



**Registration of a Charge**

Company name: **Stewart Milne Group Holdings Limited**

Company number: **SC558821**



X63NCA2P

Received for Electronic Filing: **04/04/2017**

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**Details of Charge**

Date of creation: **31/03/2017**

Charge code: **SC55 8821 0001**

Persons entitled: **BANK OF SCOTLAND PLC (AS SECURITY AGENT)**

Brief description: **N/A**

**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:

**PAUL ANDERSON**



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

Company number: 558821

Charge code: SC55 8821 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 31st March 2017 and created by Stewart Milne Group Holdings Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th April 2017 .

Given at Companies House, Edinburgh on 5th April 2017

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**

DATE OF DELIVERY: 31 MARCH 2017

**FLOATING CHARGE**

by

**STEWART MILNE GROUP HOLDINGS LIMITED**

in favour of

**BANK OF SCOTLAND PLC**

as Security Agent

**This Floating Charge is entered into with the benefit of and subject to the terms of the  
Intercreditor Agreement (as defined in this Floating Charge)**

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**THIS FLOATING CHARGE** is entered into by:

- (1) **STEWART MILNE GROUP HOLDINGS LIMITED**, a company incorporated in Scotland with registered number SC558821 and having its registered office at Peregrine House, Mosscroft Avenue, Westhill Business Park, Westhill, Aberdeen, AB32 6JQ (the "**Company**"); in favour of
- (2) **BANK OF SCOTLAND PLC**, a company incorporated in Scotland with registered number SC327000 and having its registered office at The Mound, Edinburgh EH1 1YZ as agent and trustee for itself and for each of the other Secured Parties (as defined below) on the terms and conditions set out in the Intercreditor Agreement (as defined below) (in such capacity as agent and trustee hereinafter referred to as the "**Security Agent**" (which expression shall include each person appointed as the Security Agent at the date of this Floating Charge or any additional security agent appointed for the purpose of, and in accordance with, the Intercreditor Agreement)).

**WHEREAS**

- (A) The Senior Lenders (as defined below) have agreed in accordance with the terms and conditions of the facilities agreement originally dated 7 November 2013, as amended and restated on 30 October 2015, as amended on 23 December 2015, as amended on 11 January 2016, as amended on 19 February 2016, as amended on 18 March 2016, as amended on 29 July 2016, as amended on 31 August 2016, as amended and restated on 28 September 2016, as amended on 31 October 2016, as amended on 3 November 2016, as amended 30 December 2016, as amended 20 January 2017, as amended on 31 January 2017, as amended on 10 February 2017, as amended on 28 February 2017, as amended on 3 March 2017, as amended on 10 March 2017, as amended and restated on or around the date hereof and as further amended, restated or supplemented from time to time between inter alia, Stewart Milne Group Limited (1), the various banks and financial institutions named therein (2) and the Agent (as defined herein) (3) (hereinafter referred to as the "**Facilities Agreement**") to make available to the Borrowers (as defined below) certain term loan, revolving credit and ancillary facilities (hereinafter referred to as the "**Senior Facilities**").
- (B) The Ancillary Lenders (as defined below) may agree in accordance with the terms and conditions of the Facilities Agreement and certain ancillary documents (as such documents are amended, varied, supplemented, novated or replaced from time to time hereinafter referred to as the "**Ancillary Documents**") between inter alia the Borrowers and the Ancillary Lenders to make available to the Borrowers certain ancillary facilities (hereinafter referred to as the "**Ancillary Facilities**").
- (C) The Working Capital Bank (as defined below) has agreed in accordance with the terms and conditions of the Initial Working Capital Facility Agreement (as defined in the Facilities Agreement) (as such documents are amended, varied, supplemented, novated or replaced from time to time hereafter) to provide certain working capital facilities (hereinafter referred to as the "**Working Capital Facilities**").

- (D) The Hedge Counterparties (as defined below) may make after the date hereof interest rate hedging and other similar facilities (hereinafter referred to as the "**Hedging Facilities**") available to an Obligor (as defined below) or another member of the Group (as defined below).
- (E) It is a condition precedent to the Secured Parties making or continuing to make the Facilities (as defined below) available that the Company enters into this Floating Charge.

**NOW IT IS HEREBY AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions from Facilities Agreement**

Words and expressions defined in the Facilities Agreement or whose definitions are imported into the Facilities Agreement shall bear the same meaning in this Floating Charge (including, without limitation, the recitals to this Floating Charge) unless otherwise defined in this Floating Charge or unless the context otherwise requires.

### **1.2. Definitions**

In this Floating Charge:

**"Agent"** means the Agent as defined in the Facilities Agreement.

**"Ancillary Lenders"** means the Ancillary Lenders as defined in the Facilities Agreement and **"Ancillary Lender"** means any one of them.

**"Borrower"** means a Borrower as defined in the Facilities Agreement and **"Borrowers"** shall be construed accordingly.

**"Enforcement Event"** means the giving of a notice by the Agent to the Parent under Clause 27.20 (Acceleration) of the Facilities Agreement.

**"Event of Default"** means an Event of Default as defined in the Facilities Agreement.

**"Facilities"** means the Senior Facilities, the Hedging Facilities, the Ancillary Facilities and the Working Capital Facilities.

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No. 2) Regulations (SI 2003 No. 3226).

**"Finance Documents"** means the Finance Documents as defined in the Facilities Agreement and any other document which the Security Agent and SMGL agree shall be designated a Finance Document.

**"Financial Indebtedness"** means Financial Indebtedness as defined in the Facilities Agreement.

**"Group"** means the Group as defined in the Facilities Agreement.

**"Guarantor"** means a Guarantor as defined in the Facilities Agreement.

**"Hedge Counterparty"** means a Hedge Counterparty as defined in the Facilities Agreement and **"Hedge Counterparties"** shall be construed accordingly.

**"Hedging Agreement"** means any Hedging Agreement as defined in the Facilities Agreement.

**"Intercreditor Agreement"** means the intercreditor agreement dated 7 November 2013 and made between, amongst others, SMGL and the Agent, the Security Agent, the Senior Lenders, the Ancillary Lenders, the Hedge Counterparties and certain others as amended and restated on or around the date of this Charge and as further amended, restated or supplemented from time to time.

**"Obligor"** means an **"Obligor"** as defined in the Facilities Agreement and **"Obligors"** shall be construed accordingly.

**"Quasi-Security"** means an arrangement or transaction in terms of which the Company:

- (a) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group (other than pursuant to a Permitted Disposal);
- (b) sells, transfers or otherwise disposes of any of its receivables on recourse terms;
- (c) enters into an arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enters into any other preferential arrangements having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

**"Repeating Representations"** means the Repeating Representations as defined in the Facilities Agreement.

**"Secured Assets"** means the whole of the property, assets and rights (including uncalled capital) comprised in the property and undertaking of the Company as charged under Clause 3.1 (Floating Charge) of this Floating Charge.



**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, cautioner, surety or otherwise or as the equivalent obligor under the laws of any other jurisdiction) of the Company or each other Obligor to the Security Agent and the Secured Parties (or any of them) under the Finance Documents together with (without double counting):

- (a) any refinancing, novation, refunding, deferral or extension of or increase in any of those obligations or liabilities;
- (b) any further advances and additional facilities which may be made by any Secured Party to the Company or any other Obligor under any Finance Documents and all interest, fees and costs in connection therewith;
- (c) any claim for damages or restitution in the event of rescission of any of those obligations or liabilities or otherwise in connection with any of the Finance Documents; and
- (d) any amounts which would be included in any of the foregoing but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

**"Secured Parties"** means the Secured Parties as defined in the Facilities Agreement or any of them as the context requires and **"Secured Party"** shall be construed accordingly.

**"Security"** means a fixed security, standard security, mortgage, charge, pledge, lien, assignment in security, assignation in security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Senior Lenders"** means the Lenders as defined in the Facilities Agreement and **"Senior Lender"** means any one of them.

**"SMGL"** means Stewart Milne Group Limited, a company incorporated in Scotland under the Companies Acts (Reg. No. SC057709) and having its registered office at Peregrine House, Mosscroft Avenue, Westhill Business Park, Westhill, Aberdeen AB32 6JQ.

**"Subsidiary"** means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

**"Working Capital Bank"** means the Working Capital Bank as defined in the Facilities Agreement.

### 1.3. Interpretation

Save where the contrary is indicated, any reference in this Floating Charge to:

- 1.3.1. **"assets"** includes present and future properties, revenues and rights of every description;
- 1.3.2. a **"company"** includes any body corporate;
- 1.3.3. **"fixed security"**, in relation to any property of a company, means any security (other than a floating charge or a charge having the character of a floating charge) which on the winding up of the company in Scotland would be treated as an effective security over that property including, in particular, a heritable security (within the meaning of Section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970;
- 1.3.4. **"guarantee"** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.3.5. **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.3.6. a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.3.7. a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency or department or of any regulatory, self-regulatory or other authority or organisation;
- 1.3.8. **"set-off"** includes compensation, rights of retention and the balancing of accounts in bankruptcy;
- 1.3.9. a provision of law is a reference to that provision as amended or re-enacted;
- 1.3.10. the singular shall include the plural and vice versa;
- 1.3.11. this Floating Charge and any provisions of this Floating Charge or to any other agreements, instrument or document are to be construed as references to this Floating Charge, those provisions or that agreement, instrument or document as amended, varied, supplemented, substituted, replaced or novated (however fundamentally) from time to time including (without limiting the generality of the foregoing) any variation, increase, extension or addition of or any variation of or to any facility or amount

made available under any Finance Document or any variation of the purposes for which such facility or amount may be available from time to time; and

- 1.3.12. Clauses are to be construed as references to the Clauses of this Floating Charge as amended or varied from time to time and references to sub-clauses shall unless otherwise specifically stated be construed as references to the sub-clauses of the Clause in which the reference appears.

**1.4. Successors and assignees**

Any reference in this Floating Charge to the Security Agent or a Secured Party shall include the successors, permitted assignees and permitted transferees of the Security Agent or such Secured Party.

**1.5. Trust**

The Security Agent shall hold the benefit of this Floating Charge upon trust for the other Secured Parties in accordance with Clause 16 (The Security Agent) of the Intercreditor Agreement.

**2. PAYMENT OBLIGATION**

**2.1. Undertaking to Pay**

The Company hereby, as principal debtor and not merely as surety, cautioner or guarantor, undertakes to the Security Agent for itself and on behalf of the other Secured Parties that it will pay or discharge the Secured Liabilities on the due date therefor in the manner provided in the relevant Finance Document or, where no such provision is made in the Finance Documents, on written demand.

**2.2. Interest**

If the Company fails to pay any sum on the due date for payment of that sum, the Company shall pay interest on any such sum (before and after any judgment and to the extent interest at a default rate is not otherwise being paid on such sum) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with the provisions of Clause 11.3 (Default Interest) of the Facilities Agreement.

**3. FLOATING CHARGE**

**3.1. Floating Charge**

The Company in security of the Secured Liabilities hereby grants in favour of the Security Agent a floating charge over the whole of the property, assets and rights (including uncalled capital) which is or may from time to time while this Floating Charge is in force be comprised in the property and undertaking of the Company.

**3.2. Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this Floating Charge.

**4. NEGATIVE PLEDGE**

**4.1. No other fixed or floating charges**

The Company shall not (without the prior written consent of the Security Agent) grant, create or permit to subsist any Security or Quasi-Security over all or any part of its present or future property, revenues or assets except as permitted under the Facilities Agreement.

**4.2. No disposals**

The Company shall not (without the prior written consent of the Security Agent) sell, assign, lease, transfer or otherwise dispose of or part with possession of (by one or more transactions or a series of transactions whether related or not) the whole or any part of its property, revenues, assets or rights except as permitted under the Facilities Agreement.

**5. RANKING**

**5.1. Ranking of fixed security and floating charge**

This Floating Charge shall rank as provided in the Intercreditor Agreement. Any fixed security created or granted by the Company (whether before or after the date of its execution of this Floating Charge) in favour of the Security Agent for and on behalf of itself and/or all or any of the Secured Parties shall rank in priority to the floating charge created by this Floating Charge.

**5.2. Priority of floating charge**

If the Company creates or grants any fixed security or floating charge either in breach of the prohibition in Clause 4.1 (No other fixed or floating charges) or with the consent of the Security Agent but without the written agreement of the Security Agent in relation to the ranking of such fixed security or floating charge, then the floating charge created by this Floating Charge shall rank in priority to such fixed security or floating charge.

**6. FURTHER ASSURANCE**

**6.1. Further assurance**

The Company shall (at its own costs) promptly following receipt of demand in writing from the Security Agent do all such acts or execute all such documents (including assignments, transfers, mortgages, 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)):

- 6.1.1. to perfect the Security created or intended to be created under or evidenced by this Floating Charge or for the exercise of any rights, powers and remedies of the Security Agent, any receiver or the Secured Parties provided by or pursuant to this Floating Charge or by law;
- 6.1.2. to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of the Company located in any jurisdiction outside Scotland equivalent or similar to the Security intended to be conferred by or pursuant to this Floating Charge; and
- 6.1.3. to facilitate the realisation of the Secured Assets.

## **6.2. Necessary Action**

The Company shall take all such action as is available to it (including making all filings and registrations) as is necessary for the purposes of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties (or any of them) by or pursuant to this Floating Charge.

## **7. ENFORCEMENT**

### **7.1. Enforcement**

This Floating Charge shall be enforceable immediately upon or at any time after:

- 7.1.1. the occurrence of an Enforcement Event;
- 7.1.2. the passing of 14 days following a petition being presented for the winding up or reorganisation of the Company without such petition being deemed frivolous or vexatious and having been discharged, stayed or dismissed;
- 7.1.3. an application being presented or resolution proposed for the winding up, reorganisation or administration of the Company;
- 7.1.4. the Company or any other person entitled to do so giving written notice of its intention to appoint an administrator or liquidator to the Company or the appointment of an administrator or liquidator to the Company;
- 7.1.5. a written request has been made by the Company to the Security Agent for the appointment of a receiver or an administrator;
- 7.1.6. the Company breaches any of the material terms of this Floating Charge.

## **7.2. Appointment of receiver or administrator**

At any time after this Floating Charge has become enforceable, the Security Agent shall be entitled:-

- 7.2.1. to appoint one or more persons as an administrator or administrators of the Company;
- 7.2.2. (subject to the provisions of Section 72A of the Insolvency Act) to appoint one or more persons as a receiver or receivers of the Secured Assets;
- 7.2.3. to remove (so far as it is lawfully able) any receiver or administrator so appointed;
- 7.2.4. to appoint another person(s) as an additional or replacement receiver or administrator;

and, without prejudice to the foregoing provisions, in the event that any person so appointed to be a receiver or administrator is removed by the court or otherwise ceases to act then the Security Agent shall be entitled to appoint another person or persons as receiver or administrator in his place.

## **7.3. Joint and several appointment of administrators**

If at any time and by virtue of any such appointments any two or more persons shall hold office as administrators then such administrators may act jointly and/or severally so that each one of such administrators shall be entitled (save to the extent that the contrary shall be stated in any of the deeds or other instruments appointing them) to exercise all powers and discretions conferred by this Floating Charge and by law on administrators generally and to the exclusion of the other or others of them.

## **7.4. Small company moratorium**

Notwithstanding any other provision of this Floating Charge, where the Company is an eligible company in terms of section 1A and Schedule A1 of the Insolvency Act 1986, the obtaining of moratorium or anything done with a view to obtaining a moratorium (including any preliminary decision or investigation) shall not entitle the Security Agent to appoint a receiver.

## **7.5. Financial Collateral**

- 7.5.1. The Security Agent may, to the extent that any of the Secured Assets constitute "financial collateral" (as defined in the Financial Collateral Regulations) and that this Floating Charge constitutes a "security financial collateral arrangement" (as defined in the Financial Collateral Regulations), appropriate such financial collateral in or towards the discharge of the Secured Liabilities.

7.5.2. The Company and the Security Agent agree for the purposes of Clause 7.5.1 above that the value of any such financial collateral so appropriated shall be:

- (a) in the case of any cash, the amount standing to the credit of the relevant account together with any accrued interest at the date of appropriation; and
- (b) in the case of any shares or stock of any nature whatsoever in the capital of any company, the market value thereof as determined by the Security Agent (acting reasonably) by reference to the information available to the Security Agent.

In each case the Company and the Security Agent agree that the method of valuation referred to above shall constitute a commercially reasonable method of valuing the relevant financial collateral for the purposes of the Financial Collateral Regulations.

## **8. RECEIVER**

### **8.1. Powers**

A receiver appointed under this Floating Charge shall have and be entitled to exercise all the powers conferred upon a receiver by the Insolvency Act 1986 together with the following powers:

- 8.1.1. the power to exercise all voting and other rights attaching to stocks, shares and other securities comprised within the Secured Assets;
- 8.1.2. the power to convene a general meeting of the Company or circulate written resolutions to members of the Company;
- 8.1.3. in respect of any Secured Asset situated in England and Wales or Northern Ireland, the power to exercise all powers conferred by the Insolvency Act 1986 or any other enactment or under law on receivers or administrators appointed in that jurisdiction; and
- 8.1.4. the power to make such elections for value added tax purposes as he thinks fit.

### **8.2. Joint and several appointment of receivers**

If at any time and by virtue of any such appointments any two or more persons shall hold office as receivers then such receivers may act jointly and/or severally so that each one of such receivers shall be entitled (save to the extent that the contrary shall be stated in any of the deeds or other instruments appointing them) to exercise all powers and discretions conferred by this Floating Charge and by law on receivers generally and to the exclusion of the other or others of them.

### 8.3. **Agent of Company**

Any receiver appointed under this Floating Charge shall be the agent of the Company for all purposes and the Company shall be solely responsible for the acts and defaults of a receiver appointed under this Floating Charge and for his remuneration, costs, charges and expenses.

### 8.4. **No liability**

Neither the Security Agent nor any receiver appointed under this Floating Charge shall by reason of it or such receiver entering into possession of any of the assets charged under this Floating Charge be liable to account as heritable creditor or mortgagee in possession or be liable for any loss on realisation or for any default or omission for which a heritable creditor or mortgagee in possession might otherwise be liable.

### 8.5. **Third Parties**

No purchaser or other person dealing with the Security Agent or its delegate or any receiver appointed under this Floating Charge shall be concerned whether the Secured Liabilities have become payable or enforceable or whether any money remains outstanding under the Finance Documents (or any of them) or shall be concerned with any application of any monies paid to the receiver.

### 8.6. **Consideration**

In making any sale or the disposal of any of the Secured Assets in the exercise of their respective powers, a receiver or the Security Agent may accept as, and by way of, consideration for such sale or other disposal, cash, shares, loan capital or other obligations, including, without limitation, consideration fluctuating, according to or dependent on turnover and consideration the amount of which is to be determined by a third party. Any such consideration may be received in a lump sum or by way of instalments.

## 9. **APPLICATION OF MONIES**

### 9.1. **Application of Monies**

All moneys received by the Security Agent or by any receiver appointed under this Floating Charge shall (subject to the repayment of any claims having priority to this Floating Charge) be applied in the following order:

- 9.1.1. in the payment of the costs, charges and expenses of and incidental to the appointment of any receiver under this Floating Charge and the payment of his remuneration;



- 9.1.2. in the payment and discharge of any outgoings paid and liabilities incurred by any receiver appointed under this Floating Charge in the exercise of any powers of such receiver;
- 9.1.3. in or towards the satisfaction of the Secured Liabilities in accordance with the terms of the Intercreditor Agreement; and
- 9.1.4. any surplus shall be paid to the Company or any other person entitled thereto.

## **10. POWER OF ATTORNEY**

### **10.1. Power of Attorney**

The Company hereby irrevocably appoints the Security Agent and any receiver or administrator appointed under this Floating Charge and for the time being holding office as such severally to be its attorney and on its behalf and in its name to sign, seal, execute, deliver and perfect all deeds, instruments and documents which may be required for:

- 10.1.1. carrying out any obligation imposed on the Company by or pursuant to this Floating Charge which the Company has not discharged in accordance with the terms of this Floating Charge; and
- 10.1.2. enabling the Security Agent or the receiver or administrator to exercise the rights and powers conferred upon them by this Floating Charge or by law (including the right to sell, lease, convey, transfer or realise any of the Secured Assets).

The Security Agent shall have full power to delegate the power conferred on it by this Clause 10.1 and no such delegation shall preclude the subsequent exercise of such power by the Security Agent itself or preclude the Security Agent from making a subsequent delegation thereof to some other person and any such delegation may be revoked by the Security Agent at any time. The appointment pursuant to this Clause 10.1 is to take effect immediately but the rights and powers of the attorney pursuant to this Clause 10.1 are only exercisable upon the occurrence of an Enforcement Event or where the Company has failed to remedy a breach of its obligations under this Floating Charge within 5 Business Days of such breach of obligation.

### **10.2. Ratification**

The Company shall ratify and confirm all acts and things done and all deeds, instruments and/or documents signed, sealed, executed and/or perfected by any attorney in the exercise or purported exercise of all or any of his powers under Clause 10.1.

## **11. PRESERVATION OF SECURITY**

### **11.1. Continuing Security**

The security created by or pursuant to this Floating Charge shall remain in full force and effect as a continuing security for the Secured Liabilities unless and until discharged by the Security Agent and shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the Secured Liabilities or for any other reason.

### **11.2. Independence of charge**

The Security constituted by or pursuant to this Floating Charge 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 against any person which the Security Agent and the Secured Parties (or any of them) may at any time hold for the satisfaction of all or any part of the Secured Liabilities.

### **11.3. Waiver of Defences**

Neither the obligations of the Company under this Floating Charge nor the rights, powers and remedies conferred in respect of the Company upon the Security Agent will be affected by any act, omission, matter or thing which, but for this Clause 11.3, would reduce, release or prejudice any of those obligations or those rights, powers and remedies (without limitation and whether or not known to the Company or any Secured Party) including:

- 11.3.1. any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 11.3.2. the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of an Obligor or any other member of the Group;
- 11.3.3. 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;
- 11.3.4. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- 11.3.5. any amendment, novation, supplement, extension or restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without

limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;

11.3.6. any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

11.3.7. any insolvency or similar proceedings.

#### **11.4. Rights Cumulative**

The obligations of the Company contained in this Floating Charge and all rights, powers and remedies of the Security Agent expressed in this Floating Charge are in addition to and independent of all other rights, powers and remedies possessed by the Security Agent including, without limitation, those provided for in any Finance Document, by applicable law or in any other written instrument or agreement relating to the Company's obligations or the Secured Assets.

#### **11.5. Remedies and Waivers**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent or any Secured Party, any right or remedy under this Floating Charge shall operate as a waiver of any such right or remedy. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy.

#### **11.6. Partial Invalidity**

If, at any time, any provision of this Floating Charge 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 Floating Charge nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

### **12. PRESERVATION OF RIGHTS**

#### **12.1. Preservation of Rights**

Other than as provided in this Floating Charge, the Security Agent shall not be obliged before exercising any of the rights, powers, discretions or remedies conferred upon it by this Floating Charge or by law:

12.1.1. to take any action, including but not limited to the giving of notice to, or making any demand upon, the Company or any other person or the obtaining or enforcement of any judgment, decree or order in any court against the Company or any other person;

12.1.2. to make or file any claim or proof in the administration, winding-up or liquidation of the Company or any other person; or

- 12.1.3. to enforce or seek to enforce any of its rights, powers, discretions or remedies under any other Security in respect of the Secured Liabilities.

### **13. SUBSEQUENT SECURITY INTERESTS**

If the Security Agent (acting in its capacity as security agent or otherwise) or any of the other Secured Parties receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Secured Assets, all payments thereafter by or on behalf of the Company to the Security Agent (whether in its capacity as security agent or otherwise) or any of the other Secured Parties shall be treated as having been credited to a new account of the Company and not as having been applied in reduction of the Secured Liabilities as at the time when the Security Agent received such notice.

### **14. SUSPENSE ACCOUNT**

Until all of the Secured Liabilities have been irrevocably paid in full, all monies received by the Security Agent or any receiver may, at the discretion of the Security Agent or receiver, be credited to an interest bearing suspense account and may be held in such account for so long as the Security Agent or receiver sees fit.

### **15. SET-OFF**

A Secured Party may set-off any matured obligation due from the Company under the Finance Documents (to the extent owned by that Secured Party) against any matured obligation owed by that Secured Party to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **16. RELEASE AND DISCHARGE**

#### **16.1. Release**

Subject to Clause 16.2 (Conditional Discharge), the Company shall be entitled, after the Secured Liabilities have been irrevocably and unconditionally discharged in full and none of the Secured Parties being under any actual or contingent obligations to make available any facilities of any kind whatsoever to the Company under any of the Finance Documents, to require, at its cost and request, the release of any of the Secured Assets charged under this Floating Charge and the Security Agent will execute such documents as may be required to release the Assets from the security created by the Floating Charge and to discharge the Company from its obligations under this Floating Charge

## **16.2. Conditional Discharge**

Any settlement or discharge between the Company and the Security Agent shall be conditional upon no security or payment to the Security Agent by the Company or any other person on behalf of the Company being avoided or reduced by the virtue of any provisions or enactments relating to bankruptcy, insolvency or liquidation for the time being in force and, if any such payment is so avoided or reduced, the Security Agent shall be entitled to recover the value or amount of such security or payment from the Company subsequently as if such settlement or discharge had not occurred.

## **17. CHANGES IN SECURED LIABILITIES**

The Company expressly agrees and acknowledges that the parties to the Finance Documents may from time to time agree to make amendments to the terms of those documents and may enter into such supplemental agreements as are required from time to time in order to give effect to such amendments. Such amendments may include, inter alia, the increase or reduction of the facilities made available under those documents and, for the avoidance of doubt, those facilities will form part of the Secured Liabilities under and in terms of this Floating Charge.

## **18. ASSIGNATION**

### **18.1. The Security Agent**

The Security Agent may (without prejudice to its right to appoint any joint trustee) assign and transfer all or any of its rights and obligations under this Floating Charge to any person appointed as its replacement as Security Agent (or any joint trustee) in accordance with the terms of the Intercreditor Agreement. The Security Agent shall be entitled to disclose information concerning the Company and this Floating Charge in accordance with the terms of the Facilities Agreement.

### **18.2. The Company**

The Company may not assign or transfer any of its obligations under this Floating Charge or enter into any transaction which would result in any of those rights or obligations passing to another person.

## **19. INDEMNITY**

### **19.1. Indemnity**

The Company shall indemnify the Security Agent and any receiver against any cost, loss or liability incurred by either of them as a result of:

- 19.1.1. the taking, holding, protection or enforcement of this Floating Charge;

19.1.2. the exercise or purported exercise of any of the rights, powers, discretions and remedies vested in the Security Agent and each receiver by this Floating Charge or by law; or

19.1.3. any default by the Company of any of the obligations expressed to be assumed by it in this Floating Charge,

and any such receiver may retain and pay all sums in respect of the same out of monies received under powers conferred by the Insolvency Act 1986.

## **19.2. Restriction on indemnity**

The indemnity under Clause 19.1 shall not apply to any cost, loss or liability incurred by the Security Agent or any receiver where the Security Agent or receiver (as appropriate) has acted with gross negligence or wilful misconduct.

## **20. DISCRETION AND DELEGATION**

### **20.1. Discretion**

Any power or right which may be exercised by the Security Agent or any receiver under this Floating Charge may, subject to the terms and conditions of the Intercreditor Agreement, be exercised in the absolute and unfettered discretion of the Security Agent or receiver and without any obligation to give reasons.

### **20.2. Delegation**

The Security Agent and any receiver may delegate (either generally or specifically) by power of attorney or any other manner to any person any right, power, authority or discretion conferred on it by this Floating Charge (including the power of attorney granted under Clause 10 (Power of Attorney)). The Security Agent and any receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit. Any such delegation shall not preclude the subsequent exercise, any subsequent delegation or any revocation of such right, power, authority or discretion by the Security Agent or the receiver.

## **21. CALCULATIONS AND CERTIFICATES**

### **21.1. Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Floating Charge, the Company agrees and acknowledges that the entries made in the accounts maintained by a Secured Party are, in the absence of manifest error, prima facie evidence of the matters to which they relate.

## 21.2. **Certificates and determinations**

The Company agrees and acknowledges that, any certificate or determination by a Secured Party of a rate or amount under this Floating Charge is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## 21.3. **Consent to registration**

The Company hereby consents to the registration of this Floating Charge and of any account or certificate referred to in Clauses 21.1 and 0 above for preservation and execution.

## 22. **NOTICES**

### 22.1. **Communications in writing**

Any communication to be made under or in connection with this Floating Charge shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 22.2. **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Floating Charge is:

22.2.1. in the case of the Company, [REDACTED]

[REDACTED]  
FAO Stuart MacGregor; and

22.2.2. in the case of the Security Agent, [REDACTED]

[REDACTED] FAO: Richard Lovell,

or any substitute address, fax number or department or officer as the Company may notify to the Security Agent (or the Security Agent may notify to the Company, if a change is made by the Security Agent) by not less than five Business Days' notice.

### 22.3. **Delivery**

22.3.1. Any communication or document made or delivered by one person to another under or in connection with this Floating Charge will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 22.2 (Addresses), if addressed to that department or officer.

22.3.2. Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer (if any) specified as part of its address details provided under Clause 22.2 (Addresses) (or any substitute department or officer as the Security Agent shall specify for this purpose).

22.3.3. Any communication or document which becomes effective, in accordance with Clauses 22.3.1 and 22.3.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **22.4. Electronic communication**

22.4.1. Any communication to be made under or in connection with this Floating Charge may be made by electronic mail or other electronic means (including, without limitation, by posting to a secure website) if the parties:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
- (b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

22.4.2. Any such electronic communication as specified in Clause 22.4.1 above to be made between the Company and the Security Agent or a Secured Party may only be made in that way to the extent that those parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

22.4.3. Any such electronic communication as specified in Clause 22.4.1 above made between any two parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

22.4.4. Any electronic communication which becomes effective, in accordance with Clause 22.4.3 above, after 5.00 p.m. in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this Floating Charge shall be deemed only to become effective on the following day.



- 22.4.5. Any reference in this Floating Charge to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 22.4.

**22.5. English language**

- 22.5.1. Any notice given under or in connection with this Floating Charge must be in English.
- 22.5.2. All other documents provided under or in connection with this Floating Charge must be:
- (a) in English; or
  - (b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

**23. GOVERNING LAW**

This Floating Charge and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with Scots law.

**24. JURISDICTION**

**24.1. Jurisdiction of Scottish Courts**

The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Floating Charge (including a dispute regarding the existence, validity or release of this Floating Charge) or any non-contractual obligation arising out of or in connection with this Floating Charge (a "**Dispute**").

## 24.2. Convenient Forum

The Company agrees that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary.

IN WITNESS WHEREOF this and the preceding 20 pages are executed as follows:-

They are signed for and on behalf of

**STEWART MILNE GROUP HOLDINGS LIMITED**

at **EDINBURGH**

on the **30** day of **MARCH 2017**

and delivered on the **31** day of **MARCH 2017**

by:

.....  Director

**STUART MACGREGOR** Full Name

in the presence of:

.....  Witness Signature

..... Witness Name

**Matthew Stewart Gordon**

..... Address



on **30 MARCH 2017**

at **EDINBURGH**