



**Registration of a Charge**

Company name: **ABERTAY SERVICES LIMITED**

Company number: **SC303573**

Received for Electronic Filing: **08/12/2020**



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**Details of Charge**

Date of creation: **30/11/2020**

Charge code: **SC30 3573 0003**

Persons entitled: **STEPHEN JOHN CUNNINGHAM  
ELAINE MARGARET HOUSTON**

Brief description:

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**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:

**ROSS ANTHONY LINN**



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

Company number: 303573

Charge code: SC30 3573 0003

The Registrar of Companies for Scotland hereby certifies that a charge dated 30th November 2020 and created by ABERTAY SERVICES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th December 2020 .

Given at Companies House, Edinburgh on 9th December 2020

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**

**HARPER MACLEOD LLP IS ONLY ADVISING DINGFS LTD AND NO OTHER PARTY IN RESPECT OF THIS DOCUMENT. EACH OTHER PARTY TO THIS DOCUMENT SHOULD TAKE ITS OWN INDEPENDENT LEGAL ADVICE BEFORE ENTERING INTO THIS DOCUMENT AS THE EXECUTION OF THIS DOCUMENT WILL HAVE LEGAL EFFECT AND IMPLICATIONS.**

Floating Charge

between

Abertay Services Limited, a company incorporated and registered in Scotland (Company Number SC303573) and having its registered office at West End Filling Station, Strathpeffer Road, Dingwall, Ross-Shire, IV15 9QF (the "Company"),

and

Stephen John Cunningham of 18 Bridgend Close, Dingwall, IV15 9AE and Elaine Margaret Houston of 19 Bannoch Rise, Broughty Ferry, DD5 3US jointly (the "Chargee").

It is agreed as follows:-

**1 Definitions and interpretation**

1.1 In this Instrument, unless the context otherwise requires or permits, the following shall have the following meanings:

"Act" means the Companies Act 1985;

"Administrator" means any administrator appointed in respect of the Company (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise);

"Business Day" means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in Inverness;

"Deferred Consideration" has the meaning given to it in the SPA;

"Enforcement Event" means any of the following events:

- (a) the Company has failed to pay all or any of the Secured Liabilities in accordance with Clause 2; and/or
- (b) any breach of the terms of this Instrument by the Company;

"Insolvency Act" means the Insolvency Act 1986;

"Instrument" means this floating charge;

"Receiver" means any receiver or administrative receiver appointed in respect of all or any of the Secured Assets (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise) and includes (without limitation) joint receivers and joint administrative receivers;

"Secured Assets" means the whole of the property and assets (including, without limitation, 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 Company;

"Secured Liabilities" means the obligations of the Company to the Chargee under clauses 6.1 to 6.3 (inclusive) and clause 6.8 of the SPA;

"Secured Liabilities Discharge Date" means the date on which the Guarantee Obligations (as such term is defined in the SPA) have been fully performed and discharged (or, in the

I, ROSS HATHORN LIND, SOLICITOR OF CANAS HOUSE FINANCIAL SERVICES  
PARTY IN INTERESTS HEREBY CERTIFY THIS TO BE A TRUE COPY OF  
THE ORIGINAL.

5-12-2020  
AT INVERNESS

case of the obligations and liabilities under clause 3.6 of the SPA, cease following the expiry of the Relevant Period (as such term is defined in the SPA));

"Security" means a mortgage, charge (fixed or floating), standard security, assignation in security, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect; and

"SPA" means the share purchase agreement among the Company, the Chargee and Abertay Services Limited dated on or around the date of this Instrument.

- 1.2 References in this Instrument to a "fixed security" shall be construed as a reference to a fixed security as defined by Section 486 of the Act as in force at the date of this Instrument.
- 1.3 Reference to any statute or statutory provision shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.4 References to "including" shall not be construed as limiting the generality of the words preceding it.
- 1.5 Any reference in this Instrument to a document of any kind whatsoever (including, without limitation, this Instrument) is to that document as amended, varied, supplemented, novated or substituted from time to time.
- 1.6 Words importing persons shall include individuals, firms, partnerships, corporations, governments, governmental bodies and departments, authorities, agencies, unincorporated bodies of persons or associations and any other organisations having legal capacity.
- 1.7 The singular includes the plural and vice versa and any gender includes all genders.
- 1.8 The clause headings are inserted for convenience and shall not affect the construction of this Instrument.
- 1.9 References to Clauses are references to the relevant clauses in this Instrument.
- 1.10 References to persons shall include their respective successors and permitted assignees and permitted transferees.
- 1.11 All rights and discretions of the Chargee under this Instrument are granted to the persons constituting the Chargee jointly and may only be exercised by such persons acting jointly.
- 1.12 Unless the context otherwise requires, a reference to the Secured Assets includes:
  - 1.12.1 any part of the Secured Assets; and
  - 1.12.2 the proceeds of such Secured Assets.

## **2 Bond**

The Company undertakes to the Chargee that it will pay and discharge to the Chargee all of the Secured Liabilities on demand in writing when the same are due.

## **3 Floating Charge**

- 3.1 The Company, as security for the payment and discharge of all the Secured Liabilities, hereby grants in favour of the Chargee a floating charge over the Secured Assets.

- 3.2 Paragraph 14(2)(a) of Schedule B1 to the Insolvency Act shall apply to the floating charge created by this Instrument which is a "qualifying floating charge" for the purpose of paragraph 14(1) of Schedule B1 of the Insolvency Act.

#### **4 Ranking**

- 4.1 The Company agrees that, except with the prior written consent of the Chargee, it shall be prohibited from granting or creating subsequent to the date of this Instrument, any fixed security or any other floating charge having priority over or ranking pari passu with the floating charge created by this Instrument, otherwise than in favour of the Chargee.
- 4.2 The floating charge created by this Instrument shall, if the Company grants another charge in breach of Clause 4.1, subject to section 464(2) of the Act, rank in priority to any other fixed security which shall be created by the Company after its execution of this Instrument (other than a fixed security in favour of the Chargee) and to any other floating charge which shall be created by the Company after its execution of this Instrument and (subject as aforesaid) no such fixed security or other floating charge shall rank in priority to or equally with the floating charge hereby created by it.

#### **5 Undertaking**

Except as the Chargee may otherwise agree in writing, the Company hereby undertakes that it shall not do or omit to do anything which materially and adversely depreciates, jeopardises or otherwise prejudices the value to the Chargee of the Secured Assets or the Security hereby constituted.

#### **6 Enforcement**

- 6.1 In addition to the Chargee's statutory rights, at any time following the occurrence of an Enforcement Event which is continuing unremedied and unwaived, the floating charge created pursuant to this Instrument shall be immediately enforceable and the power to appoint an Administrator or (subject, if applicable, to Section 72A of the Insolvency Act) a Receiver of the Secured Assets shall be immediately enforceable and exercisable in relation to the Security created by the Company by or pursuant to this Instrument, and the Chargee may then by instrument in writing appoint any person or persons (if more than one with power to act both jointly and severally) to be an Administrator or 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 an Administrator or a Receiver as aforesaid shall be removed by a Court or shall otherwise cease to act as such, then the Chargee shall be entitled so to appoint another person as an Administrator or Receiver in his place.
- 6.2 An Administrator or Receiver appointed hereunder shall have and be permitted to exercise all of the powers available to it under the Insolvency Act.

#### **7 Office Of Receiver**

- 7.1 Any Receiver appointed under Clause 7 shall be the agent of the Company for all purposes and (subject to the provisions of the Insolvency Act) the Company alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for Secured Liabilities incurred by him and for his remuneration and his costs, charges and expenses and the Chargee shall not incur any liability therefor (either to the Company or any other person) by reason of the Chargee making his appointment as such Receiver or for any other reason whatsoever.
- 7.2 Any Receiver appointed under Clause 7 shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Such remuneration shall be payable by the Company alone and the amount of such remuneration shall form part of the Secured Liabilities and accordingly be secured on the Secured Assets under the floating charge constituted by this Instrument.

**8 Application of Security Proceeds**

8.1 All monies received by the Chargee in terms of this Instrument shall be applied in the payment or discharge of the Secured Liabilities and thereafter the surplus (if any) shall be paid over to the Company or other person entitled to it.

8.2 Clause 9.1 is subject to the payment of any claims having priority over this Instrument.

**9 Protection of Third Parties**

No person (including, without limitation, a purchaser) dealing with the Chargee or its agents will be concerned to enquire:

9.1 whether the Secured Liabilities have become payable;

9.2 whether any power which the Chargee is purporting to exercise has become exercisable or is being properly exercised;

9.3 whether any money remains due in respect of the Secured Liabilities; or

9.4 how any money paid to the Chargee is to be applied.

**10 Protection of Security**

10.1 The Security created by this Instrument shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Liabilities and shall remain in full force and effect until the Secured Liabilities Discharge Date has occurred.

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

10.3 No failure on the part of the Chargee to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Instrument or any other document relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Instrument and any such other document are cumulative and not exclusive of any right or remedies provided by law.

10.4 Each of the provisions in this Instrument shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever, the validity, legality and enforceability of the remaining provisions of this Instrument shall not in any way be affected or impaired thereby.

10.5 Neither the Security created by this Instrument nor the rights, powers, discretions and remedies conferred upon the Chargee by this Instrument or by law shall be discharged, impaired or otherwise affected by reason of:

10.5.1 any increase in or waiver or discharge of the Secured Liabilities;

10.5.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Chargee may have now or in the future from or against the Company or any other person in respect of any of the Secured Liabilities;

- 10.5.3 any act or omission by the Chargee or any other person in taking up, perfecting or enforcing any Security or guarantee from or against the Company or any other person or the invalidity or unenforceability of any such Security or guarantee;
- 10.5.4 any amendment, variation, restatement or supplement of or to, or novation, transfer or termination (in whole or in part) of, any document relating to the Secured Liabilities or any exercise by the Chargee (in each case, in its absolute discretion) of its rights to refuse, grant, continue, vary, review, determine or increase any credit or facilities to the Company;
- 10.5.5 any grant of time, indulgence, waiver or concession by the Chargee to the Company or any other person;
- 10.5.6 any arrangement or compromise entered into between the Chargee and the Company or any other person;
- 10.5.7 the winding-up, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name and/or style of the Company;
- 10.5.8 the invalidity, illegality, unenforceability, irregularity or frustration of the Secured Liabilities or any other obligations of the Company;
- 10.5.9 any legal limitation, disability, incapacity or similar circumstances relating to the Company;
- 10.5.10 any claim or enforcement of payment from the Company;
- 10.5.11 the existence of any claim, set-off or other right which the Company may have at any time against any person, whether in connection with the Secured Liabilities or otherwise; or
- 10.5.12 any other act or omission done or omitted by any person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the Company's liability under this Instrument.

## **11 Release**

Notwithstanding any provisions in this Instrument to the contrary, this Instrument shall automatically and immediately terminate, and the obligations of the Company hereunder and the Security created hereby shall be automatically and immediately released and discharged, on the Secured Liabilities Discharge Date. Without prejudice to the foregoing provisions of this Clause 11, the Chargee shall do all things, and execute such further instruments, deeds, certificates, intimations and/or other documents whatsoever, as are necessary in order to make such termination, release and discharge effective in all jurisdictions or otherwise to evidence the same.

## **12 Notices**

- 12.1 A notice given under this Instrument:
  - 12.1.1 shall be in writing and shall be signed by or on behalf of the party giving it;
  - 12.1.2 shall be sent to the addresses stated in the addressee section of this Instrument (or such other address as the relevant party may notify to the others in accordance with the provisions of this Clause 12); and
  - 12.1.3 shall be delivered personally or sent by commercial courier.
- 12.2 A notice given in accordance with this Instrument is deemed to have been received:



- 12.2.1 if delivered personally, at the time of delivery; and
- 12.2.2 if sent by commercial courier, at the time of signature of the courier's delivery receipt.
- 12.3 If deemed receipt under the previous paragraphs of this Clause 12 is:
- 12.3.1 before 9.00 am on any Business Day, the notice shall be deemed to have been received at 9.00 am on that Business Day; or
- 12.3.2 after 5.00 pm on any Business Day, or on any day that is not a Business Day, the notice shall be deemed to have been received at 9.00 am on the next Business Day.
- 13 Changes to the Parties**
- Neither the Company nor the the Chargee may assign, transfer and/or otherwise dispose of all or any part of its right, title and/or interest in and to, and/or any of its obligations or liabilities under, this Instrument to any person without the other's prior written consent.
- 14 Counterparts**
- This Instrument may be executed in any number of counterparts and by each of the parties to this Instrument on separate counterparts and where executed in counterparts:
- 14.1 this Instrument will not take effect until each of the counterparts has been delivered;
- 14.2 each counterpart will be held as undelivered until the parties to this Instrument agree a date on which the counterparts are to be treated as delivered;
- 14.3 the date of delivery may be inserted in the testing clause in the blank provided for the delivery date; and
- 14.4 if the parties to this Instrument have nominated a person to take delivery of one or more of the counterparts, the parties to this Instrument hereby agree that the terms of s.2(3) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 shall not apply.
- 15 Governing Law**
- 15.1 This Instrument and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including, without limitation, non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Scotland.

15.2 The parties hereto irrevocably agree that, subject as provided below, the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Instrument or its subject matter or formation (including, without limitation, non-contractual disputes or claims).

IN WITNESS WHEREOF these presents consisting of this and the preceding 6 pages are subscribed as follows, with a delivery date of 30 NOV 2020:

Subscribed for and on behalf of Abertay Services Limited

DAVID MICHAEL HAYES.  
by INVERNESS

at  
on 30 NOVEMBER 2020  
before

Director

Witness

Full Name

Address

ROSS ANTHONY LINN  
CAMAS HOUSE, PARKWAYS  
BUSINESS PARK, INVERNESS, IV2 6AA

Subscribed by Stephen John Cunningham

at INVERNESS  
on 30 NOVEMBER 2020  
before

Witness (Signature)

Witness Name (Please Print)

Witness Address

ROSS ANTHONY LINN  
CAMAS HOUSE, INVERNESS,  
IV2 6AA

Subscribed by Elaine Margaret Houston

at INVERNESS  
on 30 NOVEMBER 2020  
before

Witness (Signature)

Witness Name (Please Print)

Witness Address

ROSS ANTHONY LINN  
CAMAS HOUSE, INVERNESS,  
IV2 6AA