

[8-701] **11.2** The (*Party-B*) shall as promptly as reasonably practicable after the termination of this (*document*) and in any event in three months of the date of termination remove the Trade Marks from all (*subject matter*).

[8-702] **11.3** [discontinue use of mark: see clause [8-574]]

[8-703] **Waiver**

[8-703] **12** [Standard Clauses: (short): [2-220]]

[8-704] **Entire understanding**

[8-704] **13** [Standard Clauses: [2-273]]

Variation

[8-705] **14** [Standard Clauses: [2-275]]

Previous documents

[8-706] **15** [Standard Clauses: superseded: [2-268]]

Law and jurisdiction

[8-707] **16** [Standard Clauses: [2-204]]

Third parties

[8-708] **17** [Standard Clauses: [2-238]]

Notices

[8-709] **18** [Standard Clauses: [2-282]]

Interpretation

[8-710] **19.1-x** [use part or all as appropriate of Standard Clauses: [2-216]]

[attestation clauses]

[8-711] ¹ See [4-008], note 1.

[8-711] ² It is possible that in the case of an unregistered mark all rights in the goods may belong to the user, who may wish to continue to market them, possibly with some other mark.

[8-712] **26 Assignment of simple contract debt¹**

Suggested terms for parties:¹

(*Party-A*) 'Seller'
(*Party-B*) 'Buyer'

Date and parties

THIS AGREEMENT is made on (*date*)

between:

A(*name*) plc/Ltd a company registered in [the United Kingdom (*or*) specify the jurisdiction in which the company is incorporated if it is not in one of the jurisdictions of the United Kingdom²] with number (*number*) whose registered office is (*address*) ('(*Party-A*)'); and

B(*name*) of (*address*) ('(*Party-B*)').

Definitions

1 In this deed the following word has the following meaning.

[8-713]

'Debts' the respective amounts now owing to the (*Party-A*) by the persons described in the first column of the schedule and shown opposite the name of each of those persons in respect of the matters mentioned in the second column.

Receipt and assignment

2 In consideration of £(*amount*) [(set out amount in words)] now paid by (*Party-B*) to (*Party-A*) (the receipt of which (*Party-A*) acknowledges) (*Party-B*) assigns the Debt and all rights in relation to it to (*Party-A*).

[8-714]

Title

3 The (*Party-B*) covenants with the (*Party-A*) that the Debts are still due and owing in full to the (*Party-B*) from the several persons, firms and companies as before mentioned.

[8-715]

Law and jurisdiction

4 [Standard Clauses: [2-191]]

[8-716]

The schedule

Name and address of debtors	Particulars of debts	Amount of debt
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[attestation clauses]

¹ Debts and other things in action can be assigned in writing under the hand of the assignor, and a deed is not necessary where there is valuable consideration. In other cases, without stating definitely that a deed is essential, it is certainly most advisable that the assignment should be by deed. See Law of Property Act 1925, s 136. Notice in writing of the assignment should be given to the debtors.

[8-717]

² See [4-008], note 1.

27 Maintenance agreement — formal part of maintenance agreement identifying parties, equipment and charges¹

[8-718]

(*name*) Co Ltd ('(*Party-A*)') registered number (*number*)
registered office (*address*)
VAT number (*number*)

[8-719]

Maintenance Contract

Contract No

(Party-B)

Name

Address

Site address

Equipment

Description

Make

Model

Quantity

serial nos.

[Items marked ** are excluded from Maintenance Services]

[The Maintenance Services shall consist of ((number)) [yearly] visits]

[Replacement parts shall be supplied by the (Party-B) at no expense to the (Party-A)]

Maintenance Charges (payable in advance)

Annual charge

£(...)

VAT

£(...)

Total

£(...)

Commencement Date

Please supply Maintenance Services subject to the terms and conditions overleaf.

Signed for the (Party-B)

Date

The (Party-A) agrees to provide Maintenance Services subject to the terms and conditions overleaf.

Signed for the (Party-A)

Date

[8-720] The cynical could regard agreements such as this, when made by the manufacturer, as a means of procuring the purchaser of goods to pay for his warranty claims. In commercial terms a good maintenance agreement may be worth more than the original sale. For terms and conditions, see [8-721].

[8-721] **28 Maintenance services conditions — either schedule to 'printed form' agreement or clauses for formal agreement**

(name) Co Ltd ('(Party-A)') — Maintenance Services Terms and Conditions

Definitions

[8-722] **1** In this [(document) (or) schedule] the following words have the following meanings.

'Equipment' the equipment described [overleaf (or) in the schedule 1].

'Maintenance Services' the services described [overleaf (or) in the schedule 2].

Maintenance services

[8-723] **2.1** The (Party-A) will provide the (Party-B) with Maintenance Services in respect of the Equipment on the following terms and conditions which, with the (Party-A)'s standard conditions of sale from time to time in force, shall constitute the entire maintenance contract between the (Party-A) and the (Party-B).

[8-724] **2.2** The Maintenance Services will be provided between [08.45 and 17.00] Monday to Thursday and between [08.45 and 13.30] Friday excluding public, bank and local holidays.

[8-725] **2.3** The (Party-A) will endeavour to respond promptly and if possible in 24 hours to requests for Maintenance Services.

Exclusion from services

[8-726] **3** The Maintenance Services will not extend to:

- modifications or additions to the Equipment;
- peripheral items and consumables (lists of which are available from the (Party-A));
- items which in the (Party-A)'s opinion can no longer be subject to economical maintenance and for which the (Party-A) has submitted a refurbishment cost estimate payable in addition to the Maintenance Charges unless work is authorised within 30 days of the date of the estimate;
- defects resulting, in the (Party-A)'s reasonable opinion, from misuse or neglect of or accident to the Equipment or failure to follow the instructions or advice of the (Party-A) or the Equipment manufacturer;
- visits in addition to those (if any) specified overleaf; or
- the repair or replacement of parts which the (Party-A) requires to carry out away from the site named overleaf but which the (Party-B) for security reasons or otherwise is unwilling to release to the (Party-A).

Maintenance charges

[8-727] **4.1** Maintenance Charges are payable annually in advance on or before the Commencement Date overleaf and each anniversary of it.

[8-728] **4.2** Additional services (including emergency visits outside the hours specified in condition (number)) and the cost of replacement parts not covered by a parts warranty given by the (Party-A) will be the subject of extra charges in accordance with the (Party-A)'s terms then in force payable in 30 days of the date of the (Party-A)'s invoice.

[8-729] **4.3** The (Party-A) may:

- adjust its Maintenance Charges by written notice not later than 30 days before any anniversary of the Commencement Date; and
- if the (Party-B) does not pay the adjusted Maintenance Charges on the due date terminate the contract immediately and without notice.

[8-730] 4.4 The *(Party-A)*'s charges are payable without any deductions or withholding of any kind but with the addition of VAT.

(Party-B) obligations

[8-731] 5 To facilitate the provision by the *(Party-A)* of Maintenance Services the *(Party-B)* shall:

- keep and operate the Equipment in a proper and prudent manner and ensure that only competent trained employees are allowed to operate it;
- use the Equipment in a suitable environment with proper power supplies and in accordance with instructions and advice of the Equipment manufacturer and the *(Party-A)*;
- not move the Equipment or make any addition, modification or adjustment to it without the *(Party-A)*'s prior written consent;
- maintain and make available to the *(Party-A)* records of the operation, maintenance and any malfunction of the Equipment; and
- provide at such times as the *(Party-A)* reasonably requires and at no cost to the *(Party-A)* all documentation, software, materials and services necessary for the maintenance and testing of the Equipment, access to the Equipment, use of the *(Party-B)*'s workshop and repair facilities and the co-operation of the *(Party-B)*'s personnel in diagnosing and overcoming any malfunction of the Equipment.

Liability

[8-732] 6.1 The *(Party-A)* shall use its reasonable endeavours to keep the Equipment in efficient operating condition but shall have no liability at all for any loss or damage of any kind arising from any stoppage, breakdown or failure of the Equipment however occasioned.

[8-733] 6.2 The *(Party-A)* shall have no liability for any damage to the *(Party-B)*'s property unless occasioned by the *(Party-A)*'s negligence.

Replacement parts

[8-734] 7 Replaced parts are the *(Party-A)*'s property unless replaced by parts supplied by the *(Party-B)* at no cost to the *(Party-A)*.

Force majeure

[8-735] 7 [Standard Clauses: remove cause of non-performance: [2-191]]

Commencement and term of agreement

[8-736] 8 [Standard Clauses: commencement — termination by notice: [2-027]]

Termination on default etc

[8-737] 9.0 [Standard Clauses: termination or suspension: [2-149] (if by *(Party-A)*) or [2-150] (if by either party)]

[8-738] 9.1 [Standard Clauses: material non-performance by *(Party-B)* or *(Party-C)*: [2-155]]

[8-739] 9.2 [Standard Clauses: bankruptcy etc: [2-168]]

9.3 [Standard Clauses: winding up: [2-170]] [8-740]

9.4 [Standard Clauses: receivership: [2-177]] [8-741]

Not assignable

10.1 [Standard Clauses: personal to *(Party-B)*: [2-086]] [8-742]

10.2 [Standard Clauses: third parties: [2-238]] [8-743]

Variation

11 [Standard Clauses: [2-275]] [8-744]

Notices

12 [Standard Clauses: full form: [2-282]] [8-745]

Third Parties

13 [Standard Clauses: full form: [2-258]] [8-746]

Law and Jurisdiction

14 [Standard Clauses: [2-204]] [8-747]

PART 4 E-TRADE (SOFTWARE AND THE INTERNET)

99 **Licensing of software** [8-748]

Suggested terms for parties:¹

(Party-A) 'Licensor'

(Party-B) 'Licencee'

Date and parties

THIS AGREEMENT is made on (date) [8-748A]

between:

A(name) plc/Ltd a company registered in [the United Kingdom (or) specify the jurisdiction in which the company is incorporated if it is not in one of the jurisdictions of the United Kingdom²] with number (number) whose registered office is (address) ('*(Party-A)*'); and

B(name) of (address) ('*(Party-B)*').

(Party-B) Background

(A) The *(Party-A)* has developed and owns or has licensed from third parties certain computer software applications that will (describe function of software). [8-748B]

(B) The *(Party-A)* has agreed to deliver to the *(Party-B)* and install on the *(Party-B)*'s computer the above computer programs and to grant to the *(Party-B)* a non-exclusive licence to use such programs and their associated documentation.

NOW IT IS AGREED as follows: [8-757]

	Period of sick pay	
	full pay	half pay
length of service up to six months	[] days	[] days
from six months to two years	[] days	[] days
from two years to five years	[] days	[] days
over five years	[] days	[] days

The (Party-A) may at its discretion extend the period of paid sick leave in any individual case if there are special reasons to do so.

[10-156] **20.5** If the (Party-B) has been paid the maximum sick pay entitlement in any period of [[twelve] (or) [twenty-four]] months he or she shall not be entitled to any sick pay in any subsequent period until he or she has returned to work and completed twelve months' continuous service with no absences from work other than agreed holidays and absences for minor ailments not exceeding [five] working days [but nothing in this clause shall limit any rights to income or otherwise under any insurance policy effected pursuant to clause (number)]¹⁵.

[10-157] **20.6** The (Party-A) reserves the right to terminate the (Party-B)'s employment without further notice at any time after the entitlement to sick pay has ceased (or earlier if necessary for the conduct of its business) but, except in special circumstances, will not do so without consultation with the (Party-B) and his or her medical advisers.

[10-158] **20.7** The (Party-B)'s employment will end automatically without notice by either party to the other if the (Party-B) is absent from work for [two] consecutive weeks after the (Party-A) has written to the (Party-B) at the address in his or her individual statement requesting the reason for his or her absence and he or she has failed during that period to notify the (Party-A) of the absence and the reason for it.

Maternity, adoption, paternity and parental rights¹⁶

(either)

[10-159] **21** Whenever the (Party-B) or his or her partner is pregnant or plans to adopt a child, he or she should speak to the (Party-A)'s [personnel officer] as soon as possible, so that we can discuss with the the (Party-B) what rights the (Party-B) or his or her partner or both of them have and what needs to be done to exercise those rights.

The law gives employees a number of maternity, adoption, paternity and associated rights. One of the sources of information to which the the (Party-B) might refer for more information is the Directgov website. The relevant address as at (date) was: <http://www.direct.gov.uk/en/parents/moneyandworkentitlements/workandfamilies/index.htm>.

[See the (Party-A)'s family policy: copy available from the [personnel officer]].

(or)

[See the (Party-A)'s family policy in Part 9 of this manual.]

(or)

[the entire precedent, version B [10-673B], renumbering accordingly]

Part 5: Employer's interests

Good faith

[10-163] **22.1** The (Party-B) shall devote the whole of his or her time, attention and skill in his or her working hours to the business and interests of the (Party-A) in a competent and efficient manner and use his or her best endeavours to develop maintain and extend that business and the (Party-A)'s reputation.

[10-164] **22.2** The (Party-B) may not directly or indirectly carry on or assist in carrying on or be employed or engaged in any other business or work of any kind except with the written consent of the (Party-A).¹⁷

[10-165] **22.3** If the (Party-B) is in breach of any of the terms of his or her employment he or she shall immediately disclose the breach to the (Party-A) and if he or she becomes aware of any breach of the terms of employment of any other employee he or she shall disclose the breach to the (Party-A) as soon as he or she becomes aware of it.¹⁸

[10-166] **22.4** The (Party-B) shall not use or otherwise turn to his or her advantage his or her knowledge of or any connection with any of the customers of or suppliers to the (Party-A) so as to take any direct or indirect advantage of the business and other connections of the (Party-A) except for its advantage.¹⁹

[10-167] **22.5** The (Party-B) shall not receive or obtain directly or indirectly any discount, rebate, commission or other benefit or gift ('Benefit') in respect of any goods or services supplied by or to or acquired by the (Party-A) or any other business transacted by it and shall report any Benefit offered to or received by [him]. The (Party-A) will normally consent to the receipt of traditional and trivial items, such as calendars and diaries. If the (Party-B) receives any Benefit, it will belong to the (Party-A), to whom the (Party-B) must give it or pay its value. The (Party-A) reserves the right to return the Benefit it to the giver.

[10-168] **22.6** It is necessary that the (Party-A) ensures the security of its property and therefore reserves the right to search any employee, any vehicle and any parcel or other property. If requested the search will be conducted in the presence of a third party.

Confidential information²⁰

[10-169] **23.1** In this clause 'Confidential Information' means all confidential information relating to the organisation, finances, processes, specifications, methods, designs, formulae, technology and business activities, of and concerning the (Party-A) and its customers and suppliers.

[10-170] **23.2** Except as authorised or required by his or her duties the (Party-B) shall keep secret and shall not use or disclose and shall use his or her best endeavours to prevent the use or disclosure by or to any person of any of the (Party-A)'s Confidential Information which comes to his or her knowledge during his or her employment.

[10-171] **23.3** The restriction in sub-clause (number) shall apply during and after the termination of the (Party-B)'s employment without any time limit but shall cease to apply to information or knowledge which the (Party-B) establishes has in its entirety become public knowledge otherwise than through any unauthorised disclosure or other breach on his or her part of that restriction.

- [10-172] 23.4 All records in any medium (whether written, computer readable or otherwise) including accounts, documents, drawings and private notes about the (*Party-A*) and all copies and extracts of them made or acquired by the (*Party-B*) in the course of his or her employment shall be:
- the property of the (*Party-A*);
 - used for the purpose of the (*Party-A*) only;
 - returned to the (*Party-A*) on demand at any time; and
 - returned to the (*Party-A*) without demand on the termination of the (*Party-B*)'s employment.

Competition

- [10-173] NB The (*Party-B*)'s individual statement will indicate whether this section does or does not apply to the (*Party-B*). On any relevant change in the (*Party-B*)'s status or duties, the (*Party-A*) may by written notice to the (*Party-B*) direct that it applies to the (*Party-B*) from the date mentioned in the notice.

[select as required from the following]

- [10-174] 24.1:1 [not to solicit customers: Standard Clauses [2-120]]
- [10-175] 24.1:2 [not to interfere with suppliers: Standard Clauses [2-122]]
- [10-176] 24.1:3 [not to employ other employees: Standard Clauses [2-124]]
- [10-177] 24.1:4 [not to entice other employees to leave: Standard Clauses [2-126]]
- [10-178] 24.1:5 [not to work for another who becomes a competitor: Standard Clauses [2-128]]
- [10-179] 24.1:6 [not to work for person using specified trade names: Standard Clauses [2-129]]
- [10-180] 24.1:7 [not to work in competition in specified areas: Standard Clauses [2-131]]
- [10-181] 24.1:8 [not to use specified business name: Standard Clauses [2-133]]
- [10-182] 24.1:9 [not to hold self out to be connected with (*Party-A*): Standard Clauses [2-134]]
- [10-183] 24.2:1 [limitation: customers etc in most recent two years: Standard Clauses [2-135]]
- [10-184] 24.2:2 [limitation: customers etc with whom (*Party-B*) dealt: Standard Clauses [2-136]]
- [10-185] 24.2:3 [limitation: separate [benefit of each Associated Company] and severable: Standard Clauses [2-138]]
- [10-186] 24.2:4 [limitation: clause 27.1.7 not to apply to business discontinued by (*Party-A*): Standard Clauses [2-140]]
- [10-187] 24.2:5 [limitation: [not] to apply if unfair etc dismissal: Standard Clauses [2-141]]
- [10-188] 24.2:6 [limitation: (*Party-A*) may reduce restriction: Standard Clauses [2-143]]

Part 6: Period of employment and termination

Period of employment

- 25 The (*Party-B*)'s employment shall continue from the start date shown in the individual statement until terminated in accordance with these terms, unless the individual statement specifies a fixed length of employment.²¹ [10-189]

Continuous employment

- 26 No employment with a previous employer counts as part of a continuous period of the (*Party-B*)'s employment with the (*Party-A*) unless it is shown on the (*Party-B*)'s individual statement. [10-190]

Notice of termination of employment²²

- 27.1 The (*Party-B*) is on probation for the first twelve weeks of his or her employment or longer if the (*Party-A*) notifies the (*Party-B*) in writing that it wishes to extend his or her probationary period for further assessment of his or her capability or suitability. During the first month of this period either party may terminate the employment without any period of advance notice. [10-191]

- 27.2 After the first month of employment the (*Party-B*)'s employment may be ended by prior written notice of the following periods: [10-192]

- by the (*Party-B*):
 - if paid weekly, one week's minimum notice; and
 - if paid monthly, one month's minimum period of notice; and
- by the (*Party-A*):
 - if paid weekly, one week's notice for every complete year of continuous service with a maximum of twelve weeks' notice; or
 - if paid monthly, one week for every completed year of continuous service with a minimum period of notice of one month and a maximum of [six] months.

Termination on retirement

- 28 The (*Party-B*)'s normal retirement age is [65] years (unless varied by prior consultation) and accordingly the (*Party-B*)'s employment (unless previously terminated) will end automatically on the last day of the month in which he or she attains that age. [10-193]

Termination on other grounds

- 29 The (*Party-A*)'s right to terminate the (*Party-B*)'s employment on other grounds is contained in the disciplinary rules. [10-194]

Consequences of employment

- 30.1 The (*Party-B*)'s employment shall not continue at any time after it has been terminated by the (*Party-A*) notwithstanding that the termination is [without prior notice or by shorter notice than provided for in this agreement (or) before the expiry of the Term]. [10-195]

- 30.2 If the (*Party-B*) refuses to work all or any part of his or her notice period he or she will forfeit any remuneration (whenever earned) due to him or her but unpaid at or after the time when the notice was given. [10-196]

Part 7: Disciplinary and grievance rules and procedures

Disciplinary rules²³

[10-197] **31** [disciplinary rules available from the [personnel officer]: see clause [10-078]]
(or)

[10-198] **31** In cases of serious misconduct or incompetence employees may be dismissed without any period of notice or warning. In other cases employees will be given an oral warning in the case of the first offence and a written warning in the case of a subsequent offence before being dismissed. The (Party-B) may be suspended from service without pay during the investigation of any alleged misconduct or incompetence but if the (Party-B) is not found to be at fault, he or she shall be paid his or her normal remuneration for the period of suspension.²⁴

(or)

[10-199] [the entire precedent [10-564], renumbering the manual accordingly]

Grievances and appeals

[10-200] **32** [grievance procedure available from the [personnel officer]: see clause [10-078]]

(or)

[10-201] [the entire precedent [10-608], renumbering the manual accordingly]

Part 8: Administration and miscellaneous

Trade union recognition

[10-202] **33** Employees are free to join any trade union they think fit or not to join any trade union at all. The (Party-A) does not recognise any trade unions for any purposes.

(or)

[10-203] **33** Employees are free to join any trade union they think fit or not to join any trade union at all. For [all (or) [wage]] negotiation purposes the (Party-A) recognises [the (name) Union (or) the following unions]:

- the (name) Union;
- the (name) Union; and
- the (name) Union.

Collective agreements²⁵

[10-204] **34** Although the (Party-A) may take note of terms agreed collectively between the (name) Federation and the (name) Union, no collective term will have legal effect or be incorporated in any individual contract of employment.

(or)

[10-205] **34** The terms agreed collectively between the (Party-A) or the (name) Federation and the (name) Union relating to:

- rates of pay;
- overtime and overtime pay;

holidays and holiday pay;
disciplinary and grievance procedures; and
redundancy.

shall be binding in law on the (Party-A) and the (Party-B) notwithstanding that as between the parties to that agreement it does not give rise to legal relations and is binding in honour only.

(or)

34 The terms of any collective agreement between any employers' association and any trade union or other parties incorporated or referred to in these terms shall be binding in law on the (Party-A) and the (Party-B) notwithstanding that as between the parties to that agreement it does not give rise to legal relations and is binding in honour only.

Personal details²⁶

35.1 The (Party-B) is required to inform the (Party-A) of all changes in his or her name, address, telephone number, marital status and other personal details relevant to his or her continued employment with the (Party-A).

35.2 For the purposes of the Data Protection Act 1998 the (Party-B) consents to the (Party-A) holding and processing personal data including sensitive personal data of which the (Party-B) is the subject [details of which are specified in the (Party-A)'s data protection policy²⁷] (or) [For the purposes of this clause 'sensitive data' means personal data consisting of information as to racial or ethnic origin; political opinions; religious beliefs or other beliefs of a similar nature; membership of a trade union; physical or mental health or condition; sexual life; the commission or alleged commission of any offence or any proceedings for any offence committed or alleged to have been committed, including the disposal of any such proceedings or the sentence of any court in such proceedings.²⁸]

Work appraisals

36.1 The (Party-A) operates an annual staff appraisal system which has two main purposes. One purpose is to review the (Party-B)'s work, considering not only the way he or she works and the effectiveness of his or her performance of his or her duties, but also the range and nature of those duties and how they fit into the (Party-A)'s operations and the work of its other employees. The other main purpose is to review the (Party-B)'s career development and consider such matters as training, transfer to different work, promotion, and changes of salary or pay scale.

36.2 The (Party-B) will usually have an appraisal in the first and third months of starting employment with the (Party-A) and then appraisals will normally be annual. Appraisals are conducted by [each departmental head], and will consist of an interview and a discussion with the (Party-B)'s [department head] and the completion of an appraisal form, followed (if appropriate) by an interview and discussion with the [chief executive]. If the (Party-B)'s responsibilities are direct to the [chief executive], the (Party-B)'s appraisal will be conducted by [him or her], but the (Party-B) will be able to have a review of it by a sub-committee of the (Party-A)'s board of directors. The appraisal forms should be signed by both the (Party-B) and the interviewer and a copy will be given to the (Party-B).

x.2 (*Party-B*) shall charge the Property to (*Party-A*) by way of a first legal mortgage as security for the payment of Indebtedness on the terms of the draft mortgage attached to this deed.

x.3 [Mortgages: interest monthly in arrears: [24-008], substituting (*Party-A*) for (*Party-B*) and vice versa and with the addition if desired of: 'but no interest shall be payable on the Indebtedness if it is paid in full on the due date of payment'].

x.4 The Mortgage shall not become enforceable without (*Party-B*)'s written consent until the first to occur of the vacation of the Property by (*Party-B*) and the Relevant Date.

x.5 For as long as (*Party-B*) is entitled to occupy the Property under the terms set out above (*Party-A*) may not seek to exercise [his (*or*) her] power of leasing under the Mortgage.

Covenant by (*Party-A*) to procure release of (*Party-B*) from Mortgage and for indemnity

[16-209] x (*Party-A*) covenants with (*Party-B*) to use [his (*or*) her] best endeavours to procure the release of (*Party-B*) from any liability in relation to the Mortgage and to compensate (*Party-B*) in full on demand for all liabilities in respect of it.

(*Party-A*) to transfer time-share property to (*Party-B*)

[16-210] x (*Party-A*) agrees to transfer the Time-Share Property to (*Party-B*) and (*Party-B*) agrees to compensate (*Party-A*) on demand for all liabilities in connection with it.

Repayment of price, improvements etc before division of net proceeds of sale

[16-211] x.1 If the Property [or any part of it] is sold before the solemnisation of the Marriage the net proceeds of sale and the income from them shall before being divided as stated in clause (*number*) above be paid to the parties as follows and in the following order:

- the repayment to each of the parties of any money paid by them respectively towards the price of the Property;
- the repayment to each of the parties of any money paid by them respectively as interest or repayment of principal on any loan secured by a mortgage of the Property; and
- the repayment to each of the parties of any money paid by them in any addition, improvement or repair to the Property.

x.2 If the net proceeds of sale and the income from them are not sufficient to make in full any payment due under part of sub-clause [x.1] the amount paid to each of the parties is to be made in proportion to the amounts paid by each of the parties in respect of the relevant part.

Covenant by (*Party-A*) to pay mortgage, insurance premiums and other outgoings of Property

[16-212] x (*Party-A*) covenants with (*Party-B*) to discharge for the latter's benefit:

- all mortgage interest and monthly capital repayments due in respect of the Mortgage;
- the premiums in respect of the Policy;

- the gas, electricity and telephone accounts, the house and contents insurance premiums and the council tax and water charge on the Property from (*date*); and
- the monthly hire-purchase repayments relating to the Car.

Covenant by (*Party-A*) to discharge arrears of outgoings/debts of Property

x (*Party-A*) covenants to (*Party-B*) to discharge within (*number*) days from the date of this deed/agreement any arrears which have accrued to date under the Mortgage and in respect of outstanding council tax and water charge on the Property.

Covenant by (*Party-A*) to indemnify (*Party-B*) for outgoings of Property

x (*Party-A*) covenants to compensate (*Party-B*) in full on demand for all outgoings on the Property from (*date*) to (*date*).

Covenant by (*Party-A*) to comply with Lease and indemnify (*Party-B*)

x (*Party-A*) covenants with (*Party-B*) to comply with the terms of the Lease and compensate (*Party-B*) in full on demand for any claims and liabilities arising under it after (*date*).

Covenant by (*Party-A*) to take out life policy

- x (*Party-A*) covenants with (*Party-B*) that:
- [she (*or*) he] will within (*number*) days from the Effective Date take out with (*name*) insurance company a policy of assurance for £(...) ((...)) pounds) with[out] profits on [her (*or*) his] life payable on [her (*or*) his] death (*or*) after (*number*) years for the benefit of (*Party-B*);
 - [he (*or*) she] will pay all premiums due in respect of the policy and to do nothing which might prejudice or invalidate the policy until (*Party-B*) dies or remarries whichever is the earlier;
 - all benefits under the policy whenever arising will be paid to (*Party-B*) or [her (*or*) his] estate; and
 - (*Party-A*) will have no beneficial interest in the policy or its proceeds at any time.

Covenant by (*Party-A*) to authorise insurers to release information

x (*Party-A*) covenants with (*Party-B*) to authorise (*name*) company irrevocably to release to (*Party-B*) such information as [he (*or*) she] requires relating to the Policy.

Covenant by (*Party-A*) to undergo medical examination for issue of policy

x (*Party-A*) covenants with (*Party-B*) to undergo such medical examination as may be required by an insurance company to enable (*Party-A*) (*or*) (*Party-B*) to insure (*Party-A*)'s life.

Covenant by (*Party-A*) to nominate death in service benefit for (*Party-B*)

x (*Party-A*) covenants with (*Party-B*) within (*number*) days from the Effective Date to nominate (*Party-B*) (*or*) the Children irrevocably to receive all (*or*) (*amount*)% of the death in service benefit payable under (*Party-A*)'s pension scheme with (*name*) Ltd or any other such scheme or arrangement of which [he (*or*) she] is from time to time a member or owner [so long as [he (*or*) she]

has not remarried] and to provide on request by (*Party-B*) written evidence of receipt by the trustees or provider of the scheme of arrangement of the nomination.

Covenant by (*Party-A*) to maintain medical insurance policy

[16-220] x (*Party-A*) covenants with (*Party-B*) to maintain the current level of medical insurance with (*name*) and to ensure continuity of cover for (*Party-B*) until [he (*or*) she] dies or remarries (whichever is the earlier) and for each of the Children until (*date*) (*or*) he or she ceases full-time education or reaches the age of [24] years (whichever is the earlier).

Covenant by (*Party-A*) to leave specified amount by will

[16-221] x (*Party-A*) covenants with (*Party-B*) to leave by will £(...) (...) pounds) to (*Party-B*) and £(...) (...) pounds) to each of the children.

(*Party-B*) to indemnify (*Party-A*) against [his (*or*) her] liabilities and authorise deductions

[16-222] x (*Party-B*) shall compensate (*Party-A*) in full on demand for all liabilities relating to the maintenance or education of or otherwise in respect of the Child and agrees (*Party-A*) may deduct from the payments under this deed all (*Party-B*)'s debts or liability which [he (*or*) she] discharges.

Covenant by (*Party-A*) to pay all capital gains tax and indemnify (*Party-B*)

[16-223] x (*Party-A*) covenants with (*Party-B*) to pay all capital gains tax consequent on the implementation of this (*document*) and compensate (*Party-B*) in full on demand for liability for any such tax under it after (*date*).

Covenant by (*Party-A*) relating to council tax

[16-224] x (*Party-A*) covenants with (*Party-B*) to notify in writing the (*name*) District Council within (*number*) days from the Effective Date of the separation of the parties on (*date*) and to compensate (*Party-B*) for all liability for (*Party-A*)'s council tax.

Parties acknowledge independent advice and full disclosure¹

[16-225] x Each of the parties acknowledges that the other has received separate and independent legal advice and has made full and frank disclosure to each other of his and her respective financial positions and other circumstances which are relevant to the subject matter of this deed.

[16-226] ¹ See also Standard Clauses [2-193] to [2-196].

(*Party-B*) entitled to remove [his (*or*) her] belongings from Property

[16-227] x (*Party-B*) may remove all [his (*or*) her] wearing apparel, furniture and other belongings from the Property at any time on reasonable notice to (*Party-A*) and shall do so before (*date*).

Covenant by (*Party-A*) to resign as company director and secretary

[16-228] x (*Party-A*) covenants with (*Party-B*) to resign as soon as is practicable as a director [and] (*or*) the company secretary of the Company and to acknowledge to the Company that [he (*or*) she] has no claims against it in respect of [his (*or*) her] employment and directorship or their termination. (*Party-B*)

shall compensate (*Party-A*) in full on demand for all liabilities arising out of [his (*or*) her] involvement in the Company.

Dismissal of applications for property orders

x In the course of any divorce or judicial separation proceedings which are instituted by either of the parties against the other, each of them shall apply to the Court for an order:

- that his or her claim against the other for financial assistance and any property adjustment orders be dismissed, including pension sharing orders; and
- that neither shall be entitled on the death of the other to apply for an order under s 2 of the Inheritance (Provision for Family and Dependents) Act 1975.

Each party to bear own costs

x Each of the parties shall bear his or her own costs of:

- any divorce, judicial separation or other Court proceedings between the parties;
- the ancillary applications referred to in this deed; and
- the preparation of this deed (which has been drawn up in duplicate) and the work incidental to it.

Further significant changes have been introduced over the years so that in 2002 the agricultural and business relief percentages to reduce the value taxable are now 50% or 100% (ie an effective exemption). These apply as follows:

- 100% business property relief**
- (a) for a business or an interest in a business, and
 - (b) for unquoted shares (this includes shares quoted on the unlisted securities market or the alternative investment market);
 - (c) settled property used in the business of the life tenant.
- 50% business property relief**
- (a) quoted shares if the transferor has control, and
 - (b) land, machinery, plant, buildings which the transferor owns but uses in a business (this could be a partnership in which he is a partner, or a company which he controls).
- 100% agricultural relief**
- (a) if the transferor has vacant possession (or the right to obtain it within 12 months).

of investments falling within *Howe v Earl of Dartmouth*, namely that a life tenant is entitled to benefit from a reversionary or non-income producing investment, by way of a calculation of a sum deemed to be income.

Exclusion of the rule in *Allhusen v Whittell*¹

[20-330] x Notwithstanding any rule of law or equity to the contrary my debts, funeral and testamentary expenses and legacies shall be paid or discharged entirely out of the capital of my estate without recourse to its income.

[20-331] ¹ *Allhusen v Whittell* (1867) LR 4 Eq 295, [1861-73] All ER Rep 149. In order that the life tenant and remaindermen should be treated equally in the administration of the estate, the payment of debts and funeral and testamentary expenses must be discharged rateably out of capital and the income of the first year after death.

Exclusion of the Apportionment Acts on the death of the testator¹

[20-332] x All interest dividends and other payments in the nature of income arising from my estate [or my share in it] and received after the time of my death [or when any person entitled to the income of it, ceases to be so entitled] in respect of a period wholly or partly before that time shall be treated as accruing wholly after that time and shall not be apportioned and the Apportionment Act 1870 shall accordingly be excluded in the administration of my estate.²

[20-333] ¹ The Apportionment Act 1870 largely supersedes but does not repeal the Apportionment Act 1834. Unless otherwise directed by the will, all income of the testator's estate is deemed to accrue on a day-to-day basis and shall be apportioned accordingly.

² In view of the decisions in *Re Bate, Public Trustee v Bate* [1938] 4 All ER 218, and *Re Edwards, Newbery v Edwards* [1918] 1 Ch 142, it seems that a specific reference to the 1870 Act is advisable. The position on the death of a tenant for life is different from that on the death of the testator and it seems that only apportionment under the 1870 Act is available and that only when securities are appropriate to the remaindermen.

Request to appoint named solicitors

[20-334] x I desire that [(name) of] the firm of (name) or the firm or incorporated practice¹ which at the date of my death has succeeded to and carries on its practice shall be employed as solicitor[s] in proving my will and in transacting any legal business in the execution and administration of its trusts.

[20-335] ¹ See [20-191], note 1.

POWERS AFFECTING EXECUTORS AND TRUSTEES

Statutory power to appoint new trustees vested in spouse

[20-336] x The statutory power of appointing new trustees of this will shall be vested in my [husband (or) civil partner] during [his] [life] [widowhood].

Conditions and charges of bank as executor

[20-337] x The conditions under which (name of bank) is appointed and acts as executor and trustee are those published by it and in force at the date of this will and the charges to which it is entitled are those [set out or referred to in those conditions (or) in force at the date of my death].

Power to appoint foreign trustees¹

[20-338] x My Trustees may appoint any person or corporation outside the jurisdiction of the courts of England and Wales to act as a trustee of this will in relation to any property situate outside England and Wales and may pay to that

trustee or permit him to be paid out of the capital or income, of my Residuary Estate, or the property in respect of which he is appointed any fees or other remuneration which is customary in the country in which the foreign property is situate and make such arrangements generally with any such trustee as my Trustees deem expedient without being liable for any resulting directly or indirectly from the appointment.

¹ Even in the absence of an express power to appoint foreign trustees, the courts will permit foreign trustees, where the beneficiaries are in the foreign country: *Re Whitehead's Will Trusts, Burke v Burke* [1971] 2 All ER 1334, [1971] 1 WLR 833. It is not clear whether foreign trustees can be appointed of foreign property where the settlement remains English and the beneficiaries resident in England. For the appointment of English trustees of a foreign trust, see *Chellaram v Chellaram* [1985] Ch 409, [1985] 1 All ER 1043.

Part 19: Testimonium¹

Normal form

In witness of which I (name) have signed my name² on (date)³ (or) the day and year first above written.

- ¹ As to the execution of a will, see [20-176] and the notes to it.
- ² 'Signed my name' is perhaps more intelligible to a layman than the traditional expression, and may be used where the testator will do so, but of course it is not applicable to the case of a testator who is illiterate or employs someone else to sign, in which case the traditional expression 'hereto set my hand' may be used.
- ³ The date will not be included here if the form of beginning in [20-003] stating the date is adopted.

Alternative form

In witness of which I (name) have to [each sheet of¹] this my will in this and the preceding (number) sheets of paper contained signed my name (or) set my hand on (date) (or) the day and year first before written.

¹ One signature is sufficient, but it is better where the will is contained in more than one sheet of paper that each sheet is signed by the testator. The witnesses usually sign on the last page only although it would do no harm for the testator and witnesses to sign or initial each and every page.

Mentally disordered person¹

In witness of which this will is signed by me (name) acting by (name) pursuant to the above mentioned order on (date).

¹ A 'mentally disordered person' is now more properly referred to as a 'person lacking mental capacity': Mental Capacity Act 2005, s 2. See Mental Capacity Act 2005, s 16; 18 and the beginning and attestation clauses, [20-179] and [20-356], and the notes to them.

Part 20: Attestation¹

Short form²

Signed by (name) (or) the Testator in the presence of both of us and then by us in [his]:

¹ No attestation clause is strictly necessary (Wills Act 1837, s 9), but one should always be inserted both to show the testator and witnesses what the law requires, and to make it unnecessary when the will is proved to obtain an affidavit by one of the witnesses of due execution. See also [20-176] and the notes to it. If there is an attestation clause and the Will

seems valid then strong evidence will be needed to show the Will was not properly executed: *Sherrington v Sherrington* [2005] EWCA Civ 326, 7 ITELR 711, [2005] 3 FCR 538.

² This form has been drawn to make it conform to that held sufficient in *Re Selby-Bigge* [1950] 1 All ER 1009.

Traditional form

[20-348] **Signed** by the above-named (*name*) as and for [his] last will (*or*) a [second] codicil to [his] will in the presence of us both being present at the same time who in [his] presence have signed our names as witnesses

Illiterate testator¹

[20-349] **Signed** by the [Testator] with [his] mark as [his] will after it had been read to [him] by (*name*) and [he] appeared perfectly to understand and approve it in the presence of both of us and then by us in [his].

[20-350] ¹ Rule 11 of the Non-Contentious Probate Rules 1987 provides that if it appears that there are doubts whether the testator had knowledge of the contents of the will (eg because of blindness, illiteracy etc) the registrar must be satisfied that the testator had such knowledge. If the attestation clause does not set out the exact circumstances of the execution of the will, including the fact that the will was read to and understood by him, the normal practice of the registrar is to require affidavit evidence: see Declarations [3-206].

Blind testator¹

[20-351] **Signed** by (*name*) who is [blind (*or*) partially sighted] as [his] will after it had been read to [him] by (*name*) and [he] appeared perfectly to understand and approve it in the presence of both of us and then by, us in [his].

[20-352] ¹ See [20-350], note 1.

Testator who is literate but deaf and dumb

[20-353] **Signed** by (*name*) who is deaf and dumb but is able to read as [his] will and read over the contents and signified [his] understanding and approval of it in the presence of both of us and then by us in [his].

Where the will is signed by another person for the testator¹

[20-354] **Signed** by (*name*) of (*address*) with the name of the [testator] as his will after it had been read to [him] by (*name*) and [he] appeared perfectly to understand it in [his] presence and by [his] direction and in the presence of both of us and then by us in [his].

[20-355] ¹ As to attestation clauses in cases of illiterate or incapacitated persons, see Non-Contentious Probate Rules 1987, r 11. See [20-350], note 1. It is helpful to add the name of the person who read over the will in case the validity of the will is challenged in any way. If the name is not in the attestation clause consider leaving a note with the details with the will.

Will of a mentally disordered person¹

[20-356] **Signed** by (*name*) with the name of [*name of testator*] and with [his] own name pursuant to the said order in the presence of both of us and then by us in [his].

[20-357] **Sealed** with the official seal of the Court of Protection on (*date*).

¹ This is an attestation clause of a will of a person lacking mental capacity. The powers of the Court of Protection under the Mental Capacity Act 2005, s 16 include, under s 18(1)(i), an order for the execution of a will for a person lacking capacity. Sch 2, para 3 set out the requirements relating to the execution of such a will, which must:
(a) state that it is signed by the patient acting by the authorised person;

- (b) be signed by the authorised person with the name of the patient, and with his own name, in the presence of two or more witnesses present at the same time;
 - (c) be attested and subscribed by the witnesses in the presence of the authorised person; and
 - (d) be sealed with the official seal of the Court of Protection
- See *Re P* [2009] EWHC 163 (Ch), [2010] Ch 33, [2009] 2 All ER 1198 for guidance about the matters to be considered when considering a will made under this section.

Add to the ordinary form where there are alterations¹

(...) the interlineations between the lines (*number*) and (*number*) (*or*) the alteration' in or the erasure in the line (*number*) of the page (*number*) having been previously made (*or*) the words 'and etc' in the line (*number*) of the page (*number*) having been first struck through. [20-358]

¹ These should be initialled by the testator and witnesses where they occur. [20-359]

Will of a testator who is not fluent in English

This will (having been in our presence read to (*name*) (who understands [Italian] but has an imperfect knowledge of and cannot read English) by me the undersigned (*first witness*) in English and having been truly interpreted by me the undersigned (*second witness*) who understands both English and Italian when (*name*) appeared thoroughly to understand it and approve its contents) was signed by the [Testator] in the presence of both of us and then by us in [his]. [20-360]

- 'Prohibited Materials' (to be specified—could include materials which do not conform with any British Standard or EU equivalent at the time of being specified or contravene the report 'Good Practice in the selection of Construction Materials' produced by Ove Arup & Partners (September 2002)).
- 'Property' the property described in the schedule and where the context so permits or requires any part of it.
- 'Services' (nature of services to be specified)
- 'Works' (nature of work to be specified)
- 1.2 [use all or part as appropriate of Standard Clauses: [2-216]]

BACKGROUND

- 2.1 The (Party-A) has entered into an agreement dated (date) with the Landlord for a lease of the Property for [period] subject to [covenants] under which as lessee [he] is entitled to the collateral warranty given by this deed.
- 2.2 Under the terms of the [Building Contract (or) Appointment] the (Party-B) agreed to enter into this deed with the (Party-A).

[BUILDER'S (OR) PROFESSIONAL'S] STANDARD AND RELIANCE

- 3.0 The (Party-B) warrants and undertakes to the (Party-A) that:
- 3.1 [he] has complied with and will continue to comply with [his] obligations set out in the [Building Contract (or) Appointment];
- 3.2 [he] has exercised the skill, care and diligence in complying with [his] obligations under clause 3.1 expected from a competent person carrying out [a comparable business (or) the same profession] as the (Party-B) on [Works (or) Services] of a similar size and complexity to the [Works (or) Services] under the [Building Contract (or) Appointment];
- 3.3 [he] acknowledges that the (Party-A) has relied on the (Party-B) carrying out the [Works (or) Services] in accordance with clauses 3.1 and 3.2 and that a duty of care is owed in respect of the [Works (or) Services] undertaken under the [Building Contract (or) Appointment].

PROHIBITED MATERIALS

- 4 (in the case of the architect)
- The (Party-B) warrants to the (Party-A) that [he] has not specified and will not specify for use in or about the Services any Prohibited Materials. (or, in the case of the builder)
- 4 The (Party-B) warrants to the (Party-A) that [he] has not used and will not use in or about the Works any Prohibited Materials.

INSURANCE

- 5.1 The (Party-B) shall maintain with a reputable insurance company professional indemnity insurance covering the obligations arising under this deed for an amount not less than £(...) ((...) pounds) for any occurrence or series of occurrences arising out of each and every event until (number) years after the date of Practical Completion of the Works under the Building Contract.

- 5.2 The (Party-B) shall when reasonably required by the (Party-A) produce documentary evidence that [his] professional indemnity insurance is being maintained. [21-027]

INTELLECTUAL PROPERTY AND DOCUMENTS

- 6.1 The (Party-A) shall without charge have an irrevocable right to use and copy all documents prepared or produced by or on behalf of the (Party-B) for carrying out the [Works (or) Services] under or in connection with the [Building Contract (or) Appointment] for any purpose relating to the Property including its repair, construction, alteration, extension and advertising or leasing. [21-028]
- 6.2 The (Party-B) shall promptly provide copies of any documents referred to in clause 6.1 as and when requested by the (Party-A). [21-029]

ASSIGNMENT

- 7 The (Party-A) shall be entitled to assign this deed to any person acquiring a leasehold interest in the Property. On assigning this deed the (Party-A) shall give notice of the assignment to the (Party-B). [21-030]

VARIATIONS

- 8 [No variation unless agreed in writing: Standard Clauses: [2-275]] [21-031]

LIABILITY

- 9.1 The (Party-B) undertakes to compensate the (Party-A) in full on demand for all such losses sustained by [him] as a result of any failure by the (Party-B) to comply fully with [his] obligations in connection with this deed. [21-032]
- 9.2 The (Party-B)'s liability under this deed shall cease on the expiry of (number) years from either the date of Practical Completion of the Works under the Building Contract or (if earlier) the date of termination of the [Building Contract (or) Appointment]. [21-033]

SERVICE OF NOTICES

- 10 [Standard Clauses: [2-282]] [21-034]

JURISDICTION

- 11 [Standard Clauses: [2-204]] [21-035]

THE SCHEDULE

(description of property)

(attestation clauses)

- 1 A situation may arise, where a landlord enters into a separate agreement with a builder and each of the professional advisers involved for the carrying out of design or construction work in relation to a property, which is to be leased to a tenant for a specified period. It is not uncommon in that situation for the builder and professional advisers to agree with the landlord to provide a collateral warranty to the tenant. This collateral warranty is intended for use in the situation outlined above where a tenant enters into a medium term lease with the landlord containing full repairing obligations. Where a tenant would ordinarily either rely on any tortious remedies he may have against a builder or professional adviser or, under the Contracts (Right of Third Parties) Act 1999, by entering into a collateral warranty with each [21-036]

of them, a direct contractual link is created. Notwithstanding the introduction of the Contracts (Rights of Third Parties) Act 1999 the use of collateral warranties in this scenario is widespread. The precedent does need to be adapted depending on whether it is to be used for or by the builder or adviser.

[21-037] 3 Managing agency agreement¹

Suggested terms for parties:

(Party-A) 'Developer' or 'Owner'

(Party-B) 'Manager'

THIS AGREEMENT is made on (date) between (name) of (address) ('the (Party-A)') and (name) of (address) ('the (Party-B)').

DEFINITIONS

[21-038] 1 In this agreement the following terms have the following meanings.

'Development Programme' the development programme agreed between the (Party-A) and the (Party-B) for the carrying out of the Project, updated as necessary by the (Party-B) at the (Party-A)'s request.

'Project' the development of a plot of land at (address) by the construction and sale of (number) dwelling houses and the associated road and other site work.

'Commencement Date' (date).

'Confidential Information' all confidential information relating to the business organisation, transactions, finances, specifications, methods, designs, formulae, technology and business activities or affairs, of and concerning the Project and the (Party-A) and its customers and suppliers.

'Profits' the profits (or losses) of the (Party-A) in the execution of the Project after interest but before tax shown in its [audited (or) management] accounts on the assumption that the gains and losses of land value are ignored. References to Profits for a month means the (Party-A)'s profit for that period shown in its unaudited monthly management accounts prepared on the same accountancy principles as the audited accounts.

'(Party-B)'s Prior Charge' the first £(...) ((...)) pounds) of the Profits.

'(Party-A)'s Charge' [an amount equal to the (Party-B)'s Prior Charge (or) (amount)% of the Profits].

START AND TERM OF ENGAGEMENT

[21-039] 2 The (Party-B)'s engagement under this agreement starts on the Commencement Date and shall continue for the duration of the Project.

ENGAGEMENT AND DUTIES

[21-040] 3.1 The (Party-A) and the (Party-B) agree for the engagement of the (Party-B) by the (Party-A) as its sole agent to manage the Project.

3.2 The (Party-B) shall in all correspondence, sales and other business documents relating to the Project describe himself as the (Party-A)'s 'managing agent' and shall not hold himself out to be a director, officer or employee of the (Party-A) or to represent the (Party-A) in any other capacity.

3.3 The (Party-B) shall not have power to enter into contracts and obligations on behalf of the (Party-A) except for the purposes of the Project and for amounts within the financial limits from time to time reasonably specified by the (Party-A), taking account of the resources reasonably required to implement the Development Programme. The (Party-B) shall not have power to make representations to, negotiate with or give instructions to the (Party-A)'s bank.

3.4 The (Party-A) has the right at any time or times to vary the extent of the (Party-B)'s authority by written notice or orally confirmed in writing.

3.5 As and when reasonably requested by the (Party-B) the (Party-A) shall make available the services of its directors or other employees to give advice and assistance relating to the Project.

3.6 Nothing in this agreement shall constitute the relationship of partners or joint venturers between the (Party-A) and the (Party-B).

RESULTS AND REPORTING

4.1 The (Party-B) shall use all reasonable endeavours to procure the completion of the Project not later than (number) months from the Commencement Date and will be in personal attendance at the Project's site through all working times except when it is necessary to leave it for the performance of his duties under this agreement.

4.2 The (Party-B) shall report to the (Party-A) fully on the progress of the Project and supply (in writing or computer readable form) all information which the (Party-A) reasonably requests about the Project, including the monthly operating reports showing actual performance in comparison with the programme and budget.

4.3 The (Party-B) shall maintain complete and accurate accounts and records of the Project and all transactions undertaken by him in respect of it including VAT records and reporting and accounting to the Customs & Excise. If the (Party-A) is not satisfied with the (Party-B)'s performance of his obligations under this clause it may have all or part of these obligations performed by its auditors and deduct the cost of so doing from the (Party-B)'s Prior Charge.

FINANCES

5 On condition that the (Party-B) manages the Project in accordance with the Development Programme and budget from time to time agreed between him and the (Party-A) the (Party-A) undertakes with the (Party-B) to make available to him such funds as the (Party-A) from time to time reasonably estimates to be required for the purposes of the Project, taking account of the resources reasonably required to implement the Development Programme.

RATIFICATION AND INDEMNITY

6 To the extent that the (Party-B) acts within the authority from time to time given to him by the (Party-A):

[24-400] (Party-C) 'Former Receiver'
THIS DEED is made on (*date*) between (*name*) (*or*) (*name*) Ltd company (*number*) of (*or*) whose registered office is at (*address*) ('(Party-A)'), (*name*) of (*address*) ('(Party-B)') and (*name*) of (*address*) ('(Party-C)').

Definitions

[24-401] 1 In this deed the following terms have the following meanings.

- 'Appointment' a deed dated (*date*) by which the (*Party-C*) was appointed receiver of the Company.
- 'Company' (*name*) [Ltd (*or*) plc] company (*number*).
- 'Debenture' made between the Company and the (*Party-A*) by which the Company charged all its assets to secure payment of the Indebtedness to the (*Party-A*).
- (*or*)
- 'Mortgage' a mortgage dated (*date*) by which the Property [with other property] was charged by the Company to the (*Party-A*) by way of legal mortgage to secure the payment of [the Indebtedness (*or*) £(...) ((...)) pounds], interest and other money] to the (*Party-A*).
- 'Indebtedness' all money from time to time owing on the security of the [Debenture (*or*) Mortgage], which is now £(...) ((...)) pounds plus interest from (*date*) to the date of this (*document*).
- 'clause' and 'schedule' respectively, clauses or schedules to this deed unless the context shows a contrary meaning.

Source of power

[24-402] 2 [see clause [24-389]]

Removal²

[24-403] 3 The (*Party-A*) removes and discharges the (*Party-C*) from the office of receiver and manager.
(*or*)

Resignation

[24-404] 3 The (*Party-C*) resigns [his] office as receiver with immediate effect and acknowledges that [he] has received all remuneration to which [he] is entitled under the Appointment and the (*Party-A*) accepts [his] resignation.

Appointment³

[24-405] 4 The (*Party-A*) appoints the (*Party-B*) to be receiver under the Appointment in the (*Party-C*)'s place with effect from the date of this (*document*).

Remuneration

[24-406] 5.1-2 [see clauses [24-393] and [24-394]]
[attestation clauses]

- 1 See [24-386] and the notes to it.
- 2 A receiver appointed under the Law of Property Act 1925 may be removed, but an administrator cannot be removed except by a court order: Insolvency Act 1986, s 45. See [24-398], note 6.
- 3 See note 2 above and the note referred to in it.

40 Deed of covenant by purchaser of equity of redemption with lender for payment of mortgage debt: variation for release of vendor¹

Suggested terms for parties:

- (Party-A) 'Transferee' or '[New] Mortgagor'
- (Party-B) 'Lender' or 'Mortgagee'
- (Party-C) 'Borrower' or '[Original] Mortgagor' or 'Transferor'

Date and parties

THIS DEED OF COVENANT AND RELEASE is made on (*date*) between (*name*) of (*address*) ('(Party-A)') [and] (*name*) of (*address*) ('(Party-B)') [and] (*name*) of (*address*) ('(Party-C)')].

Definitions

1 In this deed the following terms have the following meanings.

- 'Indebtedness' all money from time to time owing on the security of the Mortgage and any document supplemental to it, which is £(...) ((...)) pounds plus interest from (*date*) to the date of this (*document*).
- 'Mortgage' a mortgage dated (*date*) by which the Property was charged by the (*Party-C*) to the (*Party-B*) by way of legal mortgage to secure the payment of [the Indebtedness (*or*) £(...) ((...)) pounds], interest and other money] to the (*Party-B*).
- 'Property' the property known as (*address*) [with registered title number (*number*) (*or*) comprised in the (*document*) dated (*date*)].
- 'Transfer' a transfer of the Property dated (*date*) and made by the (*Party-C*) to (*Party-A*) subject to the Mortgage.
- (*or*)
- 'Conveyance' a conveyance of the Property dated (*date*) and made between the (*Party-C*) and (*Party-A*) subject to the Mortgage.
- 'clause' and 'schedule' respectively, clauses or schedules in this deed unless the context shows a contrary meaning.

Background

2 By the [Transfer (*or*) Conveyance] the Property was conveyed by the (*Party-C*) to the (*Party-A*) in fee simple subject to the Mortgage and the Indebtedness.

Existing rights

[24-412] 3 The (Party-B) agrees to refrain from demanding immediately payment of the Indebtedness on the (Party-A) entering into the covenant contained in this deed.

Covenants etc in prior deed

[24-413] 4 [Standard Clauses: incorporation of obligations: [2-256], substituting 'The (Party-A)' for 'each of the parties', '(Party-B)' for 'other' and 'Mortgage' for 'prior (document)', and omitting the two bracketed sub-clauses]

[No] release

[24-414] 5 [Standard Clauses: no release: [2-226], substituting '(Party-C)' for '(Party-B)' and 'the Mortgage' for 'the (document)']

(or)

[24-415] 5 [Standard Clauses: release: [2-229], substituting '(Party-C)' for '(Party-B)', '(Party-B)' for '(Party-A)' and 'Mortgage' for '(document)']

[attestation clauses]

[24-416] 1 In the absence of an express covenant or agreement a purchaser of an equity of redemption is under no personal liability to the lender (*Re Errington, ex p Mason* [1894] 1 QB 11). The execution of this deed, without incorporating the variation, will not release the vendor of the equity of redemption from his covenant in the mortgage, and the lender will thus have the benefit of two personal covenants and the security of the property. The more usual plan is to join the lender in the conveyance of the equity of redemption and he therein releases the vendor and takes a fresh covenant from the purchaser. As to the importance of the first mortgagor obtaining a release even in the case of a building society mortgage, see *West Bromwich Building Society v Bullock* [1936] 1 All ER 887.

[24-417] 41 Solicitors' undertaking on completion of a sale to discharge building society mortgage¹

[24-418] re: [(name) to (name)]

(address of property)

In consideration of your today completing the purchase of (the above property) we hereby undertake forthwith to pay over to the (name) Building Society the money required to redeem the mortgage/legal charge dated (date) and to forward the receipted mortgage/legal charge (or) the executed form END1/DS1² to you as soon as it is received by us from the (name) Building Society.

(signature of vendor's solicitors)

To (name)

(purchaser's solicitors)

[24-419] 1 This is the form recommended by the Council of the Law Society: see Appendix VI.2 in The Law Society's *Conveyancing Handbook* (1997 edition). When this form was promulgated in LSG vol 67, p 753, the opinion there expressed, that the practice of giving undertakings should be accepted by purchasers' solicitors, is limited to building society mortgages and does not extend to private or bank mortgages. A purchaser on paying the price is entitled to a

complete title and, notwithstanding common practice, the better view is that he should insist on the vacated mortgage being handed over with the deeds: *Rourke v Robinson* [1911] 1 Ch 480.

2 The reference to form END1/DS1 has been added by the editor and should be used where the title to the land and the charge are registered.

42 Release of interest in land by person in occupation¹

To (Party-B)

(address) ('Property')

I I (name) [intend to] live at the Property as a member of the household of (name) [and (name)] and acknowledge that the legal title to it is owned by [(name) in [his] sole name (or) (name) and (name) jointly] and that [[he] (or) they] intend[s] to mortgage it to you as security for a loan to be made by you to [[him] (or) them]. I [release to you all interest (if any) which I have in the Property (or) I shall not assert any interest in the Property in priority to you] so that any interest of mine in it will be postponed to the mortgage in your favour.

Dated (date)

Signed (name)

1 Unless this release is executed as a deed, it must be made for valuable consideration. Notwithstanding the overreaching provisions of the Law of Property Act 1925, the interests of persons in occupation may be overriding interests within Sch 1 or 3 to the Land Registration Act 2002: see *Williams & Glyn's Bank Ltd v Boland* [1981] AC 487, [1980] 2 All ER 408, HL. According to *Bristol and West Building Society v Henning* [1985] 2 All ER 606, [1985] 1 WLR 778, CA the beneficial interests of an occupier with no legal estate who was aware of and agreed to a mortgage by the legal owners will be subject to the mortgage and this can apply to a remortgage of which the occupier was unaware (*Equity and Law Home Loans Ltd v Prestidge* [1992] 1 All ER 909, [1992] 1 WLR 137). In *State Bank of India v Sood* [1997] Ch 276, [1997] 1 All ER 169, CA, the claims of the third and subsequent defendants, who claimed to be beneficiaries under the trust for sale on which the property was held, were overreached by LPA 1925, s 2(1)(ii) and were not overriding interests under LRA 1925, s 70(1)(g), which was the predecessor of Sch 1 and 3 to the Land Registration Act 2002 (and of wider effect than Sch 3).

43 Application to enter an obligation to make further advances

Use Land Registry form CH2.

44 Application to note agreed maximum amount of security

Use Land Registry form CH3.

45 Cancellation of entries relating to a registered charge

Use Land Registry form DS1.

This form should be accompanied by either Form AP1 or Form DS2

[24-429] **46 Application to cancel entries relating to a registered charge**

Use Land Registry form DS2.

[24-430]-[24-432] **47 Release of part of the land from a registered charge**

Use Land Registry form DS3.

This form should be accompanied by either Form AP1

[24-433]-[24-434] **48 Electronic Notification For Discharge (END)**

Use Land Registry form DS3. On the electronic version click here for the form.

[24-434A] **49 ABI model form of performance bond**

Name and parties

[24-434B] THIS GUARANTEE BOND is made on (date) between (name) of (address) ('(Party-A)'), (name) of (address) ('(Party-B)') AND (name) of (address) ('(Party-C)') whose names and [registered office] addresses are set out in the schedule to this Bond (the 'Schedule')

Definitions

Suggested terms for parties:

- (Party-A) 'Contractor'
- (Party-B) 'Guarantor'
- (Party-C) 'Employer'

- (1) The '(Party-A)' as principal
- (2) The '(Party-B)' as guarantor, and
- (3) The '(Party-C)'

Background

By a contract (the 'Contract') entered into or to be entered into between the (Party-C) and the (Party-A) particulars of which are set out in the schedule the (Party-A) has agreed with the (Party-C) to execute works (the 'Works') upon and subject to the terms and conditions therein set out.

The (Party-B) has agreed with the (Party-C) at the request of the (Party-A) to guarantee the performance of the obligations of the (Party-A) under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

Guarantee

1 The (Party-B) guarantees to the (Party-C) that in the event of a breach of the Contract by the (Party-A), the (Party-B) will subject to the provisions of

this Guarantee Bond satisfy and discharge the damages sustained by the (Party-C) as established and ascertained pursuant to and in accordance with the Contract and taking into account all sums due or to become due to the (Party-A).

Maximum liability

2 The maximum aggregate liability of the (Party-B) and the (Party-A) under this Guarantee Bond shall not exceed the sum set out in the schedule (the 'Bond Amount') but subject to that limitation and to clause 4 the liability of the (Party-B) shall be co-extensive with the liability of the (Party-A) under the Contract.

Alterations

3 [Standard clauses: [2-222]]

Discharge and release

4 Whether or not this Guarantee Bond shall be returned to the (Party-B) the obligations of the (Party-B) under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the (Party-B) before Expiry.

Performance undertaking

5 The (Party-A) having requested the execution of this Guarantee Bond by the (Party-B) undertakes to the (Party-B) (without limitation of any other rights and remedies of the (Party-C) or the (Party-B) against the (Party-A)) to perform and discharge the obligations on its part set out in the Contract.

Assignment

6 [Standard clauses: [2-086]]

Third parties

7 [Standard clauses: [2-238]]

Law and jurisdiction

8 [Standard clauses: [2-204]]

IN WITNESS etc

[attestation clauses]

Schedule

The (Party-A): [] whose [address] [registered office address] is [].

The (Party-B): [] whose registered office address is [].

The (Party-C): [] whose [address] [registered office address] is [].