



**Registration of a Charge**

Company name: **M8 GROUP LIMITED**  
Company number: **SC242849**



X8ECHN2B

Received for Electronic Filing: **19/09/2019**

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**Details of Charge**

Date of creation: **06/09/2019**  
Charge code: **SC24 2849 0003**  
Persons entitled: **KEVIN HAGUE  
JANE DUNCAN  
JAMES MCFARLANE  
CHRISTIAN DOSCH**

**There are more than four persons entitled to the charge.**

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: **SHEPHERD AND WEDDERBURN LLP**



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

Company number: 242849

Charge code: SC24 2849 0003

The Registrar of Companies for Scotland hereby certifies that a charge dated 6th September 2019 and created by M8 GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th September 2019 .

Given at Companies House, Edinburgh on 20th September 2019

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



**Companies House**



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



SHEPHERD+ WEDDERBURN

FLOATING CHARGE

by

(1) M8 Group Limited

in favour of

(2) each individual listed in Part 2 of the Schedule

6 September 2019

## CONTENTS

<b>Clause</b>	<b>Page Number</b>
1. Definitions and interpretation	2
2. Undertaking to pay	5
3. Floating charge	5
4. Ranking	5
5. Liability of the Chargor	5
6. General undertakings	6
7. Powers of the Lenders	6
8. When security becomes enforceable	7
9. Enforcement of security	7
10. Receiver	8
11. Powers of Receiver	9
12. Delegation	10
13. Application of proceeds	10
14. Costs and indemnity	11
15. Further assurance	12
16. Power of attorney	12
17. Assignment and transfer	12
18. Set-off	12
19. Amendments, waivers and consents	13
20. Severance	13
21. Third party rights	13
22. Further provisions	13
23. Notices	14
24. Governing law and jurisdiction	14
25. Consent to Registration	15
Schedule	16
LENDERS	16

## FLOATING CHARGE

### PARTIES

- (1) **M8 GROUP LIMITED**, a company incorporated under the Companies Acts (Company Number SC242849) and having its registered office at 5 Kingsthorne Park, Houstoun Industrial Estate, Livingston, West Lothian, EH54 5DB (the "**Chargor**").
- (2) The individuals listed in the Schedule as lenders (the "**Lenders**").

### AGREED TERMS

#### 1. Definitions and interpretation

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##### 1.1 Definitions

The following definitions apply in this Charge:

**"Administrator"** means an administrator appointed to manage the affairs, business and property of the Chargor pursuant to clause 7.5.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

**"Delegate"** means any person appointed by the Lenders or any Receiver pursuant to clause 12 and any person appointed as attorney of the Lenders, Receiver or Delegate.

**"Environment"** means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**"Environmental Law"** means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

**"Event of Default"** means any of the following events:

- (a) the Chargor fails to pay any of the Secured Liabilities when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three Business Days of its due date;
- (b) the Chargor fails (other than a failure to pay referred to in paragraph (a) of this definition) to comply with any provision of this Charge or any document under which the Chargor owes obligations to any Lender and (if that Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of the Lender notifying the Chargor of the default and the remedy required and the Chargor becoming aware of the default;
- (c) any representation, warranty or statement made, repeated or deemed made by the Chargor to any Lender is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made, repeated or deemed made;
- (d) the Chargor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a substantial part of its business;
- (e) any Financial Indebtedness is not paid when due or within any originally applicable grace period;
- (f) any Financial Indebtedness becomes due, or capable of being declared due and payable prior to its stated maturity by reason of an event of default (however described);
- (g) any commitment for Financial Indebtedness is cancelled or suspended by a creditor of the Chargor by reason of an event of default (however described);
- (h) any creditor of the Chargor becomes entitled to declare any Financial Indebtedness due and payable prior to its stated maturity by reason of an event of default (however described);
- (i) the Chargor stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due;

- (j) the Chargor commences negotiations, or enters into any composition, compromise, assignment, assignation or arrangement, with one or more of its creditors with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties);
- (k) a moratorium is declared in respect of any indebtedness of the Chargor;
- (l) any action, proceedings, procedure or step is taken for the suspension of payments, a moratorium of any Financial Indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
- (m) any action, proceedings, procedure or step is taken for a composition, compromise, assignment, assignation or arrangement with any creditor of the Chargor;
- (n) any action, proceedings, procedure or step is taken for the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets;
- (o) the value of the Chargor's assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (p) any event occurs in relation to the Chargor similar to those set out in paragraphs (i) to (o) (inclusive) under the laws of any applicable jurisdiction;
- (r) a distress, diligence, attachment, execution, expropriation, sequestration or other analogous legal process in any jurisdiction is levied, enforced or sued out on, or against, the Chargor's assets and is not discharged or stayed within 21 days;
- (s) any Security on or over the assets of the Chargor becomes enforceable;
- (t) any provision of this Charge or any document under which the Chargor owes obligations to any Lender is or becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect;
- (u) the Chargor repudiates or shows an intention to repudiate this Charge or any document under which the Chargor owes obligations to any Lender; or
- (v) any event occurs (or circumstances exist) which, in the reasonable opinion of any Lender, has or is likely to materially and adversely affect the Chargor's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this Charge or any document under which the Chargor owes obligations to any Lender.

**"Financial Collateral"** has the meaning given to that expression in the Financial Collateral Regulations.

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

**"Financial Indebtedness"** means any indebtedness of the Chargor for or in respect of:

- (a) borrowing or raising money (with or without security), including any premium and any capitalised interest on that money;
- (b) any bond, note, loan stock, debenture, commercial paper or similar instrument;
- (c) any acceptances under any acceptance credit or bill discounting facility (or dematerialised equivalent) or any note purchase or documentary credit facilities;
- (d) monies raised by selling, assigning or discounting receivables or other financial assets on terms that recourse may be had to the Chargor if those receivables or financial assets are not paid when due;
- (e) any deferred payment for assets or services acquired, other than trade credit that is given in the ordinary course of trading and which does not involve any deferred payment of any amount for more than 60 days;
- (f) any rental or hire charges under any finance lease (whether for land, machinery, equipment or otherwise);
- (g) any counter-indemnity obligation in respect of any guarantee, bond, indemnity, standby letter of credit or other instrument issued by a third party in connection with the Chargor's performance of a contract;
- (h) any other transaction that has the commercial effect of borrowing (including any forward sale or purchase agreement and any liabilities which are not shown as borrowed money on the Chargor's balance sheet because they are contingent,

conditional or otherwise);

- (i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and when calculating the value of any derivative transaction, only the mark to market value shall be taken into account); and
- (j) any guarantee, counter-indemnity or other assurance against financial loss given by the Chargor for any indebtedness of the type referred to in any other paragraph of this definition incurred by any person.

**"Investments"** means all certificated shares, stock, debentures, bonds or other securities or investments (whether or not marketable) from time to time legally or beneficially owned by or on behalf of the Chargor

**"Receiver"** means a receiver, receiver and manager or administrative receiver appointed by the Lenders under clause 10.

**"Secured Assets"** means the whole of the property (including uncalled capital) which is or may be from time to time comprised in the property and undertaking of the Chargor.

**"Secured Liabilities"** means all present and future obligations and liabilities of the Chargor to each Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity.

**"Security Financial Collateral Arrangement"** has the meaning given to that expression in the Financial Collateral Regulations.

**"Security"** means any mortgage, standard security, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment or assignation by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

## 1.2 Interpretation

In this Charge:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this Charge;
- (b) a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assignees and permitted transferees and this Charge shall be binding on, and enure to the benefit of, the parties to this Charge and their respective personal representatives, executors, successors, permitted assignees and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (i) a reference to this Charge (or any provision of it) or to any other agreement or document referred to in this Charge is a reference to this Charge, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Charge) from time to time;
- (j) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Charge;
- (k) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;



- (l) a reference to an amendment includes a novation, re-enactment, supplement or variation (and amend and amended shall be construed accordingly);
- (m) a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (n) a reference to continuing in relation to an Event of Default means an Event of Default that has not been waived;
- (o) a reference to determines or determined means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (p) a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### **1.3 Clawback**

If any Lender considers that an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Charge.

## **2. Undertaking to pay**

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The Chargor shall, on demand, pay to the Lenders and discharge the Secured Liabilities when they become due.

## **3. Floating charge**

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### **3.1 Floating charge**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor grants a floating charge in favour of the Lenders over the Secured Assets.

### **3.2 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.1.

## **4. Ranking**

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### **4.1 Fixed securities in favour of the Lenders**

Any fixed security granted by the Chargor in favour of the Lenders over the Secured Assets shall rank in priority to the floating charge created by this Charge.

### **4.2 Securities in favour of third parties**

In the event that the Chargor grants or creates any fixed security or floating charge in breach of the prohibition in clause 6.1(a) or with the consent of the Lenders but with no written agreement of the Lenders as to the ranking of them, the floating charge created by this Charge shall rank in priority to that fixed security or floating charge.

## **5. Liability of the Chargor**

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### **5.1 Liability not discharged**

The Chargor's liability under this Charge in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lenders that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) any Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

## 5.2 Immediate recourse

The Chargor waives any right it may have to require the Lenders (or any of them) to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Charge against the Chargor.

## 6. General undertakings

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### 6.1 Negative pledge and disposal restrictions

The Chargor shall not at any time, except with the prior written consent of the Lenders:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any security created by this Charge;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business); or
- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

### 6.2 Preservation of Secured Assets

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lenders, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this Charge.

### 6.3 Compliance with laws and regulations

- (a) The Chargor shall not, without the Lenders' prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- (b) The Chargor shall:
  - (i) comply with the requirements of any law or regulation relating to or affecting the Secured Assets or the use of it or any part of them; and
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset.

### 6.4 Notice of breaches

The Chargor shall, promptly on becoming aware of any of the same, notify the Lenders in writing of any breach of any undertaking set out in this Charge.

### 6.5 Insurance

The Chargor shall insure and keep insured the Secured Assets against such risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor.

### 6.6 Payment of outgoings

The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Lenders.

## 7. Powers of the Lenders

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### 7.1 Power to remedy

- (a) Any Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this Charge.
- (b) The Chargor irrevocably authorises each Lender and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by any Lender in remedying a breach by the Chargor of its obligations contained in this Charge shall be reimbursed by the Chargor to that Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.

**7.2 Exercise of rights**

- (a) The rights of each Lender under clause 7.1 are without prejudice to any other rights of the Lenders under this Charge.
- (b) The exercise of any rights of the Lenders under this Charge shall not make the Lenders liable to account as a mortgagee or heritable creditor in possession.

**7.3 New accounts**

- (a) If any Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, that Lender may open a new account for the Chargor in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If any Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 7.3(a), then, unless that Lender gives express written notice to the contrary to the Chargor, all payments made by the Chargor to that Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

**7.4 Indulgence**

Each Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Charge (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Charge or to the liability of the Chargor for the Secured Liabilities.

**7.5 Appointment of an Administrator**

- (a) The Lenders may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Charge becomes enforceable.
- (b) Any appointment under this clause 7.5 shall:
  - (i) be in writing signed by a Lender; and
  - (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (c) The Lenders may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 7.5 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

**8. When security becomes enforceable**

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The security constituted by this Charge shall become immediately enforceable if an Event of Default occurs.

**9. Enforcement of security**

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**9.1 Protection of third parties**

No purchaser, mortgagee or other person dealing with any Lender, any Receiver or any Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power a Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Lenders, any Receiver or any Delegate is to be applied.

**9.2 No liability as mortgagee or heritable creditor in possession**

Neither any Lender nor any Receiver or Delegate shall be liable, by reason of entering into possession of a Secured Asset or for any other reason, to account as mortgagee or heritable creditor in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee or heritable creditor in possession might be liable.

**9.3 Conclusive discharge to purchasers**

The receipt of the Lenders, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lenders, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

**9.4 Right of appropriation**

(a) To the extent that:

- (i) the Secured Assets constitute Financial Collateral; and
- (ii) this Charge and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement,

the Lenders shall have the right, at any time after the security constituted by this Charge has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lenders may, in its absolute discretion, determine.

(b) The value of any Secured Assets appropriated in accordance with this clause shall be:

- (i) in the case of cash, the amount standing to the credit of each of the Chargor's accounts with any bank, financial institution or other person, together with any accrued but unpaid interest, at the time the right of appropriation is exercised; and
- (ii) in the case of Investments, the market price of those Investments at the time the right of appropriation is exercised determined by the Lenders by reference to a recognised market index or by any other method that the Lenders may select (including independent valuation).

(c) The Chargor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

**10. Receiver**

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**10.1 Appointment**

At any time after the security constituted by this Charge has become enforceable, or at the request of the Chargor, the Lenders may, without further notice, appoint by instrument in writing, or otherwise, any one or more persons to be a Receiver of the Secured Assets.

**10.2 Removal**

The Lenders may, so far as they are lawfully able to do so, without further notice, from time to time, remove any Receiver appointed by them and may, whenever they think fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

**10.3 Remuneration**

The Lenders may fix the remuneration of any Receiver appointed by them, and the remuneration of the Receiver shall be a debt secured by this Charge, to the extent not otherwise discharged.

**10.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this Charge shall be in addition to all statutory and other powers of the Lenders under the Insolvency Act 1986.

**10.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver shall be, and remain, exercisable by the Lenders despite any prior appointment in respect of all or any part of the Secured Assets.

## 10.6 Agent of the Chargor

Any Receiver appointed by the Lenders under this Charge shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver.

## 11. Powers of Receiver

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### 11.1 General

- (a) Any Receiver appointed by the Lenders under this Charge shall, in addition to the powers conferred on it by statute, have the rights, powers and discretions set out in clause 11.2 to clause 11.17.
- (b) A Receiver has all the rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.
- (c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this Charge individually and to the exclusion of any other Receiver.
- (d) Any exercise by a Receiver of any of the powers given by clause 11 may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in clause 11.10) or itself.

### 11.2 Remuneration

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Lenders may prescribe or agree with it.

### 11.3 Possession

A Receiver may take immediate possession of, get in and realise any Secured Asset.

### 11.4 Manage or reconstruct the Chargor's business

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor.

### 11.5 Dispose of Secured Assets

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

### 11.6 Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures or fittings from any property without the consent of the Chargor.

### 11.7 Valid receipts

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

### 11.8 Make settlements

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Chargor or relating in any way to any Secured Asset.

### 11.9 Legal action

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as it thinks fit.

### 11.10 Make calls on Chargor members

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Chargor on its directors in respect of calls authorised to be made by them.

**11.11 Insure**

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 14, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this Charge.

**11.12 Subsidiaries**

A Receiver may form a subsidiary of the Chargor and transfer to that subsidiary any Secured Asset

**11.13 Borrow**

A Receiver may, for whatever purpose it thinks fit, raise and borrow money either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Lenders consent, terms under which that security ranks in priority to this Charge).

**11.14 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**11.15 Delegation**

A Receiver may delegate its powers in accordance with this Charge.

**11.16 Owner**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it would be capable of exercising as, and do all those acts and things, an owner could exercise or do, in the ownership and management of the Secured Assets or any part of the Secured Assets.

**11.17 Incidental powers**

A Receiver may do any other acts and things that it:

- (a) may consider desirable or necessary for realising any of the Secured Assets;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Charge or law; or
- (c) lawfully may or can do as agent for the Chargor.

**12. Delegation**

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**12.1 Delegation**

Any Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Charge (including the power of attorney granted under clause 16.1).

**12.2 Terms**

Each Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

**12.3 Liability**

Neither any Lender nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

**13. Application of proceeds**

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**13.1 Order of application of proceeds**

All monies received or recovered by the Lenders, a Receiver or a Delegate under this Charge or in connection with the realisation or enforcement of all or part of the security constituted by this Charge shall (subject to the claims of any person having prior rights) be applied in the following order of priority (but without prejudice to the Lenders' right to recover any shortfall from the Chargor):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lenders (and any Receiver, Delegate, attorney or agent appointed by them) under or in connection with this Charge, and of all remuneration due to any Receiver under or in connection with this Charge;
- (b) in or towards payment of the Secured Liabilities in any order and manner that the Lenders determine; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

#### 13.2 **Appropriation**

Neither the Lenders, any Receiver nor any Delegate shall be bound to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

#### 13.3 **Suspense account**

All monies received by the Lenders, a Receiver or a Delegate under this Charge:

- (a) may, at the discretion of the Lenders, Receiver or Delegate, be credited to a suspense account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Lenders and the Chargor; and
- (c) may be held in that account for so long as the Lenders, Receiver or Delegate thinks fit.

### **14. Costs and indemnity**

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#### 14.1 **Costs**

The Chargor shall, promptly on demand, pay to, or reimburse, the Lenders and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by any Lender, any Receiver or any Delegate in connection with:

- (a) this Charge or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lenders', a Receiver's or a Delegate's rights under this Charge; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding-up or administration of the Chargor) at the rate which is 4% per annum above the base rate of the Bank of England (as it may vary from time to time).

#### 14.2 **Indemnity**

- (a) The Chargor shall indemnify the Lenders, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:
  - (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Charge or by law in respect of the Secured Assets;
  - (ii) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Charge; or
  - (iii) any default or delay by the Chargor in performing any of its obligations under this Charge.
- (b) Any past or present employee or agent may enforce the terms of this clause 14.2 subject to and in accordance with the provisions of the Contract (Third Party Rights)(Scotland) Act 2017.

## **15. Further assurance**

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The Chargor shall promptly, at its own expense, take whatever action the Lenders or any Receiver may reasonably require for:

- 15.1 creating, perfecting or protecting the security created or intended to be created by this Charge;
- 15.2 facilitating the realisation of any Secured Asset; or
- 15.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lenders or any Receiver in respect of any Secured Asset,

## **16. Power of attorney**

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### **16.1 Appointment of attorneys**

The Chargor irrevocably appoints the Lenders, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Chargor is required to execute and do under this Charge; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Charge or by law on the Lenders, any Receiver or any Delegate.

### **16.2 Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 16.1.

## **17. Assignment and transfer**

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### **17.1 Assignment by Lenders**

- (a) At any time, without the consent of the Chargor, the Lenders may assign or transfer any or all of their rights and obligations under this Charge.
- (b) The Lenders may disclose to any actual or proposed assignee or transferee any information in their possession that relates to the Chargor, the Secured Assets and this Charge that the Lenders considers appropriate.

### **17.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this Charge.

## **18. Set-off**

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### **18.1 Lenders' right of set-off**

Each Lender may at any time set off any liability of the Chargor to that Lender against any liability of that Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Charge. If the liabilities to be set off are expressed in different currencies, the relevant Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by a Lender of its rights under this clause 18 shall not limit or affect any other rights or remedies available to it under this Charge or otherwise.

### **18.2 No obligation to set off**

The Lenders are not obliged to exercise their rights under clause 18.1.

### **18.3 Exclusion of Chargor's right of set-off**

All payments made by the Chargor to the Lenders under this Charge shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).



## **19. Amendments, waivers and consents**

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### **19.1 Amendments**

No amendment of this Charge shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

### **19.2 Waivers and consents**

- (a) A waiver of any right or remedy under this Charge or by law, or any consent given under this Charge, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this Charge or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Charge. No single or partial exercise of any right or remedy provided under this Charge or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Charge by the Lenders shall be effective unless it is in writing.

### **19.3 Rights and remedies**

The rights and remedies provided under this Charge are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **20. Severance**

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If any provision (or part of a provision) of this Charge is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Charge.

## **21. Third party rights**

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Subject to clause 14.2(b), this Charge does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Charge or otherwise.

## **22. Further provisions**

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### **22.1 Continuing security**

The security constituted by this Charge shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lenders discharge this Charge in writing.

### **22.2 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Lenders shall be deemed conditional on no payment or security received by the Lenders in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Lenders or their nominee may retain this Charge and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lenders deems necessary to provide the Lenders with security against any such avoidance, reduction or order for refund; and
- (b) the Lenders may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

### **22.3 Certificates**

A certificate or determination by the Lenders (or any of them) as to any amount for the time being due to the Lenders (or any of them) from the Chargor under this Charge shall be, in the absence of any manifest error, conclusive evidence of the amount due.

## **23. Notices**

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### **23.1 Delivery**

Any notice or other communication given to a party under or in connection with this Charge shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by email; and
- (c) sent to:
  - (i) the Chargor at:  
5 Kingsthorne Park, Houstoun Industrial Estate, Livingston, West Lothian, EH54 5DB  
Email: scott@petplanet.co.uk  
Attention: Scott Torrens
  - (ii) the Lenders at:  
Lynwood, Edinburgh Road, Gifford, Haddington, EH41 4JE  
Email: kevin@greenfingers.com  
Attention: Kevin Hague

or to any other address or email address as is notified in writing by one party to the other from time to time.

### **23.2 Receipt by Chargor**

Any notice or other communication that the Lenders or any of them gives to the Chargor shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by email, when received in legible form.

A notice or other communication given as described in clause 23.2(a) or clause 23.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### **23.3 Receipt by Lenders**

Any notice or other communication given to the Lenders or any of them shall be deemed to have been received only on actual receipt.

## **24. Governing law and jurisdiction**

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### **24.1 Governing law**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Scotland.

### **24.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of Scotland shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Charge or its subject matter or formation. Nothing in this clause shall limit the right of the Lenders to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**25. Consent to Registration**

The Chargor consents to the registration of this Charge and of any certificate referred to in clause 22.3 for preservation and execution.

**IN WITNESS WHEREOF** these presents consisting of this and the 14 preceding pages together with the Schedule have been subscribed as follows:

SUBSCRIBED for and on behalf of

**M8 GROUP LIMITED**

at LIVERPOOL

on 06/09/2019

by

SCOTT TURRENS Director  
(Print Name)

[Redacted Signature] Director  
(Signature)

before this witness:

[Redacted Signature] Witness  
(Signature)

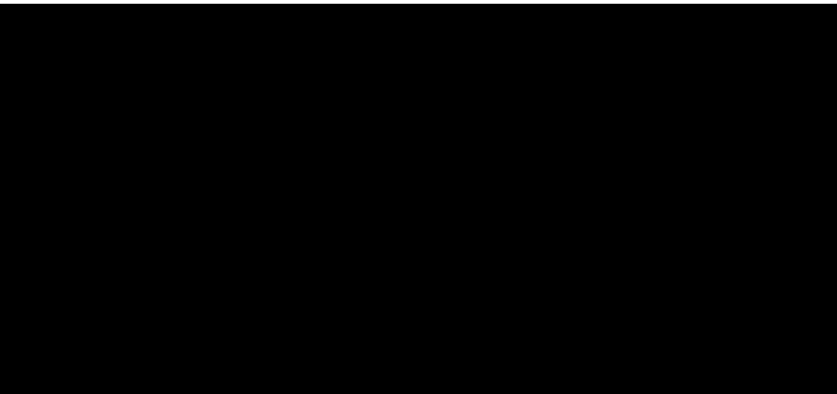
LORRAINE COQUHOUN  
(Print Name)

[Redacted Address]  
(Address)

**This is the Schedule referred to in the foregoing Floating Charge by M8 Group Limited in favour of the Lenders**

**SCHEDULE**

**LENDERS**

<b>Name of Lender</b>	<b>Address</b>
Kevin Hague	
Jane Duncan	
James McFarlane	
Christian Dosch	
Luke Jensen	
Tony Best	
Anthony Preston	
Charles Wilson	