

# MR01

## Particulars of a charge



**A fee is payable with this form.**  
Please see 'How to pay' on the  
last page

**You can use the WebFiling service to file this form online**  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where there is no  
instrument Use form MR08

For further information, please  
refer to our guidance at  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)  
COMPANIES HOUSE

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery

You **must** enclose a certified copy of the instrument with this form. The instrument must be scanned and placed on the public record

THURSDAY



A29 16/05/2013 #356  
COMPANIES HOUSE

### 1 Company details

Company number 03879165

Company name in full Baxi Potterton Limited

7 For official use

→ **Filing in this form**  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date 07/05/2013

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name The Royal Bank of Scotland plc  
as Security Agent

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

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**Description**

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

**Continuation page**

Please use a continuation page if you need to enter more details

Description

N/A

5

**Fixed charge or fixed security**

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ **Yes**

☐ **No**

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ **Yes** Continue

☒ **No** Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ **Yes**

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ **Yes**

☐ **No**

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Trustee statement ①

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

Signature

Please sign the form here

Signature

Signature

X Allen & Overy LLP

on behalf of the chargee

15/05/13

X

This form must be signed by a person with an interest in the charge

# MR01

## Particulars of a charge



### Presenter information

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name Ian Johnston

Company name Allen & Overy LLP

Address Apollolaan 15

Post town Amsterdam

County/Region

Postcode 1 0 7 7 A B

Country The Netherlands

DX

Telephone +31 (0) 20 674 10 00



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



### Checklist

**We may return forms completed incorrectly or with information missing**

**Please make sure you have remembered the following.**

- ☒ The company name and number match the information held on the public Register
- ☒ You have included a certified copy of the instrument with this form
- ☒ You have entered the date on which the charge was created
- ☒ You have shown the names of persons entitled to the charge
- ☒ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☒ You have given a description in Section 4, if appropriate
- ☒ You have signed the form
- ☒ You have enclosed the correct fee
- ☒ Please do not send the original instrument, it must be a certified copy



### Important information

**Please note that all information on this form will appear on the public record.**



### How to pay

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House'



### Where to send

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:**

#### For companies registered in England and Wales

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

#### For companies registered in Scotland

The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

#### For companies registered in Northern Ireland

The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



### Further information

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



**FILE COPY**

## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 3879165

Charge code. 0387 9165 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th May 2013 and created by BAXI POTTERTON LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th May 2013.

Given at Companies House, Cardiff on 21st May 2013



*po*



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

EXECUTION VERSION

## SHARES CHARGE

7 MAY 2013

Between

**BAXI POTTERTON LIMITED**  
(as Chargor)

and

**THE ROYAL BANK OF SCOTLAND PLC**  
(as Security Agent)

in respect of  
the Issued Share Capital of Baxi Heating UK Limited

Except for material redacted pursuant to s.859G  
of the Companies Act 2006 I certify that this is  
a correct copy of the original document.

IR Johnston

Ian Johnston, Solicitor.  
15/05/13

**ALLEN & OVERY**

Allen & Overy LLP

0035591-0000781 AMBA 3777698 9

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**THIS SHARES CHARGE** is made on 1 May 2013

**BETWEEN**

- (1) **BAXI POTTERTON LIMITED** a private company with limited liability incorporated in England and Wales (registered number 03879165) and having its registered office at Brooks House, Coventry Road, Warwick, Warwickshire, England, CV34 4LL, (the **Chargor**), and
- (2) **THE ROYAL BANK OF SCOTLAND PLC** as agent and trustee for the Secured Parties (the **Security Agent**) pursuant to the Intercreditor Agreement (as defined below)

**WHEREAS**

- (A) pursuant to a revolving facility agreement (the **Existing RCF**) dated 21 December 2010 (and as amended and/or restated from time to time) and made between, among others, BDR Thermea Group B V , the financial institutions named therein as lenders and The Royal Bank of Scotland plc as agent and security agent (the **Agent**), certain banks agreed to make available certain facilities on the terms thereof,
- (B) by an amendment and restatement agreement dated 29 April 2013 (the **Amendment and Restatement Agreement**) the terms of the Existing RCF have been amended (the **Amended RCF**),
- (C) by a forward start facility agreement dated 29 April 2013 (the **Forward Start Facility Agreement**) between, among others, the Agent, the Security Agent, the lenders and ancillary lenders named therein (the **Forward Start Lenders**), BDR Thermea Group B V , the Chargor, and the companies named therein as original borrowers, the Forward Start Lenders have agreed to provide to the original borrowers a revolving facility of EUR 550,000,000 on or prior to 21 December 2015,
- (D) by a junior facility agreement dated 29 April 2013 (the **Junior Facility Agreement**) between, among others, BDR Thermea Group B V and Cooperatieve Centrale Raiffeisen-Boerenleenbank B A as agent (the **Junior Agent**), and the lenders named therein (the **Junior Lenders**) the Junior Lenders have agreed to provide to the original borrower a term loan facility in the aggregate amount of EUR 100,000,000, and
- (E) on 29 April 2013 the Agent, the Junior Agent, the Security Agent, the Senior Lenders, the Junior Lenders, the Hedge Counterparties (each as defined therein), the Chargor and BDR Thermea Group B V and certain of its other subsidiaries as original debtors (among others) have entered into an intercreditor agreement (the **Intercreditor Agreement**)

**NOW THIS DEED WITNESSES** as follows

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Charge (including the recitals), unless the context otherwise requires or unless otherwise defined or provided for in this Charge, words and expressions shall have the same meanings as is attributed to them under the Intercreditor Agreement. In addition, the following words and expressions shall have the respective meanings ascribed to them

In this Charge

**Acceleration Event** has the meaning given to it in the Intercreditor Agreement



**Additional Shares** means any shares in the issued share capital of the Company which are acquired by or issued to the Chargor after the date of this Charge

**Charged Assets** means the Shares and the rights in respect thereof charged in terms of Clause 3

**Company** means Baxi Heating UK Limited, a company incorporated in England and Wales (registered number 03879156) and having its registered office at Brooks House, Coventry Road, Warwick, Warwickshire, England, CV34 4LL

**Default Rate** means the rate of interest per annum as described in clause 10.3 (Default interest) of the Amended RCF, clause 10.3 (Default interest) of the Forward Start Facility Agreement and clause 8.5 (Default interest) of the Junior Facility Agreement

**First Ranking Share Charge** means the share charge dated 13 December 2011, under which the Chargor granted a first ranking fixed charge over the Shares in favour of the Security Agent securing the liabilities under, amongst other things, the Existing RCF

**Initial Shares** means the 200,000,000 ordinary shares of £1 each in the issued share capital of the Company, being the whole issued share capital of the Company as at the date of this Charge, which the Chargor has agreed to mortgage and charge in accordance with the provisions of the Intercreditor Agreement

**Receiver** means an administrative receiver or a receiver appointed pursuant to the provisions of this Charge or pursuant to any applicable law and such expression shall include, without limitation, a receiver and manager

**Secured Obligations** has the meaning given to it in the Intercreditor Agreement

**Shares** means

- (a) the Initial Shares, and
- (b) any Additional Shares

## 1.2 Interpretation

Save where the contrary is indicated, any reference in this Charge to

- (a) a **company** includes any body corporate,
- (b) a **person** includes an individual, body corporate, partnership, government, state or agency of a state, in each case whether or not having separate legal personality,
- (c) any statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the same statute,
- (d) the singular shall include the plural and vice versa,
- (e) this Charge and any provisions of this Charge or to any other agreements, instrument or document are to be construed as references to this Charge, those provisions or that agreement, instrument or document, as is in force for the time being and as amended, varied, supplemented, substituted, replaced or novated from time to time, including (without limitation) in respect of this Charge, as supplemented from time to time,

- (f) Clauses and Schedules are to be construed as references to the Clauses of, and Schedules to, this Charge, as amended or varied from time to time and references to subclauses shall unless otherwise specifically stated be construed as references to the subclauses of the Clause in which the reference appears

### **1.3 Rights of Third Parties**

A third party (being any person other than the Chargor or the Security Agent and their permitted successors and assignees) may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and no consent of any third party is required for any amendment, variation or termination of this Charge

### **1.4 Headings**

The headings in this Charge are for convenience only and are to be ignored in construing this Charge

### **1.5 Unlawful Financial Assistance**

No obligations shall be included in the definition of **Secured Obligations** to the extent that, if included, the security interest granted pursuant to this Charge or any part thereof would be void as a result of a violation of the prohibition on financial assistance as contained in any applicable financial assistance rules under any relevant jurisdiction (the **Prohibition**) and all provisions hereof will be construed accordingly For the avoidance of doubt, this Charge will continue to secure those obligations which, if included in the definition of **Secured Obligations**, would not constitute a violation of the Prohibition

## **2. COVENANT TO PAY**

The Chargor hereby as principal debtor and not merely as surety, covenants with the Security Agent that it will pay or discharge the Secured Obligations on the due date therefor in the manner provided in the relevant Debt Document

## **3. SECURITY**

- 3 1 All security under this Charge is created over the present and future assets of the Chargor
- 3 2 For certain good and valuable consideration, receipt of which is acknowledged, the Chargor with full title guarantee and as continuing security for the payment and discharge to the Security Agent of all the Secured Obligations mortgages and charges the Shares to the Security Agent, by way of a fixed charge
- 3 3 For certain good and valuable consideration, receipt of which is acknowledged, the Chargor with full title guarantee and as continuing security for the payment and discharge to the Security Agent of all the Secured Obligations mortgages and charges and agrees to mortgage and charge to the Security Agent by way of a fixed charge all stocks, shares, securities (and dividend and interest thereon), rights, money or property accruing or offered at any time (whether by way of redemption, bonus, preference, options rights or otherwise) to or in respect of any of the Shares or in substitution or exchange for or otherwise derived from, any of the Shares
- 3 4 For certain good and valuable consideration, receipt of which is acknowledged, the Chargor with full title guarantee and as continuing security for the payment and discharge to the Security Agent of all the Secured Obligations assigns and agrees to assign (subject to the proviso for reassignment

contained in Clause 18) all rights relating to the Shares which the Chargor may have now or in the future against the Security Agent or any third party

#### **4. REGISTRATION OF SHARES**

- 4 1 Upon execution of this Charge, to the extent such certificates and documents of title have not already been deposited with the Security Agent pursuant to the First Ranking Share Charge, all certificates and other documents of title to the Initial Shares shall be deposited with or to the order of the Security Agent as soon as practicable after the date of this Charge in such a manner as the Security Agent shall require
- 4 2 Upon execution of this Charge, to the extent such executed but undated share transfer has not already been delivered to the Security Agent pursuant to the First Ranking Share Charge, the Chargor shall promptly deliver to the Security Agent a duly executed but undated share transfer in respect of the Initial Shares transferring the Initial Shares to the Security Agent, it being agreed between the Security Agent and the Chargor that the share transfer will not be dated by the Security Agent prior to the Charge becoming enforceable in accordance with Clause 12
- 4 3 If, at any time, the Chargor is issued or acquires any Additional Shares it shall
- (a) as soon as practicable after it acquires such Additional Shares deposit with the Security Agent all certificates and other documents of title to those Additional Shares and duly executed but undated share transfers in respect of them, and
  - (b) procure that the Company takes, or omits to take, all such steps as the Security Agent may require in order to enable it to enforce its security over the Additional Shares without restriction
- 4 4 Following the occurrence of an Acceleration Event and at the written request of the Security Agent, the Chargor shall deliver to the Security Agent a copy certified by a director or the company secretary of the Chargor as true and in full force and effect, of a resolution of the board of directors (or of a duly appointed committee thereof) of the Company in form and substance approving such transfer and resolving that the Security Agent be entered on the register of members of the Company as holder of the Shares to which such transfer relates and that a new share certificate in respect of such Shares in favour of the Security Agent be issued accordingly. The Chargor undertakes to procure that the Security Agent will accordingly be entered in the register of members of the Company forthwith and that a new share certificate as referred to above will be issued accordingly
- 4 5 If the Shares shall entitle the Chargor to rights to subscribe for any other securities then the Chargor shall do or procure to be done all such acts and things and execute or procure to be executed all such documents (including such deed or deeds supplementary hereto as the Security Agent shall reasonably require) so as to charge in favour of the Security Agent such number or amount of such other securities which the Security Agent is satisfied (acting reasonably) has a value equivalent to the value of such rights of subscription aforesaid

#### **5. PRESERVATION OF SECURITY**

- 5 1 The security constituted by this Charge shall be a continuing security and shall not be satisfied by any intermediate payment or satisfaction of the whole or any part of the Secured Obligations but shall secure the ultimate balance of the Secured Obligations
- 5 2 Where any discharge (whether in respect of this Charge, any other security or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be repaid on bankruptcy, liquidation or otherwise without

limitation, this security and the liability of the Chargor under this Charge shall continue as if there had been no such discharge or arrangement

## **6. FURTHER ASSURANCE**

6.1 The Chargor will promptly at its own cost do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)) for the purpose of exercising the rights or perfecting the Security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Assets) or for the exercise of the rights, powers and remedies of the Security Agent provided by or pursuant to this Charge or by law in each case in accordance with the rights vested in it under this Charge

6.2 The following covenants shall be implied in respect of any action taken by the Chargor to comply with its obligations under Clause 6.1

- (a) the Chargor has the right to take such action in respect of the Charged Assets, and
- (b) the Chargor will at its own cost do all that it reasonably can to give the Security Agent or its nominee the title and/or rights that it purports to give

## **7. POWER OF ATTORNEY**

7.1 With effect from the date of this Charge, the Chargor by way of security irrevocably appoints the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for

- (a) carrying out any obligation imposed on the Chargor by this Charge or any other agreement binding on the Chargor to which the Security Agent is a party (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets),
- (b) enabling the Security Agent to exercise, or delegate the exercise of, all or any of the rights granted under this Charge, and
- (c) enabling any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Charge or by law

7.2 The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers

## **8. WARRANTIES AND UNDERTAKINGS**

8.1 The Chargor represents and warrants to the Security Agent that, except as permitted under the Amended RCF and the Forward Start Facility Agreement or, after the Senior Discharge Date, the Junior Facility Agreement

- (a) it is the sole owner of the Shares,
- (b) the Shares are free from any lien, charge, encumbrance or option, other than the First Ranking Share Charge,

- (c) the Chargor is lawfully entitled to create the security constituted by this Chargor,
- (d) it is a private company with limited liability incorporated in England and Wales,
- (e) the obligations expressed to be assumed by it hereunder are legal, valid, binding and enforceable obligations,
- (f) the entry into and performance by it of its obligations hereunder will not
  - (i) conflict with any law or regulation applicable to it,
  - (ii) conflict with its constitutional documents, or
  - (iii) conflict with any material agreement or instrument binding upon it or any of its assets,
- (g) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Charge and the transactions contemplated hereunder

**8.2 The Chargor undertakes to the Security Agent that**

- (a) it shall not create or permit to subsist any Security over the Charged Assets, other than this Charge and the First Ranking Share Charge,
- (b) it shall not sell, transfer or otherwise dispose of the Charged Assets,
- (c) it shall not and shall procure that the Company will not vary any of its constitutional documents in any respect which would be reasonably likely to be materially adverse to the interests of the Security Agent, and
- (d) it shall not take or allow the taking of any action which may result in any shares in the Company being issued to any person other than to the Chargor, other than where such shares are issued to a person who immediately charges them in favour of the Security Agent as security for the Secured Obligations on the same terms as those set out in this Charge

**9. POWERS**

Unless and until an Acceleration Event occurs, the Chargor shall be entitled

- (a) to receive and retain for itself or otherwise from the Security Agent all dividends, interest and income received by it or the Security Agent in relation to the Charged Assets, and
- (b) to exercise or direct the Security Agent to exercise any voting rights attached to any of the Charged Assets but only in a manner consistent with the terms of this Charge

**10. SUSPENSION OF RIGHTS**

- 10.1** At any time after the occurrence of an Acceleration Event, and without any further consent or authority on the part of the Chargor, the Security Agent may exercise at its discretion (in the name of the Chargor or otherwise) in respect of any of the Charged Assets any voting rights and any powers or rights which may be exercised by the person or persons in whose name or names the Charged Assets are registered or who is the holder or bearer of them

- 10 2 If the Security Agent takes any such action as is referred to in Clause 10 1 above the Security Agent will forthwith give notice to the Chargor

## **11. CALLS**

The Security Agent may, but shall not be obliged to, pay any calls or other sums that may be or become due in respect of the Shares or any of them and the Chargor undertakes to pay to the Security Agent on written demand all such sums so paid by the Security Agent together with interest thereon at the Default Rate. Any monies expended by the Security Agent under this provision (and interest thereon) shall form part of the Secured Obligations and shall be secured by this Charge. Any interest payable thereon shall be payable after, as well as before, judgment or decree until actual payment in full of the Secured Obligations.

## **12. ENFORCEMENT OF SECURITY**

- 12 1 The security constituted by this Charge shall become enforceable upon and at any time after the occurrence of an Acceleration Event
- 12 2 Without limiting the valid and binding effect of this Charge at any time, if an Acceleration Event occurs the security constituted by this Charge shall become immediately enforceable and the Security Agent shall be entitled to put into force and to exercise immediately or as and when it may see fit any and every power possessed by the Security Agent by virtue of this Charge or available to a secured creditor (so that section 93 and section 103 of the Law of Property Act 1925 shall not apply to this security) and in particular (but without limitation) the Security Agent shall have power
- (a) to sell all or any of the Charged Assets in any manner permitted by law upon such terms as the Security Agent shall in its absolute discretion determine,
  - (b) to collect, recover or compromise and to give a good discharge for any moneys payable to the Chargor in respect of any of the Charged Assets, and
  - (c) to appropriate the Charged Assets by completing the signed share transfer form delivered to the Security Agent under the terms of this Charge

## **13. APPROPRIATION**

- 13 1 In this Charge, **financial collateral** has the meaning given to that term in the Financial Collateral Arrangements (No 2) Regulations 2003 (No 3226)
- 13 2 At any time after an Acceleration Event has occurred, the Security Agent may appropriate all or part of the financial collateral in or towards satisfaction of the Secured Obligations
- 13 3 The Security Agent must attribute a value to the appropriated financial collateral in a commercially reasonable manner
- 13 4 Where the Security Agent exercises its right of appropriation and the value of the financial collateral differs from the amount of the Secured Obligations, as the case may be, either
- (a) the Security Agent must account to the Chargor for the amount by which the value of the appropriated financial collateral exceeds the Secured Obligations, or
  - (b) the Chargor will remain liable to the Security Agent for any amount whereby the value of the appropriated financial collateral is less than the indebtedness

## 14. RECEIVER

- 14 1 At any time after this security becomes enforceable the Security Agent may without further notice appoint under seal or in writing under its hand any one or more qualified persons to be a receiver, administrative receiver or receiver and manager (hereinafter each called a **Receiver**) of all or any part of the Charged Assets in every respect as if the Security Agent had become entitled under the Law of Property Act 1925 to exercise the power of sale thereby conferred. In this Clause 14 **qualified person** means a person who, under the Insolvency Act 1986, is qualified to act as a receiver of the property of any company with respect to which he is appointed or (as the case may require) an administrative receiver of any such company
- 14 2 Every Receiver appointed in accordance with Clause 14 1 shall have and be entitled to exercise all powers conferred by the said 1925 Act as if such Receiver had been duly appointed thereunder. A Receiver who is an administrative receiver of the Chargor shall have all the powers of an administrative receiver under the Insolvency Act 1986. In particular by way of addition to but without hereby limiting any general powers hereinbefore referred to every such Receiver so appointed shall have power to do the following things
- (a) **Take possession** Take immediate possession of, get in and collect the Charged Assets or any part thereof
  - (b) **Sell assets** Sell, convert into money and realise all or any part of the Charged Assets by public auction or private contract and generally in such manner and on such terms as he shall think proper. Without prejudice to the generality of the foregoing he may do any of these things for a consideration consisting of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he may think fit
  - (c) **Compromise** Settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to the Charged Assets or any part thereof
  - (d) **Legal Actions** Bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Charged Assets or any part thereof as may seem to him to be expedient
  - (e) **Receipts** Give valid receipts for all moneys and execute all assurance and things which may be proper or desirable for realising the Charged Assets
  - (f) **General powers** Do all such other acts and things as he may consider desirable or necessary for realising the Charged Assets or any part thereof or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of this Charge and exercise in relation to the Charged Assets or any part thereof all such powers, authorities and things as he would be capable of exercising if he were the absolute beneficial owner of the same, and use the name of the Chargor for all or any of the purposes aforesaid
- 14 3 The Security Agent may from time to time by writing under its hand remove any Receiver appointed by it and may whenever it may deem it expedient appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated and may from time to time fix the reasonable remuneration of any Receiver appointed by it
- 14 4 All or any of the powers, authorities and discretions which are conferred by this Charge (either expressly or impliedly) upon a Receiver of the Charged Assets may be exercised, after the security hereby created becomes enforceable, by the Security Agent in relation to the whole of such Charged

Assets or any part thereof without first appointing a Receiver of such property or any part thereof or notwithstanding the appointment of a Receiver of such property or any part thereof

**15. APPLICATION OF PROCEEDS**

All moneys received by any Receiver appointed under this Charge shall be applied in the following order (a) in the payment of the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration, (b) in the payment and discharge of any outgoings paid and liabilities incurred by the Receiver in the exercise of any of the powers of the Receiver, (c) in providing for the matters (other than the remuneration of the Receiver) specified in the first three paragraphs of section 109(8) of the Law of Property Act 1925, (d) in or towards payment of any debts or claims which are required by law to be paid in preference to the Secured Obligations but only to the extent to which such debts or claims have such preference, (e) in or towards the satisfaction of the Secured Obligations in accordance with the terms of the Intercreditor Agreement and (f) any surplus shall be paid to the relevant member of the Group or other person entitled thereto. The provisions of this Clause shall take effect as and by way of variation and extension to the provisions of the said section 109(8), which provisions as so varied and extended shall be deemed incorporated herein

**16. NO LIABILITY AS CHARGEE IN POSSESSION**

The Security Agent shall not nor shall any Receiver appointed as aforesaid by reason of it or the Receiver entering into possession of the Charged Assets or any part thereof be liable to account as mortgagee in possession or be liable for any loss or realisation or for any default or omission for which a mortgagee in possession might be liable. Every Receiver duly appointed by the Security Agent under the powers in that behalf herein contained shall be deemed to be the agent of the Chargor so far as the law permits. The Chargor alone shall be responsible for its contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by it and the Security Agent shall not incur any liability therefor (either to the Chargor or to any other person whatsoever) by reason of the Security Agent making its appointment as such Receiver or for any other reason whatsoever. Every such Receiver and the Security Agent shall be entitled to all the rights, powers, privileges and immunities by the said Act conferred on mortgagees and receivers when such receivers have been duly appointed under the said Act but so that Section 103 of the Law of Property Act 1925 shall not apply

**17. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Charge shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Charge are cumulative and not exclusive of any rights or remedies provided by law

**18. COVENANT TO RELEASE**

Upon the date on which all of the Secured Obligations in respect of the Debt Documents (other than the Hedging Agreements) have been unconditionally and irrevocably paid and discharged in full, or as instructed by the Instructing Group in accordance with the Intercreditor Agreement, the Security Agent shall, at the request and cost of the Chargor, execute and do all such deeds, acts and things as may be necessary to release and (to the extent applicable) reassign the Charged Assets from the security intended to be created by this Charge



**19. MISCELLANEOUS**

19 1 The Chargor will pay or procure the payment when due of all present and future registration fees, stamp duties and other imposts or transaction taxes in relation to this Charge and keep the Security Agent or any Receiver appointed hereunder indemnified against any failure or delay in paying them

19 2 If a provision of this Charge is or becomes illegal, invalid or unenforceable in any jurisdiction that shall not affect

(a) the validity or enforceability in that jurisdiction of any other provision of this Charge, or

(b) the validity or enforceability in other jurisdictions of that or any other provision of this Charge

**20. COUNTERPARTS**

This Charge may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument and any party may enter into this Charge by executing a counterpart

**21. NOTICES**

The provisions of clause 24 (Notices) of the Intercreditor Agreement shall apply to this Charge as if set out in full herein, *mutatis mutandis*

**22. TRANSFER**

22 1 This Charge shall be binding upon and inure to the benefit of the Chargor and the Security Agent, the successors and assignees of the Security Agent. References to the Security Agent include any permitted assignee or transferee of the rights and obligations hereunder of the Security Agent. Any successor to or permitted assignee of the Security Agent shall be entitled to the full benefit, subject to the burden, hereof

22 2 The Chargor may not assign or transfer all or any part of its rights or obligations hereunder

**23. GOVERNING LAW**

This Charge and any non contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law

**24. JURISDICTION**

24 1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Charge (including a dispute relating to the existence, validity or termination of this Charge or any non-contractual obligation arising out of or in connection with this Charge) (**a Dispute**)

24 2 The parties to this Charge agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary

24 3 This Clause 24 is for the benefit of the Secured Parties only. As a result, to the extent allowed by law

(a) no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction, and

(b) the Secured Parties may take concurrent proceedings in any number of jurisdictions

**25. COUNTERPARTS**

This Charge may be signed in any number of counterparts and by different parties to this Charge on separate counterparts. Each of such counterparts shall, when executed and delivered to the Security Agent, constitute one and the same instrument.

**IN WITNESS** whereof this Charge has been executed by the Chargor and the Security Agent as a deed the day and year first above written.

**SIGNATORIES**

**THE CHARGOR**

**EXECUTED as a DEED by  
BAXI POTTERTON LIMITED**

)  
)  
)  
)

[Redacted Signature]

Director

**PAUL THOMAS MOSS**

before this witness

[Redacted Signature]

Witness Signature

**Paul Houston**

Print Name

Address

[Redacted Address]

**THE SECURITY AGENT**

**THE ROYAL BANK OF SCOTLAND )**  
**PLC (as Security Agent) )**  
**By ALASDAIR GARMAN )**

A large black rectangular redaction box covering the signature of the authorised signatory.

\_\_\_\_\_  
Authorised signatory