

To Brad Lewis

17 pages

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*THP*  
The Head Partnership  
Solicitors LLP

Debenture

Dated

2nd November

2011

BETWEEN

Brian James McVitty and Peter Neudegg as trustees for the  
time being of The Tempatron Directors Pension Scheme

— and —

Goodburn Engineering Limited

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**DEBENTURE**

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**THIS DEBENTURE** is made

*2nd November*

2011

**BETWEEN:**

- (1) Brian James McVitty and Peter Neudegg of Flat 2, Kimbolton 24 Ray Park Road, Maidenhead Berkshire and Holly Cottage, Heath Ride, Finchampstead, Berkshire respectively as the trustees for the time being of The Tempatron Directors Pension Scheme (the **Lender**); and
- (2) Goodburn Engineering Limited (CRN 00931740) whose registered office is at Unit 11 Ivanhoe Road, Hogwood Industrial Estate, Finchampstead, Wokingham, Berkshire (the **Borrower**);

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

**RECITALS:**

- A The Lender has agreed to provide the Borrower with the loan on the terms of the Facility Agreement.
- B The Borrower has agreed to create the security required by entering into this Debenture.

**THE PARTIES AGREE:**

**1 Definitions and interpretation**

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

**Charged Assets** means all the Land, assets, goodwill and undertakings of the Borrower present or future for the time being subject to the security interests created by this Debenture and includes

- (A) All shares held by the Borrower in any other company whether a subsidiary or not.
- (B) All or any stocks, shares, bonds and securities of any kind (marketable or

otherwise), negotiable instruments, warrants, loan notes and any other financial instruments held by the Borrower.

- (C) All dividends, allotments, options, bonuses, rights issues, offers, benefits and advantages accruing, arising or offered in respect of the shares and investments described above
- (D) 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.
- (E) 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.
- (F) All debts and monies due or payable to the Borrower including all amount standing credit of the Borrower's bank accounts whether such bank account is with the Lender or a third party.
- (G) All Intellectual Property belonging to the Borrower.
- (H) All present and future goodwill in the Borrower.
- (I) All uncalled capital in the Borrower.

**Default Rate** means the rate of interest set out in 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 between the Borrower and the Lender under which monies were advanced to the Borrower;

**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;

**Receiver** means a receiver appointed pursuant to this Debenture 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 Liabilities** means the liabilities of the Borrower to the Lender under or pursuant to the Facility Agreement and Security Documents and any interest, commission, costs, charges and expenses of the Lender/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 Debenture) 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 (i) stocks, (ii) shares, (iii) instruments creating or (iv) acknowledging any debt or other securities issued by any person, and

**Security Period** the period starting on the date of this debenture 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.

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 persons include individuals, unincorporated bodies, government entities, companies and corporations;

1.3.4 clause headings do not affect their interpretation; and

1.3.5 references to legislation include any modification or re-enactment thereof before the date of this Agreement.

1.4 Writing includes manuscript, facsimiles, and emails.

## **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 Debenture 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:

(a) any right, title or interest which the Borrower has now or acquires in the future to any Land; and

(b) the assets of the Borrower; 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.

### **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 writing given by the Lender to the Borrower at any time after the security constituted by this Debenture becomes enforceable, specifying the Charged Assets over which the crystallisation will take effect and if no Charged Assets are specified, the notice shall take effect over all the Charged 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:

(a) create an Encumbrance over any or all of the Charged Assets;

(b) create a trust over any or all of the Charged Assets;

(c) dispose of any or all of the Charged 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 Charged Assets; or

4.1.4 automatically and instantly without notice if an Event of Default occurs.

4.2 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 Charged Assets specified in the notice and if no Charged Assets are specified, the notice shall take effect over all the Charged 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 Charged Assets free from any Encumbrance other than the Encumbrances created by this Debenture.

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 Charged Assets and there are no covenants, agreements, conditions, interests rights or other matters which may materially adversely affect the Charged Assets.

5.1.3 **Breach of law or regulation:** The Borrower has at all times complied in all material respects with all applicable laws and regulations and has not breached any law or regulation which would materially adversely affect the Charged Assets.

5.1.4 **Third Party Rights:** The Charged 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 Charged 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 Debenture is liable to be avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise.

## **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 Charged Assets, or attempt or agree to do so;
- 6.1.2 create, attempt to create, allow to subsist any mortgage, debenture, charge or pledge, increase the amount secured by the Debenture, 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 Charged Assets;
- 6.1.3 permit any person to be registered as proprietor of any of the Charged 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 of 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 Debenture;
- 6.1.4 redeem or purchase its own shares or pay dividends of an unusual amount;
- 6.1.5 cancel, assign or allow to lapse its interest under any credit sale, hire purchase, leasing, rental, licence or similar agreement and to produce proof of payments due under such agreements on request from the Lender;
- 6.1.6 do or allow any act or omission which may prejudice the value to the Lender of the Charged Assets; or
- 6.1.7 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 carry on its business properly and efficiently and not materially change how it conducts its business;
  - 6.2.2 notify the Lender in writing of any breach of this Debenture, the Facility Agreement or any other Security Document, immediately on it becoming aware of such breach;
  - 6.2.3 In relation to the Land part of the Charged 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;

- 6.2.4 maintain all plant, machinery, fixtures, fittings, vehicles, computers and office and other equipment part of the Charged Assets in good working order and condition;
- 6.2.5 In relation to the Intellectual Property part of the Charged Assets observe all covenants and obligations and maintain and renew all relevant registrations, permits and licences;
- 6.2.6 institute, pursue and defend proceedings relating to the Charged Assets as required to protect their value and apply monies from such proceedings in discharge of sums due to the Lender;
- 6.2.7 at its own expense, keep insured any of the Charged Assets to their full replacement value;
- 6.2.8 punctually pay all insurance premiums. If the Borrower does not maintain insurance, the Lender may do so at the Borrower's expense;
- 6.2.9 punctually pay, and indemnify the Lender against, all monies due in respect of the Charged Assets;
- 6.2.10 comply with all statutory, regulatory and other requirements applying to the Charged 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;

## **7 Liability of borrower**

- 7.1 The Borrower's liability in respect of the Secured Liabilities shall not be discharged or prejudiced by:
  - 7.1.1 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
  - 7.1.2 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

7.1.3 any other act or omission (except where such act or omission is the Lender's act or omission) which but for this provision might have discharged or otherwise prejudiced the liability of the Borrower.

7.2 The Borrower may not require the Lender to:

7.2.1 enforce any security or other right; or

7.2.2 claim any payment from; or

7.2.3 otherwise proceed;

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

## **8 Enforcement**

8.1 The Lender may enforce this Debenture at any time after:

8.1.1 the occurrence of an Event of Default;

8.1.2 the floating charge has crystallised under clause 4;

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

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

## **9 Appointment, powers and removal of receivers**

9.1 At any time after the security created by this Debenture becomes enforceable the Lender may without further notice appoint in writing any one or more persons to be a receiver or a receiver and manager. Where more than one Receiver is appointed they will have the power to act separately (unless the appointment specifies otherwise).

9.2 The Lender may determine the remuneration of the Receiver.

- 9.3 The appointment of a Receiver will not preclude the Lender from appointing a subsequent Receiver over all or any of the Charged Assets whether the previously appointed receiver continues to act or not.
- 9.4 The Receiver will be the agent of the Borrower and the Borrower will be solely liable for the acts, defaults, and remuneration of the Receiver unless and until the Borrower goes into liquidation after which the receiver shall act as principal. In no event will the Receiver become the agent of the Lender.
- 9.5 The Receiver will have and be entitled to exercise all the powers set out in Schedule 1 and Schedule 2 of the Insolvency Act 1986 and the Law of Property Act 1925 and will also have the power, either in his name or in the name of the Borrower:
- 9.5.1 In connection with any sale or other disposition of the Charged Assets, to receive the consideration in a lump sum or in instalments and to receive shares and loan notes by way of consideration;
- 9.5.2 to grant options, licences or any other whatsoever in the Charged Assets;
- 9.5.3 to sever fixtures from and to repair, improve and make any alterations to, the Charged Assets;
- 9.5.4 to exercise any voting rights appertaining to the Borrower;
- 9.5.5 to do all other acts and things which the Receiver may consider desirable or necessary for realising any Charged Assets or incidental or conducive to any of the rights, powers or discretion conferred on a Receiver under or by virtue of the Debenture; and
- 9.5.6 to exercise in relation to any Charged Assets all the powers, authorities and things which he would be capable of exercising if he was absolute beneficial owner of the same;
- 9.6 Neither the Lender nor the Receiver will be liable to account as mortgagee in possession or otherwise for any money not actually received by the Lender or the Receiver.
- 9.7 Section 109 of the Law of Property Act 1925 will not apply to this Debenture or to any security it creates.

**10 Powers of sale, leasing etc.**

- 10.1 Section 103 of the Law of Property Act 1925 shall not apply to this Debenture 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 Debenture but the Lender will not exercise such power unless the security created by this Debenture has become enforceable or after the appointment of a Receiver under clause 9.
- 10.2 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 Debenture has become enforceable.
- 10.3 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.
- 10.4 No person dealing with the Lender or a Receiver, its agents or delegates will be concerned with whether this Debenture has become enforceable, whether any power exercised or purported to be exercised has become exercisable, whether any of the Secured Liabilities remain due upon this Debenture, as to the necessity or expediency of any stipulations and conditions subject to which the sale of any Charged Asset is made, as to the propriety or regularity of the sale of any Charged Asset or to see to the application of any money paid to the Lender or the Receiver, or its agents or delegates and each dealing shall be deemed to be within the powers conferred by this Debenture and to be valid and effectual accordingly.
- 10.5 Section 93 of the Law of Property Act 1925 will not apply to this Debenture or to any security it creates.

**11 New accounts**

- 11.1 On receiving notice that the Borrower has encumbered or disposed of any of the Charged Assets the Lender may rule off the Borrower's account and open a new account in the name of the Borrower.
- 11.2 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.

**12 Attorney**

12.1 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 Debenture, or may be deemed by such attorney necessary or desirable for any purpose of this Debenture or to enhance or perfect the security intended to be constituted by the Attorney or to convey or transfer legal ownership of any Charged Assets.

12.2 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 Debenture 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.

**13 Application of monies received**

13.1 Any money received under this Debenture will, subject to the discharge of any prior-ranking claims, be paid or applied in the following order of priority:

13.1.1 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;

13.1.2 In or towards satisfaction of the Secured Liabilities; and

13.1.3 as to the surplus, if any, to the person or persons entitled to it.

13.2 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 Debenture 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.

**14 Indemnity**

14.1 The Borrower will indemnify the Lender against all and any costs, charges and expenses arising:

14.1.1 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

14.1.2 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 Charged Assets.

14.2 The Borrower agrees that if it fails to pay any monies in respect of the Charged Assets or to take (or not take) any action which might diminish the value of the Charged Assets to the Lender, the Lender may pay such monies or take such action and recover the cost from the Borrower.

14.3 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 Charged Assets or relating to the protection of the environment or to health and safety matters.

14.4 Without prejudice to the generality of this clause the costs recoverable by the Lender and/or any Receiver under this Debenture shall include:

14.4.1 all costs incurred by the Lender and the beneficiaries in preparing and administering this Debenture or perfecting the security created by it;

14.4.2 all costs, whether or not allowable on a taxation by the Court, of all proceedings for the enforcement of this Debenture or for the recovery or attempted recovery of the Secured Liabilities;

14.4.3 all money expended and all costs arising out of the exercise of any power, right or discretion conferred by this Debenture; and

14.4.4 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 Debenture; and

14.4.5 all administrative charges of the Lender based on time spent by its employees and agents in connection with the affairs of the Borrower.

14.5 Any overdue amounts secured by the Debenture will carry interest at the Default Rate. Interest will accrue on a day to day basis to the date of repayment in full and, if unpaid, will be compounded with quarterly rates on the Lender's usual quarter days. Interest shall continue to be charged and compounded on this basis after as well as before any demand or judgment.

14.6 Money received or held by the Lender pursuant to this debenture may, from time to time after demand of all or any part of the Secured Liabilities has been made, be converted into such currency as the Lender considers necessary or desirable to discharge the Secured Liabilities in that currency at the Lender's then prevailing spot rate of exchange, as conclusively determined by the Lender, for purchasing the currency to be acquired with the existing currency.

## **15 Continuing security**

15.1 This Debenture 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 Charged Assets in favour of the Lender for the payment of an Indebtedness.

## **16 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 reasonably requires further to secure the payment of the Secured Liabilities, or to create, enhance or perfect any fixed security over any of the Charged Assets or to give full effect to this debenture or to vest title to any of the Charged Assets in the Lender or the Lender's nominee or any purchaser.

## **17 Miscellaneous**

### **Variation**

Variations to this Agreement will only have effect when agreed in writing by the parties' authorised representatives.

**Severability**

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

**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.

**Consent**

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

**Further assurance**

Each party will, at its own cost/the cost of the Borrower, do all further acts and execute all further documents necessary to give effect to this Debenture.

**Rights of third parties**

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

**Entire agreement**

This Debenture 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 made available in this Debenture whether written or oral.

**Succession**

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

**Counterparts**

This Debenture 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.



**Notices**

- 17.1 Notices under this Debenture will be in writing and sent to the person and address as set out at the beginning of this Debenture:

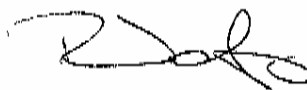
**18 Governing law and jurisdiction**

- 18.1 This Debenture is governed by the laws of England and Wales.
- 18.2 The parties will submit to the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS WHEREOF** the Parties have executed and delivered this Deed on the day and year first above written.

**EXECUTED AND DELIVERED AS A DEED**

**BY GOODBURN ENGINEERING LIMITED**

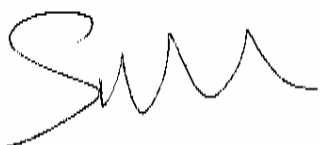


**ACTING BY ITS DIRECTOR**

**IN THE PRESENCE OF**

**NAME**

**ADDRESS**



STAMP INCLUDED

04 BELL STREET  
HEWLEY ON THAMES.  
DOX.