

13/017279

In accordance with  
Sections 859A and  
859J of the Companies  
Act 2006.

MR01

## Particulars of a charge

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

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

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

☒ **What this form is NOT for**  
You may not use this form to  
register a charge with  
an instrument. Use fo

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

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



You must enclose a certified copy of the instrument with this form.  
scanned and placed on the public record. **Do not send the original.**

SATURDAY



SCT \*S3FVYB57\* #350  
06/09/2014  
COMPANIES HOUSE

# 1 Company details

Company number S C 3 5 8 1 2 7  
Company name in full THE EDINBURGH HEARING CLINIC LTD

For official use  
→ **Filling in this form**  
Please complete in typescript or in  
bold black capitals.  
All fields are mandatory unless  
specified or indicated by \*

# 2 Charge creation date

Charge creation date d 0 d 2 m 0 m 9 y 2 y 0 y 1 y 4

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

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

Name STARKEY LABORATORIES LIMITED

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.

**MRO1**  
Particulars of a charge

<b>4</b>	<b>Brief description</b> Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.  Brief description By way of fixed charge: - all right, title, estate and other interests of the Borrower in each of the Properties not effectively mortgaged under Clause 3.1.1; - all rights in Intellectual Property, choses in action, claims or similar rights now or hereafter belonging to the Borrower  For more details, please refer to the Debenture.	Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".  Please limit the description to the available space.
<b>5</b>	<b>Other charge or fixed security</b> Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box. <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
<b>6</b>	<b>Floating charge</b> Is the instrument expressed to contain a floating charge? Please tick the appropriate box. <input checked="" type="checkbox"/> <b>Yes</b> Continue <input type="checkbox"/> <b>No</b> Go to <b>Section 7</b> Is the floating charge expressed to cover all the property and undertaking of the company? <input type="checkbox"/> <b>Yes</b>	
<b>7</b>	<b>Negative Pledge</b> Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box. <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
<b>8</b>	<b>Trustee statement <sup>①</sup></b> 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. <input type="checkbox"/>	<b>①</b> This statement may be filed after the registration of the charge (use form MR06).
<b>9</b>	<b>Signature</b> Please sign the form here.  Signature X Myerson Solicitors LLP X  This form must be signed by a person with an interest in the charge.	

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name Lianne Allan

Company name Myerson Solicitors LLP

Address Regent Road

Post town Altrincham

County/Region Cheshire

Postcode 

W	A	1	4		1	R	X
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Country UK

DX 19865 Altrincham

Telephone 0161 941 4000



### 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)

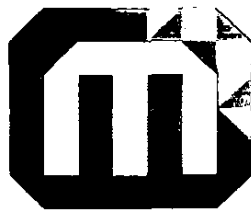
This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

- (1) THE EDINBURGH HEARING CLINIC LTD
- (2) STARKEY LABORATORIES LIMITED

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**DEBENTURE**

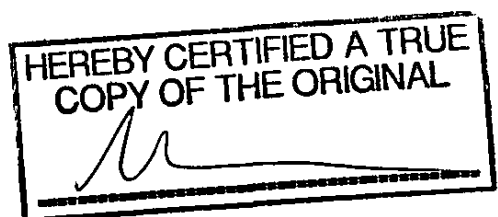
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myerson

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THIS DEBENTURE is made on

2 September 2014

**BETWEEN:**

- (1) **THE EDINBURGH HEARING CLINIC LTD** (Company Number: SC358127) incorporated in Scotland whose registered office address is situate at 179 Oakbank Road, Perth, PH1 1HA (the **Borrower**); and
- (2) **STARKEY LABORATORIES LIMITED** (Company Number: 2691952) incorporated in England and Wales whose registered office address is situate at William F Austin House, Bramhall Technology Park, Pepper Road, Hazel Grove, Stockport, Cheshire SK7 5BX (the **Lender**).

**RECITALS:**

- A. The Lender has made/has agreed to make available to the Borrower trade credit and a loan facility of such amount and under the terms of the Facility Agreement (as defined below).
- B. It is a condition of the Facility Agreement that the Borrower enters into, amongst other things, this Debenture.
- C. This Debenture is entered into as security, amongst other things, for the amount outstanding from time to time in respect of the Facility Agreement.

**OPERATIVE PROVISIONS:**

**1. Definitions and Interpretation**

- 1.1 In this Debenture, unless the context otherwise requires, the following terms shall have the following meanings:

<b>Contracts</b>	all the present and future contracts, agreements, engagements or other arrangements entered into or undertaken by the Borrower whether in the ordinary course of business or otherwise;
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<b>Debts</b>	all present and future book and other debts and other monies due, owing, payable or incurred to the Borrower including, without limitation, any amounts from time to time standing to the credit of any bank or other accounts of the Borrower and with the benefit of any guarantees, indemnities or other assurances against financial loss affecting any of the same and the benefit of any present or future insurance policies and all proceeds thereof and all things in action which may give rise to any debt, revenue or claim and any other rights relating thereto including, without limitation, negotiable instruments, legal and equitable charges, reservations of proprietary rights of trading and unpaid vendor's liens and associated rights;
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<b>Default Rate</b>	the Interest Rate specified in the Facility Agreement;
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<b>Encumbrance</b>	any mortgage, charge, pledge, lien, assignment, hypothecation, security, interest, title, retention, flawed
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asset agreement, preferential right or trust arrangement or other security arrangement or agreement or any right conferring a priority of payment;

**Environmental Law**

all laws and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the UK or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health, including but not limited to, the conservation of natural resources, the control of noise, the safety of the workplace, the undertaking of any manufacturing or process, the use of packaging, the labelling or advertisement of any goods in relation to the effect on the environment of their production or use, the production, storage, transportation, treatment, recycling or disposal of any waste or any Hazardous Substance, the preparation of audits or assessments in relation to any such matters, or the liability of any person whether civil or criminal for any harm to human health, damage to or pollution of the environment or the rectification thereof;

**Environmental Licence**

any permit, licence, authorisation, consent or other approval required by any Environmental Law;

**Event of Default**

any event set out in Clause 9.2 and each and every event of default howsoever described in the Security Documents;

**Facility Agreement**

a loan and trade credit facility agreement dated today between (1) the Borrower and (2) the Lender;

**Financial Indebtedness**

- (i) any amounts raised by borrowing under any loan or credit facility or acceptance under any acceptance credit facility;
- (ii) any amount raised under any note purchase facility or by the issue of any notes, bonds, promissory notes or other debenture or securities (whether or not issued for cash consideration);
- (iii) any liability in respect of any lease which would be classified as a "finance lease" under generally accepted accounting standards in the United Kingdom;
- (iv) any liability in respect of the purchase price for property of any description (real or personal), works or services or any combination thereof the payment of which is deferred for any period after delivery or performance;
- (v) amounts raised under any other transaction (including, without limitation, forward sale or

purchase agreements) having the commercial effect of a borrowing;

- (vi) any liability (actual or contingent) in respect of any letter of credit opened or established on behalf or for the account or at the request of the relevant person (but other than letters of credit opened or established in the normal course of day-to-day trading in favour of suppliers); and
- (vii) any liability (actual or contingent) under any guarantee, security or indemnity or other legally binding commitment designed to assure any creditor against loss in respect of any indebtedness for Financial Indebtedness of any person (and for the purpose of calculating the amount of such liability they shall be taken at the amount of the indebtedness for Financial Indebtedness covered by or, as appropriate, at the maximum amount of the liability specified in, such guarantee, security, indemnity or other commitment as aforesaid);

**Guarantee**

the guarantee(s) given to the Lender (if any) by directors/shareholders of the Borrower or any other person, in respect of the obligations and liabilities of the Borrower to the Lender, whether dated before, on or after the date of this Debenture;

**Group**

the Borrower and its Subsidiaries, its holding company (as defined in Section 1159 of the Companies Act 2006) and the Subsidiaries of that holding company;

**Hazardous Substance**

all poisonous, noxious, hazardous, infectious, radioactive or polluting substances whether natural or artificial and whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any substance which may, either alone or in combination, be harmful to man, to the life or health of any living organisms, or to property, or be deleterious to the environment;

**Intellectual Property**

all patents (including applications, improvements, prolongations, extensions and rights to apply therefor), designs (whether registered or unregistered) copyrights, design rights, database rights, trade marks and service marks (whether registered or unregistered), utility models, trade and business names, knowhow, formulae, inventions, confidential information, trade secrets and computer software programs and systems (including the benefit of any licences or consents relating to any of the above) of the Borrower and all fees, royalties or other rights derived therefrom or incidental thereto in any part of the world;

**LPA**

the Law of Property Act 1925;

<b>Permitted Encumbrances</b>	any Encumbrance created by or pursuant to any Security Document;
<b>Planning Acts</b>	the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and any extant order or regulation made or confirmed under any of them;
<b>Premises</b>	any premises other than a Property, now or previously owned, leased, occupied or controlled by the Borrower or any of its Subsidiaries;
<b>Properties</b>	the freehold, leasehold or immovable property referred to in Schedule 1 and any other freehold, leasehold or immovable property now or at any time vested in or held by or on behalf of the Borrower, together with in all cases all buildings, structures, fixtures and fittings (including trade fixtures and fittings but excluding, in the case of leasehold property, landlord's fixtures) and fixed plant and machinery and all related spare parts, fuels, equipment and tools from time to time therein or thereon subject to and with the benefit of any lease, tenancy, agreement, licence, right, covenant, condition or encumbrance affecting the same at the date hereof;
<b>Receiver</b>	any receiver or receiver and manager or administrative receiver or administrator appointed by the Lender over all or any of the Security Assets pursuant to this Debenture whether alone or jointly with any other person and includes any substitute for any of them appointed from time to time;
<b>Secured Liabilities</b>	all monies, obligations and liabilities whatsoever whether for principal interest or otherwise in whatever currency which may now or at any time in the future be due, owing or incurred by the Borrower to the Lender on any account whatsoever including, without limitation, under the terms of the Facility Agreement, any Security Document or otherwise, whether present or future, actual or contingent, primary or collateral, and whether alone, severally or jointly as principal guarantor, surety or otherwise and in whatever name or style or in any other manner whatsoever, together with interest, commission, charges and any other charges, costs and legal expenses (on a full indemnity basis) charged or incurred by the Lender and including those arising from the Lender perfecting or enforcing or attempting to enforce this Debenture or any other security (and its right thereunder) held by the Lender from time to time;
<b>Securities</b>	all stocks, shares, bonds and securities of any kind whatsoever whether marketable or otherwise and all



other interests (including but not limited to loan capital) both present and future held by the Borrower in any person (including any Subsidiary of the Borrower) and includes all allotments, rights, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to the same and all money or property offered at any time by way of dividend, conversion, redemption, bonus, preference, option or otherwise in respect thereof;

**Security Assets**

all the undertaking and the assets, rights and property of the Borrower which are the subject of any security created or purported to be created by this Debenture and includes any part of or any interest in them;

**Security Documents**

the Facility Agreement, the Guarantee, this Debenture and any other document guaranteeing or creating security for or supporting the obligations of the Borrower to the Lender;

**Security Period**

the period starting on the date of this Debenture 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;

**Subsidiary**

- (i) a subsidiary within the meaning of Section 1159 of the Companies Act 2006; and
- (ii) unless the context otherwise requires, a subsidiary undertaking within the meaning of Section 1162 of the Companies Act 2006.

- 1.2 All terms defined in the Facility Agreement which are used in this Debenture shall bear the same meaning as in the Facility Agreement unless the context requires otherwise and in the event of any conflict between the meaning of any term as defined in the Facility Agreement and in this Debenture then the definition in this Debenture shall prevail.
- 1.3 References to Clauses and Schedules are to the Clauses of and Schedules to this Debenture. Clause headings are inserted for ease of reference only and are not to affect the interpretation of this Debenture.
- 1.4 Except to the extent the context otherwise requires any reference in this document to **this Debenture** and any other document referred to in it includes any document expressed to be supplemental to or collateral with or which is entered into pursuant to or in accordance herewith or therewith and shall be deemed to include any instruments amending, varying, supplementing, novating or replacing the terms of any such documents from time to time.
- 1.5 References to a person are to be construed to include corporations, firms, companies, limited liability partnerships, partnerships, individuals, associations, states and administrative and governmental and other entities whether or not a separate legal entity; references to any person are to be construed to include references to the respective person's successors, transferees and assigns whether direct or indirect; references to the singular shall include the plural and vice versa.

- 1.6 References to any statutory provision are to be construed as references to that statutory provision as amended, supplemented, re-enacted or replaced from time to time (whether before or after the date of this Debenture) and are to include any orders, regulations, instruments or other subordinated legislation made under or deriving validity from that statutory provision.
- 1.7 Any covenant or obligation by the Borrower not to do or omit any act or thing shall be taken to include a covenant and obligation not to suffer or permit the doing or omitting of that act or thing. Any covenant or obligation by the Borrower to do any act or thing shall be taken to include a covenant and obligation to procure that it is done.
- 1.8 Where any reference is made to an event, happening or action taken by the Borrower or any guarantor of the Borrower and such term or terms comprise more than one person, then the event or action shall be an event happening to or action by any one or more of those persons.
- 1.9 The words **other** and **otherwise** are not to be construed ejusdem generis with any foregoing words where a wider construction is possible; the words **including** and **in particular** are to be construed as being by way of illustration or emphasis only and are not to be construed as, nor shall they take effect as, limiting the generality of any foregoing words.
- 1.10 In this Debenture, unless otherwise expressly provided, any reference to the liquidation, winding up or dissolution of a company or body corporate or the appointment of a receiver, manager or administrator of or in relation to a company or body corporate or any of its assets (or anything similar to the foregoing) shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, person under the law of the jurisdiction in which it is incorporated or any jurisdiction in which it carries on business or has assets or liabilities.

## **2. Covenant to Pay**

- 2.1 The Borrower covenants with the Lender that it will on written demand immediately pay and discharge the Secured Liabilities.
- 2.2 The Borrower shall pay interest to the date of payment or discharge (notwithstanding any demand or any judgment obtained by the Lender or the liquidation or administration of or any arrangement or composition with creditors by the Borrower) at the rate or rates applicable under the agreements or arrangements giving rise to the relevant obligations or liabilities or if no such rate or rates are specified at the Default Rate upon such days and upon such terms as the Lender may from time to time determine. Such interest shall be compounded in the event of it not being punctually paid but without prejudice to the right of the Lender to require payment of such interest.
- 2.3 All sums payable by the Borrower under this Debenture shall be paid without any set-off, counterclaim, withholding or deduction whatsoever unless required by law in which event the Borrower will simultaneously with making the relevant payment under this Debenture pay to the Lender such additional amount as will result in the receipt by the Lender of the full amount which would otherwise have been receivable and will supply the Lender promptly with evidence satisfactory to the Lender that the Borrower has accounted to the relevant authority for the sum withheld or deducted.

## **3. Charge**

- 3.1 The Borrower with full title guarantee and as a continuing security for the payment and discharge of the Secured Liabilities charges in favour of the Lender:
- 3.1.1 by way of legal mortgage all right, title, estate and other interests of the Borrower in each of the Properties referred to in Schedule 1; and

3.1.2 by way of fixed charge:

- (a) all right, title, estate and other interests of the Borrower in each of the Properties not effectively mortgaged under Clause 3.1.1;
- (b) all right, title and interest of the Borrower to and in all plant and machinery now or at any time hereafter vested in or held by or on behalf of the Borrower and not charged in Clause 3.1.1 and all related spare parts, fuels, equipment and tools;
- (c) all rights in Intellectual Property, choses in action, claims or similar rights now or hereafter belonging to the Borrower;
- (d) all present and future goodwill and uncalled capital for the time being of the Borrower;
- (e) all the present and future right, title and interest of the Borrower in the Securities;
- (f) all the present and future right, title, interest and benefit of the Borrower in the Contracts;
- (g) all bills of exchange, promissory notes and negotiable instruments of any description now or at any time hereafter beneficially owned by the Borrower;
- (h) all right, title and interest of the Borrower to and in the Debts and the benefit of all rights, securities and guarantees of any nature whatsoever now or at any time enjoyed or held by the Borrower;
- (i) any deposits, margins, commissions or other rights of the Borrower to any commodities and any contract or option relating thereto (whether present or future) and any guarantee or security relating thereto whether held by or placed or contracted with the Lender or any other person from time to time;
- (j) all loan capital, indebtedness or liabilities both present and future on any account or in any manner owing to the Borrower from any company which now is or may in the future become a member of the Group; and
- (k) all amounts realised by an administrator or liquidator of the Borrower upon the enforcement or execution of any order of the Court under Part VI of the Insolvency Act 1986.

3.2 The Borrower with full title guarantee and as a continuing security for the payment and discharge of the Secured Liabilities assigns absolutely to the Lender:

- 3.2.1 the benefit to the Borrower of all rights and claims to which the Borrower is now or may in the future become entitled in relation to the Properties including (but without limitation) all rights and claims of the Borrower against all persons who now are or who at any time have been or may become lessees, sub-lessees, licensees or occupiers of the whole or any part or parts of the Properties and all guarantors and sureties for the obligations of any such person;
- 3.2.2 the benefit to the Borrower of all guarantees, warranties and representations given or made by, and any rights or remedies to which the Borrower is now or may in the future be entitled against, all or any professional advisers and contractors in relation to any of the Properties and the manufacturers, suppliers or installers of all plant, machinery,

fixtures, fittings or other items now or from time to time in the buildings erected or to be erected on any of the Properties and any other person now or from time to time under contract with or under a duty to the Borrower including (without limitation) the right to prosecute in the name of the Borrower any proceedings against any such person in respect of any act, omission, neglect, default, breach of contract or breach of duty whether relating to the design, construction, inspection or supervision of the construction of any of the said buildings or to the quality or fitness for use of such plant, machinery, fixtures, fittings and other items or otherwise and the benefit of all sums recovered in any proceedings against all or any of such persons; and

**3.2.3 the right, title and interest of the Borrower in the Contracts,**

provided that if the Secured Liabilities shall be paid or discharged to the Lender's satisfaction in accordance with the provisions of this Debenture and provided further that the Lender is satisfied that it has no further obligation whether actual or contingent to make any credit or accommodation available to the Borrower then the Lender shall, subject to the provisions of Clause 19, at the request and cost of the Borrower re-assign all such assets to the Borrower or as the Borrower may direct.

- 3.3 The Borrower with full title guarantee and as a continuing security for the payment and discharge of the Secured Liabilities charges in favour of the Lender by way of floating charge all the undertaking and all the assets, rights and income of the Borrower both present and future not otherwise effectively mortgaged, charged or assigned under Clauses 3.1 or 3.2.
- 3.4 The charges created by Clause 3.1 shall constitute first fixed charges. The charge created by Clause 3.3 shall be a first floating charge unless and until it is converted into a fixed charge pursuant to Clause 5 or by operation of law.
- 3.5 The Borrower covenants to join with the Lender in giving notice of the assignments contained in Clause 3.2 to all other relevant parties and to procure an acknowledgement of such notice from them.
- 3.6 If, for any reason, the assignment of any of the Security Assets referred to in Clause 3.2 is found to be ineffective and/or if any sums payable in respect of such Security Assets are received by the Borrower, the Borrower shall hold the benefit of such Security Assets and any such sums received by it in trust for the Lender and shall account to the Lender for or otherwise apply all such sums as the Lender may direct and shall otherwise at its own cost take such action and execute such documents as the Lender may reasonably require.
- 3.7 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to this Debenture (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986) and, without prejudice to its other rights and remedies hereunder or otherwise, the Lender shall be entitled to appoint an administrator in respect of the Borrower pursuant to the Insolvency Act 1986.

**4. Restrictions on Dealing**

- 4.1 The Borrower represents, warrants and undertakes to the Lender that, save with the prior written consent of the Lender, it:
  - 4.1.1 is and will be the sole beneficial owner with full title guarantee of all the Security Assets free from Encumbrances and will not create or attempt to create or permit to arise or subsist any Encumbrance (other than the Encumbrances in favour of the Lender created under or pursuant to this Debenture and Permitted Encumbrances) on any of the Security Assets or enter into any agreement to do any of the foregoing and it shall be a condition of any such consent that the Borrower obtains or procures the execution of a

deed of priority or postponement by any encumbrancer in such form as the Lender may require;

- 4.1.2 has not and none of its Subsidiaries have sold or agreed to sell or otherwise disposed of or agreed to dispose of and will not and none of its Subsidiaries will at any time during the subsistence of this Debenture sell, assign, part with, transfer, lease, licence or otherwise dispose of or deal with the benefit of all or any of the Borrower's right, title and interest in and to the Security Assets or any part of them (save for sales of its stock in trade at not less than market value and the use of cash in the acquisition of goods or services, in either case in the ordinary course of its trading business and until such time as the floating charge created by Clause 3.3 has been converted into a fixed charge pursuant to this Debenture or by operation of law) and will not agree to or grant any option in respect of any of the foregoing; and
- 4.1.3 will pay into such account as the Lender may from time to time specify all monies which it may receive in respect of the Debts and all licence fees, royalties and other monies or claims deriving from the Intellectual Property forthwith on receipt and until such payment will hold all such monies on trust for the Lender and it will not release, set off, compound or deal with the Debts otherwise than by getting in and realising the same in the ordinary and proper course of its trading business (and for this purpose the realisation of debts by means of block discounting, factoring or the like shall not be regarded as dealing in the ordinary and proper course of its trading business) and shall at any time on demand by the Lender execute a legal assignment to the Lender of any of the Debts or the Intellectual Property in the form required by the Lender.

## **5. Conversion of Floating Charge**

- 5.1 The Lender may at any time by notice in writing to the Borrower convert the floating charge referred to in Clause 3.3 into a fixed charge as regards any of the Security Assets specified in the notice which the Lender shall consider to be in danger of being seized or sold under any form of distress, attachment, execution, diligence or other process levied or threatened or to be otherwise in jeopardy and (whether or not an Event of Default has occurred) may, without prejudice to its other rights or remedies hereunder or otherwise, at any time appoint an administrator thereof.
- 5.2 The floating charge created by this Debenture shall, unless otherwise agreed in writing by the Lender, automatically and without notice be converted into a fixed charge in respect of any Security Assets subject to it:
  - 5.2.1 which shall become subject to an Encumbrance other than a Permitted Encumbrance or to a disposition contrary to the provisions of Clause 4;
  - 5.2.2 if and when any person levies or notifies the Borrower that it intends to levy any distress, execution, sequestration or other process against those Security Assets;
  - 5.2.3 if and when the Borrower shall cease to carry on business or to be a going concern;
  - 5.2.4 if an Event of Default shall take place; or
  - 5.2.5 if any of the Secured Liabilities become due and outstanding prior to their stated maturity.

## **6. Representations, Warranties and Covenants by the Borrower**

- 6.1 The Borrower represents and warrants to the Lender and undertakes that:

- 6.1.1 it has and will at all times have the necessary power to enter into and perform its obligations under this Debenture and the charges created by this Debenture do not contravene any provision of its memorandum and articles of association or any agreement binding on it or any of the Security Assets;
- 6.1.2 this Debenture constitutes its legal, valid, binding and enforceable obligations and is a security over the Security Assets and every part thereof effective in accordance with its terms;
- 6.1.3 all necessary authorisations and consents to enable or entitle it to enter into this Debenture and to enable it and each of its Subsidiaries to carry on their respective businesses as they are currently being conducted have been obtained and will remain in full force and effect during the subsistence of the security constituted by this Debenture;
- 6.1.4 the Borrower and each of its Subsidiaries has acquired and maintained all Environmental Licences required by its use or occupation of the Properties and the Premises or for the conduct of its business as it has been and is currently being carried on and has complied with all terms and conditions relating thereto and with all other applicable Environmental Laws and has not done or permitted any act or omission whereby any such Environmental Licence would be liable to be varied, suspended or revoked;
- 6.1.5 there has been no discharge, spillage, release or emission of any Hazardous Substances on, into or from any of the Properties or the Premises, so far as the Borrower is aware, any premises adjoining any of them and no such Hazardous Substances have been stored or disposed of on or in any of the Properties or Premises or, in so far as the Borrower is aware, any premises adjoining them except in accordance with the requirements of the applicable Environmental Laws;
- 6.1.6 the Borrower is not and none of its Subsidiaries is in breach of and has not incurred or become subject to any civil or criminal liability under any Environmental Law or the terms of any Environmental Licence and the Borrower has not and none of its Subsidiaries has received any notice or other communication or become aware of any facts or circumstances from which it appears that it or any other such person may be or is alleged to be in breach or to have incurred any such liability under any Environmental Law or Environmental Licence;
- 6.1.7 neither the Borrower nor any of its Subsidiaries nor any of its operations or any of the Properties or Premises have been the subject of any investigation or inspection under any Environmental Law other than merely routine inspections and to the best of the Borrower's knowledge no such investigation or inspection is pending, threatened or proposed;
- 6.1.8 the Borrower and each of its Subsidiaries has obtained and maintained all such insurance policies as would be maintained by prudent companies carrying on business of the type carried on by the Borrower at all relevant times and has complied in all material respects with the terms and conditions of such policies;
- 6.1.9 the Borrower shall procure that any company which may be or becomes a Subsidiary of the Borrower at any time during the subsistence hereof shall execute in favour of the Lender such debenture and/or other charges supplemental to this Debenture as the Lender shall from time to time require;
- 6.1.10 the Borrower shall not reduce, increase or in any way change the structure of the share capital of the Borrower without the prior consent in writing of the Lender; and

6.1.11 the Borrower shall not permit any Subsidiary of the Borrower to issue any shares except to the Borrower or another Subsidiary of the Borrower.

6.2 The Borrower covenants with the Lender that it shall keep its books of account and prepare all financial statements to be delivered under this Debenture in accordance with accounting principles generally accepted in England and Wales consistently applied and procure that these and the following are furnished to the Lender:

6.2.1 as soon as practicable after the end of each financial year or the date the same are issued to the shareholders entitled thereto, the financial statements of the Borrower and the financial statements of the Group for and as at the end of the financial year then ended which shall be prepared so as to give a true and fair view of the financial condition of the Borrower and of the Group as at the end of the period to which those financial statements relate and of the results of its and their operations during such period;

6.2.2 such other information, financial or otherwise, as the Lender may from time to time reasonably request regarding the affairs of the Borrower and/or the Group; and

6.2.3 with reasonable promptness, details of any litigation, arbitration or administrative proceedings in progress, pending or, to the knowledge of the Borrower, threatened against it or any member of the Group which might have a material adverse effect on the Borrower's ability to perform its obligations under this Debenture.

and the Borrower permits the Lender (or its officers, employees or agents) to inspect the books of account and other books and documents of the Borrower and of the Group or make such other investigations as are reasonably necessary for the purpose of verification of such information.

6.3 Save with the prior written consent of the Lender, the Borrower covenants with the Lender:

#### **The Properties**

6.3.1 to keep the Properties and all other tangible Security Assets in good and substantial repair and in good working order and condition (fair wear and tear excepted) and to observe, perform and comply with the restrictive and other covenants and stipulations affecting the Properties or contained in any lease or tenancy agreement or otherwise affecting any of the Security Assets or their use or enjoyment;

6.3.2 not to do or permit any act or omission whereby any Security Asset may be surrendered or forfeited or the Borrower's interest or estate in or title to or the value thereof may be adversely affected;

6.3.3 not to do or suffer to be done on the Properties anything which shall be or be deemed to be development, demolition, rebuilding, alteration, addition or a change of use within the meaning of the Planning Acts nor sever or unfix or remove any of the fixtures from any of the Properties nor (except for the purpose and in the course of effecting necessary repairs thereto or of replacing the same with new or improved models or substitutes) remove any of the plant or machinery therein or used therein nor do or suffer or omit to be done any act, matter or thing which in the Lender's opinion might adversely affect the value of the Properties or whereby any statutory instrument, consent, licence, obligation or regulation shall or may be infringed;

6.3.4 duly and punctually to pay or cause to be paid all existing and future rents, rates, taxes, charges, duties, assessments, impositions and other outgoings payable (whether imposed by deed, statute or otherwise and whether in the nature of capital or revenue and even though of a wholly novel character) in respect of the Borrower's business

property and assets and/or the Security Assets or any part thereof or by the owner or occupier thereof;

- 6.3.5 not to enter into onerous or restrictive obligations affecting the Security Assets or any part thereof or create or permit to arise any overriding interest or any easement or right whatsoever in or over them;

#### **Insurances**

- 6.3.6 save as provided in Clause 6.4, to insure and keep insured, with reputable and responsible insurers approved by the Lender such of the Security Assets as are of an insurable nature against loss or damage (including loss of rent and profit) by fire, storm, lightning, earthquake, explosion, riot, civil commotion, malicious damage, impact, flood, burst pipe, terrorism, aircraft and other aerial devices or articles dropped therefrom, public liability and liability under the Defective Premises Act 1972 and other risks usually insured against by prudent companies carrying on businesses similar to those of the Borrower and such other risks and upon such terms as the Lender may from time to time reasonably require to the full reinstatement or replacement cost thereof (including architects' and surveyors' fees, other professional fees, demolition costs, costs of shoring up and, where appropriate, three years' loss of rent cover) to the satisfaction of the Lender and shall duly and promptly pay all premiums and other monies necessary for effecting and maintaining such insurances and produce to the Lender the receipts for the current premiums within 14 days after their becoming due;
- 6.3.7 in addition to the insurances effected pursuant to Clauses 6.3.6 or 6.4, to maintain and procure that its Subsidiaries maintain such other insurances as the Lender determines are normally maintained by prudent companies carrying on similar businesses including insurance against loss of records and liability to third parties and employees and duly pay and procure that its Subsidiaries pay all necessary premiums and other monies necessary for effecting and keeping up such insurances and produce to the Lender the receipts for the current premiums within 14 days after their becoming due;
- 6.3.8 to comply and procure that its Subsidiaries comply in all material respects with the terms and conditions of the above insurance policies including without limitation any stipulations or restrictions as to use or operation of any asset and not to do or (insofar as within its power to prevent the same) permit anything to be done which may make void or voidable any such insurance;

#### **Access**

- 6.3.9 to permit the Lender and/or its representatives or agents free access at all reasonable times to inspect and take copies and extracts from the books, accounts and records of the Borrower and such other documents as the Lender may require and furnish the Lender with all information (including without limitation copies of all such insurance policies as are referred to in Clauses 6.3.6, 6.3.7 and 6.4) and facilities which it may require and pay all expenses incurred by the Lender in connection therewith;
- 6.3.10 to grant the Lender or its solicitors on request all reasonable facilities to enable it or them to carry out at the Borrower's expense such investigation of title to any Security Assets and enquiries into matters in connection therewith as would be carried out by a prudent mortgagee;

#### **The Intellectual Property**

- 6.3.11 to use its best endeavours to detect any infringement of the Intellectual Property and if it shall become aware of such infringement at once to give the Lender all information in its possession with regard thereto and at the request of the Lender but at its own cost to



commence and diligently prosecute or permit the Lender in the name but at the expense of the Borrower to commence and prosecute all proceedings necessary to prevent such infringement or to recover damages in respect thereof;

- 6.3.12 to lodge all notices, complete all filings and registrations and do all other acts as may be necessary to ensure that the Intellectual Property to which the Borrower is or may become entitled is valid and subsisting and remains vested in the Borrower and to take all such actions and proceedings as are necessary to protect such Intellectual Property and if any or all such Intellectual Property shall at any time become void to lodge all notices and do all other acts as may be necessary to restore such Intellectual Property to the Borrower and in particular to pay all such fees as may be necessary for all of the above purposes at least 14 days before the same shall become due;

#### **Leases and Contracts**

- 6.3.13 in relation to any lease or tenancy agreement or any Contracts to which the Security Assets may be subject for the time being, to observe and perform the covenants on the part of the Borrower therein and to enforce the performance and observance of the other party's covenants and conditions contained therein and (in relation to any lease or tenancy) diligently and effectively to manage the premises thereby demised and not to grant any licence, waiver, consent or approval thereunder or agree any material variation to the terms thereof;
- 6.3.14 to notify the Lender forthwith in the event that a third party is in breach of the terms of any of the Contracts and/or that notice has been given to terminate any of them or it is alleged or appears that any of them may be avoided or repudiated or be or become invalid or unenforceable and in any such case shall at its own expense take such action or institute such proceedings or execute such documents as the Lender may reasonably require;

#### **Compliance with Laws**

- 6.3.15 to comply and to procure that each of its Subsidiaries complies in all material respects with the provisions of all present or future statutes and every notice, order, direction, licence, consent or permission given or made thereunder (including without limitation all applicable Environmental Laws and Environmental Licences) and the requirements of any competent authority so far as any of the same shall relate to its assets or their user or anything done on the Properties;

#### **Planning**

- 6.3.16 not to make any application for planning permission or implement any planning permission, and not to enter into or agree to enter into any agreement under Section 106 of the Town and Country Planning Act 1990 or Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or Section 38 of the Highways Act 1980 or any other similar Act, and in particular not to do or suffer to be done any act, matter or thing prohibited by, or omit or suffer to be omitted any act, matter or thing required to be done by the Planning Acts or any other Act or statutory provision whatsoever, or which shall contravene any such Act or provision, and will at all times indemnify and keep indemnified the Lender on a full indemnity basis against all actions, proceedings, costs, expenses, claims and demands in respect of any contravention of any such Act or provision;

#### **Notices**

- 6.3.17 within four days of the receipt of any notice, order, direction, designation, resolution or proposal having application to the Security Assets or to the area in which they are situate

from any Planning Authority or other public body or authority under or by virtue of the Planning Acts or any Environmental Law or any other statutory power, to give full particulars (and if requested a copy of any written particulars received by the Borrower) to the Lender and without delay to take all reasonable and necessary steps to comply therewith and/or at the request of the Lender and at the expense of the Borrower to make such objections or representations against or in respect thereof as the Lender shall deem expedient and (without prejudice to the generality of the foregoing) at all times during the continuance of this security give to the Lender or its agents such information as they shall reasonably require as to all matters relating to the Security Assets;

#### **Deposit of Deeds**

- 6.3.18 if the Lender so requires, to deposit with the Lender all deeds and documents of title and all local land charges and land registry search certificates, planning consents and the like relating to the Properties, and the insurance policies relating thereto, and all certificates and other documents of title or evidence of ownership in relation to the Intellectual Property, and shall execute and deliver to the Lender all such transfers and other documents as may be necessary to enable the Lender to be registered as the owner thereof or otherwise obtain legal title thereto and all other such documents relating to the Security Assets as the Lender may require;

#### **The Debts**

- 6.3.19 to act as agent for the Lender and collect in and realise the Debts, pay into a current account or a separate designated account (as the Lender may require) of the Borrower with a third party bank all monies which it may receive in respect of the Debts and pay or otherwise deal with such monies standing in such account in accordance with any directions from time to time given in writing by the Lender; prior to any demand being made under Clause 9 hereof, or to the provisions of Clause 5 hereof becoming operative, any monies received by the Borrower and paid into such account in respect of the Debts shall upon such payment in and subject to any directions by the Lender, stand released from the fixed charge on such Debts hereinbefore created and shall stand subject to the floating charge hereinbefore created over the other property and assets of the Borrower; any such release shall in no respects derogate from the subsistence and continuance of the said fixed charge on all other Debts of the Borrower for the time being outstanding;
- 6.3.20 on demand by the Lender to execute a legal assignment of such Debts in such form as the Lender may require and give notice thereof to the debtors from whom the Debts are owing or incurred and take such other steps as the Lender may require to perfect such legal assignment;
- 6.3.21 to deal with such Debts in accordance with any directions from time to time given in writing by the Lender and in default of and subject to any such directions deal with the same only in the ordinary and proper course of its trading business (and for this purpose the realisation of debts by means of block discounting factoring or the like shall not be regarded as dealing in the ordinary and proper course of its trading business);
- 6.3.22 to permit the third party bank to furnish directly to the Lender from time to time upon request full statements and particulars of all the Borrower's accounts with the third party bank and such other financial statements and information respecting the assets and liabilities of the Borrower as are from time to time available to the third party bank;

#### **The Securities**

- 6.3.23 duly and promptly to pay all calls, instalments or other monies which may from time to

time become due in respect of any of the Securities, it being acknowledged by the Borrower that the Lender shall not in any circumstances incur any liability whatsoever in respect of any such calls, instalments or other monies;

6.3.24 forthwith upon the execution of this Debenture to deposit with the Lender all certificates or documents of title in respect of the Securities together with a duly executed instrument of transfer or an assignment (as appropriate) thereof in blank and it is agreed that the Lender shall at any time be entitled to have all or any of the Securities registered in the name of the Lender or of such nominees as the Lender may select, provided that, for so long as no Event of Default has occurred the Lender will:

- (a) hold all dividends, interest and other monies paid on and received by it in respect of the Securities for the account of the Borrower and will pay such dividends, interest and other monies to the Borrower upon request; and
- (b) exercise all voting and other rights and powers attached to the Securities as the Borrower may from time to time in writing reasonably direct, provided that the Lender shall be under no obligation to comply with any such direction where compliance would in the Lender's reasonable opinion be prejudicial to the security hereby created;

6.3.25 subject always to the provisions of Clause 6.3.23 until the security created shall have been discharged to deliver or pay to the Lender or procure that there are delivered or paid to the Lender all stocks, shares, securities, rights, monies or other property accruing, offered or issued at any time by way of bonus, redemption, exchange, purchase, substitution, conversion, preference, option or otherwise in respect of any Securities or the certificates or other documents of title to or representing the same together with an executed instrument of transfer or an assignment in blank and the Lender is hereby authorised to arrange at any time and from time to time for any of the Securities to be registered in the name of the Lender or such nominees as the Lender may select;

#### **General**

6.3.26 to conduct and carry on its business and to procure that its Subsidiaries conduct and carry on their businesses in a proper and efficient manner and keep or cause to be kept proper books of account relating to such business and not make any material alteration in the nature of such business which would constitute a change from that carried on at the date of this Debenture; and if the Lender so requires, to give to the Lender evidence sufficient to satisfy it that the provisions of this Clause have been complied with;

6.3.27 to immediately inform the Lender both on becoming bound to complete and on completing the purchase of any Property after the date hereof and to deposit with the Lender the deeds and documents of title relating thereto and to render all necessary assistance to the Lender to ensure that the charge hereby created is registered at HM Land Registry or the Land Charges Registry and/or any other appropriate registry in respect of any such Property;

6.3.28 not to make or incur any capital expenditure or liabilities of an exceptional or unusual nature; and

6.3.29 not to confer on any other person any right or licence to occupy any land or buildings forming part of the Security Assets or any licence to assign or sub-let any part thereof.

6.4 In the case of any Property which the Borrower holds as tenant or lessee which it is required by virtue of the tenancy agreement or lease under which such Property is held either to insure or to reimburse the landlord any insurance premium or premiums paid by such landlord, then due

compliance with such insurance obligations or prompt reimbursement of such premiums to the landlord (as the case may be) shall be good compliance by the Borrower with its obligations under Clause 6.3.6 above so far as regards that Property, but without prejudice to the right of the Lender:

- 6.4.1 to call upon the Borrower to produce satisfactory evidence that the Borrower has complied with such obligations or reimbursed such premiums as aforesaid; and
- 6.4.2 to call upon the Borrower to insure against such other risks:
  - (a) which are not required by the applicable tenancy agreement or lease to be insured by the Borrower;
  - (b) which are not required by such tenancy agreement or lease to be insured by the landlord; or
  - (c) against which the landlord is enabled by the applicable tenancy agreement or lease to insure and recover the premiums from the Borrower but does not so insure and recover.
- 6.5 The Borrower shall on demand indemnify and keep the Lender indemnified on a full indemnity basis in respect of all actions, proceedings, demands, costs and expenses occasioned by any breach of any of its covenants or other obligations under this Debenture together with interest at the Default Rate from the date of payment by the Lender until repayment whether before or after judgment and any costs, damages, expenses and other liabilities incurred or sustained by the Lender by reason of any such breach shall be charged on the Security Assets.
- 6.6 None of the covenants in this Clause 6 shall be construed as limiting any powers exercisable by any Receiver under this Debenture being an agent of the Borrower.
- 7. Power to Remedy**
- 7.1 The Borrower will permit the Lender its agents and contractors at reasonable times and upon reasonable notice to enter into or upon the Properties or at any time if an Event of Default has occurred and has not been waived by the Lender:
  - 7.1.1 to view the state and condition thereof or of any of the tangible Security Assets without becoming liable as mortgagee in possession;
  - 7.1.2 to comply with or object to any direction or notice or other matter served on the Borrower; and
  - 7.1.3 to carry out at the expense of the Borrower any repairs or take any action which the Lender shall consider necessary or desirable in connection with the Security Assets to procure compliance with any covenant or obligation in this Debenture.
- 7.2 If the Borrower fails to fulfil any of the obligations as to insurance contained in this Debenture the Lender may, but shall not be obliged to, take out renew or maintain such insurances in such sum as the Lender may think expedient. If the Borrower fails to deliver on demand the policy or the current premium receipt in respect of the insurance for any portion of the Security Assets, the Lender shall be entitled to assume that the Borrower has made default in insuring the same within the meaning of this Clause.
- 7.3 The Borrower shall on demand indemnify the Lender on a full indemnity basis in respect of any costs, damages and expenses incurred by the Lender pursuant to this Clause together with interest at the Default Rate from the date of payment by the Lender until repayment whether

before or after judgment and any such costs, damages and expenses and the interest thereon shall be charged on the Security Assets.

## **8. Powers of Leasing**

8.1 The Borrower shall neither exercise the powers of leasing or accepting and agreeing to accept surrenders of leases conferred upon a mortgagor in possession by Sections 99 and 100 of the LPA nor any other powers of leasing, letting, entering into agreements for leases or lettings, surrendering or accepting surrenders of leases vested in the Borrower (whether statutory or otherwise), but the foregoing shall not be construed as a limitation of the powers of any Receiver appointed hereunder and being an agent of the Borrower, nor shall the Borrower confer on any person any contractual licence to occupy or any other right or interest in any of the Properties or grant any licence or consent to assign, underlet or part with possession or occupation of the whole or any part of them without the prior written consent of the Lender and in granting its consent the Lender shall be entitled to require that an order be obtained under Section 38(4) of the Landlord and Tenant Act 1954 (as amended) excluding the security of tenure provisions of that Act as a pre-condition to the granting of any lease.

8.2 In addition to the powers of leasing or accepting surrender of leases conferred on mortgagees by Sections 99 and 100 of the LPA, the Lender may at any time after the occurrence of an Event of Default on such terms as it shall in its absolute discretion think fit:

8.2.1 grant or make any agreement for any lease of the Security Assets or of any part thereof (whether or not the Lender shall be in possession of the Property proposed to be leased) for any term or terms of years either in possession or reversion and either with or without taking a premium and at yearly or other rents;

8.2.2 surrender or accept a surrender of any lease of the Security Assets or of any part thereof; and

8.2.3 grant any option in respect of the Security Assets or any part thereof;

in each case without the restrictions contained in the said Sections 99 and 100.

## **9. Enforcement**

9.1 If any Event of Default shall occur then:

9.1.1 the Lender shall cease to be under any further commitment to the Borrower and may at any time thereafter (notwithstanding any conflicting agreement or arrangement) declare the Secured Liabilities (or such of them as the Lender may specify) to be immediately due and payable or payable forthwith on demand; and

9.1.2 the security hereby constituted shall become immediately enforceable and the power of sale and other powers conferred by Section 101 of the LPA as varied or extended by this Debenture shall become immediately exercisable without the restrictions contained in the LPA as to the giving of notice or otherwise.

9.2 Each of the following events shall constitute an Event of Default, namely:

9.2.1 if there shall occur any event of default howsoever described under the Facility Agreement or any Security Document;

9.2.2 if the Borrower or any of its Subsidiaries (or any guarantor of the Borrower, if any) fails to pay any sums payable by it from time to time to the Lender on the due date therefor or

fails to comply with any term, condition, covenant or other provision of any Security Document or of any facility from the Lender or to perform any of its obligations or liabilities to the Lender or if any representation or warranty from time to time made to the Lender by the Borrower is or becomes incorrect or misleading in a material respect;

- 9.2.3 if any Financial Indebtedness of the Borrower or any of its Subsidiaries becomes due or capable of being declared due before its specified maturity date by reason of breach or default on the part of the Borrower or any of its Subsidiaries under the terms of any agreement or instrument creating or evidencing the same or is otherwise not paid when due (or within any applicable period of grace) or any guarantee or indemnity given by the Borrower or any of its Subsidiaries is not honoured when due and called upon;
- 9.2.4 if an encumbrancer takes possession of, or a trustee, receiver or similar officer is appointed in respect of, all or any part of the business or assets of the Borrower or any of its Subsidiaries or a distress, execution, attachment or other legal process is levied or enforced upon or sued out against all or any material part of such assets;
- 9.2.5 if the Borrower or any of its Subsidiaries is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors;
- 9.2.6 if the Borrower or any of its Subsidiaries takes any corporate action or other steps are taken or legal proceedings are started (by the Borrower or any other person) for its winding up, dissolution or re-organisation (otherwise than for the purposes of an amalgamation or reconstruction while solvent on terms previously approved in writing by the Lender) or for the appointment of a receiver, administrator, trustee or similar officer of it or of all or a material part of its revenues or assets or if any guarantor of the Borrower (being an individual) dies or becomes of unsound mind or has a bankruptcy petition presented or order made against him;
- 9.2.7 if the Borrower or any of its Subsidiaries suspends or threatens to suspend a substantial part of its business operations (otherwise than for the purposes of a reconstruction or amalgamation on terms previously approved in writing by the Lender) or any governmental authority permits or procures or threatens to permit or procure any reorganisation, transfer or expropriation (whether with or without compensation) of a substantial part of its business or assets;
- 9.2.8 if any guarantee, indemnity or other security for any of the Secured Liabilities fails or ceases in any respect to have full force and effect or to be continuing or is terminated or disputed or in the opinion of the Lender is in jeopardy, invalid or unenforceable or if the Security Documents or the security created by any of them is disputed or in the opinion of the Lender is in jeopardy;
- 9.2.9 if at any time it is or becomes unlawful for the Borrower or any of its Subsidiaries (or any guarantor of the Borrower, if any) to perform or comply with any or all of its obligations under this Debenture or any Security Document or any other agreement between the Borrower and the Lender or any of such obligations of the Borrower or any of its Subsidiaries (or any guarantor of the Borrower, if any) are not or cease to be legal, valid, binding and/or enforceable;
- 9.2.10 if control (as defined in Section 435 of the Insolvency Act 1986) or the power to take control of the Borrower is acquired by any person or company or group of associates (as defined in such section) not having control of the Borrower at the date of this Debenture (unless with the prior consent in writing of the Lender);

- 9.2.11 if the Borrower sells, assigns or otherwise transfers (whether pursuant to a single or a series of transactions) the whole or any substantial part of its business or assets;
  - 9.2.12 if in the opinion of the Lender a material adverse change occurs in the financial condition results of operations or business of the Borrower and its Subsidiaries taken as a whole; or
  - 9.2.13 if any event analogous to any of the events referred to above occurs in any jurisdiction in which the Borrower carries on business.
- 9.3 The Borrower undertakes to the Lender that it shall promptly notify the Lender of any meeting to discuss, or any proposal, notice, application or indication of, the appointment of an administrator, receiver, liquidator, trustee in bankruptcy or similar official in respect of the Borrower or any of the Security Assets and, if any such official is appointed, of his appointment.
- 9.4 The Secured Liabilities shall be deemed for the purposes of all powers implied by statute to have become due and payable within the meaning of Section 101 of the LPA immediately on the execution of this Debenture and Section 103 of the LPA (restricting the power of sale) Section 109 of the LPA (restricting the power to appoint a receiver) and Section 93 of the LPA (restricting the right of consolidation) shall not apply to this Debenture.

#### **10. Protection of Third Parties**

No purchaser, mortgagee or other person dealing with a Receiver or the Lender shall be concerned to enquire whether the Secured Liabilities have become payable or whether any power which he or it is purporting to exercise has become exercisable or be concerned with notice to the contrary or whether any money is due under this Debenture or as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with such Receiver or the Lender, or be concerned to see whether any such delegation by the Lender or the Receiver shall have lapsed for any reason or been revoked. All the protection to purchasers contained in Sections 104 and 107 of the LPA shall apply to any person purchasing from or dealing with a Receiver or the Lender as if the Secured Liabilities had become due and the statutory powers of sale and of appointing a Receiver in relation to the Security Assets had arisen on the date of this Debenture.

#### **11. Appointment of Receiver/Administrator**

- 11.1 At any time after the security constituted by this Debenture has become enforceable or if the Borrower so requests in writing at any time the Lender may without further notice to the Borrower appoint by writing any one or more persons either singly, jointly, severally or jointly and severally to be a Receiver of all or any part of the Security Assets and either at the time of appointment or any time thereafter may fix his or their remuneration and except as otherwise required by statute may remove any such Receiver and appoint another or others in his or their place.
- 11.2 Any Receiver whether appointed solely or jointly shall have the powers granted by the LPA to any receiver appointed under it and all the powers of an administrative receiver under the Insolvency Act 1986 and in addition shall have power to do the following:
- 11.2.1 enter upon, take possession of, collect and get in the Security Assets in respect of which he may be appointed or any part of them and to collect and get in all rents and other income whether accrued before or after the date of his appointment and for those purposes to make such demands and take such proceedings as may seem expedient and to take possession of the Security Assets;
  - 11.2.2 comply with and perform all or any of the acts, matters, omissions or things covenanted

to be done or omitted by the Borrower under this Debenture;

- 11.2.3 carry on, manage, develop, reconstruct, amalgamate or diversify the business of the Borrower or any part thereof in such manner as he shall in his discretion think fit (including without prejudice to the generality of the foregoing to purchase supplies and materials) and for that purpose to raise or borrow money to rank for payment in priority to the security created by this Debenture and with or without charge on the Security Assets or any part thereof;
- 11.2.4 sell by public auction or private contract or let all or any part of the Security Assets and to let on hire, lease, surrender and accept surrenders of leases and tenancies, grant rights, licences, options or easements or exchange all or any part of, and otherwise deal with or dispose of and exercise all rights, powers and discretions incidental to the ownership of, any of the Security Assets in the name of and on behalf of the Borrower or otherwise or concur in doing any of the foregoing in such manner and generally on such terms and conditions and for such consideration (whether in cash, debentures or other obligations, shares, stocks, securities or other valuable consideration and whether payable by a lump sum or by instalments) as he may think fit and carry out any such sale by conveying by deed or transferring in the name and on behalf of the Borrower or otherwise, and so that plant, machinery and other fixtures and fittings may be severed and sold separately from the premises containing them, and the Receiver may apportion any rent and the performance of any obligations;
- 11.2.5 repair, decorate, furnish, maintain, alter, improve, renew or add to the Security Assets or any part of them as he shall think fit and effect, maintain, renew or increase indemnity insurance and other insurances and obtain bonds;
- 11.2.6 appoint or dismiss managers, agents, officers, employees, servants, builders or workmen and employ professional advisers (including his own firm) and others at such salaries or for such remuneration as he may think fit;
- 11.2.7 perform, repudiate, rescind, vary or enter into any arrangement or compromise any contracts or agreements which he may consider expedient;
- 11.2.8 settle, arrange, compromise and submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the business of the Borrower or any of the Security Assets or in any way relating to the security constituted by this Debenture and bring, prosecute, defend, enforce, compromise, submit to and discontinue any actions, suits, arbitrations or proceedings whatsoever whether civil or criminal;
- 11.2.9 enter into, complete, disclaim, abandon or disregard, determine or rectify all or any of the outstanding contracts or arrangements of the Borrower and allow time for payment of any debts either with or without security;
- 11.2.10 make calls (conditionally or unconditionally) upon the shareholders of the Borrower in respect of any capital of the Borrower which may be uncalled and calls (conditionally or unconditionally) on any other person which he may think fit;
- 11.2.11 use the name of the Borrower in the exercise of all or any of the powers conferred by this Debenture;
- 11.2.12 exercise or permit the Borrower or any nominee of the Borrower to exercise any powers or rights incidental to the ownership of the Security Assets or any part of them in such manner as he may think fit;
- 11.2.13 form a Subsidiary or Subsidiaries of the Borrower and transfer, lease or licence to any



such Subsidiary (or any other person) or otherwise acquire an interest in all or any part of the Security Assets on such terms and conditions as he may think fit;

- 11.2.14 in the exercise of any of the powers, authorities and discretions conferred on him in this Debenture or for any other purpose to raise and borrow money either unsecured or secured and either in priority to, pari passu with or subsequent to the security constituted by this Debenture and generally on such terms and conditions as he may think fit and no person advancing such money should be concerned to enquire into the propriety or purpose of the exercise of this power or to see to the application of any monies so raised or borrowed;
- 11.2.15 give valid receipts for all monies and execute all discharges, assurances and things which may be proper or desirable for realising the Security Assets or any part of them;
- 11.2.16 execute and do all such other acts, things and deeds as he may consider necessary or desirable for realising or preserving the Security Assets or any part of them or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of this Debenture or otherwise and exercise in relation to the Security Assets or any part of them all such powers, authorities and things as he would be capable of exercising if he were the absolute beneficial owner of them; and
- 11.2.17 exercise any of the above powers on behalf of the Borrower or on his own behalf or, in the case of the power referred to in Clause 11.2.10, on behalf of the directors of the Borrower.
- 11.3 Any Receiver appointed under this Debenture whether acting solely or jointly shall be deemed to be the agent of the Borrower and to be in the same position as a receiver appointed under the LPA and the Borrower shall be solely responsible for his acts, omissions, defaults, losses and misconduct and for his remuneration and the Lender shall not be in any way liable or responsible either to the Borrower or to any other person whatsoever for any of them.
- 11.4 If more than one Receiver is appointed each of them shall be entitled to exercise individually all of the powers given to a Receiver under this Debenture in relation to any of the Security Assets in respect of which he has been appointed unless the Lender shall state otherwise in the document appointing him.
- 11.5 Without prejudice to the Lenders other rights and remedies hereunder or otherwise, at any time after the security constituted by this Debenture has become enforceable or if the Borrower so requests in writing at any time the Lender may without further notice to the Borrower appoint by writing any one or more persons either singly, jointly, severally or jointly and severally to be an administrator in respect of the Borrower pursuant to the Insolvency Act 1986.

## **12. Application of Proceeds**

- 12.1 Any monies received by the Lender or any Receiver pursuant to this Debenture or under the powers conferred by this Debenture shall after the occurrence of an Event of Default, and after the payment of any claims having priority to the security created by this Debenture, be applied in the following order but without prejudice to the right of the Lender to recover any shortfall from the Borrower:
- 12.1.1 where applicable, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise of all or any of the powers aforesaid and of all other outgoings properly payable by the Receiver;
- 12.1.2 where applicable, in payment of the Receiver's remuneration at such rate as may be agreed with the Lender;

12.1.3 in or towards payment of the Secured Liabilities in such order as the Lender in its absolute discretion thinks fit; and

12.1.4 in payment of the surplus (if any) to the person or persons entitled to it.

12.2 All monies received by the Borrower by virtue of any insurance on the Security Assets, whether or not effected pursuant to this Debenture and whether the event by virtue of which such monies became payable occurred before on or after the date of this Debenture, shall be deemed part of the Security Assets and (subject to any rights of third parties arising under any statute for the time being relating to the application of insurance monies and under any leases under which any of the Properties are demised or let to or by the Borrower or under the terms of any insurances if such terms are incorporated therein in order to comply with the provisions of any such leases) shall unless the Lender shall confirm otherwise in writing be paid to the Lender and any monies so paid to the Lender or otherwise received by the Lender by virtue of any such insurance shall be applied at the discretion of the Lender either in reduction of the Secured Liabilities or in or towards making good the loss or damage in respect of which they became payable and any monies received by the Borrower by virtue of any insurance on the Security Assets shall be held on trust for payment to the Lender in accordance with this Clause 12.2.

12.3 The Lender or any Receiver may credit any monies to a suspense account for so long and in such manner as the Lender or any Receiver may from time to time determine and the Receiver may retain the same for such period as the Receiver and the Lender consider expedient.

### **13. Lender's Powers**

13.1 The Borrower further covenants and agrees with the Lender that the Lender may exercise in the name of the Borrower or otherwise at any time after an Event of Default and without any further consent or authority on the part of the Borrower in respect of the Securities any voting rights and all powers given to trustees by Sections 3 to 7 (inclusive) of the Trustee Act 2000 in respect of securities or property subject to a trust and any powers or rights which may be exercisable by the person in whose name any of the Securities is registered or by the bearer thereof.

13.2 Without prejudice to any other rights, power or remedies of the Lender, howsoever arising, at any time after an Event of Default or if requested by the Borrower the Lender may without further notice and without first appointing a Receiver exercise all or any of the powers conferred on mortgagees by the LPA as varied or extended by this Debenture and all the powers, authorities and discretions conferred expressly or by implication on any Receiver in this Debenture or conferred by statute or common law.

13.3 It shall be lawful for the Lender or any Receiver at any time to exercise for and on behalf of the Borrower any or all of the powers conferred on a landlord or tenant by the Landlord and Tenant Acts 1927 and 1954 in respect of the Security Assets but without any obligation to exercise any of such powers and without any liability for powers so exercised and the Borrower hereby covenants with the Lender that it will promptly deliver to the Lender all notices served on the Borrower in respect of the Security Assets under the said Acts.

13.4 The Lender will not be liable to account to the Borrower as mortgagee in possession for any money not actually received by the Lender.

### **14. Entry into Possession**

If the Lender or any Receiver shall enter into possession of the Security Assets or any part of them it or he may from time to time and at any time go out of such possession. Neither the Lender nor any Receiver shall in any circumstances be liable to account to the Borrower for

anything except its or his actual receipts or be liable to the Borrower for any loss or damage arising from any realisation of the Security Assets or any part of them or from any act, default or omission in relation to the Security Assets or any part of them unless such loss or damage shall be caused by its or his own fraud.

#### **15. Discharge of Security**

The security constituted by this Debenture shall be continuing and shall not be considered as satisfied or discharged by any intermediate payment or settlement of the whole or any part of the Secured Liabilities and shall be binding until all the Secured Liabilities have been discharged in full to the satisfaction of the Lender and the Lender has ceased to have any obligation whether actual or contingent to make any credit or accommodation available to the Borrower under the Facility Agreement or otherwise.

#### **16. Power of Attorney**

16.1 The Borrower by way of security irrevocably appoints the Lender and any Receiver and every delegate or sub-delegate referred to in Clause 20 and each of them jointly and also severally to be the attorney of the Borrower (with full powers of substitution and delegation) for the Borrower and in its name or otherwise and on its behalf and as its act and deed to sign, seal, execute, deliver, perfect and do all deeds, instruments, notices, documents, acts and things which the Borrower may or ought to do under the covenants and provisions contained in this Debenture (including without limitation to make demand upon or to give any notice or receipt to any person owing money to the Borrower and to execute and deliver any charges, legal mortgages, assignments or other security) 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 Debenture or by the LPA on the Lender or any Receiver or which may be required or which the Lender or any Receiver shall deem fit for carrying any sale or lease, charge, mortgage or dealing by the Lender or by any Receiver into effect or for giving to the Lender or any Receiver the full benefit of this Debenture and generally to use the name of the Borrower and to execute and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which it or he may deem proper in the exercise of all or any of the powers, authorities or discretions conferred on the Lender or any Receiver pursuant to this Debenture.

16.2 The Borrower ratifies and confirms and agrees to ratify and confirm anything such attorney shall lawfully and properly do or purport to do by virtue of Clause 16.1 and all money expended by any such attorney shall be deemed to be expenses incurred by the Lender under this Debenture.

#### **17. Prior Charges**

In respect of the Permitted Encumbrance, if any proceedings or steps are being taken to exercise or enforce any powers or remedies conferred by such prior charge against the Security Assets or any part of them the Lender or any Receiver appointed under this Debenture in respect of such Security Assets may (but without prejudice to any rights the Receiver may have under Section 43 of the Insolvency Act 1986 to apply to the Court for authorisation to dispose of property secured by a prior charge) redeem such prior Encumbrance or procure its transfer to itself or himself as the case may be and may settle and pass the accounts of any prior mortgagee, chargee or encumbrancer. Any account so settled and passed shall be conclusive and binding on the Borrower and all the principal money, interest, costs, charges and expenses of and incidental to such redemption or transfer shall be paid to the Lender on demand with interest at the Default Rate and until payment the Security Assets shall stand charged with the amount to be so paid and all the powers, authorities and discretions conferred by a prior charge upon the mortgagee, chargee or encumbrancer or any receiver thereunder shall be exercisable by the Lender or a Receiver in like manner as if the same were expressly included in this

Debenture and the Lender shall be entitled to exercise all the powers, authorities and discretions of a receiver and manager or administrative receiver appointed thereunder.

**18. Further Assurances**

- 18.1 The Borrower shall immediately notify the Lender of any contract, conveyance, transfer, assignment or other disposition, or the acquisition by the Borrower or any nominee on its behalf of any Properties, Intellectual Property or Securities and shall if the Lender so requires enter into such security instruments as the Lender shall deem necessary to perfect the Lender's security interest therein or for the purpose of more effectively providing security to the Lender for the payment and discharge of the Secured Liabilities.
- 18.2 The Borrower agrees that upon demand by the Lender from time to time it shall execute and deliver a formal assignment or assurance of all or any part of the Security Assets not now in existence and of any sums payable under any of the Contracts or any leases now or hereafter to come into existence and that pending any such assignment or assurance the Borrower shall hold the same upon trust for the Lender and subject to the provisions of this Debenture and following any such formal assignment or assurance the same shall form part of the Security Assets for all the purposes of this Debenture.
- 18.3 Without prejudice to anything else contained in this Debenture the Borrower shall at any time at the request of the Lender but at the cost of the Borrower promptly sign, seal, execute, deliver and do all deeds, instruments, notices, documents, acts and things in such form as the Lender may in its discretion from time to time require for creating, perfecting or protecting the security over the Security Assets or any part of them or for facilitating their realisation and the exercise of all powers, authorities and discretions vested in the Lender or any Receiver or for securing the Secured Liabilities.

**19. Avoidance of Payments**

- 19.1 No assurance, security or payment which may be avoided or adjusted under any enactment relating to bankruptcy or insolvency or under Part VI of the Insolvency Act 1986 or similar legislation binding on the Borrower in a jurisdiction other than England and Wales and no release, settlement or discharge given or made by the Lender on the faith of any such assurance, security or payment shall prejudice or affect the right of the Lender to recover from the Borrower (including the right to recover any monies which it may have been compelled by due process of law to refund under the provisions of the Insolvency Act 1986 and any costs payable by it pursuant to or otherwise incurred in connection with such process) or to enforce the security created by or pursuant to this Debenture to the full extent of the Secured Liabilities.
- 19.2 The Lender shall be at liberty to retain the security created by or pursuant to this Debenture for a period of 25 months after the Secured Liabilities shall have been paid and discharged in full notwithstanding any release, settlement, discharge or arrangement given or made by the Lender on or as a consequence of such payment or termination of liability. If at any time within the period of 25 months after such payment or discharge a petition shall be presented to a competent court for an order for the winding up or the making of an administration order in respect of the Borrower or the Borrower shall commence to be wound up or to go into administration or has a notice of appointment of an administrator presented against it or any analogous proceedings shall be commenced by or against the Borrower the Lender shall be at liberty to continue to retain such security for and during such further period as the Lender may determine. The Borrower agrees that in such event such security shall be deemed to have continued to have been held as security for the payment and discharge to the Lender of all Secured Liabilities.

**20. Delegation**

The Lender may at any time and from time to time delegate by power of attorney or in any other manner to any person or persons all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender under this Debenture in relation to the Security Assets or any part of them. Any such delegation may be made upon such terms (including power to sub-delegate) and subject to such regulations as the Lender may think fit. The Lender shall not be in any way liable or responsible to the Borrower for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

## **21. Entry in Land Registry**

16.1 If the Borrower or any nominee on its behalf acquires any Property the title to which is registered or required to be registered under the Land Registration Acts 1925-2002, the Borrower will notify the Lender of the relevant title number(s) as soon as it obtains such information and will procure that title thereto is duly and promptly registered and that this Debenture is entered on the register.

16.2 In relation to Properties registered under the Land Registration Acts 1925-2002 and any unregistered Properties subject to compulsory first registration the Borrower hereby applies to the Chief Land Registrar for a Restriction in the following terms to be entered on the register of the Borrower's title relating to such Property hereby charged:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Charge dated [                      ] in favour of Starkey Laboratories Limited referred to in the Charges Register".

16.3 In respect of any part of the Properties registered or to be registered as aforesaid the Borrower hereby certifies that the charge created by this Debenture does not contravene any of the provisions of its Memorandum or Articles of Association.

## **22. Custody**

The Lender shall be entitled to provide for the safe custody by third parties of all certificates and documents of title relating to the Security Assets and shall not be responsible for any loss or damage occurring to or in respect thereof.

## **23. Costs**

23.1 The Borrower shall on demand and on a full indemnity basis pay to the Lender the amount of all costs and expenses (including legal and out-of-pocket expenses and any Value Added Tax on such costs and expenses) which the Lender incurs in connection with:

23.1.1 the preparation, negotiation, execution and delivery of this Debenture and the Security Documents;

23.1.2 any stamping or registration of this Debenture;

23.1.3 any actual or proposed amendment of or waiver or consent under or in connection with this Debenture or any Security Document;

23.1.4 any discharge or release of this Debenture, including any redemption and the

preparation of any redemption statements;

23.1.5 the preservation or exercise (or attempted preservation or exercise) of any rights under or in connection with and the enforcement (or attempted enforcement) of this Debenture or any of the Security Documents;

23.1.6 dealing with or obtaining advice about any other matter or question arising out of or in connection with this Debenture or any of the Security Documents

together with interest at the Default Rate thereon from the earlier of the date of demand and the date of payment by the Lender until the date of payment by the Borrower whether before or after judgment.

## **24. Indemnity**

The Lender and every Receiver, attorney, manager, agent or other person appointed by the Lender under this Debenture and their respective employees shall be entitled to be indemnified on a full indemnity basis out of the Security Assets in respect of all liabilities and expenses incurred or suffered by any of them in or directly or indirectly as a result of the exercise or purported exercise of any of the powers, authorities or discretions vested in them under this Debenture and against all actions, proceedings, losses, costs, claims and demands suffered or incurred by the Lender in respect of any matter or thing done or omitted in any way relating to the Security Assets and the Lender and any such Receiver may retain and pay all sums in respect of the same out of any monies received under the powers conferred by this Debenture.

## **25. Set-off**

25.1 In addition to any general lien or similar right (if any) to which it may be entitled by law, the Lender may without notice to the Borrower set off any such sums due from the Lender to the Borrower in or towards the satisfaction of any of the Secured Liabilities.

25.2 The Borrower irrevocably authorises the Lender in its name and at its expense to perform such acts and sign such documents as may be required to give effect to any set-off or transfer pursuant to Clause 25.1.

25.3 In this Clause "rights under the general law" means any right of set off, combination or consolidation of accounts, lien or similar right which the Lender has under any applicable law.

## **26. Communications**

26.1 Every notice, demand or other communication under this Debenture shall be in writing and may be delivered personally or by letter as follows:

26.1.1 if to the Lender to its address specified at the head of this Debenture for the attention of:

The Directors; or

26.1.2 if to the Borrower to its address specified at the head of this Debenture or its registered or principal office for the time being for the attention of:

The Directors;

or to such other address or facsimile number as may be notified in accordance with this Clause by the relevant party to the other party for such purpose.

26.2 Every notice, demand or other communication shall be deemed to have been received (if sent by post) 24 hours after being posted first class postage prepaid (if posted from and to an address within the United Kingdom) or 5 working days after being posted prepaid airmail (if posted from or to an address outside the United Kingdom) and (if delivered personally) at the time of delivery if during normal business hours on a working day in the place of intended receipt and otherwise at the opening of business in that place on the next succeeding such working day.

26.3 The Lender and any Receiver may but shall not be obliged to rely upon and act in accordance with any communication which may be or purport to be given by telephone or facsimile transmission on behalf of the Borrower by any person notified to the Lender by the Borrower as being authorised to give such communication without enquiry as to the authority and identity of the person making or purporting to make such communication. The Borrower shall indemnify and keep the Lender or any Receiver indemnified on a full indemnity basis against all losses, claims, actions, proceedings, damages, costs and expenses incurred or sustained by the Lender as a result of relying upon or acting in accordance with any such communication.

26.4 All notices, demands or other communications under or in connection with this Debenture shall be in English.

## **27. Transfers**

27.1 This Debenture is freely assignable or transferable by the Lender.

27.2 The Borrower may not assign or transfer any of its obligations under this Debenture or enter into any transaction which would result in any of those obligations passing to another person.

27.3 The Lender may disclose to any person related to the Lender and/or any person to whom it is proposing to transfer or assign or has transferred or assigned this Debenture any information about the Borrower and any person connected or associated with it.

## **28. Currency Indemnity**

If under any applicable law or regulation or pursuant to a judgment or order being made or registered against the Borrower or the liquidation of the Borrower or without limitation for any other reason any payment under or in connection with this Debenture is made or falls to be satisfied in a currency (the "payment currency") other than the currency in which such payment is expressed to be due under or in connection with this Debenture (the "contractual currency") then to the extent that the amount of such payment actually received by the Lender when converted into the contractual currency at the rate of exchange falls short of the amount due under or in connection with this Debenture the Borrower as a separate and independent obligation shall indemnify and hold harmless the Lender against the amount of such shortfall. For the purposes of this Clause "rate of exchange" means the rate at which the Lender is able on or about the date of such payment to purchase the contractual currency with the payment currency and shall take into account (and the Borrower shall be liable for) any premium and other costs of exchange including any taxes or duties incurred by reason of any such exchange.

## **29. Release**

Subject to any provision to the contrary, including Clause 19, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:

- (a) release the Security Assets from the security constituted by this Debenture; and

- (b) reassign the Security Assets to the Borrower.

**30. Miscellaneous**

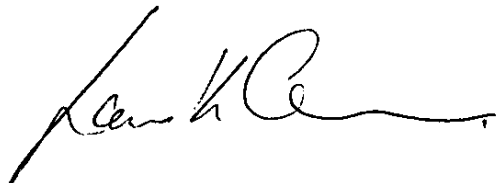
- 30.1 No delay or omission on the part of the Lender in exercising any right or remedy under this Debenture shall impair that right or remedy or operate as or be taken to be a waiver of it nor shall any single partial or defective exercise of any such right or remedy preclude any other or further exercise under this Debenture of that or any other right or remedy.
- 30.2 The Lender may give time or other indulgence or make other arrangement, variation or release with any person in respect of the indebtedness or any other security or guarantee for the Secured Liabilities without derogating from the Borrower's liabilities or the Lender's rights under this Debenture.
- 30.3 The Lender's rights under this Debenture are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Lender deems expedient. For the avoidance of doubt, the rights under this Debenture shall be without prejudice and in addition to any rights under general law.
- 30.4 Any waiver by the Lender of any terms of this Debenture or any consent or approval given by the Lender under it shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.
- 30.5 The security constituted by this Debenture shall be in addition to and shall:
- 30.5.1 not be prejudiced, determined or affected by nor operate so as in any way to determine, prejudice, affect or merge in any bill, note, Encumbrance, remedy or lien which the Lender may now or at any time in the future hold for or in respect of the Secured Liabilities or any of them to the intent that the security hereby created shall not merge therein nor shall any such security merge herein;
- 30.5.2 shall be in addition to any rights, powers and remedies at law; and
- 30.5.3 shall not be prejudiced by time or indulgence granted to any person or any abstention by the Lender in perfecting or enforcing any remedies, securities, guarantees or rights it may now or in the future have from or against the Borrower or any other person or any waiver, release, variation, act, omission, forbearance, unenforceability, indulgence or invalidity of any such remedy, security, guarantee or right.
- 30.6 If at any time any one or more of the provisions of this Debenture is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction neither the legality, validity or enforceability of the remaining provisions of this Debenture nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.
- 30.7 Any certificate or determination of the Lender as to any matter provided for in this Debenture shall in the absence of manifest error be conclusive and binding on the Borrower. Any liberty or power which may be exercised may be exercised in the absolute and unfettered discretion of the Lender which shall not be under any obligation to give reasons therefor.
- 30.8 This Debenture may be executed in any number of counterparts in which case this Debenture will be as effective as if all signatures on the counterparts were on a single copy of this Debenture.
- 30.9 This Debenture is and will remain the property of the Lender.



**31. Law and Jurisdiction**

- 31.1 This Debenture is governed by and shall be construed in accordance with English law.
- 31.2 The Borrower irrevocably agrees for the exclusive benefit of the Lender that the courts of England shall have jurisdiction to hear and determine any suit action or proceeding and to settle any dispute which may arise out of or in connection with this Debenture and for such purposes irrevocably submits to the jurisdiction of such courts.
- 31.3 Nothing contained in this Clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not (unless precluded by applicable law).
- 31.4 The Borrower irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

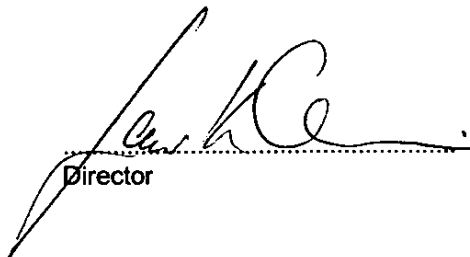
**IN WITNESS** whereof the Borrower and the Lender has executed and delivered this Debenture as a Deed the day and year first before written.

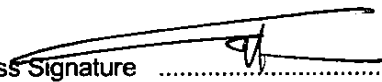
A handwritten signature in black ink, appearing to be 'L. H. C.', located above the second signature.A handwritten signature in black ink, appearing to be 'John H. C.', located below the first signature.

**SCHEDULE 1**

**Properties**

EXECUTED as a Deed by )  
THE EDINBURGH HEARING CLINIC LTD )  
acting by: )  
in the presence of: )

  
Director

Witness Signature  .....

Witness Name CLARA FORSDEN .....

(CAPITALS)

Witness Address 20 High St .....

Perth .....

Witness Occupation Solicitor .....

EXECUTED as a Deed by )  
STARKEY LABORATORIES LIMITED )  
acting by: )  
in the presence of: )

.....  
Director

Witness Signature .....

Witness Name .....

(CAPITALS)

Witness Address .....

Witness Occupation .....



**FILE COPY**

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

Company number: 358127

Charge code: SC35 8127 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 2nd September 2014 and created by THE EDINBURGH HEARING CLINIC LTD. was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th September 2014.

Given at Companies House, Edinburgh on 10th September 2014



**Companies House**



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