



Registration of a Charge

Company Name: **LOTHIAN BROADBAND NETWORKS LIMITED**

Company Number: **SC494551**



Received for filing in Electronic Format on the: **05/04/2023**

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Details of Charge

Date of creation: **28/03/2023**

Charge code: **SC49 4551 0006**

Persons entitled: **SCOTTISH INVESTMENTS LIMITED**

Brief description:

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: **JAMES WILSON ON BEHALF OF DENTONS UK AND MIDDLE EAST LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 494551

Charge code: SC49 4551 0006

The Registrar of Companies for Scotland hereby certifies that a charge dated 28th March 2023 and created by LOTHIAN BROADBAND NETWORKS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th April 2023 .

Given at Companies House, Edinburgh on 5th April 2023

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**

CHXT/075969.00008/84487908.3

Bond and Floating Charge

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

28 March 2023

This Bond and Floating Charge is subject to the terms of the Ranking Agreement

Lothian Broadband Networks Limited
(Chargor)

Scottish Investments Limited
(Chargee)

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For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Bond and Floating Charge is delivered on 28 March 2023

THIS BOND AND FLOATING CHARGE is made by:

- (1) **LOTHIAN BROADBAND NETWORKS LIMITED** incorporated and registered in Scotland with company number SC494551 whose registered office is at Suite 2, Ground Floor Orchard Brae House, 30 Queensferry Road, Edinburgh, EH4 2HS (the **Chargor**); and

in favour of

- (2) **SCOTTISH INVESTMENTS LIMITED** incorporated in Scotland with registered number SC681617 and whose registered office is at Waverley Gate, 2-4 Waterloo Place, Edinburgh, United Kingdom, United Kingdom, EH1 3EG (the **Chargee**).

Background:

The Chargor enters into this Floating Charge in connection with the SLN (as defined below).

IT IS AGREED as follows:

1 Definitions and Interpretation

1.1 Definitions

In this Floating Charge:

Event of Default means failure to comply with the conditions in Parts 1 and 2 of Schedule 2 to the SLN.

Fixed Security shall have the meaning given to it in section 486 of the Companies Act 1985.

Floating Charge means this bond and floating charge.

Party means a party to this Floating Charge.

Ranking Agreement is as defined in the SLN.

Receiver includes any person or persons appointed (and any additional person or persons appointed or substituted) as receiver by the Chargee under this Floating Charge and shall include joint Receivers.

Security Asset means the whole of the property, assets and undertaking (including uncalled capital) from time to time of the Chargor.

Secured Liabilities means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Chargor to the Chargee under the SLN.

Security Period means the period beginning on the date of this Floating Charge and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

SLN means the secured loan note instrument to be entered into on or around the date of this Floating Charge by the Chargor pursuant to which the Chargor will constitute secured loan notes 2023 plus any capitalised sums which are added to the principal in accordance with such instrument.

1.2 Construction

1.2.1 Capitalised terms defined in the SLN have the same meaning in this Floating Charge unless expressly defined in this Floating Charge.

1.2.2 The provisions of clause 1.2 to 1.15 of the SLN apply to this Floating Charge as though they were set out in full in this Floating Charge except that references to this Instrument will be construed as references to this Floating Charge.

1.2.3 Unless a contrary indication appears, a reference in this Floating Charge to:

- (a) the SLN or any other agreement or instrument is a reference the SLN or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (b) any **rights** in respect of an asset includes:
 - (i) all amounts and proceeds paid or payable;
 - (ii) all rights to make any demand or claim; and
 - (iii) all powers, remedies, causes of action, security, guarantees and indemnities, in each case in respect of or derived from that asset;
- (c) the term **this Security** means any Security created by this Floating Charge.

1.2.4 Any undertaking of the Chargor under this Floating Charge (other than a payment obligation which has been discharged) remains in force during the Security Period.

1.2.5 If the Chargee considers that an amount paid to the Chargee under the SLN is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Floating Charge.

1.2.6 Unless the context otherwise requires, a reference to a Security Asset includes the proceeds of any disposal of that Security Asset.

1.3 Third party rights

This Floating Charge does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Floating Charge or otherwise.

2 Creation of Security

2.1 General

2.1.1 The Chargor must pay or discharge the Secured Liabilities in the manner provided for in the SLN.

2.1.2 All the security created under this Floating Charge:

- (a) is created in favour of the Chargee;
- (b) is created over present and future assets of the Chargor;
- (c) is security for the payment of all the Secured Liabilities; and
- (d) is made with absolute warrandice.

2.2 Floating charge

The Chargor grants a floating charge over the Security Assets in favour of the Chargee.

2.3 Priority

2.3.1 The floating charge created by Clause 2.2 (*Floating charge*) shall, subject to section 464(2) of the Companies Act 1985 and the Ranking Agreement, rank in priority to any Fixed Security.

2.3.2 The Chargor shall not, without the prior written consent of the Chargee and in accordance with the Ranking Agreement, create or permit to exist any Fixed Security or floating charge over all or any part of the Security Assets which ranks in priority to or equally with the floating charge created by Clause 2.2 (*Floating charge*) except for the other bond and floating charges granted to the other Security Holders as defined in the Ranking Agreement.

2.4 Qualifying Floating Charge

The floating charge created by Clause 2.2 is a qualifying floating charge for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

3 Restrictions on Dealings

Except as expressly allowed under the SLN or this Floating Charge, the Chargor must not create or permit to subsist any Security on any Security Asset.

4 When Security Becomes Enforceable

4.1 Event of Default

The Security created by this Floating Charge shall become enforceable on the occurrence of an Event of Default.

4.2 Discretion

After this Security has become enforceable, the Chargee may enforce all or any part of this Security in any manner it sees fit or as instructed in accordance with the SLN.

5 Enforcement of Security

5.1 No liability as heritable creditor in possession

Neither the Chargee nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as heritable creditor in possession or for any loss on realisation or for any default or omission for which a heritable creditor in possession might be liable.

5.2 Protection of third parties

No person (including a purchaser) dealing with the Chargee or a Receiver or its or his/her agents will be concerned to enquire:

- (a) whether the Secured Liabilities have become payable or enforceable;
- (b) whether any power which the Chargee or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- (c) whether any money remains due under the SLN; or
- (d) how any money paid to the Chargee or to that Receiver is to be applied.

5.3 Redemption of prior charges

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

- (a) redeem any prior Security against any Security Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of the prior ranking creditor, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.

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

5.4 Contingencies

If this Security is enforced at a time when no amount is due under the SLN but at a time when amounts may or will become due, the Chargee (or a Receiver) may pay the proceeds of any recoveries effected by it into a suspense account or other account selected by it.

5.5 Financial collateral

5.5.1 To the extent that the Security Assets constitute "financial collateral" and this Floating Charge and the obligations of the Chargor under this Floating Charge constitute a "security financial collateral arrangement" (in each case, for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003), the Chargee will have the right after this Security has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Liabilities.

5.5.2 Where any financial collateral is appropriated:

- (a) if it is listed or traded on a recognised exchange, its value will be taken as being the value at which it could have been sold on the exchange on the date of appropriation; or
- (b) in any other case, its value will be such amount as the Chargee reasonably determines having taken into account advice obtained by it from an independent

commercial property adviser, investment Chargee or accountancy firm of national standing selected by it,

and each Finance Party will give credit for the proportion of the value of the financial collateral appropriated to its use.

6 Receivers and Administrators

6.1 Appointment and Removal

6.1.1 Except as provided below and without prejudice to the provisions of the Insolvency Act 1986, if this Security has become enforceable or the Chargor so requests to the Chargee at any time, the Chargee may without prior notice to the Chargor:

- (a) (subject to section 72A of the Insolvency Act 1986) appoint one or more persons to be a Receiver of the whole or any part of the Secured Assets;
- (b) remove (so far as it is lawfully able) any Receiver so appointed;
- (c) appoint another person(s) as an additional or replacement Receiver(s); and
- (d) appoint one or more persons to be an Administrator in accordance with paragraph 14 of Schedule B1 of the Insolvency Act 1986.

6.1.2 Any appointment or removal under Clause 6 may be by instrument in writing (by deed, under seal or in writing under its hand).

6.1.3 The Chargee is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under section 1A of the Insolvency Act 1986.

6.2 Remuneration

The Chargee may fix the remuneration of any Receiver appointed by it.

6.3 Agent of the Chargor

6.3.1 A Receiver will be deemed to be the agent of the Chargor for all purposes. The Chargor alone is responsible for any contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.

6.3.2 The Chargee will not incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

6.4 Relationship with the Chargee

To the fullest extent allowed by law, any right, power or discretion conferred by this Floating Charge (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Chargee in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

7 Powers of Receiver

7.1 General

- 7.1.1 A Receiver has all of the rights, powers and discretions set out below in this Clause 7 in addition to those conferred on it by any law. This includes all the rights, powers and discretions conferred on a receiver under the Insolvency Act 1986 including those set out in Schedule 2 to the Insolvency Act 1986.
- 7.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this Floating Charge individually and to the exclusion of any other Receiver.

7.2 Possession

A Receiver may take immediate possession of, get in and realise any Security Asset.

7.3 Carry on business

A Receiver may carry on any business of the Chargor in any manner he/she thinks fit.

7.4 Employees

- 7.4.1 A Receiver may appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Floating Charge upon such terms as to remuneration or otherwise as he/she thinks fit.
- 7.4.2 A Receiver may discharge any person appointed by the Chargor.

7.5 Borrow money

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he/she thinks fit.

7.6 Sale of assets

- 7.6.1 A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he/she thinks fit.
- 7.6.2 The consideration for any such transaction may consist of cash or non-cash consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he/she thinks fit.
- 7.6.3 Fixtures, other than landlord's fixtures, may be severed and sold separately from the property containing them without the consent of the Chargor.

7.7 Leases

A Receiver may let any Security Asset for any term and at any rent (with or without a premium) which he/she thinks fit and may accept a surrender of any lease or tenancy of any Security Asset on any terms which he/she thinks fit (including the payment of money to a lessee or tenant on a surrender).

7.8 Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

7.9 Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he/she thinks fit.

7.10 Receipts

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

7.11 Subsidiaries

A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary any Security Asset.

7.12 Delegation

A Receiver may delegate his/her powers in accordance with this Floating Charge.

7.13 Lending

A Receiver may lend money or advance credit to any person.

7.14 Protection of assets

A Receiver may:

- (a) effect any repair or insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset;
- (b) commence and/or complete any building operation; and
- (c) apply for and maintain any planning permission, building regulation approval or any other Authorisation,

in each case as he/she thinks fit.

7.15 Other powers

A Receiver may:

- (a) do all other acts and things which he/she may consider necessary or desirable for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Floating Charge or law;
- (b) exercise in relation to any Security Asset all the powers, authorities and things which he/she would be capable of exercising if he/she were the absolute beneficial owner of that Security Asset; and

- (c) use the name of the Chargor for any of the above purposes.

8 Application of Proceeds

All amounts from time to time received or recovered by the Chargee or any Receiver pursuant to the terms of this Floating Charge or in connection with the realisation or enforcement of all or part of this Security will be held by the Chargee and applied in accordance with the SLN. This Clause 8:

- (a) is subject to the payment of any claims having priority over this Security; and
- (b) does not prejudice the right of the Chargee to recover any shortfall from the Chargor.

9 Expenses and Indemnity

The Chargor must:

- (a) promptly on demand pay to the Chargee the amount of all costs and expenses (including legal fees) incurred by the Chargee in connection with this Floating Charge including any arising from any actual or alleged breach by any person of any law or regulation; and
- (b) keep the Chargee indemnified against any failure or delay in paying those costs or expenses.

10 Delegation

10.1 Power of Attorney

The Chargee or any Receiver may, at any time, delegate by power of attorney or otherwise to any person for any period all or any right, power, authority or discretion exercisable by it under this Floating Charge.

10.2 Terms

Any such delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Chargee or that Receiver (as the case may be) may, in its discretion, think fit in the interests of the Chargee.

10.3 Liability

Neither the Chargee nor any Receiver shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

11 Further Assurances

11.1.1 The Chargor must promptly, at its own expense, take whatever action the Chargee or a Receiver may reasonably require for:

- (a) creating, perfecting or protecting any security over any Security Asset; or

- (b) facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Chargee or any Receiver or any of their respective delegates or sub-delegates in respect of any Security Asset.

11.1.2 The action that may be required under Clause 11.1.1 above includes:

- (a) the execution of any standard security, charge, transfer, conveyance, assignation or assurance of any asset, whether to the Chargee or to its nominees; or

- (b) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Chargee may consider necessary.

12 Power of Attorney

The Chargor irrevocably and severally appoints the Chargee, each Receiver and any of their respective delegates or sub-delegates to be its attorney with the full power and authority of the Chargor to execute, deliver and perfect all deeds, instruments and other documents in its name and otherwise on its behalf and to do or cause to be done all acts and things, in each case which may be required or which any attorney may in its absolute discretion deem necessary for carrying out any obligation of the Chargor under or pursuant to this Floating Charge or generally for enabling the Chargee or any Receiver to exercise the respective powers conferred on them under this Floating Charge or by law. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause 12.

13 Miscellaneous

13.1 Continuing Security

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

13.2 New Accounts

13.2.1 If any subsequent charge or other interest affects any Security Asset, the Chargee may open a new account with the Chargor.

13.2.2 If the Chargee does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.

13.2.3 As from that time all payments made to the Chargee will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

13.3 Time deposits

Without prejudice to any right of set-off the Chargee may have under the SLN or otherwise, if any time deposit matures on any account the Chargor has with the Chargee within the Security Period when:

- (a) this Security has become enforceable; and
- (b) no Secured Liability is due and payable,

that time deposit will automatically be renewed for any further maturity which the Chargee considers appropriate.

14 Notices

14.1 Any communication and/or information to be given in connection with this Agreement shall be in writing in English and shall either be delivered by hand or sent by first class post, email or other electronic form:

- (a) to any company which is a party at the address of that company shown in Clause 14.3; or
- (b) where the recipient is the Chargee, a notice must be given or served under both (i) and (ii) below (and the deemed date of receipt of both shall be as stated in clause 14.2(c)):
 - (i) in hard copy, either delivered by hand or sent by first class post to its registered office for the attention of 'Head of Investment Legal'; and
 - (ii) by email to notices@thebank.scot ,

(or in each such case such other address as the recipient may notify to the other parties for such purpose).

14.2 A communication sent according to Clause 14.1 shall be deemed to have been received:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by pre-paid first class post, on the second day after posting; or
- (c) if sent by email or other electronic form, at the time of completion of transmission by the sender;

except that if a communication is received between 5.30 pm on a Business Day and 9.30 am on the next Business Day, it shall be deemed to have been received at 9:30am on the second of such Business Days.

14.3 Addresses

14.3.1 The addresses referred to in Clause 14.1 are:

- (a) The Chargor:

Lothian Broadband Networks Limited

Suite 2, Ground Floor Orchard Brae House, 30 Queensferry Road, Edinburgh, EH4 2HS

Attention: Jennifer Nicoll,

Email: [REDACTED]

- (b) The Chargee:

Scottish Investments Limited

Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG

Attention: Head of Investment Legal

Email: notices@thebank.scot

15 Release

At the end of the Security Period, the Finance Parties must, at the request and cost of the Chargor, take whatever action is necessary to release its Security Assets from this Security.

16 Counterparts

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

16.1.2 Where executed in counterparts:

- (a) this Floating Charge shall not take effect until each of the counterparts has been delivered in accordance with the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (the Counterparts Act);
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;
- (c) the counterparts shall be treated as a single document pursuant to the Counterparts Act; and
- (d) the parties may choose to evidence the date of delivery of this Floating Charge by inserting it on the cover page and at the top of page 1 in the blank provided for the delivery date of this Floating Charge.

The parties agree that where a person is nominated under section 2(1) of the Counterparts Act to take delivery of one or more of the counterparts, the obligations and/or duties of that person under section 2(3) of the Counterparts Act shall be excluded and such person shall hold such counterparts in accordance with any other arrangements agreed between the parties. The parties agree that this Clause 16 is for the benefit of any such nominated person and can be relied upon by such person notwithstanding that such person may not be a party to this Floating Charge.

17 Governing Law

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

IN WITNESS WHEREOF the Floating Charge consisting of this and the preceding 11 pages is executed as follows and, if executed in counterpart delivered on the date set out on the cover page and at the top of page 1 of this Floating Charge in accordance with Clause 16.

CHARGOR

Executed for and on behalf of

LOTHIAN BROADBAND NETWORKS LIMITED

at Edinburgh

on 27th day of March 2023

by

Director
(Signature)

JENNIFER NICOLL
Director
(Print Full Name)

in the presence of this witness:

Adam Thomas Livingstone

Witness

Full name

Address

CHARGE

Executed for and on behalf of

SCOTTISH INVESTMENTS LIMITED

at

on

27 day of MARCH 2023

by

Authorised Signatory
(Signature)

Nicola Douglas

Authorised Signatory
(Print Full Name)

in the presence of this witness:

Colin Douglas

Witness

Full name

Address