



Registration of a Charge

Company Name: **H L (NORTH EAST) HOLDINGS LIMITED**

Company Number: **07208158**



Received for filing in Electronic Format on the: **05/10/2021**

XAEHPKPN

Details of Charge

Date of creation: **04/10/2021**

Charge code: **0720 8158 0004**

Persons entitled: **OPTI-FLEX LIMITED (INCORPORATED IN NEW ZEALAND WITH COMPANY NUMBER 975100)**

Brief description: **ALL OF THE COMPANY'S SHARES IN R3 NZ LIMITED (A COMPANY REGISTERED IN NEW ZEALAND WITH COMPANY NUMBER 8199980) (THE "CHARGED SECURITIES"); AND IN RELATION TO THE CHARGED SECURITIES: (A) DISTRIBUTIONS AND DIVIDENDS; (B) BONUS SHARES, DEBENTURES AND OTHER INVESTMENT SECURITIES; (C) OPTIONS OR RIGHTS TO TAKE UP SHARES, DEBENTURES AND OTHER INVESTMENT SECURITIES; (D) OTHER RIGHTS, MONEY AND PROPERTY OF ANY NATURE, IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH THE COMPANY'S TITLE TO OR INTEREST IN SUCH CHARGED SECURITIES; AND ANY PROCEEDS OF SALE OR REDEMPTION OF THE CHARGE SECURITIES.**

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC**

**COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

MINCOFFS SOLICITORS LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7208158

Charge code: 0720 8158 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 4th October 2021 and created by H L (NORTH EAST) HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th October 2021 .

Given at Companies House, Cardiff on 6th October 2021

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



Companies House



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

Specific Security Deed

relating to shares in R3 NZ Limited

granted by

H L (North East) Holdings Limited

Grantor

in favour of

Opti-Flex Limited

Secured Party

Specific Security Deed

Dated the 4th day of October 2021

Parties

H L (NORTH EAST) HOLDINGS LIMITED, incorporated in the United Kingdom with company number 07208158 (the Grantor).

OPTI-FLEX LIMITED, incorporated in New Zealand with company number 975100 (the Secured Party).

Introduction

The Grantor has agreed to grant a Security Interest in the Charged Property to the Secured Party to secure to the Secured Party payment or delivery of the Secured Money and performance of the Secured Obligations.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this deed:

Business Day means has the meaning given to it in the Loan Agreement.

Charged Property means:

- (a) the Charged Securities;
- (b) the Rights; and
- (c) any proceeds of sale or redemption of the Charged Securities.

Charged Securities means all of the Grantor's shares in the Company.

Company means R3 NZ Limited, a company registered in New Zealand with company number 8199980.

Event of Default means:

- (a) an event of default (as defined under the Loan Agreement) under the Loan Agreement; and
- (b) a breach of a material obligation under this deed by the Grantor, where such breach has not been remedied within seven days of notice of the breach being given by the Secured Party or where such breach is not capable of remedy.

Loan Agreement means loan agreement dated on or about the date of this deed pursuant to which the Secured Party has agreed to make a loan to the Grantor to fund the provision of shareholder funds to the Company to assist the Company purchasing the assets and business of the Secured Party pursuant to the SPA.

PPSA means Personal Property Securities Act 1999.

PPSR means the personal property securities register established and maintained under section 139 of the PPSA.

Receiver means a receiver, or receiver and manager, appointed under this deed.

Rights means, in relation to the Charged Securities:

- (a) distributions and dividends;
- (b) bonus shares, debentures and other investment securities;
- (c) options or rights to take up shares, debentures and other investment securities; and
- (d) other rights, money and property of any nature,

in each case arising out of or in connection with the Grantor's title to or interest in such Charged Securities.

Secured Money means all indebtedness of the Grantor to the Secured Party under or in connection with the Loan Agreement.

Secured Obligations means all present and future obligations under or in connection with the Loan Agreement which the Grantor has or owes to the Secured Party, other than obligations to pay or deliver any Secured Money.

Security Interest has the meaning given to that term in the PPSA.

SPA means the agreement for sale and purchase of business and assets dated 30 July 2021, entered into between the Secured Party (as vendor), the Company (as purchaser), the Grantor (as guarantor) and Elaine Hogg and Jeffrey Dalton Hogg (as covenantors) relating to the purchase of the Secured Party's assets and business.

Void Payment means any payment made to the Secured Party by or on behalf of the Grantor which is subsequently avoided, conceded or compromised as being void or voidable under any law relating to insolvency or the protection of creditors or to any other matter or event.

1.2 Interpretation

The following rules of interpretation apply in this deed:

- (a) Reference to **clauses** are to those in this deed.
- (b) Reference to the **Schedule** means the schedule to this deed, which shall form part of this deed.
- (c) Reference to a **Party** includes the Party's successors, permitted substitutes and permitted assigns.
- (d) **Headings** and **subheadings** have been inserted for convenience only and will not affect the interpretation of this deed.
- (e) Reference to the **singular** includes the **plural** and vice versa.
- (f) Reference to a **document** or **agreement** (including a reference to this deed) is to that document or agreement as amended, supplemented, varied or replaced.
- (g) Reference to **legislation** or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (h) If any **day** on or by which a person must do something under this deed is not a Business Day:
 - (i) if the act involves a payment, the person must do it on or by the next Business Day unless that day falls in the following month, in which case, the previous Business Day; and
 - (ii) in any other case, the person must do it on or by the previous Business Day.
- (i) A reference to a **person** includes a corporation, trust, partnership, unincorporated body, government agency, or other entity whether or not it comprises a separate legal entity.

1.3 PPSA defined terms

Words and expressions used in this deed which have been defined in the PPSA are to be interpreted in accordance with their meanings in the PPSA unless otherwise defined in this deed. Without limitation, in this deed, each of **financing change statement**, **financing statement** and **verification statement**, has the meaning given to that term in the PPSA.

2. Grant of Security

2.1 Security Interest

The Grantor grants a Security Interest in the Charged Property to the Secured Party as security for the payment of any payment of the Secured Money and performance of the Secured Obligations by the Grantor.

2.2 Continuing security

The Security Interest granted under this deed is a continuing security and will operate until released in accordance with this deed.

2.3 Priority

The Security Interest under this deed shall constitute a first ranking Security Interest in the Charged Property. Nothing in this deed may be construed as an agreement or consent by the Secured Party or any other Secured Party to:

- (a) subordinate the Security Interest created under this deed in favour of any person;
- (b) any Security Interest attaching to or being created in any Charged Property; or
- (c) defer or postpone the date of attachment of the Security Interest created under this deed in any Charged Property.

3. Grantor Obligations

3.1 Performance

The Chorgor undertakes in favour of the Secured Party to:

- (a) perform or procure performance of all of the Secured Obligations; and
- (b) pay or procure payment of the Secured Money.

3.2 Transfer and documents of title

The Grantor must, if requested in writing by the Secured Party, promptly provide to the Secured Party:

- (a) a blank executed share transfer in respect of the Charged Securities; and
- (b) documents of title to the Charged Securities (if any).

3.3 Share register

The Grantor agrees to procure that the Secured Party's Security Interest under this deed is noted on the Company's share register.

3.4 Further assurances

The Grantor agrees to execute and deliver any documents or instruments and do all other things reasonably required by the Secured Party to give effect to this deed and to confirm and perfect the Secured Party's Security Interest, including providing all necessary information to register any financing statement or financing change statement on the PPSR.

3.5 Voting rights

Unless and until an Event of Default occurs, the Grantor may exercise all voting rights in relation to any of the Charged Property that it holds, provided that the Grantor will not cast, or refrain from casting, a vote in a manner which could reasonably be expected to adversely affect the security created under and by this deed.

4. Registration Under PPSA

The Grantor authorises the Secured Party to:

- (a) file all financing statements and other documents; and
- (b) do all things (including completing and adding schedules to this deed for further identifying the Charged Property),

which are necessary to perfect and continue the Security Interest created by this deed.

5. Undertakings and Representations

5.1 Undertakings related to Charged Property

The Grantor undertakes that for so long as the Secured Money and the Secured Obligations remain outstanding it will:

- (a) not dispose of any Charged Property, other than with the Secured Party's consent in writing;
- (b) not create or permit to exist any Security Interest over or affecting any Charged Property except as created or permitted by this deed; and
- (c) not do, or omit to do, or allow to occur anything that might render any Charged Property or a Security Interest created under this deed unenforceable or liable to forfeiture or cancellation.

5.2 Representations

The Chargor represents and warrants to the Secured Party that:

- (a) the Chargor is, and will at all times be, the sole registered owner of all the Charged Property and no Security Interest (nor any agreement to create any Security Interest) exists over or affects any of the Charged Property except for the Security Interest granted under this deed and any Security Interest consented to in writing by the Secured Party;
- (b) the Security Interest created by this deed is an effective Security Interest over the Charged Property;
- (c) its entry into, and the exercise of its rights and compliance with its obligations under, this deed do not and will not:
 - (i) conflict with any law or regulation applicable to it;
 - (ii) conflict with any of its constitutional documents; or

- (iii) conflict with any agreement or document binding upon it or any of its assets; and
 - (d) all authorisations required or desirable:
 - (i) to enable it lawfully to enter into, and exercise its rights and comply with its obligations under, this deed; and
 - (ii) to make this deed admissible in evidence in its jurisdiction of incorporation,
- have been obtained or effected and are in full force and effect.

5.3 Repetition

The representations and warranties contained in clause 5.2 will be deemed to be repeated by the Chargor at all times for so long as Secured Money or any Secured Obligation remains outstanding, by reference to the facts and circumstances then existing.

6. Enforcement

6.1 Consequences of Event of Default

At any time following the occurrence of an Event of Default and while it is continuing, and without prejudice to any other remedies the Secured Party may have:

- (a) the Security Interest created under this deed will become enforceable without the consent of the Chargor or any other person;
- (b) the Secured Party has full control over, may exercise as it sees fit and receive and retain the benefit of, all voting rights in relation to the Charged Property; and
- (c) the Secured Party may, without waiting any further period of time, do any or all of the following:
 - (i) sell, transfer, dispose or otherwise deal with all or any part of the Charged Property;
 - (ii) cause itself or its nominee to be registered as the holder of the Charged Property, or as the person entitled to the Charged Property;
 - (iii) complete in favour of any person (including the Secured Party itself) who is purchasing the Charged Property, any transfer of the Charged Property on behalf of the Chargor; or
 - (iv) appoint a Receiver in accordance with clause 7.

6.2 Notice of exercise of power

The Secured Party will, before exercising a right, power or remedy under this deed (or any other document) or conferred by law:

- (a) give any notice or demand; and
- (b) allow any time to elapse,

which they are required by law to give.

6.3 Exercise of power

If the Secured Party disposes of or deals with or attempts to dispose of or deal with any of the Charged Property under or in purported exercise of any of the Secured Party's rights, powers, remedies or authorities under this deed or any other document, no purchaser or any other person involved with any disposal or dealing:

- (a) need enquire whether there has been a default by the Grantor under this deed or otherwise as to the propriety or regularity of the dealing or disposal; or

- (b) is affected by express or constructive notice that the dealing or disposal is unnecessary or improper.

Despite any irregularity or impropriety, that disposal or dealing or attempted disposal or dealing is deemed to be authorised and is valid.

7. Receiver

7.1 Appointment

If:

- (a) an Event Default has occurred which has not been remedied to the satisfaction of, or waived by, the Secured Party; or
- (b) the Grantor so requests,

the Secured Party may appoint any person or persons (whether jointly, severally or jointly and severally) to be a Receiver of all or any of the Charged Property. The Secured Party may do this whether or not it has exercised any other right and even if dissolution of the Grantor has already commenced.

7.2 Removal Additional rights

At any time on or following the appointment of any Receiver, the Secured Party may:

- (a) determine, or vary, the terms of appointment of the Receiver;
- (b) require any Receiver to give it a Security Interest or an indemnity for the due performance of the Receiver's duties;
- (c) remove any Receiver; or
- (d) appoint another Receiver in addition to, or in place of, any Receiver.

7.3 Remuneration

The Secured Party may, subject to applicable law, determine or vary the remuneration of any Receiver. Such remuneration:

- (a) may be (or may include) a commission;
- (b) is payable by the Grantor;
- (c) will form part of the Secured Money; and
- (d) will be secured by the Security Interest created under this document.

7.4 Receiver agent of Grantor

Every Receiver is the agent of the Grantor except where (but only to the extent that) the Receiver is required by notice from the Secured Party to act as agent of the Secured Party. The Secured Party is not responsible for a Receiver's actions, including the misconduct, negligence or default of a Receiver.

7.5 Receiver's rights

In addition to, and without limiting or affecting, any other rights granted to or conferred on a Receiver (including under applicable law), and subject to the specific terms of appointment of each Receiver, each Receiver has the right in respect of the Charged Property and the Grantor's business to do anything (whether alone or with any other person) the Grantor could do as if the Receiver had full legal and beneficial ownership of the Charged Property and carried on the Grantor's business for the Receiver's own benefit.

7.6 Exercise of Receiver's rights

Every Receiver will, to the fullest extent permitted by law, exercise its rights in compliance with any directions issued by the Secured Party, and otherwise on such terms and conditions as the Receiver requires.

7.7 Withdrawal

The Secured Party may at any time give up possession of any Charged Property or discontinue any receivership.

8. Receipt and Application of Money

8.1 Order of application

Subject to clause 8.2, all amounts from time to time received or recovered by the Secured Party or Receiver pursuant to the terms of this deed or Loan Agreement (for the purposes of this clause 8, the **Recoveries**) shall be held by the Secured Party or Receiver on trust to apply them at any time as the Secured Party or the Receiver (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause 8.1), in the following order of priority:

- (a) firstly, in payment of all costs and expenses incurred by the Secured Party or Receiver in connection with any realisation or enforcement of the security taken in accordance with the terms of this deed;
- (b) secondly, in payment of the Receivers remuneration (if applicable);
- (c) thirdly, in payment of the Secured Money to the Secured Party; and
- (d) the balance, if any, in payment to the Grantor.

8.2 Permitted deductions

The Secured Party or Receiver shall be entitled, in its discretion, to set aside by way of reserve amounts required to meet and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this deed, and to pay all taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as Secured Party under this deed or otherwise.

8.3 Recovery

In applying the proceeds of any sale or realisation of the whole or any part of the Charged Property, the Secured Party or Receiver is obliged to account to the Chargor only in respect of so much of those proceeds as have been actually received in cleared funds as at the date of actual receipt of the same.

9. Secured Party's Rights

9.1 Preservation of Secured Party's rights

The Secured Party's rights and the Grantor's obligations and liabilities under this deed are not affected by anything which might otherwise affect them at law or in equity, including:

- (a) the Secured Party or another person granting time or other indulgence to the Grantor;
- (b) any transaction or arrangement that may take place between the Secured Party and the Grantor or any other person;
- (c) the Secured Party failing or neglecting to recover by the realisation of any amount in connection with a successful Claim from any person;
- (d) the Secured Party becoming a party to or being bound by any compromise, assignment of

property, scheme of arrangement, composition of debts or scheme of reconstruction by or which relates to the Grantor;

- (e) the release, discharge, abandonment, loss, impairment, transfer of or other dealing with (either in whole or in part and whether with or without consideration) the Secured Party's rights under this deed or under any other document;
- (f) the obtaining of a judgment or order against the Grantor or any other person; or
- (g) the failure by any person intended or contemplated as a party to this deed to properly execute this deed.

9.2 Void Payments

If a Void Payment is made to the Secured Party:

- (a) the Void Payment is not deemed to have discharged the Grantor's liability for which it was made despite any release, settlement or discharge which may have been given on the faith of the Void Payment;
- (b) the Secured Party and the Grantor are to be placed in or restored to the position they would have been in but for the Void Payment and the Grantor and the Secured Party may exercise the rights and are subject to the liabilities which each would have had or been subject to, if the Void Payment and any release, discharge or settlement given on the faith of the Void Payment had not been made or given; and
- (c) the Grantor must take all steps and sign all documents, and must procure that all relevant third parties take all steps and sign all documents that the Secured Party requires for the replacement or reinstatement of this deed previously held by the Secured Party from the Grantor.

9.3 Secured Party discretion

The Secured Party may determine at any time whether to enforce or refrain from enforcing this deed or security or right and may at any time make any arrangement or compromise with any person which the Secured Party consider expedient.

9.4 No marshalling

The Secured Party is not required to marshal, enforce or apply under, or appropriate, recover or exercise any guarantee, security or other right held by it at any time or any moneys or property which they hold or are entitled to receive at any time, before this deed is enforced.

10. Power of Attorney

10.1 Appointment

The Chargor irrevocably appoints the Secured Party and any Receiver to be its attorney (with full power to appoint substitutes and to sub-delegate) on its behalf and in its name or otherwise, at such time and in such manner after the occurrence of an Event of Default and for so long as it is continuing, as the attorney may think fit, to:

- (a) do anything which the Chargor is obliged to do under this deed and which the relevant Chargor has failed to do; and
- (b) do anything the attorney thinks desirable to give effect to the rights conferred on the Secured Party by clause 6.1.

10.2 Ratification

The Chargor agrees to ratify everything done by an attorney in accordance with clause 10.1.

11. Protection of Third Parties

No person dealing with the Secured Party or any person acting on behalf of the Secured Party or the Receiver shall be concerned to enquire whether any Event of Default has occurred or any event has happened upon which any of the rights conferred by or pursuant to this deed are or may be exercisable, or otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights nor will such person be affected by any notice that such dealing or action is unnecessary or improper.

12. PPSA

12.1 Waiver

Without limiting any other provision of this deed, the Chargor:

- (a) waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interest created under this deed; and
- (b) agrees that, at any time after an Event of Default has occurred, the Secured Party may:
 - (i) take possession of any Charged Property; and/or
 - (ii) dispose of any Charged Property in such manner and generally on such terms and conditions as the Secured Party thinks desirable,

and otherwise do anything the Chargor could do in relation to the Charged Property.

12.2 PPSA – Part 9 and additional rights

The Chargor and the Secured Party agree that, to the extent permitted by law and in respect of this deed and each Security Interest created under this deed, the Chargor and the Secured Party contract out of the Chargor's rights to (and the Chargor waives its rights to):

- (a) receive notice of the Secured Party's proposal to retain personal property under section 120(2) of the PPSA; and
- (b) object to the Secured Party's proposal to retain any personal property under section 121 of the PPSA.

13. Release

If:

- (a) all of the Secured Obligations have been performed and no Secured Moneys are owing (the date of this occurring being the **Maturity Date**); or
- (b) the Chargor disposes of the legal and beneficial ownership of all of the Charged Property to the Secured Party,

then with effect from the Maturity Date or the disposal (as applicable), the Secured Party will be deemed (without the need for any further action by any party) to have given the Chargor a release of the Security Interest in the Charged Property and the Secured Party will in either case, at the request of the Chargor, discharge any financing statement relating to the Charged Property.

14. Method of Payment

All payments required to be made under this deed must be made by crediting the account of the recipient (specified for that purpose) with cleared funds.

15. Notices

All notices and other communications to be given under this deed must be delivered in accordance with the applicable notice provisions set out in the Loan Agreement.

16. General

16.1 Entire agreement

This deed and the Loan Agreement constitute the entire agreement and understanding of the Parties relating to the matters dealt with in this deed and supersedes and extinguishes any previous agreement (whether oral or written) between the Parties in relation to such matters.

16.2 Amendments

This deed may only be amended by deed signed by all Parties.

16.3 Further assurances

Each Party shall, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this deed.

16.4 Waivers

No Party will be deemed to have waived any right under this deed unless the waiver is given in writing and signed by that Party. A failure to exercise or delay in exercising any right under this deed will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in this deed.

16.5 Amendments

This deed may not be amended or varied in any way unless such amendment or variation is made in writing and signed by each Party.

16.6 Assignment

No Party will assign or transfer, or purport to assign or transfer, any of their rights or obligations under this deed without the prior written consent of the other Party (such consent shall not be unreasonably or arbitrarily withheld or delayed).

16.7 Severability

If any provision of this deed is found by a court or other competent authority to be void or unenforceable, such provision will be deemed to be deleted from this deed and the remaining provisions of this deed will continue in full force and effect.

16.8 Rights and remedies

Unless otherwise expressly provided in this deed, the rights and remedies set forth in this deed are in addition to, and not in limitation of, any other rights and remedies under or relating to this deed (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

16.9 Counterparts

This deed may be signed and delivered in any number of counterparts, including by way of electronic transmission where a Party signs a counterpart and sends it as a PDF to the other Party by email. All such counterparts, when taken together, shall constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to bear the date of this deed.

16.10 Electronic signatures

A Party may sign this deed by way of the application of that Party's electronic signature (whatever

form that electronic signature takes) in accordance with Part 4 of the Contract and Commercial Law Act 2017, and such method of signing is conclusive of that Party's intention to be legally bound by this deed as if that Party had signed this deed by manuscript signature.

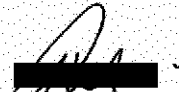
16.11 Governing law and jurisdiction

This deed, and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual claims), will be governed by and construed in accordance with the laws of New Zealand.

Signatures

EXECUTED AND DELIVERED as a deed poll.

Signed for and on behalf of H L (NORTH EAST)
HOLDINGS LIMITED by:



Signature of director

ANDREW HEWITSON
Name of director (print)



Signature of director

TREVOR LOWE
Name of director (print)