

MR01

Particulars of a charge



001896/104

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

You can use the form online  
Please go to www.companieshouse.gov.uk

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

☐ What this form is for  
You may not use  
register a charge  
instrument Use

WEDNESDAY



A03

\*A2EADTQZ\*

07/08/2013

COMPANIES HOUSE

#260

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



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

1 Company details

Company number 0 2 6 4 8 2 8 9

Company name in full METALOGIC LIMITED

4 for official use

Filing in this form  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

2 Charge creation date

Charge creation date 2 9 0 7 2 0 1 3

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

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

Name BANK OF MONTREAL

Name

Name

Name

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

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

# MR01

## Particulars of a charge

**4**

### Description

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

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

Description

**5**

### Fixed charge or fixed security

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

☒ **Yes**☐ **No****6**

### Floating charge

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

☒ **Yes** Continue☐ **No** Go to **Section 7**

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

☐ **Yes****7**

### Negative Pledge

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

☒ **Yes**☐ **No**

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Particulars of a charge

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**Trustee statement<sup>1</sup>**

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

☐

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

9

**Signature**

Please sign the form here

Signature

Signature

X *MCCARTHY TETRAULT* X

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

# MR01

## Particulars of a charge



### Presenter information

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

Contact name **EJIRO UKOKO**

Company name **MCCARTHY TETRAULT**

Address **125 OLD BROAD STREET**

Post town **GREATER LONDON**

County/Region **LONDON**

Postcode **E C 2 N 1 A R**

Country **UNITED KINGDOM**

DX

Telephone **0207 786 5700**



### Certificate

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



### Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

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



### Important information

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



### How to pay

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

Make cheques or postal orders payable to 'Companies House'.



### Where to send

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

**For companies registered in England and Wales**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

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

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



### Further information

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

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



**FILE COPY**

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

Company number: 2648289

Charge code: 0264 8289 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th July 2013 and created by METALOGIC LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th August 2013

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Given at Companies House, Cardiff on 9th August 2013



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 29 July 2013

**METALOGIC LIMITED**

as Company

and

**BANK OF MONTREAL**

as Agent

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**DEBENTURE**

---

McCarthy Tétrault  
125 Old Broad Street  
London EC2N 1AR  
Tel +44 (0)20 7786 5700  
Fax +44 (0)20 7786 5702  
[www.mccarthy.ca](http://www.mccarthy.ca)

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|   |                        |
|---|------------------------|
| <b>McCARTHY TÉTRAULT</b>                                    |                        |
| 125 Old Broad Street  |                        |
| London EC2N 1AR   |                        |
| Tel +44 (0)20 7786 5700                                     |                        |
| <b>I CERTIFY THIS TO BE A TRUE<br/>COPY OF THE ORIGINAL</b> |                        |
| Signature   | <u>[Signature]</u>     |
| Name  | <u>ANDREW HAMILTON</u> |
| Position  | <u>SOLICITOR</u>       |
| Date  | <u>6 AUGUST 2013</u>   |

THIS AGREEMENT (the "**Agreement**") is entered into as a deed and made on 29 July 2013

**BETWEEN:**

- (1) **METALOGIC LIMITED**, a private company incorporated and registered in England and Wales with company number 02648289 whose registered office is at Jonas Software, Hithercroft Road, Wallingford, Oxon, England, OX10 9BT (the "**Company**"), and
- (2) **BANK OF MONTREAL** a chartered bank existing under the laws of Canada (the "**Agent**"),

each a "**Party**" and together the "**Parties**"

**WHEREAS** Constellation Software Inc (the "**Borrower**") has entered into a third amended and restated credit agreement dated 1 March 2012 with, inter alios, the Lenders (as therein defined) and the Bank of Montreal in its capacity as administrative agent for the Lenders (in such capacity, the "**Agent**") as amended on 3 July 2012, 30 October 2012 and 8 March 2013 (such credit agreement as it may be further amended, restated, supplemented or otherwise modified from time to time being herein called the "**Credit Agreement**")

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby agrees with the Agent as follows

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement

"**Act**" means the Law of Property Act 1925

"**Administrator**" means a person appointed pursuant to paragraph 14 of Schedule B1 to the Insolvency Act 1986 to manage the Company's affairs, business and property

"**Affiliate**" has the meaning given to that term in the Credit Agreement

"**Event of Default**" has the meaning given to that term in the Credit Agreement

"**Guarantee**" means the guarantee dated on or about the date of this Debenture between the Agent and the Company

"**Lenders**" has the meaning given to that term in the Credit Agreement

"**Lien**" has the meaning given to that term in the Credit Agreement

"**Loan Documents**" has the meaning given to that term in the Credit Agreement

"**Receiver**" means an administrative receiver, a receiver and manager or (if the Agent so specified in the relevant appointment) a receiver, in all cases appointed under this Agreement

"**Security**" has the meaning given to it in the Credit Agreement

**"Security Assets"** means all assets, rights and properties of the Company which are the subject of any Lien created by or pursuant to this Agreement

**"Security Documents"** means this Debenture and the Guarantee,

**"Security Period"** means the period beginning on the date of this Agreement and ending on the Termination Date

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent) of whatsoever nature of the Company to the Agent and the Lenders under each Loan Document whether owed jointly or severally and whether as principal, guarantor, indemnitor or in any other capacity (together with costs, charges and expenses incurred by the Agent, Receiver, attorney, manager, agent or other person, in the preparation, perfection and enforcement of security or other agreements held by the Agent in respect of such indebtedness, liabilities and obligations, and interest thereon), and any unpaid balance thereof but excluding any obligation or liability which, if it were so included, would result in this Agreement contravening any law specifically including for greater certainty all Guarantees provided by it which comprise part of the Security and all of its other obligations to the Agent and the Lenders which it may from time to time acknowledge in writing are secured hereby

**"Termination Date"** means the date on which

- (a) the Agent confirms to the Company that the Company has no further obligation or liability (whether actual or contingent) to make payments to the Agent and/or any Lender under or pursuant to the terms of any of the Loan Documents, and
- (b) none of the Agent and/or any Lender has any obligation or liability (whether actual or contingent) pursuant to, or in connection with, the Loan Documents, or any of them, which could give rise to such an obligation or liability of the Company and all relevant commitments of the Agent are cancelled

## 1.2 Construction

- (a) In this Agreement, unless the contrary intention appears, a reference to
  - (i) an **"amendment"** includes a supplement, novation, restatement or re-enactment and **"amended"** will be construed accordingly,
  - (ii) assets include present and future properties, revenues and rights of every description and a reference to a **"Security Asset"** includes the proceeds of sale of that Security Asset,
  - (iii) an **"authorisation"** includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation,
  - (iv) **"disposal"** means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary, and **"dispose"** will be construed accordingly,
  - (v) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money,

- (vi) the words **"include"**, **"includes"** and **"including"** shall be construed without limitation,
- (vii) a **"person"** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality,
- (viii) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation,
- (ix) a currency is a reference to the lawful currency for the time being of the relevant country,
- (x) an Event of Default being **"outstanding"** means that it has not been remedied or waived,
- (xi) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation,
- (xii) a Clause is a reference to a clause of this Agreement,
- (xiii) a Party or any other person includes its successors in title, permitted assigns and permitted transferees, and
- (xiv) a Loan Document or another document is a reference to that Loan Document or other document as amended, assigned or novated
- (b) Unless expressly provided to the contrary in a Loan Document, a person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights or Third Parties) Act 1999
- (c) Terms defined in, or by incorporation in, the Credit Agreement have the same meanings when used in this Agreement, unless otherwise defined or the context requires otherwise
- (d) The headings in this Agreement do not affect its interpretation

### **1.3 Clawback**

If the Agent considers (acting reasonably) that an amount paid by the Company in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the Company or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Agreement

### **1.4 Enterprise Act 2002**

Paragraph 14 of Schedule B1 of the Insolvency Act 1986 (as inserted by section 248 of, and Schedule 16 to, the Enterprise Act 2002) applies to the floating charge created by this Agreement

## **2. COVENANT TO PAY AND CREATION OF SECURITY**

### **2.1 Covenant to pay**

The Company covenants with the Agent that it shall pay and discharge, or procure the payment or discharge of, each of the Secured Obligations (excluding any money, obligation or liability which would otherwise cause this covenant or the security constituted by this Agreement to be unlawful or prohibited by any applicable law or regulation) at the time and in the manner provided in the relevant Loan Document for their payment or discharge by the Company

### **2.2 General**

All the security created under this Agreement

- (a) is created in favour of the Agent,
- (b) is created over present and future assets of the Company,
- (c) is security for the payment of all the Secured Obligations, and
- (d) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994

## **3. FIXED AND FLOATING CHARGES**

### **3.1 Fixed Charge**

The Company, with full title guarantee and as security for the full payment and performance of all the Secured Obligations, charges, and agrees to charge, by way of first fixed charge to the Agent all of the Company's rights, title and interest, present and future, in, to and under all existing and future assets owned by it

### **3.2 Floating Charge**

The Company, with full title guarantee and as security for the full payment and performance of all the Secured Obligations, charges in favour of the Agent by way of floating charge all of the Company's assets and rights not otherwise effectively charged under Clause 3.1 (*Fixed Charge*)

### **3.3 Conversion**

- (a) The Agent may, at any time by notice to the Company, convert the floating charge created by this Agreement into a fixed charge as regards all or any of the Security Assets specified in the notice if
  - (i) an Event of Default is outstanding,

- (ii) the Agent considers, acting in good faith, that the Security Assets are in danger of being seized or sold under any form of distress, attachment, execution, or other legal process or to be otherwise in jeopardy, or
  - (iii) the Agent reasonably believes that steps likely to lead to the presentation of a petition for the administration or winding-up of or the appointment of an Administrator in respect of the Company are being, or have been, taken
- (b) The conversion shall take effect immediately upon the giving of such notice
- (c) Notwithstanding anything express or implied in this Agreement, and without prejudice to any law which may have similar effect if
  - (i) the Company creates or attempts to create any Lien (except any Lien expressly allowed under the Credit Agreement) over all or any of the Security Assets without the prior consent of the Agent, or
  - (ii) any person levies or attempts to levy any distress, execution, sequestration or other process against any of the Security Assets, or
  - (iii) a resolution is passed or an order is made for the winding-up, dissolution, administration or other reorganization (other than a solvent reorganization) of the Company, or
  - (iv) an Administrator is appointed or an application is presented for the making of an administration order or notice of intention to appoint an Administrator is given,

then the floating charges created by Clause 3.2 (*Floating Charge*) will automatically (without notice) be converted into fixed charges (and the Agent may appoint a Receiver of the same)

### **3.4 Assets acquired after any floating charge crystallisation**

Any asset acquired by the Company after any crystallisation of the floating charge created under this Agreement which but for such crystallisation would be subject to a floating charge shall (unless the Agent confirms in writing to the contrary) be charged to the Agent by way of first fixed charge

### **3.5 Reconversion of fixed charge assets into floating charge assets**

The Agent may at any time after any conversion of the floating charge over any Security Asset into a fixed charge in accordance with Clause 3.3 (*Conversion*) reconvert such fixed charge into a floating charge

## **4. REPRESENTATIONS AND WARRANTIES**

### **4.1 Representations and warranties**

The Company makes the representations and warranties set out in this Clause 4 for the benefit of the Agent

## **4.2 Status**

- (a) It is a private limited company, duly incorporated and validly existing under the laws of England and Wales
- (b) It has the power to carry on its own business as it is now being and will be conducted
- (c) It has the power to own its assets
- (d) It is capable of being sued in its own right and is not subject to any immunity from any proceedings

## **4.3 Powers and authority**

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, the Security Documents to which it is or will be a party and the transactions contemplated by the Security Documents

## **4.4 Legal validity**

Subject to any qualifications as to matters of law referred to in any legal opinion, each Security Document to which it is a party is its legally binding, valid and enforceable obligation

## **4.5 Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, the Security Documents do not conflict with

- (a) any law or regulation applicable to it or its assets,
- (b) its constitutional documents, and
- (c) any document which is binding upon it or any of its assets

## **4.6 Ownership of assets**

It has

- (a) good title to and freedom to use under any applicable laws all assets (including, but not limited to, intellectual property rights) necessary to conduct its business as it is now being and will be conducted, and
- (b) good and marketable title to all the assets reflected in its latest audited financial statements,

in each case free from Liens (other than Liens arising by operation of law or expressly permitted under the Credit Agreement)

## **4.7 Times for making representations**

- (a) The representations set out in this Clause 4 are made by the Company on the date of this Agreement
- (b) Unless a representation is expressed to be given at, or as at, a specific date, each representation is deemed to be repeated by the Company each time a borrowing or a payment is made by the Borrower under the Credit Agreement
- (c) When a representation is repeated, it is applied to the circumstances existing at the time of repetition

## **5. RESTRICTIONS ON DEALINGS AND NOTICES**

### **5.1 Restrictions on dealings**

The Company must not

- (a) create or allow to subsist any Lien (other than this Agreement) on any Security Asset, or
- (b) sell, transfer, licence, lease or otherwise dispose of any Security Asset,

except as expressly allowed under the Credit Agreement

### **5.2 Notice of breach**

The Company shall promptly on becoming aware of all the same give the Agent notice in writing of any breach of

- (a) any representation or warranty set out in Clause 4 (*Representation and Warranties*), and
- (b) the covenant set out in Clause 5.1 (*Restrictions on dealings*)

## **6. RIGHTS AND OBLIGATIONS OF THE COMPANY**

### **6.1 Exercise of Rights**

Notwithstanding the charges set out in Clause 3 (*Fixed and Floating Charges*), the Company shall, subject to the terms of this Agreement and the Credit Agreement and until the security constituted by this Agreement becomes enforceable, be entitled to exercise and enforce, to the exclusion of the Agent, all or any of its rights, discretions and remedies under, or in respect of, the Security Assets

### **6.2 No transfer of obligations**

Nothing in this Agreement or in the Credit Agreement shall constitute or be deemed to constitute a novation or settlement of any obligations (including, without limitation, the Secured Obligations) or indebtedness of the Company, nor shall it be construed as an assumption or acceptance by the Agent of any obligations of the Company in respect of the Security Assets (unless the Agent expressly elects to do so when exercising its rights under Clause 8 (*Enforcement*))

### **6.3 Release**

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At the end of the Security Period, the Agent will, at the request and expense of the Company, release and, where necessary, reassign to the Company the Security Assets and take such further action as is reasonably necessary or desirable to complete such releases and reassignments

## **7. CONTINUING SECURITY**

### **7.1 Continuing Security**

The security constituted by this Agreement is continuing and shall extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or intermediate discharge in whole or in part of the Secured Obligations

### **7.2 Additional security**

- (a) The Company undertakes that it will execute such other security in respect of the Security Assets as the Agent (acting reasonably) may require and shall give further notices in connection with the creation of security over the Security Assets and use its reasonable endeavours to procure that the Agent promptly receives acknowledgements of and consents to such notices as the Agent may reasonably require
- (b) The security constituted by this Agreement is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Agent for any Secured Obligation

### **7.3 Reinstatement**

Where any discharge (whether in respect of the obligations of the Company to the Agent or any security therefor or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise, this security and the liability of the Company under this Agreement shall continue as if the discharge or arrangement had not occurred

## **8. ENFORCEMENT**

### **8.1 Enforcement**

The security constituted by this Agreement shall become immediately enforceable upon the occurrence of an Event of Default and the power of sale and other powers conferred by Section 101 of the Act, as varied or amended by this Agreement, shall be immediately exercisable upon and at any time after the occurrence of an Event of Default. At any time following the occurrence of an Event of Default the Agent may in its absolute discretion enforce all or any part of the security constituted by this Agreement in any manner it sees fit, in particular (but without limitation) the Agent may

- (a) exercise any rights acquired by it in respect of the Security Assets pursuant to this Agreement in all respects in place of the Company,

- (b) sell or assign, transfer or otherwise dispose of in such manner and for such consideration as it may think fit to the extent permitted by applicable law all or any part of the Security Assets charged to it pursuant to this Agreement, and/or
- (c) otherwise put into force and effect all rights, powers and remedies available to it at law or otherwise as chargee of all or part of the Company's rights and interest under the Security Assets which are charged to the Agent pursuant to this Agreement

## **8.2 General**

Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of consolidation) do not apply to the security constituted by this Agreement

## **8.3 Contingencies**

- (a) If the Agent enforces the security constituted by this Agreement at a time when no Secured Obligations are due but at a time when Secured Obligations may or will become so due, the Agent (or the Administrator or Receiver) may pay the proceeds of any recoveries into a suspense account with the Agent or such other bank as may be designated for this purpose by the Agent
- (b) To the extent that the Agent (or the Administrator or Receiver, as appropriate) pays the proceeds of any recoveries into a suspense account pursuant to paragraph (a) above, it shall apply amounts standing to the credit of any suspense account towards payment of the Secured Obligations as and when they fall due and payable

## **8.4 No liability as mortgagee in possession**

Neither the Agent nor any Administrator or Receiver will be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable

## **8.5 Privileges**

Each Receiver and the Agent is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that Section 103 of the Act does not apply

## **8.6 Protection of Third Parties**

No person (including a purchaser) dealing with the Agent or an Administrator or a Receiver (or their or his agents) will be concerned to enquire

- (a) whether the Secured Obligations have become payable, or
- (b) whether any power which the Agent or the Administrator or Receiver is purporting to exercise has become exercisable, or
- (c) whether any money remains due under the Loan Documents, or

- (d) how any money paid to the Agent or the Administrator or Receiver is to be applied

## **8.7 Redemption of prior Liens**

- (a) At any time after the security constituted by this Agreement has become enforceable, the Agent may
  - (i) redeem any prior Lien affecting any Security Asset, and/or
  - (ii) procure the transfer of that Lien to itself, and/or
  - (iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer (any accounts so settled and passed shall be conclusive and binding on the Company)
- (b) All principal moneys, interest and all proper and reasonable costs (including legal fees), charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the Company to the Agent on demand

## **9. RECEIVER**

### **9.1 Appointment of Administrator or Receiver**

At any time after the security constituted by this Agreement becomes enforceable, (or if the Company so requests the Agent in writing at any time), the Agent may without further notice appoint, under seal or in writing under its hand, any one or more qualified persons from an accounting firm of international standing (or such other firm as the Company may agree) to be a Receiver of all or any part of the Security Assets in like manner in every respect as if the Agent had become entitled under the Act to exercise the power of sale conferred under the Act or, when permitted by law, may appoint an Administrator

### **9.2 Agent of the Company**

Each Administrator or Receiver is deemed to be the agent of the Company for all purposes and accordingly is deemed to be in the same position as Administrator or a Receiver duly appointed by a mortgagee under the Act. The Company alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him. The Agent shall not incur any liability (either to the Company or to any other person) by reason of the Agent making its appointment of an Administrator or a Receiver

### **9.3 Removal**

The Agent may by writing under its hand (subject to Section 45 of the Insolvency Act 1986) remove any Receiver appointed by it and may, whenever it deems it expedient, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated

### **9.4 Remuneration**

The Agent may fix the remuneration of any Receiver appointed by it and the maximum rate specified in Section 109(6) of the Act shall not apply. Such remuneration shall be payable by the Company alone and shall constitute a Secured Obligation under this Agreement.

#### **9.5 Relationship with Company**

- (a) To the fullest extent permitted by law, any right, power or discretion conferred by this Agreement (either expressly or impliedly) upon an Administrator or a Receiver may after this Agreement becomes enforceable be exercised by the Agent in relation to any Security Assets without first appointing an Administrator or a Receiver or (to the extent that the exercise of any such right, power or discretion does not conflict with the exercise of such rights, power and discretion by such Administrator or Receiver) notwithstanding the appointment of an Administrator or a Receiver.
- (b) The Agent shall instruct and direct each Administrator or Receiver.

#### **9.6 Power of Sale**

The powers of sale and appointing an Administrator or a Receiver conferred by this Agreement shall be in addition to all statutory and other powers of the Agent under the Insolvency Act 1986 and the Act or otherwise and shall be exercisable without the restrictions contained in section 103 and 109 of the Act or otherwise.

### **10. POWERS OF ADMINISTRATOR OR RECEIVER**

#### **10.1 General**

- (a) Each Administrator or Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out below in this Clause 10 (*Powers of Administrator or Receiver*) in addition to those conferred on him by the Act and the Insolvency Act 1986.
- (b) If there is more than one Administrator or Receiver holding office at the same time, each Administrator or Receiver may (unless the document appointing him states otherwise or unless the exercise of any power would conflict with the exercise of such power by any other Administrator or Receiver) exercise all of the powers conferred on an Administrator or a Receiver under this Agreement individually and to the exclusion of any other Administrators or Receivers.
- (c) A Receiver who is an administrative receiver of the Company has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.

#### **10.2 Possession**

An Administrator or a Receiver may take immediate possession of, get in and collect any Security Assets.

### **10.3 Protection of assets**

An Administrator or a Receiver may pay any payments due under any Security Asset

### **10.4 Compromise**

An Administrator or a Receiver may dispute, settle, compromise or adjust any claim relating in any way to any Security Assets, and may exercise all rights, and bring, prosecute, arbitrate, mediate, enforce, defend and abandon all actions, suits and proceedings, in relation to any Security Assets which may seem to him to be expedient

### **10.5 Receipts**

An Administrator or a Receiver may give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising any Security Asset

### **10.6 Delegation**

An Administrator or a Receiver may delegate his powers in accordance with Clause 13 (*Delegation*)

### **10.7 Other powers**

An Administrator or a Receiver may

- (a) do all other acts and things which he may consider desirable or necessary for realising any Security Assets or incidental or conducive to any of the rights, powers or discretions conferred on an Administrator or a Receiver under or by virtue of this Agreement, and
- (b) exercise in relation to any Security Assets all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of the same,

and may use the name of the Company for any of the above purposes

## **11. APPLICATION OF PROCEEDS**

### **11.1 General**

Any moneys received by the Agent or any Administrator or Receiver after the security constituted by this Agreement has become enforceable shall be applied (but without prejudice to the right of the Agent to recover any shortfall from the Company) in or towards payment of the Secured Obligations or such part of them as is then due and payable

### **11.2 Prior claims**

This Clause 11 (*Application of Proceeds*) is subject to payment of any claims having priority over this Agreement

## **12. FURTHER ASSURANCES**

The Company shall, at its own expense, take whatever action (to the extent it is permitted to do so by applicable law) the Agent, an Administrator or a Receiver

- (a) may reasonably require for perfecting or protecting the security intended to be created by this Agreement over any Security Asset, and
- (b) may require (after the security constituted by this Agreement has become enforceable) for facilitating the realisation of any Security Asset or the exercise of any right, power or discretion exercisable by the Agent, Administrator or Receiver or any of their delegates or sub-delegates in respect of any Security Asset,

including the execution of any assignment of any property (and, in the case of paragraph (b) above, transfer or conveyance of any property) whether to the Agent or to its nominees, and the giving of any notice, order or direction and the making of any registration

## **13. DELEGATION**

- (a) The Agent may delegate (to the extent necessary for the exercise of any right, power or discretion exercisable by it under this Agreement) by power of attorney or in any other manner to
  - (i) at any time, any of its Affiliates, or
  - (ii) after the security constituted by this Agreement has become enforceable, to any qualified person, if not an Affiliate, that is an accounting firm of international standing, or a person employed by, or a partner in such firm,

any right, power or discretion exercisable by it under this Agreement. An Administrator or Receiver may delegate by power of attorney or in any other manner to any qualified person, which is an accounting firm of international standing, any right, power or discretion exercisable by it under this Agreement

- (b) Any such delegation may be made upon the terms (including power to sub-delegate) and subject to any regulations which the Agent or such Administrator or Receiver (as the case may be) may think fit, provided that any delegate of a right, power or discretion under this Clause 13 on whom a further right of sub-delegation is conferred, shall be subject to the same restrictions applicable to the Agent specified in subparagraph (a) above in exercising any such right of sub-delegation
- (c) Neither the Agent nor any Administrator or Receiver will be in any way liable or responsible to the Company for any loss or liability arising from any act, default, omission or misconduct on the part of any third party delegate or sub-delegate appointed in accordance with the terms of this Clause 13

## **14 POWER OF ATTORNEY**

### **14.1 Appointment**

The Company hereby by way of security irrevocably appoints, severally, the Agent, each Administrator or Receiver and any of their delegates and sub-delegates properly appointed pursuant to Clause 13 (*Delegation*) to be its true and lawful attorney on its behalf and in its name, after the security constituted by this Agreement has become enforceable to

- (a) execute and do all such assurances, acts and things which may be necessary or which the Company is obliged to do under this Agreement and generally in its name and on its behalf to exercise all or any of the powers, authorities and discretions conferred by or pursuant to this Agreement or by statute on the Agent, and
- (b) exercise all or any of the rights, powers, authorities and discretions of the Company in respect of the Security Assets including, to sell, dispose of, or transfer all or any of the Security Assets and to receive and give valid receipt for any money payable in respect of or arising from the enforcement of any of the Security Assets

### **14.2 Ratification**

The Company hereby agrees to ratify and confirm whatever any such attorney as is mentioned in Clause 14.1 (*Appointment*) shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretion referred to in this Clause 14

### **14.3 Revocation**

The Company hereby declares and undertakes that the power of attorney granted by it pursuant to Clause 14.1 (*Appointment*), shall not be revoked by the Company for so long as any Secured Obligations remain outstanding

## **15. CHANGES TO THE PARTIES**

### **15.1 Benefit of this Agreement**

This Agreement shall be binding upon and enure to the benefit of each Party and its or any subsequent respective successors, transferees and permitted assigns

### **15.2 Transfers by the Company**

The Company may not assign, transfer, novate or dispose of any of, or any interest in, its rights and/or obligations under this Agreement

### **15.3 Transfers by the Agent**

The Agent may assign all or any of its rights or benefits under this Agreement to any person in favour of whom an assignment has been made in accordance with the Credit Agreement and the Company undertakes, as soon as practicable on being requested to

do so by the Agent, to enter into such documents as may be necessary to effect such transfer

## **16. MISCELLANEOUS**

### **16.1 Tacking**

The Agent shall perform its obligations under the Credit Agreement (including any obligation to make available further borrowings)

### **16.2 Agent**

The Agent shall be under no obligation to exercise any right, power or privilege conferred upon it by or pursuant to this Agreement or any applicable law or to make any claim or to take any other action to enforce any rights, title and interests assigned under this Agreement

### **16.3 No Liability**

(a) The Agent shall not be liable for any loss of any kind which may occur as a result of the exercise or purported exercise of any of its rights contained in this Agreement unless such loss occurs as a result of its gross negligence or wilful misconduct and shall not be liable for any loss which may occur as a result of any delay in the exercise of any of such rights

(b) No action taken or omitted to be taken by the Agent shall give rise to any defence, counterclaim or right of set off in favour of the Company against the Agent, or affect or impair the Company's liabilities for the Secured Obligations

### **16.4 Certificates**

A certificate of the Agent setting out the amount of the Secured Obligations due from the Company shall be evidence of such amount against the Company in the absence of manifest or proven error

### **16.5 Counterparts**

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement

## **17. GOVERNING LAW**

This Agreement is governed by English law

## **18. ENFORCEMENT**

### **18.1 Jurisdiction**

(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**")

- (b) 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
- (c) This Clause 18.1 (*Jurisdiction*) is for the benefit of the Agent only. As a result, the Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Agent may take concurrent proceedings in any number of jurisdictions

## **18.2 Waiver of immunity**

The Company irrevocably and unconditionally

- (a) agrees not to claim any immunity from proceedings brought by the Agent against it in relation to this Agreement and to ensure that no such claim is made on its behalf,
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings, and
- (c) waives all rights of immunity in respect of it or its assets

## **19. NOTICES**

### **19.1 Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter

### **19.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is that identified with its name below or any substitute address, fax number or department or officer as that Party may notify to the other Party by not less than five Business Days' notice

- (a) the Company

Metalogic Limited  
45 Vogell Road, Suite 500  
Richmond Hill, ON  
L4B 3P6

Fax +1 905 886 5455  
Attention: President

with a copy to

Constellation Software Inc  
20 Adelaide Street East

Suite 1200  
Toronto, Ontario  
Canada M5C 2T6

Fax +1 416 861 2287  
Attention Chief Financial Officer

- (b) the Agent

Bank of Montreal  
Agent Bank Services  
234 Simcoe Street  
Toronto, Ontario  
Canada M5T 1T4

Fax +1 416 598 6218  
Attention Manager, Agent Bank Services

with a copy to

Bank of Montreal  
BMO Capital Markets  
4th Floor, First Canadian Place  
Toronto, Ontario  
Canada M5X 1H3

Fax +1 416 359 7796  
Attention Vice President, Loan Products Group

### 19.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective
- (i) if by way of fax, when received in legible form during normal business hours, or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 19.2 (*Addresses*), if addressed to that department or officer

- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's name above (or any substitute department or officer as the Agent shall specify for this purpose)

**19.4 English language**

- (a) Any notice given under or in connection with this Agreement shall be in English
- (b) All other documents provided under or in connection with this Agreement shall be
  - (i) in English, or
  - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document

**This Agreement is entered into as a deed on the date stated at the beginning of this Agreement.**

## SIGNATORIES

The Company

SIGNED and DELIVERED as a deed by  
**METALOGIC LIMITED**

acting by BARRY SYMONS  
a director, in the presence of,

*mh*

(Signature of witness)

Name *Michael Show*

Address *45 Vogell Road, Suite 500*  
*Richmond Hill, ON*  
*L4B 3P6*

Occupation *Lawyer*

*[Signature]*  
Director

The Agent

**BANK OF MONTREAL**

By .

Name

Title

## SIGNATORIES

The Company

SIGNED and DELIVERED as a deed by  
**METALOGIC LIMITED**

acting by \_\_\_\_\_,  
a director, in the presence of,

Director

(Signature of witness)

Name

Address

Occupation

The Agent

**BANK OF MONTREAL**

By 

Name **JEFF CURRIE**

Title **VIC PRESIDENT**