



Registration of a Charge

LLP name: **A A HUTTON LLP**

LLP number: **SO300293**

Received for Electronic Filing: **15/06/2015**



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Details of Charge

Date of creation: **12/06/2015**

Charge code: **SO30 0293 0001**

Persons entitled: **LLOYDS BANK PLC**

Brief description: **N/A**

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **PINSENT MASONS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

LLP number: SO300293

Charge code: SO30 0293 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 12th June 2015 and created by A A HUTTON LLP was delivered pursuant to Part 25 of the Companies Act 2006 as applied by The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 on 15th June 2015 .

Given at Companies House, Edinburgh on 18th June 2015

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under the Limited Liability Partnership
(Application of the Companies Act 2006) Regulations 2009 SI 2009/1804



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

FLOATING CHARGE

by

A A HUTTON LLP

in favour of

LLOYDS BANK PLC



Pinsent Masons

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FLOATING CHARGE by

- (1) **A A HUTTON LLP** incorporated in Scotland (Company Number SO300293) whose registered office is at 1 Rutland Square, Edinburgh, EH1 2AS (the "**Company**")

in favour of

- (2) **LLOYDS BANK PLC** incorporated in England (Company Number 00002065) whose registered office is at 25 Gresham Street, London, EC2V 7HN (the "**Bank**").

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Security unless the context requires otherwise:-

"Act"	means the Insolvency Act 1986 as amended
"Business Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in London
"Environment"	means all or any of the air (including air within buildings and other man-made or natural structures above or below ground) land and water and ecological systems supported by those media, and humankind and all other living creatures and organisms
"Environmental Law"	means all laws, statutes, treaties, directives, regulations, codes of practice, circulars and guidance notices having mandatory effect, court or tribunal decisions and rules of common law concerning the Environment or human health and safety, including (without limitation) those relating to the actual or potential emission, discharge, release, escape or leakage of Hazardous Substances into the Environment or the creation, production, processing, treatment, handling, storage, transportation, labelling, packaging, distribution or disposal of Hazardous Substances or Waste
"Event of Default"	<p>means:-</p> <p>(a) the failure by the Company to pay or fulfil the Secured Obligations in whole or part on the due date;</p> <p>(b) the occurrence of any event which under any contract or agreement (written or otherwise) between the Company and the Bank results in the Secured Obligations becoming immediately due and payable or entitles the Bank to require immediate repayment of the Secured Obligations;</p> <p>(c) the dissolution of the Company or the appointment of a liquidator, receiver, administrative receiver, administrator, judicial factor, or similar official in respect of</p>

the Company or any of its undertaking or assets, the giving of notice of intention to appoint such an administrator, the institution of a voluntary arrangement or scheme of arrangement or composition in respect of its debts or affairs, or the presentation of any administration application, petition or other legal proceedings, or the commencement of other corporate action or procedure, for any of those purposes, or any analogous appointment or action in any other jurisdiction;

- (d) the breach by the Company of any of its obligations under this Security or any of the warranties and representations by the Company in this Security being or becoming incorrect or misleading in any material respect; or
- (e) the Company ceasing or threatening to cease to carry on business or becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986

"Hazardous Substances"

means any living or inanimate material, substance or medium (including without limiting that generality electricity, radiation, radio, television, radar or similar transmission, noise, vibration, bacteria, viruses and genetic material) which alone or in combination with others is capable of causing harm to humankind (including offence to the senses) or other living creatures or organisms, or to property

"Intellectual Property Rights"

means all know-how, patents, patent applications, trade marks, immunity trade marks, service marks, trade names, brand names, business names, registered designs, copyright and all other industrial and intellectual property rights and any interests (including by way of licence) in any of the foregoing (in each case whether registered or not and including all applications for the same)

"Intercreditor Agreement"

means the intercreditor agreement dated 18 December 2014 and made between, among others, Marston Topco Limited, the Bank (as Senior Creditor), the Obligors, the Mezzanine FACS Lender, the Mezzanine Quintus Lender and the Investors (each as defined in the Intercreditor Agreement)

"Receiver"

means any receiver or administrative receiver appointed in respect of the Secured Assets under this Security (whether by the Company or the Court) and includes joint receivers

"Secured Assets"

means the whole of the property (including uncalled capital) which is or may from time to time, while this Security is in force, be comprised in the property

and undertaking of the Company

"Secured Obligations"

means all or any monies, liabilities and obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, cautioner, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Company to the Bank including interest, discount, commission and all lawful charges or expenses which the Bank may in the course of its business charge or incur in respect of any of those matters or for keeping any account of the Assignor and so that interest shall be computed and compounded according to the usual rate and practice of the Bank as well after as before any demand made or decree or judgement obtained under this Security, and all or any monies, liabilities and obligations due to the Bank under this Security;

"Security"

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

"Waste"

means any form of waste, including any by-product of an industrial process and anything which is abandoned, unwanted or surplus, whether or not it is capable of being recovered or recycled, or has any value

1.2 Interpretation

In this Security unless the context requires otherwise:-

- 1.2.1 words importing the singular shall include the plural and vice versa;
- 1.2.2 references to this Security or any other document shall be construed as references to this Security or such other document as amended, supplemented, novated, extended or restated from time to time;
- 1.2.3 references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.4 references to a **"person"** shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- 1.2.5 references to a **"fixed security"** mean a fixed security as defined by Section 486 of the Companies Act 1985;
- 1.2.6 any reference to the Bank includes its permitted successors, transferees and assignees;
- 1.2.7 **"tax"** means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without

limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and "taxes" and "taxation" shall be construed accordingly; and

- 1.2.8 this Security is subject to the Intercreditor Agreement, and in the event of any inconsistency between this Security and the Intercreditor Agreement, the Intercreditor Agreement shall prevail.

1.3 Headings

The table of contents and the headings in this Security are included for convenience only and shall be ignored in construing this Security.

2. FLOATING CHARGE

2.1 Payment

The Company undertakes to the Bank that it will on demand of the Bank pay and discharge any or all of the Secured Obligations when due and payable (whether by acceleration or otherwise).

2.2 Floating Charge

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

2.3 Negative pledge and ranking

Save as otherwise provided in the Intercreditor Agreement or unless otherwise agreed in writing by the Bank and subject to Section 464(2) of the Companies Act 1985:

- 2.3.1 the Company shall not create or permit to subsist any fixed security or other floating charge or encumbrance over any part of the Secured Assets until the Secured Obligations have been fully and unconditionally paid or discharged; and

- 2.3.2 this Security shall rank in priority to any fixed security or other floating charge created by the Company after its execution of this Security.

3. PROTECTION OF SECURITY

3.1 Continuing security

This Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force and may not be revoked until the Secured Obligations have been fully and unconditionally paid and discharged.

3.2 No prejudice

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

3.3 No waiver

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

3.4 Severability

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

3.5 Non impairment

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

- 3.5.1 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any security or any right or remedy which the Bank may have now or in the future from or against the Company or any other person in respect of any of the Secured Obligations;
- 3.5.2 any failure, act or omission by the Bank or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Company or any other person in respect of the Secured Obligations;
- 3.5.3 any increase in or waiver or discharge of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of any document or agreement relating thereto;
- 3.5.4 any grant of time, indulgence, waiver or concession to the Company or any other person;
- 3.5.5 any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Company or any other person;
- 3.5.6 any invalidity, illegality, unenforceability, irregularity or frustration of the Secured Obligations; or
- 3.5.7 anything done or omitted to be done by the Bank or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Company under this Security.

3.6 Further assurance

The Company shall, at its own cost, promptly after being requested to do so by the Bank do all such acts and things and execute and deliver all such documents as the Bank may reasonably require for perfecting or protecting this Security or its priority or for creating such fixed security or charge over any of the Secured Assets as the Bank may request or for facilitating the realisation or application of the Secured Assets and the exercise of the rights, powers and discretions conferred on the Bank or any Receiver under this Security.

3.7 New accounts

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

4. POWER OF ATTORNEY

4.1 Appointment

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

4.1.1 to do anything which the Company is obliged to do (but has not done) under this Security including, without limitation, to create any fixed security or charge over any of the Secured Assets; and

4.1.2 generally to exercise all or any of the rights, powers and discretions conferred on the Bank or Receiver in relation to the Secured Assets under this Security.

4.2 Ratification

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

4.3 Exercise of power

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

5. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

5.1 Representations and warranties

The Company represents and warrants to the Bank that:-

5.1.1 it is duly incorporated and validly existing under the law of Scotland;

5.1.2 it has the power to grant this Security and perform its obligations hereunder;

5.1.3 it has taken all necessary corporate action to authorise the execution and delivery of this Security and the performance of its obligations hereunder;

5.1.4 the grant of this Security and the performance of its obligations hereunder will not contravene any law, regulation or agreement to which the Company is a party or by which it is bound, or cause any limitation on any of the powers of the Company however imposed, or the right or ability of its directors to exercise any of such powers, to be exceeded;

5.1.5 all authorisations required for the creation, performance, validity and enforceability of this Security by the Company have been obtained and are in full force and effect;

5.1.6 it has not, save as otherwise provided in the Intercreditor Agreement, and 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 Secured Assets or any interest therein, or agreed, conditionally or unconditionally, to do so; and

- 5.1.7 it has not, save 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, entered into any agreement or granted any option to sell or otherwise dispose of the Secured Assets or any interest therein, or agreed, conditionally or unconditionally, to do so.

5.2 Undertakings

- 5.2.1 The Company undertakes that save as otherwise provided in the Intercreditor Agreement or otherwise agreed in writing by the Bank it shall not:-

- (a) 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;
- (b) dispose of any other of the Secured 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;
- (c) pull down or remove the whole or any part of any buildings or erections forming part of the Secured 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;
- (d) sell, factor, discount, assign or otherwise charge or dispose of its book debts or other accounts or payments receivable;
- (e) become a guarantor or surety for any person;
- (f) issue or create any debentures, debenture or loan stock or loan capital;
- (g) agree to postpone or subordinate the Company's right to receive or claim payment of any debt or monetary claim due to it; or
- (h) do or omit to do anything whereby any insurance in respect of the Company or the Secured Assets may be rendered void or voidable.

- 5.2.2 The Company undertakes that unless otherwise agreed in writing by the Bank it shall:-

- (a) conduct its business and affairs in a proper and efficient manner and provide the Bank on request with such trading, financial and other information as the Bank may reasonably require from time to time;
- (b) comply promptly with its obligations under any document or agreement relating to the Secured Obligations;
- (c) on request deposit with the Bank all title deeds, certificates and other documents of title or evidence of ownership in relation to the Secured Assets;
- (d) promptly notify the Bank of its acquisition of any heritable, freehold or leasehold property, and if so requested, deposit with the Bank all title deeds, leases and other documents of title or evidence of ownership or occupation in relation to that property;

- (e) comply with all obligations, conditions and covenants relating to the heritable, freehold or leasehold property owned or occupied by the Company and promptly pay all rents, rates, taxes and other outgoings in respect thereof and give the Bank and its representatives access to such property at all reasonable times, on reasonable notice;
- (f) comply with all laws, statutes, directives and regulations (including 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 (in particular, under Environmental Law) for the efficient conduct of its business;
- (g) if so requested by the Bank appoint an accountant or firm of accountants nominated by the Bank to investigate its financial and trading affairs and report to the Bank;
- (h) keep the Secured Assets in good order (and where appropriate good working order) and repair and, where necessary, renew and replace them;
- (i) effect and maintain such insurances (in respect of the Company, its business and the Secured Assets) of such types, against such risks, with such insurers, for such amounts and on such terms and conditions as the Bank 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 Bank within 3 Business Days of being requested to do so); and otherwise comply with the terms and conditions applicable to such insurances: if the Company fails to effect any such insurance or pay any such premium or other sum, the Bank shall be entitled to do so in accordance with Clause 9.1 (*Non compliance by Company*): the Company shall procure that the name and interest of the Bank under this Security is endorsed or noted on all such insurances and so far as reasonably practicable that they each contain a non vitiation provision whereby they will not be held void, voidable or otherwise unenforceable against the Bank by reason of any non disclosure, misrepresentation or other act, neglect or default of or attributable to the Company;
- (j) 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;
- (k) notify the Bank immediately in the event of any creditor executing diligence, (whether effectual or not), levying distress or execution, or serving any garnishee order against the Company or any of the Secured Assets;
- (l) 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 Rights (if any) owed or used by the Company and take such steps as may be necessary (including without limitation, instituting legal proceedings) to prevent third parties infringing such Intellectual Property Rights in any material respect; and
- (m) promptly notify the Bank of any breach of any Environmental Law applicable to it, or any of the representations, warranties and undertakings on its part specified in this Clause 5 where such breach has or is likely to have a material adverse effect on the value of the Secured

Assets, the financial condition, assets or revenues of the Company, the ability of the Company to fulfil the Secured Obligations, or the effectiveness of this Security.

6. ENFORCEMENT

6.1 Enforceable

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

- 6.1.1 an Event of Default has occurred and is continuing;
- 6.1.2 the Company requesting the appointment of a Receiver or administrator;
- 6.1.3 an administration application being made in respect of the Company; or
- 6.1.4 any person giving notice of intention to appoint an administrator.

6.2 Appointment of Receiver or administrator

6.2.1 At any time after this Security has become enforceable in accordance with Clause 6.1, the Bank shall be entitled:-

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

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

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

6.3 Powers of Receiver

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

- 6.3.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Company), to transfer any part of the Secured 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 Company, or the Receiver, or its or his/her nominee or trustee;
- 6.3.2 subject to the articles of association, to convene extraordinary general meetings of the Company;

- 6.3.3 generally, without prejudice to the other provisions of this Clause, to exercise all the rights, powers and discretions in respect of the Secured 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 Secured Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Obligations; and
- 6.3.4 in respect of any of the Secured Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

6.4 Agent of Company

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

6.5 Application of proceeds

All monies realised by a Receiver or otherwise arising from the enforcement of this security shall, subject always to Clause 6.6 (*Monies on suspense account*) and Clause 7 (*Discharge*), the claims of creditors ranking in priority to or *pari passu* with the claims of the Bank under this Security, and the terms of Section 60 of the Act, be applied by the Receiver in or towards settlement of the Secured Obligations in such order as the Receiver shall in his/her absolute discretion decide unless otherwise provided in the Intercreditor Agreement, and any surplus shall be paid to the Company or any other person entitled thereto.

6.6 Monies on suspense account

Nothing in this Security shall limit the right of a Receiver and/or the Bank (and the Company acknowledges that a Receiver and the Bank are so entitled) if and for so long as the Receiver and/or the Bank in his/her/its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of this Security into a suspense account or accounts (which may be an account or accounts with the Bank), without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Obligations.

6.7 Balance

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

6.8 Third parties

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

7. DISCHARGE

7.1 Discharge

When the Secured Obligations have been fully and unconditionally paid or discharged the Bank shall at the Company's request, and at its expense, discharge this Security. Any payment or realisation in respect of the Secured Obligations which in the reasonable opinion of the Bank is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably settled or discharged until the expiry of the period during which it may be challenged on any such ground.

7.2 Retention of Security

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

7.3 Avoidance of payments

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

8. LIABILITY OF RECEIVER AND BANK

A Receiver and the Bank shall not in any circumstances be liable to the Company or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Security or any realisation, appropriation or application of the Secured Assets or from any act, default or omission of the Receiver or the Bank, or his/her or its officers, employees or agents in relation to the Secured Assets or otherwise in connection with this Security, except to the extent caused by the wilful neglect or default of the Receiver or the Bank or his/her or its officers, employees or agents.

9. MISCELLANEOUS

9.1 Non compliance by Company

If the Company fails to make any payment or fulfil any obligation due by it under or pursuant to this Security, a Receiver or the Bank, as the case may be, shall be entitled to do so on its behalf and in its name (or in his/her/its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as he/she/it, acting reasonably, considers expedient, and the amount of any such payment and/or the costs incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Company on demand, together with interest at 2% per annum over the rate otherwise payable in respect of the Secured Obligations (or, if there was no such applicable rate, at 2% above the Bank's base rate) from the date of demand until settlement and shall constitute Secured Obligations.

9.2 Currency conversion

9.2.1 Irrespective of the currency (whether Sterling or otherwise) in which all or part of the Secured Obligations or the Secured Assets from time to time is/are expressed, the Bank shall be entitled at any time and without prior notification to the Company to convert the amount(s) in question into such other currency (whether Sterling or otherwise) as the Bank may from time to time consider appropriate: any such

conversion shall be effected at the spot market rate of the Bank prevailing at the time of such conversion.

9.2.2 If by reason of any applicable law or regulation, or pursuant to any judgement, decree or order against the Company, or in respect of the liquidation or other insolvency of the Company, or for any other reason, any payment under or in connection with this Security is due or made in a currency (the "**payment currency**") other than the currency in which it is expressed to be due under or in connection with this Security (the "**contractual currency**") then to the extent that the amount of such payment actually received by the Bank when converted into the contractual currency at the applicable rate of exchange falls short of the amount due under or in connection with this Security, the Company shall as a separate and independent obligation indemnify and hold the Bank harmless against the amount of such shortfall.

9.2.3 For these purposes "**applicable rate of exchange**" means the rate at which the Bank is able on or about the date of such payment to purchase, in accordance with its usual practice, the contractual currency with the payment currency, and shall take into account (and the Company should be liable for) any premium and other costs of exchange, including taxes and duties incurred by reason of such exchange.

9.3 **Assignment**

9.3.1 The Bank may at any time (without notice or consent) assign the benefit of this Security or any of its rights or obligations hereunder.

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

9.4 **Certificate**

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

9.5 **Entire agreement**

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

9.6 **Non-reliance**

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

9.7 **Amendments**

No amendment or variation of this Security shall be effective unless it is in writing and signed by or on behalf of each of the parties.

9.8 **Expenses**

The Company shall promptly on demand pay the Bank the amount of all costs and expenses (including legal fees) reasonably incurred by it and any Delegate in connection with the negotiation, preparation, execution and perfection of this Security and any other documents referred to in this Security.

9.9 Set-off

The Company authorises the Bank (but the Bank shall not be obliged to exercise such right), after the security created by or pursuant to this Security has become enforceable in accordance with Clause 6 (*Enforcement*), to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Bank to the Company and apply any credit balance to which the Company is entitled on any account with the Bank in accordance with Clause 6.5 (*Application of Proceeds*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

10. NOTICES

10.1 Communications in writing

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

10.2 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 Security is:-

10.2.1 in the case of the Company, its registered office from time to time;

10.2.2 in the case of the Bank, its registered office from time to time; and

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

10.3 Delivery

10.3.1 Any communication or document made or delivered by one person to another under or in connection with this Security 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 10.2 (*Addresses*), if addressed to that department or officer.

10.3.2 Any communication or document to be made or delivered to the Bank will be effective only when actually received by the Bank and then only if it is expressly marked for the attention of the department or officer identified with the Bank's signature below (or any substitute department or officer as the Bank shall specify for this purpose).

10.3.3 All notices from or to the Company shall be sent through the Bank.

11. **GOVERNING LAW**

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

IN WITNESS WHEREOF these presents consisting of this and the 13 preceding pages are executed as follows:

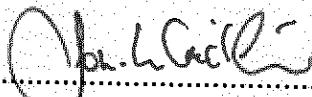
SUBSCRIBED for and on behalf of
A A HUTTON LLP

at **50 Leithian Road, Edinburgh**

on the **12th** day

of **June** 2015

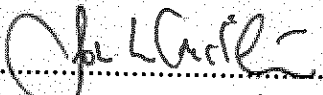
by



Member

JOHN CRICKTON AS A DIRECTOR OF

MARSTON (HOLDINGS) LIMITED Full Name



Member

JOHN CRICKTON AS A DIRECTOR OF

MARSTON GROUP LIMITED Full Name