



**Registration of a Charge**

Company name: **SIMEC GHR LTD**

Company number: **SC315779**

Received for Electronic Filing: **04/10/2018**



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**Details of Charge**

Date of creation: **21/09/2018**

Charge code: **SC31 5779 0003**

Persons entitled: **WYELANDS BANK PLC**

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.**





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

Company number: 315779

Charge code: SC31 5779 0003

The Registrar of Companies for Scotland hereby certifies that a charge dated 21st September 2018 and created by SIMEC GHR LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th October 2018 .

Given at Companies House, Edinburgh on 5th October 2018

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**

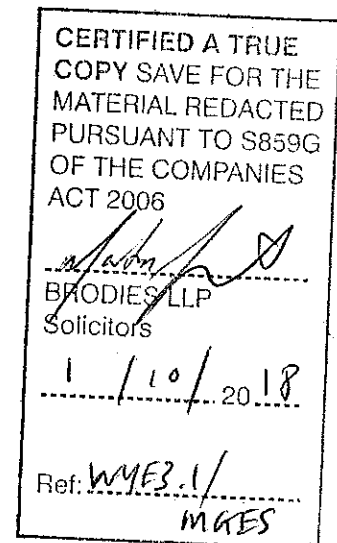
by

**SIMEC GHR LTD**  
(as Chargor)

in favour of

**WYELANDS BANK PLC**  
(as Lender)

**Brodies LLP**  
15 Atholl Crescent  
Edinburgh EH3 8HA  
T: 0131 228 3777  
F: 0131 228 3878  
DX ED 10  
Ref: MPST.WGJK.WYE3.1



For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Floating Charge is delivered on 21 SEPTEMBER 2018

by

- (1) **SIMEC GHR LTD**, a company incorporated in Scotland with company number SC315779 and whose registered office is at Lochaber, Smelter, Fort William, Scotland, PH33 6TH (the "Chargor")

in favour of

- (2) **WYELANDS BANK PLC**, a company incorporated in England and Wales with Company Number 01536428 and having its registered office at 7 Hertford Street, London, United Kingdom, W1J 7RH (the "Lender")

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Floating Charge unless the context requires otherwise:-

- 1.1.1 **"Act"** means the Insolvency Act 1986 as amended;
- 1.1.2 **"Default Rate"** means the rate of interest specified in, and calculated in accordance with clause 10.3 of the Facility Agreement;
- 1.1.3 **"Facility Agreement"** means the agreement so called, dated on or around the date of this Floating Charge entered into, among, *inter alios*, the Chargor and the Lender, as amended, supplemented, novated, extended or restated from time to time;
- 1.1.4 **"Receiver"** means any receiver or administrative receiver appointed in respect of the Secured Assets under this Floating Charge (whether by the Chargor or the Court) and includes joint receivers;
- 1.1.5 **"Secured Assets"** means the whole of the property (including uncalled capital) which is or may from time to time, while this Floating Charge is in force, be comprised in the property and undertaking of the Chargor; and
- 1.1.6 **"Secured Obligations"** means all the liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by the Chargor 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.

### **1.2 Facility Agreement definitions**

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

### 1.3 Interpretation

In this Floating Charge unless the context requires otherwise:-

- 1.3.1 words importing the singular shall include the plural and vice versa;
- 1.3.2 references to this Floating Charge or any other document shall be construed as references to this Floating Charge or such other document as amended, supplemented, novated, extended or restated from time to time;
- 1.3.3 references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.3.4 references to a "person" shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- 1.3.5 references to a "fixed security" mean a fixed security as defined by Section 486 of the Companies Act 1985;
- 1.3.6 any reference to the Lender includes its permitted successors, transferees and assignees; and
- 1.3.7 "tax" means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and "taxes" and "taxation" shall be construed accordingly.

### 1.4 Conflict

If there is any conflict between the provisions of this Floating Charge and the provisions of the Facility Agreement, the relevant provisions of the Facility Agreement shall prevail.

## 2 FLOATING CHARGE

### 2.1 Payment

The Chargor undertakes to the Lender that it will pay and discharge the Secured Obligations in accordance with the Facility Agreement and the other Finance Documents.

## **2.2 Floating Charge**

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

## **2.3 Negative pledge and ranking**

Save as otherwise provided in the Facility Agreement, unless otherwise agreed in writing by the Lender and subject to Section 464(2) of the Companies Act 1985:

2.3.1 the Chargor shall not create any fixed security or other floating charge over any part of the Secured Assets ranking in priority to or equally with this Floating Charge after its execution of this Floating Charge except any fixed security in favour of the Lender; and

2.3.2 this Floating Charge shall rank in priority to any fixed security or other floating charge created by the Chargor after its execution of this Floating Charge except any fixed security in favour of the Lender,

## **3 PROTECTION OF SECURITY**

### **3.1 Continuing security**

This Floating Charge shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force until the Lender confirms in writing to the Chargor that the Secured Obligations have been fully and unconditionally paid and discharged. The Lender shall promptly provide notice in writing to the Chargor upon the Secured Obligations being fully and unconditionally paid and discharged.

### **3.2 No prejudice**

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

### **3.3 Waiver of Defences**

Neither the Security created by this Floating Charge nor the obligations of the Chargor under this Floating Charge 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 or the Lender or any other Finance Party) including:-

3.3.1 any time, waiver or consent granted to, or composition with, the Chargor or other person;

3.3.2 the release of the Chargor or any other person under the terms of any composition or arrangement with any person;

- 3.3.3 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 the Chargor 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;
- 3.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- 3.3.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;
- 3.3.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or
- 3.3.7 an insolvency, liquidation, administration or similar procedure.

#### **3.4 Severability**

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

#### **3.5 Further assurance**

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

#### **3.6 New accounts**

At any time after the Lender 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 Secured Assets or the proceeds of realisation, the Lender may open a new account or accounts with the Chargor, if the Lender 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 Lender shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount covered by this Floating Charge.



#### **4 POWER OF ATTORNEY**

##### **4.1 Appointment**

The Chargor hereby irrevocably appoints the Lender, 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 Chargor is obliged to do (but has not done) under this Floating Charge; and

4.1.2 generally to exercise all or any of the rights, powers and discretions conferred on the Lender or Receiver in relation to the Secured Assets under this Floating Charge.

##### **4.2 Ratification**

The Chargor 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 Chargor 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 an Event of Default which is continuing (which upon the appointment of a Receiver shall be deemed to be the case) or if the Chargor does not fulfil any of its obligations under Clause 3.5 (Further assurance) within five Business Days of notice from the Lender or Receiver to do so.

#### **5 REPRESENTATIONS AND WARRANTIES**

##### **5.1 Representations and warranties**

The Chargor represents and warrants to the Lender that it has not save as provided in the Facility Agreement or otherwise in the Finance Documents and except for liens or retention of title provisions arising in the ordinary course of its trading activities, granted or created any other security, charge or encumbrance over the Secured Assets or any interest therein, or agreed, conditionally or unconditionally, to do so.

#### **6 ENFORCEMENT**

##### **6.1 Enforceable**

This Floating Charge shall be enforceable immediately upon:-

6.1.1 an Event of Default occurring which is continuing; or

- 6.1.2 any request being made by the Chargor to the Lender for the appointment of a Receiver or an administrator, or for the Lender to exercise any other power or right available to it.

## 6.2 Appointment of Receiver or administrator

- 6.2.1 At any time after this Floating Charge has become enforceable the Lender shall be entitled;-

- 6.2.1.1 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;
- 6.2.1.2 to appoint one or more persons as an administrator or administrators of the Chargor;
- 6.2.1.3 to make an administration application in respect of the Chargor; or
- 6.2.1.4 to give notice of intention to appoint an administrator or administrators in respect of the Chargor.

- 6.2.2 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 Lender 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 Lender shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

- 6.2.3 Paragraph 14 of Schedule B1 to the Act shall apply to this Floating Charge.

## 6.3 Powers of Receiver

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

- 6.3.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Chargor), 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 Chargor, or the Receiver, or its or his/her nominee or trustee;
- 6.3.2 subject to the articles of association, to convene extraordinary general meetings of the Chargor;

6.3.3 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 Obligations; and

6.3.4 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.

#### **6.4 Agent of Company**

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

#### **6.5 Application of proceeds**

All amounts from time to time received or recovered by the Lender and/or any Receiver pursuant to or in connection with the realisation or enforcement of all or any part of this Floating Charge shall, subject always to Clause 6.6 (Monies on suspense account) and Clause 7 (Discharge), the claims of creditors ranking in priority to or pari passu with the claims of the Lender under this Floating Charge, and the terms of Section 60 of the Act, shall be held by the Lender and/or any Receiver on trust to apply them at any time as the Lender and/or any Receiver (in their discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 6.5), in the following order of priority:

- 6.5.1 in discharging any sums owing to any Receiver;
- 6.5.2 in discharging all costs and expenses incurred by the Lender or any Receiver in connection with any realisation or enforcement of this Floating Charge taken in accordance with the terms of this Floating Charge;
- 6.5.3 for application towards the discharge of the Secured Obligations (in accordance with the terms of the Finance Documents);
- 6.5.4 if the Chargor is under no further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Lender is obliged to pay or distribute in priority to the Chargor; and
- 6.5.5 the balance, if any, in payment or distribution to the Chargor.

## **6.6 Monies on suspense account**

Nothing in this Floating Charge shall limit the right of a Receiver and/or the Lender (and the Chargor acknowledges that a Receiver and/or the Lender are so entitled) if and for so long as the Receiver and/or the Lender in his/her/its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of this Floating Charge into a suspense account or accounts (which may be an account or accounts with the Lender), without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Obligations provided that If the aggregate of such monies so placed to the credit of such suspense account or accounts shall equal or exceed the Secured Obligations, the Receiver and/or the Lender shall, subject always to Clause 7 (Discharge), forthwith apply the same towards settlement of the Secured Obligations.

## **6.7 Balance**

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

## **6.8 Third parties**

6.8.1 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 Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

6.8.2 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.

# **7 DISCHARGE**

## **7.1 Discharge**

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

## **7.2 Retention of Security**

If any payment or realisation in respect of the Secured Obligations is, in the Lender'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 Lender shall be entitled to retain this Floating Charge undischarged until the expiry of the period during which it may be challenged on any such ground.

## **7.3 Avoidance of payments**

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

## **8 LIABILITY OF RECEIVER AND LENDER**

A Receiver and the Lender shall not in any circumstances be liable to the Chargor or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Floating Charge or any realisation, appropriation or application of the Secured Assets or from any act, default or omission of the Receiver or the Lender, or his/her or its officers, employees or agents in relation to the Secured Assets or otherwise in connection with this Floating Charge, except to the extent caused by the fraud, gross negligence, wilful neglect or default of the Receiver or the Lender or his/her or its officers, employees or agents,

## **9 MISCELLANEOUS**

### **9.1 Non-compliance by Company**

If the Chargor fails to make any payment or fulfil any obligation due by it under or pursuant to this Floating Charge, a Receiver or the Lender, as the case may be, shall be entitled to do so on its behalf and in its name (or in his/her/its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as he/she/it considers expedient, and the amount of any such payment and/or the costs incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Chargor on demand, together with interest at the Default Rate from the date of demand until settlement and shall constitute Secured Obligations.

### **9.2 Assignment**

9.2.1 The Lender may at any time (without notice or consent) assign the benefit of this Floating Charge or any of its rights or obligations hereunder in accordance with the Facility Agreement.

9.2.2 The Chargor may not assign, transfer or otherwise deal with the benefit or burden of this Floating Charge or any of its rights or obligations hereunder.

**9.3 Entire agreement**

This Floating Charge constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Floating Charge.

**9.4 Non-reliance**

Each of the parties acknowledges and agrees that in entering into this Floating Charge 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 Floating Charge or not) other than as expressly set out in this Floating Charge.

**9.5 Amendments**

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

**9.6 Counterparts and Delivery**

9.6.1 This Floating Charge may be executed in any number of counterparts and by each of the parties on separate counterparts.

9.6.2 Where executed in counterparts:

9.6.2.1 this Floating Charge shall not take effect until each of the counterparts has been delivered;

9.6.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and

9.6.2.3 the date of delivery shall be inserted in the space provided for that purpose on page 1 of this Floating Charge.

**10 NOTICES**

The provisions of Clause 32 (Notices) of the Facility Agreement shall apply mutatis mutandis to this Floating Charge as if set out in full herein.

# 11 GOVERNING LAW

This Floating Charge 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 10 preceding pages are executed as follows and if executed in counterpart is delivered on the date set out on page 1 of this Floating Charge in accordance with Clause 9.6:

SUBSCRIBED for and on behalf of **SIMEC GHR LTD** as Chargor by

signature of witness

LAURA KNAPTON  
full name of above (print)

address of witness

signature of director/authorised signatory

PARDUMAN KUMAR GUPTA  
full name of above (print)

19/09/2018  
date of signing

LONDON  
place of signing

SUBSCRIBED for and on behalf of **WYELANDS BANK PLC** as Lender by

signature of witness

full name of above (print)

address of witness

signature of authorised signatory/attorney

full name of above (print)

date of signing

place of signing

# 11 GOVERNING LAW

This Floating Charge 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 10 preceding pages are executed as follows and if executed in counterpart is delivered on the date set out on page 1 of this Floating Charge in accordance with Clause 9.6:

SUBSCRIBED for and on behalf of **SIMEC GHR LTD** as Chargor by

signature of witness

signature of director/ authorised signatory

full name of above (print)

full name of above (print)

date of signing

address of witness

place of signing

SUBSCRIBED for and on behalf of **WYELANDS BANK PLC** as Lender by

signature of witness

signature of authorised signatory/attorney-

MELODY MAN  
full name of above (print)

NEIL SAWBLIDGE  
full name of above (print)

21 SEPTEMBER 2018  
date of signing

address of witness

LONDON, UK.  
place of signing