



Registration of a Charge

Company name: **CLAYTON NANOTECHNOLOGY LIMITED**

Company number: **06304446**



X68H883C

Received for Electronic Filing: **13/06/2017**

Details of Charge

Date of creation: **07/06/2017**

Charge code: **0630 4446 0001**

Persons entitled: **DERYK LAW (AS SECURITY TRUSTEE FOR THE SECURED PARTIES)**

Brief description:

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

GATELEY PLC



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 6304446

Charge code: 0630 4446 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th June 2017 and created by CLAYTON NANOTECHNOLOGY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th June 2017 .

Given at Companies House, Cardiff on 13th June 2017

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 7 June 2017

- (1) CLAYTON GROUP LIMITED AND OTHERS
- (2) DERYK LAW

GUARANTEE AND DEBENTURE

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DATE 7 June 2017

PARTIES

- (1) THE ENTITIES LISTED IN SCHEDULE 1 TO THIS DEED (each a **Chargor** and together the **Chargors**); and
- (2) DERYK LAW of [REDACTED] as security trustee for the Secured Parties (the **Security Trustee**).

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 In this deed the following definitions will apply:

A Loan Notes

the Secured Series A Loan Notes 2025 constituted by the A Instrument;

A Instrument

the instrument dated on or about the date of this deed executed by the Company to constitute the A Loan Notes;

Administrator

any person appointed (or to be appointed) by the Security Trustee to be an administrator of a Chargor under paragraph 14 to Schedule B1 Insolvency Act;

Assets

present and future properties, revenues and rights of every description;

B Loan Notes

The Secured Series B Loan Notes 2025 constituted by the B Instrument;

B Instrument

the instrument dated on or about the date of this deed executed by the Company to constitute the B Loan Notes;

Business Day

any day (other than a Saturday, Sunday or public holiday) during which banks in London are open for normal business;

Certificate

each certificate in respect of the Notes;

Charged Assets

all Assets from time to time charged or intended to be charged by or under this deed (and references to the Charged Assets include any part of them);

Delegate

any delegate, agent, attorney or trustee appointed by the Security Trustee;

Environmental Claim

any claim, order, notice or other communication received by a Chargor alleging failure to comply with any Environmental Law or alleging liability under it, any indication that any charge is or may be imposed under any Environmental Law on the Charged Assets or any indication given to a Chargor that the Charged Assets are or may be listed in any register of contaminated land or similar register;

Environmental Law

all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the United Kingdom or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health, including the conservation of natural resources, the production, storage,

transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or its rectification or any related matters;

Environmental Permit

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

Equipment

all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations, apparatus and other tangible moveable property for the time being owned by the Chargors, including all spare parts, replacements, modifications and additions;

Event of Default

- (a) a Chargor fails to pay all or any of the Secured Liabilities when due following a demand for payment;
- (b) any step is taken (including the making of an application or the giving of any notice) by a Chargor or by any other person to wind up or dissolve a Chargor or to appoint an administrator, liquidator, trustee, manager or receiver, administrative receiver or similar officer of a Chargor or any part of its undertaking or assets;
- (c) the making of a request by a Chargor for the appointment of a Receiver; and/or
- (d) a Chargor breaches any of the provisions of any Transaction Document or an event of default (however described) occurs under any Transaction Document;

Instrument

the A Instrument and B Instrument executed by the Parent to constitute the Notes;

Insurance

any policies of insurance in which a Chargor has an interest from time to time;

Intellectual Property

all intellectual property rights or equivalent, including patents, trade marks, service marks, business names, domain names, rights in get-up and goodwill, copyright and neighbouring and related rights, moral rights, rights in designs and to inventions, database rights, know-how, trade secrets, confidential information and any other proprietary knowledge and/or information of whatever nature and howsoever arising, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals and claim protection from such rights and all similar or equivalent rights which subsist or may in future subsist in any part of the world;

Insolvency Act

the Insolvency Act 1986;

LPA

the Law of Property Act 1925;

Noteholder

the holders from time to time of the Notes whose names are entered in the register of holders of the Notes maintained by or on behalf of the Parent;

Notes

the A Loan Notes and B Loan Notes of the Parent;

Parent

Clayton Group Limited a company incorporated and registered in England and Wales (registered number 10691126) whose registered office is at [One Eleven, Edmund Street, Birmingham B3 2HJ];

Party

a party to this deed;

Property

the Assets referred to in clauses 3.1.1 and 3.1.2;

Receivables

all present and future book and other debts and all other amounts recoverable or receivable by, or due or owing to, the Chargors from other persons (whether actual or contingent and howsoever arising), all proceeds of those debts and other amounts and all rights of any nature held by the Chargors in relation to them;

Receiver

any receiver, manager or receiver and manager appointed by the Security Trustee under this deed;

Secured Liabilities

all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or in any other capacity) of the Chargors to the Secured Parties under or in relation to the Transaction Documents, together with (i) all interest (including default interest), fees, costs, charges and expenses which a Secured Parties may charge or incur under or in relation to the Transaction Documents and (ii) any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings;

Secured Parties

the Security Trustee, the Noteholders and any Receiver or Delegate;

Securities

all present and future stocks, shares, loan capital, debentures, bonds, warrants or other securities (whether or not marketable) held by a Chargor (at law or in equity) together with all dividends, distributions and other Assets paid or payable on such Securities (as the case may be), together with all shares or other Assets accruing to or offered or otherwise derived from or incidental to such Securities;

Security Document

- (a) this deed; and
- (b) any other document entered into at any time by or on behalf of any Group Company creating any Security in favour of any of the Secured Parties as security, guarantee or indemnity for the Secured Liabilities;

Security Interest

a mortgage, charge, pledge, lien, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

Third Parties Act

the Contracts (Rights of Third Parties) Act 1999;

Transaction Documents

- (a) this deed and each other Security Document;
- (b) the Trust Deed;
- (c) each Certificate;
- (d) the Instrument; and
- (e) any other document designated as such by the Security Trustee and the Parent; and

Trust Deed

the security trust deed dated on or about the date of this deed and entered into between the Security Trustee, the Parent and each Chargor.

- 1.2 In this deed, a reference to:
 - 1.2.1 a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this deed;
 - 1.2.2 a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - 1.2.3 this deed or any provision of this deed or any other agreement, document or instrument is to this deed, that provision or that agreement, document or instrument as amended, novated, supplemented, extended or restated;
 - 1.2.4 "disposal" includes any sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly;
 - 1.2.5 a "Party", the "Chargor" or the "Security Trustee" will be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Trustee, any person for the time being appointed as Security Trustee in accordance with the Transaction Documents; and
 - 1.2.6 the "Charged Assets" means all or any part of them and the "Property" means all or any part of it including land and buildings.
- 1.3 The schedules form part of this deed and have the same effect as if expressly set out in the body of this deed and will be interpreted and construed as though they were set out in this deed.
- 1.4 The contents table and headings in this deed are for convenience only and do not affect the interpretation or construction of this deed.
- 1.5 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.6 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them will not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.7 For the purposes of section 2 Law of Property (Miscellaneous Provisions) Act 1989, the terms of any facility or loan agreements, security documents, finance documents and of any side letters between any parties in relation to any of them are incorporated into this deed.
2. **COVENANT TO PAY**
- 2.1 Each Chargor covenants with the Security Trustee that it will pay or discharge on demand the Secured Liabilities when they fall due.
3. **CHARGES**
- 3.1 As a continuing security for the payment of the Secured Liabilities, each Chargor, with full title guarantee, charges, and agrees to charge, in favour of the Security Trustee the following Assets which are at any time owned by that Chargor or in which it is from time to time interested:
 - 3.1.1 by way of **legal mortgage** all the freehold and leasehold property (if any) now vested in or charged to it including any property specified in the schedule, together with all buildings, fixtures and fittings (including trade fixtures and fittings) at any time on or attached to such property;
 - 3.1.2 by way of **fixed charge** all other present and future interests (not being charged by clause 3.1.1) in any freehold or leasehold property vested in or

- charged to it, the buildings and fixtures and fittings (including trade fixtures and fittings) at any time on or attached to such property;
- 3.1.3 by way of **fixed charge** all proceeds of sale derived from the Property or any buildings, fixtures or fittings (including trade fixtures and fittings) at any time on or attached to the Property, the benefit of all covenants given in respect of the Property or any of those buildings, fixtures or fittings and all licences to enter upon or use land and the benefit of all other agreements relating to land;
 - 3.1.4 by way of **fixed charge** all Equipment;
 - 3.1.5 by way of **fixed charge** all Securities;
 - 3.1.6 by way of **fixed charge** all money standing to the credit of that Chargor from time to time on any accounts with any bank or any other person;
 - 3.1.7 by way of **fixed charge** all Intellectual Property; and
 - 3.1.8 by way of **fixed charge** all the goodwill and uncalled capital of that Chargor.
- 3.2 As a continuing security for the payment of the Secured Liabilities, each Chargor, with full title guarantee, assigns and agrees to assign absolutely (subject to a proviso for reassignment on irrevocable discharge of the Secured Liabilities) in favour of the Security Trustee all the rights, title, interest and benefit of that Chargor in and to:
- 3.2.1 the Insurances (together with all proceeds of such Insurances); and
 - 3.2.2 the Receivables.
- 3.3 As further continuing security for the payment of the Secured Liabilities, each Chargor charges with full title guarantee in favour of the Security Trustee by way of **floating charge** all its Assets and undertaking both present and future not effectively mortgaged, charged or assigned under the provisions of clause 3.1 or 3.2, including heritable property and all other Assets in Scotland.
- 4. CONVERSION OF FLOATING CHARGE**
- 4.1 Paragraph 14 of schedule B1 Insolvency Act applies to any floating charge created by or under this deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act).
- 4.2 The Security Trustee may, by written notice to the Parent, convert the floating charge created by this deed into a fixed charge as regards all or any of the Chargors' Assets specified in the notice at any time the Security Trustee, in its reasonable opinion, considers those Assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.
- 4.3 The floating charge created by the Chargors under this deed will (in addition to the circumstances in which this will occur under general law) automatically be converted into a fixed charge in relation to the Assets subject to that floating charge if:
- 4.3.1 without the Security Trustee's prior written consent, a Chargor creates or attempts to create any Security Interest over all or any of the Charged Assets; or
 - 4.3.2 any person levies or attempts to levy any distress, execution, attachment or other process against all or any of the Charged Assets or if any person presents a petition to wind up or applies for an administration order in respect of a Chargor.
- 5. GUARANTEE AND INDEMNITY**
- Each Chargor irrevocably and unconditionally jointly and severally:
- 5.1 guarantees to the Security Trustee (on behalf of each Secured Party) punctual performance by each other Chargor of all that other Chargor's obligations under the Transaction Documents;
 - 5.2 undertakes with the Security Trustee (on behalf of each Secured Party) that whenever another Chargor does not pay any amount when due under or in connection with any

Transaction Document, that Chargor shall immediately on demand pay that amount as if it was the principal obligor; and

- 5.3 agrees with the Security Trustee (on behalf of each Secured Party) that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Security Trustee (on behalf of each Secured Party) immediately on demand against any cost, loss or liability it incurs as a result of a Chargor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Transaction Document on the date when it would have been due.

6. NEGATIVE PLEDGE

Each Chargor undertakes to the Security Trustee that, during the continuance of the security created by this deed, it must not, without the prior written consent of the Security Trustee, create, purport to create or permit to subsist any Security Interest over the Charged Assets.

7. UNDERTAKINGS

Each Chargor must:

- 7.1 keep the Property in a good state of repair (sufficient as to enable the Property to be let in accordance with all applicable laws and regulations), not carry out any development at any Property and keep all Equipment in good working order and condition;
- 7.2 duly and punctually pay all rates, rents, taxes, charges and other outgoings due by it in respect of the Charged Assets;
- 7.3 not dispose of any Charged Asset save for the disposal of any Charged Asset charged by way of uncrystallised floating charge only for market value in the ordinary course of its business;
- 7.4 permit the Security Trustee or its representatives to have, on reasonable notice, access during normal office hours to the Charged Assets and to inspect and take copies of its accounts and records;
- 7.5 in relation to the Charged Assets comply with all its obligations under law, statute or regulation and under any permit, approval, licence or consent;
- 7.6 observe and perform all covenants and stipulations from time to time affecting the Charged Assets, or the manner of use or the enjoyment of them and not enter into any onerous or restrictive obligations affecting the Charged Assets;
- 7.7 keep all Charged Assets comprehensively insured for full replacement value in an amount and form and with an insurance company or underwriters acceptable to the Security Trustee, provided that if a Chargor fails to comply with the terms of this clause 7.7 or clause 7.8, the Security Trustee may, at the Chargors' expense, effect any insurance and generally do the things and take any action the Security Trustee considers necessary or desirable to prevent or remedy any breach of this clause 7.7 or clause 7.8;
- 7.8 procure that the Security Trustee is noted under each of the Insurances (other than public liability and third party liability insurances) but without liability on the part of the Security Trustee for any premium in relation to those Insurances and hold the proceeds of any Insurances on trust for the Security Trustee to be applied as the Security Trustee sees fit;
- 7.9 not do, or permit to be done, anything that would or might depreciate, jeopardise or otherwise prejudice the Security Interest created by this charge or diminish the value of any of the Charged Assets (except for expected fair wear and tear) or the effectiveness of the Security Interest created by this deed;
- 7.10 immediately on request by the Security Trustee deposit with the Security Trustee all certificates, log books, deeds and documents of title relating to or representing the Charged Assets; and
- 7.11 in respect of any freehold or leasehold land specified in the schedule, apply to the Chief Land Registrar for the registration of a Restriction against the registered titles in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated 2017 in favour of Deryk Law as Security Trustee referred to in the charges register."

8 ENFORCEMENT OF SECURITY

- 8.1 The security created by this deed shall become immediately enforceable upon the occurrence of an Event of Default and the Security Trustee may, in its absolute discretion, enforce all or any part of it in such manner as it sees fit.
- 8.2 The power of sale and other powers conferred by section 101 LPA (as varied or extended by this deed) will arise on and be exercisable without further notice at any time after the execution of this deed. Sections 93 and 103 LPA do not apply to the security created by this deed.
- 8.3 At any time after the security created by this deed has become enforceable, the Security Trustee may, at the sole cost of the Chargors (payable to the Security Trustee on demand) redeem any prior Security Interest over any Charged Asset and/or procure the transfer of that Security Interest to itself and/or settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed will be conclusive and binding on the Chargors. All money paid by the Security Trustee to that prior mortgagee, chargee or encumbrancer in accordance with those accounts will form part of the Secured Liabilities.
- 8.4 At any time after the security created by this deed becomes enforceable, or if so requested by the Chargor owning the relevant Charged Asset (or the Parent on its behalf) by written notice at any time, the Security Trustee (or any Delegate or Receiver on its behalf) may:
 - 8.4.1 without further notice appoint any person (or persons) to be a Receiver;
 - 8.4.2 without further notice appoint any person (or persons) to be an Administrator of any Chargor; and/or
 - 8.4.3 exercise in respect of the Charged Assets all or any of the powers and remedies given to mortgagees by the LPA, including the power to take possession of, receive the benefit of, or sell any of the Charged Assets.
- 8.5 At any time after the security created by this deed becomes enforceable the Security Trustee (or its nominee) may (without consent or authority from the relevant Chargor (or the Parent on its behalf) exercise in the name of that Chargor any voting rights attached to the Securities and any other powers or rights exercisable by the registered holder or bearer of the Securities and all dividends, distributions, interest and other sums declared, payable, paid or made in respect of the Securities received by or on behalf of that Chargor will be held on trust for the Security Trustee (or its nominee) and may be applied as though they were the proceeds of sale.
- 8.6 The Security Trustee may remove any Receiver appointed by it and, at any time, appoint a new Receiver in the place of any Receiver whose appointment has terminated. If at any time there is more than one Receiver, those persons will have power to act individually (unless the deeds or other instruments appointing them say otherwise).
- 8.7 If the Security Trustee enforces the security created by this deed itself under clause 8.4.2, it will have the same powers as a Receiver.
- 8.8 An Administrator will have all the powers given to him under the Insolvency Act.
- 8.9 Any Receiver will have the following powers (in addition to the powers conferred by the LPA and, although he is not an administrative receiver, by schedule 1 to the Insolvency Act but without any of the restrictions imposed upon the exercise of those powers by those statutes):
 - 8.9.1 the same powers to do, or to omit to do, in the name of and on behalf of any Chargor, anything which that Chargor itself could have done or omitted to do with the Charged Assets were they not the subject of this deed and that Chargor were not in insolvency proceedings;

- 8.9.2 to take possession of, collect and get in the Charged Assets and/or income in respect of which he was appointed;
 - 8.9.3 to manage the Charged Assets and the business of the relevant Chargor;
 - 8.9.4 to redeem any Security Interest and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
 - 8.9.5 to alter, improve, develop, complete, construct, modify, refurbish or repair any asset, building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the relevant Chargor is concerned or interested prior to his appointment, being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any asset, building or land;
 - 8.9.6 to sell or concur in selling, leasing or otherwise disposing of the Charged Assets in respect of which he was appointed without the need to observe any restriction imposed by section 103 or 109 LPA; and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the relevant Chargor;
 - 8.9.7 to lease, make agreements for leases, accept surrenders of leases and grant options as the Security Trustee thinks fit and without the need to comply with any of the provisions of sections 99 and 100 LPA;
 - 8.9.8 to take any proceedings, in the name of the relevant Chargor or otherwise, as he thinks fit in respect of the Charged Assets and/or income in respect of which he was appointed, including proceedings for recovery of rent or other money in arrears at the date of his appointment;
 - 8.9.9 to insure, and renew any insurances in respect of, the Charged Assets as he thinks fit or as the Security Trustee directs;
 - 8.9.10 to appoint and employ such managers, officers and workmen and engage such professional advisers as he thinks fit, including power to employ his partners and firm;
 - 8.9.11 to operate any rent review clause in respect of any Property in respect of which he was appointed and to apply for any new or extended lease; and
 - 8.9.12 to enter into or make any agreement, arrangement or compromise as he thinks fit and to do all other things as may seem to him to be incidental or conducive to any other power vested in him in the realisation of the security created by this deed.
- 8.10 In making any disposal in the exercise of their respective powers, the Receiver, the Security Trustee or any Delegate may accept, as consideration, cash, shares, loan capital or other Assets on any terms (including the method of calculation and timing of payment) the Receiver, the Security Trustee or any Delegate may agree. Any contract for any such disposal by the Receiver, the Security Trustee or any Delegate may contain conditions excluding or restricting the personal liability of that Receiver, the Security Trustee or that Delegate.
- 8.11 Any Receiver will be the agent of the relevant Chargor and the Chargors will be solely responsible for his acts and defaults and for his remuneration.
- 8.12 Any Receiver will be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Security Trustee (or failing agreement to be fixed by the Security Trustee) without the restrictions contained in section 109 LPA.
- 8.13 Only money actually paid by a Receiver to the Security Trustee in satisfaction or discharge of the Secured Liabilities will be capable of being applied by the Security Trustee in satisfaction of the Secured Liabilities.

- 8.14 Neither the Security Trustee nor any Receiver or Delegate will be liable in respect of the Charged Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless the loss or damage is caused by its gross negligence or wilful misconduct.
- 8.15 Neither the Security Trustee nor any Receiver or Delegate is obliged to take any particular action to collect the Receivables and neither will be liable to any Chargor for the manner in which it collects or fails to collect any Receivable.
- 8.16 Without prejudice to the generality of clause 8.14, entry into possession of the Charged Assets will not render the Security Trustee or the Receiver or any Delegate liable to account as mortgagee in possession. If and when the Security Trustee or any Receiver or Delegate enters into possession of the Charged Assets, it will be entitled, at any time at its discretion, to go out of possession.
- 8.17 All or any of the powers which are conferred by this deed on a Receiver may be exercised by the Security Trustee or any Delegate without first appointing a Receiver or notwithstanding the appointment of any Receiver.
- 8.18 Except to the extent provided by law, none of the powers described in clauses 8.8 to 8.17 will be affected by an insolvency event in relation to any Chargor.
- 8.19 No purchaser from or other person dealing with the Security Trustee or with any Receiver or Delegate will be obliged or concerned to enquire whether the right of the Security Trustee to appoint a Receiver or Delegate or the right of the Security Trustee or any Receiver or Delegate to exercise any of the powers conferred by this deed in relation to the Charged Assets have arisen or become exercisable by the Security Trustee or by any such Receiver or Delegate, nor be concerned with notice to the contrary, or with the propriety of the exercise or purported exercise of any of those powers. The title of such a purchaser and the position of such a person will not be impeachable by reference to any of the above matters.

9. CONTINUING SECURITY AND MULTIPLE CHARGORS

- 9.1 This deed will remain in full force and effect as continuing security until the Security Trustee has certified in writing that the Secured Liabilities have been discharged in full. The Security Trustee may make one or more demands under this deed.
- 9.2 The Chargors' obligations under this deed will not be affected by any time, waiver or consent granted to, or composition with any Chargor or any other person.
- 9.3 This deed will be in addition to, and without prejudice to and will not merge with, any other right, remedy, guarantee or Security Interest which the Security Trustee may at any time hold in respect of any of the Secured Liabilities and this deed may be enforced without any Secured Party first having:
 - 9.3.1 recourse to any other right, remedy, guarantee or Security Interest held or available to it;
 - 9.3.2 to take action or obtain judgment in any court against a Chargor or any other person;
 - 9.3.3 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of any Chargor or any other person; or
 - 9.3.4 to make demand, enforce or seek to enforce any claim, right or remedy against any Chargor or any other person.
- 9.4 The liability of each Chargor to the Secured Parties is joint and several.
- 9.5 The incapacity or insolvency of any Chargor shall not discharge or affect the liability of any other Chargor.
- 9.6 Until the Secured Liabilities are paid or discharged in full in accordance with the terms of the Transaction Documents, each Chargor irrevocably and unconditionally postpones all of its rights of contribution from each other Chargor.
- 9.7 The Security Trustee may, in its absolute discretion, release or accept any composition from or make any arrangements with any Chargor at any time from its obligations and liabilities to

the Security Trustee under this deed or otherwise in respect of the Secured Liabilities without the consent of any other Chargor and without releasing, discharging or otherwise affecting the liability of any other Chargor. The Security Trustee shall not be obliged to notify any other Chargor of such release or composition.

10. FURTHER ASSURANCE AND POWER OF ATTORNEY

10.1 Each Chargor must promptly do all acts or execute all Security Interests or other documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in the form the Security Trustee may reasonably require) in favour of the Security Trustee or its nominee:

10.1.1 to create, perfect, protect or maintain the Security Interest created or intended to be created under or evidenced by this deed or for the exercise of any rights, powers and remedies of any Secured Party provided by this deed or by law;

10.1.2 to ensure the Security Trustee is noted on any insurance policy relating to the Charged Assets; and/or

10.1.3 to facilitate the realisation of the Charged Assets.

10.2 Any document required to be executed by a Chargor under clause 10.1 will be prepared at the cost of the Chargors.

10.3 Each Chargor by way of security irrevocably appoints the Security Trustee and any Receiver or Delegate (in writing under hand signed by an officer of the Security Trustee or any Receiver or Delegate) severally to be its agents and attorneys in its name and on its behalf to:

10.3.1 do all things which that Chargor may be required to do under this deed;

10.3.2 sign, execute, deliver and otherwise perfect any Security Interest or other document required to be signed or executed under the terms of this deed; and

10.3.3 sign, execute, deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required by the Security Trustee or any Receiver or Delegate in the exercise of any of their powers under this deed, or to perfect or vest in the Security Trustee, any Receiver, any Delegate, its nominees or any purchaser, title to any Charged Assets or which they may deem expedient in connection with the getting in, disposal or realisation of any Charged Assets.

10.4 Each agent and attorney may appoint a substitute or delegate his authority. Each Chargor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does under the power of attorney conferred by clause 10.3.

11. PAYMENTS

11.1 Subject to clause 11.2, all payments to be made by the Chargors in respect of this deed, will be made in immediately available funds to the credit of any account the Security Trustee may designate. All payments will be made free and clear of, and without any deduction for, or on account of, any set-off or counterclaim or, except to the extent required by law, any deduction on account of any taxes.

11.2 If a Chargor is required by law to withhold or deduct any taxes from any sum payable under this deed to the Security Trustee, the sum so payable by the Chargors will be increased so as to result in the receipt by the Security Trustee of a net amount equal to the full amount expressed to be payable under this deed.

11.3 The Security Trustee may set-off any matured obligation due from any Chargor under this deed against any matured obligation owed by the Security Trustee to any Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Trustee may convert either obligation at a market rate of exchange reasonably determined by the Security Trustee.

11.4 Any demand, notification or certificate given by the Security Trustee specifying amounts due and payable under or in connection with any of the provisions of this deed will, in the absence of manifest error, be conclusive and binding on the Chargors.

- 11.5 Any release, discharge or settlement between a Chargor and the Security Trustee will be deemed conditional upon no payment or Security Interest received or held by the Security Trustee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration or receivership. Notwithstanding any release, discharge or settlement, the Security Trustee will be entitled to recover the value or amount of such Security Interest or payment from that Chargor or to enforce this deed as if that release, discharge or settlement had not occurred.
- 11.6 The Security Trustee may apply or refrain from applying all payments received for the Secured Liabilities as it thinks fit. All money received, recovered or realised by the Security Trustee under this deed may at the discretion of the Security Trustee be credited to any suspense account for so long as the Security Trustee determines (with interest accruing at the rate, if any, as the Security Trustee may determine for the account of the Chargors).
- 12. COSTS, EXPENSES AND INDEMNITIES**
- 12.1 The Chargors must reimburse the Security Trustee, any Receiver, any Delegate and any Administrator for all costs and expenses, including legal fees (and any value added or similar tax on them), incurred in connection with the enforcement, attempted enforcement or preservation of any of their respective rights under this deed, or any of the documents referred to in this deed.
- 12.2 Each Chargor must on demand jointly and severally indemnify the Security Trustee and any Receiver, Administrator or Delegate and any of its and their officers and employees (each, an **Indemnified Party**) in respect of all costs, losses (including consequential losses), actions, claims, expenses, demands or liabilities whether in contract, tort, or otherwise and whether arising at common law, in equity or by statute which may be incurred by or made against any of them at any time relating to or arising directly or indirectly out of:
- 12.2.1 the exercise or purported exercise of the powers contained in this deed;
 - 12.2.2 a claim of any kind made or asserted against any Indemnified Party which would not have arisen if this deed had not been executed and/or registered;
 - 12.2.3 the creation, imposition, recording or registration of any Security Interest over any Charged Asset securing the reimbursement to or recovery by any third party (including any regulatory authority or government agency) of any costs expenses or other sums incurred in consequence of a breach contravention or violation of any Environmental Law or the release discharge or emission of any harmful or hazardous material and the redemption, removal, vacation or discharge of any such Security Interest;
 - 12.2.4 the making of any Environmental Claim against any Indemnified Party or the Chargor in respect of any Charged Asset and/or any business operations or activities on any Charged Asset;
 - 12.2.5 any liability or potential liability upon any Indemnified Party to remedy clean-up or make good any breach contravention or violation of any Environmental Law by a Chargor or any harm actual or potential to the environment caused directly or indirectly by any release emission or discharge of any harmful or hazardous material from in or to the Charged Assets; or
 - 12.2.6 a breach by a Chargor of any of its obligations under this deed
- unless, in the case of clauses 12.2.1 and 12.2.2, it was caused by the negligence or wilful misconduct of the Indemnified Party.
- 12.3 No Indemnified Party will in any way be liable or responsible to the Chargors for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Charged Assets, except to the extent caused by its own negligence or wilful misconduct.
- 12.4 The Chargors must pay all present and future stamp, registration and similar taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this deed or any judgment given in connection with this deed.

13. THIRD PARTY RIGHTS

- 13.1 Subject to clauses 13.2 to 13.3, a person who is not a Party will have no rights under the Third Parties Act to enforce or rely upon a provision of this deed. No Party may hold itself out as trustee of any rights under this deed for the benefit of any third party unless specifically provided for in this deed. This clause 13.1 does not affect any right or remedy of any person which exists, or is available, other than under the Third Parties Act.
- 13.2 Any person to whom the benefit of any provision of this deed is assigned in accordance with the terms of this deed is entitled under the Third Parties Act to enforce any term of this deed which confers (expressly or impliedly) any benefit on any such person.
- 13.3 Subject to the terms of the Instrument, the Secured Parties are entitled under the Third Parties Act and with the prior written consent of the Security Trustee to enforce any term of this deed which confers (expressly or impliedly) any benefit on any that Secured Party.
- 13.4 Any Receiver or Delegate may, subject to the Third Parties Act, rely on any clause of this deed which expressly confers rights on it.
- 13.5 The Security Trustee and the Chargors may, by agreement in writing, rescind, terminate or vary any of the provisions in this deed or waive or settle any right or claim under it in any way without the consent of any third party.

14. NOTICES

The provisions of clause 15 of the Trust Deed shall be deemed to be incorporated into this deed, mutatis mutandis, as if the same were set out in full in this deed.

15. GENERAL

- 15.1 If a Secured Party receives notice (whether actual or otherwise) of any subsequent Security Interest affecting the Charged Assets, it may open a new account or accounts for the relevant Chargor in its books.
- 15.2 If the relevant Secured Party does not open a new account immediately on receipt of notice under clause 15.1, then (unless it gives express written notice to the contrary to the relevant Chargor (or the Parent on its behalf)) all payments made to it by that Chargor will be treated as having been credited to a new account of that Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice.
- 15.3 The Security Trustee may assign or transfer all or any of its rights under this deed in accordance with the provisions of the Trust Deed. No Chargor may assign, transfer, charge, make the subject of a trust or deal in any other manner with this deed or any of its rights under this deed or purport to do any of those things without the prior written consent of the Security Trustee.
- 15.4 No variation to this deed will be effective unless made in writing and signed by or on behalf of all the Parties. A waiver given or consent granted by the Security Trustee under this deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 15.5 Each provision of this deed is severable and distinct from the others. If at any time any provision of this deed is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it will to that extent or in those circumstances be deemed not to form part of this deed but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this deed will not be affected in any way.
- 15.6 If any provision of this deed is found to be illegal, invalid or unenforceable in accordance with clause 15.5 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with those modifications as may be necessary to make it legal, valid or enforceable.
- 15.7 Failure or delay in exercising a right or remedy provided by this deed or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this deed or by law

prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.

15.8 The Secured Parties' rights and remedies contained in this deed are cumulative and not exclusive of any rights or remedies provided by law.

15.9 This deed may be executed in any number of counterparts each of which when executed and delivered will be an original. All the counterparts together will constitute one and the same document.

16. **GOVERNING LAW AND JURISDICTION**

16.1 This deed (including any associated non-contractual disputes or claims) is governed by the laws of England and Wales.

16.2 The Parties agree to submit to the non-exclusive jurisdiction of the English courts in relation to any claim or matter (whether contractual or non-contractual) arising under this deed.

EACH CHARGOR has executed this deed as a deed and delivered it on the date first set out above.

The Chargors

Name	Place of Incorporation	Registered Number	Registered Office
Clayton Group Limited	England and Wales	10691126	One Eleven, Edmund Street, Birmingham B3 2HJ
Clayton Holdings Limited	England and Wales	04653905	Unit 2 Summerton Road, Oldbury, West Midlands B69 2EL
Clayton Furnaces Limited	England and Wales	03098707	Unit 2 Summerton Road, Oldbury, West Midlands B69 2EL
Beta Heat Treatment Limited	England and Wales	02195866	Unit 2 Summerton Road, Oldbury, West Midlands B69 2EL
Clayton Thermal Processes Limited	England and Wales	02240210	Unit 2 Summerton Road, Oldbury, West Midlands B69 2EL
Clayton Nanotechnology Limited	England and Wales	06304446	Chl C/O Clayton Holdings Limited Summerton Road, Oldbury, West Midlands B69 2EL

Schedule 2
Property

Freehold land being Plot 2 Brades Road, Oldbury registered under Title Number WM446909

CHARGORS

EXECUTED as a **DEED** by **CLAYTON**)
GROUP LIMITED acting by a director in the)
presence of:)

Director

Witness Signature

Witness Name **MATTHEW SMITH**
(in **BLOCK CAPITALS**)

Address

Gateley Plc
One Eleven, Edmund Street, Birmingham B3 2HU
dx 13033 Birmingham 1
tel 0121 234 0000 fax 0121 234 0001

Occupation

Solicitor

EXECUTED as a **DEED** by **CLAYTON**)
HOLDINGS LIMITED acting by a director in)
the presence of:)

Director

Witness Signature

Witness Name **MATTHEW SMITH**
(in **BLOCK CAPITALS**)

Address

Gateley Plc
One Eleven, Edmund Street, Birmingham B3 2HU
dx 13033 Birmingham 1
tel 0121 234 0000 fax 0121 234 0001

Occupation

Solicitor

EXECUTED as a **DEED** by **CLAYTON**)
FURNACES LIMITED acting by a director in)
the presence of:)

Director

Witness Signature

Witness Name **MATTHEW SMITH**
(in **BLOCK CAPITALS**)

Address

Gateley Plc
One Eleven, Edmund Street, Birmingham B3 2HU
dx 13033 Birmingham 1
tel 0121 234 0000 fax 0121 234 0001

Occupation

Solicitor

EXECUTED as a DEED by BETA HEAT)
TREATMENT LIMITED acting by a director)
in the presence of:)

Director

Witness Signature

Witness Name

MATTHEW SMITH

(in BLOCK CAPITALS)

Address

Gateley Plc

One Eleven, Edmund Street, Birmingham B3 2HJ
dx 13033 Birmingham 1
tel 0121 234 0000 fax 0121 234 0001

Occupation

Solicitor

EXECUTED as a DEED by CLAYTON)
THERMAL PROCESSES LIMITED acting)
by a director in the presence of:)

Director

Witness Signature

Witness Name

MATTHEW SMITH

(in BLOCK CAPITALS)

Address

Gateley Plc

One Eleven, Edmund Street, Birmingham B3 2HJ
dx 13033 Birmingham 1
tel 0121 234 0000 fax 0121 234 0001

Occupation

Solicitor

EXECUTED as a DEED by CLAYTON)
NANOTECHNOLOGY LIMITED acting by a)
director in the presence of:)

Director

Witness Signature

Witness Name **MATTHEW SMITH**
(in BLOCK CAPITALS)

Address

Gateley Plc

One Eleven, Edmund Street, Birmingham, B2 4
dx 13033, Birmingham
tel 0121 234 0000 fax 0121 234 0001

Occupation

Solicitor

CHARGE

SIGNED by **DERYK LAW** as **THE**)
SECURITY TRUSTEE on behalf of **THE**)
CHARGEES:)

