



Registration of a Charge

Company name: **HIGHLAND DISTRIBUTION VENTURES LIMITED**

Company number: **SC198207**



X8KPOY3K

Received for Electronic Filing: **20/12/2019**

Details of Charge

Date of creation: **12/12/2019**

Charge code: **SC19 8207 0007**

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

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 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: 198207

Charge code: SC19 8207 0007

The Registrar of Companies for Scotland hereby certifies that a charge dated 12th December 2019 and created by HIGHLAND DISTRIBUTION VENTURES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th December 2019 .

Given at Companies House, Edinburgh on 23rd December 2019

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

10 December 2019
SEAH/SUMK/101327.00297/67877930.3

Bond and Floating Charge

Dated 12 December 2019

Highland Distribution Ventures Limited
(Company)

and

The Royal Bank of Scotland plc
(Security Trustee)

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This Bond and Floating Charge is delivered on 12 December 2019 and made between

- (1) **Highland Distribution Ventures Limited**, a company incorporated in Scotland (Company Number: SC198207) and having its registered office at 100 Queen Street, Glasgow G1 3DN (the **Company**); and
- (2) **The Royal Bank of Scotland plc**, in its capacity as security trustee for itself and for the Secured Parties under the terms of the Facilities Agreement (the **Security Trustee**).

WITNESSES as follows

1 Definitions and Interpretation

1.1 Definitions

In this Charge, unless the context otherwise requires:

Administrator means a person appointed under Schedule B1 to the Insolvency Act 1986 to manage the affairs, business and/or property of the Company.

Bankruptcy Act means the Bankruptcy & Diligence etc (Scotland) Act 2007.

Charge means this bond and floating charge.

Charged Assets means the whole of the property, assets and undertaking (including uncalled capital) from time to time of the Company.

Collateral Instruments means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any liabilities of any person and includes any document or instrument creating or evidencing an Encumbrance.

Default Rate means the rate specified in Clause 12.4 (*Default interest*) of the Facilities Agreement.

Disposal includes any sale, lease, sub-lease, assignment or transfer, the grant of an option or similar right, the grant of any easement, right or privilege, the grant of a licence or permission to assign or sublet, the creation of a trust or other equitable interest or any other proprietary right in favour of a third party, a sharing or parting with possession or occupation whether by way of licence or otherwise and the granting of access to any other person over any intellectual property, and **dispose** and **disposition** shall be construed accordingly.

Encumbrance means any Security or Quasi-Security.

Event of Default has the meaning given to that term in the Facilities Agreement.

Facilities Agreement means the facilities agreement dated on or around the date of this Charge between (1) The 1887 Company Limited as Parent; (2) the subsidiaries of the Parent listed in Part 1 of the Schedule 1 thereto as Original Borrowers; (3) the subsidiaries of the Parent listed in Part 1 of Schedule 1 thereto as Original Guarantors; (4) The Royal Bank of Scotland plc, Lloyds Bank plc, HSBC UK Bank plc, Skandinaviska Enskilda Banken AB (publ), Citibank N.A., London Branch and BNP Paribas, London Branch as mandated lead arrangers; (5) the financial institutions listed in Part 2 of Schedule 1 thereto as Original

Lenders; (6) the financial institutions listed in Part 3 of Schedule 1 thereto as Original Hedge Counterparties; (7) The Royal Bank of Scotland plc as agent; and (8) The Royal Bank of Scotland plc as Security Trustee (as that agreement may from time to time be amended, varied, novated, supplemented or replaced from time to time including, without limitation, by the increase or extension of maturity of the facilities).

Financial Collateral shall have the meaning given to that expression in the Financial Collateral Regulations.

Financial Collateral Regulations means the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003 No. 3226).

Fixed Security shall have the meaning given to it in section 47 of the Bankruptcy Act.

Fixtures means in relation to any freehold or leasehold property charged by or pursuant to this Charge all fixtures and fittings (including trade fixtures and fittings other than occupational tenants' fixtures and fittings) and fixed plant and machinery from time to time thereon, the property wherein is vested in the Company.

Incapacity means, in relation to a person, the insolvency, liquidation, dissolution, winding-up, administration, receivership, amalgamation, reconstruction or other incapacity of that person whatsoever (and, in the case of a partnership, includes the termination or change in the composition of the partnership).

Indebtedness means any obligation for the payment or repayment of money, whether as principal or surety and whether present or future, actual or contingent.

Party means a party to this Charge.

Receiver means any one or more receivers and/or managers or administrative receivers appointed by the Security Trustee pursuant to this Charge in respect of the Company or over all or any of the Charged Assets.

Secured Obligations means all the liabilities and all other present and future obligations at any time due, owing or incurred by any Obligor to any Secured Party under the Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

Security Financial Collateral Arrangements shall have the meaning given to that expression in the Financial Collateral Regulations.

Security Period means the period beginning on the date of this Charge and ending on the date on which all of the Secured Obligations which have arisen or which may arise have been irrevocably and unconditionally paid and discharged in full and the Finance Parties are not under any liability or commitment to make any further advances or provide any further financial accommodation to the Obligors or the security hereby created has been finally released and discharged.

1.2 **Successors and assigns**

The expressions **Security Trustee**, **Finance Party**, **Secured Party** and **Company** include, where the context admits, their respective successors, and, in the case of the Security Trustee, the Finance Parties and the Secured Parties, their respective transferees and assignees, whether immediate or derivative.

1.3 Headings

Clause headings and the Contents page are inserted for convenience of reference only and shall be ignored in the interpretation of this Charge.

1.4 Construction of certain terms

In this Charge, unless the context otherwise requires:

- 1.4.1 references to Clauses are to be construed as references to the Clauses of this Charge;
- 1.4.2 references to (or to any specified provision of) this Charge or any other document shall be construed as references to this Charge, that provision or that document as in force for the time being and as amended, restated, supplemented, replaced or novated from time to time no matter how fundamental in nature any such amendment, restatement or supplement may be and including, for the avoidance of doubt and without limitation, any amendment, restatement or supplement that increases the amount of any facilities made available by any Secured Party to the Company or any other Obligor or that extends the date for repayment thereby or that increases the interest or fees payable thereon or in respect thereof;
- 1.4.3 words importing the plural shall include the singular and vice versa;
- 1.4.4 references to a **time of day** are to London time;
- 1.4.5 references to **assets** include all or part of any business, undertaking, real property, personal property, uncalled capital and any rights (whether actual or contingent, present or future) to receive, or require delivery of, or otherwise in respect of, any of the foregoing;
- 1.4.6 references to a **guarantee** include references to an indemnity or other assurance against financial loss including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any Indebtedness and **guaranteed** shall be construed accordingly;
- 1.4.7 a **person** is to be construed to include references to a natural person, corporation, firm, company, partnership, limited partnership, limited liability partnership, joint venture, unincorporated body of persons, individual or any state or any agency of a state, whether or not a separate legal entity;
- 1.4.8 references to a **regulation** include any present or future regulation, rule, official directive, request or guideline (whether or not having the force of law) of any agency, authority, central bank or government department or any self-regulatory or other national or supra-national authority;
- 1.4.9 references to **set-off** include rights of retention, claims of compensation and rights to balance accounts on insolvency;
- 1.4.10 references to a **fixed security** shall be construed as a reference to a fixed security as defined by Section 47 of the Bankruptcy Act as in force at the date hereof; and
- 1.4.11 references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended and includes any subordinate legislation.

1.5 **Appointment of Receiver/Administrator**

Any appointment of a Receiver or an Administrator under Clause 5 (*Appointment of Receiver/Administrator and Powers of Receiver*) hereof may be made by any successor or assignee or transferee of the Security Trustee, and the Company hereby irrevocably appoints each such successor or assignee or transferee to be its attorney in the terms and for the purposes stated in Clause 9 (*Power of Attorney*) hereof.

1.6 **Facilities Agreement definitions**

Unless the context otherwise requires or unless otherwise defined in this Charge, words and expressions defined in the Facilities Agreement shall have the same meaning when used in this Charge.

1.7 **Conflicts with Facilities Agreement**

In the case of any conflict or inconsistency between the terms of this Charge and the terms of the Facilities Agreement, the terms of the Facilities Agreement shall prevail.

1.8 **Meaning of continuing**

An Event of Default is **continuing** if it has not been remedied or waived.

2 **Obligations to Pay**

2.1 The Company undertakes to the Security Trustee that it will on demand pay or discharge the Secured Obligations on the due date or dates therefor in accordance with the terms of the relevant Finance Documents (including this Charge).

2.2 If the Company shall fail to pay any amount undertaken to be paid under Clause 2.1 above on the due date for payment thereof, it shall on demand by the Security Trustee but without double counting of any default interest payable pursuant to any Finance Document (which in the case of any conflict shall prevail) pay interest on that amount (before and after any decree, judgment or demand) from the due date to the date of actual payment calculated on a daily basis (based on a year of 365 days) at the Default Rate.

3 **Charge**

3.1 **Floating Charge**

The Company, as a continuing security for the payment and discharge of the Secured Obligations, **HEREBY GRANTS** in favour of the Security Trustee a floating charge over the whole of the Charged Assets.

3.2 **Restrictions on dealing with Charged Assets**

Subject to the terms of the Facilities Agreement, the Company hereby covenants that it will not without the prior written consent of the Security Trustee:

3.2.1 dispose of the Charged Assets or any part thereof or attempt or agree so to do except in the case of disposals expressly permitted by the terms of this Charge or any Permitted Disposal or Permitted Transaction;

- 3.2.2 sell, factor, assign or otherwise deal with the book or other debts forming part of the Charged Assets otherwise than in the ordinary course of collecting and realising the same or in relation to any Permitted Disposal or Permitted Transaction;
- 3.2.3 pull down or remove the whole or any part of any buildings forming part of the Charged Assets or sever or unfix or remove any of the material fixtures thereto nor (except for the purposes of effecting necessary repairs thereto or of replacing the same) remove any of the plant and machinery belonging to or used by it except in the ordinary course of business or where to do so would materially affect the interests of the Secured Parties under the Finance Documents;
- 3.2.4 grant or agree to grant any tenancy or licence affecting all or any part of the Charged Assets or grant or agree to grant a lease or sublease of, or accept a surrender of a lease, sublease or tenancy of all or any part of the Charged Assets except in the case of any Permitted Disposal or Permitted Transaction; or
- 3.2.5 create or attempt to create or permit to subsist in favour of any person other than the Security Trustee any Encumbrance on or affecting the Charged Assets or any part thereof except any Permitted Security.

3.3 Ranking of floating charge

- 3.3.1 This Charge shall, subject to section 46(4) of the Bankruptcy Act, rank in priority to any Fixed Security (other than any Fixed Security granted by the Company in favour of the Security Trustee which shall rank in priority to this Charge) and to any other floating charge.
- 3.3.2 The Company shall not, without the prior written consent of the Security Trustee, create or permit to exist any fixed security or floating charge over all or any part of the Charged Assets which ranks in priority to or equally with this Charge except for any Fixed Security granted by the Company in favour of the Security Trustee or any Permitted Security.

3.4 Qualifying floating charge

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to any floating charge created pursuant to this Charge.

4 Events of Default; Certain Powers of The Security Trustee; Enforcement

4.1 Powers on enforcement

Following the occurrence of an Event of Default which is continuing, the security constituted by this Charge shall become enforceable and the Security Trustee may exercise all the powers conferred on the holder of a qualifying floating charge by the Insolvency Act 1986 and all or any of the rights and powers conferred by this Charge without further notice to the Company.

4.2 Financial Collateral Regulations

To the extent that any Charged Asset constitutes Financial Collateral and is subject to a Security Financial Collateral Arrangement created by or pursuant to this Charge, the Security Trustee shall have the right, at any time after this Charge becomes enforceable, to appropriate all or any part of those Charged Assets in or towards the payment or discharge of the Secured Obligations. The value of any Charged Assets appropriated in accordance with this Clause 4.2 shall be the price of those Charged Assets at the time the right of

appropriation is exercised as listed on any recognised market index, or determined by such other method as the Security Trustee may select (including independent valuation). The Company agrees that the methods of valuation provided for in this Clause 4.2 are commercially reasonable for the purpose of Regulation 18 of the Financial Collateral Regulations. To the extent that any Charged Asset constitutes Financial Collateral, the Company agrees that such Charged Assets shall be held or re-designated so as to be under the control of the Security Trustee for all purposes of the Financial Collateral Regulations.

4.3 Subsequent Encumbrances

If the Security Trustee receives notice of any subsequent Encumbrance (which is not a Permitted Security) affecting the Charged Assets or any part thereof, the Security Trustee may open a new account for the Company. If it does not do so then, unless the Security Trustee gives express written notice to the contrary to the Company, it shall nevertheless be treated as if it had opened a new account at the time when it received such notice and as from that time all payments made by or on behalf of the Company to the Security Trustee shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount due from the Company to the Security Trustee at the time when it received such notice.

4.4 Fixtures

Subject to any prior ranking security, at any time on or after the security constituted by this Charge becomes enforceable or if requested by the Company, the Security Trustee may sever any Fixtures from the property to which they are attached and sell them separately from that property.

5 Appointment of Receiver/Administrator and Powers Of Receiver

5.1 Appointment

At any time on or after the occurrence of an Event of Default which is continuing or if requested by the Company, the Security Trustee may by instrument in writing executed by any director or other duly authorised officer appoint any person to be:

5.1.1 a Receiver of all or any part of the Charged Assets; or

5.1.2 an Administrator,

and any such appointment may be made subject to such qualifications, limitations and/or exceptions (either generally or in relation to specific assets or classes of asset) as may be specified in the instrument effecting the appointment. Where more than one Receiver is appointed, each joint Receiver shall have power to act severally, independently of any other joint Receivers, except to the extent that the Security Trustee may specify to the contrary in the appointment. The Security Trustee may (subject, where relevant, to section 45 of the Insolvency Act 1986) remove any Receiver so appointed and appoint another in his place.

5.2 Receiver as agent

A Receiver shall be the agent of the Company in respect of which he is appointed and the Company shall be solely responsible for his acts or defaults and for his remuneration. The Company shall be solely responsible for the acts and defaults of a Receiver appointed under this Charge and for his remuneration, costs, charges and expenses and the Security Trustee shall not have any liability or responsibility in respect of any act or default of such Receiver or

of any such remuneration, costs, charges and expenses, save in the case of gross negligence or wilful default of the Receiver.

5.3 Powers of Receiver

A Receiver shall have the power to do or omit to do on behalf of the Company anything which the Company itself could do or omit to do if the Receiver had not been appointed, notwithstanding any liquidation of the Company. In particular (but without limitation) a Receiver shall (whether or not he is an administrative receiver) have power to do all the acts and things described in Schedules 1 and 2 to the Insolvency Act 1986 as if the words **he** and **him** referred to the Receiver and the word **company** referred to the Company. In particular and by way of addition to, but without prejudice to those aforementioned powers (and those of the Security Trustee) a Receiver will have power:

- 5.3.1 to sell, let or lease or concur in selling, letting or leasing and to vary the terms or determine, surrender or accept surrenders of leases or tenancies of or grant options and licences over all or any part of the Charged Assets in such manner and generally on such terms as he shall think fit in his absolute and unfettered discretion and so that any such sale may be made for cash or for shares or securities of another company or other valuable consideration (in each case payable in a lump sum or by instalments);
- 5.3.2 to sever any fixtures (including trade and tenant's fixtures) from the property of which they form part;
- 5.3.3 to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Assets, including, without limitation, all voting and other rights attaching to stocks, shares and other securities owned by the Company;
- 5.3.4 to make and effect all repairs and improvements;
- 5.3.5 to redeem any prior encumbrance and to settle and pass the accounts of the encumbrancer and any accounts so settled and passed will (subject to any manifest error) be conclusive and binding on the Company and the money so paid will be deemed to be an expense properly incurred by the Receiver;
- 5.3.6 to promote the formation of a subsidiary or subsidiaries of the Company, including, without limitation, any such company formed for the purpose of purchasing, leasing, licensing or otherwise acquiring interests in all or any of the assets of the Company;
- 5.3.7 to make any arrangement or compromise which the Security Trustee or the Receiver may think fit;
- 5.3.8 to make and effect all repairs, renewals, improvements, and insurances;
- 5.3.9 to appoint managers, officers and agents for any of the purposes referred to in this Clause 5 at such salaries as the Receiver may determine;
- 5.3.10 to raise or borrow any money from or incur any liability to the Security Trustee or others on such terms with or without security as he may think fit and so that any such security may be or include a charge on the whole or any part of the Charged Assets ranking in priority to this Charge or otherwise; and

- 5.3.11 to do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Obligations.

The powers of a Receiver may be limited by the terms of his appointment.

5.4 **Remuneration**

Subject to section 58 of the Insolvency Act 1986, the Security Trustee may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another person as Receiver in his place.

6 **Application of Proceeds; Purchasers**

6.1 **Application of proceeds**

All monies received by the Security Trustee or by any Receiver after the security constituted by this Charge becomes enforceable pursuant to Clause 4.1 (*Powers on enforcement*), shall be applied, after the discharge of the remuneration and expenses of the Receiver and all liabilities having priority to the Secured Obligations including, for the avoidance of doubt, the cost and expenses incurred by the Security Trustee or any other Secured Party (including but not limited to costs and expenses incurred by the Security Trustee or any Receiver in the course of carrying on the business of the Company), in or towards satisfaction of the Secured Obligations in such number and order as the Security Trustee may determine, except that the Security Trustee may credit the same to an interest-bearing suspense account for so long and in such manner as the Security Trustee may from time to time determine (acting reasonably) and the Receiver may retain the same for such period as he and the Security Trustee consider expedient.

6.2 **Insurance proceeds**

All monies receivable by virtue of any of the insurances of the Company after the date of enforcement of this Charge shall be paid to the Security Trustee (or if not paid by the insurers directly to the Security Trustee shall be held on trust for the Security Trustee) and shall be applied in reduction of the Secured Obligations except where the Company is required (as landlord or tenant) to apply such insurance monies in accordance with any lease of any of the Charged Assets in which event they shall be so applied.

6.3 **Protection of purchasers**

- 6.3.1 No purchaser or other person shall be bound or concerned to see or enquire whether the right of the Security Trustee or any Receiver to exercise any of the powers conferred by this Charge has arisen or be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of such powers.
- 6.3.2 The receipt of the Security Trustee or of a Receiver shall be an absolute discharge to a purchaser from, or other person dealing with, the Security Trustee or the Receiver and shall relieve that purchaser of any obligation to see to the application of any monies paid to or at the direction of the Security Trustee or the Receiver.

7 Protection of Security Trustee and Receiver

Neither the Security Trustee nor any Receiver or Administrator shall be liable to the Company in respect of any loss or damage which arises out of the exercise, the attempted or purported exercise or the failure to exercise any of their respective powers or for any other loss of any nature whatsoever.

8 Indemnities; Exclusion of Liability; Costs And Expenses

8.1 No liability as heritable creditor in possession

Neither the Secured Parties nor any Receiver shall be liable to account as heritable creditor in possession in respect of all or any of the Charged Assets or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever for which a heritable creditor may be liable as such.

8.2 Recovery of book debts

Neither the Secured Parties nor any Receiver shall have any liability or responsibility of any kind to the Company arising out of the exercise or non-exercise of the right to enforce recovery of any book debts or other receivables or shall be obliged to make any enquiry as to the sufficiency of any sums received in respect of the same or to make any claims or take any other action to collect or enforce the same.

8.3 Indemnity

Without double counting any equivalent rights exercisable by any Secured Party under the Facilities Agreement, the Company hereby undertakes to indemnify and keep indemnified the Secured Parties, any Receiver and any attorney, agent or other person appointed by the Secured Parties under this Charge and the Secured Parties' and any Receiver's officers and employees (each an **Indemnified Party**) in respect of all costs, losses, actions, claims, expenses, demands or liabilities whether in contract, tort or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against, any of the Indemnified Parties (or by or against any manager, agent, officer or employee for whose liability, act or omission any of them may be answerable) at any time relating to or arising directly or indirectly out of or as a consequence of:

8.3.1 anything done or omitted in the exercise or purported exercise of the powers contained in this Charge; or

8.3.2 any breach by the Company of any of its obligations under this Charge.

8.4 Third party contract rights

8.4.1 Each Indemnified Party referred to in Clause 8.3 (*Indemnity*) shall have the benefit and may enforce the terms of this Charge in accordance with the *ius quaesitum tertio*.

8.4.2 Subject to Clause 8.4.1, a person who is not a party to this Charge shall have no rights under the *ius quaesitum tertio* to enforce or to enjoy the benefit of any term of this Charge.

8.4.3 Notwithstanding Clause 8.4.1 or any other provision of this Charge, the Security Trustee and the Company shall be entitled to agree variations to this Charge without notifying the other Indemnified Parties or seeking the consent of such Indemnified Parties or any of them to the variation.

9 Power of Attorney

9.1 Power of attorney

The Company by way of security hereby irrevocably appoints the Security Trustee and any Receiver severally to be its mandatory and attorney and in its name and on its behalf:

- 9.1.1 to execute and complete any documents or instruments which the Security Trustee or such Receiver may require for perfecting the title of the Security Trustee to the Charged Assets or for vesting the same in the Security Trustee, its nominees or any purchaser;
- 9.1.2 to sign, execute, seal and deliver and otherwise perfect any further security document referred to in Clause 25.24 of the Facilities Agreement (*Further Assurance*); and
- 9.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Security Trustee or a Receiver under this Charge or which may be deemed expedient by the Security Trustee or a Receiver in connection with any disposition, realisation or getting in by the Security Trustee or such Receiver of the Charged Assets or any part thereof or in connection with any other exercise of any power under this Charge.

9.2 When enforceable

Whilst the power of attorney granted under this Clause 9 takes effect immediately, it shall only become enforceable after the occurrence of an Event of Default that is continuing.

9.3 Ratification

The Company hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall reasonably do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 9.

10 Continuing Security and Other Matters

10.1 Continuing security

This Charge and the obligations of the Company under this Charge shall:

- 10.1.1 secure the ultimate balance from time to time owing to the Security Trustee and each Secured Party in respect of the Secured Obligations and shall be a continuing security notwithstanding any intermediate payment, partial settlement or other matter whatsoever;
- 10.1.2 be in addition to, and not prejudice or affect, any present or future Collateral Instrument, Encumbrance, right or remedy held by or available to the Security Trustee or any Secured Party;
- 10.1.3 not merge with or be in any way prejudiced or affected by the existence of any such Collateral Instruments, Encumbrances, rights or remedies or by the same being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Security Trustee or any Secured Party dealing with, exchanging, releasing, varying or failing to perfect or enforce any of the same, or giving time for payment or indulgence or compounding with any other person liable; and

- 10.1.4 not in any way be prejudiced or affected by any amendment or supplement to, or novation of, any of the Finance Documents.

10.2 **Waiver of Defences**

The obligations of the Company under this Charge and the security created or granted under this Charge will not be affected by any act, omission, matter or thing which, but for this Clause 10.2, would reduce, release or prejudice any of its obligations under this Charge and/or the security created or granted under this Charge (without limitation and whether or not known to it or the Security Trustee) including:

- 10.2.1 any time, waiver or consent granted to, or composition with, any Obligor or any other person;
- 10.2.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- 10.2.3 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 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;
- 10.2.4 any Incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- 10.2.5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement of a Finance Document or any other document or security;
- 10.2.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- 10.2.7 any insolvency or similar proceedings.

10.3 **Collateral Instruments**

The Security Trustee and the Secured Parties shall not be obliged to make any claim or demand on the Company or any other person liable or to resort to any Collateral Instrument or other means of payment before enforcing this Charge and no action taken or omitted in connection with any such Collateral Instrument or other means of payment shall discharge, reduce, prejudice or affect the liability of the Company. The Security Trustee and the Secured Parties shall not be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such Collateral Instrument or other means of payment.

10.4 **Suspense accounts**

Any money received pursuant to the realisation of any security created pursuant to this Charge (whether before or after any Incapacity of the Company or any other person liable) may be placed to the credit of an interest-bearing suspense account with a view to preserving the rights of the Security Trustee and each Secured Party to prove for the whole of its respective claims against the Company or any other person liable or may be applied in or towards satisfaction of the Secured Obligations.

10.5 **Settlements conditional**

Any release, discharge or settlement between the Company and the Security Trustee and each Secured Party shall be conditional upon no security, disposition or payment to the Security Trustee and such Secured Party by the Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition is not fulfilled the Security Trustee and any such Secured Party shall be entitled to enforce this Charge as if such release, discharge or settlement had not occurred and any such payment had not been made.

10.6 **Company to deliver up certain property**

If the Company takes or receives the benefit of any security or receives or recovers any money or other property other than any security, money or property which it is entitled to take or receive under the Finance Documents, such security, money or other property shall be held on trust for the Security Trustee and shall be delivered to the Security Trustee on demand.

10.7 **Rights additional**

All the rights, remedies and powers vested in the Security Trustee, hereunder shall be in addition to and not a limitation of any and every other right, power or remedy vested in the Security Trustee under this Charge, any Finance Document or at law and all the powers so vested in the Security Trustee may be exercised from time to time and as often as the Security Trustee may deem expedient.

10.8 **No enquiry**

The Security Trustee shall not be obliged to make any enquiry as to the nature or sufficiency of any payment received by it under this Charge or to make any claim or take any action to collect any monies receivable by the Security Trustee in the exercise of any powers conferred by this Charge or to enforce any rights or benefits assigned to the Security Trustee or to which the Security Trustee may at any time be entitled under this Charge.

10.9 **No responsibility for loss**

Other than as required by mandatory law, if such law cannot, by virtue of this Clause 10.9, be disapplied, the Security Trustee shall not be responsible for any loss occasioned by the timing of the exercise or, as the case may be, the non-exercise, of its powers under this Charge save for any loss occasioned by its gross negligence or wilful default.

11 **Non-competition**

11.1 **Non-competition**

Until the expiry of the Security Period, the Company shall not, unless required to do so by the Security Trustee in writing:

- 11.1.1 be subrogated to any rights of the Security Trustee against any member of the Group or be entitled to any right of contribution or indemnity in respect of any payment to the Security Trustee by any member of the Group; or

- 11.1.2 be entitled to claim in the insolvency, administration, winding-up, bankruptcy or liquidation of any member of the Group in competition with the Security Trustee; or
- 11.1.3 exercise any right of compensation, retention or set-off against any member of the Group; or
- 11.1.4 take any security or guarantee from any Group member or claim the benefit of or exercise any right under any guarantee or security granted by any member of the Group in favour of the Company.

11.2 Trust

If any security or guarantee is held from any member of the Group by the Company or if any amount is received, retained or set-off by the Company either in contravention of Clause 11.1 above or following a request from the Security Trustee to exercise any of the rights referred to, the Company shall hold such security or guarantee and any amount received, retained or set-off in trust for the Security Trustee and shall pay that amount to the Security Trustee on demand.

12 Additional Security

- 12.1 This Charge shall be without prejudice and in addition to any other security which may at any time be held by the Security Trustee from the Company or any other person in respect of the whole or any part of the Secured Obligations and may be enforced independently of any such other security.

- 12.1.1 The Security Trustee shall not be obliged before exercising any of the rights conferred on it by this Charge or by law:

- (a) to take any action, enforce any security, exercise any right of compensation or set-off or to obtain or enforce any judgment, decree or order in any court against the Company or any other person; or
- (b) to make or file any claim or proof in a winding up, liquidation, administration or other insolvency proceedings of the Company or any other person.

13 Currencies

All monies received or held by the Secured Parties or by a Receiver under this Charge at any time on or after an Event of Default has occurred which is continuing in a currency other than a currency in which the Secured Obligations are denominated may from time to time be sold for such one or more of the currencies in which the Secured Obligations are denominated as the relevant Secured Party or Receiver considers necessary or desirable acting reasonably and the Company shall indemnify the relevant Secured Party against the full sterling cost (including all costs, charges and expenses) incurred in relation to such sale. Neither the Secured Parties nor any Receiver shall have any liability to the Company in respect of any loss resulting from any fluctuation in exchange rates after any such sale.

14 Release of Security

- 14.1 Upon the expiry of the Security Period or, if the Security Trustee so agrees, at any other time, the Security Trustee shall, subject to the provisions of Clause 14.2, at the request and cost of the Company, execute such documents as may be required to release this Charge and any other security created over the Charged Assets under the terms of this Charge.

- 14.2 If any payment or discharge of any Secured Obligations is, in the reasonable opinion of the Security Trustee, liable to be avoided or invalidated under any enactment relating to bankruptcy or insolvency, the Security Trustee may refuse to grant any release of the security created by this Charge for such further period as the risk of such avoidance or invalidity continues.

15 Miscellaneous

15.1 Liabilities survive deficiencies and releases

The Company agrees to be bound by this Charge notwithstanding that any charges contained in this Charge may be terminated or released (other than in accordance with Clause 14 (*Release of Security*)) or may be or become invalid or unenforceable against the Company whether or not the deficiency is known to the Secured Parties.

15.2 Evidence and calculations

Any certificate or determination by the Security Trustee as to any amount due to the Security Trustee or as to the amount of the Secured Obligations shall, in the absence of manifest error, be conclusive and binding on the Company for all purposes.

15.3 Remedies cumulative

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

15.4 Severability

Each of the provisions in this Charge shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

15.5 Powers of Security Trustee

Any appointment or removal of a Receiver under Clause 5 (*Appointment of Receiver/Administrator and Powers of Receiver*) and any consents under this Charge may be made or given in writing signed or sealed by any successors or assigns of the Security Trustee and accordingly the Company irrevocably appoints each successor and assign of the Security Trustee to be its mandatory and attorney in the terms and for the purposes set out in Clause 9 (*Power of Attorney*).

15.6 Successors and assigns

- 15.6.1 The Security Trustee may at any time (and without notice or consent other than as may be required under the Facilities Agreement) assign or transfer the benefit of this Charge (or all or any of its rights under this Charge) to any successor security trustee to the extent necessary to give effect to any transfer of the security trustee role under the terms of the Facilities Agreement.

- 15.6.2 The Company may not assign or transfer the benefit or burden of this Charge or all or any of its rights under this Charge without the prior written consent of the Security Trustee.
- 15.6.3 Any appointment or removal of a Receiver under Clause 5 (*Appointment of Receiver/Administrator and Powers of Receiver*) and any consents under this Charge may be made or given in writing signed or sealed by any successors or assigns of the Security Trustee and accordingly the Company hereby irrevocably appoints each successor and assign of the Security Trustee to be its attorney in the terms and for the purposes set out in Clause 9 (*Power of Attorney*).

15.7 **Reorganisation**

This Charge shall remain binding on the Company notwithstanding any change in the constitution of any Secured Party or its absorption in, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The security granted by this Charge shall remain valid and effective in all respects in favour of the Security Trustee and any assignee, transferee or other successor in title of the Security Trustee in the same manner as if such assignee, transferee or other successor in title had been named in this Charge as a party instead of, or in addition to the Security Trustee.

15.8 **Delegation of powers**

The Security Trustee shall be entitled, at any time and as often as may be expedient, to delegate all or any of the powers and discretions vested in it by this Charge in such manner, upon such terms, and to such person as the Security Trustee in its absolute discretion may think fit and such person shall have the same rights and obligations as it would have had if such person had been a party to the Finance Documents in place of the Security Trustee.

15.9 **Unfettered discretion**

Save as otherwise provided for in this Charge, any liability or power which may be exercised or any determination which may be made under this Charge by any Secured Party may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefor.

16 **Notices**

All notices, requests, demands and other communications to be given under this Deed shall be given and/or deemed to be given in the same manner as notices to be given under the Facilities Agreement, and the terms of Clause 42 of the Facilities Agreement shall apply *mutatis mutandis* to this Deed as though that Clause were set out in full herein.

17 **Counterparts**

- 17.1 This Charge may be executed in any number of counterparts, and on such execution, the counterparts shall be treated as a single document pursuant to the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015.
- 17.2 Where executed in counterparts:
- 17.2.1 this Charge shall not take effect until both of the counterparts have been delivered; and

17.2.2 delivery will take place when the date of delivery is agreed between the parties after execution of this Charge as evidenced by the date inserted on page 1 of this Charge.

17.3 Where not executed in counterparts, this Charge shall become effective on the date agreed between the parties as evidenced by the date inserted on page 1 of this Charge.

18 Law

This Charge shall be governed by and construed in accordance with Scots law, and all claims and disputes between the Parties or any of them arising out of or in connection with this Charge (whether or not contractual in nature) shall be determined in accordance with Scots law.

19 Jurisdiction

19.1 The Court of Session has exclusive jurisdiction to settle any dispute arising out of or in connection with this Charge (whether or not contractual in nature and including a dispute regarding the existence, validity or termination of this Charge) (a **Dispute**).

19.2 The Parties agree that the Court of Session is the most appropriate and convenient court to settle Disputes and accordingly no Party will argue to the contrary.

19.3 If the Company argues that a court other than the Court of Session has jurisdiction to determine any Dispute arising out of or in connection with this Charge, that issue shall be determined in accordance with Scots law, and any right that the Company might otherwise have to rely upon the law of the forum or any other law is hereby irrevocably and unconditionally waived.

19.4 This Clause 19 (*Jurisdiction*) is for the benefit of the Security Trustee only. As a result, the Security Trustee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

20 Consent to Registration

A certificate signed by an authorised officer of the Security Trustee (a **Certificate**) shall, in the absence of manifest error, conclusively determine the Secured Obligations at any relevant time and shall constitute a balance and charge against the Company, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Company hereby consents to the registration of this Charge and of any such Certificate for preservation.

IN WITNESS WHEREOF this Charge consisting of this and the preceding sixteen pages has been executed by the parties as follows:


The Company

SUBSCRIBED by Highland Distribution Ventures Limited

acting by:

.....MARTIN COOKE.....

Attorney
(Print Full name)

..........

Attorney
(Signature)

in the presence of this witness:

..........
(Signature)

.....Solicitor..... Occupation

.....SEAN HEDGES.....
Witness (Print Full Name)

Dentons UK and Middle East LLP
1 George Square
.....Glasgow..... Address
G2 1AL

together at GLASGOW
on the 11th day of December 2019

The Security Trustee

SUBSCRIBED by The Royal Bank of Scotland plc
acting by:

acting by:

Anthony O'Keefe

Authorised Signatory
(Print Full name)

[Redacted Signature]

in the presence of this witness:

[Redacted Signature]

(Signature)

Broker Occupation

The Royal Bank of Scotland Plc
Syndicated Loans Agency
250 Bishopsgate
London
EC2M 4AA Address

[Redacted Signature]

Authorised Signatory
(Signature)

Francis Hugh Carey
Witness (Print Full Name)

together at London
on the 11 day of December 2019