

001676/63
MR01

Particulars of a charge



A fee is payable with this form.
Please see 'How to pay' on the
last page.

You can use the WebFiling service to file this form online.
Please go to www.companieshouse.gov.uk

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument.

☒ **What this form is NOT for**
You may not use this form to
register a charge where there is
instrument. Use form MR08.

FRIDAY



SCT 16/05/2014 #361
COMPANIES HOUSE

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.



You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record.

1

Company details

Company number S C 0 0 5 8 6 3

Company name in full Heart of Midlothian PLC (in administration)

27

For official use

→ **Filling in this form**
Please complete in typescript or in
bold black capitals.

All fields are mandatory unless
specified or indicated by *

2

Charge creation date

Charge creation date 0 9 0 5 2 0 1 4

3

Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees
entitled to the charge.

Name Foundation of Hearts Limited (SC387126)

Name

Name

Name

If there are more than four names, please supply any four of these names then
tick the statement below.

☐ I confirm that there are more than four persons, security agents or
trustees entitled to the charge.

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4

Description

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security.

Continuation page

Please use a continuation page if you need to enter more details.

Description

N/A

5

Fixed charge or fixed security

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

☐ Yes

☒ No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

☒ Yes Continue

☐ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☒ Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

☒ Yes

☐ No

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Particulars of a charge

8

Trustee statement ①

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

☐

① This statement may be filed after the registration of the charge (use form MR06).

9

Signature

Please sign the form here.

Signature

Signature

X

X

This form must be signed by a person with an interest in the charge.

For and on behalf of:

CMS Cameron McKenna LLP,
Saltire Court, 20 Castle Terrace,
Edinburgh EH1 2EN

MR01

Particulars of a charge



Presenter information

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name LODU/GRMX/FOU010.00001

Company name CMS Cameron McKenna LLP

Address Saltire Court

20 Castle Terrace

Post town Edinburgh

County/Region

Postcode E H 1 2 E N

Country

DX DX 553001 EDINBURGH 18

Telephone 0131 228 8000



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'.



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

For companies registered in England and Wales:

The Registrar of Companies, Companies House, Crown Way, Cardiff, Wales, CF14 3UZ. DX 33050 Cardiff.

For companies registered in Scotland:

The Registrar of Companies, Companies House, Fourth floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, Scotland, EH3 9FF. DX ED235 Edinburgh 1 or LP - 4 Edinburgh 2 (Legal Post).

For companies registered in Northern Ireland:

The Registrar of Companies, Companies House, Second Floor, The Linenhall, 32-38 Linenhall Street, Belfast, Northern Ireland, BT2 8BG. DX 481 N.R. Belfast 1.



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 5863

Charge code: SC00 5863 0027

The Registrar of Companies for Scotland hereby certifies that a charge dated 9th May 2014 and created by HEART OF MIDLOTHIAN PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th May 2014.

Given at Companies House, Edinburgh on 21st May 2014



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

CERTIFIED AS A TRUE AND
COMPLETE COPY OF THE
ORIGINAL SAVE FOR
REDACTIONS UNDER
S.859G COMPANIES ACT 2006

.....
Date: 16 May 2014.....
CMS Cameron McKenna LLP,
Saltire Court, 20 Castle Terrace,
Edinburgh EH1 2EN

FLOATING CHARGE

by

(1) HEART OF MIDLOTHIAN PLC (IN ADMINISTRATION)

in favour of

(2) FOUNDATION OF HEARTS LIMITED

**SUBJECT TO THE TERMS OF THE INTERCREDITOR AGREEMENT, AS DEFINED
HEREIN**

DATED

2014

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FLOATING CHARGE

BY:

- (1) **HEART OF MIDLOTHIAN PLC (IN ADMINISTRATION)** a company incorporated in Scotland (registered number SC005863) whose registered office is at c/o BDO LLP, Citypoint, 65 Haymarket Terrace, Edinburgh EH2 5HD acting by its administrators, Bryan Jackson, Trevor Birch and James Stephen, all BDO LLP (the "**Administrators**") appointed to act as joint administrators on 19 June 2013 (the "**Company**");

IN FAVOUR OF:

- (2) **FOUNDATION OF HEARTS LIMITED** a company limited by guarantee and incorporated in Scotland (registered number SC387126) whose registered office is at 23 Melville Street, Edinburgh, Midlothian EH3 7PE (the "**Lender**").

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Security unless the context requires otherwise:

"**Act**" means the Insolvency Act 1986 as amended by the Insolvency Act 2000 and the Enterprise Act 2002 or, where the context so requires, any of these enactments;

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for business in London and Edinburgh;

"**Environment**" means all or any of the air (including air within buildings and other man-made or natural structures above or below ground) land and water and ecological systems supported by those media, and humankind and all other living creatures and organisms;

"**Environmental Law**" means all laws, statutes, treaties, directives, regulations, codes of practice, circulars and guidance notices having mandatory effect, court or tribunal decisions and rules of common law concerning the Environment or human health and safety, including (without limitation) those relating to the actual or potential emission, discharge, release, escape or leakage of Hazardous Substances into the Environment or the creation, production, processing, treatment, handling, storage, transportation, labelling, packaging, distribution or disposal of Hazardous Substances or Waste;

"**Event of Default**" means if any of the following events should occur after the date of this Security:

- (a) the failure by the Company to pay or fulfil the Secured Obligations in whole or part on the due date;
- (b) the occurrence of any other event which under any contract or agreement (written or otherwise) between the Company and the Lender results in the Secured Obligations becoming immediately due and payable or entitles the Lender to require immediate repayment of the Secured Obligations;

- (c) the dissolution of the Company or the appointment of a liquidator, receiver, administrative receiver, administrator, judicial factor, or similar official in respect of the Company or any of its undertaking or assets;
- (d) the giving of notice of intention to appoint an administrator in respect of the Company, or the presentation of any administration application in respect of the Company;
- (e) the institution of a voluntary arrangement or scheme of arrangement or composition in respect of the debts or affairs of the Company;
- (f) the petition or commencement of any other legal proceedings or corporate action, for any of the purposes set out in paragraphs 1.1(c) to 1.1(e) (inclusive) above, or any analogous appointment or action in any other jurisdiction; or
- (g) the Company ceasing or threatening to cease to carry on business or becoming unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

"Hazardous Substances" means any living or inanimate material, substance or medium (including without limiting that generality electricity, radiation, radio, television, radar or similar transmission, noise, vibration, bacteria, viruses and genetic material) which alone or in combination with others is capable of causing harm to humankind (including offence to the senses) or other living creatures or organisms, or to property;

"Intellectual Property Rights" means all know-how, patents, patent applications, trade marks, immunity trade marks, service marks, trade names, brand names, business names, domain names, moral rights, inventions, registered designs, copyright and all other industrial and intellectual property rights and any interests (including by way of licence) in any of the foregoing (in each case whether registered or not and including all applications for and rights to use the same) which may now or in the future subsist;

"Intercreditor Agreement" means the Intercreditor Agreement dated on or about the date of this Security between amongst others the Lender, Bidco (1874) Limited and the Company;

"Receiver" means any receiver or administrative receiver appointed in respect of the Secured Assets under this Security and includes joint receivers;

"Secured Assets" means the whole of the property (including uncalled capital) which is or may from time to time, while this Security is in force, be comprised in the property and undertaking of the Company;

"Secured Obligations" means all or any monies, liabilities and obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, cautioner, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Company to the Lender including interest and all lawful charges or expenses which the Lender may charge or incur in respect of any of those matters and so that interest shall be computed and before as well as after any demand made or decree or judgment obtained under this Security, and all or any monies, liabilities and obligations due by the Company under this Security;

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

"Waste" means any form of waste, including any by-product of an industrial process and anything which is abandoned, unwanted or surplus, whether or not it is capable of being recovered or recycled, or has any value.

1.2 Interpretation

In this Security unless the context requires otherwise:

- (a) words importing the singular shall include the plural and vice versa;
- (b) references to this Security or any other document shall be constituted as references to this Security or such other document as amended, supplemented or novated from time to time;
- (c) 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;
- (d) 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);
- (e) references to a **"fixed security"** mean a fixed security as defined by section 486 of the Companies Act 1985;
- (f) any reference to the Lender includes its permitted successors, transferees and assignees;
- (g) references to a document **"in the agreed form"** means a document in a form agreed by the Company and the Lender and initialled by, or on behalf of, each of them for the purpose of identification as such; and
- (h) **"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.

1.3 Headings

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

1.4 Intercreditor Agreement

This Security is subject to the terms of the Intercreditor Agreement. In the event of any inconsistency between the terms of this Security and the Intercreditor Agreement the Intercreditor Agreement shall prevail.

2. FLOATING CHARGE

2.1 Payment

The Company undertakes to the Lender that it will pay and discharge the Secured Obligations on the due date therefor, or, if no date for payment has been agreed, on demand.

2.2 Floating Charge

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

2.3 Qualifying floating charge

Paragraph 14 of Schedule B1 to the Act applies to the floating charge created by or pursuant to this Security (and such floating charge is a qualifying floating charge for the purposes of the Act).

2.4 Negative pledge and ranking

Unless otherwise agreed in writing by the Lender and subject to section 464(2) of the Companies Act 1985:

- (a) the Company shall not create any fixed security or other floating charge over any part of the Secured Assets after its execution of this Security except any fixed security in favour of the Lender; and
- (b) this Security shall rank in priority to any fixed security or other floating charge created by the Company after its execution of this Security except any fixed security in favour of the Lender.

3. PROTECTION OF SECURITY

3.1 Continuing security

This Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force and may not be revoked until the Secured Obligations have been fully and unconditionally paid and discharged.

3.2 No prejudice

This Security 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 may now or at any time hereafter hold for all or any part of the Secured Obligations.

3.3 No waiver

Failure or delay on the part of the Lender in exercising any right, power or discretion under or pursuant to this Security shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Security are in addition to and not in substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

3.4 Severability

The provisions of this Security shall be severable and distinct from one another and if at any time one or more of such provisions is or becomes or is declared void, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Security shall not in any way be affected or impaired thereby.

3.5 Non impairment

The Company agrees that none of its obligations or the Lender's rights, powers and discretions under this Security shall be reduced, discharged or otherwise adversely affected by:

- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any security or any right or remedy which the Lender may have now or in the future from or against the Company or any other person in respect of any of the Secured Obligations; or
- (b) any failure, act or omission by the Lender or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Company or any other person in respect of the Secured Obligations; or
- (c) any increase in or waiver or discharge of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of any document or agreement relating thereto; or
- (d) any grant of time, indulgence, waiver or concession to the Company or any other person; or
- (e) any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Company or any other person; or
- (f) any invalidity, illegality, unenforceability, irregularity or frustration of the Secured Obligations; or
- (g) anything done or omitted to be done by the Lender or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Company under this Security.

3.6 Further assurance

The Company 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 Security 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 the Receiver under this Security.

4. POWER OF ATTORNEY

4.1 Appointment

The Company hereby irrevocably appoints the Lender, whether or not a Receiver has been appointed, and separately also the 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:

- (a) to do anything which the Company is obliged to do (but has not done) under this Security; and
- (b) generally to exercise all or any of the rights, powers and discretions conferred on the Lender or the Receiver in relation to the Secured Assets under this Security.

4.2 Ratification

The Company hereby ratifies and confirms and agrees to ratify and confirm whatever its attorney may do or purport to do in the exercise or purported exercise of the power of attorney given by the Company under this clause.

4.3 Exercise of power

The appointment effected under clause 4.1 (*Appointment*) shall take effect immediately (in the case of the Receiver, upon his/her appointment), but the powers conferred shall only become exercisable upon the occurrence of an Event of Default which is continuing unwaived or unremedied (which upon the appointment of the Receiver shall be deemed to be the case) or if the Company does not fulfil any of its obligations under clause 3.6 (*Further assurance*) within three Business Days of notice from the Lender or the Receiver to do so.

5. REPRESENTATION, WARRANTIES AND UNDERTAKINGS

5.1 Representations and warranties

The Company represents and warrants to the Lender that:

- (a) it is duly incorporated and validly existing under the law of Scotland;
- (b) it has the power to grant this Security and perform its obligations hereunder;
- (c) it has taken all necessary corporate action to authorise the execution and delivery of this Security and the performance of its obligations hereunder;
- (d) the grant of this Security and the performance of its obligations hereunder will not contravene any law, regulation or agreement to which the Company is a party or by which it is bound, or cause any limitation on any of the powers of the Company however imposed, or the right or ability of its directors to exercise any of such powers, to be exceeded;
- (e) all authorisations required for the creation, performance, validity and enforceability of this Security by the Company have been obtained and are in full force and effect;
- (f) it has not, 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; and

- (g) it has not, save in the ordinary course of its trading activities, for market value, on an arms length basis and for consideration payable in cash on normal commercial terms, entered into any agreement or granted any option to sell or otherwise dispose of the Secured Assets or any interest therein, or agreed, conditionally or unconditionally, to do so.

5.2 Undertakings

- (a) The Company undertakes that unless otherwise agreed in writing by the Lender it shall not:
 - (i) dispose of any of the Secured Assets or any interest therein otherwise than in the ordinary course of its trading activities, for market value, on an arms length basis and for consideration payable in cash on normal commercial terms;
 - (ii) sell, factor, discount, assign or otherwise charge or dispose of its book debts or other accounts or payments receivable;
 - (iii) become a guarantor or surety for any person;
 - (iv) issue or create any debentures, debenture or loan stock or loan capital;
 - (v) agree to postpone or subordinate the Company's right to receive or claim payment of any debt or monetary claim due to it; or
 - (vi) do or omit to do anything whereby any insurance in respect of the Company or the Secured Assets may be rendered void or voidable.
- (b) The Company undertakes that unless otherwise agreed in writing by the Lender it shall:
 - (i) conduct its business and affairs in a proper and efficient manner and provide the Lender on request with such trading, financial and other information as the Lender may reasonably require from time to time;
 - (ii) comply promptly with its obligations under any document or agreement relating to the Secured Obligations;
 - (iii) on request deposit with the Lender all title deeds, certificates and other documents of title or evidence of ownership in relation to the Secured Assets;
 - (iv) promptly notify the Lender of its acquisition of any heritable, freehold or leasehold property, and if so requested, deposit with the Lender all title deeds, leases and other documents of title or evidence of ownership or occupation in relation to that property;
 - (v) keep the Secured Assets in good order (and where appropriate good working order) and repair and, where necessary, renew and replace them;

- (vi) effect and maintain such insurances (in respect of the Company, its business and the Secured Assets) of such types, again such risks, with such insurers, for such amounts and on such terms and conditions as are usually maintained by prudent companies carrying on the same or similar activities as the Company pay the premiums and any other sums necessary to keep such insurances in force promptly when they fall due (and produce the relevant receipts to the Lender within three Business Days of being requested to do so); and otherwise comply with the terms and conditions applicable to such insurances: if the Company fails to effect any such insurance or pay any such premium or other sum, the Lender shall be entitled to do so in accordance with clause 10.1 (*Non compliance by Company*): the Company shall procure that the name and interest of the Lender as sole loss payee under this Security is endorsed or noted on all such insurances and so far as reasonably practicable that they each contain a non vitiation provision whereby they will not be held void, voidable or otherwise unenforceable against the Lender by reason of any non disclosure, misrepresentation or other act, neglect or default of or attributable to the Company;
- (vii) apply all monies received under any such insurances in accordance with the provisions of any loan or facility agreement between the Lender and the Company or (if no requirement as to application is so imposed) towards replacing, restoring or reinstating the property destroyed or damaged or making good the loss or damage otherwise sustained;
- (viii) notify the Lender immediately in the event of any creditor executing diligence, (whether effectual or not), levying distress or execution, against the Company or any of the Secured Assets;
- (ix) take all appropriate action (in particular make all filings and registrations and pay all fees, taxes and similar amounts) as may be necessary and commercially reasonable to maintain in full force and effect all Intellectual Property Rights (if any) owed or used by the Company which are material to its business and take such steps as may be necessary and commercially reasonable (including without limitation, instituting legal proceedings) to prevent third parties infringing such Intellectual Property Rights in any material respect; and
- (x) promptly notify the Lender of any breach of any Environmental Law applicable to it, or any of the representations, warranties and undertakings on its part specified in this clause 5 where such breach has or is likely to have a material adverse effect on the value of the Secured Assets, the financial condition, assets or revenues of the Company, the ability of the Company to fulfil the Secured Obligations, or the effectiveness of this Security.

6. ENFORCEMENT

6.1 Enforceable

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

- (a) an Event of Default occurring which is continuing unwaived or unremedied; or
- (b) the Company following the date of this Security requesting the appointment of a Receiver or administrator.

6.2 Appointment of Receiver or administrator

- (a) At any time after this Security has become enforceable the Lender shall be entitled:
- (i) 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;
 - (ii) to appoint one or more persons as an administrator of the Company;
 - (iii) to make an administration application in respect of the Company; or
 - (iv) to give notice of intention to appoint an administrator in respect of the Company.
- (b) The appointment of a Receiver or Receivers or an administrator, or the giving of notice of intention to appoint an administrator 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.

6.3 Powers of Receiver

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

- (a) to promote or procure the incorporation of any new company (whether or not a subsidiary of the Company), to transfer any part of the Secured Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Company, or the Receiver, or its or his/her nominee or trustee;
- (b) subject to the articles of association, to convene extraordinary general meetings of the Company;
- (c) 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
- (d) 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

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

responsible for his/her acts, omissions, neglects and defaults and for all liabilities and obligations incurred by him/her, and his/her remuneration costs, charges and expenses.

6.5 Application of proceeds

All monies realised by the Receiver or otherwise arising from the enforcement of this security shall, subject always to clause 6.6 (*Monies on suspense account*) and clause 7 (*Discharge*), to the claims of creditors ranking in priority to or *pari passu* with the claims of the Lender under this Security and to the terms of section 60 of the Act, be applied by the Receiver in or towards the settlement of the Secured Obligations in such order as the Receiver shall in his/her absolute discretion decide and any surplus shall be paid to the Company or any other person entitled thereto.

6.6 Monies on suspense account

Nothing in this Security shall limit the right of the Receiver and/or the Lender (and the Company acknowledges that the Receiver and the Lender are so entitled) if and for so long as the Receiver and/or the Lender in its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of this Security into a suspense account or accounts, 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 the Receiver under this clause are subject only to his/her obligation to account to the Company or any other person entitled thereto for any balance of the Secured Assets or their proceeds remaining in his/her hands after the Secured Obligations have been fully and unconditionally paid and discharged.

6.8 Third parties

- (a) No purchaser from or other person dealing with the 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.
- (b) The receipt or discharge of the 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 its direction.

7. DISCHARGE

7.1 Discharge

When the Secured Obligations have been fully and unconditionally paid or discharged the Lender shall at the Company's request, and at its expense, discharge this Security. 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 Security 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

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

9. SET-OFF

9.1 Set-off rights

The Lender may (but shall not be obliged to) set off any obligation which is due and payable by the Company to the Lender and unpaid against any obligation (whether or not matured) owed by the Lender to the Company, regardless of the place of payment, booking branch or currency of either obligation.

9.2 Set-off rights after Security is enforceable

At any time after this Security has become enforceable (and in addition to its rights under clause 9.1 (*Set-off rights*)), the Lender may (but shall not be obliged to) set-off any contingent liability owed by the Company to the Lender against any obligation (whether or not matured) owed by the Lender to the Company, regardless of the place of payment, booking branch or currency of either obligation.

9.3 Currency conversion for purpose of set-off

If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange for the purpose of the set-off.

9.4 Unliquidated or unascertained liabilities

If either obligation referred to in this clause 9 is unliquidated or unascertained, the Lender may set-off in an amount estimated by it in good faith to be the amount of that obligation.

10. MISCELLANEOUS

10.1 Non compliance by Company

If the Company fails to make any payment or fulfil any obligation due by it under or pursuant to this Security, the Receiver or the Lender, as the case may be, shall be entitled to do so on its behalf and in its name (or in its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as 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 Company on demand, together with interest at 6% per annum from the date of demand until settlement and shall constitute Secured Obligations.

10.2 Assignment

- (a) The Lender may at any time (without notice or consent) assign the benefit of this Security or any of its rights or obligations hereunder.
- (b) The Company may not assign, transfer or otherwise deal with the benefit or burden of this Security or any of its rights or obligations hereunder.

10.3 Certificate

A certificate signed by any authorised signatory on behalf of the Lender shall, save in the case of manifest error, conclusively constitute the amount of the Secured Obligations at the relevant time for all purposes of this Security.

10.4 Entire agreement

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

10.5 Non-reliance

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

10.6 Amendments

No amendment or variation of this Security shall be effective unless it is in writing and signed by the Company and is made with the prior written consent of the Lender.

10.7 Expenses

The Company shall indemnify the Lender on demand against all liabilities, costs, charges and expenses properly and reasonably incurred by the Lender (including the fees and expenses of any legal advisers employed by the Lender and where appropriate any VAT) in connection

with the preparation and execution of this Security and the enforcement or preservation of the Lender's rights under this Security, together with interest at 6% per annum from the date of demand until settlement, and the amount thereof shall be a Secured Obligation.

10.8 Administrators liability

The Administrators have entered into and signed this Security as agents for or on behalf of the Company and neither they, their firm, partners, employees, advisers, representatives or agents shall incur any personal liability in respect of any of the obligations undertaken by the Company or in respect of any failure on the part of the Company to observe, perform or comply with any such obligations or under or in relation to any associated arrangements or negotiations or under any document or assurance made pursuant to this Security.

11. NOTICES

11.1 Notices and deemed receipt

Any demand or notice to be given under this Security shall be in writing signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post or by facsimile to the address and for the attention of the relevant party set out in clause 11.2 (*Addresses for notices*) (or as otherwise notified by that party thereunder). Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery or registered post, 24 hours from the date of posting; and
- (c) in the case of facsimile, at the time of transmission, where in order to prove transmission it shall be sufficient to produce confirmation of uninterrupted transmission by a transmission report,

provided that if deemed receipt occurs before 9.00am on a Business Day the notice shall be deemed to have been received at 9.00am on that day and if deemed receipt occurs after 5.00pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9.00am on the next Business Day.

11.2 Addresses for notices

The addresses and facsimile numbers of the parties for the purposes of this clause 11 are:

The Lender

Address: 23 Melville Street, Edinburgh EH3 7PE
For the attention of: The Directors, Foundation of Hearts Limited
Fax number: 0131 240 3889

The Company

Address: Heart of Midlothian plc (in administration),
c/o BDO LLP, Citypoint, 65 Haymarket Terrace, Edinburgh EH12
5HD

For the attention of: Bryan Jackson

Fax number:

or such other address or facsimile number in the United Kingdom as may be notified in writing from time to time by the relevant party to the other.

11.3 No electronic service

For the avoidance of doubt no demand or notice given under this Security shall be validly given if sent by e-mail.

12. GOVERNING LAW

This Security and any non-contractual obligations arising out of or in connection with it 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 13 preceding pages are executed as follows:

SUBSCRIBED for and on behalf of
HEART OF MIDLOTHIAN PLC (IN ADMINISTRATION)
at **EDINBURGH**
on the **9** day
of **MAY** 2014

by one of the Administrators (without personal liability)

..... Administrator

before this witness

Lucy Gannon Witness

LUCY RAE GANNON Full Name

53 BOTHWELL ST Address

GLASGOW