



Registration of a Charge

Company name: **ATR HOLDINGS LIMITED**

Company number: **SC305588**

Received for Electronic Filing: **02/08/2016**



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Details of Charge

Date of creation: **27/07/2016**

Charge code: **SC30 5588 0015**

Persons entitled: **WELLS FARGO TRUST CORPORATION LIMITED (AS PRINCIPAL SECURITY AGENT)**

Brief description:

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by:

PINSENT MASONS LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 305588

Charge code: SC30 5588 0015

The Registrar of Companies for Scotland hereby certifies that a charge dated 27th July 2016 and created by ATR HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd August 2016 .

Given at Companies House, Edinburgh on 3rd August 2016

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**

FLOATING CHARGE

by

ATR HOLDINGS LIMITED

in favour of

**WELLS FARGO TRUST CORPORATION LIMITED
(AS PRINCIPAL SECURITY AGENT)**



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Clause	Heading	Page No.
1	DEFINITIONS AND INTERPRETATION.....	1
1.1	Definitions	1
1.2	Facilities Agreement definitions.....	1
1.3	Interpretation.....	1
1.4	Conflict.....	2
1.5	Acknowledgement	2
2	FLOATING CHARGE	2
2.1	Payment.....	2
2.2	Floating Charge	2
2.3	Negative pledge and ranking	2
2.4	Restrictions on creation of security.....	2
3	PROTECTION OF SECURITY	3
3.1	Continuing security	3
3.2	No prejudice.....	3
3.3	No waiver	3
3.4	Severability	3
3.5	Non impairment	3
3.6	Further assurance.....	4
3.7	New accounts	4
4	POWER OF ATTORNEY	4
4.1	Appointment.....	4
4.2	Ratification	4
4.3	Exercise of power	4
5	ENFORCEMENT	5
5.1	Enforceable.....	5
5.2	Appointment of Receiver or administrator	5
5.3	Powers of Receiver	5
5.4	Agent of Company	7
5.5	Application of proceeds	7
5.6	Monies on suspense account.....	7
5.7	Balance	7
5.8	Third parties	7
6	DISCHARGE	8
6.1	Discharge.....	8
6.2	Retention of Security	8
6.3	Avoidance of payments	8
7	LIABILITY OF RECEIVER AND PRINCIPAL SECURITY AGENT	8
8	MISCELLANEOUS	8
8.1	Non compliance by Company.....	8
8.2	Assignment	8
8.3	Certificate.....	9
8.4	Entire agreement.....	9
8.5	Non-reliance	9
9	NOTICES.....	9
10	GOVERNING LAW	10

FLOATING CHARGE by

- (1) **ATR HOLDINGS LIMITED** incorporated in Scotland (Registered Number SC305588) whose registered office is at Blackwood House, Union Grove Lane, Aberdeen, United Kingdom, AB10 6XU (the "**Company**")

in favour of

- (2) **WELLS FARGO TRUST CORPORATION LIMITED** incorporated in England (Registered Number 04409492) whose registered office is at One Plantation Place, 30 Fenchurch Street, London, EC3M 3BD as Principal Security Agent under and as defined in the Facilities Agreement and its successor(s) as such Principal Security Agent (the "**Principal Security Agent**")

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Security unless the context requires otherwise:

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

"**Facilities Agreement**" means the senior term loan and revolving facilities agreement dated on or around the date of this Security entered into among the Company and others (as Borrowers and Guarantors), Wells Fargo Bank, N.A., London Branch, HSBC Bank plc and Clydesdale Bank plc as Arrangers and Original Lenders, Wells Fargo Bank International as Agent, Wells Fargo Trust Corporation Limited as Principal Security Agent and Capita Trust Company Limited as Shares Security Agent as amended, supplemented, novated, extended or restated from time to time;

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

"**Secured Obligations**" means all monies, liabilities and obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, cautioner, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Company to the Secured Parties under the Finance Documents; and

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

1.2 Facilities Agreement definitions

In this Security, unless the context requires otherwise terms defined in clause 1.1 (*Definitions*) of the Facilities Agreement shall have the same meaning in this Security.

1.3 Interpretation

To the extent applicable, the provisions of clause 1.2 (*Construction*) of the Facilities Agreement shall apply *mutatis mutandis* to this Security as if set out in full herein.

1.4 Conflict

If there is any conflict between the provisions of this Security and the provisions of the Facilities Agreement, the provisions of the Facilities Agreement shall prevail.

1.5 Acknowledgement

The Company herein acknowledges that the Principal Security Agent is party to this Security solely to take the benefit of this Security. This Security does not impose any additional obligations and duties on the Principal Security Agent other than as expressly provided for in this Security. In the event of a conflict between the terms of this Security and the Facilities Agreement in relation to the duties and obligations of the Principal Security Agent, the terms of the Facilities Agreement shall prevail.

2 FLOATING CHARGE

2.1 Payment

The Company undertakes to the Principal Security Agent that it will pay and discharge the Secured Obligations when due for payment or discharge in accordance with the Facilities Agreement and the other Finance Documents.

2.2 Floating Charge

In security for the payment and discharge of the Secured Obligations, the Company hereby GRANTS a FLOATING CHARGE over the Secured Assets in favour of the Principal Security Agent.

2.3 Negative pledge and ranking

Unless otherwise agreed in writing by the Principal Security Agent or as permitted by the terms of the Facilities Agreement and subject to Section 464(2) of the Companies Act 1985:

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

2.4 Restrictions on creation of security

If security cannot be created in respect of any asset of the Company without the consent of any third party:

- 2.4.1 the Company must notify the Principal Security Agent promptly upon becoming aware of the same;
- 2.4.2 this Security shall not create any security in respect of that asset except to the extent permitted without the consent of any third party but will secure all amounts which the Company may receive in respect of that asset;
- 2.4.3 unless the Principal Security Agent otherwise agrees, the Company must use reasonable endeavours to obtain the consent of the third party to the creation of security over that asset pursuant to this Security; and
- 2.4.4 on and from the date on which such consent is obtained, the Security shall extend to and include that asset.

3 PROTECTION OF SECURITY

3.1 Continuing security

This Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force until the Secured Obligations have been fully and unconditionally paid and discharged.

3.2 No prejudice

This Security shall be in addition to and independent of and shall not in any way prejudice or be prejudiced by any other security, right or remedy which the Principal Security Agent may now or at any time hereafter hold for all or any part of the Secured Obligations.

3.3 No waiver

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

3.4 Severability

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

3.5 Non impairment

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

- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any security or any right or remedy which the Principal Security Agent may have now or in the future from or against the Company or any other person in respect of any of the Secured Obligations; or
- (b) any failure, act or omission by the Principal Security Agent or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Company or any other person in respect of the Secured Obligations; or
- (c) any increase in or waiver or discharge of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of the Facilities Agreement or other Finance Document; or
- (d) any grant of time, indulgence, waiver or concession to the Company or any other person; or
- (e) any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Company or any other person; or
- (f) any invalidity, illegality, unenforceability, irregularity or frustration of the Secured Obligations; or

- (g) anything done or omitted to be done by the Principal Security Agent or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Company under this Security.

3.6 Further assurance

The Company shall promptly after being requested to do so by the Principal Security Agent do all such acts and things and execute and deliver all such documents as the Principal Security Agent may reasonably require for perfecting or protecting this Security or its priority or for facilitating the realisation or application of the Secured Assets and the exercise of the rights, powers and discretions conferred on the Principal Security Agent or the Receiver under this Security.

3.7 New accounts

At any time after the Principal Security Agent has received or is deemed to be affected by notice (whether actual or constructive) of the creation of any subsequent security, charge or encumbrance over or affecting any part of the Secured Assets or the proceeds of realisation, any Finance Party may open a new account or accounts (bearing interest at commercial rates) with the Company. If the relevant Finance Party does not open a new account or accounts it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice and as from that time all payments made to the relevant Finance Party shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount covered by this Security.

4 POWER OF ATTORNEY

4.1 Appointment

The Company hereby irrevocably appoints the Principal Security Agent, whether or not a Receiver has been appointed, and separately also the Receiver, as its attorney on its behalf and in its name or otherwise, at such times and in such a manner as the attorney may think fit:

- (a) to do anything which the Company is obliged to do (but has not done) under this Security including, without limitation, to create any fixed security or charge over any of the Secured Assets; and
- (b) generally to exercise all or any of the rights, powers and discretions conferred on the Principal Security Agent or the Receiver in relation to the Secured Assets under this Security.

4.2 Ratification

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

4.3 Exercise of power

The appointment effected under Clause 4.1 shall take effect immediately (in the case of the Receiver, upon his/her appointment), but the powers conferred shall only become exercisable upon the occurrence of an Event of Default which is continuing (which upon the appointment of the Receiver shall be deemed to be the case) or if the Company does not fulfil any of its obligations under Clause 3.6 (*Further assurance*) within 3 Business Days of notice from the Principal Security Agent or the Receiver to do so.

5 ENFORCEMENT

5.1 Enforceable

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

- (a) an Event of Default occurring which is continuing; or
- (b) the Company requesting the appointment of a Receiver or administrator.

5.2 Appointment of Receiver or administrator

5.2.1 Subject to the terms of the Act, at any time after this Security has become enforceable the Principal Security Agent shall be entitled:

- (a) to appoint one or more persons as a Receiver or Receivers in respect of the Secured Assets, or apply to the Court for such appointment;
- (b) to appoint one or more persons as an administrator or administrators of the Company;
- (c) to make an administration application in respect of the Company; or
- (d) to give notice of intention to appoint an administrator or administrators in respect of the Company.

5.2.2 The appointment of a Receiver or Receivers or an administrator or administrators, or the giving of notice of intention to appoint an administrator or administrators shall be effected by the Principal Security Agent by written instrument or notice in accordance with and in such form as may be prescribed under the Act. If any such person so appointed as Receiver or administrator is removed from office by the Court or otherwise ceases to act, the Principal Security Agent shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

5.2.3 Paragraph 14 of Schedule B1 to the Act shall apply to this Security.

5.3 Powers of Receiver

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

- (a) to take possession of, collect and get in all or any part of the Secured Assets and/or income in respect of which he was appointed;
- (b) to manage the Secured Assets and the Company's business as he thinks fit;
- (c) to redeem any Security and to borrow or raise any money and secure the payment of any money in priority to the Secured Obligations for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- (d) to enter into, terminate or vary any Hedging Agreement;
- (e) to sell or concur in selling, leasing or otherwise disposing of all or any part of the Secured Assets in respect of which he was appointed and, without limitation:
 - (i) fixtures may be severed and sold separately from any land containing them, without the Borrower's consent;

- (ii) the consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party); and
 - (iii) any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;
- (f) to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to abandon, complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Company was concerned or interested before his appointment (being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land);
- (g) to carry out any sale, lease or other disposal of all or any part of the Secured Assets by conveying, transferring, assigning or leasing the same in the Company's name and, for that purpose, to enter into covenants and other contractual obligations in the Company's name so as to bind the Company;
- (h) to take any such proceedings in the Company's name as he shall think fit in respect of the Secured Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment);
- (i) to exercise any voting rights attached to any of the Secured Assets;
- (j) to enter into or make any such agreement, arrangement or compromise as he shall think fit;
- (k) to insure and to renew any insurances in respect of the Secured Assets as he shall think fit (or the Principal Security Agent shall direct);
- (l) to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ any firm, partner, company or other entity with which he is associated);
- (m) to form one or more subsidiaries of the Company and to transfer to any such subsidiary all or any part of the Secured Assets;
- (n) to:
 - (i) give valid receipts for all monies and to do all such things as may seem necessary to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Secured Asset;
 - (ii) exercise in relation to any Secured Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Secured Asset; and
 - (iii) use the Company's name for any of the above purposes; and
- (o) in respect of any of the Secured Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

5.4 Agent of Company

The Receiver shall be the agent of the Company for all purposes of and in all respects arising under this Security and, except as otherwise provided by the Act or in the case of the gross negligence or wilful default of the Receiver, the Company alone shall be responsible for his/her acts, omissions, neglects and defaults and for all liabilities and obligations incurred by him/her, and his/her remuneration costs, charges and expenses.

5.5 Application of proceeds

All monies from time to time received or recovered by the Principal Security Agent or any Receiver pursuant to the terms of this Security or in connection with the realisation of all or any part of this Security shall be held by the Principal Security Agent or Receiver on trust to apply them at any time as the Principal Security Agent or any Receiver (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

- (a) in discharging any sums (including fees, costs and expenses) owing to the Principal Security Agent, any Receiver or Delegate; and
- (b) thereafter, in or towards the settlement of the Secured Obligations in accordance with Clause 33.7 (*Order of Application*) of the Facilities Agreement.

5.6 Monies on suspense account

Nothing in this Security shall limit the right of the Receiver and/or the Principal Security Agent (and the Company acknowledges that the Receiver and/or the Principal Security Agent are so entitled) if and for so long as the Receiver and/or the Principal Security Agent in its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of this Security into a suspense account or accounts bearing interest at commercial rates without an obligation on the Principal Security Agent to look for an account with the highest interest rate (which may be an account or accounts with the Principal Security Agent), without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Obligations provided that if the aggregate of such monies so placed to the credit of such suspense account or accounts shall equal or exceed the Secured Obligations, the Receiver and/or the Principal Security Agent shall, subject always to Clause 6 (*Discharge*), forthwith apply the same towards settlement of the Secured Obligations.

5.7 Balance

The rights powers and discretions conferred on the Principal Security Agent and any Receiver under this Clause are subject only to their obligation to account to the Company or any other person entitled thereto for any balance of the Secured Assets or their proceeds remaining in his/her hands after the Secured Obligations have been fully and unconditionally paid or satisfied.

5.8 Third parties

- 5.8.1 No purchaser from or other person dealing with the Principal Security Agent or Receiver in relation to the Secured Assets shall be concerned to enquire whether any of the powers exercised or purported to be exercised by him/her hereunder has become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.
- 5.8.2 The receipt or discharge of the Principal Security Agent or Receiver shall be an absolute discharge to any purchaser or other person dealing with the Principal Security Agent or Receiver in relation to the Secured Assets and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Principal Security Agent or Receiver or at its direction.

6 DISCHARGE

6.1 Discharge

Upon the irrevocable and unconditional payment and discharge in full of the Secured Obligations or, if so agreed by the Principal Security Agent, at any other time, the Principal Security Agent shall at the Company's request, and at its expense, discharge this Security. Any payment or realisation in respect of the Secured Obligations which in the reasonable opinion of the Principal Security Agent is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably settled or discharged until the expiry of the period during which it may be challenged on any such ground.

6.2 Retention of Security

If any payment or realisation in respect of the Secured Obligations is, in the Principal Security Agent's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the Principal Security Agent shall be entitled to retain this Security undischarged until the expiry of the period during which it may be challenged on any such ground.

6.3 Avoidance of payments

The Principal Security Agent's right to recover the Secured Obligations in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Principal Security Agent on the faith of any such payment or realisation.

7 LIABILITY OF RECEIVER AND PRINCIPAL SECURITY AGENT

The provisions of Clause 30.26 (*Exclusion of the Principal Security Agent's Liability*) of the Facilities Agreement shall apply to this Security *mutatis mutandis* as if set out in full herein.

8 MISCELLANEOUS

8.1 Non compliance by Company

If the Company fails to make any payment or fulfil any obligation due by it under or pursuant to this Security within 10 Business Days of the due date for such payment or fulfilment, the Receiver or the Principal Security Agent, as the case may be, shall be entitled (but shall not be obliged to and shall not be liable for any failure to do so) to do so on its behalf and in its name (or in its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as it considers expedient, and the amount of any such payment and/or the costs properly incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Company on demand, together with interest at the Default Rate from the date of demand until settlement and shall constitute Secured Obligations.

8.2 Assignment

8.2.1 The Principal Security Agent may at any time (without notice or consent) assign the benefit of this Security or any of its rights or obligations hereunder in accordance with the Facilities Agreement.

8.2.2 The Company may not assign, transfer or otherwise deal with the benefit or burden of this Security or any of its rights or obligations hereunder.

8.3 Certificate

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

8.4 Entire agreement

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

8.5 Non-reliance

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

9 NOTICES

The provisions of Clause 36 (*Notices*) of the Facilities Agreement shall apply to any notices issued under this Security.

GOVERNING LAW

This Security shall be governed by and construed in accordance with the law of Scotland and in so far as not already subject thereto the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the nine preceding pages are executed as follows:

SUBSCRIBED for and on behalf of
ATR HOLDINGS LIMITED

at ARLORDEN

on the 27 day

of JULY 2016

by



Director

EVAN LEASK

Full Name

before this witness



Witness

ANDREW LINDON

Full Name

BLACKBURN HOUSE, UNION GLOVE Address

LANE ARLORDEN ARLORDEN GLA