



Registration of a Charge

Company Name: **WHYTE AND MACKAY LIMITED**

Company Number: **SC014456**



XAIYR1F5

Received for filing in Electronic Format on the: **09/12/2021**

Details of Charge

Date of creation: **07/12/2021**

Charge code: **SC01 4456 0113**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC**

Brief description: **N/A**

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR THE MATERIAL REDACTED PURSUANT TO S859G OF THE COMPANIES ACT 2006, THIS IS A TRUE, COMPLETE AND CORRECT COPY OF THE EXECUTED ORIGINAL INSTRUMENT.**

Certified by: **CRAIG HUNTER**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 14456

Charge code: SC01 4456 0113

The Registrar of Companies for Scotland hereby certifies that a charge dated 7th December 2021 and created by WHYTE AND MACKAY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 9th December 2021 .

Given at Companies House, Edinburgh on 9th December 2021

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**

I CERTIFY THAT SAVE FOR THE MATERIAL REDACTED
PURSUANT TO s859G OF THE COMPANIES ACT 2006,
THIS IS A TRUE, COMPLETE AND CORRECT COPY
OF THE EXECUTED ORIGINAL INSTRUMENT

Bank ref: DATE... 9 December 2021

SIGNED..... 

Floating Charge (Scotland) Company (0121)

THIS IS AN IMPORTANT DEED. YOU SHOULD TAKE LEGAL ADVICE BEFORE SIGNING.

Owner: Whyte and Mackay Limited

Registered No: SC014456

Bank: The Royal Bank of Scotland plc

1. Owner's Obligations

The Owner will pay to the Bank on demand all the Owner's Obligations on the due date for payment as provided by the terms of any agreement or document constituting the same. The **Owner's Obligations** are all the Owner's liabilities to the Bank (present, future, actual or contingent and whether incurred alone or jointly with another) and include:

- 1.1 **Interest** at the rate charged by the Bank, calculated both before and after demand or decree on a daily basis and compounded according to agreement, or, in the absence of agreement, quarterly on the days selected by the Bank.
- 1.2 Any expenses the Bank or a receiver incurs (on a full indemnity basis and with Interest from the date of payment) in connection with:
 - 1.2.1 the **Property** charged by Clause 2. References to Property include any part of it.
 - 1.2.2 taking, perfecting, protecting, enforcing or exercising any power under this deed

2. Floating Charge

- 2.1 The Owner, as a continuing security for the payment on demand of the Owner's Obligations, gives to the Bank a floating charge over all its property, undertaking, assets (including uncalled capital) and rights owned now or in the future.
- 2.2 Any fixed charge given by the Owner to the Bank will rank in priority to the floating charge.
- 2.3 The floating charge will rank in priority to any fixed charge and any other floating charge granted by the Owner after completion of this deed, unless the Bank agrees otherwise.

3. Restrictions

The Owner will not, without the Bank's consent:

- 3.1 permit or create any fixed security, floating charge or lien on the Property, whether ranking before or after this deed, except in favour of the Bank.
- 3.2 dispose of, whether by sale, lease, licence, sub-licence, transfer or otherwise, any of its Land. References to **Land** are to any interest in heritable, freehold or leasehold land.
- 3.3 grant, or accept a surrender of, any lease or licence of any of its Land or consent to a tenant assigning or sub-letting.
- 3.4 dispose of whether by sale, lease, licence, sub-licence, transfer or otherwise, any other property, assets or rights, other than in the ordinary course of business.
- 3.5 deal with its book and other debts, except by collecting them in the ordinary course of business. In particular, the Owner will not realise its book and other debts by means of invoice discounting or factoring arrangements.
- 3.6 call on, or accept payment of, any uncalled capital.

4. Property Undertakings

The Owner will:

- 4.1 permit the Bank at any time to inspect the Property.

- 4.2 keep all Property of an insurable nature comprehensively insured (including if requested by the Bank, terrorism cover) to the Bank's reasonable satisfaction for its full reinstatement cost. In default, the Bank may arrange insurance at the Owner's expense.
- 4.3 hold on trust for the Bank all proceeds of any insurance of the Property. At the Bank's option, the Owner will apply the proceeds in making good the relevant loss or damage, or to reduce the Owner's Obligations.
- 4.4 where required by the Bank, deposit with the Bank all insurance policies (or copies where the Bank agrees), and all deeds and documents of title relating to the Property.
- 4.5 keep the Property in good condition.
- 4.6 not, without the Bank's consent, carry out any development on or make any alterations to any Land which require planning permission or approval under building regulations.
- 4.7 pay all the money the Owner receives in respect of book and other debts into an account with the Bank. The Bank may specify the relevant account.

5. Investigating Accountants

The Bank may require the Owner to appoint a firm of accountants to review its financial affairs, if:

- 5.1 any of the Owner's Obligations are not paid when due.
- 5.2 the Bank considers that the Owner has breached any other obligation to the Bank.
- 5.3 the Bank considers any information provided by the Owner to be materially inaccurate.

Any review required will take place within 7 days of the Bank's request (or longer if the Bank agrees). The firm, and the terms of reference, must be approved by the Bank. The Owner (and not the Bank) will be responsible for the firm's fees and expenses, but the Bank may make payment and the Owner will repay the Bank on demand.

6. Enforcement

In addition to the Bank's statutory rights, the floating charge will become enforceable and the Bank may appoint an administrator or receiver, if:

- 6.1 the Bank demands payment of any of the Owner's Obligations when the same are due and payable.
- 6.2 the Owner asks the Bank, or the Bank receives notice of intention, to appoint an administrator or an administration application is made.
- 6.3 a meeting is called or a petition is presented for liquidation of the Owner.
- 6.4 any security is enforced in respect of any assets of the Owner.
- 6.5 any document is filed at court initiating or applying for a moratorium or an order is made for a moratorium to come into force in relation to the Owner.

This clause 6 shall not apply to any winding up petition which the Bank is satisfied is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

7. Certificate of Owner's Obligations and Consent to Registration

A certificate signed by a Bank official as to the amount of the Owner's Obligations will be binding on the Owner, except if there is an obvious error. The Owner consents to the registration of this deed and the certificate for preservation and execution.

8. Appointment of Receiver or Administrator

The Bank may appoint or remove a receiver or receivers of the Property, or appoint an administrator of the Owner. If the Bank appoints a receiver, the Bank may fix and pay the receiver's fees and expenses. The receiver will be the Owner's agent and the Owner (and not the Bank) will be responsible for the acts, defaults and remuneration of the receiver.

9. Powers of the Bank and receivers

9.1 The Bank or any receiver may:

9.1.1 carry on the Owner's business.

9.1.2 enter, take possession of, and/or generally manage the Property.

9.1.3 complete any unfinished works or carry out any new works of building, reconstruction, maintenance or repair on any Land.

9.1.4 purchase any Land or other property and purchase, grant or release any interest in or right over Land or the benefit of any covenants affecting that Land. References to Land or Property include land or property that is purchased by the Bank or a receiver under this power.

9.1.5 sell, lease, surrender or accept surrenders of leases, charge or deal with the Property without restriction, including disposing of any fixtures separately from the Land.

9.1.6 complete any transactions by executing any deeds or documents in the name of the Owner.

9.1.7 take, continue or defend any proceedings and enter into any arrangement or compromise.

9.1.8 insure the Property and any works, arrange indemnity and other similar insurance, and obtain bonds and give counter-indemnities and other security in connection with this.

9.1.9 call up any uncalled capital with all the powers conferred by the Owner's articles of association.

9.1.10 employ advisers, consultants, managers, agents, workmen and others.

9.1.11 purchase or acquire materials, tools, equipment, furnishing, goods or supplies.

9.1.12 do any acts which the Bank or a receiver considers to be incidental or beneficial to the exercise of their powers.

9.2 A receiver may borrow and secure the repayment of any money, in priority to the Owner's Obligations.

9.3 Joint receivers may exercise their powers jointly and separately.

9.4 A receiver will first apply any money received from the Property towards the repayment of all money that the receiver has borrowed and secondly in payment of the receiver's fees and expenses. The receiver will then apply any remaining money received as required by law.

9.5 The Bank may exercise any of its powers even if a receiver has been appointed.

9.6 The Bank may exercise any rights attached to any charged stock, shares and other securities as it considers necessary to preserve the value of, or realise, that Property. Otherwise, the Bank will only exercise those rights as instructed by the Owner.

9.7 The Bank may set off any amount due from the Owner against any amount owed by the Bank to the Owner. The Bank may exercise this right, without prior notice, both before and after demand. For this purpose, the Bank may convert an amount in one currency to another, using its market rate of exchange at the relevant time.

9.8 Any credit balance with the Bank will not be repayable, or capable of being disposed of, charged or dealt with by the Owner, until the Owner's Obligations both before and after demand have been paid in full. The Bank allowing the Owner to make withdrawals will not waive this restriction in respect of future withdrawals.

10. Appointment of a Monitor

The Owner will not enter into a moratorium or appoint a monitor without first giving the Bank 5 business days' notice of its intention to do so.

11. Application of Payments

- 11.1 The Bank may apply any payments received for the Owner to reduce any of the Owner's Obligations, as the Bank decides.
- 11.2 If the Bank receives notice of any charge or interest affecting the Property, the Bank may suspend the Owner's account(s) and open a new account or accounts. Regardless of whether the Bank suspends the account(s), any payments received by the Bank for the Owner after the date of the notice will be applied first to repay the Owner's Obligations arising after that date.

12. Preservation of Other Security and Rights and Further Assurance

- 12.1 The deed is in addition to any other security or guarantee for the Owner's Obligations held by the Bank now or in the future. The Bank may consolidate the deed with any other security so that they have to be redeemed together, but it will not merge with or prejudice any other security or guarantee or any of the Bank's other rights.
- 12.2 On request, the Owner will execute any deed or document, or take any other action required by the Bank, to perfect or enhance the Bank's security under the deed.

13. Power of Attorney

To give effect to the deed and secure the exercise of any of their powers, the Owner irrevocably appoints the Bank, and separately any receiver, to be the Owner's attorney (with full power of substitution and delegation), in the Owner's name to sign or execute any documents, deeds and other instruments, or to take, continue or defend any proceedings.

14. Consents, Notices and Demands

- 14.1 All consents, notices and demands must be in writing.
- 14.2 The Bank may deliver a notice or demand to the Owner at its registered office or at the contact details last known to the Bank.
- 14.3 A notice or demand signed by an official of the Bank will be effective at the time of personal delivery; on the second business day after posting; or, if by fax, at the time of sending, if sent before 6.00 p.m. on a business day, or otherwise on the next business day. A **business day** is a weekday other than a national holiday.
- 14.4 A notice from the Owner to the Bank will be effective on receipt.

15. Transfers

The Bank may allow any person to take over any of its rights and duties under the deed. The Owner authorises the Bank to give that person or its agent any financial or other information about the Owner. References to the Bank include its successors.

16. Conflict

To the extent the provisions of this floating charge conflict with the provisions of any facility agreement, facility letter or other finance document (however defined) constituting the Owner's Obligations from time to time (a "**Debt Document**"), the provisions of that Debt Document shall prevail, provided that where there is more than one Debt Document in place at any time, the provisions of which conflict with the provisions of this floating charge, the Bank shall in its absolute discretion determine which Debt Document should prevail where there is conflict amongst the provision of those Debt Documents.

17. Law

- 17.1 Scots law applies to this deed and the Scottish courts have exclusive jurisdiction.

