



**Registration of a Charge**

Company name: **SPIRAL LTD**

Company number: **SC576038**

Received for Electronic Filing: **06/11/2019**



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**Details of Charge**

Date of creation: **06/11/2019**

Charge code: **SC57 6038 0001**

Persons entitled: **TOGETHER COMMERCIAL FINANCE LIMITED**

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 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **EIDANN CAMPBELL, SOLICITOR**



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

Company number: 576038

Charge code: SC57 6038 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 6th November 2019 and created by SPIRAL LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th November 2019 .

Given at Companies House, Edinburgh on 7th November 2019

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**FLOATING CHARGE**

**By**

**SPIRAL LTD**

**In favour of**

**Together Commercial Finance Limited**

**Date of delivery** 06/11/2019

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**THIS FLOATING CHARGE** is delivered on 06/11/19 and is granted by

- (1) **SPIRAL LTD**, a company incorporated in Scotland (Registered Number SC576038) and having its registered office at Unit 16, 5 Dickson Street, WEST CALDER, EH55 8DZ (the "Chargor")

**IN FAVOUR OF:**

- (2) **TOGETHER COMMERCIAL FINANCE LIMITED**, A COMPANY INCORPORATED IN ENGLAND AND WALES (COMPANY NUMBER 2058813) AND HAVING ITS REGISTERED OFFICE AT LAKE VIEW, LAKESIDE, CHEADLE, CHESHIRE SK8 3GW (THE "LENDER")

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE as follows:-

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Charge, the following definitions will apply:-

<b>"Administrator"</b>	any person appointed to be an administrator of the Chargor pursuant to paragraph 14 of Schedule B1 to the Insolvency Act;
<b>"Authorisation"</b>	an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;
<b>"Business Day"</b>	any day (other than a Saturday, Sunday or public holiday) during which clearing banks in the City of London are open for normal business;
<b>"Charged Assets"</b>	the whole of the property (including uncalled capital) which is or may from time to time, while this Charge is in force, be comprised in the property and undertaking of the Chargor;
<b>"Companies Act"</b>	the Companies Act 2006 ;
<b>"Default Rate"</b>	means the rate of interest as applied from time to time to the Secured Liabilities and, where different rates of interest are applied to different parts of the Secured Liabilities any one of such rates as the Lender shall in its absolute discretion choose;
<b>"Environment"</b>	means humans, animals, plants and all other living organisms including the ecological systems of which they form, part and the following media: <ul style="list-style-type: none"><li>(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);</li><li>(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains</li></ul>

	and sewers); and
	(c) land (including, without limitation, land under water);
<b>"Environmental Law"</b>	means any applicable law or regulation which relates to: <ul style="list-style-type: none"> <li>(a) the pollution or protection of the Environment;</li> <li>(b) the conditions of the workplace; or</li> <li>(c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm, to the Environment, including, without limitation, any waste;</li> </ul>
<b>"Event of Default"</b>	<ul style="list-style-type: none"> <li>(a) the Chargor fails to pay all or any of the Secured Liabilities following a demand for payment by the Lender made in accordance with the terms of the Finance Documents;</li> <li>(b) any step is taken (including the making of an application or the giving of any notice) by the Chargor or by any other person to appoint an Administrator;</li> <li>(c) any step is taken (including the making of an application or the giving of any notice) by the Chargor or by any other person to wind up or dissolve the Chargor or to appoint a liquidator, trustee, manager or receiver, administrative receiver or similar officer of the Chargor or any part of its undertaking or assets;</li> <li>(d) the making of a request by the Chargor for the appointment of a Receiver;</li> <li>(e) any analogous procedure or step to those listed in (b) to (d) (inclusive) above is taken under the laws of any Relevant Jurisdiction; and/or</li> <li>(f) the Chargor breaches any of the provisions of any Finance Document or an event of default (howsoever described) occurs under any Finance Document;</li> </ul>
<b>"Finance Documents"</b>	this Charge, any document, instrument or agreement pursuant to which the Lender makes monies available to the Chargor or pursuant to which the Chargor otherwise owes sums to the

	Lender and any Security granted in favour of the Lender in respect of the obligations of the Chargor to the Lender from time to time;
<b>"Financial Collateral"</b>	shall have the meaning given to that expression in the Financial Collateral Regulations;
<b>"Financial Collateral Regulations"</b>	the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);
<b>"Insolvency Act"</b>	the Insolvency Act 1986;
<b>"Intellectual Property"</b>	all Intellectual property rights or equivalent, including: <ul style="list-style-type: none"> <li>(a) patents, registered and unregistered trade and service marks, business names, domain names, copyright, rights in designs, rights in inventions, database rights and topography rights (whether or not registered);</li> <li>(b) applications for any or all of the rights in (a) above, together with the right to apply for registration of such rights;</li> <li>(c) know-how, trade secrets, confidential information, technical information, customer and supplier lists and any other proprietary knowledge and/or information of whatever nature and howsoever arising,</li> </ul> together with any rights or types of protection of the same or of a similar nature to those listed in (a), (b) or (c) which may subsist anywhere in the world and in each case for their full term (including any reversions or extensions) and/or effect;
<b>"Receiver"</b>	any receiver or administrative receiver appointed in respect of the Charged Assets under this Charge and includes joint receivers;
<b>"Relevant Jurisdiction"</b>	In relation to the Chargor: <ul style="list-style-type: none"> <li>(a) its jurisdiction of incorporation or organisation;</li> <li>(b) any jurisdiction where any Charged Asset is situated; and</li> <li>(c) any jurisdiction where it conducts its business;</li> </ul>
<b>"Secured Liabilities"</b>	all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor,

guarantor, surety or in any other capacity whatsoever or as the equivalent obligor under the laws of any other jurisdiction) of the Chargor to the Lender and including any obligations and liabilities of the Chargor to third parties assigned, novated or otherwise vested in the Lender provided that no obligation or liability shall be included in this definition of "Secured Liabilities" to the extent that, if it were so included, this Charge (or any part of it) would constitute unlawful financial assistance within the meaning of sections 678 and 680 of the Companies Act;

**"Security"**

a mortgage, charge, pledge, trust, assignment by way of security, assignation in security, standard security, lien, hypothecation or other encumbrance, arrangement or security interest securing any obligation of any person or any other agreement or arrangement having a similar effect or any title retention rights or set-off rights created by agreement;

**"Security Financial Collateral Arrangement"**

has the meaning given to it in the Financial Collateral Regulations;

**"Security Period"**

the period beginning on the date of this Charge and ending on the date on which:

- (a) all of the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full; and
- (b) the Lender has no further commitment, obligation or liability to the Chargor under or pursuant to any agreement or other document;

**"Spot Rate of Exchange"**

a market rate of exchange selected by the Lender;

**"Taxes"**

any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**1.2 Interpretation**

**1.2.1** In this Charge, unless the context otherwise requires:-

**1.2.1.1** references to clauses are to be construed as references to the clauses of this Charge;

**1.2.1.2** a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any



subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this Charge;

- 1.2.1.3 words importing the plural shall include the singular and vice versa;
  - 1.2.1.4 a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - 1.2.1.5 a "Party", the "Chargor", or the "Lender" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - 1.2.1.6 "disposal" includes any sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly;
  - 1.2.1.7 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
  - 1.2.1.8 writing shall, subject to clause 10, include any mode of reproducing words in a legible and non-transitory form;
  - 1.2.1.9 this Charge or any provision of this Charge or any other agreement, document or instrument is to this Charge, that provision or that agreement, document or instrument as amended, novated, supplemented, extended, restated or acceded to from time to time;
  - 1.2.1.10 a time of day is a reference to Edinburgh time;
  - 1.2.1.11 references to a "fixed security" mean a fixed security as defined by section 486 of the Companies Act 1985; and
  - 1.2.1.12 an Event of Default is "continuing" if it has not been remedied to the satisfaction of the Lender or waived by the Lender.
- 1.3 The contents table and headings in this Charge are for convenience only and do not affect the interpretation or construction of this Charge.
  - 1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
  - 1.5 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.

## **2. COVENANT TO PAY**

The Chargor covenants with the Lender that it will pay or discharge on demand the Secured Liabilities when they fall due.

### **3. DEFAULT INTEREST**

- 3.1** Any amount which is not paid under this Charge when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the Default Rate.
- 3.2** Default interest will be calculated at the Default Rate on the basis of the actual number of days elapsed and a year of 365 days and will be compounded at monthly intervals.
- 3.3** Any amount payable under clause 9.8 shall bear interest from the date such costs, fees or other expenses are incurred until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the Default Rate.

### **4. SECURITY**

#### **4.1 Floating Charge**

As a continuing security for the payment of the Secured Liabilities, the Chargor hereby grants a floating charge over the Charged Assets in favour of the Lender.

#### **4.2 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charge created by or pursuant to this Charge (and such floating charge is a qualifying floating charge for the purposes of the Insolvency Act).

#### **4.3 Negative pledge**

The Chargor covenants with the Lender that [save as otherwise provided in the Intercreditor Agreement], unless agreed in writing by the Lender and subject to section 464(2) of the Companies Act 1985:

- 4.3.1** the Chargor shall not create any fixed security or other floating charge over any part of the Charged Assets after its execution of this Charge except any fixed security in favour of the Lender; and
- 4.3.2** this Charge shall rank in priority to any fixed security or other floating charge created by the Chargor after its execution of this Charge except any fixed security in favour of the Lender.

### **5. ENFORCEMENT**

#### **5.1 When Charge is enforceable**

The security constituted by this Charge shall become immediately enforceable upon the occurrence of an Event of Default.

#### **5.2 Appointment of a Receiver or Administrator**

- 5.2.1** At any time after this Charge has become enforceable the Lender shall be entitled:
- 5.2.1.1** to appoint one or more persons as a Receiver or Receivers in respect of the Charged Assets, or apply to the Court for such appointment;
- 5.2.1.2** to appoint one or more persons as an Administrator of the Chargor;

5.2.1.3 to make an administration application in respect of the Chargor; or

5.2.1.4 to give notice of intention to appoint an Administrator in respect of the Chargor,

in each case in accordance with and to the extent permitted by laws applicable to the Chargor and to this Charge.

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

### **5.3 Powers of Receiver**

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

5.3.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Chargor), to transfer any part of the Charged Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Chargor, or the Receiver, or its or his/her nominee or trustee;

5.3.2 subject to the articles of association, to convene extraordinary general meetings of the Chargor;

5.3.3 to make any arrangement or compromise which the Receiver or the Lender may think fit;

5.3.4 generally, without prejudice to the other provisions of this clause to exercise all the rights, powers and discretions in respect of the Charged Assets it would be entitled to exercise if it were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Charged Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Liabilities; and

5.3.5 in respect of any of the Charged Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Insolvency 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 the Chargor**

The Receiver shall be the agent of the Chargor for all purposes of and in all respects arising under this Charge and, except as otherwise provided by the Insolvency Act, the Chargor 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 Balance**

The rights powers and discretions conferred on the Receiver under this clause are subject only to his/her obligation to account to the Chargor or any other person entitled thereto for any balance of the Charged Assets or their proceeds remaining in his/her hands after the Secured Liabilities have been fully and unconditionally paid and discharged.

## **5.6 Third parties**

**5.6.1** No purchaser from or other person dealing with the Receiver in relation to the Charged 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 Liabilities remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

**5.6.2** The receipt or discharge of the Receiver shall be an absolute discharge to any purchaser or other person dealing with the Receiver in relation to the Charged 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 Receiver or at its direction.

## **5.7 Security Financial Collateral Arrangement**

**5.7.1** At any time after the security constituted by this Charge has become enforceable and to the extent that any of the Charged Assets constitute Financial Collateral and are subject to a Security Financial Collateral Arrangement pursuant to this Charge, the Lender shall have the right to appropriate all or any part of those Charged Assets in or towards the payment or discharge of the Secured Liabilities as are then due and payable as the Lender may think fit. The value of such Charged Assets appropriated in accordance with this clause 5.7.1 shall be the price of those Charged Assets at the time the right of appropriation is exercised as listed on any recognised market index, or as determined by such other method as the Lender may select (including independent valuation). The Chargor agrees that the methods of valuation provided for in this clause 5.7.1 are commercially reasonable.

**5.7.2** To the extent that the Charged Assets constitute Financial Collateral, the Chargor agrees that such Charged Assets may, at the Lender's option, be held or designated so as to be under the control of the Lender for all purposes of the Financial Collateral Regulations.

## **6. LIABILITY OF THE LENDER**

### **6.1 Liability**

The Lender and any Receiver shall not in any circumstances be liable to the Chargor or any other person for losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Charge or any realisation, appropriation or application of the Charged Assets or from any act, default or omission of the Lender or the Receiver or his/her or its officers, employees or agents in relation to the Charged Assets or otherwise in connection with this Charge.

### **6.2 Indemnity**

The Lender, any Receiver and every attorney, manager, agent, employee or other person appointed by the Lender under or in connection with this Charge shall be and

is hereby indemnified by the Chargor in respect of all liabilities, costs, losses and expenses incurred by them or him in the execution (or purported execution) of any of the powers, authorities or discretions vested in them or him pursuant to the terms of this Charge (or by any law or regulation) and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way in connection with or relating to all or any of the Charged Assets and the Lender, any Receiver or any such other person may retain and pay all sums in respect of the same out of money received under the powers conferred by this Charge.

## **7. PROTECTION OF SECURITY**

### **7.1 Continuing security**

**7.1.1** This Charge shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which the Lender may at any time hold in respect of any of the Secured Liabilities and this Charge may be enforced against the Chargor without the Lender first having recourse to any other right, remedy, guarantee or Security held or available to it.

**7.1.2** This Charge shall remain in full force and effect as a continuing security until the Lender shall have certified in writing that the Secured Liabilities have been discharged in full.

### **7.2 Waiver of rights**

**7.2.1** The obligations of the Chargor under this Charge and the rights, powers and discretions of the Lender under this Charge will not be reduced, discharged or otherwise affected by:

**7.2.1.1** any time, waiver or consent granted to, or composition with the Chargor or any other person;

**7.2.1.2** the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of the Chargor;

**7.2.1.3** the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or Security over assets of the Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument;

**7.2.1.4** the Lender failing to realise the full value of any Security held by it;

**7.2.1.5** any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person or any defective or excessive exercise of the Chargor's powers or authority;

**7.2.1.6** any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) termination or replacement of the Secured Liabilities or any document, guarantee or Security related to the Secured Liabilities including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility or other document or Security;

- 7.2.1.7 any unenforceability, illegality, invalidity, irregularity or frustration of any obligation (actual or purported) of any person under this Charge or any other document, guarantee or Security held in connection with the Secured Liabilities;
- 7.2.1.8 any claim or enforcement of payment from the Chargor or any other person;
- 7.2.1.9 any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, dissolution, limitation, disability, the discharge by operation of law or any similar proceedings in respect of the Chargor or any other person;
- 7.2.1.10 any change in the constitution, name or style of the Chargor or any other person, or if such other person is a partnership or other unincorporated organisation, its dissolution or any change in its status or membership; or
- 7.2.1.11 anything done or omitted to be done by the Lender or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Chargor under this Charge.

### **7.3 Lender's protections**

- 7.3.1 The Lender may make one or more demands under this Charge.
- 7.3.2 This Charge shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which the Lender may at any time hold in respect of any of the Secured Liabilities and this Charge may be enforced without the Lender first having:
  - 7.3.2.1 recourse to any other right, remedy, guarantee or Security held or available to it;
  - 7.3.2.2 to take action or obtain judgment in any court against the Chargor or any other person;
  - 7.3.2.3 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Chargor or any other person; or
  - 7.3.2.4 to make demand, enforce or seek to enforce any claim, right or remedy against the Chargor or any other person.
- 7.3.3 The Chargor's liability under this Charge shall not be discharged or affected by anything that would not have discharged or affected it if the Chargor had been a principal debtor instead of a chargor under this Charge.

### **7.4 Further assurance**

- 7.4.1 The Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)):
  - 7.4.1.1 to perfect the Security created or intended to be created under or evidenced by this Charge (which may include the execution of a pledge, charge, assignment, assignment or assurance or other Security over all or any of the assets which are, or are intended to be, the subject of this Charge) or for the exercise of any rights,

powers and remedies of the Lender provided by law and/or pursuant to the Finance Documents;

7.4.1.2 to confer on the Lender Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Charge;

7.4.1.3 creating any fixed security or charge over any of the Charged Assets;

7.4.1.4 to facilitate the exercise of any rights, powers and remedies exerciseable by the Lender or any Receiver in respect of any of the Charged Assets or provided by or pursuant to the Finance Documents or by law; and/or

7.4.1.5 to facilitate the realisation of the assets which are, or are intended to be, the subject of this Charge.

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

## **7.5 Power of attorney**

7.5.1 The Chargor by way of security irrevocably appoints the Lender to be its agent and attorney in its name and on its behalf to:

7.5.1.1 do all things which the Chargor may be required to do under this Charge;

7.5.1.2 sign, execute (using the company seal where appropriate), deliver and otherwise perfect any Security required to be signed or executed pursuant to the terms of this Charge; and

7.5.1.3 sign, execute (using the company seal where appropriate), deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required by the Lender in the exercise of any of its powers under this Charge, or to perfect or vest in the Lender, its nominees or any purchaser, title to any Charged Assets or which the Lender may deem expedient in connection with the getting in, disposal, or realisation of any Charged Assets.

7.5.2 Each agent and attorney may appoint a substitute or delegate his authority.

7.5.3 The Chargor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does or may purport to do in the exercise or purported exercise of the power of attorney conferred by clause 7.5.1.

## **8. REPRESENTATIONS AND UNDERTAKINGS**

### **8.1 Representations and warranties**

The Chargor represents and warrants to the Lender that:

8.1.1 It is a limited company duly organised, validly existing and registered under the relevant laws of its jurisdiction of incorporation;

- 8.1.2 it has the power and all necessary governmental and other consents, approvals, licences and authorities to own its assets and carry on its business as it is being conducted;
- 8.1.3 it is empowered to enter into and perform its obligations contained in this Charge and has taken all necessary action to authorise the execution, delivery and performance of this Charge, to create the security to be constituted by this Charge and to observe and perform its obligations under this Charge;
- 8.1.4 the obligations expressed to be assumed by it in this Charge are legal, valid, binding and enforceable obligations;
- 8.1.5 (without limiting the generality of clause 8.1.4 above), this Charge creates the security interests which it purports to create and those security interests are valid and effective;
- 8.1.6 the entry into and performance by it of, and the transactions contemplated by, this Charge and the granting of this Charge and security constituted by this Charge do not and will not conflict with:
  - 8.1.6.1 any law or regulation applicable to it;
  - 8.1.6.2 its constitutional documents; or
  - 8.1.6.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;
- 8.1.7 all Authorisations required or desirable:
  - 8.1.7.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Charge; and
  - 8.1.7.2 to make this Charge admissible in evidence in its Relevant Jurisdictions,
 have been obtained or effected and are in full force and effect;
- 8.1.8 it has not, save in the ordinary course of its trading activities and for value, entered into any agreement or granted any option to sell or otherwise dispose of the Charged Assets or any interest therein, or agreed, conditionally or unconditionally, to do so; and
- 8.1.9 it has not, except for liens or retention of title provisions arising in the ordinary course of its trading activities, granted or created any other Security, charge or encumbrance over the Charged Assets or any interest therein, or agreed, conditionally or unconditionally, to do so.

## **8.2 Matters represented**

Each of the representations and warranties in clause 8.1 will be correct and complied with in all [material] respects at all times during the continuance of the security constituted by this Charge.

## **8.3 Undertakings**

- 8.3.1 Except with the Lender's prior written consent, the Chargor undertakes to the Lender that it shall not:-
  - 8.3.1.1 dispose of any of its heritable, freehold or leasehold property or any interest or estate therein or grant any lease, sub-lease,



- tenancy, sub-tenancy or licence thereof or surrender or accept the surrender of any of the foregoing;
- 8.3.1.2** dispose of any other of the Charged Assets or any interest therein otherwise than in the ordinary course of its trading activities, for market value, on an arms length basis and for consideration payable in cash on normal commercial terms;
- 8.3.1.3** pull down or remove the whole or any part of any buildings or erections forming part of the Charged Assets or make any structural or external alterations thereto or sever or unfix or remove any of the fixtures attaching thereto or (except for the purpose of effecting necessary repairs or replacing with new or improved models or substitutes) remove any fixed plant or machinery belonging to or used by it;
- 8.3.1.4** sell, factor, discount, assign or otherwise charge or dispose of its book debts or other accounts or payments receivable;
- 8.3.1.5** become a guarantor or surety for any person;
- 8.3.1.6** issue or create any debentures, debenture or loan stock or loan capital;
- 8.3.1.7** agree to postpone or subordinate the Chargor's right to receive or claim payment of any debt or monetary claim due to it; or
- 8.3.1.8** do or omit to do anything whereby any insurance in respect of the Chargor or the Charged Assets may be rendered void or voidable.
- 8.3.2** The Chargor undertakes that unless otherwise agreed in writing by the Lender it shall:
- 8.3.2.1** conduct its business and affairs in a proper and efficient manner and provide the Lender on request with such trading, financial and other information as the Lender may reasonably require from time to time;
- 8.3.2.2** comply promptly with its obligations under the Finance Documents;
- 8.3.2.3** on request deposit with the Lender all title deeds, certificates and other documents of title or evidence of ownership in relation to the Charged Assets;
- 8.3.2.4** promptly notify the Lender of its acquisition of any heritable, freehold or leasehold property, and if so requested, deposit with the Lender all title deeds, leases and other documents of title or evidence of ownership or occupation in relation to that property;
- 8.3.2.5** comply with all obligations, conditions and covenants relating to the heritable, freehold or leasehold property owned or occupied by the Chargor and promptly pay all rents, rates, taxes and other outgoings in respect thereof and give the Lender and its representatives access to such property at all reasonable times, on reasonable notice;
- 8.3.2.6** comply with all laws, statutes, directives and regulations (including, without limitation, Environmental Laws) and all notices, codes of practice and other requirements having the force of law which are applicable to it and obtain, effect, maintain and comply

with all registrations, licenses, consents, authorisations and exemptions required (including, without limitation, under Environmental Law) for the efficient conduct of its business;

- 8.3.2.7** If so requested by the Lender appoint an accountant or firm of accountants nominated by the Lender to investigate its financial and trading affairs and report to the Lender;
- 8.3.2.8** keep the Charged Assets in good order (and where appropriate good working order) and repair and, where necessary, renew and replace them;
- 8.3.2.9** effect and maintain such insurances (in respect of the Chargor, its business and the Charged Assets) of such types, against such risks, with such insurers, for such amounts and on such terms and conditions as the Lender may from time to time reasonably approve or require, pay the premiums and any other sums necessary to keep such insurances in force promptly when they fall due (and produce the relevant receipts to the Lender within three Business Days of being requested to do so); and otherwise comply with the terms and conditions applicable to such insurances. If the Chargor fails to effect any such insurance or pay any such premium or other sum, the Lender shall be entitled to do so in accordance with clause 8.4. The Chargor shall procure that the name and interest of the Lender as sole loss payee under this Charge is endorsed or noted on all such insurances and that they each contain a non-vitiation provision whereby they will not be held void, voidable or otherwise unenforceable against the Lender by reason of any non disclosure, misrepresentation or other act, neglect or default of or attributable to the Chargor;
- 8.3.2.10** apply all monies received, under any such insurances towards replacing, restoring or reinstating the property destroyed or damaged or making good the loss or damage otherwise sustained;
- 8.3.2.11** notify the Lender immediately in the event of any creditor executing diligence, (whether effectual or not), levying distress or execution, or serving any garnishee order against the Chargor or any of the Charged Assets;
- 8.3.2.12** take all appropriate action (in particular make all filings and registrations and pay all fees, taxes and similar amounts) as may be necessary to maintain in full force and effect all Intellectual Property (if any) owed or used by the Chargor and take such steps as may be necessary (including without limitation, instituting legal proceedings) to prevent third parties infringing such Intellectual Property in any material respect; and
- 8.3.2.13** promptly notify the Lender of any breach of any Environmental Law applicable to it, or of any of the representations, warranties and undertakings on its part specified in this clause 8 where such breach has or likely to have a material adverse effect on the value of the Charged Assets, the financial condition, assets or revenues of the Chargor, the ability of the Chargor to fulfil the Secured Liabilities, or the effectiveness of this Charge.

#### **8.4 Power to Remedy**

Without prejudice to the powers granted to the Lender under clause 5, if the Chargor defaults at any time in complying with any of its obligations contained in this Charge, the Lender shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Chargor hereby irrevocably authorises the Lender by way of security to do all such things necessary or desirable in connection therewith. Any monies so expended by the Lender shall be repayable by the Chargor to the Lender on demand together with interest thereon.

### **9. APPROPRIATION, PAYMENTS AND COSTS AND EXPENSES**

#### **9.1 Application of proceeds**

All monies received by the Lender under this Charge shall (subject to the rights and claims of any person having a security ranking in priority to the security constituted by this Charge) be applied in the following order:

- 9.1.1 in payment of the costs, charges and expenses incurred by the Lender, and payments made by the Lender, in connection with this Charge or the Charged Assets;
- 9.1.2 in or towards the satisfaction of the Secured Liabilities in accordance with clause 9.6; and
- 9.1.3 any surplus shall be paid to the Chargor or other person entitled to it.

#### **9.2 Protection of third parties**

No purchaser from or other person dealing with the Lender in relation to the Charged Assets shall be obliged or concerned to enquire whether the right of the Lender to exercise any of the powers conferred by this Charge in relation to the Charged Assets or any part of the Charged Assets have arisen or become exercisable by the Lender, nor be concerned with notice to the contrary, nor with the propriety of the exercise or purported exercise of any such powers and the title of such a purchaser and the position of such a person shall not be affected by reference to any of those matters.

#### **9.3 Notice of subsequent Security – new accounts**

- 9.3.1 If the Lender receives notice (whether actual or otherwise) of any subsequent Security affecting any part of the Charged Assets and/or the proceeds of sale of the Charged Assets, it may open a new account or accounts for the Chargor in its books.
- 9.3.2 If the Lender does not open a new account immediately on receipt of notice under clause 9.3.1, then (unless the Lender gives express written notice to the contrary to the Chargor) all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Lender.

#### **9.4 Consolidation of accounts and set-off**

- 9.4.1 The Lender shall be entitled without notice to the Chargor (both before and after demand):
  - 9.4.1.1 to combine or consolidate all or any sums of money now or hereafter standing to the credit of the then existing accounts of

the Chargor with the Lender with the liabilities to the Lender of the Chargor; and

9.4.1.2 to set-off, retain as cover for, apply or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the liabilities of the Chargor to the Lender on any other account or in any other respect.

9.4.2 The liabilities referred to in this clause 9.4 may be actual, contingent, primary, collateral, several or joint liabilities, and the accounts, sums and liabilities referred to in this clause 9.4 may be denominated in any currency.

9.4.3 If the amounts concerned are expressed in a different currency then the Lender may exercise all such rights and is authorised to effect any necessary conversions at the Spot Rate of Exchange.

9.4.4 If the relevant obligation or liability is unliquidated or unascertained the Lender may set-off the amount it estimates (in good faith) will be the final amount of such obligation or liability once it becomes liquidated or ascertained.

## **9.5 Currency**

9.5.1 All monies received or held by the Lender under this Charge may be converted from their existing currency into such other currency as the Lender considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the Spot Rate of Exchange.

9.5.2 No payment to the Lender (whether under any judgment or court order or in the liquidation or dissolution of the Chargor or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made, unless and until the Lender shall have received payment in full in the currency in which the obligation or liability was incurred and, to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency, the Lender shall have a further separate cause of action against the Chargor and shall be entitled to enforce the security constituted by this Charge to recover the amount of the shortfall.

9.5.3 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

9.5.3.1 any reference in this Charge to, and any obligations arising under this Charge in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Chargor); and

9.5.3.2 any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).

9.5.4 If a change in any currency of a country occurs, this Charge will, to the extent the Lender (acting reasonably and after consultation with the Chargor) specifies to be necessary, be amended to comply with any

generally accepted conventions and market practice in the London Interbank market and otherwise to reflect the change in currency.

**9.6 Appropriation and suspense account**

- 9.6.1** Subject to clause 9.6.3, the Lender may appropriate all payments received in respect of the Secured Liabilities in reduction of any part of those liabilities as it thinks fit.
- 9.6.2** Any such appropriation shall override any appropriation by the Chargor.
- 9.6.3** All monies received, recovered or realised by the Lender under this Charge may at the discretion of the Lender be credited to any suspense account for so long as the Lender determines (with interest accruing thereon at such rate, if any, as the Lender may determine for the account of the Chargor) without the Lender having any obligation to apply such monies or any part of them in or towards the discharge of any of the Secured Liabilities.

**9.7 Payments**

- 9.7.1** Subject to clause 9.7.2, all payments to be made by the Chargor in respect of this Charge, shall be made in immediately available funds to the credit of such account as the Lender may designate. All such payments shall be made free and clear of, and without any deduction for, or on account of, any set-off or counterclaim or, except to the extent compelled by law, any deduction on account of any Taxes.
- 9.7.2** If the Chargor is compelled by law to withhold or deduct any Taxes from any sum payable hereunder to the Lender, the sum so payable by the Chargor shall be increased so as to result in the receipt by the Lender of a net amount equal to the full amount expressed to be payable hereunder.
- 9.7.3** Any demand, notification or certificate given by the Lender specifying amounts due and payable under or in connection with any of the provisions of this Charge shall, in the absence of manifest error, be conclusive and binding on the Chargor.

**9.8 Costs and expenses**

- 9.8.1** The Chargor shall reimburse the Lender in respect of all reasonable expenses, including reasonable legal, valuation, accountancy and consultancy fees (and any value added or similar tax thereon) incurred by the Lender in connection with:
  - 9.8.1.1** the negotiation, preparation, execution and completion of this Charge, or any of the documents referred to herein; and
  - 9.8.1.2** any actual or proposed amendment, replacement, restatement or extension of, or any waiver or consent under, this Charge.
- 9.8.2** The Chargor shall reimburse the Lender and any Receiver for all costs and expenses, including legal fees (and any value added or similar tax thereon) incurred in connection with the enforcement, attempted enforcement or preservation of any of their respective rights under this Charge, or any of the documents referred to herein.
- 9.8.3** The Chargor shall pay all present and future stamp, registration and similar taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this Charge or any judgment given in connection therewith and shall indemnify the Lender and any Receiver against any and all liabilities, including

penalties with respect to, or resulting from, its delay or omission to pay any such stamp, registration and similar taxes or charges.

**9.9 Assignment and transfer**

The Lender may assign or transfer all or any part of its rights under this Charge. The Chargor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this Charge or any of its rights under this Charge or purport to do any of the same without the prior written consent of the Lender.

**9.10 Contingencies**

If this Charge is enforced at a time when no amounts are due to the Lender under the Finance Documents (but at a time when amounts may become so due), the Lender may pay the proceeds of any recoveries effected by it into a blocked suspense account bearing interest at such rate (if any) as the Lender usually grants for accounts of that size and nature.

**10. NOTICES**

**10.1 Communications in writing**

Any notice given pursuant to this Charge shall be in writing signed by, or on behalf of, the person issuing the notice may be delivered by hand or by prepaid recorded delivery first class post to:

10.1.1 In the case of the Chargor, its registered office address for the time being; and

10.1.2 In the case of the Lender:

10.1.2.1 address: Lake View, Lakeside, Cheadle, SK8 3GW

10.1.2.2 marked for the attention of: Marc Goldberg

or, in relation to any Party, such other address for service in the United Kingdom as that Party may from time to time notify to the other.

**10.2 Delivery**

10.2.1 In the absence of evidence of earlier receipt and subject to clause 10.2.3 a notice served in accordance with clause 10.1 shall be deemed to have been received:

10.2.1.1 if delivered by hand, at the time of actual delivery to the address referred to in clause 10.1; and

10.2.1.2 if delivered by prepaid recorded delivery first class post, two Business Days from the date of posting.

10.2.2 If deemed receipt under clause 10.2.1 occurs on a day which is not a Business Day or after 5.00 p.m. on a Business Day, the relevant notice shall be deemed to have been received at 9.00 a.m. on the next Business Day.

10.2.3 For the avoidance of doubt, notice given under this Charge shall not be validly served if sent by fax or e-mail.

**10.3 English language**

10.3.1 Any notice given under or in connection with this Charge must be in English.

10.3.2 All other documents provided under or in connection with this Charge must be:

10.3.2.1 in English; or

10.3.2.2 if not in English, and if so required by the Lender, 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.

## **11. RELEASE**

### **11.1 Release**

Upon the expiry of the Security Period (but not otherwise) the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to discharge, or release (without recourse or warranty) the Charged Assets from the Security created by this Charge.

### **11.2 Reinstatement**

Any release, discharge or settlement between the Chargor and the Lender shall be conditional upon no security, disposition or payment to the Lender by the Chargor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition is not fulfilled the Chargor's liability under this Charge shall continue and the Lender shall be entitled to enforce this Charge as if such release, discharge or settlement had not occurred and any such payment had not been made.

### **11.3 Retention of Security**

If any payment or realisation in respect of the Secured Liabilities is, in the Lender'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 Lender shall be entitled to retain this Charge undischarged until the expiry of the period during which it may be challenged on any such ground.

### **11.4 Avoidance of payments**

The Lender's right to recover the Secured Liabilities 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 Lender on the faith of any such payment or realisation.

## **12. GENERAL**

### **12.1 Amendments and waivers**

No variation to this Charge shall be effective unless made in writing and signed by or on behalf of all the parties to this Charge. A waiver given or consent granted by the Lender under this Charge will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

### **12.2 Severability**

Each provision of this Charge is severable and distinct from the others. If at any time any provision of this Charge is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Charge but (except to that extent or in those circumstances in the case of that provision) the legality, validity and

enforceability of that and all other provisions of this Charge shall not be affected in any way.

**12.3 Illegality**

If any provision of this Charge is found to be illegal, invalid or unenforceable in accordance with clause 12.3 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.

**12.4 Remedies and waivers**

The failure or delay in exercising a right or remedy provided by this Charge or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this Charge or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.

**12.5 Exercise of discretion**

Any right or power which may be exercised or any determination which may be made under this Charge by the Lender may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefore.

**12.6 Rights cumulative**

The Lender's rights and remedies contained in this Charge are cumulative and not exclusive of any rights or remedies provided by law.

**12.7 Delegation**

The Lender may delegate, by power of attorney or in any other manner, to any person, any right, power or discretion exercisable by it under this Charge upon any terms (including power to sub-delegate) which it may think fit. The Lender shall not be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate.

**12.8 Consent to registration**

The Chargor consents to the registration of this Charge and of any certificate referred to in clause 9.7.3 above for preservation and execution.

**13. GOVERNING LAW AND JURISDICTION**

**13.1 Governing Law**

This Charge together with any non-contractual disputes or claims arising out of or in connection with this Charge shall in all respects be governed by and interpreted in accordance with Scots law.

**13.2 Jurisdiction**

**13.2.1** For the exclusive benefit of the Lender, the Chargor irrevocably agrees that the courts of Scotland are to have jurisdiction to settle any disputes which may arise out of or in connection with this Charge and that any proceedings may be brought in those courts.

**13.2.2** Nothing contained in this clause shall limit the right of the Lender to commence any proceedings against the Chargor in any other court of competent jurisdiction nor shall the commencement of any proceedings against the Chargor in one or more jurisdictions preclude the



commencement of any proceedings in any other jurisdiction, whether concurrently or not.

- 13.2.3 The Chargor irrevocably waives any objection which it may now or in the future have to the laying of the venue of any proceedings in any court referred to in this clause and any claim that those proceedings have been brought in an inconvenient or inappropriate forum, and irrevocably agrees that a judgment in any proceedings commenced in any such court shall be conclusive and binding on it and may be enforced in the courts of any other jurisdiction.

#### **14. COUNTERPARTS AND DELIVERY**

##### **14.1 Counterpart execution**

This Charge may be executed in any number of counterparts and by the parties on separate counterparts.

##### **14.2 Delivery where Charge is executed in counterpart**

Where executed in counterpart:

- 14.2.1 this Charge shall not take effect until all of the counterparts have been delivered;
- 14.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- 14.2.3 the parties may choose to evidence the date of delivery of this Charge by inserting this on the front page of this Charge.

##### **14.3 Delivery where Charge is not executed in counterpart**

If this Charge is not executed in counterparts, this Charge shall be delivered on the date inserted on the front page of this Charge or, if no such date is inserted, the date on which the Chargor signed this Charge.

**14.4 Appointment of nominated person**

The parties to this Charge, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery)(Scotland) Act 2015 (the "Counterparts Act"), nominate the Lender to take delivery of all counterparts of this Charge. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Charge.

IN WITNESS WHEREOF these presents consisting of this and the preceding [21] pages are executed by the parties hereto as follows:-

Subscribed for and on behalf of SPIRAL LTD

by **KAREN STEPHEN**  
, Director at **Whitburn** on the **15<sup>th</sup>** day of **Nov 14** before this witness:-

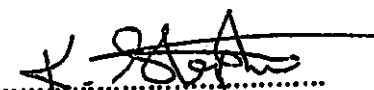
Witness ..... 

Full Name .....

Address .....

.....

MESSRS SNEDDON MORRISON  
CLYDESDALE BANK CHAMBERS  
18 EAST MAIN STREET  
WHITBURN EH47 0RB  
WEST LOTHIAN (DX 641062)  
TEL: 01501 740345  
FAX: 01501 741901

  
.....  
Director

Subscribed for and on behalf of Together Commercial Finance Limited by  
, a duly authorised signatory at ..... on the ..... day of ..... before  
this witness:-

Witness .....

Full Name .....

Address .....

.....

.....  
Authorised signatory

**14.4 Appointment of nominated person**

The parties to this Charge, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery)(Scotland) Act 2015 (the "Counterparts Act"), nominate the Lender to take delivery of all counterparts of this Charge. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Charge.

**IN WITNESS WHEREOF** these presents consisting of this and the preceding [21] pages are executed by the parties hereto as follows:-

Subscribed for and on behalf of

by  
, Director at on the day of before this  
witness:-

Witness .....

Full Name .....

Address .....

Director

Subscribed for and on behalf of Together Commercial Finance Limited by **MARC RICHARD GOLDBERG**  
, a duly authorised signatory at **CHEADLE** on the **6TH** day of **November** before  
this witness:- **2019**

Witness *SCW* .....

Full Name *Danielle Comer* .....

Address *Lake View, Lakeside* .....

Authorised signatory

*Cheadle, SK8 3GW.*