S628335/13

In accordance with Sections 859A and 859J of the Companies Act 2006.

MR01

Particulars of a charge

IRIS Laserform

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 instrument. Use form MR08.

WEDNESDAY

S2MZWZKW
SCT 11/12/2013 #149
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.

For official use

1 Company details

Company number	S C 1 3 4 7 4 1
Company name in full	Forth Ports Limited (the **"Chargor"**)

→ **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	d 0 d 2 m 1 m 2 y 2 y 0 y 1 y 3

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	Deutsche Bank AG, London Branch (the **"Security Agent"**)
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.

MR01
Particulars of a charge

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**

MR01
Particulars of a charge

8 Trustee statement ❶

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.

☐

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

9 Signature

Please sign the form here.

Signature

Signature

X for and on behalf of Burness Paull LLP X

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

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 LAURA ELLIS (CLI/2013/433)

Company name BURNESS PAULL LLP

Address 50 LOTHIAN ROAD

FESTIVAL SQUARE

Post town EDINBURGH

County/Region

Postcode E H 3 9 W J

Country

DX ED73 EDINBURGH

Telephone 0131 473 6000

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: 134741

Charge code: SC13 4741 0011

The Registrar of Companies for Scotland hereby certifies that a charge dated 2nd December 2013 and created by FORTH PORTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th December 2013.

Given at Companies House, Edinburgh on 16th December 2013

Companies House

REGISTRAR OF COMPANIES FOR SCOTLAND

THE OFFICIAL SEAL OF THE REGISTRAR OF COMPANIES

EXECUTION VERSION

Burness Paull

Certified a true copy
Edinburgh .....
for and on behalf of Burness Paull LLP

FORTH PORTS LIMITED
as the Chargor

in favour of

DEUTSCHE BANK AG, LONDON BRANCH
as Security Agent for the Secured Parties

BOND AND FLOATING CHARGE

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BOND AND FLOATING CHARGE

by

(1) **FORTH PORTS LIMITED**, a company incorporated under the Companies Acts with registered number SC134741 and having its registered office at 1 Prince of Wales Dock, Edinburgh, EH6 7DX (the **"Chargor"**)

in favour of

(2) **DEUTSCHE BANK AG, LONDON BRANCH** as trustee for each of the Secured Parties on the terms and conditions set out in the Intercreditor Agreement (the "**Security Agent**" which expression shall include any person for the time being appointed as trustee, or as an additional trustee, for the purposes of the Intercreditor Agreement)

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Instrument:

"Administration Event" means:

(a) the presentation of an application to the court for the making of an administration order in relation to the Chargor; or

(b) the giving of written notice by any person (who is entitled to do so) of its intention to appoint an administrator of the Chargor or the filing of such a notice with the court;

"Administrator" means any administrator appointed pursuant to this Instrument;

"Collateral Rights" means all rights, powers and remedies of the Security Agent provided by or pursuant to this Instrument or by law;

"Debt Documents" has the meaning given to that term in the Intercreditor Agreement, but shall exclude any agreement evidencing the terms of the Subordinated Liabilities or the Intra-Group Liabilities;

"Event of Default" has the meaning given to that term in the Intercreditor Agreement;

"External Creditors" has the meaning given to that term in the Intercreditor Agreement;

"Intercreditor Agreement" means the intercreditor agreement entered into on or about the date of this Instrument between, amongst others, the Agent, the Lenders, the Hedge Counterparties, the Original Debtors and the Security Agent (each as defined therein);

"Investments" means any:

(a) stocks, shares, debentures and certificates of deposit and other instruments creating or acknowledging indebtedness, including alternative finance investment bonds;

(b) interests in collective investment schemes, in whatever form or jurisdiction any such scheme is established, including partnership interests;

(c) warrants and other instruments entitling the holder to subscribe for or acquire any investments described in paragraphs (a) or (b) above;

(d) certificates and other instruments conferring contractual or property rights (other than options) in respect of the investments in paragraphs (a), (b) or (c) above; and

(e) options to acquire any investments described in paragraphs (a), (b), (c) or (d) above,

in each case whether held directly by or to the order of the Chargor or by any trustee, nominee, custodian, fiduciary or clearance system on its behalf (including all rights against any such trustee, nominee, custodian, fiduciary or clearance system including, without limitation, any contractual rights or any right to delivery of all or any part of the Investments from time to time);

"Obligor" means any borrower or guarantor under a Debt Document;

"Original Facilities Agreement" the facilities agreement dated on or about the date of this Instrument between, amongst others, Otter Ports Limited as Parent, Forth Ports Limited as Company and the Mandated Lead Arrangers with Lloyds Bank plc acting as Agent and Deutsche Bank AG, London Branch acting as the Security Agent (each as defined in that agreement);

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

"Secured Assets" means the whole of the property (including uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Chargor (other than (i) any assets that are prohibited from being charged under this Instrument pursuant to the Merchant Shipping Law Amendment Act 1853, and for the avoidance of doubt (ii) the assets

held on trust pursuant to a declaration of trust dated 18 December 2001 by the Chargor in respect of the property which it holds on trust for Forth Property Developments Limited and (iii) the assets held on trust pursuant to a declaration of trust dated 18 December 2001 by the Chargor in respect of the property which it holds on trust for Forth Property Investments Limited);

"Secured Obligations" means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents, including each Special Participant in respect of the Special Participant Liabilities (to the extent a Special Participant Notice has not been served on the Security Agent by a Special Participant, in which case, the Special Participant Liabilities relating to such Special Participant shall cease to be Secured Obligations), in all cases both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity;

"Secured Parties" means the Security Agent, any Receiver or Delegate and each of the External Creditors from time to time but, in the case of each External Creditor, only if it is a Party or has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to Clause 19.10 (*Creditor Accession Undertaking*) of the Intercreditor Agreement; and

"Security Period" means the period beginning on the date of this Instrument and ending on the date on which the Security Agent is satisfied that the Secured Obligations have been irrevocably and unconditionally discharged in full and no External Creditor is under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person under any of the Debt Documents.

1.2 Unless otherwise stated or referred to in Clause 1.1 terms and expressions defined in the Intercreditor Agreement shall have the same meaning in the Instrument, or any notice given under or in connection with this Instrument.

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

1.4 The rules of interpretation contained in Clause 1.2 (*Construction*) of the Intercreditor Agreement (in the form signed on or about the date of this Instrument) shall apply to the construction of this Instrument, or in any notice given under or in connection with this Instrument.

1.5 Any certification or determination by the Security Agent of a rate or amount under this Instrument is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

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

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

1.8 Any appointment of a Receiver under Clause 6 (*Enforcement*) may be made by any successor or permitted assignee or transferee of the Security Agent and the Chargor hereby irrevocably appoints each such successor or assignee or transferee to be its attorney in the terms and for the purposes stated in Clause 14 (*Mandate and Attorney*).

1.9 The provisions of this Instrument shall continue notwithstanding the earlier termination of the Original Facilities Agreement or the Original Facilities Agreement being declared void. If the Original Facilities Agreement is terminated or declared void, any reference in this Instrument to the Original Facilities Agreement (or a provision thereof) shall be construed as a reference to the Original Facilities Agreement or that provision in its form as at the date of this Instrument as subsequently amended, supplemented, varied or replaced by the parties thereto and for these purposes the provisions of the Original Facilities Agreement shall be deemed to be valid and binding and this Instrument shall not in any way be affected or impaired if any provisions of the Original Facilities Agreement are or become invalid, illegal or unenforceable.

1.10 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this Instrument which is accordingly a qualifying floating charge.

1.11 This Instrument is subject to the terms of the Intercreditor Agreement.

1.12 In the event of any conflict between the terms of this Instrument and the terms of the Intercreditor Agreement and/or the Original Facilities Agreement, the terms of the Original Facilities Agreement and/or the Intercreditor Agreement shall prevail.

2 BOND

2.1 Undertaking to Pay

The Chargor undertakes with the Security Agent that it shall, when due in accordance with the terms of the Secured Obligations or, if they do not specify a time for payment, on demand of the Security Agent pay, discharge and satisfy the Secured Obligations and indemnify the Security Agent and each of the Secured Parties against any losses, costs, charges, expenses and liabilities arising from any breach or failure to pay, discharge or satisfy the Secured Obligations in accordance with their respective terms.

2.2 Default Interest

2.2.1 If the Chargor fails to pay any amount payable by it under this Instrument on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is one per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Secured Obligation in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Security Agent (acting reasonably). Any interest accruing under this Clause 2.2 shall be immediately payable by the Chargor on demand by the Security Agent.

2.2.2 If any overdue amount consists of all or part of a Secured Obligation which became due on a day which was not the last day of an Interest Period relating to that Secured Obligation:

(a) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Secured Obligation; and

(b) the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

2.2.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

3 FLOATING CHARGE

The Chargor as security for the payment and discharge of all the Secured Obligations hereby grants in favour of the Security Agent a first floating charge over the Secured Assets.

4 NEGATIVE PLEDGE AND RANKING OF FLOATING CHARGE

4.1 Except as permitted under the Debt Documents the Chargor shall not at any time during the Security Period create or permit to subsist any Security over all or any part of the Secured Assets or dispose of or otherwise deal with any part of the Secured Assets.

4.2 Any fixed security granted by the Chargor in favour of the Security Agent (whether before or after the date of execution of this Instrument) shall rank in priority to the floating charge created by this Instrument.

4.3 In the event that the Chargor grants or creates any fixed security or floating charge in breach of the prohibition in Clause 4.1 or with the consent of the Security Agent under Clause 4.1 but with no written agreement of the Security Agent as to the ranking of them, this Instrument shall rank in priority to that fixed security or floating charge.

4.4 It shall be implied in respect of Clause 3 (*Floating charge*) that the Chargor is disposing of the Charged Assets free from all charges and incumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

5 SET-OFF

The Chargor authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right), after the occurrence of an Event of Default which is continuing, to set off against the Secured Obligations any amount or other obligation due from the Chargor under the Debt Documents against any matured obligation (contingent or otherwise) owing by the Security Agent to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Security Agent in accordance with Clause 8 *(Application of Proceeds)* (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

6 ENFORCEMENT

6.1 In addition to any statutory provisions concerning enforceability or attachment at any time after:

6.1.1 an Event of Default which is continuing;

6.1.2 an Administration Event;

6.1.3 any event or the receipt by the Security Agent of any information or the coming to the attention of the Security Agent of any other matter or thing whatsoever which causes the Security Agent (acting reasonably) to believe that all or any part of the Secured Assets is in danger of seizure, distress or other legal process or that all or any part of the Security created by or pursuant to this Instrument is otherwise for any reason whatsoever in jeopardy; or

6.1.4 a request from the Chargor to the Security Agent that it exercise any of its powers under this Instrument,

the security created by or pursuant to this Instrument is immediately enforceable and the Security Agent may without notice to the Chargor, then (or as soon thereafter as permitted by law) in its absolute discretion by instrument in writing appoint any person or persons (if more than one with power to act both jointly and separately) to be an administrator of the Chargor or (subject, if applicable, to Section 72A of the Insolvency Act 1986) a receiver of the Secured Assets. In addition, and without prejudice to the foregoing provisions of this Clause 6.1, in the event that any person appointed to be a Receiver shall be removed by a court or shall otherwise cease to act as such, then the Security Agent shall be entitled so to appoint another person as Receiver in his place.

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

6.2.1 all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do; and

6.2.2 the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to:

(a) any of the functions, powers, authorities or discretions conferred on or vested in him;

(b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);

(c) the exercise of the Collateral Rights (including realisation of all or any part of the assets in respect of which that Receiver was appointed); or

(d) bringing to his hands any assets of the Chargor forming part of, or which when got in would be, Secured Assets.

6.3 To the extent that Secured Assets constitute "financial collateral" and this Instrument and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (**"the Regulations"**)) the Security Agent shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations in accordance with the terms of this Instrument and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of any Secured Assets appropriated in accordance with this Clause 6.3 shall be (a) in the case of cash, the amount standing to the credit of each of the Accounts, together with any accrued but unposted interest, at the time the right of appropriation is exercised; and (b) in the case of Investments, the market price of such Investments determined by the Security Agent by reference to a public index or by such other process as the Security Agent may select, including independent valuation. In each case, the parties agree that the method of valuation provided for in this Instrument shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

7 OFFICE OF RECEIVER

7.1 Any Receiver appointed under Clause 6 (*Enforcement*) shall be entitled to act individually or together with any other person approved or substituted as Receiver as the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act 1986) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and for his remuneration and his costs, charges and expenses and the Security Agent shall not incur any liability for those (either to the Chargor or any other person) by reason of the Security Agent making his appointment as such Receiver or for any other reason whatsoever.

7.2 Any Receiver appointed under Clause 6 (*Enforcement*) shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Subject to Section 58 of the Insolvency Act 1986, the remuneration of the Receiver may be fixed by the Security Agent (and may be or include a commission calculated by reference to the gross amount of all money

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

8 APPLICATION OF PROCEEDS

All monies received or recovered and any non-cash recoveries made or received by or on behalf of the Security Agent or any Receiver pursuant to this Instrument or the powers conferred by it shall be applied first in the payment or other discharge of the costs, charges and expenses incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Security Agent (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Intercreditor Agreement.

9 EFFECTIVENESS OF SECURITY

9.1 Continuing Security

9.1.1 The Security created by or pursuant to this Instrument shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Agent.

9.1.2 No part of the security from time to time intended to be constituted by this Instrument will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

9.2 Cumulative Rights

The security created by or pursuant to this Instrument shall be cumulative, in addition to and independent of every other security which the Security Agent or any Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other security. No prior security held by the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Secured Assets shall merge into the security constituted by this Instrument.

9.3 **No Prejudice**

The security created by or pursuant to this Instrument shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, or the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security Agent holds the security or by any other thing which might otherwise prejudice that security.

9.4 **Remedies and Waivers**

No failure on the part of the Security Agent to exercise, nor any delay on its part in exercising, any right under this Instrument shall operate as a waiver of that right or constitute an election to affirm this Instrument. No election to affirm this Instrument shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall preclude any further or other exercise of that or any other right.

9.5 **No Liability**

To the extent permitted by law, none of the Security Agent, its nominee(s) or any Receiver shall be liable for any loss by reason of (a) taking any action permitted by this Instrument or (b) any neglect or default in connection with the Secured Assets or (c) taking possession of or realising all or any part of the Secured Assets, except in the case of gross negligence, wilful default or fraud upon its part.

9.6 **Partial Invalidity**

If, at any time, any provision of this Instrument is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Instrument nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Instrument is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

9.7 **Waiver of defences**

The obligations assumed, and the Security created, by the Chargor under this Instrument, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 9.7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Instrument (without limitation and whether or not known to the Chargor or any Secured Party) including:

9.7.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;

9.7.2 the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

9.7.3 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 Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

9.7.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of, any Obligor or any other person;

9.7.5 any amendment, novation, supplement, extension, restatement (in each case, however fundamental and whether or not more onerous) or replacement of a Debt Document or any other document or Security or of the Secured Obligations (including, without limitation, any change in the purpose of, any extension of, or any increase in any facility or the addition of any new facility under any Debt Document or other documents or Security or of the Secured Obligations);

9.7.6 any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or Security or of the Secured Obligations; and

9.7.7 any insolvency or similar proceedings.

9.8 **Immediate recourse**

The Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Instrument. This waiver applies irrespective of any law or any provision of this Instrument to the contrary.

9.9 **Deferral of Rights**

Until such time as the Secured Obligations have been discharged in full, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Instrument:

9.9.1 to be indemnified by any Obligor;

9.9.2 to claim any contribution from any guarantor of any Obligor's obligations under this Instrument; and/or

9.9.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under this Instrument or of any other guarantee or security taken pursuant to, or in connection with, this Instrument by any Secured Party;

9.9.4 to bring legal or other proceedings for an order requiring any Obligor to make any payment or perform any obligation, in respect of which any Obligor has given a guarantee, undertaking or indemnity under any Debt Document;

9.9.5 to exercise any right of set-off against any Obligor; and/or

9.9.6 to claim or prove as a creditor of any Obligor in competition with any Secured Party.

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution on trust for the Secured Parties to the extent necessary to enable all amounts which may be or become payable to any Secured Party by the Obligors under or in connection with this Instrument to be repaid in full and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 8 (*Application of Proceeds*).

10 RELEASE OF SECURITY

10.1 Release of Security

Upon the Secured Obligations being discharged in full and none of the Secured Parties being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person under any of the Debt Documents, the Security Agent shall, at the request and cost of the Chargor, release and cancel the security constituted by this Instrument subject to Clause 10.2 (*Clawback*) and without recourse to, or any representation or warranty by, the Security Agent or any of its nominees.

10.2 Clawback

If the Security Agent considers that any amount paid or credited to any Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under this Instrument and the security constituted by this Instrument shall continue and such amount shall not be considered to have been irrevocably paid.

11 SUBSEQUENT SECURITY INTERESTS

If the Security Agent (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignment, assignation or transfer affecting all or any part of the Secured Assets which is prohibited by the terms of any Debt Document, all payments thereafter by or on behalf of the Chargor to the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties will (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

12 SUSPENSE ACCOUNTS

All monies received, recovered or realised by the Security Agent under this Instrument (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Security Agent considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Security Agent's discretion, in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

13 FURTHER ASSURANCE

13.1 Further Assurance: General

The Chargor shall promptly at its own cost do all such acts or execute all such documents (including assignations, pledges, transfers, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require) in favour of the Security Agent or its nominee(s):

13.1.1 to perfect and/or protect the security created or intended to be created under and evidenced by this Instrument in respect of the Secured Assets (which may include the execution by the Chargor of a charge assignation or assignation or other security over all or any of the assets constituting, or intended to constitute, Secured Assets or for the exercise of any rights, powers and remedies of the Security Agent provided by this Instrument or by law);

13.1.2 to facilitate the realisation of the Secured Assets; and

13.1.3 the Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of the Security conferred or intended to be conferred on the Security Agent by or pursuant to this Instrument.

13.2 Necessary Action

The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Security Agent by or pursuant to this Instrument.

14 MANDATE AND ATTORNEY

14.1 Appointment and Powers

The Chargor by way of security irrevocably appoints the Security Agent and any Receiver severally to be its mandatary and attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

14.1.1 carrying out any obligation imposed on the Chargor by this Instrument or any other Debt Document binding on the Chargor to which the Security Agent is party (including the execution and delivery of any mortgages, deeds, charges, assignments or other security and any transfers of the Secured Assets); and

14.1.2 enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Instrument or by law (including, after the occurrence of an Event of Default which is continuing, the exercise of any right of a legal or beneficial owner of the Secured Assets).

14.2 Ratification

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

15 CURRENCY INDEMNITY

15.1 Currency indemnity

15.1.1 If any sum due from the Chargor under this Instrument (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is

payable into another currency (the "**Second Currency**") for the purpose of:

(a) making or filing a claim or proof against the Chargor; or

(b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Chargor shall as an independent obligation, within three Business Days of demand, indemnify the Security Agent to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

15.1.2 The Chargor waives any right it may have in any jurisdiction to pay any amount under this Instrument in a currency or currency unit other than that in which it is expressed to be payable.

16 EXPENSES

16.1 Expenses

The Chargor shall, from time to time on demand of the Security Agent, reimburse the Security Agent for all the costs and expenses (including legal fees) (together with any applicable VAT, save to the extent that the Security Agent reasonably determines in its own discretion that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority) on a full indemnity basis thereon incurred by it in connection with:

16.1.1 the negotiation, preparation, printing, perfection and execution of this Instrument and the completion of the transactions and perfection of the Security contemplated in this Instrument; and

16.1.2 the exercise, preservation and/or enforcement of any of the Collateral Rights or the Security contemplated by this Instrument or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Security or of enforcing the Collateral Rights,

and shall carry interest from the date of such demand until so reimbursed in accordance with Clause 2.2 (*Default Interest*).

16.2 Continuing Effect

The provisions of Clause 16 (*Expenses*) shall continue in full force and effect notwithstanding any release or discharge of all or any part of the Security and

whether or not the Security Agent is then the trustee pursuant to the Intercreditor Agreement.

17 ASSIGNATION

17.1 No assignations or transfers by the Chargor

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Instrument.

17.2 Assignations and transfers by the Security Agent

The Security Agent may assign and transfer all or any of its rights and obligations under this Instrument. The Security Agent shall be entitled to disclose such information concerning the Chargor and this Instrument as the Security Agent considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

18 NOTICES

The provisions of Clause 23 (*Notices*) of the Intercreditor Agreement shall apply to this Instrument.

19 DISCRETION AND DELEGATION

19.1 Discretion

Any liberty or power which may be exercised or any determination which may be made under this Instrument by the Security Agent or any Receiver may, subject to the terms and conditions of the Intercreditor Agreement, be exercised or made in its absolute and unfettered discretion.

19.2 Delegation

Each of the Security Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Instrument (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Security Agent or the Receiver itself.

19.3 Security Agent

In acting under this Instrument, the Security Agent does so in accordance with, and subject to the terms of the Intercreditor Agreement and has the benefit of the protections set out in the Intercreditor Agreement and the Original Facilities Agreement and shall be entitled to act or refrain from acting in accordance with the

provisions of the Intercreditor Agreement. In the event of any conflict between the Intercreditor Agreement and this Instrument, the Intercreditor Agreement shall prevail.

20 GOVERNING LAW AND JURISDICTION

This Instrument shall be governed by, and construed in all respects in accordance with, the law of Scotland and, for the benefit of the Security Agent, the Chargor irrevocably submits to the non-exclusive jurisdiction of the Scottish courts but without prejudice to the ability of the Security Agent to proceed against the Chargor in any other appropriate jurisdiction.

21 CONSENT TO REGISTRATION

The Chargor hereby consents to the registration of this Instrument and of any such certificate for preservation: IN WITNESS WHEREOF these presents consisting of this and the preceding 16 pages are executed as follows:

THE CHARGOR

SUBSCRIBED for and on behalf of
the said FORTH PORTS LIMITED

at **Linklaters LLP**
One Silk Street
London EC2Y 8HQ

on 2 DECEMBER 2013

By STUART RANDALL PATERSON
Print Full Name

Director

before this witness

PAMELA JUNE SMYTH
Print Full Name

Witness

Address

53 EAST CRAIGS WIND

EDINBURGH

EH12 8HJ