



**Registration of a Charge**

Company name: **BAR SOBA GROUP LTD**

Company number: **SC536487**

Received for Electronic Filing: **30/07/2018**



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**Details of Charge**

Date of creation: **26/07/2018**

Charge code: **SC53 6487 0001**

Persons entitled: **BGF NOMINEES LIMITED (AS SECURITY TRUSTEE)**

Brief description:

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by:

**JONATHAN HEANEY**



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

Company number: 536487

Charge code: SC53 6487 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 26th July 2018 and created by BAR SOBA GROUP LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th July 2018 .

Given at Companies House, Edinburgh on 30th July 2018

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



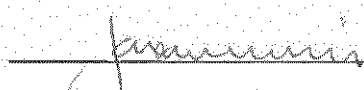
**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

EXECUTION VERSION

 Burness Paul

  
For and on behalf of Burness Paul LLP at Edinburgh 27 July 2018 I certify that, save for the material redacted pursuant to section 859G of the Companies Act 2006, this copy instrument is a correct and true copy of the original instrument.

**BAR SOBA GROUP LTD**

as Chargor

in favour of

**BGF NOMINEES LIMITED**

as Security Trustee for the Beneficiaries

**BOND AND FLOATING CHARGE**

## TABLE OF CONTENTS

Clause		Page No.
1	DEFINITIONS AND INTERPRETATION	1
2	BOND	7
3	FLOATING CHARGE	7
4	DEFAULT INTEREST	7
5	NEGATIVE PLEDGE AND RANKING OF FLOATING CHARGE	7
6	UNDERTAKINGS	8
7	REPRESENTATIONS AND WARRANTIES	10
8	CURRENCY AND SET-OFF	11
9	ENFORCEMENT	12
10	OFFICE OF RECEIVER	14
11	APPLICATION OF ENFORCEMENT PROCEEDS	14
12	PROTECTION OF SECURITY	15
13	FURTHER ASSURANCE	17
14	MANDATE AND ATTORNEY	17
15	APPROPRIATION AND SUSPENSE ACCOUNT	18
16	PAYMENTS	18
17	COSTS, EXPENSES AND INDEMNITIES	18
18	ASSIGNMENT AND TRANSFER	20
19	NOTICES	20
20	COUNTERPARTS AND DELIVERY	20
21	GOVERNING LAW AND JURISDICTION	20
22	CONSENT TO REGISTRATION	21

## **BOND AND FLOATING CHARGE**

by

- (1) **BAR SOBA GROUP LTD**, a company incorporated under the Companies Acts with registered number SC536487 and having its registered office at 3/1 135 Buchanan Street, Glasgow, United Kingdom, G1 2JA (the “**Chargor**”)

in favour of

- (2) **BGF NOMINEES LIMITED**, a company incorporated and registered in England and Wales (registered number 10007355) whose registered address is at 13-15 York Buildings, London, England, WC2N 6JU as security trustee for the Beneficiaries (the “**Security Trustee**”)

## **CONSIDERING THAT:**

- (A) the Loan Notes (as defined below) are conditional upon the Chargor granting this bond and floating charge to the Security Trustee; and
- (B) the Chargor has agreed to do so.

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

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 In this Deed:**

“**Administrator**” means any administrator appointed pursuant to this Deed;

“**Beneficiaries**” means the Security Trustee, the Noteholders and any Receiver or Delegate;

“**Business Day**” means a day (other than a Saturday, a Sunday or a public holiday) on which clearing banks are open for all normal banking business in the City of London and Edinburgh;

“**Certificate**” means each certificate in respect of the Loan Notes;

“**Default Interest**” means any interest accruing in accordance with Clause 4 (Default Interest);

“**Default Rate**” means the default rate of interest payable pursuant to the Instrument;

“**Delegate**” means any delegate, agent, attorney or co-trustee appointed by the Security Trustee;

“**Environmental Claim**” means

- (a) any claim, order, notice or other communication received by the Chargor alleging failure to comply with any Environmental Law or alleging liability under it; or
- (b) any indication that any charge is or may be imposed under any Environmental Law on the Secured Assets; or
- (c) any indication given to the Chargor that the Secured Assets are or may be listed in any register of contaminated land or similar register;

**“Environmental Law”** means all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the United Kingdom or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health, including the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or its rectification or any related matters;

**“Environmental Permit”** means any permit, licence, authorisation, consent or other approval required by any Environmental Law;

**“Event of Default”** has the meaning set out in Key Condition 3.2 (Redemption on an Event of Default) of the Instrument;

**“Group Companies”** has the meaning given to that term in the Trust Deed;

**“Guarantee”** has the meaning given to that term in the Trust Deed;

**“Guarantor”** means each of the Group Companies together with each other person who provides a guarantee in favour of the Security Trustee from time to time;

**“Floating Charge”** has the meaning given to that term in the Trust Deed;

**“Insurances”** means the Chargor’s interest in all contracts and policies of insurance which are from time to time taken out or effected by or on behalf of the Chargor in connection with the Secured Assets;

**“Instrument”** means the secured loan note instrument of the Parent dated on or about the date of this Deed constituting as at the date of this Deed £600,000 secured loan notes of the Parent;

**“Legal Reservations”** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(b) the time barring of claims under the Limitation Act 1980 and the Foreign Limitation Periods Act 1984, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim; and

(c) similar principles, rights and defences under the laws of any Relevant Jurisdiction;

**“Loan Notes”** means the fixed rate 9% secured loan notes constituted by the Instrument or as the case may require, any part of them for the time being issued and outstanding;

**“Noteholders”** means the person(s) from time to time entered in the Register as the holders of the Loan Notes;

**“Obligor”** means the Chargor and each Guarantor;

**“Parent”** means Bar Soba Group Ltd, a company incorporated under the Companies Acts with registered number SC536487 and having its registered office at 3/1, 135 Buchanan Street, Glasgow, United Kingdom, G1 2JA

**“Party”** means a party to this Deed;

**“Permitted Disposal”** means a disposal that is not prohibited by the terms of any Transaction Document of any Secured Asset charged by way of uncrystallised floating charge only for market value in the ordinary course of business;

**“Permitted Security”** means

(a) liens and rights of set-off securing obligations which are not overdue beyond their standard payment dates, arising by operation of law in the ordinary and usual course of trading over property other than land;

(b) any Security arising out of title retention provisions in a supplier’s standard conditions of supply of goods acquired in the ordinary and usual course of trading;

(c) any Security granted in terms of the Transaction Documents or with the prior written approval of the Security Trustee; and

(d) any Security granted in favour of the Security Trustee;

**“Rate of Exchange”** means a market rate of exchange for the purchase of the relevant currency by the Security Trustee;

**“Receiver”** means any receiver or administrative receiver appointed in respect of the Secured Assets (whether pursuant to this Deed, pursuant to any statute, by a court or otherwise) and includes joint receivers;



**“Register”** means the register of Loan Notes maintained under Condition 3 of the Instrument;

**“Relevant Jurisdiction”** means in relation to the Chargor:

- (a) its jurisdiction of incorporation or organisation;
- (b) any jurisdiction where any Secured Asset is situated; and
- (c) any jurisdiction where it conducts its business;

**“Secured Assets”** means the whole of the property (including uncalled capital) which is or may be from time to time while this Deed is in force comprised in the property and undertaking of the Chargor;

**“Secured Liabilities”** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or in any other capacity whatsoever) of the Obligors to the Beneficiaries under the Transaction Documents, including any obligations and liabilities of any Obligor to third parties assigned, novated or otherwise vested in any Beneficiary together with (i) all interest (including Default Interest), fees, costs, charges and expenses which any Beneficiary may charge or incur under the Transaction Documents; (ii) all obligations and liabilities arising under or in connection with any refinancing, novation, refunding, deferral or extension of any obligations or liabilities under the Transaction Documents; and (iii) any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings;

**“Security”** means a mortgage, standard security, charge, pledge, trust, assignment or assignation by way of 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 Document”** has the meaning given to that expression in the Trust Deed;

**“Transaction Documents”** has the meaning given to that term in the Trust Deed; and

**“Trust Deed”** means the security trust deed dated on or about the date of this Deed between inter alia the Security Trustee, the Parent and the Noteholders.

## 1.2 Construction

1.2.1 words in the singular include the plural and vice versa and words in one gender include any other gender;

1.2.2 a reference to a statute or statutory provision includes:

- (a) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it; and
- (b) any statute, statutory provision or subordinate legislation which modifies, consolidates, re-enacts or supersedes it,

whether such subordinate legislation, statute or statutory provision comes into force before or after the date of this Deed, except to the extent that such subordinate legislation, statute or statutory provision comes into force after the date of this Deed and would impose any new or extended obligation, liability or restriction on or otherwise adversely affect the rights of any party;

1.2.3 any Scottish statutory provision or Scottish legal term for any action, remedy, method of judicial proceeding, document, legal status, court, official or any other legal concept or thing shall, in respect of any person incorporated or resident in any jurisdiction other than Scotland, be deemed to refer to and include any equivalent or analogous action, remedy, method of judicial proceeding, document, legal status, court, official or other legal concept or thing or what most nearly approximates in that jurisdiction to the relevant Scottish statutory provision or Scottish legal term;

1.2.4 a reference to:

- (a) a person includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality); and
- (b) clauses and schedules are to clauses and schedules of this Deed and references to sub clauses and paragraphs are references to sub clauses and paragraphs of the clause or schedule in which they appear;
- (c) sterling and the sign £ means pounds sterling in the currency of the United Kingdom;
- (d) the table of contents and headings are for convenience only and shall not affect the interpretation of this Deed; and
- (e) general words shall not be given a restrictive meaning:
  - (i) if they are introduced by the word other, including and in particular or similar words by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
  - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;

- (f) a Party, the Chargor, an Obligor, the Security Trustee, the Parent, any Noteholder or any Beneficiary shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Trustee, any person for the time being appointed as Security Trustee or Security Trustees in accordance with the Transaction Documents;
- (g) 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;
- (h) a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (i) writing shall, subject to Clause 19 (Notices), include any mode of reproducing words in a legible and non transitory form;
- (j) this Deed or any provision of this Deed or any other agreement, document or instrument is to this Deed, that provision or that agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, substituted, novated, assigned, supplemented, extended or restated whether or not as a result of any of the same:
  - (i) there is an increase or decrease in any facility made available under the Instrument or other agreement or document or an increase or decrease in the period for which any facility is available or in which it is repayable;
  - (ii) any additional, further or substituted facility to or for such facility is provided;
  - (iii) any rate of interest, commission, or fees or relevant purpose is changed;
  - (iv) the identity of the parties is changed;
  - (v) the identity of the providers of any security is changed;
  - (vi) there is an increased or additional liability on the part of any person; or
  - (vii) a new agreement is effectively created or deemed to be created; and
- (k) a time of day is a reference to London time.

- 1.2.5 The schedules form part of this Deed and have the same effect as if expressly set out in the body of this Deed and shall be interpreted and construed as though they were set out in this Deed.
- 1.2.6 A reference to any asset, unless the context otherwise requires, includes any present and future asset.
- 1.2.7 If the Security Trustee considers that an amount paid to it or a Receiver or any Beneficiary is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
- 1.2.8 Unless the context otherwise requires, a reference to a Secured Asset includes the proceeds of sale of that Secured Asset.
- 1.2.9 An Event of Default is “**continuing**” if it has not been waived.

## **2 BOND**

- 2.1 The Chargor undertakes to the Security Trustee for itself and as trustee for the Beneficiaries that it will pay or discharge on demand all the Secured Liabilities when the same fall due for payment, performance or discharge in accordance with the terms of the Transaction Documents.
- 2.2 Paragraph 14 of Schedule B1 to the Insolvency Act (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to this Deed which is accordingly a qualifying floating charge.

## **3 FLOATING CHARGE**

The Chargor as security for the payment and discharge of all the Secured Liabilities hereby grants in favour of the Security Trustee a floating charge over the Secured Assets.

## **4 DEFAULT INTEREST**

Any amount which is not paid under this Deed when due shall bear interest at the Default Rate.

## **5 NEGATIVE PLEDGE AND RANKING OF FLOATING CHARGE**

- 5.1 The Chargor agrees that it shall be prohibited from granting or creating subsequent to the date of execution of this Deed any fixed security or any other floating charge over the Secured Assets or any part or parts of them (other than a Permitted Security), other than in favour of the Security Trustee or in favour of another person and with the prior written consent of the Security Trustee.

5.2 Any fixed security granted by the Chargor in favour of the Security Trustee (whether before or after the date of execution of this Deed) shall rank in priority to this Security.

5.3 In the event that the Chargor grants or creates any fixed security or floating charge in breach of the prohibition in Clause 5.1 or with the consent of the Security Trustee under Clause 5.1 but with no written agreement of the Security Trustee as to the ranking of them, this Deed shall rank in priority to that fixed security or floating charge.

## 6 UNDERTAKINGS

6.1 The Chargor hereby undertakes to the Security Trustee that it shall carry on and conduct its business and affairs in a proper and efficient manner and, unless otherwise specifically permitted in any Transaction Document, it shall:

6.1.1 keep all of the Secured Assets in good and sufficient repair and all plant and machinery or other moveable property in good working order and condition, in each case fair wear and tear excepted, and, where necessary for the efficient conduct of its business, renew and replace the same as and when the same shall become obsolete, worn out or destroyed (if commercially prudent to do so);

6.1.2 not, without the prior written consent of the Security Trustee, become cautioner, guarantor or surety for any person, firm or company;

6.1.3 not, without the prior written consent of the Security Trustee, undertake any obligation to any third party whereby the Chargor's rights to recover or take payment of any monies due or which may become due to the Chargor from any debtor of the Chargor are postponed or subordinated to the claims of such third party;

6.1.4 pay all rents, rates, taxes, levies, assessments, impositions and outgoings whatsoever, whether governmental, municipal or otherwise, which may be imposed upon or payable in respect of the Secured Assets as and when the same shall become payable, taking into account agreed periods of grace (if any) and also punctually pay and discharge all debts and obligations which by law may have priority over this Security;

6.1.5 insure and keep insured such of the Secured Assets as comprise heritable and real, moveable and personal property and effects of every description with underwriters, insurance companies or other insurers to be approved by the Security Trustee against loss or damage by fire and such other contingencies and risks as may be required by the Security Trustee in their full reinstatement value or for such insured value as the Security Trustee may specify or agree from time to time in writing for the time being in the name of the Chargor with, if so requested by the Security Trustee, the interest of the Security Trustee endorsed on the policy or policies (other than public liability and third party liability insurances) or noted as the Security Trustee may require;

- 6.1.6 duly pay all premiums and sums payable for the purposes of any Insurances and produce the receipts therefor or other evidence of payment to the Security Trustee within fourteen days of being requested by the Security Trustee so to do, and not do anything or omit to do anything in or upon or relating to the Secured Assets or any part thereof which may render any Insurances void or voidable;
  - 6.1.7 not, without the prior written consent of the Security Trustee, sell, transfer, lease, hire out, lend, discount, factor, charge or otherwise dispose of, deal in or remove all or any of the Secured Assets, save for a Permitted Disposal;
  - 6.1.8 notify the Security Trustee of any freehold or leasehold property the title to which is registered at H.M. Land Registry (England and Wales) and of any application which may be made to record or register at H.M. Land Registry or any other land registry (other than the Register of Sasines and the Land Register of Scotland) the title to any freehold or leasehold or other property owned by it and to produce to the Security Trustee the relevant official copy of the title;
  - 6.1.9 notify the Security Trustee of any trade marks registered or applied to be registered in the register maintained under Section 63 of the Trade Marks Act 1994 at any time prior to or after the date of this Deed in the United Kingdom and if requested by the Security Trustee, deliver to the Security Trustee along with such notification Form TM 24 (or such other form as may be prescribed by the Registrar of Trade Marks for the registration of the prescribed particulars of the grant of a security interest (whether fixed or floating) under Section 25 of the Trade Marks Act 1994), duly completed and ready to be signed and despatched by the Security Trustee to the Comptroller General of Patents Designs and Trade Marks.
  - 6.1.10 maintain its centre of main interests (COMI) for the purposes of the Council Regulation (EC) No 1346/2000 on Insolvency Proceedings, in the United Kingdom.
- 6.2 Except as the Security Trustee may from time to time otherwise agree in writing:
- 6.2.1 the Chargor shall promptly get in and realise in the ordinary course of its trade or business all its book debts (but this shall not permit the selling, assigning, factoring or discounting of all or any of such book debts) apart from balances standing to the credit of any account with any bank or financial institution and, until payment into an account as provided below, shall procure that it holds the proceeds of such getting in and realisation (including all monies receivable in respect thereof) in trust for the Security Trustee in such manner as the Security Trustee may require;
  - 6.2.2 the Chargor shall immediately pay into such account or accounts with such bank or banks as the Security Trustee may from time to time direct in writing all monies whatever payable or paid to it from time to time including, without limitation, all monies which it may receive in respect of the book and other debts and claims secured by it under this Deed; and

- 6.2.3 if at any time called upon to do so by the Security Trustee, the Chargor shall within 14 days of written notice from the Security Trustee execute and deliver to the Security Trustee an assignment of all or any of its book debts to the Security Trustee at the cost of the Chargor and in such form as the Security Trustee may reasonably require.
- 6.3 The Chargor will observe and perform in all respects restrictive and other covenants and stipulations and burdens for the time being affecting its heritable, freehold or leasehold property or the mode of use or the enjoyment of the same or affecting its moveable or personal property or its ancillary or connected rights and will not, without the prior consent in writing of the Security Trustee, enter into any onerous or restrictive obligations with regard thereto and the Chargor will not do or suffer or omit to be done any act, matter or thing whereby any provisions of any Act of Parliament, order or regulation whatever from time to time in force affecting such property or rights shall be infringed.
- 6.4 The Chargor will notify the Security Trustee promptly in the event of any creditor exercising diligence against it or any of the Secured Assets wherever situated or taking any steps which might be expected to lead thereto.
- 6.5 The Chargor will notify the Security Trustee promptly of the acquisition by it of any heritable, freehold or leasehold property.
- 6.6 The Chargor will, if the Security Trustee so requires, deposit with the Security Trustee all certificates, deeds and other documents of title or evidence of ownership in relation to all or any of the Secured Assets.

## **7 REPRESENTATIONS AND WARRANTIES**

- 7.1 The Chargor represents and warrants to the Security Trustee that:
- 7.1.1 it is a limited liability company duly organised, validly existing and registered under the relevant laws of its jurisdiction of incorporation;
- 7.1.2 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;
- 7.1.3 it is empowered to enter into and perform its obligations contained in this Deed and has taken all necessary action to authorise the execution, delivery and performance of this Deed, to create the security to be constituted by this Deed and to observe and perform its obligations under this Deed;
- 7.1.4 subject to the Legal Reservations, the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations;

- 7.1.5 the entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of this Deed and security constituted by this Deed do not and will not conflict with:
- (a) any law or regulation applicable to it;
  - (b) its constitutional documents; or
  - (c) 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;
- 7.1.6 it is the legal and beneficial owner of the Secured Assets;
- 7.1.7 no Security exists over the Secured Assets other than Permitted Security;
- 7.1.8 it has complied with all Environmental Laws and Environmental Permits applicable to the Secured Assets and its business;
- 7.1.9 there has been no discharge, spillage, release or emission of any prescribed, dangerous, noxious or offensive substance or any controlled waste on, into or from any Secured Asset or any adjoining premises and no such substances or any controlled waste have been stored or disposed of on any Secured Asset or, so far as that Chargor is aware, in any adjoining premises except in accordance with the requirements of the applicable Environmental Laws; and
- 7.1.10 it is not in breach of and has not incurred or become subject to any civil or criminal liability under any Environmental Laws or the terms of any Environmental Permit and it has not done anything or omitted to do anything which could result in any liability being imposed on the Security Trustee under any Environmental Law.
- 7.2 Each of the representations and warranties in Clause 7.1 will be correct and complied with in all respects at all times during the continuance of the Security constituted by this Deed.

## **8 CURRENCY AND SET-OFF**

- 8.1 All monies received or held by the Security Trustee or any Receiver or Delegate under this Deed may be converted from their existing currency into such other currency as the Security Trustee considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the Rate of Exchange.
- 8.2 No payment to the Security Trustee (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, unless and until the Security Trustee 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 Security Trustee shall have a further separate cause of action against the Chargor and shall be entitled to enforce the security constituted by this Deed to recover the amount of the shortfall.

- 8.3 If a change in any currency of a country occurs, this Deed will, to the extent the Security Trustee (acting reasonably and after consultation with the Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice and otherwise to reflect the change in currency.
- 8.4 The Security Trustee may set-off any matured obligation due from the Chargor under this Deed against any matured obligation owed by the Security Trustee (in its capacity as agent and trustee of the Beneficiaries) to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Trustee may exercise all such rights and is authorised to effect any necessary conversions at the Rate of Exchange.
- 8.5 The liabilities referred to in this Clause 8 may be actual, contingent, primary, collateral, several or joint liabilities, and the accounts, sums and liabilities referred to in this Clause 8 may be denominated in any currency.
- 8.6 If the relevant obligation or liability is unliquidated or unascertained the Security Trustee 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 ENFORCEMENT

- 9.1 In addition to any statutory provisions concerning enforceability or attachment the Security created under this Deed shall become enforceable upon and the Security Trustee's powers of appointment and other rights and powers shall become exercisable at any time after:

- 9.1.1 the occurrence of an Event of Default that is continuing; or
- 9.1.2 the receipt of any request from the board of directors of the Chargor,

and the Security Trustee may then (or as soon thereafter as permitted by law) by instrument in writing appoint any person or persons (if more than one with power to act both jointly and separately) to be an administrator of the Chargor or (subject, if applicable, to Section 72A of the Insolvency Act 1986) a receiver of the Secured Assets. In addition, and without prejudice to the foregoing provisions of this Clause 9.1, in the event that any person appointed to be a Receiver shall be removed by a court or shall otherwise cease to act as such, then the Security Trustee shall be entitled so to appoint another person as Receiver in his place.

- 9.2 An Administrator shall have and be entitled to exercise, in addition to and without limiting all the powers of an administrator under the Insolvency Act 1986, all the powers of a receiver under Schedule 2 of the Insolvency Act 1986 and a Receiver shall have and be entitled to

exercise, in addition to and without limiting all the powers of a receiver under Schedule 2 of the Insolvency Act 1986, all the powers of an administrative receiver set out in Schedule 1 of the Insolvency Act 1986 together with (in either case) the power to exercise any powers or rights incidental to ownership of the Secured Assets, including (as regards shares and other securities) any voting rights or rights of enforcing the same together with power to:

- 9.2.1 implement and exercise all or any of the Chargor's powers and/or rights and/or obligations under any contract or other agreement forming a part of the Secured Assets;
- 9.2.2 make any arrangement or compromise which he shall think expedient of or in respect of any claim by or against the Chargor;
- 9.2.3 promote or procure the formation of any new company or corporation;
- 9.2.4 subscribe for or acquire for cash or otherwise any share capital of such new company or corporation in the name of the Chargor and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;
- 9.2.5 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Secured Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of the Chargor and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it, any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;
- 9.2.6 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of the Chargor any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;
- 9.2.7 convene an extraordinary general meeting of the Chargor;
- 9.2.8 acquire any property on behalf of the Chargor;
- 9.2.9 do all such other acts and things as he may consider necessary or desirable for protecting or realising the Secured Assets, or any part thereof, or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of or pursuant to this Deed and exercise in relation to the Secured Assets, or any part thereof, all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same and use the name of the Chargor for all and any of the purposes aforesaid;

subject always to the rights of the Security Trustee as holder of this Security.

- 9.3 To the extent that any of the Secured Assets constitutes “financial collateral” and this Deed and the obligations of the Chargor hereunder constitute a “security financial collateral arrangement” (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the “Regulations”) the Security Trustee shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Liabilities and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be (a) in the case of cash, the amount standing to the credit of each of the relevant accounts, together with any accrued but unposted interest, at the time the right of appropriation is exercised; and (b) in the case of any shares, stocks, debentures, bonds or other securities or investments, the market price of such shares, stocks, debentures, bonds or other securities or investments determined by the Security Trustee by reference to a public index or by such other process as the Security Trustee may select, including independent valuation. In each case, the parties agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## 10 OFFICE OF RECEIVER

- 10.1 Any Receiver appointed under Clause 9 (Enforcement) shall be the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act 1986) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and for his remuneration and his costs, charges and expenses and the Security Trustee shall not incur any liability for those (either to the Chargor or any other person) by reason of the Security Trustee making his appointment as such Receiver or for any other reason whatsoever.
- 10.2 Any Receiver appointed under Clause 9 (Enforcement) shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Subject to Section 58 of the Insolvency Act 1986, the remuneration of the Receiver may be fixed by the Security Trustee (and may be or include a commission calculated by reference to the gross amount of all money received or otherwise and may include remuneration in connection with claims, actions or proceedings made or brought against the Receiver by the Chargor or any other person or the performance or discharge of any obligation imposed upon him by statute or otherwise) but such remuneration shall be payable by the Chargor alone and the amount of such remuneration shall form part of the Secured Liabilities and accordingly be secured on the Secured Assets under the floating charge constituted by this Deed.

## 11 APPLICATION OF ENFORCEMENT PROCEEDS

- 11.1 All monies received by the Security Trustee or any Receiver under or by virtue of this Deed following enforcement of the security hereby granted or of any security interest constituted pursuant hereto shall be applied, subject to the claims of any creditors ranking in priority to or *pari passu* with the claims of the Security Trustee under this Deed, in the following order:

- 11.1.1 first, in or towards payment of all costs, charges and expenses of or incidental to the appointment of the Receiver and the exercise of all or any of his powers, including his remuneration and all outgoings paid by and liabilities incurred by him as a result of such exercise;
- 11.1.2 secondly, in or towards satisfaction of the Secured Liabilities in accordance with the terms of the Trust Deed; and
- 11.1.3 thirdly, any surplus shall be paid to the Chargor or any other person entitled thereto.

## 12 PROTECTION OF SECURITY

- 12.1 The security created by and any security interest constituted pursuant to this Deed shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever and in particular (but without prejudice to the generality of the foregoing) shall not be considered satisfied by an intermediate repayment or satisfaction of part only of the Secured Liabilities and shall continue in full force and effect until total and irrevocable satisfaction of all the Secured Liabilities.
- 12.2 The security created by and any security interest constituted pursuant to this Deed shall be in addition to and shall not in any way prejudice or be prejudiced by any collateral or other security, right or remedy which the Security Trustee may now or at any time hereafter hold for all or any part of the Secured Liabilities.
- 12.3 No failure on the part of the Security Trustee to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Deed or any other document relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Deed and any such other document are cumulative and not exclusive of any right or remedies provided by law.
- 12.4 Each of the provisions in this Deed shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired by that occurrence.
- 12.5 If the Security Trustee or any other Beneficiary receives or is deemed to be affected by notice, whether actual or constructive, of any subsequent security or other interest affecting any part of the Secured Assets and/or the proceeds of sale(s) thereof, the Security Trustee and each other Beneficiary may open a new account or accounts in the name of the Chargor. If the Security Trustee or such other Beneficiary does not open a new account or accounts, it shall nevertheless be treated as if it had done so at the time when it receives or was deemed to have received notice and as and from that time all payments made by the Chargor to the Security Trustee (whether in its capacity as trustee or otherwise) or to another Beneficiary shall be

credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this Deed is security.

12.6 Neither the security created by, nor any security interest constituted pursuant to, this Deed nor the rights, powers, discretions and remedies conferred upon the Security Trustee by this Deed or by law shall be discharged, impaired or otherwise affected by reason of:

12.6.1 any present or future security, guarantee, indemnity or other right or remedy held by or available to the Security Trustee being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Security Trustee from time to time exchanging, varying, realising, releasing or failing to perfect or enforce any of the same; or

12.6.2 the Security Trustee compounding with, discharging or releasing or varying the liability of, or granting any time, indulgence or concession to, the Chargor or any other person or renewing, determining, varying or increasing any accommodation or transaction in any manner whatsoever or concurring in accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Chargor or any other person; or

12.6.3 any act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor instead of cautioner or by anything done or omitted which but for this provision might operate to exonerate the Chargor from the Secured Liabilities; or

12.6.4 any legal limitation, disability, incapacity or other similar circumstance relating to the Chargor.

12.7 The Security Trustee shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Deed or by law, to:

12.7.1 take any action or obtain judgement or decree in any court against the Chargor; or

12.7.2 make or file any claim to rank in a winding-up or liquidation of the Chargor; or

12.7.3 enforce or seek to enforce any other security taken, or exercise any right or plea available to the Security Trustee, in respect of any of the Chargor's obligations under any other Transaction Document.

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

### **13 FURTHER ASSURANCE**

13.1 The Chargor shall promptly do all such acts or execute all such documents (including assignments, assignations, transfers, mortgages, standard securities, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)):

13.1.1 to perfect the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Security Trustee or any other Beneficiary provided by or pursuant to the Transaction Documents or by law;

13.1.2 to confer on the Security Trustee or any other Beneficiary Security over any property and assets of that Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or

13.1.3 to facilitate the realisation of the assets which are, or are intended to be, the subject of this Deed.

13.2 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 Security Trustee or the Beneficiaries by or pursuant to the Transaction Documents.

13.3 Any security document required to be executed by the Chargor pursuant to this Clause 13 will be prepared at the cost of the Chargor.

### **14 MANDATE AND ATTORNEY**

14.1 The Chargor hereby irrevocably appoints the Security Trustee and any Receiver to be its mandatary and attorney for it and on its behalf and in its name or otherwise and as such to create or constitute any deed, or to make any alteration or addition or deletion in or to, any documents which the Security Trustee or the Receiver may require for perfecting or protecting the title of the Security Trustee or the Receiver to the Secured Assets or after the Security constituted by this Deed has become enforceable, for vesting any of the Secured Assets in the Security Trustee or the Receiver or its nominees or any purchaser and to re-deliver the same thereafter and otherwise generally to sign, seal and deliver and perfect any fixed security, floating charge, transfer, disposition, assignation, security and/or assurance or any writing, assurance, document or act which may be required or may be deemed proper by the Security Trustee or the Receiver on or in connection with any sale, lease, disposition, realisation, getting in or other enforcement by the Security Trustee or the Receiver of all or any of the Secured Assets in accordance with the provisions of this Deed.

14.2 The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such mandatary or attorney shall do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 14.

## **15 APPROPRIATION AND SUSPENSE ACCOUNT**

- 15.1 Subject to Clause 11 (Application of Enforcement Proceeds) and Clause 15.2 and to the terms of the Instrument, the Security Trustee may apply all payments received for the Secured Liabilities to reduce any part of those liabilities as it thinks fit.
- 15.2 All monies received, recovered or realised by the Security Trustee under this Deed may at the discretion of the Security Trustee be credited to any suspense account for so long as the Security Trustee determines (with interest accruing thereon at such rate, if any, as the Security Trustee may determine for the account of the Chargor) without the Security Trustee having any obligation to apply such monies or any part of them in or towards the discharge of any of the Secured Liabilities.

## **16 PAYMENTS**

- 16.1 Subject to Clause 16.2 all payments to be made by the Chargor in respect of this Deed, shall be made in immediately available funds to the credit of such account as the Security Trustee 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.
- 16.2 If the Chargor is compelled by law to withhold or deduct any taxes from any sum payable under this Deed to the Security Trustee, the sum so payable by the Chargor shall be increased so as to result in the receipt by the Security Trustee of a net amount equal to the full amount expressed to be payable under this Deed.
- 16.3 Any demand, notification or certificate given by the Security Trustee specifying amounts due and payable under or in connection with any of the provisions of this Deed shall, in the absence of manifest error, be conclusive and binding on the Chargor.

## **17 COSTS, EXPENSES AND INDEMNITIES**

- 17.1 The Chargor shall reimburse the Security Trustee, any Receiver, any Delegate and any Administrator 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 Security Trustee, any Receiver, any Delegate or any Administrator in connection with:
- 17.1.1 the negotiation, preparation, execution and completion of this Deed, or any of the documents referred to herein; and
  - 17.1.2 any actual or proposed amendment, replacement, restatement or extension of, or any waiver or consent under, this Deed.
- 17.2 The Chargor shall reimburse the Security Trustee, any Receiver, any Delegate and any Administrator 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 Deed, or any of the documents referred to herein.

17.3 The Chargor will on demand indemnify the Security Trustee (and every Receiver, Administrator, Delegate and any of its and their officers and employees (each an **"Indemnified Party"**) in respect of all costs, losses (including consequential losses), actions, claims, expenses, demands or liabilities whether in contract, delict or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against any of them at any time relating to or arising directly or indirectly out of:

17.3.1 of the powers contained in this Deed;

17.3.2 a claim of any kind made or asserted against any Indemnified Party which would not have arisen if this Deed had not been executed and/or registered;

17.3.3 the creation, imposition, recording or registration of any Security over any Secured Asset securing the reimbursement to or recovery by any third party (including without limitation any regulatory authority or government agency) of any costs expenses or other sums incurred in consequence of a breach contravention or violation of any Environmental Law or the release discharge or emission of any harmful or hazardous material and the redemption, removal, vacation or discharge of any such Security;

17.3.4 the making of any Environmental Claim against any Indemnified Party or the Chargor in respect of any Secured Asset and/or any business operations or activities thereon;

17.3.5 any liability or potential liability upon any Indemnified Party to remedy clean-up or make good any breach contravention or violation of any Environmental Law by the Chargor or any harm actual or potential to the environment caused directly or indirectly by any release emission or discharge of any harmful or hazardous material from in or to the Secured Assets; or

17.3.6 any breach by the Chargor of any of its obligations under this Deed;

unless, in the case of Clauses 17.3.1 and 17.3.2 it was caused by the negligence or wilful misconduct of the Indemnified Party.

17.4 No Indemnified Party shall in any way be liable or responsible to any Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Secured Assets, except to the extent caused by its own negligence or wilful misconduct.

17.5 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 Deed or any judgment given in connection therewith.

## **18 ASSIGNMENT AND TRANSFER**

18.1 The Security Trustee may assign or transfer all or any part of its rights under this Deed in accordance with and subject to the provisions of the Trust Deed.

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

## **19 NOTICES**

The provisions of Clause 14 (Notices) of the Trust Deed shall be deemed to be incorporated into this Deed, mutatis mutandis, as if the same were set out in full herein.

## **20 COUNTERPARTS AND DELIVERY**

20.1 This deed may be executed in any number of counterparts and by each of the Parties on separate counterparts.

20.2 Where executed in counterparts:

20.2.1 this Deed will not take effect until each of the counterparts has been delivered;

20.2.2 where any counterpart is being held as undelivered, delivery will take place on the date of delivery agreed among the parties (the "agreed date"). The agreed date will be inserted in the testing clause of this Deed; and

20.2.3 section 2(3) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 is hereby excluded and shall not apply to the execution arrangements in respect of this Deed.

20.3 Where not executed in counterparts this Deed shall take effect after its execution upon the date agreed between the parties as evidenced by the date inserted in the testing clause.

## **21 GOVERNING LAW AND JURISDICTION**

21.1 This Deed and any dispute, claim or obligation (whether contractual or non-contractual arising out of or in connection with it, its subject matter or formation shall be governed by Scots law.

21.2 The courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Deed, its subject matter or formation (a Dispute).

21.3 The parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

21.4 Clauses 21.1 to 21.3 are for the benefit of the Security Trustee only. As a result, the Security Trustee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

## 22 CONSENT TO REGISTRATION

A certificate signed by any official, manager or equivalent account officer of the Security Trustee shall, in the absence of manifest error, conclusively determine the Secured Liabilities at any relevant time and shall constitute a balance and charge against the Chargor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignation. The Chargor hereby consents to the registration of this Deed and of any such certificate for preservation: IN WITNESS WHEREOF these presents consisting of this and the preceding 20 pages are executed in counterpart as follows and DELIVERED on 26 July 2018.

### THE CHARGOR

SUBSCRIBED for and on behalf of the said BAR GROUP SOBA LTD

at Edinburgh

on 25 July 2018

by

ANTHONY GERARD McGRATH

Print Full name

Director

before this witness:

CATHIONA LAMMARNE

Print Full Name

Witness

Address:

BURNES PAULL LLP  
50 COTHIAN ROAD  
FESTIVAL SQUARE  
EDINBURGH EH3 9WJ  
Tel No: 0131 473 6000

**THE SECURITY TRUSTEE**

SUBSCRIBED for and on behalf of the said BGF NOMINEES LIMITED

at Edinburgh

on 25 July 2018

by

GEMMA HAMILTON

Print Full name

before this witness:

CATHERINA LUNNWARNE

Print Full Name

Address:

BURNES PAUL LLP  
50 LOTHIAN ROAD  
FESTIVAL SQUARE  
EDINBURGH EH3 9WJ  
Tel No: 0131 473 6000

  
Director

Attorney

  
Witness