



Registration of a Charge

Company name: **ELK MACHINERY & PLANT HIRE LTD**

Company number: **11988398**



XA2F8X5T

Received for Electronic Filing: **14/04/2021**

Details of Charge

Date of creation: **17/03/2021**

Charge code: **1198 8398 0002**

Persons entitled: **ADSUM TECHNOLOGIES LTD**

Brief description:

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

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:

IRWIN MITCHELL LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 11988398

Charge code: 1198 8398 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th March 2021 and created by ELK MACHINERY & PLANT HIRE LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th April 2021 .

Given at Companies House, Cardiff on 15th April 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**

ADSUM

Date 17 March 2021

(1) ELK MACHINERY & PLANT HIRE LTD

AND

(2) ADSUM TECHNOLOGIES LTD

DEBENTURE

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BETWEEN:

- (1) **ADSUM TECHNOLOGIES LTD** a company incorporated in England and Wales under number 12471071 whose registered office is at Tavistock Square South (D), Tavistock Square, London, United Kingdom, WC1H 9LG ("**Lender**"); and
- (2) **ELK MACHINERY & PLANT HIRE LTD** a company incorporated in England and Wales under number 11988398 whose registered office is at 16 Llwynyrwn Pontyates, Llanelli, Wales, SA15 5UD ("**Borrower**");

(each of the "**Lender**" and the "**Borrower**" being a "**Party**" and together the "**Lender**" and the "**Borrower**" are the "**Parties**").

BACKGROUND

- A The Lender has agreed to provide the Borrower with the loan on the terms of the Facility Agreement.
- B It is a condition precedent to the provision of the loan that the Borrower provide security to the Lender to secure the payment and discharge of the Secured Liabilities.
- C The Borrower has agreed to create the security required by entering into this Deed.

IT IS AGREED as follows

1 DEFINITIONS AND INTERPRETATION

- 1.1 Words and expressions defined in the Facility Agreement (defined below) will have the same meanings in this Deed unless they are expressly defined in this Deed.
- 1.2 In this Deed, unless otherwise provided:

"**Default Rate**" means the rate of interest applied to overdue amounts under the Facility Agreement;

"**Encumbrance**" means any mortgage, charge, pledge, lien or other security interest of any kind, and any right of set off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having similar effect to the provision of security, other than liens arising by operation of law in the ordinary course of the Borrower's business;

"**Facility Agreement**" means the facility agreement dated on or around the date of this Deed between the Borrower and the Lender;

"**Insurance Policies**" means each contract or policy of insurance to which the Borrower is a party or in which it has an interest

"**Intellectual Property**" means copyright, patents, know-how, trade secrets, trade marks, trade names, the right to sue in passing off, design right, get-up, database right, customer lists, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future, (v) to which the Borrower is or may be entitled and (vi) wherever existing and the benefit of any agreement or any licence for the use of any such right;

"**Land**" means any right or interest in or over land wherever situated, including without limitation any buildings and fixtures on land, and the benefit of any covenants or rights owed to any person or enforceable by such person by virtue of the

ownership, possession or occupation of land and/or all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Borrower or in which the Borrower holds an interest (including (but not limited to) the properties described in 0);

"Permitted Security" has the meaning given to that term in the Facility Agreement;

"Receiver" means a receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and an administrative receiver (if the Lender is permitted to appoint such administrative receiver);

"Secured Assets" means all of the present and future assets of the Borrower which from time to time are the subject of any Security created, or purported to be created, by or pursuant to this Deed (including those listed in **Error! Reference source not found.** and Schedule 1);

"Secured Liabilities" means all money, liabilities and obligations now or in the future owed or incurred by the Borrower to the Lender (including those under the Facility Agreement or this Deed) whether actual or contingent, sole or joint, as principal or as surety, including (without limitation) any liability of the Borrower to a third party which subsequently becomes payable to the Lender by assignment or otherwise and any interest, commission, costs, charges and expenses of the Lender;

"Securities" means all right, title and interest of the Borrower, now or in the future, in any:

- (a) stocks,
- (b) shares,
- (c) instruments creating, or
- (d) acknowledging any debt or other securities issued by any person; and

"Security Period" the period starting on the date of this Deed and ending on the day on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

"VAT" means

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

"VAT Recoveries" means all monies paid or owing to the Borrower from HMRC by way of VAT reclaim in respect of VAT previously paid to HMRC in relation to the purchase of the Property.

- 1.3 Unless the context otherwise requires:
- 1.3.1 each gender includes the others;
 - 1.3.2 the singular and the plural are interchangeable;
 - 1.3.3 references to clauses, Schedules or Appendices mean to clauses or Schedules of and Appendices to this Deed;
 - 1.3.4 references to this Deed include its Schedule and Appendices, as amended;
 - 1.3.5 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
 - 1.3.6 including means including without limitation and general words are not limited by example;
 - 1.3.7 clause headings do not affect their interpretation; and
 - 1.3.8 references to legislation include any re-enactment but exclude any modification thereof after the date of this Deed.

2 BORROWER'S OBLIGATION TO PAY

- 2.1 The Borrower covenants with the Lender that it will pay and discharge to the Lender the Secured Liabilities on demand when due.
- 2.2 The making of one demand under this Deed will not stop the Lender making any further demands.
- 2.3 The Lender will not make any demand unless it is entitled to do so.

3 CREATION OF SECURITY

- 3.1 As continuing security for the payment and discharge of the Secured Liabilities the Borrower charges to the Lender with full title guarantee:
 - 3.1.1 by way of legal mortgage all Land now owned by the Borrower;
 - 3.1.2 by way of fixed charge:
 - 3.1.2.1 any right, title or interest which the Borrower has now or acquires in the future to any Land; and
 - 3.1.2.2 the assets set out in Schedule 1; and
 - 3.1.3 by way of floating charge the Borrower's bank accounts and other assets not otherwise effectively charged by clauses 3.1.1 and 3.1.3.
 - 3.1.4 As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, the benefit of any VAT Recoveries.
- 3.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.1.3.

4 CRYSTALLISATION

- 4.1 The floating charge created by clause 3.1.3 will crystallise into a fixed charge:
- 4.1.1 by notice in given by the Lender to the Borrower at any time after the security constituted by this Deed becomes enforceable, specifying the Secured Assets over which the crystallisation will take effect and if no Secured Assets are specified, the notice shall take effect over all the Secured Assets of the Borrower; or
 - 4.1.2 automatically and instantly without notice if the Borrower resolves, without the Lender's prior written consent, to take or takes any step to:
 - 4.1.2.1 create an Encumbrance over any or all of the Secured Assets;
 - 4.1.2.2 create a trust over any or all of the Secured Assets;
 - 4.1.2.3 dispose of any or all of the Secured Assets, except if such disposal is in the ordinary course of the Borrower's business;
 - 4.1.3 automatically and instantly without notice if any person resolves, without the Lender's prior written consent, to take or takes any step to levy any distress, execution, sequestration or other process against any or all of the Secured Assets; or
 - 4.1.4 automatically and instantly without notice if an Event of Default occurs.
- 4.2 Any asset acquired by the Borrower after crystallisation has occurred under clause 4.1 which would be subject to a floating charge if crystallisation had not occurred will be charged by way of a fixed charge, unless the Lender confirms otherwise in writing.
- 4.3 Any charge by the Borrower that has crystallised under clause 4.1 may, by notice in writing given at any time by the Lender to the Borrower, be reconverted into a floating charge in relation to the Secured Assets specified in the notice and if no Secured Assets are specified, the notice shall take effect over all the Secured Assets of the Borrower.

5 BORROWER'S REPRESENTATION AND WARRANTIES

- 5.1 The Borrower represents and warrants to the Lender as follows:
- 5.1.1 ***Ownership***

The Borrower is the legal and beneficial owner of the Secured Assets free from any Encumbrance other than the Permitted Security and the Encumbrances created by this Deed.
 - 5.1.2 ***Adverse claims and covenants***

The Borrower has not received or acknowledged notice of any adverse claim by any person in respect of the Secured Assets and there are no covenants, agreements, conditions, interests rights or other matters which may adversely affect the Secured Assets.
 - 5.1.3 ***Breach of law or regulation***

The Borrower has at all times complied in all respects with all applicable laws and regulations and has not breached any law or regulation which would adversely affect the Secured Assets.

5.1.4 Third Party Rights

The Secured Assets are not subject to terms entitling a third party to terminate or limit the use of any facility necessary for the enjoyment and use of the Secured Assets.

5.1.5 Overriding interests

Nothing has arisen, has been created or is subsisting, which would be an overriding interest in any Land.

5.1.6 Liquidation or administration

No Encumbrance expressed to be created by this Deed is liable to be avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise.

- 5.2 The Borrower repeats the representations and warranties in clause 5.1 above on each day during the Security Period.

6 BORROWER'S UNDERTAKINGS AND COVENANTS

- 6.1 The Borrower covenants not, without the prior written consent of the Lender, to:

6.1.1 (except in the case of assets charged by way of floating charge only which the Borrower may deal with in the ordinary course of its business) part with possession of, or transfer, sell, lease, assign or otherwise dispose of all or any of the Secured Assets, or attempt or agree to do so;

6.1.2 create, attempt to create or allow to subsist any mortgage, debenture, charge or pledge, increase the amount secured by the Deed, permit any lien (except a lien arising by operation of law in the ordinary course of trading) or other encumbrance to arise on or affect all or any of the Secured Assets, subject to any Permitted Security existing at the time of this agreement;

6.1.3 permit any person other than to be registered as proprietor of any of the Secured Assets under the Land Registration Act 2002 or create or permit to arise any unregistered interest which overrides first registration affecting such property within Schedule 1 to that Act, to become entitled to any proprietary right or interest which might affect the value of any land fixtures or fixed plant and machinery charged by this Deed other than pursuant to the terms of the Permitted Security;

6.1.4 do or allow any act or omission which may prejudice the value to the Lender of the Secured Assets; or

6.1.5 create any subsidiaries.

- 6.2 The Borrower covenants that it will, unless, in any case, the Lender has given its written consent otherwise:

6.2.1 notify the Lender in writing of any breach of this Deed, the Facility Agreement or any other Security Document, immediately on it becoming aware of such breach;

6.2.2 in relation to the Land part of the Secured Assets observe all covenants, not enter into any onerous or restrictive obligation, effect or allow any development within the Town and Country Planning Acts, do, allow or omit anything infringing any statute or regulation and maintain and keep them in good and substantial repair;

- 6.2.3 maintain all plant, machinery, fixtures, fittings, vehicles, computers and office and other equipment part of the Secured Assets in good working order and condition;
- 6.2.4 institute, pursue and defend proceedings relating to the Secured Assets as required to protect their value and apply moneys from such proceedings in discharge of sums due to the Lender;
- 6.2.5 at its own expense, keep insured any of the Secured Assets to their full replacement value including professional fees and other expenses with reputable insurers against risks normally insured for assets of that type in the name of the Borrower or, at the Lender's request, the joint names of the Borrower and the Lender;
- 6.2.6 punctually pay all insurance premiums, have the Lender's interest noted on the policy and produce the insurance documents including any receipt on request of the Lender. If the Borrower does not maintain insurance, the Lender may do so at the Borrower's expense;
- 6.2.7 punctually pay, and indemnify the Lender against, all moneys due in respect of the Secured Assets;
- 6.2.8 comply with all statutory, regulatory and other requirements applying to the Secured Assets except where actually or potentially adverse to the Lender's interest, when the Borrower will immediately consult the Lender and make or join the Lender in making such representations as the Lender may request;
- 6.2.9 deposit with the Lender or its nominee all deeds and documents of title relating to all land, buildings and other real property belonging to the Borrower and Insurance Policies relating thereto, all certificates and documents of title relating to the Securities and such blank documents, signed by the registered holder, as the Lender may request to perfect or vest in itself its title to the Securities and all other documents relating to the Secured Assets as the Lender may request; or
- 6.2.10 if requested by the Lender, ensure that each subsidiary of the Borrower guarantees to the Lender payment of all monies covenanted to be paid under this Deed and charge its undertaking, property and assets to secure such payment in such manner as the Lender may request.

7 PERFECTION OF SECURITY

7.1 Title documents

The Borrower must at any time immediately upon the request of the Lender, deposit with the Lender, all deeds, title documents, certificates and other documents constituting or evidencing title to each of the Secured Assets including all certificates and documents of title relating to the Securities and such blank documents, signed by the registered holder, as the Lender may request to perfect or vest in itself its title to the Securities and all other documents relating to the Secured Assets as the Lender may request.

7.2 Document delivery and other steps to perfect security

- 7.2.1 The Borrower must at any time immediately upon the request of the Lender, execute and deliver to the Lender (at the Borrower's expense) in such form and substance as the Lender may reasonably require all documents required to perfect the Encumbrances created, or purported to be created, by or pursuant to this Deed (including any documents required in connection with any registration formalities).

7.2.2 The Borrower must take all such other action as is available to it as may be necessary or as may reasonably be requested by the Lender to create, perfect, protect or maintain any of the Encumbrances created, or purported to be created, by or pursuant to this Deed or to vest title to any Secured Asset in the Lender or its nominee or any purchaser, or to facilitate the realisation of any Secured Asset under this Deed or the exercise of any of the rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law, including:

7.2.2.1 making all filings and registrations with and paying all taxes and duties to the appropriate authorities (including Companies House and HM Land Registry); and

7.2.2.2 making an application to HM Land Registry for a restriction to be placed on the Proprietorship Register of the Borrower's Property so that no disposition of any such Property by the Borrower is to be registered without the prior written consent of the Lender.

8 LIABILITY OF BORROWER

8.1 The Borrower's liability in respect of the Secured Liabilities shall not be discharged or prejudiced by:

8.1.1 the renewal, determination, variation or increase of the loan under the Facility Agreement or the acceptance or variation of any compromise, arrangement or settlement or the omission to claim or enforcement of payment from any other person by the Lender; or

8.1.2 any security, guarantee, indemnity, remedy or other right held by or available to the Lender being or becoming wholly or partially illegal, void or unenforceable on any ground; or

8.1.3 any other act or omission which but for this provision might have discharged or otherwise prejudiced the liability of the Borrower.

8.2 The Borrower may not require the Lender to:

8.2.1 enforce any security or other right; or

8.2.2 claim any payment from; or

8.2.3 otherwise proceed;

against any other person before enforcing this Deed against the Borrower.

9 ENFORCEMENT

The Lender may enforce this Deed at any time after:

9.1 the occurrence of an Event of Default;

9.2 the floating charge has crystallised under clause 4;

9.3 there has occurred any event which in the Lender's opinion is actually or potentially adverse to the Borrower; or

9.4 there has occurred any other event which in the Lender's opinion actually or potentially jeopardises the security created by this Deed.

10 APPOINTMENT, POWERS AND REMOVAL OF RECEIVERS

10.1 Appointment of a Receiver

At any time:

10.1.1 after the Encumbrances created by or pursuant to this Deed have become enforceable; or

10.1.2 if so requested by the Borrower,

the Lender may appoint by writing any person to be a Receiver of all or any part of the Secured Assets.

10.2 Powers of Receivers joint and several

Where more than one Receiver is appointed, they shall have power to act separately unless the Lender in the appointment specifies to the contrary.

10.3 Remuneration of Receiver

The Lender may from time to time determine the remuneration of the Receiver.

10.4 Power of the Lender to remove Receiver

The Lender may, subject to section 45 of the Insolvency Act 1986, remove the Receiver from the assets of which it is Receiver.

10.5 Further appointment

The appointment of a Receiver shall not preclude:

10.5.1 the Lender from making any subsequent appointment of a Receiver over all or any of the Secured Assets over which a Receiver has not previously been appointed or has ceased to act; or

10.5.2 a Receiver, while continuing to act, consenting to the appointment of an additional Receiver to act with it.

10.6 Status of Receiver as agent

A Receiver shall be the agent of the Borrower and the Borrower shall be solely liable for the Receiver's acts, defaults and remuneration, unless and until the Borrower goes into liquidation, after which the Receiver shall act as principal and shall not become the agent of the Lender.

10.7 Powers of Receiver

A Receiver shall have and be entitled to exercise in relation to the Borrower all the powers set out in Schedule I to the IA 1986, and in particular, by way of addition and without limiting such powers, and without prejudice to the powers of the Lender, a Receiver shall have power either in its own name or in the name of the Borrower:

10.7.1 in connection with any sale or other disposition of the Secured Assets, to receive the consideration for the sale in a lump sum or in instalments and to receive shares by way of consideration;

10.7.2 to grant options, licences or any other interests in the Secured Assets;

- 10.7.3 to sever fixtures from, and to repair, improve and make any alterations to, the Secured Assets;
- 10.7.4 to exercise any voting rights appertaining to the Borrower;
- 10.7.5 to do all other acts and things which it may consider desirable or necessary for realising any Secured Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed; and
- 10.7.6 to exercise in relation to any of the Secured Assets all the powers, authorities and things which it would be capable of exercising if it was the absolute beneficial owner of the Secured Asset.

10.8 Limitation on Lender's liability

Neither the Lender nor any Receiver shall be liable:

10.8.1 for any loss, however caused, arising out of:

- 10.8.1.1 any sale or other disposal of any of the Secured Assets and whether or not a better price could or might have been obtained by deferring or advancing the date of such sale or other disposal; or
- 10.8.1.2 the exercise of or failure to exercise any of the Lender's powers under this Deed; or

10.8.2 to account as mortgagee in possession for any of the Secured Assets.

10.9 Section 109 of the LPA 1925

Section 109 of the LPA 1925 shall not apply to this Deed or to any of the security it creates.

11 OTHER POWERS EXERCISABLE BY THE LENDER

11.1 Lender may exercise Receiver's powers

All powers of a Receiver conferred by this Deed may be exercised by the Lender after the Encumbrances created by or pursuant to this Deed have become enforceable, whether as attorney of the Borrower or otherwise, and whether or not a Receiver has been appointed.

11.2 Lender empowered to receive receivables

The Lender or any manager or officer of the Lender is irrevocably empowered to receive all receivables and claims that may be assigned to the Lender under this Deed, on payment to give an effectual discharge for them, on non-payment to take and institute if the Lender in its sole discretion so decides all steps and proceedings either in the name of the Borrower or in the name of the Lender for their recovery, and to agree accounts and to make allowances and to give time to any surety. The Borrower undertakes to ratify and confirm whatever the Lender or any manager or officer of the Lender shall do or purport to do under this clause 11 (Other powers exercisable by the Lender).

11.3 Lender not obliged to take action relating to receivables

The Lender shall not be obliged to:

- 11.3.1.1 make any enquiry as to the nature or sufficiency of any sums received by it in respect of any receivables or claims assigned to it under this Deed or pursuant to any of the Secured Assets;
- 11.3.1.2 make any claim or take any other action under this Deed; or
- 11.3.1.3 collect any money or enforce any of its other rights under this Deed.

11.4 Lender has no obligation under the Insurance Policies

The Lender shall have no obligation under the Insurance Policies and shall have no liability in the event of failure by the Borrower to perform its obligations under the Insurance Policies

12 POWERS OF SALE, LEASING ETC

12.1 Statutory power of sale to arise on execution

Section 103 of the Law of Property Act 1925 shall not apply to this Deed but the statutory power of sale will as between the Lender and a purchaser arise on and be exercisable at any time after the execution of this Deed but the Lender will not exercise such power unless the security created by this Deed has become enforceable or after the appointment of a Receiver under clause 10.

12.2 Power of the Lender to grant leases

The statutory powers of sale, leasing and accepting surrenders exercisable by the Lender are extended to allow the Lender to grant or surrender leases of any Land vested in the Borrower or in which it has an interest on such terms and conditions as the Lender may think fit provided that the security constituted by this Deed has become enforceable.

12.3 Lender may sever fixtures

The statutory power of sale exercisable by the Lender is extended to allow the Lender to sever any fixtures from the land and sell them separately.

13 NEW ACCOUNTS

- 13.1 On receiving notice that the Borrower has encumbered or disposed of any of the Secured Assets the Lender may rule off the Borrower's account and open a new account in the name of the Borrower.
- 13.2 If the Lender does not open a new account on receipt of a notice as from that time all payments made to the Lender will be treated as if they had been credited to a new account and will not reduce the amount owing from the Borrower at the time when the notice was received.

14 ATTORNEY

- 14.1 By way of security the Borrower irrevocably appoints the Lender, whether or not a Receiver has been appointed, and any Receiver separately as Borrower's attorney with full power to appoint substitutes and to delegate in its name and on its own behalf and as its act and deed or otherwise at any time after this security has become enforceable to execute and deliver and otherwise perfect any agreement, assurance,

deed, instrument or document, or perform any act that may be required of the Borrower under this Deed, or may be deemed by such attorney necessary or desirable for any purpose of this Deed or to enhance or perfect the security intended to be constituted by such attorney or to convey or transfer legal ownership of any Secured Assets.

- 14.2 The Borrower will ratify and confirm all transactions entered into by the Lender or Receiver in the proper exercise of their powers in accordance with this Deed and all transactions entered into by the Lender or the Receiver in signing, sealing, delivering and otherwise perfecting any assignment, mortgage, charge, security, deed, assurance, document or act as aforesaid.

15 PROTECTION OF THIRD PARTIES

No person (including a purchaser) dealing with the Lender or any Receiver or any of their respective nominees or agents, shall be concerned to enquire:

- 15.1 whether the Encumbrances created by or pursuant to this Deed have become enforceable;
- 15.2 whether any Receiver is validly appointed or acting within its powers;
- 15.3 whether any power exercised or purported to be exercised has become exercisable;
- 15.4 whether any of the Secured Liabilities remain due;
- 15.5 as to the necessity or expediency of any stipulations or conditions subject to which the sale of any Secured Asset is made, or otherwise as to the propriety or regularity of the sale of any Secured Asset; or
- 15.6 how any money paid to the Lender or a Receiver, or their respective nominees or agents, is applied.

16 CONSOLIDATION OF MORTGAGES

The restrictions on consolidation of mortgages contained in section 93 of the LPA 1925 shall not apply to this Deed.

17 RIGHTS OF LENDER OR RECEIVER TO REMEDY BREACH

If the Borrower defaults in its performance of any of the undertakings under clause 5 (Undertakings) or other obligations in this Deed, the Lender or any Receiver may (but shall not be obliged to) do whatever may be necessary to rectify the default or protect the Lender's interest under this Deed (including, if applicable, entering any property owned by the Borrower without becoming liable as mortgagee in possession) at the expense of the Borrower.

18 APPLICATION OF MONEYS RECEIVED

- 18.1 Any money received under this Deed will, subject to the discharge of any prior-ranking claims, be paid or applied in the following order of priority:
 - 18.1.1 in satisfaction of all costs, charges and expenses incurred and payments made by the Lender and/or the Receiver and of the remuneration of the Receiver;
 - 18.1.2 in or towards satisfaction of the Secured Liabilities; and
 - 18.1.3 as to the surplus, if any, to the person or persons entitled to it.

- 18.2 The Lender may, in its absolute discretion on or at any time or times after demand and pending the payment to the Lender of the whole of the Secured Liabilities, place and keep to the credit of a separate or suspense account any money received, recovered or realised by the Lender by virtue of this Deed for so long and in such manner as the Lender may determine without any intermediate obligation to apply it in or towards the discharge of any of the Secured Liabilities.

19 INDEMNITY

- 19.1 The Borrower will indemnify the Lender against all and any costs, charges and expenses arising:
- 19.1.1 out of any of the assets charged or assigned pursuant to clause 3 resulting in the Borrower or the Lender or the Receiver infringing or allegedly infringing any third party rights; and
 - 19.1.2 in relation to any proceedings referable to the Borrower brought against the Lender and/or the Receiver or to which the Lender and/or the Receiver may be joined whether as the plaintiff or defendant that relate to any of the Secured Assets.
- 19.2 The Borrower agrees that if it fails to pay any moneys in respect of the Secured Assets or to take (or not take) any action which might diminish the value of the Secured Assets to the Lender, the Lender may pay such monies or take such action and recover the cost from the Borrower.
- 19.3 The Borrower indemnifies the Lender and its employees and agents fully at all times against any claim, liability, loss or expense incurred by the Lender directly or indirectly as a result of any delay or failure of the Borrower in complying with clause 6 or with any law, regulation, directive or code of practice applicable to the Borrower or to its business or the Secured Assets or relating to the protection of the environment or to health and safety matters.
- 19.4 Without prejudice to the generality of this clause the costs recoverable by the Lender and/or any Receiver under this Deed shall include:
- 19.4.1 all costs, whether or not allowable on a taxation by the courts, of all proceedings for the enforcement of this Deed or for the recovery or attempted recovery of the Secured Liabilities;
 - 19.4.2 all money expended and all costs arising out of the exercise of any power, right or discretion conferred by this Deed; and
 - 19.4.3 all costs and losses arising from any default by the Borrower in the payment when due of any of the Secured Liabilities or the performance of its obligations under this Deed.
- 19.5 Any overdue amounts secured by the Deed will carry interest at the Default Rate. Interest will accrue on a day-to-day basis to the date of repayment in full. Interest shall continue to be charged and compounded on this basis after as well as before any demand or judgment.

20 RELEASE

- 20.1 Subject to clause 20.2 below, the Lender will, at the request and cost of the Borrower, execute all documents as the Borrower may reasonably require to release the Secured Assets from the security constituted by this Deed.
- 20.2 Any release, discharge or settlement between the Lender and the Borrower will be conditional upon no payment or security received by the Lender in respect of the

Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise and, notwithstanding any such release, discharge or settlement:

20.2.1 the Lender or its nominee will be at liberty to retain this Deed and the security created by or pursuant to this Deed, including all certificates and documents relating to the whole or any part of the Secured Assets, for such period as the Lender may deem necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

20.2.2 the Lender will be entitled to recover the value or amount of such security or payment from the Borrower subsequently as if such release, discharge or settlement had not occurred.

21 CONTINUING AND ADDITIONAL SECURITY

21.1 This Deed will remain as continuing security in favour of the Lender, regardless of the settlement of any account or any other matter whatever and will be without prejudice and in addition to any and all other rights, remedies or security which is or are in place now or in the future in respect of any Secured Assets in favour of the Lender for the payment of an Indebtedness

21.2 The Encumbrances constituted by this Deed are in addition to and do not prejudice, nor are they in any way prejudiced by, any other Encumbrance, guarantee or right of set-off, combination or other rights exercisable by the Lender against the Borrower or any Encumbrance, guarantee, indemnity and/or negotiable instrument now or in the future held by the Lender.

22 FURTHER SECURITY

The Borrower will on the demand of the Lender execute and deliver to the Lender at the cost of the Borrower any document that the Lender requires further to secure the payment of the Secured Liabilities, or to create, enhance or perfect any fixed security over any of the Secured Assets or to give full effect to this Deed or to vest title to any of the Secured Assets in the Lender or the Lender's nominee or any purchaser.

23 SET-OFF

The Lender may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by it) against any matured obligation owed by the Lender to the Borrower. Any exercise by the Lender of its rights under this clause shall be without prejudice to any other rights or remedies available to it under this Deed or otherwise.

24 MISCELLANEOUS

24.1 Survival

Notwithstanding termination of this Deed, any provisions which have not been fully implemented or performed remain in full force and effect and will continue to bind, and to be enforceable against the relevant party and will not be extinguished or affected by any other event or matter except a specific and duly authorised written waiver or release of the other party to this Deed.

24.2 Variation

Variations to this Deed will only have effect when agreed in writing.

24.3 Severability

The unenforceability of any part of this Deed will not affect the enforceability of any other part.

24.4 Waiver

Unless otherwise agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

24.5 Consent

Consent by a party, where required, will not prejudice its future right to withhold similar consent.

24.6 Rights of third parties

This Deed is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

24.7 Assignment and subcontracting

24.7.1 The Lender may assign any of its rights under this Deed or transfer all its rights or obligations by novation to any person.

24.7.2 The Borrower may not assign any of its rights or transfer any rights or obligations under this Deed.

24.8 Entire agreement

This Deed and documents referred to in it represent the entire agreement between the parties and supersede all previous agreements, term sheets and understandings relating to the Loan whether written or oral.

24.9 Succession

This Deed will bind and benefit each party's successors and assignees.

24.10 Counterparts

This Deed may be signed in any number of separate counterparts. Each, when executed and delivered by a party, will be an original; all counterparts will together constitute one instrument.

25 NOTICES

The provisions of clause 17 (Notices) of the Facility Agreement shall apply as though set out in full in this Deed.

26 GOVERNING LAW AND JURISDICTION

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

26.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

Assets charged by way of fixed charge

- 1 All shares held by the Borrower in any other company whether a subsidiary or not.
- 2 All or any stocks, shares (other than those described in paragraph 1 above), bonds and Securities of any kind (marketable or otherwise), negotiable instruments, warrants, loan notes and any other financial instruments held by the Borrower.
- 3 All dividends, allotments, options, bonuses, rights issues, offers, benefits and advantages accruing, arising or offered in respect of the shares and investments described in paragraphs 1 and 2 above.
- 4 All fixed and moveable plant, machinery, tools, vehicles, computers and office and other equipment of the Borrower and the benefit of any agreements, licences and warranties in respect thereof.
- 5 All Insurance Policies.
- 6 All book debts of the Borrower arising in the ordinary course of its business and all benefits, security and rights held in or to secure the payment of the book debts.
- 7 All debts and moneys due or payable to the Borrower except those referred to in paragraph 6 above including all amount standing credit of the Borrower's bank accounts whether such bank account is with the Lender or a third party.
- 8 All Intellectual Property belonging to the Borrower.
- 9 All present and future goodwill in the Borrower.
- 10 All uncalled capital in the Borrower.
- 11 All rights under any agreement to which the Borrower is a party which has not been assigned to the Lender.

EXECUTION PAGE

The **BORROWER**

EXECUTED as a **DEED** by NIGELAN CHILTON
ELK MACHINERY & PLANT HIRE LTD acting by
.....DIRECTOR.....
in the presence of:.....)

.....
Director

.....
Signature of witness

DARRAN JONES
.....
Name of witness

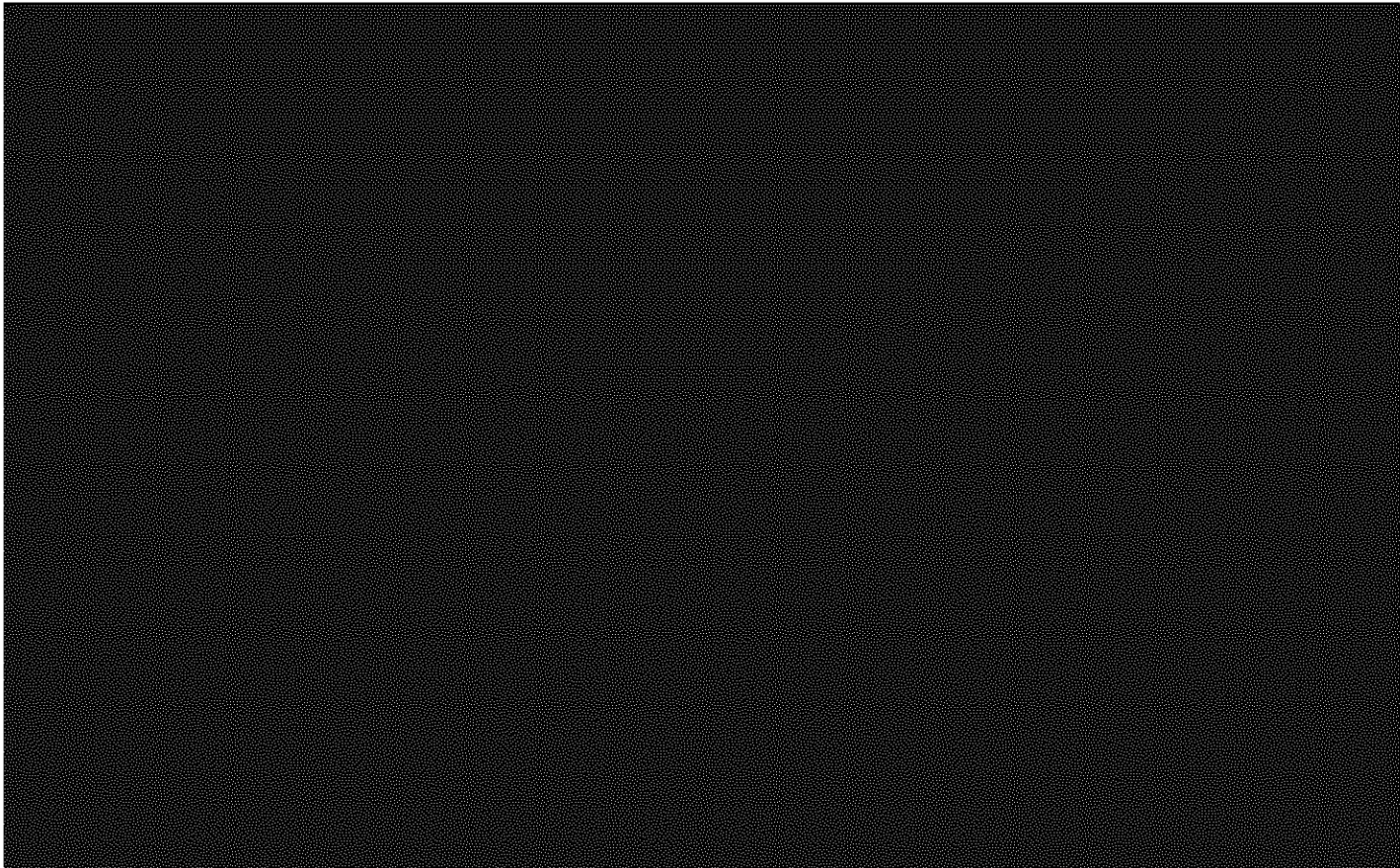
.....
Address witness

.....
Occupation of witness

THE LENDER

SIGNED by)
for and on behalf of)
ADSUM TECHNOLOGIES LTD.....)

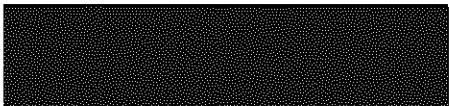
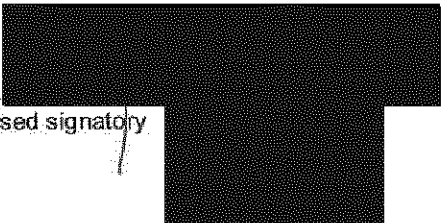
.....
Authorised signatory



THE LENDER

JUSTINA TARTILANTE

SIGNED by)
for and on behalf of)
ADSUM TECHNOLOGIES LTD.....)



.....
Authorised signatory

F. J. W. DIGBY

