



**Registration of a Charge**

Company name: **MATTHEW CLARK (SCOTLAND) LIMITED**

Company number: **SC039321**



X4i4GSHS

Received for Electronic Filing: **16/10/2015**

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**Details of Charge**

Date of creation: **07/10/2015**

Charge code: **SC03 9321 0024**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC AS SECURITY AGENT**

Brief description:

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**PINSENT MASONS LLP**



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

Company number: 39321

Charge code: SC03 9321 0024

The Registrar of Companies for Scotland hereby certifies that a charge dated 7th October 2015 and created by MATTHEW CLARK (SCOTLAND) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th October 2015 .

Given at Companies House, Edinburgh on 19th October 2015

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

**FLOATING CHARGE**

by

**MATTHEW CLARK (SCOTLAND) LIMITED**

in favour of

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

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**of all its property and undertaking**

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**Pinsent Masons**

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## FLOATING CHARGE by

- (1) **MATTHEW CLARK (SCOTLAND) LIMITED** incorporated in Scotland (Company Number SC039321) whose registered office is at The Ca'd'oro 45 Gordon Street, Glasgow, G1 3PE (the "**Company**")

in favour of

- (2) **THE ROYAL BANK OF SCOTLAND PLC** (the "**Security Agent**") as agent and trustee for itself and each of the Secured Finance Parties (as defined below)

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Security unless the context requires otherwise:-

"Act"	means the Insolvency Act 1986 as amended
"Declared Default"	means an Event of Default which has resulted in the TAR Agent exercising any of its rights under clause 26.18 ( <i>Acceleration</i> ) of the TAR Facilities Agreement
"Default Rate"	means the rate specified in clause 12.3 ( <i>Default interest</i> ) of the TAR Facilities Agreement
"Event of Default"	has the meaning given to that term in the TAR Facilities Agreement
"Group"	has the meaning given in the Intercreditor Agreement
"Intercreditor Agreement"	has the meaning given to that term in the TAR Facilities Agreement
"Parent"	means Conviviality Retail Plc, a public limited company incorporated in England and Wales with company number 05592636
"Receiver"	means any receiver or administrative receiver appointed in respect of the Secured Assets under this Security (whether by the Company 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 Company
"Secured Finance Documents"	has the meaning given to "TAR Finance Documents" in the Intercreditor Agreement (each being a " <b>Secured Finance Document</b> ")
"Secured Finance Parties"	has the meaning given to the term "TAR Secured Parties" in the Intercreditor Agreement (each being a " <b>Secured Finance Party</b> ")
"Secured Liabilities"	means all monies and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Security Obligor to any Secured Finance Party under

the Secured Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

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

**"Security Obligor"** has the meaning given in the Intercreditor Agreement

**"Security Period"** means the period beginning on the date of this Security and ending on the date which:-

(a) all of the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full; and

(b) no Secured Finance Party has any further commitment, obligation or liability under or pursuant to the Secured Finance Documents

**"TAR Agent"** has the meaning given in the Intercreditor Agreement

**"TAR Facilities Agreement"** means the facilities agreement dated 7 September 2015 between, amongst others, the Parent, the TAR Agent and the Security Agent, as amended, supplemented, novated, extended or restated from time to time

## 1.2 Facilities Agreement definitions

In this Security, unless the context requires otherwise, terms defined in clause 1.1 (*Definitions*) of the TAR Facilities Agreement shall have the same meaning in this Security.

## 1.3 Interpretation

1.3.1 The provisions of clause 1.2 (*Construction*) of the TAR Facilities Agreement and clause 1.2 (*Construction*) of the Intercreditor Agreement shall apply *mutatis mutandis* to this Security as if set out in full herein;

1.3.2 In this Security references to a "fixed security" mean a fixed security as defined by Section 486 of the Companies Act 1985;

## 1.4 Headings

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

## 1.5 Intercreditor Agreement

1.5.1 If there is any conflict or inconsistency between the provisions of this Security and the provisions of the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail.

1.5.2 This Security is subject to the terms of the Intercreditor Agreement.

- 1.5.3 The provisions of the Intercreditor Agreement shall apply to the Security Agent's rights and duties and the resignation of the Security Agent as if set out in this Security.

## **2. FLOATING CHARGE**

### **2.1 Payment**

The Company undertakes to the Security Agent that it will pay and discharge the Secured Liabilities in accordance with the TAR Facilities Agreement and the other Secured Finance Documents.

### **2.2 Floating Charge**

In security for the payment and discharge of the Secured Liabilities, the Company hereby GRANTS a FLOATING CHARGE over the Secured Assets in favour of the Security Agent.

### **2.3 Negative pledge and ranking**

Save as otherwise provided in the Secured Finance Documents or unless otherwise agreed in writing by the Security Agent and subject to Section 464(2) of the Companies Act 1985:

2.3.1 the Company shall not create any fixed security or other floating charge over any part of the Secured Assets after its execution of this Security except any fixed security in favour of the Security Agent; and

2.3.2 this Security shall rank in priority to any fixed security or other floating charge created by the Company after its execution of this Security except any fixed security in favour of the Security Agent.

## **3. PROTECTION OF SECURITY**

### **3.1 Continuing security**

This Security shall be a continuing security to the Security Agent and shall remain in force for the duration of the Security Period notwithstanding any intermediate settlement of account or other matter or thing whatsoever.

### **3.2 No prejudice**

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

### **3.3 No waiver**

Failure or delay on the part of the Security Agent 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**

Neither the security created by this Security nor the obligations of the Company under this Security will be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice that security or any of those obligations (whether or not known to it, the Security Agent or any other Secured Finance Party) including:-

- 3.5.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 3.5.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any person;
- 3.5.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over, assets of any Obligor or other person or 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;
- 3.5.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;
- 3.5.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Secured Finance Document or any other document or security;
- 3.5.6 any unenforceability, illegality or invalidity of any obligation of, or any security created by, any person under any Secured Finance Document or any other document; or
- 3.5.7 an insolvency, liquidation, administration or similar procedure.

### **3.6 New accounts**

If the Security Agent or any other Secured Finance Party receives notice (whether actual or otherwise) of any subsequent security (other than a Permitted Security) over or affecting any of the Secured Assets or if a petition is presented or a resolution passed in relation to the winding up of the Company, the Security Agent and the relevant Secured Finance Party or Secured Finance Parties may close the current account or accounts and/or open a new account or accounts for the Company. If the Security Agent or any other Secured Finance Party does not open a new account or accounts immediately it shall nevertheless be treated as if it had done so at the time when the relevant event occurred, and as from that time all payments made by the Company to the Security Agent or that Secured Finance Party shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the Secured Liabilities.

## **4. POWER OF ATTORNEY**

### **4.1 Appointment**

The Company hereby irrevocably appoints the Security Agent; whether or not a Receiver has been appointed, and separately also any 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:-

- 4.1.1 to do anything which the Company is obliged to do (but has not done) under this Security including, without limitation, to create any fixed security or charge over any of the Secured Assets; and
- 4.1.2 generally to exercise all or any of the rights, powers and discretions conferred on the Security Agent or Receiver in relation to the Secured Assets under this Security.

#### **4.2 Ratification**

The Company 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 Company under this Clause.

#### **4.3 Exercise of power**

The appointment effected under Clause 4.1 (*Appointment*) shall take effect immediately (in the case of a Receiver, upon his/her appointment), but the powers conferred shall only become exercisable upon the occurrence of a Declared Default (which upon the appointment of a Receiver shall be deemed to be the case).

### **5. ENFORCEMENT**

#### **5.1 Enforceable**

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

- 5.1.1 the occurrence of a Declared Default; or
- 5.1.2 the Company requesting the appointment of a Receiver or administrator.

#### **5.2 Appointment of Receiver or administrator**

5.2.1 At any time after this Security has become enforceable the Security Agent shall be entitled:-

- (a) 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;
- (b) to appoint one or more persons as an administrator or administrators of the Company;
- (c) to make an administration application in respect of the Company; or
- (d) to give notice of intention to appoint an administrator or administrators in respect of the Company.

5.2.2 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 the Security Agent 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, the Security Agent shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

5.2.3 Paragraph 14 of Schedule B1 to the Act shall apply to this Security.

### 5.3 Powers of Receiver

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

- 5.3.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Company), 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 Company, or the Receiver, or its or his/her nominee or trustee;
- 5.3.2 subject to the articles of association, to convene extraordinary general meetings of the Company;
- 5.3.3 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 Liabilities; and
- 5.3.4 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.

### 5.4 Agent of Company

A Receiver shall be the agent of the Company for all purposes of and in all respects arising under this Security and, except as otherwise provided by the Act, the Company 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.

### 5.5 Application of proceeds

All monies realised by a Receiver or otherwise arising from the enforcement of this security shall, subject always to Clause 5.6 (*Monies on suspense account*) and Clause 6 (*Discharge*), the claims of creditors ranking in priority to or *pari passu* with the claims of the Security Agent under this Security, and the terms of Section 60 of the Act, be applied by the Receiver in or towards settlement of the Secured Liabilities in accordance with the Intercreditor Agreement and any surplus shall be paid to the Company or any other person entitled thereto.

### 5.6 Monies on suspense account

Nothing in this Security shall limit the right of a Receiver and/or the Security Agent (and the Company acknowledges that a Receiver and/or the Security Agent are so entitled) if and for so long as the Receiver and/or the Security Agent in his/her/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 (which may be an account or accounts with the Security Agent), without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Liabilities.

**5.7 Balance**

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

**5.8 Third parties**

5.8.1 No purchaser from or other person dealing with a 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 Liabilities remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

5.8.2 The receipt or discharge of a 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 his/her direction.

**6. DISCHARGE**

**6.1 Release**

Upon the expiry of the Security Period, the Security Agent shall, or shall procure that its appointees will, at the request and cost of the Company, take whatever action is reasonably necessary to release (without recourse or warranty) the Secured Assets from this Security.

**6.2 Reinstatement**

If the Security Agent reasonably considers that any amount paid or credited to any Secured Finance Party under any Secured Finance Document (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is capable of being avoided, reduced or otherwise set aside:-

6.2.1 that amount shall not be considered to have been paid for the purposes of determining whether the Secured Liabilities have been irrevocably and unconditionally paid and discharged; and

6.2.2 the liability of the relevant Obligor and the security created by this Security shall continue as if that amount had not been paid or credited.

**6.3 Avoidance of payments**

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.

**7. LIABILITY OF RECEIVER AND SECURITY AGENT**

A Receiver and the Security Agent shall not in any circumstances be liable to the Company 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 the Security Agent, 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 gross negligence or wilful misconduct of the Receiver or the Security Agent or his/her or its officers, employees or agents.

## **8. MISCELLANEOUS**

### **8.1 Non compliance by Company**

If the Company fails to comply with any of its obligations in relation to any of its assets subject to security pursuant to this Security, or the Security Agent reasonably considers that the Company has failed to comply with any such obligations, where such failure to do so could have a Material Adverse Effect on the interests of the Secured Finance Parties the Security Agent may, if it thinks fit (but without any obligation) take such steps as it deems appropriate to remedy such failure (including, without limitation, the carrying out of repairs, the putting in place of insurance or the payment of costs, charges or other expenses) and the Company will co-operate with and will grant the Security Agent or its agents or contractors such access as the Security Agent may require to the relevant assets or otherwise in order to facilitate the taking of such steps.

### **8.2 TAR Facilities Agreement provisions**

The provisions of clauses 20 (*Costs and expenses*), 25.16 (*Disposals*) and 25.30 (*Further assurance*) of the TAR Facilities Agreement shall apply *mutatis mutandis* to this Security as if set out in full herein.

### **8.3 Assignment**

8.3.1 The Security Agent may at any time (without notice or consent) assign the benefit of this Security or any of its rights or obligations hereunder in accordance with the TAR Facilities Agreement and Intercreditor Agreement (as applicable).

8.3.2 The Company may not assign, transfer or otherwise deal with the benefit or burden of this Security or any of its rights or obligations hereunder.

### **8.4 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 Security.

### **8.5 Non-reliance**

Each of the parties acknowledges and agrees that in entering into this Security it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to this Security or not) other than as expressly set out in this Security.

### **8.6 Amendments**

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

## **9. NOTICES**

All notices, requests, demands and other communications to be given under this Security shall be given and/or deemed to be given in the same manner as notices to be given under the TAR Facilities Agreement, and the terms of clause 35 (*Notices*) of

the TAR Facilities Agreement shall apply *mutatis mutandis* to this Security as though that clause was set out in full herein.

**10. GOVERNING LAW**

This Security shall be governed by and construed in accordance with the law of Scotland 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 consisting of this and the eight preceding pages are executed as follows:-

SUBSCRIBED for and on behalf of  
**MATTHEW CLARK (SCOTLAND) LIMITED**

at Manchester  
on the 7th day  
of October 2015  
by

[Redacted Signature] Director  
ANDREW HUMPHREYS Full Name

before this witness

[Redacted Signature] Witness  
ASHLEY JACKSON Full Name  
DLA Piper UK LLP Address  
101 Barbirolli Square  
Manchester  
M2 3DL