

13 5879/80

# MR01

## Particulars of a charge



Companies House

**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)

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.  
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. This  
must be scanned and placed on the public record.

WEDNESDAY



SCT 26/03/2014 #156  
COMPANIES HOUSE

### 1 Company details

Company number S C 0 1 4 4 5 6

Company name in full WHYTE AND MACKAY LIMITED

For official use  
94  
→ **Filling 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 d 1 9 m 0 3 y 2 0 y 1 4

### 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 STANDARD CHARTERED BANK as agent and trustee for the  
other Finance Parties

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 <sup>①</sup>**

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.

☐

<sup>①</sup> This statement may be filed after the registration of the charge (use form MR06).

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**Signature**

Please sign the form here.

Signature

Signature

X *One Singh & Brothers Ltd* 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 ACG.JAS.STA162.7.20851999

Company name BRODIES LLP

Address 15 ATHOLL CRESCENT

Post town EDINBURGH

County/Region

Postcode E H 3 8 H A

Country UNITED KINGDOM

DX ED10

Telephone 0131 656 0036



### 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: 14456

Charge code: SC01 4456 0094

The Registrar of Companies for Scotland hereby certifies that a charge dated 19th March 2014 and created by WHYTE AND MACKAY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th March 2014.

Given at Companies House, Edinburgh on 27th March 2014



**Companies House**



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

**ASSIGNATION IN SECURITY**

among

**WHYTE AND MACKAY LIMITED**  
as Assignor

**WHYTE AND MACKAY WAREHOUSING LIMITED**  
as Custodian

and

**STANDARD CHARTERED BANK**  
as Security Agent

Re: Custody Agreement in relation to whisky stock

2014

This Assignment is entered into subject to the terms and conditions of the

Intercreditor Agreement  
dated 13 March 2014

Brodies LLP  
15 Atholl Crescent  
Edinburgh EH3 8HA  
T: 0131 228 3777  
F: 0131 228 3878  
Ref: (BS.MXM.STA162.7)

CERTIFIED A TRUE  
COPY SAVE FOR THE  
MATERIAL REDACTED  
PURSUANT TO S859G  
OF THE COMPANIES  
ACT 2006

*M. MacInnes*

BRODIES LLP  
Solicitors

25 March 2014

Ref: *MXM/STA162.7*

## ASSIGNATION IN SECURITY

among

- (1) **WHYTE AND MACKAY LIMITED**, incorporated under the Companies Acts in Scotland (company number SC014456) and having its registered office at Dalmore House, 310 St Vincent Street, Glasgow G2 5RG (the "**Assignor**");
- (2) **WHYTE AND MACKAY WAREHOUSING LIMITED**, incorporated under the Companies Acts in Scotland (company number SC229822) and having its registered office at Dalmore House, 310 St Vincent Street, Glasgow G2 5RG (the "**Custodian**"); and
- (3) **STANDARD CHARTERED BANK** incorporated in England by Royal Charter 1853 of 1 Basinghall Avenue, London, EC2V 5DD as agent and trustee for the other Finance Parties (as defined in the Facility Agreement defined below) and its successors and assignees whomsoever as such trustee from time to time (the "**Security Agent**").

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Assignment unless the context requires otherwise:

"**Assignment**" means this assignment in security;

"**Assigned Rights**" means the Assignor's whole right, title, interest and benefit, past, present and future, in and to the Custody Agreement and the Related Rights;

"**Borrower**" means USL Holdings (UK) Limited (registered number 06127302);

"**Custody Agreement**" means the agreement of such name entered into between the Assignor and the Custodian and dated on or about the date of execution by the Assignor and the Custodian of this Assignment;

"**Facility Agent**" means Standard Chartered Bank as facility agent under the Senior Finance Documents;

"**Facility Agreement**" means the £370,000,000 facilities agreement dated on or around 13 March 2014 between, among others, the Borrower, the other Original Obligors and the Original Lenders (each as defined therein), the Facility Agent and the Security Agent;

"**Party**" means a party to this Assignment;

"**Related Rights**" means all rights, remedies, benefits and entitlements now or at any time hereafter accrued or accruing in respect of the Assignor's interest in the Custody Agreement including, without limitation:

- (i) the right to payment of all monies due thereunder;

- (ii) the proceeds of all payments thereunder and of all claims, awards, adjudications and judgments under or in respect thereof;
- (iii) all claims for damages in respect of any breach thereof (other than a breach by the Assignor);
- (iv) the benefit of all (if any) warranties and indemnities;
- (v) all (if any) rights of termination or rescission;
- (vi) the right to require and enforce performance by the other party of its obligations thereunder by way of adjudication, arbitration proceedings or otherwise; and
- (vii) the right to perform and fulfil the obligations on the Assignor's part thereunder;

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Senior Creditor under any Senior Finance Document, except for any obligation or liability which, if it were so included, would result in this Assignment contravening any law (including section 678 or section 679 of the Companies Act 2006);

**"Security"** means any Security Interest created, evidenced or conferred by or under this Assignment;

**"Security Period"** means the period beginning on the date of this Assignment and ending on the Senior Debt Discharge Date;

**"Senior Creditor"** has the meaning given to it in the Intercreditor Agreement;

**"Senior Debt Discharge Date"** has the meaning given to it in the Intercreditor Agreement;

**"Senior Finance Document"** has the meaning given to it in the Intercreditor Agreement.

## 1.2 Construction

1.2.1 Capitalised terms defined in the Facility Agreement have, unless expressly defined in this Assignment, the same meaning in this Assignment.

1.2.2 The provisions of Clause 1.2 (Construction) of the Facility Agreement apply to this Assignment as though they were set out in full in this Assignment, except that references to the Facility Agreement will be construed as references to this Assignment.

1.2.3 In this Assignment any reference to a Senior Finance Document or any other document includes (without prejudice to any prohibition on amendments) any amendments to that Senior Finance Document or other document, including any amendment providing for any change in purpose of, any extension of or any increase in the amount of a facility or any additional facility and a reference to an amendment



includes a supplement, novation, restatement or re-enactment and amended will be construed accordingly.

- 1.2.4 Any covenant or undertaking of the Assignor under this Assignment remains in force during the Security Period and is given for the benefit of each Senior Creditor (to the extent secured).
- 1.2.5 If the Security Agent considers that an amount paid to a Senior Creditor under a Senior Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Assignment.
- 1.2.6 The date of delivery of this Assignment is the date of delivery stated below the signature of the Assignor. If no date of delivery is stated the date of delivery is the date of signing stated below the signature of the Assignor.
- 1.2.7 Notwithstanding that this Assignment is executed by the Assignor and also by the Security Agent this Assignment is intended to take effect as a charge from the date of delivery of this Assignment by the Assignor.

### **1.3 Successors and assignees**

References in this Assignment to "the Assignor", "the Custodian", "the Senior Creditors", "the Finance Parties" and "the Security Agent" or any other person shall include, where the context admits the successors, assignees and transferees of the Assignor, the Custodian, a Senior Creditor, a Finance Party, the Security Agent or such other person, and in the case of the Security Agent shall include such other persons as may from time to time be appointed as Security Agent.

## **2 Creation of Security**

### **2.1 General**

- 2.1.1 All the security created, evidenced or conferred by this Assignment:
  - 2.1.1.1 is created in favour of the Security Agent;
  - 2.1.1.2 is security for the payment, discharge and performance of all the Secured Liabilities; and
  - 2.1.1.3 is made with absolute warrandice.
- 2.1.2 The Security Agent holds the benefit of this Assignment on trust for the Senior Creditors.

### **2.2 Undertaking to pay**

The Assignor undertakes to the Security Agent to pay or discharge the Secured Liabilities in the manner provided for in the Senior Finance Documents.

Error! No property name supplied.Error! No property name supplied.

## 2.3 Assignment and intimation

- 2.3.1 As security for the payment, discharge and performance of the Secured Liabilities, the Assignor hereby assigns in favour of the Security Agent the Assigned Rights.
- 2.3.2 Notwithstanding the assignment set out in clause 2.3.1, whilst this Assignment subsists the Assignor shall *perform and continue to perform all obligations and liabilities* imposed on it under the Custody Agreement.
- 2.3.3 No obligation or liability shall be assumed by the Security Agent or any other Senior Creditor in respect of the Assigned Rights as a result of the execution and delivery of this Assignment.
- 2.3.4 The Assignor hereby intimates and gives notice to the Custodian of the assignment hereby granted. The Custodian by its execution of this Assignment immediately subsequent to the execution hereof by the Assignor acknowledges such intimation and notice and confirms that:
- 2.3.4.1 it has received no intimation of any other security granted over the Assigned Rights other than this Assignment;
- 2.3.4.2 it undertakes not to assign, transfer or otherwise resign its interest as custodian under the Custody Agreement without the prior written consent of the Security Agent;
- 2.3.4.3 it will not amend, vary, alter, terminate or agree to amend, vary, alter or terminate the Custody Agreement without the prior written consent of the Security Agent; and
- 2.3.4.4 all claims or rights of set-off, counterclaim, deduction, lien or retention in respect of the Custody Agreement are excluded.

## 3 Protection of security

### 3.1 Continuing security

This Security is a continuing security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

### 3.2 Reinstatement

- 3.2.1 If any discharge (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation, administration or otherwise without limitation, the liability of the Assignor under this Assignment will continue or be reinstated as if the discharge or arrangement had not occurred.

- 3.2.2 Each Senior Creditor may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

### 3.3 Waiver of defences

The obligations of the Assignor under this Assignment will not be affected by any act, omission or thing (whether or not known to it or any Senior Creditor) which, but for this provision, would reduce, release or prejudice any of its obligations under this Assignment. This includes:

- 3.3.1 any time or waiver granted to, or composition with, any Obligor or any other person;
- 3.3.2 any release of any person under the terms of any composition or arrangement with any creditor or any member of the Group;
- 3.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or any other person;
- 3.3.4 any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 3.3.5 any incapacity, lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;
- 3.3.6 any amendment of a Senior Finance Document or any other document or security; or
- 3.3.7 any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Senior Finance Document or any other document or security or the failure by any member of the Group to enter into or be bound by any Senior Finance Document.

### 3.4 Immediate recourse

The Assignor waives any right it may have of first requiring any Senior Creditor (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any other member of the Group or any other person before claiming from the Assignor under this Assignment.

### 3.5 Appropriations

At any time during the Security Period, each Senior Creditor (or any trustee or agent on its behalf) may without affecting the liability of the Assignor under this Assignment:

- 3.5.1 (i) refrain from applying or enforcing any other moneys, security or rights held or received by that Senior Creditor (or any trustee or agent on its behalf) against those amounts; or

- (ii) apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and

3.5.2 hold in an interest-bearing suspense account any moneys received from the Assignor or on account of the Assignor's liability under this Assignment.

### **3.6 Non-competition**

Unless the Security Period has expired or the Security Agent otherwise directs, the Assignor will not, after a claim has been made under this Assignment or by virtue of any payment or performance by it under this Assignment:

- (i) be subrogated to any rights, security or moneys held, received or receivable by any Senior Creditor (or any trustee or agent on its behalf);
- (ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Assignor's liability under this Clause;
- (iii) claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with any Senior Creditor (or any trustee or agent on its behalf); or
- (iv) receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or exercise any right of set-off as against any Obligor.

The Assignor must hold in trust for and must immediately pay or transfer to the Security Agent for the Senior Creditors any payment or distribution or benefit of security received by it contrary to this Clause or in accordance with any directions given by the Security Agent under this Clause.

### **3.7 Additional security**

3.7.1 This Assignment is in addition to and is not in any way prejudiced by any other security now or subsequently held by any Senior Creditor.

3.7.2 No prior security held by any Senior Creditor (in its capacity as such or otherwise) over the Assigned Rights will merge into this Security.

### **3.8 Security held by Assignor**

The Assignor may not, without the prior consent of the Security Agent, hold any security from any other Obligor in respect of the Assignor's liability under this Assignment. The Assignor will hold any security held by it in breach of this provision on trust for the Security Agent.

## **4 Power of Attorney**

### **4.1 Appointment**

The Assignor hereby irrevocably and severally appoints the Security Agent and each of its delegates and sub-delegates as its mandatary and attorney on its behalf and in its name or

otherwise to do anything which the Assignor is obliged to do under this Assignment including, without limitation, to execute further securities, transfers or assignments of and other instruments relating to the Assigned Rights and give instructions (in material or dematerialised form) which the Assignor has failed to do and generally to exercise all or any of the rights, powers and discretions conferred on the Security Agent in relation to the Assigned Rights under this Assignment.

#### **4.2 Ratification**

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

### **5 Representations, warranties and undertakings**

#### **5.1 Representations, Warranties and Undertakings**

The Assignor hereby represents, warrants and undertakes to the Security Agent that:

- 5.1.1 it is and will be while this Assignment remains in effect the sole owner of the Assigned Rights free from any Security Interest (except those created by or under this Assignment or otherwise in favour of the Security Agent) or other rights or interests in favour of third parties and it undertakes not to assign or transfer its interest under the Custody Agreement without the prior written consent of the Security Agent;
- 5.1.2 subject to the Legal Reservations, this Assignment creates those Security Interests it purports to create and is not liable to be amended or otherwise set aside on its liquidation or administration or otherwise;
- 5.1.3 the security created over the Assigned Rights hereunder constitutes a first ranking security interest over the Assigned Rights which are not and will not be; while this Assignment remains in effect, subject to any prior or pari passu Security Interest and the Assignor will not while this Assignment remains in effect create or allow to exist any Security Interest on or over the Assigned Rights or any of them except as expressly allowed under or pursuant to the Finance Documents;
- 5.1.4 it has not disposed of or agreed to dispose of or granted or agreed to grant any trust or option in respect of all or any of its right, title and interest in and to the Assigned Rights and will not do any of these things while this Assignment remains in effect; and
- 5.1.5 it will not take any action whereby the Assigned Rights are altered or diminished (save to the extent permitted by the Security Agent);
- 5.1.6 it will not amend, vary, alter, terminate or agree to amend, vary, alter or terminate the Custody Agreement without the prior written consent of the Security Agent;
- 5.1.7 it will duly and punctually perform its obligations in respect of the Assigned Rights; and

- 5.1.8 it will notify the Security Agent promptly of the occurrence of any event of default under or any breach by it or any other party of the Custody Agreement and will promptly forward to the Security Agent a copy of any notice or demand served on it in respect of the any of the foregoing.

## 5.2 Timing of Representations and Warranties

The representations, warranties and undertakings set out in Clause 5.1 are made on the date hereof and each representation and warranty under this Assignment is deemed to be repeated by the Assignor on each date on which the representations and warranties are deemed to be repeated under the Facility Agreement by reference to the then existing circumstances.

## 6 Enforcement of security

### 6.1 Enforcement

This Security shall become immediately enforceable if an Event of Default is outstanding and the Security Agent gives notice to the Assignor that this Security is enforceable.

### 6.2 Exercise of Rights

After this Security has become enforceable the Security Agent may in its absolute discretion enforce all or any part of the security created by this Assignment in any manner it sees fit or as the Majority Senior Creditors direct and may sell or in any other way dispose of any of the Assigned Rights and exercise any other rights or remedies conferred on it hereunder or by law in such manner as it sees fit without application to the court and without notice to the Assignor and without demand for payment apply the proceeds of such sale, disposal or enforcement in or towards discharge of the Secured Liabilities or otherwise in accordance with the terms hereof.

### 6.3 Redemption of prior charges

At any time after this Security has become enforceable, the Security Agent may:

- 6.3.1 redeem any prior Security Interest against any of the Assigned Rights; and/or
- 6.3.2 procure the transfer of that Security Interest to itself; and/or
- 6.3.3 settle and pass the accounts of the prior assignee, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Assignor.

The Assignor must pay to the Security Agent, immediately on demand, the costs and expenses incurred by the Security Agent in connection with any such redemption and/or transfer, including the payment of any principal or interest.

### 6.4 Contingencies

If this Security is enforced at a time when no amount is due under the Senior Finance Documents but at a time when amounts may or will become due, the Security Agent may pay the proceeds of any recoveries effected by it into such number of suspense accounts as it considers appropriate.

## **6.5 Costs and Expenses**

6.5.1 All costs and expenses of selling or otherwise disposing of the Assigned Rights shall form part of the Secured Liabilities, and the Security Agent shall not be liable to the Assignor in relation to the manner or extent of sale or other disposal of the Assigned Rights or any part thereof.

6.5.2 The Assignor must:

6.5.2.1 immediately on demand pay all costs and expenses (including legal fees) properly incurred in connection with this Assignment by any Senior Creditor, attorney, manager, agent or other person appointed by the Security Agent under this Assignment including any arising from any actual or alleged breach by any person of any law or regulations; and

6.5.2.2 keep each of them indemnified against any loss or liability incurred by it in connection with any litigation, arbitration or administrative proceedings concerning this Assignment.

## **6.6 Custodian and Custody Agreement**

The Custodian undertakes to comply fully with any notice or instruction given to it by the Security Agent in connection with any sale or disposal of the Assigned Rights or any part thereof after this Security has become enforceable.

## **7 Application of proceeds**

Unless otherwise determined by the Security Agent any moneys received by the Security Agent after the security created by or pursuant to this Assignment has become enforceable must be applied in the following order of priority:

7.1 in or towards payment of or provision for all costs and expenses properly incurred by the Security Agent under or in connection with this Assignment;

7.2 in payment to (until the Senior Debt Discharge Date) the Facility Agent for application towards the balance of the Secured Liabilities in accordance with the Intercreditor Agreement; and

7.3 in payment of the surplus (if any) to the Assignor or any other person entitled thereto.

This Clause is subject to the payment of any claims having priority over this Security and to the terms of the Intercreditor Agreement. This Clause does not prejudice the right of any Senior Creditor to recover any shortfall from the Assignor.

## **8 Delegation and liability**

- 8.1 The Security Agent may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Assignment.
- 8.2 Any such delegation may be made upon any terms (including power to sub-delegate) which the Security Agent may think fit.
- 8.3 The Security Agent will not be in any way liable or responsible to the Assignor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate. The Security Agent will not be liable by reason of entering into possession of the Assigned Rights to account as security holder in possession or for any loss on realisation or for any default or omission for which a security holder in possession might be liable.

## **9 Further assurances**

- 9.1 The Assignor must, at its own expense, take whatever action the Security Agent may require (acting reasonably) for:
- 9.1.1 creating, perfecting or protecting any security intended to be created by or pursuant to this Assignment;
  - 9.1.2 facilitating the realisation of the Assigned Rights;
  - 9.1.3 facilitating the exercise of any right, power or discretion exercisable, by the Security Agent or any of its delegates or sub-delegates in respect of the Assigned Rights; or
  - 9.1.4 creating and perfecting security in favour of the Security Agent (equivalent to the security intended to be created by this Assignment) over any assets of the Assignor acquired after the date of this Assignment.

This includes:

- 9.1.5 the re-execution of this Assignment;
- 9.1.6 the execution of any transfer or assignment of any property whether to the Security Agent or to its nominee; and
- 9.1.7 the giving of any notice and the making of any filing or registration;

which, in any such case, the Security Agent may think necessary (acting reasonably).

## **10 New accounts**

At any time after the Security Agent has received or is deemed to be affected by notice (whether actual or constructive) of the creation of any subsequent security charge or encumbrance over or affecting any part of the Assigned Rights or the proceeds of realisation any Senior Creditor may open a new account or accounts with the Assignor. If the relevant Senior Creditor does not open a



new account or accounts it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice and as from that time all payments made to the relevant Senior Creditor shall be credited or be treated as having been credited to the new account and shall not operate to reduce any Secured Liability.

## **11 Third parties**

- 11.1 No purchaser from or other person dealing with the Security Agent in relation to the Assigned Rights shall be concerned to enquire whether any of the powers exercised or purported to be exercised by it hereunder has become exercisable, whether any of the Secured Liabilities remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.
- 11.2 The receipt or discharge of the Security Agent shall be an absolute discharge to any purchaser or other person dealing with the Security Agent in relation to the Assigned Rights 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 Security Agent or at its direction.

## **12 Financial collateral**

- 12.1 To the extent that the assets charged under this Assignment constitute "financial collateral" and this Assignment and the obligations of the Assignor under this Assignment constitute a "security financial collateral arrangement" (in each case for the purpose of and as defined in the Financial collateral Arrangements (No 2) Regulations 2003 (SI 2003 No 3226)) the Security Agent shall have the right after this Security has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Liabilities.
- 12.2 For the purpose of Clause 12.1, the value of the financial collateral appropriated shall be such amount as the Security Agent acting in good faith reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.

## **13 Discharge**

- 13.1 At the end of the Security Period, the Security Agent must, at the request and cost of the Assignor, take whatever action is reasonably necessary to discharge or retrocess this Assignment.
- 13.2 The Security Agent's right to recover the Secured Liabilities 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 the Security Agent on the faith of any such payment or realisation.
- 13.3 If any payment or realisation in respect of the Secured Liabilities is, in the Security Agent's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the Security Agent shall be entitled to retain this

Assignment undischarged until the expiry of the period during which it may be challenged on any such ground.

#### **14 Miscellaneous**

##### **14.1 Severability**

The provisions of this Assignment 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 Assignment shall not in any way be affected or impaired thereby.

##### **14.2 Certificate**

A certificate signed by any authorised signatory on behalf of the Security Agent shall, save in the case of manifest error, conclusively constitute the amount of the Secured Liabilities at the relevant time for all purposes of this Assignment.

##### **14.3 Amendments**

No amendment or variation of this Assignment shall be effective unless it is in writing and signed by or on behalf of each of the Parties.

##### **14.4 Restrictions on claims by the Assignor**

Any rights which the Assignor may have:

14.4.1 to be subrogated to any rights or security of or moneys held, received or receivable by any Senior Creditor with respect to the Secured Liabilities; or

17.5.2 to be entitled to any right of contribution or indemnity from the other Obligors or any other person; or

17.5.3 to claim, rank, prove or vote as a creditor of the other Obligors or any other person or its estate in competition with any Senior Creditor;

shall be exercised by the Assignor only if and to the extent that the Security Agent so requires and in such manner and upon such terms as the Security Agent may specify and the Assignor shall hold any moneys, rights or security held or received by it as a result of the exercise of any such rights on trust for the Security Agent for application in accordance with the terms hereof as if such moneys, rights or security were held or received by the Security Agent under this Assignment.

#### **15 Governing law**

This Assignment and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

**16 Enforcement**

- 16.1 The courts of Scotland have exclusive jurisdiction to settle any dispute including a dispute relating to non-contractual obligations arising out of or in connection with this Assignment (including a dispute regarding the existence, validity or termination of this Assignment) (a "**Dispute**").
- 16.2 The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 16.3 This Clause is for the benefit of the Senior Creditors only. As a result, no Senior Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, a Senior Creditor may take concurrent proceedings in any number of jurisdictions.

**17 Consent to registration and authorisation**

- 17.1 The Assignor consents to the registration of this Assignment and of any certificate referred to in Clause 14.2 for preservation and execution.
- 17.2 The Assignor hereby authorises the Security Agent or its agent to insert the date of delivery of this Assignment in the execution block below.

IN WITNESS WHEREOF this Assignment consisting of this and the previous 13 pages is executed as follows:

**ASSIGNOR**

For and on behalf of Whyte and Mackay Limited

  
signature of  
director/secretary/authorised signatory/witness

ROBIN THOMAS SHANWAN  
full name of above (print)

292 ST VINCENT STREET  
GLASGOW  
G2 5TR

Address of witness

  
signature of  
director/secretary/authorised signatory

MR BRYAN DONAGHEY  
full name of above (print)

19 MARCH 2014  
date of signing

19 MARCH 2014  
date of delivery

GLASGOW  
place of signing

**CUSTODIAN**

For and on behalf of Whyte and Mackay Warehousing Limited

  
signature of  
director/secretary/authorised signatory/witness

ROBIN THOMAS SHANWAN  
full name of above (print)

292 ST VINCENT STREET  
GLASGOW  
G2 5TR  
address of witness

  
signature of  
director/secretary/authorised signatory

MR BRYAN DONAGHEY  
full name of above (print)


19 MARCH 2014  
date of signing

GLASGOW  
place of signing

**SECURITY AGENT**

Error! No property name supplied. Error! No property name supplied.

For and on behalf of Standard Chartered Bank as Security Agent

  
signature of witness

Bobby Singh  
full name of above (print)

1 BASINGHALL AVENUE  
LONDON  
EC1V 5DQ  
address of witness

  
signature of authorised signatory

PAUL THOMPSON  
full name of above (print)

13/03/2014  
date of signing

LONDON  
place of signing