

PATENT ASSIGNMENT

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SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

SECURITY AGREEMENT

CONVEYING PARTY DATA

Name	Execution Date
Phyworks Limited	04/05/2006

RECEIVING PARTY DATA

Name:	ETV Capital S.A.
Street Address:	46A Avenue John F. Kennedy
Internal Address:	L-1855
City:	Luxembourg
State/Country:	LUXEMBOURG

PROPERTY NUMBERS Total: 11

Property Type	Number
Application Number:	10334323
Application Number:	10353305
Application Number:	10379745
Application Number:	10376890
Application Number:	10610778
Application Number:	10442824
Application Number:	10422825
Application Number:	10817206
Application Number:	11088463
Application Number:	11395542
Patent Number:	6941506

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ATTORNEY DOCKET NUMBER:

0288694.125

NAME OF SUBMITTER:

John V. Hobgood

Total Attachments: 30

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DATED

5 APRIL

2006

(1) PHYWORKS LIMITED

(2) ETV CAPITAL S.A.

DEBENTURE

This Debenture is subject to the terms of a Deed of Priority as defined herein

TAYLOR WESSING
Carmelite
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Blackfriars
London EC4Y 0DX

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THIS DEBENTURE is made the

5

day of

APRIL

2006

BETWEEN

- (1) **PHYWORKS LIMITED** (registered in England and Wales under company number 04075331) the registered office of which is 3110 Great Western Court, Hunts Ground Road, Stoke Gifford, Bristol BS34 8HP (the "**Borrower**"); and
- (2) **ETV CAPITAL S.A.** a company incorporated under the laws of the Grand Duchy of Luxembourg whose registered office is at 46A Avenue John F Kennedy, L-1855 Luxembourg (the "**Lender**").

INTRODUCTION

- (A) The Lender has agreed to make available to the Borrower a term facility of up to £3,000,000 (three million Pounds Sterling) subject to and upon the terms and conditions contained in the Loan Agreement (as defined below).
- (B) As a condition precedent to and pursuant to the provisions of the Loan Agreement the Borrower has agreed to enter into this Debenture for the purpose of providing security to the Lender for the Secured Liabilities.

AGREED TERMS

1. Definitions and interpretation

1.1 Definitions

In this Debenture the following expressions have the following meanings, unless the context otherwise requires:

"**Asset Insurance**" means the insurance referred to in clause 12(g)(i) (Property and Asset Insurance) in respect of assets other than the Property;

"**Administrator**" means any administrator appointed pursuant to this Debenture;

"**Book Debts**" means:

- (a) all book and other debts in existence from time to time (including, without limitation, any sums whatsoever owed by banks or similar institutions), both present and future, due, owing to or which may become due, owing to or purchased or otherwise acquired by the Borrower; and
- (b) the benefit of all rights whatsoever relating to the debts referred to above including, without limitation, any related agreements, documents, rights and remedies (including, without limitation, negotiable or non negotiable instruments, guarantees, indemnities, legal and equitable charges, reservation of proprietary rights, rights of tracing, unpaid vendor's liens and all similar connected or related rights and assets);

"**Book Debts Account**" means such separate and denominated account or accounts with such bank as may be specified in writing by the Lender (taking into account the

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RBS Facility and the Deed of Priority) for the purpose of receiving payments of the proceeds of the realisation and collection of Book Debts;

"Charged Property" means the whole or any part of the property, assets, income and undertaking of the Borrower from time to time mortgaged, charged or assigned to the Lender pursuant to this Debenture;

"Company" means any person of whose share capital the Shares form all or any part;

"Contracts" means all the Borrower's rights, title, interest and benefit in and to any contract in respect of the whole or any part of the Charged Property to which the Borrower is a party;

"Costs" means all costs, charges or expenses of whatsoever nature including, without limitation, legal fees, disbursements and any VAT to be charged on such costs, charges, expenses and disbursements;

"Default Rate" means the annual rate of interest specified in clause 7.2 of the Loan Agreement;

"Deed of Priority" means the deed of priority dated on or about the date hereof and made between (1) RBS Invoice Finance Limited, (2) the Borrower and (3) the Lender;

"Derivative Assets" means all stocks, shares, warrants or other securities, rights, dividends, interest or other property (whether of a capital or income nature) accruing, offered, issued or deriving at any time by way of dividend, bonus, redemption, exchange, purchase, substitution, conversion, consolidation, subdivision, preference, option or otherwise attributable to any of the Shares or any Derivative Assets previously described;

"Event of Default" means any of those events or circumstances set out in clause 15 (Events of Default) of the Loan Agreement;

"Fixtures" means all assets of whatsoever nature, apart from land and buildings, forming part of any freehold or leasehold property owned by the Borrower and deemed by law to be immovable property;

"Floating Charge Property" has the meaning given to this term in clause 4(d);

"Insolvency Act" means the Insolvency Act 1986 unless otherwise stated;

"Intellectual Property" means the intellectual property described in schedule 1 (Intellectual Property) together with all other intellectual property presently or in the future owned by the Borrower in any part of the World including without limitation subsisting patents and subsisting rights of a similar nature to patents, applications for patents and such rights, divisions prolongations, renewals, extensions, supplementary protection certificates and continuations of such applications for patents, registered and unregistered trade marks, registered and unregistered service marks, registered and unregistered designs, utility models (in each case for their full period and all extensions and renewals of them), applications for any of them and the right to apply for any of them in any part of the World, inventions, processes, software, formulae, technology (whether patentable or not) data, drawings, specifications, business or trade secrets, technical information, confidential information, Know how, business names, trade names, brand names, domain names, database rights, copyright and rights in the nature of database rights and copyright, design rights, semiconductor topography rights, get up and any uniform resource identifiers and any similar rights existing in any country and all legal equitable and other rights in any of them; and the benefit (subject to the burden) of any and all agreements and licences (where such

agreements and licences permit the creation of security) in connection with any of the foregoing and all present and future rights and causes of action whenever and wherever accrued to the Borrower in respect of the infringement of the foregoing intellectual property rights including rights and causes of action arising out of the agreements, arrangements and licences in connection with the foregoing;

"Loan Agreement" means the Loan Agreement dated on or about the date hereof and made between the Borrower and the Lender;

"LPA" means the Law of Property Act 1925;

"Nominees" means the Lender, its agents, nominees and any other person holding the Shares and the Derivative Assets on behalf of the Lender from time to time;

"Plant and Machinery" means all plant and machinery, equipment, fittings, installations and apparatus, inventory, furniture, tools, motor vehicles and all other such assets (other than Fixtures) whatsoever, wherever situate, which are now, or at any time after the date of this Debenture become, the property of the Borrower;

"Property" means all estates and other interests in any freehold, leasehold or other immovable property (including, without limitation, all Fixtures on such property) which are now, or at any time after the date of this Debenture become, the property of the Borrower, all proceeds of sale derived from such property and the benefit of all covenants to which the Borrower is entitled in respect of such property;

"Property Insurance" means the insurance referred to in clause 12(f)(i) (Property and Asset Insurance) in respect of the Property;

"Receiver" means any receiver appointed pursuant to this Debenture, including, for the avoidance of doubt, a receiver and manager or a manager;

"Rights" means all the Borrower's rights, title and interest from time to time in any lease, licence or occupational right whatsoever together with the entire benefit of all the Borrower's rights, title and interest from time to time in any renewal of, replacement of or variation to any such lease, licence or occupational right (including, without limitation, all its rights, title and interest in any occupational lease, agreement for any occupational lease and any associated agreements which may be granted by the Borrower or any person deriving title from the Borrower from time to time over or in respect of the whole or any part of the Property and any other properties (freehold or leasehold) in which the Borrower has an interest);

"Secured Liabilities" means all moneys, debts and liabilities from time to time due, owing or incurred by the Borrower to the Lender on any current or other account whatsoever pursuant to the Facility Documents in each case:

- (a) whether present or future;
- (b) whether alone or jointly with any other person;
- (c) whether actual or contingent;
- (d) whether as principal or as surety;
- (e) in whatsoever name, firm or style;
- (f) in whatsoever currency denominated; or
- (g) otherwise,

including, without limitation, all liabilities in connection with foreign exchange transactions, accepting, endorsing or discounting notes or bills, under bonds, guarantees, indemnities, documentary or other credits or any instruments from time to time entered into by the Lender for or at the request of the Borrower together with interest to the date of payment at such rates and upon such terms as may from time to time be agreed and all commission, fees, costs (including, without limitation, legal fees) on a full indemnity basis and other charges;

"Security Documents" means any document entered into by any person from time to time creating any Security Interest, directly or indirectly, for the obligations of the Borrower under the Facility Documents including, without limitation, this Debenture; and

"Shares" means all stocks, shares and other securities held by the Borrower or any nominee of the Borrower.

1.2 Interpretation

- (a) In this Debenture:
 - (i) the Contents page and clause headings are included for convenience only and do not affect the construction of this Debenture;
 - (ii) words denoting the singular include the plural and vice versa; and
 - (iii) words denoting one gender include each gender and all genders.
- (b) In this Debenture, unless the context otherwise requires, references to:
 - (i) persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations and trusts (in each case whether or not having a separate legal personality);
 - (ii) documents, instruments and agreements (including, without limitation, this Debenture and any document referred to in this Debenture) are references to such documents, instruments and agreements as modified, amended, varied, supplemented or novated from time to time;
 - (iii) **"Administrators"** and **"administrators"** are references to administrators appointed under the Insolvency Act 1986, as amended, if appropriate, by the Enterprise Act 2002 and include administrators appointed under the out-of-court procedure under the Enterprise Act 2002;
 - (iv) receivers are references to receivers of whatsoever nature including, without limitation, receivers and managers and administrative receivers;
 - (v) the terms the **"Lender"** and the **"Receiver"** include, where the context so admits, references to any assignee, transferee or delegate of any such person;
 - (vi) a party to this Debenture includes references to its successors, transferees and assigns;
 - (vii) recitals, clauses and schedules are references to recitals to this Debenture, clauses of this Debenture and schedules to this Debenture; and references to this Debenture include its schedules;

- (viii) paragraphs are references to paragraphs of the schedule in which the references appear;
- (ix) statutory provisions (where the context so admits and unless otherwise expressly provided) are construed as references to those provisions as respectively amended, consolidated, extended or re enacted from time to time, and to any orders, regulations instruments or other subordinate legislation made under the relevant statute; and
- (x) a time of day is a reference to London time.

1.3 *Loan Agreement defined terms*

Unless otherwise defined in this Debenture, terms defined in the Loan Agreement bear the same meaning in this Debenture.

1.4 *Conflict with Loan Agreement*

If there is any conflict between the provisions of this Debenture and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall prevail.

2. *Covenant to pay*

The Borrower shall on demand pay to the Lender or discharge, as the case may be, all the Secured Liabilities when the Secured Liabilities become due in the manner provided in the relevant Facility Document.

3. *Interest*

The Borrower shall pay to the Lender interest on the Secured Liabilities (after as well as before any demand made or judgment obtained or the liquidation or administration of the Borrower) at the rate and upon the terms set out in the Loan Agreement.

4. *Security*

By way of continuing security in favour of the Lender for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee hereby charges to the Lender or assigns to the Lender (as the case may be) the property set out below in the manner set out below:

(a) *Property*

By way of first fixed charge the Property and all Rights relating to such Property.

(b) *Intellectual Property*

By way of first fixed charge, all the Intellectual Property owned by the Borrower.

(c) *Goodwill*

By way of first fixed charge, all the goodwill and uncalled capital for the time being of the Borrower.

(d) *Floating charge*

By way of first floating charge, all the undertaking and assets of the Borrower whatsoever, (including but without limitation the Contracts, the Book Debts, the Plant and Machinery and the Shares and Derivative Assets) wherever situate, whether movable, immovable, present or future (including, without limitation, its uncalled capital for the time being and all the undertaking and assets of the Borrower referred to above which are, for any reason, not validly charged or assigned pursuant to clauses 4(a) (Property) to 4(c) (Goodwill) (inclusive) of this Debenture) (the "**Floating Charge Property**").

The floating charge created by this Debenture is a qualifying debenture for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act.

5. Conversion of floating charge

5.1 *Conversion by notice*

The Lender may by notice to the Borrower convert the floating charge contained in this Debenture into a fixed charge as regards such Charged Property as the Lender may specify (whether generally or specifically) in that notice (i) if it reasonably considers that it would be desirable to do so in order to protect, preserve or supplement the charges over the Charged Property or the priority of those charges; or (ii) on, or at any time following, the occurrence of an Event of Default (where the Event of Default is continuing at the relevant time), or both.

5.2 *Automatic conversion*

If, without the prior written consent of the Lender, the Borrower creates any Security Interest other than a Permitted Security Interest over any of the Charged Property not expressed to be subject to a fixed charge under this Debenture, or attempts to do so, or if any person levies or attempts to levy any distress, attachment, execution or other legal process against any of such Charged Property, or if any steps that are not vexatious, frivolous, or an abuse of Court, are taken for the appointment of, or notice is given of intention to appoint, an administrator in relation to the Borrower, the floating charge created by this Debenture over the Charged Property the subject of such Security Interest or process will automatically, without notice, be converted into a fixed charge as soon as such event occurs.

PROVIDED THAT the floating charge contained in this Debenture may not be converted into a fixed charge solely by reason of the obtaining of a moratorium or anything done with a view to obtaining a moratorium by an eligible company (as defined by Schedule A1 of the Insolvency Act), under the Insolvency Act.

6. Further assurance

The Borrower shall:

- (a) forthwith, at any time if so required by the Lender, at its own expense execute and deliver to the Lender such further legal or other mortgages, charges, assignments, securities, authorities and documents as the Lender may in its reasonable discretion require of the whole or such part of the Charged Property as the Lender may specify, in such form as the Lender may in its reasonable discretion require, to protect or perfect the Lender's right, title or interest (in any jurisdiction) in the Charged Property or to secure the payment or discharge of the Secured Liabilities, including, without limitation, in order to vest the whole or

such part of the Charged Property in the Lender, the nominee of the Lender or in any purchaser from the Lender or the Receiver;

- (b) pending the execution and delivery of any such assignments, hold such Charged Property upon trust for the Lender subject to the provisions of this Debenture; and
- (c) pending the execution and delivery of any such mortgages, charges, or other security, hold such Charged Property subject to the provisions of this Debenture.

7. Deposit of documents and title deeds

7.1 The Borrower shall within ten Business Days of receipt of a written request of the Lender deposit with the Lender (and the Lender during the continuance of this security may hold and retain):

- (a) all deeds and documents of title relating to the Property;
- (b) all stock or share certificates or other documents of title to or representing the Shares and the Derivative Assets together with such duly executed transfers or assignments with the name of the transferees, date and consideration left blank as the Lender may require;
- (c) all such deeds and documents of title (if any) relating to the Book Debts as the Lender may from time to time reasonably specify (and taking into consideration the RBS Facility and the Deed of Priority); and
- (d) if so requested by the Lender, copies of any specified Contracts certified to be true copies by one director of or solicitor acting for the Borrower.

7.2 The Borrower shall upon the written request of the Lender:

- (a) procure the registration in the company books of the Company of the transfer of the Shares and the Derivative Assets to the Lender (or the Nominees as the Lender may require), the entry of the Lender (or the Nominees as the Lender may require) in the register of members of the Company as the holder or holders of the Shares and the Derivative Assets, and the issue of new share certificates in respect of the Shares and the Derivative Assets to the Lender (or the Nominees as the Lender may require); and
- (b) upon the accrual, offer, issue or receipt of any Derivative Assets deliver or pay to the Lender or procure the delivery or payment to the Lender of all such Derivative Assets or the stock or share certificates or other documents of title to or representing them together with such duly executed transfers or assignments with the name of the transferee, date and consideration left blank as the Lender may require.

8. Negative pledge

The Borrower shall not:

- (a) create, purport to create or allow to subsist, any Security Interest over the whole or any part of the Charged Property except for any Permitted Security Interest;

- (b) convey, assign, transfer, or agree to convey, assign or transfer the whole or any part of the Charged Property (other than Floating Charge Property in the ordinary course of business);
- (c) permit or agree to any variation of the rights attaching to the whole or any part of the Charged Property (other than the Floating Charge Property in the ordinary course of business);
- (d) knowingly, do, cause or permit to be done anything which may in the reasonable opinion of the Lender, to a material extent depreciate, jeopardise or otherwise prejudice the value to the Lender (whether monetary or otherwise) of the whole or any part of the Charged Property other than Floating Charge Property in the ordinary course of business;
- (e) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts except in the ordinary course of business or as permitted in the Deed of Priority;
- (f) make any distribution by way of dividend or otherwise howsoever without the prior written consent of the Lender; or
- (g) take any steps for the appointment of an administrator without first giving the Lender 10 Business Days' notice of its intention to do so.

9. The Book Debts Account

Subject to the terms of the Deed of Priority the Borrower shall:

- (a) collect and realise all Book Debts in the ordinary course of its business. For the avoidance of doubt, it is hereby declared that for the purposes of this Debenture, the ordinary course of business of the Borrower does not include or extend to the selling, assigning or in any other way factoring or discounting any Book Debts;
- (b) upon the written request of the Lender (having exercised its right under clauses 5.1 or 6(a) (hereinafter called the "**Conversion**"), pay the proceeds of such collection and realisation into the Book Debts Account;
- (c) following the Conversion, not except with the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed), withdraw from the Book Debts Account all or any monies standing to the credit of the Book Debts Account; and
- (d) following the Conversion, if called upon so to do by the Lender execute a legal assignment of the Book Debts to the Lender in such terms as the Lender may in its discretion require, give such notice of that legal assignment to the debtors from whom the Book Debts are due, owing or incurred and take any such other step as the Lender may in its discretion require to perfect such legal assignment.

10. Dividends, voting rights and Nominees

10.1 *Dividends and voting rights*

For so long as no Event of Default has occurred, the Borrower may:

- (a) subject to clause 7.2(b) (Deposit of documents and title deeds), receive and retain all dividends, interest and other income deriving from and received by it in respect of the Shares and the Derivative Assets; and
- (b) exercise all voting and other rights and powers attached to the Shares and the Derivative Assets PROVIDED THAT such exercise does not adversely affect the Shares and the Derivative Assets and is not otherwise inconsistent with the Debenture.

10.2 *Trustee powers*

The Lender may at its discretion (in the name of the Borrower or otherwise, subject to clause 10.1 (Dividends and voting rights), after the occurrence of an Event of Default and without any consent or authority on the part of the Borrower) exercise all the powers given to trustees by section 10(3) and (4) of the Trustee Act 1925 (as amended by section 9 of the Trustee Investments Act 1961) in respect of those Shares and the Derivative Assets subject to a trust.

10.3 *Lender's powers of enforcement over Shares and the Derivative Assets*

- (a) Following the occurrence of an Event of Default and following the crystallisation of the floating charge over the same in accordance with clauses 5.1 (Conversion by Notice) or 5.2 (Automatic Conversion), all dividends, interest and other income forming part of the Shares and the Derivative Assets shall, unless otherwise agreed between the Lender and the Borrower, be paid without any set off or deduction whatsoever to an interest bearing suspense account in the name of the Lender and shall be retained by the Lender until applied as hereinafter provided as part of the Shares and the Derivative Assets and any such monies which may be received by the Borrower shall, pending such payment, be held in trust for the Lender.
- (b) The Lender shall (in the absence of negligence, wilful default or fraud) not have any duty as to any Shares and Derivative Assets and shall incur no liability for:
 - (i) ascertaining or taking action in respect of any calls instalments, conversions, exchanges, maturities, tenders or other matters in relation to any Shares and Derivative Assets or the nature or sufficiency of any payment whether or not the Lender has or is deemed to have knowledge of such matters;
 - (ii) taking any necessary steps to preserve rights against prior parties or any other rights pertaining to any Shares and Derivative Assets; or
 - (iii) for any failure to present any interest, coupon or any bond or stock drawn for repayment or for any failure to pay any call or instalment or to accept any offer or to notify the Borrower of any such matter or for any failure to ensure that the correct amounts (if any) are paid or received in respect of the Shares and the Derivative Assets.

10.4 *Custody*

The Lender shall be entitled to provide for the safe custody by third parties of all stock and share certificates and documents of title deposited with the Lender or Nominees at the expense of the Borrower and shall not be responsible for any loss of or damage to any such certificates or documents.

11. Representations and warranties

11.1 The Borrower represents and warrants to the Lender that:

(a) *Ownership of the Charged Property*

it is absolutely, solely and beneficially entitled to all the Charged Property as from the date it or any part of it falls to be charged under this Debenture and the rights of the Borrower in respect of the Charged Property are free from any Security Interest of any kind other than a Permitted Security Interest; and

(b) *No disposal*

it has not sold or agreed to sell or otherwise disposed of, or agreed to dispose of, the benefit of all or any of the Borrower's right, title and interest in and to the Charged Property other than pursuant to the RBS Security and the Floating Charge Property in the ordinary course of business.

11.2 The representations and warranties set forth in this clause are given and made on and as of the date of this Debenture, shall survive the execution of this Debenture and are continuing representations and warranties which are deemed to be repeated during the continuance of the security constituted by this Debenture.

12. Undertakings

The Borrower gives each of the undertakings contained in this clause to the Lender.

(a) *Duration*

The undertakings in this clause shall remain in force during the continuance of the security constituted by this Debenture.

(b) *To comply with statutes*

The Borrower shall use its reasonable endeavours to comply with all reasonable requirements of any Authority, all obligations under any statute and all byelaws and regulations relating to the whole or any part of the Charged Property.

(c) *To provide information*

The Borrower shall furnish to the Lender promptly following request by the Lender such information and supply such documents or papers relating to the Charged Property from time to time as the Lender may require.

(d) *Security by Subsidiary*

The Borrower shall procure that any company which may be or become a Subsidiary of the Borrower during the subsistence of this Debenture shall provide in favour of the Lender such security in such form as the Lender may in its discretion require (acting reasonably).

(e) *Shares of Subsidiary*

The Borrower shall not permit any Subsidiary of the Borrower to issue any shares except to the Borrower itself or to one of the Borrower's other wholly owned Subsidiaries.

(f) *Notification of Events of Default*

The Borrower shall forthwith after becoming aware of the same notify the Lender in writing of the occurrence of any Event of Default.

(g) *Property and Asset Insurance*

The Borrower shall:

- (i) insure and keep insured the Property and all of its undertaking and assets other than the Property with reputable and responsible insurers previously approved by the Lender (such approval not to be unreasonably withheld or delayed) in such manner, and to such extent as is reasonable and customary for an enterprise engaged in the same or a similar business and, in the same or similar localities, such risks and contingencies as the Lender shall from time to time reasonably request;
- (ii) procure that the interest of the Lender is noted on all policies of Property Insurance and Asset Insurance in such manner as the Lender may in its absolute discretion require;
- (iii) duly and punctually pay all premiums and any other moneys necessary for maintaining the Property Insurance and the Asset Insurance in full force and effect;
- (iv) ensure that if reasonably required by the Lender every policy of insurance relating to the Property Insurance and the Asset Insurance (if available) contains a first loss payee clause and a standard mortgagee clause, whereby such insurance will not be invalidated, vitiated or avoided as against a mortgagee in the event of any misrepresentation, act, neglect or failure to disclose on the part of the insured;
- (v) produce to the Lender on request copies of all policies and all receipts for the current premiums with respect to the Property Insurance and the Asset Insurance; and
- (vi) immediately give notice to the Lender of any occurrence which gives rise, or might give rise, to a material claim under any policy of insurance relating to the Property Insurance, the Asset Insurance or both and, except with the prior written consent of the Lender, (such consent not to be unreasonably withheld or delayed) the Borrower shall not agree to settlement of any such claim.

If the Borrower at any time fails to perform any of its material obligations contained in this clause, the Lender may effect or renew such insurance as the Lender acting reasonably thinks fit and the Borrower shall reimburse the Lender for the reasonable Costs thereby incurred promptly following request. Such Costs will bear interest in accordance with clause 3 (Interest) from the date of payment by the Lender until the date of reimbursement.

(h) *Insurance monies*

- (i) Any monies received by virtue of any insurance relating to the whole or any part of the Charged Property (whether effected pursuant to this Debenture or otherwise) will be deemed to be part of the Charged Property. The Borrower shall apply all such monies in making good, or in recouping expenditure incurred in making good, any loss or damage

or, if the Lender in its reasonable discretion so requires following an Event of Default, towards discharge of the Secured Liabilities.

- (ii) The Borrower shall ensure that all such monies as are referred to in clause 12(h)(i) which are not paid directly by the insurers to the Lender shall be held by the recipient upon trust for the Lender and be applied by the Borrower in accordance with clause 12(h)(i).
- (iii) This clause applies whether or not this Debenture has become enforceable.

(i) *To repair*

The Borrower shall:

- (i) at all times keep in good and substantial repair and condition, subject to normal wear and tear all the Charged Property including, without limitation, all buildings, erections and structures on and in the Property;
- (ii) keep all Plant and Machinery in good repair, working order and condition and fit for its purpose; and
- (iii) where it is uneconomic to repair any part of the Charged Property, replace such part by another similar asset of equal or greater quality and value.

(j) *Intellectual Property*

The Borrower shall, during the continuance of the security constituted by this Debenture:

- (i) take all action that, in the reasonable opinion of the Borrower is reasonably necessary to effect, protect, review and maintain the Intellectual Property (wherever situate) which is material to the Borrower's business and contracts and promptly notify the Lender of any material infringement or alleged material infringement or any material challenge to the validity of any such Intellectual Property (except for routine communications received from patent, trademark or other intellectual property registries) of which the Borrower has notice and supply the Lender with all information in the Borrower's possession relating thereto as the Lender may reasonably request;
- (ii) notify the Lender of any application for registration and any grant of registration of Intellectual Property;
- (iii) duly and promptly take all steps and actions as the Borrower reasonably considers prudent to obtain granted patents of broad and effective scope in the United Kingdom and all other countries where, in the reasonable opinion of the Borrower, it is commercially reasonable to prosecute such applications in respect of the inventions the subject of the patents and patent applications listed in schedule 1 and, if in the reasonable opinion of the Borrower it is commercially reasonable to seek other patents, of all patentable inventions comprised in any part of the Intellectual Property and belonging to the Borrower;
- (iv) promptly on written request of the Lender duly and expeditiously apply to register (and pay all fees and costs in connection therewith) in such register(s) or with such authorities as the Lender may deem appropriate

(acting reasonably) for the purpose (in the United Kingdom or elsewhere) and in such name(s) as may be required by the law and practice of the place of registration such of the following as may be capable of registration, whether in the United Kingdom or elsewhere:

- (A) the Intellectual Property;
 - (B) this Debenture;
 - (C) all licences, registered user agreements or other interests granted to or acquired by the Borrower relating to the Intellectual Property; and
 - (D) all future assignments and/or mortgages made hereunder;
- (v) execute such further short form or other documents as may be reasonable in order to facilitate registration of this Debenture or otherwise perfect the Lender's security interests over any of the Intellectual Property as provided in clause 12(j)(iv) and as reasonably requested to be executed by the Lender shall, at the Borrower's expense. The Lender shall join with the Borrower in executing such documents;
 - (vi) provide to the Lender such copy documents as are reasonable and appropriate to confirm compliance with clause 12(j)(iv) above;
 - (vii) pay all application, registration, renewal and other payments necessary for effecting, protecting, maintaining or renewing any registrations of Intellectual Property required to be made under clauses 12(j)(i) to 12(j)(v), insofar as is reasonably possible, at least one calendar month before the latest time provided for payment therefor and do all other acts and things reasonably necessary for maintaining all such Intellectual Property in full force and effect, and on written request from the Lender send or deliver to the Lender the receipt for every such payment promptly after the same shall have been made. If default shall be made by the Borrower in making such payments or doing such acts or things, the Lender may make such payments or cause such acts or things to be done;
 - (viii) use reasonable endeavours to procure that any agents acting for it shall agree in writing to notify the Lender of any renewal or other fees due in respect of any material Intellectual Property and of any such acts or things in the Borrower's reasonable opinion are necessary for protecting and maintaining any such Intellectual Property before such payment is due or such act or thing must be done;
 - (ix) maintain an up-to-date record of all trade marks, applications for registration of trade marks and of all material copyright, patents and patent applications and any other Intellectual Property owned by the Borrower and provide a copy to the Lender on written request;
 - (x) at the written request of the Lender, provide the Lender with a written summary of all trade marks, trade mark applications, trade names and any other Intellectual Property acquired by the Borrower (whether in the United Kingdom or elsewhere) since the creation of this Debenture or the date of the last notification, as the case may be;

- (xi) not mortgage, charge, encumber, sell, assign, transfer, or otherwise dispose of, license or agree to license any Intellectual Property or any grant or permit to subsist any rights thereunder or interest therein or permit any third party to use such Intellectual Property save for any licence granted or agreement to licence, partnership, escrow arrangement or distributor agreement, in each case entered into in the ordinary course of business;
- (xii) otherwise that in the usual course of the Borrower's business, not alter any specification for which any trade mark has been registered or give its consent to registration by a third party of any trade mark the same or confusingly similar to any trade mark;
- (xiii) diligently commence and prosecute all proceedings as may be necessary (and desirable in the opinion of the management of the Borrower acting in good faith and in the best interests of the Borrower) to prevent infringement or, as applicable, continued infringement of all Intellectual Property belonging to the Borrower where such infringement has or could have a material effect on the Borrower's business;
- (xiv) save as is required by law, not without the Lender's prior written consent use the Lender's name in or join the Lender into any proceedings relating to infringement of any Intellectual Property;
- (xv) use its reasonable endeavours to protect the Intellectual Property and all documents embodying it from and against theft, loss, destruction, unauthorised access, copying or use;
- (xvi) not publish or otherwise disclose details of any of its inventions, other than as a consequence of the ordinary course of patent prosecution processes, software, formulae, technology (whether patentable or not) data, drawings, specifications, business or trade secrets, technical information confidential information and know how except in the usual course of the Borrower's business and subject to obligations of confidentiality being imposed on any recipient of any such information;
- (xvii) otherwise than in the usual course of the Borrower's business, not permit any person other than the Borrower or Lender to be registered as owner of the Intellectual Property or any part of it; and
- (xviii) if after an Event of Default, the Lender or Receiver shall wish to realise the Charged Property, the Borrower shall upon demand assign to the Lender or the Receiver or such other person nominated by them all rights to sue for damages and other remedies in respect of infringements of the Intellectual Property prior to the date of the assignment.

The Borrower hereby appoints the Lender as its authorised agent to make any filings, registrations or renewals or otherwise at such registries or with such authorities as appropriate, whether in the United Kingdom or elsewhere as shall be necessary to give effect to clause 12(j) and hereby irrevocably authorises the Lender, if the Borrower shall during the continuance of this Debenture make default in carrying out any of its obligations under clause 12(j), to effect such registrations, renewals, payments and notifications or carry out such acts or things at the expense of the Borrower as shall be reasonably necessary to protect the Lender's interest hereunder or to protect or maintain the Intellectual Property in question or any of it. The Lender agrees that it shall

first give the Borrower a reasonable period of notice before carrying out any such filings, registrations and renewals to allow the Borrower to effect the same in reasonable time. Provided However that nothing herein shall prevent the Lender from acting immediately if it reasonably considers that its interests may be materially prejudiced by not doing so.

13. Costs and Lender's performance of covenants

13.1 *Costs undertaking*

The Borrower shall on demand pay to the Lender or the Receiver, as the case may be, and discharge all Costs payable by it pursuant to this Debenture on a full and unlimited indemnity basis, together with interest at the Default Rate from the date the relevant Cost was expended, incurred or suffered (whichever is the earlier) by the Lender or the Receiver, as the case may be, until full discharge of such Cost.

13.2 *Lender's performance of covenants*

If the Borrower fails to perform the undertakings contained in clause 12(i) (To repair), the Lender may perform such covenant at the Borrower's expense and the Borrower shall reimburse the Lender for the reasonable Costs of such performance on demand. Nothing in this Debenture shall oblige the Lender to perform any covenant of the Borrower.

14. Default

14.1 *Enforcement*

Subject to clause 15.3 of the Loan Agreement, this Debenture will become enforceable immediately:

- (a) on the making of a demand pursuant to clause 2 (Covenant to pay); or
- (b) if any steps (other than steps connected with the Borrower consulting with an Insolvency Practitioner) are taken for the appointment of an administrator or where notice is given of an intention to appoint, or a petition is filed or an application is made or a competent court makes an order for the appointment of, an administrator, in relation to the Borrower, or any steps are taken for the appointment of a receiver or an administrative receiver of the Borrower, or any of its assets (unless such steps or notice are vexatious or frivolous or an abuse of Court (in the reasonable opinion of the Lender)); or
- (c) if the Borrower requests the Lender to appoint an administrator or a receiver over the whole or any part of its undertaking or assets.

14.2 *Consequences of default*

On and at any time after the occurrence of an Event of Default, the Lender in its absolute discretion may by written notice to the Borrower:

- (a) declare the Secured Liabilities to be immediately due and payable, together with all accrued interest thereon and any other sums then owed by the Borrower under any Facility Document to which it is a party and, upon that declaration, such sums shall become immediately due and payable without demand or notice of any kind, all of which are hereby expressly waived by the Borrower; or

- (b) declare the Secured Liabilities to be due and payable on demand of the Lender; and/or
- (c) declare the security constituted by the Facility Documents to be enforceable.

15. Appointment of Administrator

- 15.1 At the time, or at any time after, the security constituted by this Debenture becomes enforceable, whether or not the Lender has entered into or taken possession of the whole or any part of the Charged Property pursuant to this Debenture, the Lender may, in so far as permitted by law, at its option and in addition to any right to appoint a Receiver, by writing under the hand of any authorised officer of the Lender, appoint any person to be an administrator of the Company under the Insolvency Act and the Enterprise Act 2002 and such person shall, from the effective date of such appointment, be an Administrator with all powers conferred on him by the Insolvency Act or the Enterprise Act 2002 as the case may be.
- 15.2 Without prejudice to any continuing right of the Lender, at its option, to appoint a Receiver under this Debenture unless and until, and then only to the extent, prohibited from so doing by the provisions of the Enterprise Act 2002, the floating charge created hereunder is a qualifying floating charge for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act (incorporated by Schedule 16 of the Enterprise Act 2002) and that paragraph shall apply to this Debenture.

16. Statutory power of sale

- 16.1 For the purposes of all powers implied by statute, and in particular the power of sale under section 101 of the LPA (Powers incident to estate or interest in a mortgage), the Secured Liabilities will be deemed to have become due when the security created by this Debenture becomes enforceable and section 103 of the LPA (Regulation of exercise of power of sale) and section 93 of the LPA (Restriction on consolidation of mortgages) will not apply.
- 16.2 The statutory powers of leasing conferred on the Lender are extended so as to authorise the Lender to lease, make arrangements for leases, accept surrender of leases and grant options on such terms and conditions as the Lender may in its reasonable discretion think fit. The Lender is not obliged to comply with any of the provisions of section 99 (Leasing powers of mortgagor and mortgagee in possession) and section 100 (Powers of mortgagor and mortgagee in possession to accept surrenders of leases) of the LPA.
- 16.3 Each of the Lender and the Receiver may exercise such person's statutory power of sale in respect of the whole or any part of the Property.

17. Receiver

17.1 Appointment of Receiver

- (a) At any time, or at any time after, the security constituted by this Debenture has become enforceable, whether or not the Lender has entered into or taken possession of the whole or any part of the Charged Property pursuant to this Debenture:
 - (i) the Lender may, in so far as is permitted by law, at its option, by writing under the hand of any authorised officer of the Lender, appoint any

person to be a receiver of the Charged Property and such person shall, with effect from the date of such appointment, be a **"Receiver"**;

PROVIDED THAT this provision shall not apply solely by reason of the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, by an eligible company (as defined in Schedule A1 of the Insolvency Act) under the Insolvency Act;

- (ii) the Lender may, from time to time, in similar manner, remove the Receiver and appoint another in his place;
- (iii) the Lender may, either at the time of appointment or at any time thereafter, fix the remuneration of the Receiver;
- (iv) the Lender and any Nominee wheresoever situate may, without further notice and without the restrictions contained in section 103 of the Law of Property Act 1925 (Regulation of exercise of power of sale), exercise in respect of all or any part of the Shares and the Derivative Assets all the powers and rights exercisable by the registered holder of the Shares and the Derivative Assets and all other powers conferred on mortgagees by the Law of Property Act 1925 as varied or extended by this Debenture; and
- (v) the Lender and any Nominee wheresoever situate may apply any dividends, interest or other payments received or receivable by the Lender or by such Nominee in respect of the Shares and the Derivative Assets as if they were proceeds of sale.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- (b) The Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Debenture or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Lender shall not be liable to the Borrower for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever.

17.2 *Powers of Receiver*

The Receiver has all the powers to do or abstain from doing anything which the Borrower could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by section 109 of the LPA (Appointment, powers, remuneration and duties of receivers) and, in the case of a Receiver who is an administrative receiver, the powers conferred by section 29 of the Insolvency Act (Definitions) and Schedule 1 to the Insolvency Act (Powers of administrator or administrative receiver), and in particular the Receiver may:

- (a) *Carry on business*

carry on, manage or concur in carrying on or managing the whole or any part of the business of the Borrower as he may in his discretion think fit;

- (b) *Protection of assets*

- (i) manage, insure, repair, decorate, maintain, alter, improve, renew or add to the Charged Property or concur in so doing;

- (ii) commence or complete any building operations on the Property;
- (iii) apply for and maintain any planning permissions, building regulations, approvals and any other permissions, consents or licences,

in each case as he may in his discretion think fit;

(c) *Realisation of assets*

sell, exchange, convert into money and realise the whole or any part of the Charged Property or concur in so doing by public auction or private contract and generally in such manner and on such terms as he may in his discretion think fit. Without prejudice to the generality of the foregoing, he may do any of these things for any valuable consideration including, without limitation, cash, shares, stock, debentures or other obligations. Any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;

(d) *Let, hire or lease*

- (i) let, hire or lease (with or without premium) and accept surrenders of leases or tenancies or concur in so doing;
- (ii) grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property;
- (iii) exchange or concur in exchanging the Charged Property,

in each such case in such manner and generally on such terms as he may in his discretion think fit, with all the powers of an absolute beneficial owner. The Receiver may exercise any such power by effecting such transaction in the name or on behalf of the Borrower or otherwise;

(e) *Borrowing*

for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to this Debenture or of defraying any Costs (including, without limitation, his remuneration) which are incurred by him in the exercise of such powers, authorities or discretions or for any other purpose, to raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Debenture or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;

(f) *Make calls*

make, or require the directors of the Borrower to make, such calls upon the shareholders of the Borrower in respect of any uncalled capital of the Borrower as the Receiver may in his discretion require and enforce payment of any call so made by action (in the name of the Borrower or the Receiver as the Receiver may in his discretion think fit) or otherwise;

(g) *Compromise*

- (i) settle or compromise any claim by, adjust any account with, refer to arbitration any dispute with, and deal with any question or demand from, any person who is, or claims to be, a creditor of the Borrower, as he may in his discretion think fit; and
- (ii) settle or compromise any claim, adjust any account, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;

(h) *Proceedings*

bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;

(i) *Subsidiaries*

- (i) promote the formation of any Subsidiary of the Borrower with a view to such Subsidiary purchasing, leasing, licensing or otherwise acquiring an interest in the Charged Property;
- (ii) arrange for the purchase, lease, licence or acquisition of an interest in the Charged Property by any such Subsidiary for any valuable consideration, including, without limitation, cash, shares, debentures, loan stock, convertible loan stock or other securities, profits or a sum calculated by reference to profits, turnover, royalties, licence fees or otherwise, whether or not secured on the undertaking or assets of such Subsidiary and whether or not such consideration is payable or receivable in a lump sum or at any time or any number of times by instalments spread over such period, as the Receiver may in his discretion think fit; and
- (iii) arrange for such Subsidiary to trade or cease to trade as the Receiver may in his discretion think fit;

(j) *Employees*

appoint and discharge any manager, officer, agent, professional adviser, employee and any other person, upon such terms as he may in his discretion think fit;

(k) *Receipts*

give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for realising the Charged Property;

(l) *General powers*

do all such other acts and things as the Receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Debenture or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

17.3 *Receiver as agent of the Borrower*

The Receiver is at all times and for all purposes the agent of the Borrower. Subject to the provisions of the Insolvency Act, the Borrower is solely responsible for all the Receiver's acts, defaults, neglect and misconduct of any nature whatsoever and for his remuneration and Costs, to the exclusion of liability on the part of the Lender.

17.4 *No obligation*

The Receiver is not obliged to exercise any of the powers set out in this clause.

17.5 *Several power*

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Lender specifies otherwise in the appointment of such Receiver.

17.6 *Powers exercisable by the Lender*

- (a) The Lender may exercise all powers granted to the Receiver by this Debenture, whether as attorney of the Borrower or otherwise.
- (b) The powers of the Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Lender as provided in clause 16 (Statutory power of sale) or otherwise and so that, inter alia, such powers are and remain exercisable by the Lender in respect of that part of the Charged Property in respect of which no appointment of a Receiver by the Lender is from time to time subsisting.

17.7 *Application of proceeds*

The provisions of sections 99 to 109 inclusive of the LPA are varied and extended to the extent that all monies received by the Receiver be applied (subject to the provisions of the Enterprise Act 2002, in so far as they are applicable to this Debenture) in the following order:

- (a) in full payment of his remuneration and the Costs of realisation including, without limitation, all Costs of, or incidental to, any exercise of any power referred to in this Debenture, including, without limitation, all outgoings paid by the Receiver;
- (b) providing for the matters specified in paragraphs (i) to (iii) inclusive of section 109 (8) of the LPA (Appointment, powers, remuneration and duties of receiver);
- (c) in or towards satisfaction of any debts or other imposts which are by statute made payable in preference to the Secured Liabilities to the extent to which such debts or imposts are made so payable;
- (d) if so required by the Lender in its discretion, in or towards satisfaction of the Secured Liabilities; and
- (e) to the Borrower or any other person entitled to any surplus.

18. Protection of third parties

- 18.1 Any person (including, without limitation, any purchaser, mortgagor or mortgagee) (in this clause a "**purchaser**") dealing with the Lender may assume without inquiry that:

- (a) some part of the Secured Liabilities has become due;
 - (b) a demand for such Secured Liabilities has been duly made; and
 - (c) such Secured Liabilities have become due within the meaning of section 101 of the LPA (Powers incident to estate or interest in a mortgage).
- 18.2 No purchaser dealing with the Receiver or the Lender is to be concerned to enquire whether any power exercised or purported to be exercised by the Receiver or the Lender has become exercisable, or as to the propriety or regularity of any sale by, or other dealing with, the Receiver or the Lender. Any such sale or dealing is deemed to be within the powers conferred by this Debenture and to be valid and effective accordingly. All the protection to purchasers contained in section 104 (Conveyance on sale) and section 107 (Mortgagee's receipt, discharges etc.) of the LPA and section 42(3) of the Insolvency Act (Prohibition upon enquiry into administrative receiver's powers) apply to any purchaser.

19. No liability as mortgagee in possession

19.1 *Mortgagee's liability*

Neither the Lender nor the Receiver is:

- (a) liable to account as mortgagee in possession in respect of the Charged Property; or
- (b) liable for any loss upon realisation or exercise of any power, authority or right of the Lender or the Receiver arising under this Debenture, nor for any act, default, neglect, or misconduct of any nature whatsoever.

19.2 *Possession*

If the Lender or the Receiver enters into possession of the Charged Property, such person may at any time go out of possession at the discretion of such person.

20. Power of attorney

20.1 The Borrower irrevocably appoints by way of security the Lender, each person deriving title from the Lender and the Receiver, jointly and severally to be its attorney (with full power to appoint substitutes and to sub delegate) for it, in its name, on its behalf and as its act and deed or otherwise to sign or execute any deed or document or do any act or thing which the Borrower is, or may become, obliged to sign, execute or do pursuant to this Debenture or which the Lender, the Receiver or any person deriving title from the Lender or the Receiver may in the discretion of such person think fit in connection with the exercise of any of the powers of such person or the realisation of any security constituted by this Debenture.

20.2 Without prejudice to the generality of the foregoing, the Borrower unconditionally undertakes to the Lender, and separately to the Receiver and to each person deriving title from the Lender or the Receiver, that it shall ratify and confirm anything done or purported to be done in good faith and without negligence by any attorney appointed pursuant to this clause.

21. Cumulative and continuing security

- 21.1 This Debenture is a continuing security to the Lender regardless of any intermediate payment or discharge of the whole or any part of the Secured Liabilities and will not be prejudiced or affected by any act, omission or circumstance which, but for this clause, might affect or diminish its effectiveness.
- 21.2 If the Borrower shall have unconditionally and irrevocably paid and discharged the Secured Liabilities in full (which event shall not occur whilst it has any contingent liabilities to the Lender), the Lender will at the Borrower's request and expense execute any deed of release or discharge of the security created hereunder as the Borrower may reasonably request.
- 21.3 The security constituted by this Debenture is in addition to, is not in substitution for, is without prejudice to, and does not merge with, any rights whatsoever which the Lender may have, whether in respect of the Secured Liabilities or otherwise, including, without limitation, any rights arising under any other Security Interest, any bill, note, guarantee, contract or applicable rule of law.
- 21.4 Any receipt, release or discharge of the security constituted by, or of any liability arising under, this Debenture shall not release or discharge the Borrower from any liability which may exist independently of this Debenture to the Lender.
- 21.5 Where the security constituted by this Debenture initially takes effect as a collateral or further security to any other Security Interest held by the Lender then, notwithstanding any receipt, release or discharge given in respect of such other Security Interest, this Debenture shall take effect as an independent security for any monies, liabilities or other sums secured by such other Security Interest.

22. Avoidance of payments

- 22.1 No assurance, security or payment which may be avoided under the law or subject to an order of the court made under any law relating to bankruptcy, insolvency, administration or winding up, including, without limitation, the Insolvency Act, and no release, settlement or discharge given or made by the Lender on the faith of any such assurance, security or payment, prejudices or affects the right of the Lender:
- (a) to recover any monies from the Borrower (including, without limitation, any monies which it is compelled to refund under Chapter X of Part IV (Malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions) of the Insolvency Act and any Costs payable by it incurred in connection with such process); or
 - (b) to enforce the security constituted by this Debenture to the full extent of the Secured Liabilities.
- 22.2 The Lender (acting reasonably) may retain the security so created as security for the Secured Liabilities for a period of one month plus any statutory period within which any such assurance, security or payment can be avoided or invalidated notwithstanding any release, settlement, discharge or arrangement given or made by the Lender.
- 22.3 If at any time within the period referred to in clause 22.2 any person takes any step whatsoever relating to (i) the winding up or administration of the Borrower; or (ii) any arrangement with the creditors of the Borrower, the Lender may retain the whole or any part of the security constituted by this Debenture for such further period as the Lender may in its reasonable discretion think fit. Such security will be deemed to have been

held and remained held by the Lender as security for the payment to the Lender of the Secured Liabilities.

23. Prior charges

23.1 If there subsists any prior Security Interest against the Charged Property and either, any step is taken to exercise any power or remedy conferred by such Security Interest or the Lender or the Receiver exercises any power of sale pursuant to this Debenture, the Lender may redeem such prior Security Interest or procure the transfer of such Security Interest to itself and may settle and pass the accounts of the person entitled to such Security Interest. Any accounts so settled and passed are conclusive and binding on the Borrower.

23.2 The Borrower shall reimburse the Lender for any Costs incurred by the Lender in exercise of its rights under this clause.

24. Opening a new account

24.1 If the Lender receives notice of any subsequent Security Interest affecting the Charged Property, the Lender may open a new account for the Borrower in its books.

24.2 If the Lender does not open such new account, then, unless the Lender gives express written notice to the contrary to the Borrower, all payments by or on behalf of the Borrower to the Lender will be treated as from the time of receipt of notice of such subsequent Security Interest by the Lender as having been credited to a new account of the Borrower and not as having been applied in reduction of the amount of the Secured Liabilities as at the time when the notice was received.

25. Suspense account

The Lender may, in its discretion credit to any suspense or impersonal interest-bearing account and hold in such account, on such terms as the Lender may in its discretion think fit, all monies received, recovered or realised by the Lender pursuant to this Debenture (including, without limitation, the proceeds of any conversion of currency) pending the application from time to time (as the Lender may effect in its discretion) of such monies and accrued interest, if any, in or towards satisfaction of the Secured Liabilities.

26. Currency

If any sum due from the Borrower hereunder or under any order or judgment given or made in relation hereto has to be converted from the currency (the "**first currency**") in which the same is payable hereunder or under such order or judgment into another currency (the "**second currency**") for the purpose of making or filing a claim or proof against the Borrower, obtaining an order or judgment in any court or other tribunal or enforcing any order or judgment given or made in relation hereto, the Borrower shall indemnify and hold harmless the Lender from and against any loss suffered as a result of any difference between (x) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (y) the rate of exchange at which the Lender may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction in whole or in part, of any such order, judgment, claim or proof. Any amount due from the Borrower under this clause 27 shall be due as a separate debt and shall not be affected by judgment being obtained for any other sums due hereunder but it shall be

secured, and the Lender shall have all rights in relation to it, as if it formed part of the Loan. The term "**rate of exchange**" includes any premium or costs of exchange in connection with the purchase of the first currency with the second currency.

27. Set off

The Borrower agrees that the Lender may at any time after the occurrence of an Event of Default without notice or further demand, notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all monies then held by the Lender and set-off any such sum against monies outstanding under the Facility Documents. Where such combination, set off or transfer requires the conversion of one currency into another, such conversion shall be calculated at the Exchange Rate for purchasing the currency for which the Borrower is liable, with the existing currency.

28. Assignment

Neither the Lender nor the Borrower may assign, transfer, novate or dispose of any of or any interest in, its rights and obligations under this Debenture, save as provided in clause 22 (Assignments and transfers by the Borrower) and clause 23 (Assignments and transfers by the Lender) of the Loan Agreement.

29. Waivers

No failure or delay or other relaxation or indulgence on the part of the Lender to exercise any power, right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

30. Severability

Each of the provisions of this Debenture is distinct and severable from the others and if at any time one or more of such provisions is or becomes illegal, invalid or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

31. Land Registry

The Borrower hereby applies to the Chief Land Registrar to enter a restriction in the Proprietorship Registers of the registered titles (if any) of the Property or, in the case of the first registration of the whole or any part of the Property, against the Property, or both, of a restriction in the following form:

"Except under an order of the Registrar no disposition or dealing by the proprietor of the land is to be registered without the consent of the proprietor for the time being of the charge hereby created".

32. Notices

32.1 Any notice or document shall be deemed to have been served:

(a) if delivered, at the time of delivery; or

- (b) if posted, at 10.00 a.m. on the second business day after it was put into the post; or
 - (c) if sent by facsimile process, at the expiration of 2 hours after the time of despatch, if despatched before 3.00 p.m. on any business day, and in any other case at 10.00 a.m. on the business day following the date of despatch.
- 32.2 In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter or that the facsimile message was properly addressed and despatched as the case may be.

33. Law

This Debenture is governed by and shall be construed in accordance with English law.

34. Counterparts and delivery

- 34.1 This Debenture may be executed in any number of counterparts, each of which is an original, and which together constitute one and the same document.
- 34.2 If this Debenture is executed in more than one counterpart, this Debenture is deemed to be delivered and has effect when:
- (a) each party other than the Lender has executed a counterpart of this Debenture;
 - (b) each party other than the Lender has handed over such counterpart to one of the other parties to this Debenture; and
 - (c) each of the counterparts has been dated.
- 34.3 If this Debenture is not executed in more than one counterpart, this Debenture is deemed to be delivered and has effect when each party other than the Lender has executed this Debenture and this Debenture has been dated.
- 34.4 The execution (whether under hand or as a deed) or sealing of this Debenture by or on behalf of a party constitutes an authority to the solicitors or legal counsel acting for that party in connection with this Debenture, or any agent or employee of such solicitors or legal counsel, to deliver it as a deed on behalf of that party.
- 34.5 Each party to this Debenture agrees to be bound by this Debenture despite the fact that any other person which was intended to execute or to be bound does not do so or is not effectually bound and despite the fact that any Security Interest contained in this Debenture is terminated or becomes invalid or unenforceable against any other person whether or not such termination, invalidity or unenforceability is known to the Lender.

35. Third Party Rights

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefits of this Agreement.

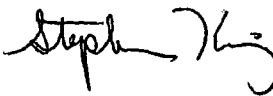
IN WITNESS whereof this Debenture has been executed and delivered as a deed on the date written at the beginning of this Debenture.

SCHEDULE 1

Intellectual Property
Phyworks Limited Patents

Item	Title	Granted patent number or published application number	Countries/Territories covered
1.	Switching Circuit for Decoder (Switching circuit)	GB 2,388,755	UK
		US 6,941,506	US
2.	Transmission of multi-level data	GB 2,395,405	UK
		US 2004091029	US
3.	Fibre Optic Communications (FEC for G.709)	GB 2,396,786	UK
		US 2006044162	US
4.	Phase Detector	GB 2,397,956	UK
		US 2004146131	US
5.	Receiver (Equaliser adaption)	GB 2,397,980	UK
		US 2004146099	US
6.	Receiver (Measuring of eye opening)	GB 2,397,982	UK
		US 2004146119	US
7.	Receiver (Slice level)	GB 2,401,291	UK
		US 2004218694	US
8.	Error correcting decoder (Iterative decoding algorithm)	GB 2,387,302	UK
9.	Integrated circuit – optical transmitter or receiver (combined P-S S-P device)	GB 2,401,265	UK
		US 2004213504	US
10.	Equaliser architecture	GB 2,412,277	UK
		US 2005201455	US
11.	Diagonal placement	Unpublished application	US
12.	DFE adaptation algorithm	Unpublished applications	UK and US

**Executed and Delivered as a Deed
for and on behalf of
Phyworks Limited
by:**

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)
)


Director

Director/Secretary



Notice Details:

Address: Building 3110 Great Western Court
Hunts Ground Road
Stoke Gifford
Bristol, UK
BS34 8HP

Fax No: 0117 974 9001

Telephone No: 0117 974 9050

Attention: Mr Nick Stables

**Executed and Delivered as a Deed
for and on behalf of
ETV Capital S.A.
by:**

)
)
)
)
)

Notice Details:

Address: C/O European Technology Ventures (Advisers) Limited
First Floor
1 Tenterden Street
London
W1S 1TA

Fax No: 020 7491 1935

Telephone No: 020 7907 2370

Attention: Nathaniel Norgren

UKMAT2664666.4

Executed and Delivered as a Deed
for and on behalf of
Phyworks Limited
by:

)
)
)
)

Director

Director/Secretary

Notice Details:

Address: Building 3110 Great Western Court
Hunts Ground Road
Stoke Gifford
Bristol, UK
BS34 8HP

Fax No: 0117 974 9001

Telephone No: 0117 974 9050

Attention: Mr Nick Stables

Executed and Delivered as a Deed
for and on behalf of
ETV Capital S.A.
by:

)
)
)
)



Notice Details:

Address: C/O European Technology Ventures (Advisers) Limited
First Floor
1 Tenterden Street
London
W1S 1TA

Fax No: 020 7491 1935

Telephone No: 020 7907 2370

Attention: Nathaniel Norgren