favour of [LENDER]."

(b) shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with Clause 6.7(a).

**6.8 MAINTENANCE OF THE CHATTEL** The Borrower shall:

(a) at its own expense, maintain the Chattel in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;

(b) at its own expense, renew and replace any parts of the Chattel when it becomes obsolete, worn out or damaged with parts of a similar quality and of equal or greater value;

(c) keep or procure to be kept accurate, complete and up to date records of all repairs, servicing and maintenance carried out on the Chattel

(d) permit the Lender, or such persons as it may nominate, at all reasonable times and on reasonable notice to enter on any premises of the Borrower to effect such maintenance or repairs to the Chattel as the Lender or its nominee considers necessary; and

(e) not permit the Chattel to be:

(i) used or handled, other than by properly qualified and trained persons; or

(iii) to be overloaded or used for any purpose for which it is not designed or reasonably suitable or in any manner which would invalidate or otherwise prejudice any of the Insurance Policies.

**6.9 INFORMATION** The Borrower shall:

(a) give the Lender such information concerning the location, condition, use and operation of the Chattel as the Lender may require;

(b) permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine the Chattel and the records relating to the Chattel, at all reasonable times and on reasonable prior notice; and

(c) promptly notify the Lender in writing of any action, claim or demand made by or against it in connection with all or any part of the Chattel or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim or demand, together with, in each case, the Borrower's proposals for settling, liquidating, compounding or contesting any such action, claim or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

**6.10 INSURANCE** The Borrower shall:

(a) insure, and keep insured, the Chattel against:

(i) loss or damage by fire or terrorist acts;

(ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and

(iii) any other risk, perils and contingencies as the Lender may reasonably require.

Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Lender, and must be for not less than the replacement value of or, if higher, the cost of reinstating the Chattel.

(b) if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to the insurance required by Clause 6.10(a).

**6.11 INSURANCE PREMIUMS** The Borrower shall:

(a) promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that Insurance Policy in full force and effect; and

(b) (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy.

**6.12 NO INVALIDATION OF INSURANCE** The Borrower shall not do or omit to do, or permit to be done or omitted, any thing that may invalidate or otherwise prejudice any Insurance Policy.

**6.13 PROCEEDS FROM INSURANCE POLICIES** Monies payable under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall:

(a) immediately be paid to the Lender (to the level of the Secured Liabilities);

(b) (if they are not paid directly to the Lender by the insurers) be held by the Borrower as trustee of the same for the benefit of the Lender (and the Borrower shall account for them to the Lender); and

(c) be applied in making good or recouping expenditure in respect of the loss or damage for which such monies are received or, after the security constituted by this deed has become enforceable and if the Lender so directs, in or towards discharge or reduction of the Secured Liabilities.

**6.14 PAYMENT OF OUTGOINGS** The Borrower shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Chattel and, on demand, produce evidence of payment to the Lender.

**6.15 COMPLIANCE WITH COVENANTS** The Borrower shall observe and perform all covenants, stipulations and

conditions to which the Chattel is or may be subjected and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed.

**6.16 MAINTENANCE OF INTERESTS IN THE CHATTEL** The Borrower:

(a) shall not, without the prior written consent of the Lender:

(i) grant, or agree to grant, any licence or lease affecting the Chattel; or

(ii) in any other way dispose of, or agree to dispose of, surrender or create any legal or equitable interest in the Chattel;

(b) shall keep the Chattel in its sole and exclusive possession at the location (if any) specified in Schedule 1 or at such other location as the Lender may consent in writing and shall not take the Chattel or allow it to be taken, out of England and Wales.

**6.17 ANNEXATION** The Borrower shall not, without the Lender's prior written consent, annex, fix or otherwise secure or allow any such annexation, fixing or securing of the Chattel to any premises, land or buildings if the result of such action or omission is that the Chattel, or any part of it, would or might become a fixture or fitting.

**6.19 ENVIRONMENT** The Borrower shall, in respect of the Chattel:

(a) comply with all the requirements of Environmental Law both in the conduct of its general business and in the management, possession or use of the Chattel; and

(b) obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law.

**7. POWERS OF THE LENDER**

**7.1 POWER TO REMEDY**

(a) The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.

(b) The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

(c) Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed, shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with Clause 14.1.

**7.2 EXERCISE OF RIGHTS**

(a) The rights of the Lender under Clause 7.1 are without prejudice to any other rights of the Lender under this deed.

(b) The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

**7.3 INDULGENCE** The Lender may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the

Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Borrower for the Secured Liabilities.

## **8. WHEN SECURITY BECOMES ENFORCEABLE**

**8.1 SECURITY BECOMES ENFORCEABLE ON EVENT OF DEFAULT** The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

**8.2 DISCRETION** After the security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit.

## **9. ENFORCEMENT OF SECURITY**

**9.1 PROTECTION OF THIRD PARTIES** No purchaser, mortgagee or other person dealing with the Lender, any Receiver or Delegate shall be concerned to enquire:

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

## **10. RECEIVER**

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

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

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

**10.4 POWER OF APPOINTMENT ADDITIONAL TO STATUTORY POWERS** The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

**10.5 POWER OF APPOINTMENT EXERCISABLE DESPITE PRIOR APPOINTMENTS** The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets.

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

Lender.

## **11. POWERS OF RECEIVER**

### **11.1 GENERAL**

(a) Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in Clause 11.2 to Clause 11.19.

(b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

(c) Any exercise by a Receiver of any of the powers given by Clause 11 may be on behalf of the Borrower, the directors of the Borrower or himself.

**11.2 REPAIR AND IMPROVE SECURED ASSETS** A Receiver may undertake or complete any works or repairs, alterations, additions, replacements or other acts for the protection or improvement of the Secured Assets as he thinks fit.

**11.3 GRANT OR SURRENDER LEASES** A Receiver may grant, or accept surrenders of, any leases, lettings or hire affecting the Chattel on any terms and subject to any conditions that he thinks fit.

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

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

**11.6 REALISE SECURED ASSETS** A Receiver may take possession of the Chattel.

**11.7 REMOVE SECURED ASSETS** A Receiver may enter any premises where the Chattel is located and sever, dismantle and remove it from the premises without the Borrower's consent.

**11.8 MANAGE SECURED ASSETS** A Receiver may do all such things as may be necessary for the ownership, management or operation of the Chattel.

**11.9 DISPOSE OF SECURED ASSETS** A Receiver may grant options and licences over all or any part of the Chattel, sell, assign, lease and accept surrenders of leases of (or concur in selling, assigning, leasing or accepting surrenders of leases of), the Chattel in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Chattel.

**11.10 VALID RECEIPTS** A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising the Chattel.

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

**11.12 BRING PROCEEDINGS** A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to the Chattel as he thinks fit.

**11.13 INSURANCE** A Receiver may, if he thinks fit, but without prejudice to the indemnity in Clause 14, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, any insurance.

**11.14 POWERS UNDER THE LPA 1925** A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

**11.15 BORROW** A Receiver may, for any of the purposes authorised by this Clause 11, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of the Chattel on any terms that he thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

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

**11.17 DELEGATION** A Receiver may delegate his powers in accordance with this deed.

**11.18 ABSOLUTE BENEFICIAL OWNER** A Receiver may, in relation to the Chattel, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Chattel.

**11.19 INCIDENTAL POWERS** A Receiver may do any other acts and things that he:

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

## **12. DELEGATION**

**12.1 DELEGATION** The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under Clause 16.1).

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

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

## **13. APPLICATION OF PROCEEDS**

**13.1 ORDER OF APPLICATION OF PROCEEDS** All monies received by the Lender, a Receiver or a Delegate pursuant to this deed after the security constituted by this deed has become enforceable (other than sums received pursuant to any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

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

and

(c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

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

**13.3 SUSPENSE ACCOUNT** All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received pursuant to any Insurance Policy, which are not going to be applied in or towards discharge of the Secured Liabilities):

(a) may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;

(b) shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and

(c) may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

#### **14. COSTS AND INDEMNITY**

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

(a) this deed or the Chattel;

(b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or

(c) taking proceedings for, or recovering, any of the Secured Liabilities,

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

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

(a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Chattel;

(b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or

(c) any default or delay by the Borrower in performing any of its obligations under this deed.

#### **15. FURTHER ASSURANCE**

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

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

including, without limitation, (if the Lender or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of the Chattel (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **16. POWER OF ATTORNEY**

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

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

**16.2 RATIFICATION OF ACTS OF ATTORNEYS** The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in Clause 16.1.

## **17. RELEASE**

Subject to Clause 24.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release the Chattel from the security constituted by this deed.

## **18. ASSIGNMENT AND TRANSFER**

**18.1 ASSIGNMENT BY LENDER** The Lender may not assign any of his rights, or transfer any of its rights or obligations, under this deed.

**18.2 ASSIGNMENT BY BORROWER** The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **19. SET-OFF**

**19.1 LENDER'S RIGHT OF SET-OFF** The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this Clause 19 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

### **19.2 NO OBLIGATION TO SET OFF**



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

**19.3 EXCLUSION OF BORROWER'S RIGHT OF SET-OFF** All payments made by the Borrower to the Lender under this deed shall be made without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **20. AMENDMENTS, WAIVERS AND CONSENTS**

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

### **20.2 WAIVERS AND CONSENTS**

(a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

(b) A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

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

## **21. SEVERANCE**

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

## **22. COUNTERPARTS**

### **22.1 COUNTERPARTS**

(a) This deed may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

(b) Transmission of the executed signature page of a counterpart of this deed by email shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

## **23. THIRD PARTY RIGHTS**

### **23.1 THIRD PARTY RIGHTS**

Except as expressly provided in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this deed. This does not affect any right or

remedy of a third party which exists, or is available, apart from that Act.

## **24. FURTHER PROVISIONS**

**24.1 INDEPENDENT SECURITY** The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for the Chattel at any time. No prior security held by the Lender over the whole or any part of the Chattel shall merge in the security created by this deed.

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

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

(a) the Lender or its nominee may retain this deed and the security created by or pursuant to it, including all certificates and documents relating to the Chattel, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

(b) the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

**24.4 CERTIFICATES** A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower shall be, in the absence of any manifest error, conclusive evidence of the amount due.

## **25. NOTICES**

**25.1 DELIVERY** Each notice or other communication required to be given under or in connection with this deed shall be:

(a) in writing;

(b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

(c) sent to the Borrower or the Lender at the addresses set out at the top of this deed or to any other address or fax number as is notified in writing by one party to the other from time to time.

**25.2 RECEIPT BY BORROWER** Any notice or other communication that the Lender gives to the Borrower shall be deemed to have been received:

(a) if delivered by hand, at the time it is left at the relevant address;

(b) if posted by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; and

(c) if sent by fax, when received in legible form.

A notice or other communication given as described in Clause 25.2(a) or Clause 25.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

**25.3 RECEIPT BY LENDER** Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

**25.4 SERVICE OF PROCEEDINGS** This Clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **26. GOVERNING LAW AND JURISDICTION**

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

### **26.2 JURISDICTION**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

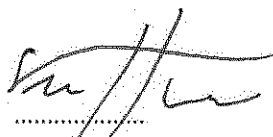

**26.3 OTHER SERVICE** The Borrower irrevocably consents to any legal action or process in any proceedings under Clause 26.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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

## **SCHEDULE 1 THE CHATTEL**

A Laminar Flow unit which is situated at Centre Park, Clacton Road, Frating, Colchester CO7 7DL and which at the date of this deed is undergoing testing.

Executed as a deed by A. Smith Gt. Bentley Ltd acting by  
Simon Hare, director, in the presence of:

  
.....  
Director  
JAYNE ROBERTSON  
48 LOPPICE RD  
ALRESFORD  
COLCHESTER  
ESSEX  
CO7 8DP  
FINANCE MANAGER

Executed as a deed by Maurice Barrington Hare

.....

in the presence of:

.....