



Registration of a Charge

Company Name: **APACHE VAPE LIMITED**

Company Number: **NI636481**



XBHJ2Q9K

Received for filing in Electronic Format on the: **25/11/2022**

Details of Charge

Date of creation: **10/11/2022**

Charge code: **NI63 6481 0003**

Persons entitled: **CALEDONIAN HERITABLE LIMITED**

Brief description:

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ANDREW THOMSON**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: NI636481

Charge code: NI63 6481 0003

The Registrar of Companies for Northern Ireland hereby certifies that a charge dated 10th November 2022 and created by APACHE VAPE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 25th November 2022 .

Given at Companies House, Belfast on 28th November 2022

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



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

(1) APACHE VAPE LIMITED

in favour of

(2) CALEDONIAN HERITABLE LIMITED

**BOND AND FLOATING
CHARGE**

2022

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THIS AGREEMENT is made

BY:

- (1) **APACHE VAPE LIMITED** a company incorporated under the Companies Acts (registered number NI636481) having its registered office at Unit 1 Elagh Business Park, Coshquin, Derry, BT48 8QH (the "**Operator**");

IN FAVOUR OF:

- (2) **CALEDONIAN HERITABLE LIMITED** a company incorporated in Scotland (registered number SC076552) having its registered office at 4 Hope Street, Edinburgh EH2 4DB ("**Caledonian**").

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Security unless the context requires otherwise:

"**Act**" means the Insolvency Act 1986 as amended by the Insolvency Act 2000 and the Enterprise Act 2002 or, where the context so requires, any of those enactments;

"**Agreement**" means the Loan Agreement entered into between Caledonian and the Principal and executed by the Principal on or around the date of the Operator's execution hereof;

"**Event of Default**" means the occurrence of any event listed in clause 6.1 of this Security;

"**Guarantee**" means the Guarantee of the Principal's loan obligations in terms of the Agreement entered into between Caledonian and the Operator and executed by the Operator of even date with the Operator's execution hereof;

"**Principal**" means The Shilling Group (Edinburgh) Limited a company incorporated under the Companies Acts (registered number SC251010) having its registered office at 27 Lauriston Street, Edinburgh, EH3 9DQ;

"**Receiver**" means any receiver or administrative receiver appointed in respect of the Secured Assets under this Security (whether by the Operator or the Court) and includes joint receivers;

"**Secured Assets**" means the whole of the property (including uncalled capital) which is or may from time to time, while this Security is in force, be comprised in the property and undertaking of the Operator;

"**Secured Obligations**" means all or any monies, liabilities and obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, cautioner, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Operator to Caledonian including without prejudice to the foregoing generality sums and obligations due by the Operator in terms of the Guarantee, and all or any monies, liabilities and obligations due by the Operator under this Security; and

"**Security**" means these presents (and, as the context may require or imply, the floating charge hereby created) as amended or supplemented from time to time.

1.2 Interpretation

In this Security unless the context requires otherwise:

- (a) words importing the singular shall include the plural and vice versa;
- (b) references to this Security or any other document shall be constituted as references to this Security or such other document as amended, supplemented or novated from time to time;
- (c) references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- (d) references to a **"person"** shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- (e) references to a **"fixed security"** mean a fixed security as defined by section 486 of the Companies Act 1985;
- (f) any reference to Caledonian includes its permitted successors, transferees and assignees;
- (g) references to a document **"in the agreed form"** means a document in a form agreed by the Operator and Caledonian and initialled by, or on behalf of, each of them for the purpose of identification as such; and
- (h) **"tax"** means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and **"taxes"** and **"taxation"** shall be construed accordingly.

1.3 Headings

The table of contents and the headings in this Security are included for convenience only and shall be ignored in construing this Security.

1.4 Conflict

If there is any conflict between the provisions of this Security and the provisions of the Agreements, the provisions of the Agreements shall prevail.

2. FLOATING CHARGE

2.1 Payment

The Operator undertakes to Caledonian that it will pay and discharge the Secured Obligations in accordance with the terms of any document relating to the same.

2.2 Floating Charge

In security for the payment and discharge of the Secured Obligations, the Operator hereby grants a floating charge over the Secured Assets in favour of Caledonian.

2.3 Negative pledge and ranking

Unless otherwise agreed in writing by Caledonian and subject to section 464(2) of the Companies Act 1985:

- (a) the Operator shall not create any fixed security or other floating charge over any part of the Secured Assets except any fixed security in favour of Caledonian; and
- (b) this Security shall rank in priority to any fixed security or other floating charge created by the Operator after its execution of this Security.

3. PROTECTION OF SECURITY

3.1 Continuing security

This Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force and may not be revoked until the Secured Obligations have been fully and unconditionally paid and discharged.

3.2 No prejudice

This Security shall be in addition to and independent of and shall not in any way prejudice or be prejudiced by any other security, right or remedy which Caledonian may now or at any time hereafter hold for all or any part of the Secured Obligations.

3.3 No waiver

Failure or delay on the part of Caledonian in exercising any right, power or discretion under or pursuant to this Security shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Security are in addition to and not substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

3.4 Severability

The provisions of this Security shall be severable and distinct from one another and if at any time one or more of such provisions is or becomes or is declared void, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Security shall not in any way be affected or impaired thereby.

3.5 Non impairment

The Operator agrees that none of its obligations or Caledonian's rights, powers and discretions under this Security shall be reduced, discharged or otherwise adversely affected by:

- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any security or any right or remedy which Caledonian may have now or in the

future from or against the Operator or any other person in respect of any of the Secured Obligations; or

- (b) any failure, act or omission by Caledonian or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Operator or any other person in respect of the Secured Obligations; or
- (c) any increase in or waiver or discharge of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of the Loan Agreement; or
- (d) any grant of time, indulgence, waiver or concession to the Operator or any other person; or
- (e) any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Operator or any other person; or
- (f) any invalidity, illegality, unenforceability, irregularity or frustration of the Secured Obligations; or
- (g) anything done or omitted to be done by Caledonian or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Operator under this Security.

3.6 Further assurance

The Operator shall promptly after being requested to do so by Caledonian do all such acts and things and execute and deliver all such documents as Caledonian may require for perfecting or protecting this Security or its priority or for facilitating the realisation or application of the Secured Assets and the exercise of the rights, powers and discretions conferred on Caledonian or the Receiver under this Security.

4. POWER OF ATTORNEY

4.1 Appointment

Subject to the terms of clause 4.3 the Operator hereby irrevocably appoints the Receiver, as its attorney on its behalf and in its name or otherwise, at such times and in such a manner as the attorney may think fit:

- (a) to do anything which the Operator is obliged to do (but has not done) under this Security; and
- (b) generally to exercise all or any of the rights, powers and discretions conferred on the Receiver in relation to the Secured Assets under this Security.

4.2 Ratification

The Operator hereby ratifies and confirms and agrees to ratify and confirm whatever its attorney may do or purport to do in the exercise or purported exercise of the power of attorney given by the Operator under this clause.

4.3 Exercise of power

The appointment effected under clause 4.1 (*Appointment*) shall take effect immediately (in the case of the Receiver, upon his/her appointment), but the powers conferred shall only become exercisable upon the occurrence of an Event of Default (which upon the appointment of the Receiver shall be deemed to be the case) or if the Operator does not fulfil any of its obligations under clause 3.6 (*Further assurance*) within three Business Days of notice from the Receiver to do so.

5. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

5.1 Representations and warranties

The Operator represents and warrants to Caledonian that:

- (a) it is duly incorporated and validly existing under the law of Scotland;
- (b) it has the power to grant this Security and perform its obligations hereunder;
- (c) it has taken all necessary corporate action to authorise the execution and delivery of this Security and the performance of its obligations hereunder;
- (d) the grant of this Security and the performance of its obligations hereunder will not contravene any law, regulation or agreement to which the Operator is a party or by which it is bound, or cause any limitation on any of the powers of the Operator however imposed, or the right or ability of its directors to exercise any of such powers, to be exceeded;
- (e) all authorisations required for the creation, performance, validity and enforceability of this Security by the Operator have been obtained and are in full force and effect;
- (f) it has not, except for liens or retention of title provisions arising in the ordinary course of its trading activities, granted or created any other security, charge or encumbrance over the Secured Assets other than as disclosed to Caledonian or any interest therein, or agreed, conditionally or unconditionally, to do so; and
- (g) it has not, save in the ordinary course of its trading activities, for market value, on an arms length basis and for consideration payable in cash on normal commercial terms, entered into any agreement or granted any option to sell or otherwise dispose of the Secured Assets or any interest therein, or agreed, conditionally or unconditionally, to do so.

5.2 Undertakings

- (a) The Operator undertakes that save as otherwise provided in the Agreements or unless otherwise agreed in writing by Caledonian, such agreement not to be unreasonably withheld nor delayed, it shall not:
 - (i) dispose of any of the Secured Assets or any interest therein otherwise than in the ordinary course of its trading activities, for market value, on an arms length basis and for consideration payable in cash on normal commercial terms;

- (ii) sell, factor, discount, assign or otherwise charge or dispose of its book debts or other accounts or payments receivable;
 - (iii) become a guarantor or surety for any person;
 - (iv) issue or create any debentures, debenture or loan stock or loan capital;
 - (v) agree to postpone or subordinate the Operator's right to receive or claim payment of any debt or monetary claim due to it;
 - (vi) do or omit to do anything whereby any insurance in respect of the Operator or the Secured Assets may be rendered void or voidable; or
 - (vii) let or grant leases or other rights of occupancy or possession of the buildings or land forming part of the Secured Assets or any part thereof
- (b) The Operator undertakes that unless otherwise agreed in writing by Caledonian, such agreement not to be unreasonably withheld nor delayed, it shall:
- (i) conduct its business and affairs in a proper and efficient manner;
 - (ii) comply promptly with its obligations under the Agreements;
 - (iii) comply with all laws, statutes, directives and regulations and all notices, codes of practice and other requirements having the force of law which are applicable to it and obtain, effect, maintain and comply with all registrations, licenses, consents, authorisations and exemptions required for the efficient conduct of its business;
 - (iv) effect and maintain such insurances (in respect of the Operator, its business and the Secured Assets) of such types, against such risks, with such insurers, for such amounts and on such terms and conditions as are usually maintained by prudent companies carrying on the same or similar activities as the Operator;
 - (v) apply all monies received under any such insurances towards replacing, restoring or reinstating the property destroyed or damaged or making good the loss or damage otherwise sustained; and
 - (vi) notify Caledonian immediately in the event of any creditor executing diligence, (whether effectual or not), levying distress or execution, or serving any garnishee order against the Operator or any of the Secured Assets.

6. ENFORCEMENT

6.1 Enforceable

This Security shall be enforceable immediately upon, or at any time after:

- (a) an order being made or resolution being passed for the Operator's winding up or liquidation, compulsory or voluntary;
- (b) the Operator ceasing or threatening to cease to carry on the Operator's business;

- (c) on default by the Operator in the satisfaction, performance or observance of any of the obligations, conditions or provisions contained in the Agreements or in this Security;
- (d) the Operator requesting the appointment of a Receiver or administrator;
- (e) an administration application being made in respect of the Operator or on the appointment of an interim administrator or an administrator for the management of the Operator's affairs, business and property;
- (f) any person giving notice of intention to appoint an administrator;
- (g) on any diligence being done or forced upon or against the Operator or any of the Secured Assets of which diligence the Operator shall give immediate notice to Caledonian; or

6.2 Appointment of Receiver or administrator

- (a) At any time after this Security has become enforceable Caledonian shall be entitled:
 - (i) to appoint one or more persons as a Receiver or Receivers in respect of the Secured Assets, or apply to the Court for such appointment;
 - (ii) to appoint one or more persons as an administrator or administrators of the Operator;
 - (iii) to make an administration application in respect of the Operator; or
 - (iv) to give notice of intention to appoint an administrator or administrators in respect of the Operator.
- (b) The appointment of a Receiver or Receivers or an administrator or administrators, or the giving of notice of intention to appoint an administrator or administrators shall be effected by Caledonian by written instrument or notice in accordance with and in such form as may be prescribed under the Act. If any such person so appointed as Receiver or administrator is removed from office by the Court or otherwise ceases to act, Caledonian shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

6.3 Powers of Receiver

A Receiver appointed under this Security shall have the following powers in addition to those specified in Schedule 2 of the Act:

- (a) to promote or procure the incorporation of any new company (whether or not a subsidiary of the Operator), to transfer any part of the Secured Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Operator, or the Receiver, or its or his/her nominee or trustee;
- (b) subject to the articles of association, to convene extraordinary general meetings of the Operator;

- (c) generally, without prejudice to the other provisions of this clause to exercise all the rights, powers and discretions in respect of the Secured Assets it would be entitled to exercise if it were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Secured Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Obligations;
- (d) to make any arrangement or compromise which he may think expedient;
- (e) to make calls, conditionally or unconditionally, on the Operator's members in respect of the Operator's uncalled capital with the same powers as are by the Operator's articles of association conferred on the Operator's directors in respect of calls and to the exclusion of the Operator's directors powers in that behalf; and
- (f) in respect of any of the Secured Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

6.4 Agent of Operator

The Receiver shall be the agent of the Operator for all purposes of and in all respects arising under this Security and, except as otherwise provided by the Act, the Operator alone shall be responsible for his/her acts, omissions, neglects and defaults and for all liabilities and obligations incurred by him/her, and his/her remuneration costs, charges and expenses.

6.5 Application of proceeds

All monies realised by the Receiver or otherwise arising from the enforcement of this Security shall, subject always to clause 6.6 (*Monies on suspense account*) and clause 7 (*Discharge*), to the claims of creditors ranking in priority to or *pari passu* with the claims of Caledonian under this Security and to the terms of section 60 of the Act, be applied by the Receiver in or towards the settlement of the Secured Obligations and any surplus shall be paid to the Operator or any other person entitled thereto.

6.6 Monies on suspense account

Nothing in this Security shall limit the right of the Receiver and/or Caledonian (and the Operator acknowledges that the Receiver and/or Caledonian are so entitled) if and for so long as the Receiver and/or Caledonian in its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of this Security into a suspense account or accounts, without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Obligations provided that if the aggregate of such monies so placed to the credit of such suspense account or accounts shall equal or exceed the Secured Obligations, the Receiver and/or Caledonian shall, subject always to clause 7 (*Discharge*), forthwith apply the same towards settlement of the Secured Obligations.

6.7 Balance

The rights powers and discretions conferred on the Receiver under this clause are subject only to his/her obligation to account to the Operator or any other person entitled thereto for any balance of the Secured Assets or their proceeds remaining in his/her hands after the Secured Obligations have been fully and unconditionally paid and discharged.

6.8 Third parties

- (a) No purchaser from or other person dealing with the Receiver in relation to the Secured Assets shall be concerned to enquire whether any of the powers exercised or purported to be exercised by him/her hereunder has become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.
- (b) The receipt or discharge of the Receiver shall be an absolute discharge to any purchaser or other person dealing with the Receiver in relation to the Secured Assets and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Receiver or at its direction.

7. DISCHARGE

7.1 Discharge

When the Secured Obligations have been fully and unconditionally paid or discharged Caledonian shall at the Operator's request, and at its expense, discharge this Security. Any payment or realisation in respect of the Secured Obligations which in the reasonable opinion of Caledonian is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably settled or discharged until the expiry of the period during which it may be challenged on any such ground.

7.2 Retention of Security

If any payment or realisation in respect of the Secured Obligations is, in Caledonian's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, Caledonian shall be entitled to retain this Security undischarged until the expiry of the period during which it may be challenged on any such ground.

7.3 Avoidance of payments

Caledonian's right to recover the Secured Obligations in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by Caledonian on the faith of any such payment or realisation.

8. LIABILITY OF RECEIVER AND CALEDONIAN

The Receiver and Caledonian shall not in any circumstances be liable to the Operator or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Security or any realisation, appropriation or application of the Secured Assets or from any act, default or omission of the Receiver or Caledonian, or his/her or its officers, employees or agents in relation to the Secured Assets or otherwise in connection with this Security, except to the extent caused by the wilful neglect or default of the Receiver or Caledonian or his/her or its officers, employees or agents.

9. MISCELLANEOUS

9.1 Non compliance by Operator

If the Operator fails to make any payment or fulfil any obligation due by it under or pursuant to this Security, the Receiver or Caledonian, as the case may be, shall be entitled to do so on its behalf and in its name (or in its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as it considers expedient, and the amount of any such payment and/or the costs incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Operator on demand, together with interest at 4% per annum over the base rate from time to time of Bank of Scotland plc (or if such bank shall cease to exist, such other UK clearing bank as Caledonian may nominate) from the date of demand until settlement and shall constitute Secured Obligations.

9.2 Assignment

- (a) Caledonian may at any time (without consent) assign the benefit of this Security or any of its rights or obligations hereunder.
- (b) The Operator may not assign, transfer or otherwise deal with the benefit or burden of this Security or any of its rights or obligations hereunder.

9.3 Expenses

The Operator shall indemnify Caledonian on demand against all liabilities, costs, charges and expenses properly and reasonably incurred by Caledonian (including the fees and expenses of any legal advisers employed by Caledonian and where appropriate any VAT) in connection with the enforcement or preservation of Caledonian's rights under this Security, together with interest at 4% per annum over the base rate from time to time of Bank of Scotland plc (or if such bank shall cease to exist, such other UK clearing bank as Caledonian may nominate) from the date occurring 14 days after the date of demand until settlement and the amount thereof shall be a Secured Obligation.


10. GOVERNING LAW

This Security shall be governed by and construed in accordance with Scots Law and in so far

as not already subject thereto the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts **IN WITNESS WHEREOF** these presents are executed as follows:

SUBSCRIBED for and on behalf of **APACHE VAPE LIMITED** at Derry, NI
on the 10th day of November 2022

by

 Stephen Ryan, Director

before this witness

Colm Doherty Witness

31 Carnhill Full Name

Derry Address

BT48 8BA