



**Registration of a Charge**

Company Name: **MACMILLAN SPIRITS CO. LTD**

Company Number: **SC649933**



XD0EZ3QI

Received for filing in Electronic Format on the: **05/04/2024**

**Details of Charge**

Date of creation: **26/03/2024**

Charge code: **SC64 9933 0003**

Persons entitled: **HIGHLANDS AND ISLANDS ENTERPRISE**

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: **ALAN CASSELS**



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

Company number: 649933

Charge code: SC64 9933 0003

The Registrar of Companies for Scotland hereby certifies that a charge dated 26th March 2024 and created by MACMILLAN SPIRITS CO. LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th April 2024 .

Given at Companies House, Edinburgh on 8th April 2024


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**

 Burness Paul

I certify that, save for the material redacted pursuant to section 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.



**MACMILLAN SPIRITS CO. LTD**  
as the Chargor

in favour

**HIGHLANDS AND ISLANDS ENTERPRISE**

**BOND AND FLOATING CHARGE**

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## BOND AND FLOATING CHARGE

by

- (1) **MACMILLAN SPIRITS CO. LTD**, a company incorporated under the Companies Acts with registered number SC649933 and having its registered office at Bornish House, Bornish, Isle Of South Uist, Scotland, HS8 5SA (the “**Chargor**”)

in favour of

- (2) **HIGHLANDS AND ISLANDS ENTERPRISE**, established by the Enterprise and New Towns (Scotland) Act 1990 and having its registered office at An Lòchran, 10 Inverness Campus, Inverness, Highland IV2 5NA (“**HIE**”)

## CONSIDERING THAT:

- (A) HIE has agreed or will agree to make certain loans available to the Chargor;
- (B) one of the conditions precedent to the availability of the facilities referred to in paragraph (A) above is that the Chargor grants to HIE this bond and floating charge.

**NOW IT IS HEREBY AGREED AND DECLARED** as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 In this Instrument:

“**Administrator**” means any administrator appointed pursuant to this Instrument;

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh;

“**Event of Default**” means any of the events referred to in paragraph 3 (*Default*) of Section FOURTH (*General Conditions*) of the Undertaking;

“**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);

“**Insurances**” means the Chargor’s interest in all contracts and policies of insurance which are from time to time taken out or effected by or on behalf of the Chargor in connection with the Secured Assets;

**“Receiver”** means any receiver or administrative receiver appointed in respect of the Secured Assets (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise) and includes joint receivers;

**“Secured Assets”** means the whole of the property (including uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Chargor;

**“Secured Liabilities”** means all present and future obligations and liabilities of the Chargor to HIE, whether actual, contingent, sole, joint and/or several or otherwise, under or in connection with the Undertaking;

**“Security”** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**“Security Financial Collateral Arrangements”** shall have the meaning given to that expression in the Financial Collateral Regulations; and

**“Undertaking”** means the undertaking by the Chargor (as obligant) in favour of HIE dated on or about the date of this Instrument.

## 1.2 Construction

1.2.1 References in this Instrument to a “fixed security” shall be construed as a reference to a fixed security as defined by Section 70 of the Insolvency Act 1986 as in force at the date of this Instrument.

1.2.2 Unless a contrary indication appears, any reference in this Instrument to:

(a) the **“Chargor”** and **“HIE”** shall be construed so as to include their respective successors in title, permitted assignees and permitted transferees and each is a **“Party”** to this Instrument; and

(b) a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality).

1.2.3 Unless any provision of this Instrument or the context otherwise requires, any reference in this Instrument to a provision of law is a reference to that provision as amended or re-enacted.

1.2.4 In this Instrument the singular includes the plural and vice versa. Clause headings are for ease of reference only and a reference to a Clause is to be construed as a reference to a clause of this Instrument.

- 1.2.5 Any appointment of a Receiver under Clause 7 (Enforcement) may be made by any successor or permitted assignee or transferee of HIE and the Chargor hereby irrevocably appoints each such successor or assignee or transferee to be its attorney in the terms and for the purposes stated in Clause 12 (Mandate and Attorney).

### **1.3 Third party rights**

- 1.3.1 This Instrument does not confer on any person who is not a Party (other than any Administrator, Receiver or attorney appointed in terms of this Instrument) any right to enforce or otherwise invoke this Instrument or any part of it under the Contract (Third Party Rights) (Scotland) Act 2017.

- 1.3.2 The consent of any person who is not a Party is not required to rescind or vary this Instrument at any time.

## **2 BOND**

- 2.1 The Chargor undertakes to HIE that it will pay or discharge to HIE all the Secured Liabilities on demand in writing when the Secured Liabilities become due for payment or discharge (whether by acceleration or otherwise).
- 2.2 Paragraph 14 of Schedule B1 to the Insolvency Act (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to this Instrument which is accordingly a qualifying floating charge.

## **3 FLOATING CHARGE**

The Chargor as security for the payment and discharge of all the Secured Liabilities hereby grants in favour of HIE a floating charge over the Secured Assets.

## **4 NEGATIVE PLEDGE AND RANKING OF FLOATING CHARGE**

- 4.1 The Chargor agrees that it shall be prohibited from granting or creating subsequent to the date of execution of this Instrument any fixed security or any other floating charge over the Secured Assets or any part or parts of them, other than in favour of HIE or in favour of another person and with the prior written consent of HIE (including under any ranking agreement or intercreditor agreement to which HIE and the Chargor are party), such consent not to be unreasonably withheld.
- 4.2 Any fixed security granted by the Chargor in favour of HIE (whether before or after the date of execution of this Instrument) shall rank in priority to the floating charge created by this Instrument.
- 4.3 In the event that the Chargor grants or creates any fixed security or floating charge in breach of the prohibition in Clause 4.1 or with the consent of HIE under Clause 4.1 but with no

written agreement of HIE as to the ranking of them, this Instrument shall rank in priority to that fixed security or floating charge.

## **5 UNDERTAKINGS**

5.1 The Chargor hereby undertakes to HIE that it shall carry on and conduct its business and affairs in a proper and efficient manner and it shall:

- 5.1.1 keep all of the Secured Assets in good and sufficient repair and all plant and machinery or other moveable property in good working order and condition, in each case fair wear and tear excepted, and, where necessary for the efficient conduct of its business, renew and replace the same as and when the same shall become obsolete, worn out or destroyed (if commercially prudent to do so);
- 5.1.2 not, without the prior written consent of HIE, become cautioner, guarantor or surety for any person, firm or company;
- 5.1.3 not, without the prior written consent of HIE, undertake any obligation to any third party whereby the Chargor's rights to recover or take payment of any monies due or which may become due to the Chargor from any debtor of the Chargor are postponed or subordinated to the claims of such third party;
- 5.1.4 pay all rents, rates, taxes, levies, assessments, impositions and outgoings whatsoever, whether governmental, municipal or otherwise, which may be imposed upon or payable in respect of the Secured Assets as and when the same shall become payable, taking into account agreed periods of grace (if any) and also punctually pay and discharge all debts and obligations which by law may have priority over the floating charge created by this Instrument;
- 5.1.5 insure and keep insured such of the Secured Assets as comprise heritable and real, moveable and personal property and effects of every description with underwriters, insurance companies or other insurers to be approved by HIE against loss or damage by fire and such other contingencies and risks as may be required by HIE in their full reinstatement value or for such insured value as HIE may specify or agree from time to time in writing for the time being in the name of the Chargor with the interest of HIE endorsed on the policy or policies or noted as HIE may require;
- 5.1.6 duly pay all premiums and sums payable for the purposes of any Insurances and produce the receipts therefor or other evidence of payment to HIE within fourteen days of being requested by HIE so to do, and not do anything or omit to do anything in or upon or relating to the Secured Assets or any part thereof which may render any Insurances void or voidable; and
- 5.1.7 not, without the prior written consent of HIE, sell, transfer, lease, hire out, lend, discount, factor, charge or otherwise dispose of, deal in or remove all or any of the Secured Assets.



- 5.2 Except as HIE may from time to time otherwise agree in writing the Chargor shall promptly get in and realise in the ordinary course of its trade or business all its book debts (but this shall not permit the selling, assigning, factoring or discounting of all or any of such book debts).
- 5.3 The Chargor will observe and perform in all respects restrictive and other covenants and stipulations and burdens for the time being affecting its heritable, freehold or leasehold property or the mode of use or the enjoyment of the same or affecting its moveable or personal property or its ancillary or connected rights and will not, without the prior consent in writing of HIE, enter into any onerous or restrictive obligations with regard thereto and the Chargor will not do or suffer or omit to be done any act, matter or thing whereby any provisions of any Act of Parliament, order or regulation whatever from time to time in force affecting such property or rights shall be infringed.
- 5.4 The Chargor will notify HIE promptly in the event of any creditor exercising diligence against it or any of the Secured Assets wherever situated or taking any steps which might be expected to lead thereto.
- 5.5 The Chargor will notify HIE promptly of the acquisition by it of any heritable, freehold or leasehold property.
- 5.6 The Chargor will, if HIE so requires, and subject to the terms of any ranking agreement or intercreditor agreement to which HIE and the Chargor are party, deposit with HIE all certificates, deeds and other documents of title or evidence of ownership in relation to all or any of the Secured Assets.

## **6 SET-OFF**

Without prejudice to any of its other rights, remedies or powers, HIE shall be entitled to hold all sums which are now or which may at any time hereafter be at the credit of any account or accounts in the name of the Chargor with HIE as security for the Secured Liabilities and to apply without notice to the Chargor any such sums in and towards discharge of the Secured Liabilities. HIE shall not be obliged to exercise its rights under this Clause 6, which shall be without prejudice and in addition to any right of set-off, compensation, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).

## **7 ENFORCEMENT**

- 7.1 In addition to any statutory provisions concerning enforceability or attachment the floating charge created by this Instrument shall become enforceable upon and HIE's powers of appointment and other rights and powers shall become exercisable at any time after:

7.1.1 the occurrence of an Event of Default; or

7.1.2 the receipt of any request from the board of directors of the Chargor; or

- 7.1.3 the taking (or purported taking) by any person of any step towards the winding up or dissolution of the Chargor or towards the appointment of any administrator, trustee, administrative receiver, receiver, liquidator or the like to the Chargor or the whole or any part of its property;

and HIE may then (or as soon thereafter as permitted by law) by instrument in writing appoint any person or persons (if more than one with power to act both jointly and separately) to be an administrator of the Chargor or (subject, if applicable, to Section 72A of the Insolvency Act 1986) a receiver of the Secured Assets. In addition, and without prejudice to the foregoing provisions of this Clause 7.1, in the event that any person appointed to be a Receiver shall be removed by a court or shall otherwise cease to act as such, then HIE shall be entitled so to appoint another person as Receiver in his place.

- 7.2 An Administrator shall have and be entitled to exercise, in addition to and without limiting all the powers of an administrator under the Insolvency Act 1986, all the powers of a receiver under Schedule 2 of the Insolvency Act 1986 and a Receiver shall have and be entitled to exercise, in addition to and without limiting all the powers of a receiver under Schedule 2 of the Insolvency Act 1986, all the powers of an administrative receiver set out in Schedule 1 of the Insolvency Act 1986 together with (in either case) the power to exercise any powers or rights incidental to ownership of the Secured Assets, including (as regards shares and other securities) any voting rights or rights of enforcing the same together with power to:

- 7.2.1 implement and exercise all or any of the Chargor's powers and/or rights and/or obligations under any contract or other agreement forming a part of the Secured Assets;
- 7.2.2 make any arrangement or compromise which he shall think expedient of or in respect of any claim by or against the Chargor;
- 7.2.3 promote or procure the formation of any new company or corporation;
- 7.2.4 subscribe for or acquire for cash or otherwise any share capital of such new company or corporation in the name of the Chargor and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;
- 7.2.5 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Secured Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of the Chargor and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it, any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;
- 7.2.6 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of the Chargor any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;

- 7.2.7 convene an extraordinary general meeting of the Chargor;
- 7.2.8 acquire any property on behalf of the Chargor;
- 7.2.9 do all such other acts and things as he may consider necessary or desirable for protecting or realising the Secured Assets, or any part thereof, or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of or pursuant to this Instrument and exercise in relation to the Secured Assets, or any part thereof, all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same and use the name of the Chargor for all and any of the purposes aforesaid;

subject always to the rights of HIE as holder of the floating charge created by this Instrument.

- 7.3 To the extent that Secured Assets constitute Financial Collateral and are subject to a Security Financial Collateral Arrangement created by or pursuant to this Instrument, HIE shall have the right, at any time after this Instrument becomes enforceable, to appropriate all or any part of those Secured Assets in or towards the payment or discharge of the Secured Liabilities. The value of any Secured Assets appropriated in accordance with this Clause 7.3 shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as HIE may select (including independent valuation). The Chargor agrees that the methods of valuation provided for in this Clause 7.3 are commercially reasonable for the purposes of Regulation 18 of the Financial Collateral Regulations. To the extent that Secured Assets constitute Financial Collateral, the Chargor agrees that such Secured Assets shall be held or designated so as to be under the control of HIE for all purposes of the Financial Collateral Regulations.

- 7.4 The Security Agent may not appoint a Receiver solely as a result of the obtaining of a moratorium (or as a result of anything done with a view to obtaining a moratorium) under Part A1 of the Insolvency Act 1986 other than in respect of a floating charge referred to in section A52(4) of Part A1 of the Insolvency Act 1986.

## 8 OFFICE OF RECEIVER

- 8.1 Any Receiver appointed under Clause 7 (Enforcement) shall be the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act 1986) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and for his remuneration and his costs, charges and expenses and HIE shall not incur any liability for those (either to the Chargor or any other person) by reason of HIE making his appointment as such Receiver or for any other reason whatsoever.
- 8.2 Any Receiver appointed under Clause 7 (Enforcement) shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Subject to Section 58 of the Insolvency Act 1986, the remuneration of the Receiver may be fixed by HIE (and may be or include a commission calculated by reference to the gross amount of all

money received or otherwise and may include remuneration in connection with claims, actions or proceedings made or brought against the Receiver by the Chargor or any other person or the performance or discharge of any obligation imposed upon him by statute or otherwise) but such remuneration shall be payable by the Chargor alone and the amount of such remuneration shall form part of the Secured Liabilities and accordingly be secured on the Secured Assets under the floating charge constituted by this Instrument.

## **9 APPLICATION OF ENFORCEMENT PROCEEDS**

9.1 All monies received by HIE or any Receiver under or by virtue of this Instrument following enforcement of the security hereby granted or of any security interest constituted pursuant hereto shall be applied, subject to the claims of any creditors ranking in priority to or *pari passu* with the claims of HIE under this Instrument, in the following order:

9.1.1 first, in or towards payment of all costs, charges and expenses of or incidental to the appointment of the Receiver and the exercise of all or any of his powers, including his remuneration and all outgoings paid by and liabilities incurred by him as a result of such exercise;

9.1.2 secondly, in or towards satisfaction of the Secured Liabilities in such order as HIE shall in its absolute discretion decide; and

9.1.3 thirdly, any surplus shall be paid to the Chargor or any other person entitled thereto.

9.2 Nothing contained in this Instrument shall limit the right of the Receiver or HIE (and the Chargor acknowledges that the Receiver and HIE are so entitled) if and for so long as the Receiver or HIE, in their discretion, shall consider it appropriate, to place all or any monies arising from the enforcement of the security interest hereby granted or any security created pursuant to this Instrument into a suspense account, without any obligation to apply the same or any part thereof in or towards the discharge of any of the Secured Liabilities.

## **10 PROTECTION OF SECURITY**

10.1 The security created by and any security interest constituted pursuant to this Instrument shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever and in particular (but without prejudice to the generality of the foregoing) shall not be considered satisfied by an intermediate repayment or satisfaction of part only of the Secured Liabilities and shall continue in full force and effect until total and irrevocable satisfaction of all the Secured Liabilities.

10.2 The security created by and any security interest constituted pursuant to this Instrument shall be in addition to and shall not in any way prejudice or be prejudiced by any collateral or other security, right or remedy which HIE may now or at any time hereafter hold for all or any part of the Secured Liabilities.

- 10.3 No failure on the part of HIE to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Instrument or any other document relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Instrument and any such other document are cumulative and not exclusive of any right or remedies provided by law.
- 10.4 Each of the provisions in this Instrument 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 of this Instrument shall not in any way be affected or impaired by that occurrence.
- 10.5 If HIE receives or is deemed to be affected by notice, whether actual or constructive, of any subsequent security or other interest affecting any part of the Secured Assets and/or the proceeds of sale(s) thereof, HIE may open a new account or accounts with the Chargor. If HIE does not open a new account or accounts, it shall nevertheless be treated as if it had done so at the time when it receives or was deemed to have received notice and as from that time, all payments made to HIE shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this Instrument is security.
- 10.6 Neither the security created by, nor any security interest constituted pursuant to, this Instrument nor the rights, powers, discretions and remedies conferred upon HIE by this Instrument or by law shall be discharged, impaired or otherwise affected by reason of:
- 10.6.1 any present or future security, guarantee, indemnity or other right or remedy held by or available to HIE being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by HIE from time to time exchanging, varying, realising, releasing or failing to perfect or enforce any of the same; or
  - 10.6.2 HIE compounding with, discharging or releasing or varying the liability of, or granting any time, indulgence or concession to, the Chargor or any other person or renewing, determining, varying or increasing any accommodation or transaction in any manner whatsoever or concurring in accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Chargor or any other person; or
  - 10.6.3 any act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor instead of cautioner or by anything done or omitted which but for this provision might operate to exonerate the Chargor from the Secured Liabilities; or
  - 10.6.4 any legal limitation, disability, incapacity or other similar circumstance relating to the Chargor.

10.7 HIE shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Instrument or by law, to:

10.7.1 take any action or obtain judgement or decree in any court against the Chargor; or

10.7.2 make or file any claim to rank in a winding-up or liquidation of the Chargor; or

10.7.3 enforce or seek to enforce any other security taken, or exercise any right or plea available to HIE, in respect of any of the Chargor's obligations to HIE.

## 11 FURTHER ASSURANCE

The Chargor shall execute and do all such assurances, acts and things as HIE may require for perfecting or protecting the security created by or pursuant to this Instrument over the Secured Assets or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions conferred on HIE or on any Receiver by this Instrument and shall in particular (but without limitation) promptly after being requested to do so by HIE or any Receiver, execute all assignments and transfers (in favour of HIE or any Receiver or to such nominee as either shall direct) of the Secured Assets which come into existence after the date of this Instrument and give all notices orders and directions which HIE or any Receiver may think expedient for the purposes specified in this Clause 11.

## 12 MANDATE AND ATTORNEY

12.1 The Chargor hereby irrevocably appoints HIE and any Receiver to be its mandatary and attorney for it and on its behalf and in its name or otherwise and as such to create or constitute any deed, or to make any alteration or addition or deletion in or to, any documents which HIE or the Receiver may require for perfecting or protecting the title of HIE or the Receiver to the Secured Assets or for vesting any of the Secured Assets in HIE or the Receiver or its nominees or any purchaser and to re-deliver the same thereafter and otherwise generally to sign, seal and deliver and perfect any fixed security, floating charge, transfer, disposition, assignment, security and/or assurance or any writing, assurance, document or act which may be required or may be deemed proper by HIE or the Receiver on or in connection with any sale, lease, disposition, realisation, getting in or other enforcement by HIE or the Receiver of all or any of the Secured Assets.

12.2 The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such mandatary or attorney shall do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 12.

## 13 EXPENSES

13.1 The Chargor binds and obliges itself for the whole expenses of completing and enforcing the security granted by this Instrument and the expenses of any discharge thereof.

- 13.2 All costs, charges and expenses incurred and all payments made by HIE or any Receiver under this Instrument in the lawful exercise of the powers conferred by this Instrument, whether or not occasioned by any act, neglect or default of the Chargor, shall be payable by the Chargor on demand and shall be a Secured Liability. All such costs, charges, expenses and payments shall be paid and secured as between HIE or any Receiver and the Chargor on the basis of a full and unqualified indemnity.

14 **INDEMNITY**

HIE, every Receiver and every attorney, manager, agent or other person appointed by HIE or any such Receiver in connection with this Instrument shall be entitled to be indemnified out of the Secured Assets in respect of all liabilities and expenses incurred by it or him in the execution or purported execution of any of the powers, authorities or discretions vested in it or him pursuant to this Instrument and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Secured Assets and HIE and any Receiver may retain and pay all sums in respect of the same out of any monies received under the powers conferred by this Instrument.

15 **AVOIDANCE OF PAYMENTS**

Any amount which has been paid by the Chargor to a Receiver or HIE and which is, in the opinion of HIE, capable of being reduced or restored or otherwise avoided, in whole or in part, in the liquidation or administration of the Chargor shall not be regarded as having been irrevocably paid for the purposes of this Instrument.

16 **NOTICES**

16.1 **Communications in writing**

Any communication to be made under or in connection with this Instrument shall be made in writing and, unless otherwise stated, may be made by fax or letter.

16.2 **Addresses**

The address (and the department or officer, if any, for whose attention the communication is to be made) of the Chargor and HIE for any communication or document to be made or delivered under or in connection with this Instrument:

16.2.1 in the case of the Chargor:

Address:	Bornish House
	Bornish
	Isle Of South Uist
	HS8 5SA

Attention: Chief Executive Officer

16.2.2 in the case of HIE:

Address: An Lòchran  
10 Inverness Campus  
Inverness  
IV2 5NA

Attention: HIE Area Manager, Innse Gall

or any substitute address or fax number or department or officer as the Chargor may notify to HIE (or HIE may notify to the Chargor if a change is made by HIE) by not less than 5 Business Days' notice.

### 16.3 Delivery

16.3.1 Any communication or document made or delivered by one person to another under or in connection with this Instrument will only be effective:

- (a) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; and
- (b) if a particular department or officer is specified as part of its address details provided under Clause 16.2 (Addresses), if addressed to that department or officer.

16.3.2 Any communication or document to be made or delivered to HIE will be effective only when actually received by HIE and then only if it is expressly marked for the attention of the department or officer specified as part of its address details provided under Clause 16.2 (Addresses) (or any substitute department or officer as HIE shall specify for this purpose).

### 16.4 English language

Any notice given under or in connection with this Instrument must be in English.

## 17 GOVERNING LAW AND JURISDICTION

This Instrument shall be governed by, and construed in all respects in accordance with, the law of Scotland and, for the benefit of HIE, the Chargor irrevocably submits to the non-



