



**Registration of a Charge**

Company name: **THE HALO KILMARNOCK LIMITED**

Company number: **SC536157**



X8EV8VQ0

Received for Electronic Filing: **27/09/2019**

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**Details of Charge**

Date of creation: **11/09/2019**

Charge code: **SC53 6157 0003**

Persons entitled: **SCOTTISH ENTERPRISE**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **BRODIES LLP**



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

Company number: 536157

Charge code: SC53 6157 0003

The Registrar of Companies for Scotland hereby certifies that a charge dated 11th September 2019 and created by THE HALO KILMARNOCK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th September 2019 .

Given at Companies House, Edinburgh on 30th September 2019

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



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

**DEBENTURE**

between

**THE HALO KILMARNOCK LIMITED**

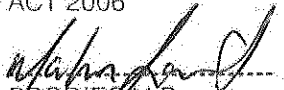
(as Chargor)

and

**SCOTTISH ENTERPRISE**

(as Lender)

CERTIFIED A TRUE  
COPY SAVE FOR THE  
MATERIAL REDACTED  
PURSUANT TO S859G  
OF THE COMPANIES  
ACT 2006

  
BRODIES LLP  
Solicitors

19/09/2019

Ref: MPST/SC092184

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THIS DEBENTURE is dated 11 September 2019 and made as a Deed between:

- (1) THE HALO KILMARNOCK LIMITED, a company incorporated in Scotland with registered number SC536157 and having its registered office at c/o Macdonald Henderson Limited, 94 Hope Street, Glasgow, Scotland, G2 6PH (the "Chargor"); and
- (2) SCOTTISH ENTERPRISE, established under the Enterprise and New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ (the "Lender").

**BACKGROUND:**

- (A) The Lender has agreed to make a loan facility available to the Chargor under the Facility Agreement (as defined below).
- (B) One of the conditions precedent to the availability of the facility referred to in paragraph (A) above is that the Chargor grants to the Lender this Deed.
- (C) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1 In this Deed:**

"Act" means the Law of Property Act 1925;

"Assigned Contracts" means:

- (a) each of the contracts listed in Schedule 2 (*Assigned Contracts*); and
- (b) any other agreement to which the Chargor is a party and which the Lender and the Chargor has designated as an Assigned Contract at any time;

in each case including any guarantees or sureties entered into in respect of them;

"Assigned Insurances" means the Insurances (if any) specified in Schedule 3 (*Assigned Insurances*) (including any renewal, substitution or replacement of such Insurance;

"Deed" means this debenture;

"Default Rate" means the rate applicable pursuant to Clause 8.4 (*Default Interest*) of the Facility Agreement;

"Facility Agreement" means the facility agreement between the Chargor and the Lender dated on or around the date of this Deed;

"Financial Collateral" has the meaning given to that term in the Financial Collateral Regulations;

"Financial Collateral Regulations" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (SC 12006 No 3226);

"Fixtures" means all fixtures and fittings and fixed plant and machinery on the Mortgaged Property;

"Mortgaged Property" means all freehold and leasehold property located in England and Wales which the Chargor purports to mortgage or charge under this Deed including (without limitation) any freehold or leasehold property specified in the Schedule (*Real Property*);

"Party" means a party to this Deed;

"Property" means ALL and WHOLE the two areas of ground being 9.32 hectares lying to the west of Hill Street, Kilmarnock registered in the Land Register of Scotland under title number AYR113846;

"Receiver" means an administrative receiver, a receiver and manager or a receiver, in each case, appointed under this Deed;

"Schedule" means the schedule to this Deed;

"Secured Liabilities" means any and all monies and obligations due, owing or incurred by the Chargor to the Lender in any manner and in any currency or currencies, whether present or future, actual or contingent, incurred alone or jointly with any other person and whether as principal, guarantor, cautioner or surety including interest, costs, charges and expenses incurred by the Lender in respect of those monies or obligations; and

"Security Assets" means all assets of the Chargor the subject of the security, created by or constituted pursuant, to this Deed.

## 1.2 Interpretation

1.2.1 Capitalised terms defined in the Facility Agreement have, unless expressly defined in this Deed, the same meaning in this Deed.

1.2.2 The provisions of clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed *mutatis mutandis* except that references to the Facility Agreement are to be construed as references to this Deed.

1.2.3 A Finance Document or other document includes (without prejudice to any prohibition on amendments) all amendments however fundamental to that Finance Document or other document, including any amendment providing for any increase in the amount of a facility or any additional facility.

1.3 The terms of the other Finance Documents and of any side letters between any parties in relation to any Finance Document are incorporated in this Deed to the extent required to ensure that any purported disposition of any freehold or leasehold property contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.4 Unless the context otherwise requires, a reference to a Security Asset includes:

1.4.1 any part of that Security Asset;

1.4.2 any proceeds of that Security Asset; and

1.4.3 any present and future assets of that type.

1.5 Third party rights

1.5.1 Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this Deed.

1.5.2 Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

1.5.3 Any Receiver may, subject to this Clause 1.5 and the Third Parties Act, rely on any Clause of this Deed which expressly confers rights on it.

1.6 Conflict

Where there is any conflict between the terms of this Deed and the terms of the Facility Agreement and/or where the terms of this Deed are more onerous on the Chargor than the terms of the Facility Agreement, the terms of the Facility Agreement shall prevail.

2 COVENANT TO PAY

The Chargor, as primary obligor and not merely as surety, covenants that it will on demand in writing made to it pay or discharge the Secured Liabilities when the same are due for payment or discharge (whether by acceleration or otherwise).

3 CHARGING PROVISIONS

3.1 The Chargor with full title guarantee charges to the Lender as a continuing security for the payment or discharge of the Secured Liabilities:

3.1.1 by way of a first legal mortgage all estates or interests in any freehold or leasehold property situated in England and Wales owned by it and all rights under any licence or other agreement or document which gives that Chargor a right to occupy or use such

property including any freehold or leasehold property specified in the Schedule, together with all present and future buildings and fixtures (including trade fixtures) which are at any time on or attached to the property (for the avoidance of doubt excluding any such estates, interests or rights located in Scotland); and

3.1.2 (to the extent that they are not the subject of a mortgage under Clause 3.1.1) by way of first fixed charge (and for the avoidance of doubt excluding any such estates, interests, rights or others located in Scotland or governed by Scots law):

3.1.2.1 all estates or interests in any freehold or leasehold property located in England and Wales owned by it and all rights under any licence or other agreement or document which gives the Chargor a right to occupy or use property located in England and Wales;

3.1.2.2 the benefit of all other agreements relating to land in England and Wales which the Chargor is or may become party to or otherwise entitled;

3.1.2.3 all plant, machinery, fixtures, fittings, furniture, furnishings, equipment and chattels located in England and Wales owned by the Chargor and its interest in any such assets in its possession located in England and Wales;

3.1.2.4 all shares, stocks, debentures, bonds, warrants, coupons or other securities and investments owned (at law or in equity) by it or held by any nominee on its behalf; and

3.1.2.5 any dividend, interest or other distribution paid or payable or any right, money or property accruing or offered at any time by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise accruing or payable in relation to any share, stock, debenture, bond, warrant, coupon or other security or investment;

3.1.2.6 all rights and interests in and claims under all insurance contracts or policies or assurance contracts or policies held by or insuring to the benefit of the Chargor (including all money payable under them);

3.1.2.7 all of its rights in respect of any amount standing to the credit of any bank account, cash at bank and credit balances (excluding those arising on fluctuating accounts) located in England and Wales with any bank or other person whatsoever and all rights relating or attaching to them (including the right to interest);

3.1.2.8 all present and future book debts of the Chargor;



- 3.1.2.9 all of its rights in respect of any patents, utility models, copyright, registered and unregistered rights in designs, registered and unregistered trade and service marks, rights in passing off and database rights in each case now or in the future held by the Chargor (whether alone or jointly with others) anywhere in the world and including any extensions and renewals of ordinary application for such rights;
  - 3.1.2.10 all the Chargor's rights in relation to trade secrets, confidential information and know-how in any part of the world;
  - 3.1.2.11 the benefit of all warranties, instruments, guarantees, charges, pledges and other security and all other rights and remedies available to the Chargor in respect of the assets comprised within a mortgage, fixed charge or assignment by way of security created pursuant to this Clause 3;
  - 3.1.2.12 any beneficial interest, claim or entitlement it has to any assets of any pension fund;
  - 3.1.2.13 its goodwill and uncalled capital for the time being;
  - 3.1.2.14 the benefit of any authorisation (statutory or otherwise) held in connection with the Mortgaged Property; and
  - 3.1.2.15 the right to recover and receive compensation which may be payable to it in respect of any authorisation referred to in Clause 3.1.2.14.
- 3.1.3 assigns absolutely the Lender, subject to the proviso for re-assignment on redemption:
- 3.1.3.1 the benefit of all rights and claims of the Chargor now or at any time against managing agents, professional advisors or contractors in relation to the Property and any business carried on at the Property, and against manufacturers, suppliers and installers of Fixtures or other items on the Property or other persons under contract or under a duty to the Chargor in relation to the Property;
  - 3.1.3.2 the benefit of all Assigned Contracts, other contracts, deeds, undertakings, agreements, warranties, securities, covenants, guarantees, bonds or indemnities of any nature now or at any time relating to the Property or the other Security Assets (including, but not limited to, any rent deposit or other sum paid as security or paid under any contract for the sale of the Property or option agreement relating to the Property but only to the extent the Chargor has title to and a right to deal with and/or dispose of such deposit or other sum), and all rights and

claims to compensation of any nature paid in relation to the Property;  
and

3.1.3.3 the benefit of all Assigned Insurances and other policies and contracts of insurance now or at any time relating to the Property or the other Security Assets and all moneys payable under any such policies and contracts; and

3.1.3.4 all of its rights in respect any letter of credit issued in its favour and any bill of exchange or other negotiable instrument held by it.

3.2 To the extent that:

3.2.1 any such right described in clause 3.1.3 above is not capable of assignment, the assignment of that right purported to be effected by clause 3.1.3 above shall operate as an assignment of any damages, compensation, remuneration, profit, rent or income which the Chargor may derive from that right or be awarded or entitled to in respect of that right; and

3.2.2 they are not effectively assigned under clauses 3.1.3 or 3.2.1 above, the Chargor charges by way of first fixed charge all of the rights and benefits described in clauses 3.1.3 and 3.2.1 above.

#### 4 PERFECTION OF SECURITY

4.1 The Chargor must deliver notices of assignment in relation to each Security Asset which is subject to an assignment under this Deed:-

4.1.1 Assigned Contracts:

4.1.1.1 within 5 Business Days of the date on which the assignment is granted, by issuing a notice substantially in the form set out in Schedule 4 (*Form of notice of assignment of Assigned Contract*) addressed to the relevant counterparty; and

4.1.1.2 if the Chargor and Lender designate any further contracts as an "Assigned Contract", within 5 Business Days of the date on which any such contract is designated an "Assigned Contract", a notice substantially in the form set out in Schedule 4 (*Form of notice of assignment of Assigned Contract*) addressed to the relevant counterparty.

4.1.2 Assigned Insurances:

4.1.2.1 within 5 Business Days of the date on which the assignment is granted, by issuing a notice substantially in the form set out in Schedule 5 (*Form*

of notice of assignment of Assigned Insurance) addressed to the relevant insurer; and

4.1.2.2 If the Chargor renews, substitutes or replaces any Assigned Insurance, by issuing, on or within 5 Business Days of the date of the renewal, substitution or replacement, a notice substantially in the form set out in Schedule 5 (*Form of notice of assignment of Assigned Insurance*) addressed to the relevant insurer.

4.2 The Chargor shall use reasonable endeavours to procure that each notice of assignment is acknowledged by the party to whom it is addressed.

4.3 The Chargor will deliver to the Lender:-

4.3.1 a copy of each notice of assignment, within 5 Business Days of delivery to the relevant counterparty; and

4.3.2 a copy of each acknowledgment of a notice of assignment, within 5 Business Days of receipt from the relevant counterparty.

## 5 UNDERTAKINGS

5.1 The Chargor shall keep the Secured Assets in good and substantial repair and in good working order and condition.

5.2 The Chargor shall preserve and maintain all intellectual property rights owned or used by it.

5.3 The Chargor shall observe and perform all covenants, agreements and stipulations from time to time affecting its interest in any lease, agreement for lease, licence or other agreement or document which gives it a right to occupy or use property comprised in its Mortgaged Property.

5.4 The Chargor shall, in relation to the Secured Assets, comply in all material respects with the terms of all applicable laws and regulations including (without limitation) all environmental laws, legislation relating to public health, town and country planning, control and handling of hazardous substances or waste, fire precautions and health and safety at work.

5.5 If the Chargor acquires any freehold or leasehold property located in England and Wales after the date of this Deed, it shall notify the Lender immediately and on request by the Lender and at the cost of the Chargor, execute and deliver to the Lender a legal mortgage in favour of the Lender of that property in any form (consistent with this Deed) which the Lender may require.

5.6 The Chargor must, within 14 days after the receipt by it of any application, requirement, order or notice served or given by any public or local or any other authority with respect to its Mortgaged Property (or any part of it) deliver a copy to the Lender and inform the Lender of the steps taken or proposed to be taken to comply with the relevant requirement.

5.7 The Chargor applies to the Chief Land Registrar for a restriction in the following terms to be entered on the Register of Title relating to any Mortgaged Property registered at H.M. Land Registry:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the debenture dated 11 September 2019 in favour of Scottish Enterprise referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its authorised signatory. (Standard form P)"

5.8 The obligation on the part of the Lender to make further advances to the Chargor is deemed to be incorporated in this Deed and the Chargor applies to the Chief Land Registrar for a note of such obligation to be entered on the Register of Title of all present and future registered freehold and leasehold property of the Chargor located in England and Wales.

5.9 The Chargor shall, immediately upon execution of this Deed, deposit with the Lender (i) all deeds and documents of title relating to its Mortgaged Property and all local land charges, land charges and Land Registry search certificates and similar documents received by it or on its behalf and (ii) all certificates and other documents of title to the stocks, debentures, shares and other securities and investments referred to in clause 3.1.2.2 together with stamped stock transfer forms in respect of the same executed in blank and left undated. The Lender may at any time after this Security becomes enforceable, complete the instruments of transfer on behalf of the Chargor in favour of itself or such other person as it should select.

5.10 The Chargor shall promptly pay or cause to be paid and indemnify the Lender and any Receiver against all present and future rent, rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever now or at any time in the future payable in respect of the Mortgaged Property.

5.11 The Chargor shall grant the Lender or its lawyers on request all facilities within the power of the Chargor to enable the Lender or its lawyers (at the expense of the Chargor) after this Security has become enforceable to:

5.11.1 carry out investigations of title to the Mortgaged Property; and

5.11.2 make such enquiries in relation to any part of the Mortgaged Property as a prudent mortgagee. The Chargor will permit any authorised representative of the Lender at all reasonable times to enter upon any part of the Mortgaged Property of the Chargor and to inspect the Chargor's books of account and other books and documents and those of its subsidiaries.

5.12 The Chargor shall:

5.12.1 not allow any person other than itself to be registered under the Land Registration Act 2002 as proprietor of any of the Mortgaged Property (or any part of it) or create or

permit to arise any overriding interest (as specified in Schedule 1 or Schedule 3 to the Land Registration Act 2002) affecting any such property;

5.12.2 not knowingly do or cause to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the marketability of any of the Security Assets.

5.13 The Chargor shall notify the Lender as soon as reasonably practicable in the event of any creditor executing diligence against the Chargor or any distress or execution is levied or enforced against the Chargor or any third party debt as or freezing order is made and served on the Chargor.

5.14 The Chargor shall notify the Lender as soon as reasonably practicable if any steps are taken by any person in relation to the administration, receivership, winding-up or dissolution of the Chargor.

5.15 Other than as permitted in terms of the Facility Agreement, the Chargor may not withdraw any moneys (including interest) standing to the credit of any blocked account. The Lender may, subject to the terms of the Facility Agreement, (and subject to the payment of any claims having priority to this Security) withdraw amounts standing to the credit of any blocked account.

5.16 The Chargor may not:

5.16.1 make or permit others to make any application for planning permission in respect of any part of the Mortgaged Property; or

5.16.2 carry out or permit to be carried out on any part of the Mortgaged Property any development for which the permission of the local planning authority is required,

except as part of carrying on its principal business where it would not or would not be reasonably likely to have a material adverse effect on the value, saleability or use of the Mortgaged Property or the carrying on of the principal business of the Chargor.

5.17 Except where expressly permitted under the Facility Agreement, the Chargor may not:

5.17.1 grant any lease of, part with possession or share occupation of the whole or any part of its Mortgaged Property or confer any licence, right or interest to occupy or grant any licence or permission to assign, underlet or part with the same;

5.17.2 vary, surrender, cancel or dispose of, or permit to be forfeit any leasehold interest in any of its Mortgaged Properties.

## 6 NEGATIVE PLEDGE

The Chargor agrees that it shall be prohibited from granting or creating subsequent to the date of execution of this Deed any floating security or any other fixed charge over the Security Assets or any part or parts of them, other than (i) in favour of the Lender or in favour of another person and with the prior written consent of the Lender, and/or (ii) Permitted Security.

## **7 INSURANCES**

- 7.1 The Chargor shall ensure that all Security Assets that are insurable are insured with reputable insurance companies or underwriters to such extent and against such risks as is normal for prudent companies in businesses similar to those of the Chargor (or as otherwise requested in writing by the Lender from time to time).
- 7.2 Subject to the rights of the Lender under Clause 7.3, the Chargor shall where appropriate and reasonably diligent to do so pursue its rights under each of its policies of insurance, but only if and to the extent that the exercise of those rights in the manner proposed would not result in a Default under the terms of the Facility Agreement.
- 7.3 Subject to the terms of the Facility Agreement, and following the occurrence of an Event of Default which is continuing:
- 7.3.1 the Lender may exercise (without any further consent or authority on the part of the Chargor and irrespective of any direction given by the Chargor) any of the rights of the Chargor in connection with any amounts payable to it under any of its insurances;
  - 7.3.2 the Chargor must take such steps (at its own cost) as the Lender may require to enforce those rights; this includes initiating and pursuing legal or arbitration proceedings in the name of the Chargor; and
  - 7.3.3 the Chargor must hold any payment received by it under any of its policies of insurance on trust for the Lender.
- 7.4 The Chargor shall within 5 Business Days give notice of this Deed to each of the other parties to each of the contracts of insurances by sending a notice in terms approved in advance by the Lender.

## **8 WHEN SECURITY BECOMES ENFORCEABLE**

This Deed shall become enforceable and the Lender may exercise all the powers conferred on mortgagees by the Law of Property Act 1925 (as varied or extended by this Deed), all the powers conferred on the holder of a qualifying floating charge (as defined in the Insolvency Act 1986) by the Insolvency Act 1986 and all or any of the rights and powers conferred by this Deed without further notice to the Chargor upon and at any time after the occurrence of an Event of Default which it continuing.

## **9 ENFORCEMENT OF SECURITY**

- 9.1 The power of sale and any other power conferred on a mortgagee by law (including under section 101 of the Act) as varied or amended by this Deed will be immediately exercisable at any time after this Security has become enforceable.

- 9.2 For the purposes of all powers implied by law, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- 9.3 Any restriction imposed by law on the power of sale (including under section 103 of the Act) or the right of a mortgagee to consolidate mortgages (including under section 93 of the Act) does not apply to this Security.
- 9.4 Any powers of sale, leasing and accepting surrenders conferred on the Lender by law are extended so as to authorise the Lender to lease, make agreements for leases, accept surrenders of leases and grant options as the Lender may think fit and without the need to comply with any restrictions conferred by law (including under section 99 or 100 of the Act).
- 9.5 Neither the Lender nor any Receiver will be liable, by reason of entering into possession of a Security Asset:
- 9.5.1 to account as mortgagee in possession or for any loss on realisation; or
- 9.5.2 for any default or omission for which a mortgagee in possession might be liable.
- 9.6 Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by law (including the Act) on mortgagees and receivers duly appointed under any law (including the Act).
- 9.7 No person (including a purchaser) dealing with the Lender or a Receiver or its or his agents will be concerned to enquire:
- 9.7.1 whether the Secured Liabilities have become payable;
- 9.7.2 whether any power which the Lender or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- 9.7.3 whether any money remains due under the Facility Agreement; or
- 9.7.4 how any money paid to the Lender or to that Receiver is to be applied.
- 9.8 At any time after this Security has become enforceable, the Lender may:
- 9.8.1 redeem any prior security against any Security Asset; and/or
- 9.8.2 procure the transfer of that security to itself; and/or
- 9.8.3 settle and pass the accounts of the prior mortgagee, chargee or encumbrancer and any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.

9.9 The Chargor must pay to the Lender, immediately on demand, the costs and expenses incurred by the Lender in connection with any redemption and/or transfer pursuant to Clause 9.8, including the payment of any principal or interest.

9.10 If this Security is enforced at a time when no amount is due under the Facility Agreement but at a time when amounts may or will become due, the Lender (or the Receiver) may pay the proceeds of any recoveries effected by it into such number of suspense accounts as it considers appropriate.

## 10 RECEIVER

10.1 Except as provided below, the Lender may by deed, under seal or in writing under its hand appoint any one or more persons to be a Receiver of all or any part of the Security Assets of the Chargor if this Deed has become enforceable or the Chargor so requests the Lender in writing at any time.

10.2 Where more than one Receiver is appointed they will have power to act separately (unless the appointment of the Lender specifies to the contrary).

10.3 Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the Act) does not apply to this Deed.

10.4 The Lender 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 to the Insolvency Act 1986.

10.5 The Lender may not appoint an administrative receiver (as defined in section 29(2) of the Insolvency Act 1986) over the Security Assets if the Lender is prohibited from so doing by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

10.6 The Lender may from time to time determine the remuneration of the Receiver and may (subject to Section 45 of the Insolvency Act 1986) remove the Receiver from all or any part of the assets of which he is the Receiver and at any time after any Receiver has vacated office or ceased to act, appoint a further Receiver over all or any part of those assets.

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

## 11 POWERS OF RECEIVER

11.1 A Receiver will be the agent of the Chargor for all purposes and will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor is solely responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver.



- 11.2 A Receiver has all the rights, powers and discretions set out below in this clause in addition to those conferred on it by any law. This includes:
- 11.2.1 in the case of an administrative receiver, all the rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986; and
  - 11.2.2 otherwise, all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the Act and the Insolvency Act 1986.
- 11.3 A Receiver may:
- 11.3.1 take immediate possession of, get in and collect any Security Asset;
  - 11.3.2 carry on any business of the Chargor in any manner he thinks fit;
  - 11.3.3 appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Deed upon such terms as he thinks fit;
  - 11.3.4 discharge any person appointed by the Chargor;
  - 11.3.5 raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Deed or otherwise and generally on any terms and for whatever purpose which he thinks fit;
  - 11.3.6 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 thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit. Fixtures and fittings in respect of the Mortgaged Property may be severed and sold separately from the Mortgaged Property without the consent of the Chargor;
  - 11.3.7 let any Security Asset for any term and at any rent (with or without a premium) which he thinks fit and may accept a surrender of any lease or tenancy of any Security Asset on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender);
  - 11.3.8 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;
  - 11.3.9 bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit;
  - 11.3.10 give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset;

- 11.3.11 form a subsidiary of the Chargor and transfer to that subsidiary any Security Asset;
- 11.3.12 delegate his powers in accordance with this Deed;
- 11.3.13 lend money or advance credit to any customer of the Chargor;
- 11.3.14 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;
- 11.3.15 commence and/or complete any building operation; and
- 11.3.16 apply for and maintain any planning permission, building regulation approval or any other authorisation,

in each case as he thinks fit.

11.4 In addition to the powers set out in Clauses 9.2 and 9.3, a Receiver may:

- 11.4.1 do all other acts and things which he may consider desirable or necessary 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 Deed or by law;
- 11.4.2 exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset; and
- 11.4.3 use the name of the Chargor for any of the above purposes.

## 12 APPLICATION OF PROCEEDS

- 12.1 Unless otherwise determined by the Lender or a Receiver, any monies received by the Lender or that Receiver after this Deed has become enforceable must be applied in the order and manner specified by the Facility Agreement notwithstanding any purported appropriation by the Chargor.
- 12.2 Nothing contained in this Deed shall limit the right of the Lender or a Receiver (and the Chargor acknowledges that the Lender and any Receiver is so entitled) if and for so long as the Lender or a Receiver, in its 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 Deed 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.

## 13 DELEGATION

- 13.1 The Lender or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed. Any such delegation may

be made upon any terms (including power to sub-delegate) which the Lender or any Receiver may think fit.

- 13.2 Neither the Lender nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

#### 14 FURTHER ASSURANCES

- 14.1 The Chargor shall, at its own expense, take whatever action the Lender requires for:

- 14.1.1 creating, perfecting or protecting any security intended to be created by or pursuant to this Deed;
- 14.1.2 following the occurrence of an Event of Default which is continuing, facilitating the realisation of any Security Asset;
- 14.1.3 facilitating the exercise of any right, power or discretion exercisable by the Lender or any Receiver or any of their respective delegates or sub-delegates in respect of any Security Asset; or
- 14.1.4 creating and perfecting security in favour of the Lender (equivalent to the security intended to be created by this Deed) over any assets of any Chargor located in any jurisdiction outside England and Wales.

- 14.2 The action the Lender may require pursuant to Clause 14.1 includes:

- 14.2.1.1 the re-execution of this Deed;
- 14.2.1.2 the execution of any legal mortgage, charge, standard security, transfer, conveyance, assignment or assurance or other fixed security of any property, whether to the Lender or to its nominee; and
- 14.2.1.3 the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Lender may think expedient.

#### 15 SET-OFF

- 15.1 Following the occurrence of an Event of Default which is continuing, the Chargor authorises the Lender to apply any credit balance (then due) to which the Chargor is at any time entitled on any account or accounts with the Lender towards satisfaction of the Secured Liabilities. If such balances are in different currencies, the Lender may convert either balance at the market rate of exchange for the purpose of the set-off.

- 15.2 The Lender shall not be obliged to exercise its rights under this Clause 15, 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).

#### 16 POWER OF ATTORNEY

- 16.1 The Chargor, by way of security, irrevocably appoints the Lender, and also (as a separate appointment) any Receiver severally and each of their respective delegates and sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause.

- 16.2 The appointment effected under Clause 14.1 shall take effect immediately (in the case of a Receiver, upon his/her appointment), but the powers conferred shall only become exercisable upon the occurrence of an Event of Default which is continuing (which upon the appointment of a Receiver shall be deemed to be the case) or if the Company does not fulfil any of its obligations under Clause 13 (*Further assurance*) within 10 Business Days of notice from the Lender or Receiver to do so.

#### 17 PRESERVATION OF SECURITY

- 17.1 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 and is without prejudice and in addition to any other right, remedy or security of whatever sort the Lender may hold at any time for the Secured Liabilities or any other obligation whatsoever and will not be affected by any release, reassignment or discharge of such other right, remedy or security.

- 17.2 The Chargor will permit any authorised representative of the Lender at all reasonable times to enter upon any part of the Mortgaged Property and to inspect the Chargor's books of account and other books and documents and those of its subsidiaries.

- 17.3 The Lender shall be entitled, at any time and at the Lender's sole cost, to have a valuation of the Security Assets or any part of them carried out from time to time by an independent surveyor or valuer (to be appointed at the Lender's sole discretion) and the Chargor consents to such valuation report being prepared and agrees to provide such access and other assistance as may be reasonably required by the Lender for such purposes. The Chargor shall ensure that any tenant or other occupier of the Mortgaged Property shall ensure access and assistance is provided for these purposes, subject to the terms of any leases or rights of occupancy.

- 17.4 If any payment by the Chargor or any discharge given by the Lender (whether in respect of the obligations of the Chargor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- 17.4.1 the liability of the Chargor will continue as if the payment, discharge, avoidance or reduction had not occurred; and
- 17.4.2 the Lender will be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.
- 17.5 The obligations of the Chargor under this Deed will not be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Deed (whether or not known to it or the Lender). This includes:
- 17.5.1 any time or waiver granted to, or composition with, any person;
- 17.5.2 any release of any person under the terms of any composition or arrangement;
- 17.5.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of any person;
- 17.5.4 any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 17.5.5 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- 17.5.6 any amendment of the Facility Agreement or any other document or security;
- 17.5.7 any unenforceability, illegality, invalidity or non-provability of any obligation of any person under the Facility Agreement or any other document or security; or
- 17.5.8 any insolvency or similar proceedings.
- 17.6 The Chargor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any other person before claiming from the Chargor under this Deed.
- 17.7 Until all amounts which may be or become payable by the Chargor under or in connection with the Facility Agreement have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may without affecting the liability of the Chargor under this Deed:
- 17.7.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Lender (or any trustee or agent on its behalf) against those amounts; or
- 17.7.2 apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and

- 17.7.3 hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.
- 17.8 This Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Lender and no prior security held by the Lender over any Security Asset will merge into this Security.
- 17.9 If any subsequent charge or other interest affects any Security Asset, the Lender may open a new account or accounts with the Chargor. If the Lender 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 and as from that time all payments made to the Lender will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Obligation.
- 17.10 The perpetuity period for the trusts in this Deed is 80 years.
- 17.11 To the extent that the assets mortgaged or charged under this Deed constitute Financial Collateral and this Deed and the obligations of the Chargor under this Deed constitute a "Security Financial Collateral Arrangement" (as defined in the Financial Collateral Regulations) the Lender shall have the right, at any time after this Security becomes enforceable, to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Liabilities.
- 17.12 For the purpose of Clause 17.11, the value of the Financial Collateral appropriated shall be the price of such Financial Collateral at the time the right of appropriation is exercised as listed on any recognised marked index or determined by such other method as the Lender may select. The Chargor agrees that the methods of valuation provided for in this Deed are commercially reasonable for the purposes of Regulation 18 of the Financial Collateral Regulations.

## 18 NOTICES

All notices, requests, demands and other communications to be given under this Deed shall be given and/or be deemed to be given in the same manner as notices to be given under the Facility Agreement and the terms of clause 28 (*Notices*) of the Facility Agreement shall apply *mutatis mutandis* to this Deed as though that clause were set out in full in this Deed.

## 19 INDEMNITY

The Lender and every attorney, manager, agent or other person (including any Receiver) appointed by the Lender in connection with this Deed shall be entitled to be indemnified out of the Security Assets in respect of all liabilities and expenses incurred by it in the execution or purported execution of any of the powers, authorities or discretions vested in it pursuant to this Deed 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 Security Assets and the Lender may retain and pay all sums in respect of the same out of any monies received under the powers conferred by this Deed.

20      **AVOIDANCE OF PAYMENTS**

Any amount which has been paid by the Chargor to the Lender and which is, in the opinion of the Lender, 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 Deed.

21      **RELEASE**

Once the Secured Liabilities have been paid or discharged in full, the Lender shall, at the request and reasonable cost of the Chargor, take any action which is necessary to release the security created (or expressed to be created) by this Deed and execute and deliver such further deeds and documents as the Chargor may reasonably require to give effect to this Clause 21.

22      **COUNTERPARTS**

This Deed may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

23      **GOVERNING LAW AND JURISDICTION**

23.1      This Deed is governed by English law.

23.2      The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "Dispute").

23.3      The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

23.4      This Clause 23 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions (while taking into account the provisions of Clause 23.3 above).

**THIS DEED** has been executed and delivered as a deed on the date stated at the beginning of this Deed.

SCHEDULE 1 – REAL PROPERTY

Freehold/Leasehold	Description
None.	



**SCHEDULE 2 – ASSIGNED CONTRACTS**

None.

**SCHEDULE 3 – ASSIGNED INSURANCES**

Description of Insurance	Insurer	Policy Number
AXA XL Combined Liability Insurance	XL Caitlin Insurance Company UK Limited	19CLM419309

#### SCHEDULE 4 – FORM OF NOTICE OF ASSIGNMENT OF ASSIGNED CONTRACT

To be printed on the headed notepaper of the Chargor

To: [Insert name and address of relevant contract counterparty]

Date: [ ]

Dear Sirs,

##### [DESCRIPTION OF RELEVANT ASSIGNED CONTRACT] (THE "CONTRACT")

1. We give you notice that we have entered into a debenture dated [ ] in favour of Scottish Enterprise (the "Lender") (the "Debenture").
2. We give you notice that, pursuant to the terms of the Debenture, we have assigned (and, to the extent not validly or effectively assigned, we have charged by way of fixed charge) to the Lender by way of security all of our rights, title and interest from time to time in, and the full benefit of, the Contract and all rights, title and interest in any amounts payable to us under the Contract, including any claims for damages in respect of any breach of the Contract.
3. Following the Lender's notification to you that the security created by the Debenture has become enforceable:-
  - a. [all payments to be made to us under or arising from the Contract should be made [to the Lender or to its order as it may specify in writing from time to time] [specify bank account];
  - b. all remedies provided for in the Contract or available at law or in equity are exercisable by the Lender;
  - c. you are authorised and instructed, without further approval from us, to comply with your obligations (including without limitation your payment obligations) under the Contract in accordance with the written instructions of the Lender from time to time (and to hold the money for any such payments to the Lender's order pending receipt of written instructions from the Lender); and
  - d. subject to paragraph 4 below, you shall allow the Lender to perform all the obligations assumed by us under the Contract.
4. We shall remain liable to perform all our obligations under the Contract and the Lender shall be under no obligation of any kind whatsoever in respect of the Contract.
5. With effect from the date of receipt of this notice, we irrevocably and unconditionally instruct and authorise you, without requiring further approval from us, to:
  - a. promptly disclose to the Lender such information relating to the Contract as the Lender may at any time request including, without limitation, all information, accounts and records in your possession or control that may be necessary or of assistance to enable the Lender to verify the amount of all payments made or payable under the Contract by you or the performance by you of all your obligations under the Contract; and
  - b. provide the Lender with copies of all notices given or received under the Contract promptly after they are given or received.

6. The authority and instructions contained in this notice cannot be revoked or varied by us without the prior written consent of the Lender.
7. By countersigning this letter, you confirm that you have not received notice of any previous assignments or charges of or over any of the rights, title and interests and benefits referred to in this notice;
8. This notice, and any dispute or claim arising out of or in connection with it, shall be governed by and construed in accordance with English law.

Please acknowledge receipt of this notice and your acknowledgement of the matters and instructions set out above within [5] days of receipt by signing, dating and returning the enclosed copy of this letter directly to the Lender at [Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ] marked for the attention of [•].

Yours faithfully,

for and on behalf of  
The Halo Kilmarnock Limited

Acknowledged:

.....  
For and on behalf of  
[Name of contract counterparty]

## SCHEDULE 5 – FORM OF NOTICE OF ASSIGNMENT OF INSURANCE

To be printed on the headed notepaper of the Chargor

To: [Insert name and address of relevant insurer]

Copy: [Insert name and address of relevant insurance broker]

Date: [ ]

Dear Sirs,

[DESCRIPTION OF RELEVANT INSURANCE POLIC[Y][IES] INCLUDING POLICY NUMBER] (THE "POLIC[Y][IES]") [refer to an attached schedule if there are a number of policies]

1. We give you notice that we have entered into a debenture dated [ ] in favour of Scottish Enterprise (the "Lender") (the "Debenture").
2. Pursuant to the terms of the Debenture, we have assigned (and, to the extent not validly or effectively assigned, we have charged by way of fixed charge) to the Lender by way of security all of our rights, title, interest and benefits in to or in respect of the Polic[y][ies] including the benefit of all claims and returns of premiums in respect thereof to which we are or may at any time become entitled.
3. Following the Lender's notification to you that the security created by the Debenture has become enforceable:-
  - 3.1 all payments and claims under or arising from the Polic[y][ies] are to be made to the Lender to such account (or to its order) as it may specify in writing from time to time;
  - 3.2 all remedies provided for in the Polic[y][ies] or available at law or in equity are to be exercisable by the Lender; and
  - 3.3 all rights to compel the performance of the Polic[y][ies] are to be exercisable by the Lender.
4. Subject to the foregoing, you may continue to deal with us in relation to the Polic[y][ies] until you receive written notice to the contrary from the Lender. Thereafter, we will cease to have any right to deal with you in relation to the Polic[y][ies] and you must deal only with the Lender.
5. The authority and instructions contained in this notice cannot be revoked or varied by us without the prior written consent of the Lender.
6. By countersigning this letter, you confirm that you have not received notice of any previous assignments or charges of or over any of the rights, title and interests and benefits referred to in this notice.
7. This notice, and any dispute or claim arising out of or in connection with it, shall be governed by and construed in accordance with English law.

Please acknowledge receipt of this notice and your acknowledgement of the matters and instructions set out above within [5] days of receipt by signing, dating and returning the enclosed copy of this letter directly to the Lender at [Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ] marked for the attention of [\*].

Yours faithfully,

for and on behalf of  
The Halo Kilmarnock Limited

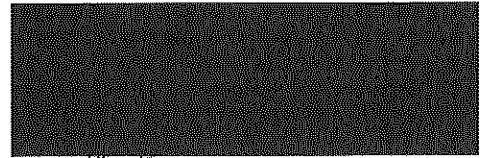
Acknowledged:

.....

For and on behalf of *[Name of insurer]*

SIGNATORIES

EXECUTED as a DEED by )  
THE HALO KILMARNOCK )  
LIMITED acting by )  
MARIE STEWART MACQUEEN Director )  
in the presence of



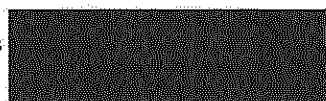
Director

Witness Signature

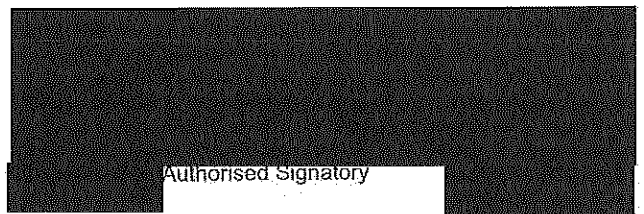


Name FRASER MARKISON

Address



EXECUTED as a DEED by )  
SCOTTISH ENTERPRISE )  
acting by )  
CATHERINE MARY COUL  
Authorised Signatory



Authorised Signatory

Common seal of SCOTTISH ENTERPRISE:

