

M

CHWP000

COMPANIES FORM No. 466(Scot)

Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

466

Please do not
write in
this margin

Pursuant to section 410 and 466 of the Companies Act 1985

Please complete
legibly, preferably
in black type, or
bold block lettering

To the Registrar of Companies
(Address overleaf - Note 5)

For official use

Company number

113

SC014456

Name of company

* Whyte and Mackay Limited (the "Company")

* insert full name
of company

Date of creation of the charge (note 1)

7 December 2021

Description of the instrument creating or evidencing the charge or of any ancillary document which has been altered (note 1)

Floating charge

Names of the persons entitled to the charge

The Royal Bank of Scotland plc

Short particulars of all the property charged

The whole of the property, undertaking, assets (including uncalled capital) and rights owned now or in the future of the Company.

Presenter's name address and
reference (if any):

Ref: 303834/120008
DLA Piper Scotland LLP
Collins House
Rutland Square
Edinburgh EH1 2AA

For official use (02/06)

Charges Section

TUESDAY



SAJCJL49

SC

14/12/2021

#134

COMPANIES HOUSE

Names, and addresses of the persons who have executed the instrument of alteration (note 2)

- (1) WHYTE AND MACKAY LIMITED, having its registered office at 4th Floor, St Vincent Plaza, 319 St Vincent Street, Glasgow, G2 5RG
- (2) THE ROYAL BANK OF SCOTLAND PLC, having its registered office at 36 St. Andrew Square, Edinburgh, EH2 2YB
- (3) WHYTE AND MACKAY GROUP LIMITED, having its registered office at 4th Floor, St Vincent Plaza, 319 St Vincent Street, Glasgow, G2 5RG

*Please do not
write in
this margin*

*Please complete
legibly, preferably
in black type, or
bold block lettering*

Date(s) of execution of the instrument of alteration

Intercreditor agreement dated 7 December 2021 (the "Intercreditor Agreement")

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

Until the Senior Creditor Discharge Date (but without prejudice to the rights of the Subordinated Creditor to receive Realisations on enforcement of the Security Documents in accordance with the application of clause 2(a)(iii)), except with the prior written consent of the Senior Creditor, the Company shall not:

(d) create or permit to exist any Charge over any of its assets for any of the Subordinated Debt except a Charge pursuant to the Subordinated Security Documents.

See following page for definitions.

Short particulars of any property released from the floating charge

N/A

The amount, if any, by which the amount secured by the floating charge has been increased

N/A

A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

*Please do not
write in
this margin*

***Please complete
legibly, preferably
in black type, or
bold block lettering***

At all times the Senior Creditor Security Documents and the Subordinated Security Documents shall rank in the following order of priority:

(A) in respect of the Inventory of the Company:

(1) FIRST the Senior Creditor Security Documents; and

(2) SECOND the Subordinated Security Documents;

(B) in respect of all assets of the Company other than the Inventory, the Subordinated Security Documents and the Senior Creditor Security Documents *pari passu* and without preference between them.

Definitions:

"Charge" means any mortgage, charge, assignation or assignment by way of security, pledge, hypothecation, lien, right of set-off, retention of title provision, trust or other arrangement for the purpose of, or which has the effect of, granting any security interest of any kind whatsoever;

"Facility Agreement" means the sterling revolving facility agreement between the Senior Creditor and the Company dated on or around the date of the Intercreditor Agreement;

"Inventory" means "inventory" as defined in the Facility Agreement;

"Realisations" means all receipts, recoveries and realisations;

"Security Documents" means mean the Senior Creditor Security Documents and the Subordinated Security Documents;

"Senior Creditor" means The Royal Bank of Scotland PLC;

"Senior Creditor Debt" means all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now are or at any time hereafter may be or become due and owing by the Company to the Senior Creditor whether solely or jointly with one or more persons and whether as principal debtor or guarantor or surety;

"Senior Creditor Discharge Date" means the date and time on and at which all Senior Creditor Debt has been fully and irrevocably paid or discharged to the satisfaction of the Senior Creditor, whether or not as a result of enforcement;


"Senior Creditor Security Documents" means the security documents listed in part 1 of schedule 1 to the Intercreditor Agreement together with any present or future document conferring or evidencing any charge, guarantee or other assurance against financial loss for, or in respect of, the Senior Creditor Debt or any of it;

"Subordinated Creditor" means Whyte and Mackay Group Limited;

"Subordinated Debt" means all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now are or at any time hereafter may be or become due and owing by the Company to the Subordinated Creditor whether solely or jointly with one or more persons and whether as principal debtor or guarantor or surety; and

"Subordinated Security Documents" means means the security documents listed in part 2 of schedule 1 to the Intercreditor Agreement together with any present or future document conferring or evidencing any charge, guarantee or other assurance against financial loss for, or in respect of, the Subordinated Debt or any of it.

*Please complete
legibly, preferably
in black type, or
bold block lettering*

Signed  Date 9 December 2021

On behalf of {company}[chargee]†

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. † delete as appropriate
For the date of creation of a charge see section 410(5) of the Companies Act.
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. The address of the Registrar of Companies is: Companies Registration Office, 139 Fountainbridge Edinburgh EH3 9FF DX 235 Edinburgh



FILE COPY

**CERTIFICATE OF THE REGISTRATION
OF AN ALTERATION TO A FLOATING CHARGE**

COMPANY NO. 14456
CHARGE CODE SC01 4456 0113

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 7 DECEMBER 2021 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985
ON 14 DECEMBER 2021

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 7
DECEMBER 2021

BY WHYTE AND MACKAY LIMITED

IN FAVOUR OF
THE ROYAL BANK OF SCOTLAND PLC

GIVEN AT COMPANIES HOUSE, EDINBURGH 14 DECEMBER 2021



Companies House




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



I CERTIFY THAT SAVE FOR THE MATERIAL
REDACTED PURSUANT TO s859G OF THE COMPANIES ACT
2006, THIS IS A TRUE, COMPLETE AND CORRECT COPY
OF THE EXECUTED ORIGINAL INSTRUMENT

DATE..... 9 December 2021

SIGNED..... 

DATED

7 December

2021

(1) WHYTE AND MACKAY LIMITED

(2) THE ROYAL BANK OF SCOTLAND PLC

-and-

(3) WHYTE AND MACKAY GROUP LIMITED

**INTERCREDITOR
AGREEMENT**

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	PURPOSE AND RANKING	3
3.	UNDERTAKINGS OF THE COMPANY	4
4.	UNDERTAKINGS OF THE SUBORDINATED CREDITOR	4
5.	SUBORDINATED DOCUMENTS.....	4
6.	PRE ENFORCEMENT TURNOVER.....	5
7.	POST ENFORCEMENT TURNOVER.....	5
8.	SUBORDINATION.....	5
9.	ENFORCEMENT BY SUBORDINATED CREDITOR	6
10.	REPRESENTATIONS AND WARRANTIES OF SUBORDINATED CREDITOR.....	6
11.	INFORMATION BETWEEN SENIOR CREDITOR AND SUBORDINATED CREDITOR.....	7
12.	SUBROGATION BY SUBORDINATED CREDITOR	7
13.	PROTECTION OF SUBORDINATION.....	7
14.	POWER OF ATTORNEY	8
15.	EXPENSES.....	8
16.	NOTICES.....	8
17.	CUMULATIVE REMEDIES AND WAIVERS	10
18.	SEVERABILITY	10
19.	STATUS OF COMPANY	10
20.	TRANSFERS	10
21.	INSTRUMENT OF ALTERATION	11
22.	COUNTERPARTS	11
23.	GOVERNING LAW.....	12
	SCHEDULE 1: THE SECURITY DOCUMENTS.....	14
	<i>Part 1: Senior Creditor Security Documents</i>	14
	<i>Part 2: Subordinated Security Documents</i>	14
	SCHEDULE 2: FORM OF DEED OF ACCESSION FOR NEW PARTIES	15

THIS INTERCREDITOR AGREEMENT is made on

7 December

2021

BETWEEN:

- (1) **WHYTE AND MACKAY LIMITED**, a company incorporated in Scotland under the Companies Acts (company number SC014456) having its registered office at 4th Floor, St Vincent Plaza, 319 St Vincent Street, Glasgow, G2 5RG (the "**Company**");
- (2) **THE ROYAL BANK OF SCOTLAND PLC** (the "**Senior Creditor**"); and
- (3) **WHYTE AND MACKAY GROUP LIMITED**, a company incorporated in Scotland under the Companies Acts (company number SC221954) having its registered office at 4th Floor, St Vincent Plaza, 319 St Vincent Street, Glasgow, G2 5RG (the "**Subordinated Creditor**").

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Agreement" means this intercreditor agreement;

"Business Day" means a day (other than a Saturday or Sunday) on which banks are generally open for business in Edinburgh and London;

"Charge" means any mortgage, charge, assignation or assignment by way of security, pledge, hypothecation, lien, right of set-off, retention of title provision, trust or other arrangement for the purpose of, or which has the effect of, granting any security interest of any kind whatsoever;

"Creditors" means the Senior Creditor and the Subordinated Creditor and "Creditor" shall mean either of them;

"Debt Documents" means the Senior Creditor Documents and the Subordinated Documents;

"Deed of Accession" means a deed entered into pursuant to clause 20 substantially in the form set out in schedule 2;

"Enforcement Date" means the first date on which the Senior Security Document is enforced;

"Event of Default" means any event of default or other event entitling the creditor concerned to accelerate the due date of any liability of the Company;

"Facility Agreement" means the sterling revolving facility agreement between the Senior Creditor and the Company dated on or around the date of this Agreement;

"Inventory" means "inventory" as defined in the Facility Agreement;

"Realisations" means all receipts, recoveries and realisations;

"Security Documents" mean the Senior Creditor Security Documents and the Subordinated Security Documents;

"Senior Creditor Debt" means all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now are or at any time hereafter may be or become due and owing by the Company to the Senior Creditor whether solely or jointly with one or more persons and whether as principal debtor or guarantor or surety;

"Senior Creditor Discharge Date" means the date and time on and at which all Senior Creditor Debt has been fully and irrevocably paid or discharged to the satisfaction of the Senior Creditor, whether or not as a result of enforcement;

"Senior Creditor Documents" means the Facility Agreement and the Senior Creditor Security Documents;

"Senior Creditor Security Documents" means the security documents listed in part 1 of schedule 1 together with any present or future document conferring or evidencing any charge, guarantee or other assurance against financial loss for, or in respect of, the Senior Creditor Debt or any of it;

"Subordinated Debt" means all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now are or at any time hereafter may be or become due and owing by the Company to the Subordinated Creditor whether solely or jointly with one or more persons and whether as principal debtor or guarantor or surety;¹

"Subordinated Documents" means all agreements between the Company and the Subordinated Creditor evidencing or recording the terms of the Subordinated Debt at any time (and the terms of which have been approved by the Senior Creditor), and the Subordinated Security Documents;

"Subordinated Security Documents" means the security documents listed in part 2 of schedule 1 together with any present or future document conferring or evidencing any charge, guarantee or other assurance against financial loss for, or in respect of, the Subordinated Debt or any of it; and

"Subsidiary" has the meaning given to it in Section 1159 of the Companies Act 2006.

1.2 Interpretation

(a) In this Agreement, a reference to:

- (i) the "Company", the "Senior Creditor" or the "Subordinated Creditor" shall include any person deriving title from them or any permitted successor or assignee;
- (ii) a document is a reference to that document as amended, novated, supplemented or replaced in whole or in part;
- (iii) an enactment includes references to any amendment, enactment and/or legislation subordinate to that enactment and/or any permission of whatever kind under the enactment; and
- (iv) a Clause, paragraph, sub-paragraph or the Schedule are to a clause, paragraph, sub-paragraph of, and the schedule, to this Agreement.

¹ DLA Note: Company to provide a copy of the existing subordinated loan.

- (b) Words in the singular shall import the plural and vice versa.
- (c) The headings in this Agreement shall not affect its interpretation.

2. PURPOSE AND RANKING

- (a) The purpose of this Agreement is that:
 - (i) without prejudice to the terms of clause 2(a)(iii), the Senior Creditor Debt and the Subordinated Debt shall rank in the following order of priority:
 - (A) FIRST the Senior Creditor Debt; and
 - (B) SECOND the Subordinated Debt;
 - (ii) at all times the Senior Creditor Security Documents and the Subordinated Security Documents shall rank in the following order of priority:
 - (A) in respect of Inventory of the Company:
 - (1) FIRST the Senior Creditor Security Documents; and
 - (2) SECOND the Subordinated Security Documents;
 - (B) in respect of all assets of the Company other than Inventory, the Subordinated Security Documents and the Senior Creditor Security Documents *pari passu* and without preference between them.
 - (iii) the Realisations arising from enforcement of the Security Documents shall (subject to the rights of any prior or preferential Charges or creditors) be applied in the following order of priority:
 - (A) in respect of Realisations of Inventory of the Company arising through enforcement of the Security Documents:
 - (1) FIRST in discharging the Senior Creditor Debt in full;
 - (2) SECOND in discharging the Subordinated Debt; and
 - (B) in respect of Realisations of all assets of the Company other than Inventory arising through enforcement of the Security Documents, in discharging the Subordinated Debt and the Senior Creditor Debt *pari passu* and without preference between them.
- (b) Any present or future standard security, floating charge or other Charge granted by the Company (other than the Security Documents) to any of the parties to this Agreement shall not (unless otherwise agreed in writing between the parties) prejudice the ranking provisions set out in this clause 2 notwithstanding any provision contained in any of the Security Documents or any future standard security or floating charge or other Charge or any rule of law to the contrary.
- (c) The Creditors will co-operate with a view to reflecting the priority set out in this clause 2 in any register or with any filing or registration authority.

3. UNDERTAKINGS OF THE COMPANY

Until the Senior Creditor Discharge Date (but without prejudice to the rights of the Subordinated Creditor to receive Realisations on enforcement of the Security Documents in accordance with the application of clause 2(a)(iii)), except with the prior written consent of the Senior Creditor, the Company shall not:

- (a) pay, prepay or repay any of the Subordinated Debt;
- (b) make any distribution in respect of or purchase or acquire any of the Subordinated Debt;
- (c) discharge any of the Subordinated Debt by set-off or any right of combination of accounts;
- (d) create or permit to exist any Charge over any of its assets for any of the Subordinated Debt except a Charge pursuant to the Subordinated Security Documents;
- (e) amend, vary, waive or release any term of any of the Subordinated Documents; or
- (f) take or omit to take any action whereby the subordination contemplated by this Agreement may be impaired.

4. UNDERTAKINGS OF THE SUBORDINATED CREDITOR

Until the Senior Creditor Discharge Date (but without prejudice to the rights of the Subordinated Creditor to receive Realisations on enforcement of the Security Documents in accordance with the application of clause 2(a)(iii)), except with the prior written consent of the Senior Creditor, the Subordinated Creditor shall not:

- (a) demand or receive payment, prepayment or repayment of, or any distribution in respect of, any of the Subordinated Debt;
- (b) discharge any of the Subordinated Debt by set-off or any right of combination of accounts;
- (c) permit to exist or receive any Charge for any of the Subordinated Debt except a Charge pursuant to the Subordinated Security Documents;
- (d) amend, vary, waive or release any term of any of the Subordinated Documents; or
- (e) take or omit to take any action whereby the subordination contemplated by this Agreement may be impaired.

5. SUBORDINATED DOCUMENTS

- (a) If there is any inconsistency between the terms of this Agreement and the terms on which the Subordinated Debt is incurred by the Company, the terms of this Agreement shall prevail.
- (b) If there are any other terms relating to ranking of the Subordinated Debt existing at the date of this Agreement and not contemplated in this Agreement or the Subordinated Documents, those terms will be of no force and effect until the Senior Creditor Discharge Date.

6. PRE ENFORCEMENT TURNOVER

If at any time prior to the Enforcement Date:

- (a) the Subordinated Creditor receives a payment, prepayment or repayment of, or any distribution in respect of, any of the Subordinated Debt;
- (b) any of the Subordinated Debt is discharged by set-off, combination of accounts or otherwise,

the Subordinated Creditor shall promptly pay to the Senior Creditor for application towards the Senior Creditor Debt an amount equal to the lesser of:

- (i) the outstanding recovered balance of the Senior Creditor Debt; and
- (ii) the amount of such payment, prepayment or repayment or distribution, set-off or combination.

7. POST ENFORCEMENT TURNOVER

If at any time following the Enforcement Date any Creditor receives a payment or distribution from the Realisations on enforcement of the Security Documents other than in accordance with clause 2(a)(iii), such Creditor shall promptly pay to the other Creditor for application towards that other Creditor's Debt an amount equal to the lesser of:

- (a) the outstanding recovered balance of such Debt; and
- (b) the amount of such payment or distribution from Realisations,

in order to always provide for the agreed application of Realisations on enforcement of the Security Documents in accordance with clause 2(a)(iii).

8. SUBORDINATION

- (a) If:
 - (i) any resolution is passed or order made for the winding up, liquidation, dissolution, administration or reorganisation of the Company;
 - (ii) the Company becomes subject to any insolvency, bankruptcy, reorganisation, receivership, liquidation, dissolution or other similar proceeding;
 - (iii) the Company assigns its assets for the benefit of its creditors or enters into any arrangement with its creditors generally; or
 - (iv) the Company becomes subject to any distribution of its assets, or if any similar event occurs,

the Subordinated Debt will be subordinate in right of payment to the Senior Debt and the Senior Creditor shall be entitled on behalf of the Subordinated Creditor to claim, enforce and prove for the Subordinated Debt and take all such proceedings and do all such things as the Senior Creditor sees fit to recover the Subordinated Debt and (without prejudice to the rights of the Subordinate Creditor to receive Realisations on enforcement of the Security Documents in accordance with the application of

clause 2(a)(iii)) receive all distributions on the Subordinated Debt for application towards the Senior Creditor Debt.

- (b) If and to the extent that the Senior Creditor is not entitled to take such proceedings, the Subordinated Creditor will do so in good time as reasonably requested by the Senior Creditor.
- (c) In any of the circumstances mentioned in clause 8(a), until the Senior Creditor Discharge Date, the Subordinated Creditor will (without prejudice to the rights of the Subordinated Creditor to receive Realisations on enforcement of the Security Documents in accordance with the application of clause 2(a)(iii)) hold on trust for the Senior Creditor, and on demand pay, an amount equal to all distributions received or receivable by the Subordinated Creditor in respect of the Subordinated Debt to the Senior Creditor for application towards the Senior Debt and the trustee in bankruptcy, liquidation, assignee or other person distributing the assets of the Company or their proceeds shall be directed to pay distributions on the Subordinated Debt direct to the Senior Creditor.

9. ENFORCEMENT BY SUBORDINATED CREDITOR

Until the Senior Creditor Discharge Date, and unless the Senior Creditor has previously consented in writing, the Subordinated Creditor shall not (but always without prejudice to the rights of the Subordinated Creditor to receive Realisations on enforcement of the Security Documents in accordance with the application of clause 2(a)(iii):

- (a) accelerate any of the Subordinated Debt or otherwise declare any of the Subordinated Debt prematurely payable unless the Senior Creditor has declared the Senior Creditor Debt prematurely due and payable;
- (b) enforce the Subordinated Debt by execution, diligence, distress or otherwise;
- (c) have any right to crystallise any floating charge in the Subordinated Security Documents;
- (d) have any right to enforce any security conferred by the Subordinated Security Documents by sale, possession, appointment of a receiver or otherwise;
- (e) petition for (or vote in favour of any resolution for) or initiate or support or take any steps with a view to any insolvency, liquidation, reorganisation, administration or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or any similar proceedings involving the Company, whether by petition, convening a meeting, voting for a resolution or otherwise.

10. REPRESENTATIONS AND WARRANTIES OF SUBORDINATED CREDITOR

The Subordinated Creditor represents and warrants to the Senior Creditor that this Agreement:-

- (a) is within its powers, has been duly authorised by it;
- (b) constitutes its legal, valid and binding obligations; and
- (c) does not conflict with any law or regulation or its constitutional documents or any document binding on it and that it has obtained all necessary consents for the performance by it of this Agreement.

11. INFORMATION BETWEEN SENIOR CREDITOR AND SUBORDINATED CREDITOR

- (a) The Subordinated Creditor will notify the Senior Creditor of the occurrence of any Event of Default under the Subordinated Documents.
- (b) The Subordinated Creditor will on written request from time to time notify the Senior Creditor in writing of details of the amount of the Subordinated Debt.
- (c) The Company authorises the Senior Creditor and the Subordinated Creditor to disclose to each other all information relating to the Company, its Subsidiaries or related entities, and coming into the possession of any of them in connection with the Senior Creditor Documents or any of the Subordinated Documents.

12. SUBROGATION BY SUBORDINATED CREDITOR

If the Senior Creditor Debt is wholly or partially paid out of any proceeds received in respect of, or on account of, the Subordinated Debt owing to the Subordinated Creditor, the Subordinated Creditor will to that extent be subrogated to the Senior Creditor Debt so paid (and all securities and guarantees for that Senior Creditor Debt) but not before all the Senior Creditor Debt is irrevocably paid in full.

13. PROTECTION OF SUBORDINATION

- (a) The subordination provisions in this Agreement shall constitute a continuing subordination irrespective of any intermediate payment or satisfaction of the Senior Creditor Debt or the Subordinated Debt.
- (b) The subordination provisions in this Agreement shall remain in full force and effect irrespective of any act, event or matter which might, as a matter of law or otherwise, discharge this Agreement including:-
 - (i) any time or other indulgence granted in respect of the Senior Creditor Debt or the Subordinated Debt; or
 - (ii) any increase in or waiver or discharge of any of the Senior Creditor Debt or the Subordinated Debt or any amendment or termination of any agreement relating to the Senior Creditor Debt or the Subordinated Debt; or
 - (iii) the Senior Creditor abstaining from perfecting or enforcing or giving up or waiving any security, this Agreement or other right or remedy for all or any of the Senior Creditor Debt; or
 - (iv) any legal limitation, disability, incapacity or other circumstance relating to, or any invalidity, unenforceability or frustration of any of the obligations of, the Company, any other guarantor or any other person in respect of the Senior Creditor Debt or the Subordinated Debt.
- (c) Until the Senior Creditor Discharge Date (but without prejudice to the rights of the Subordinated Creditor to receive Realisations on enforcement of the Security

Documents in accordance with the application of clause 2(a)(iii)), the Senior Creditor may:

- (i) apply any monies or property received under this Agreement or from the Company or from any other person against the Senior Creditor Debt in such order as it sees fit;
- (ii) (if it so decides) apply any monies or property received from the Company or from any other person (other than money or property received for the Subordinated Creditor under this Agreement) against any liability other than the Senior Creditor Debt owed to it;
- (iii) hold in suspense any monies or distributions received from the Subordinated Creditor or on account of the liability of the Subordinated Creditor under this Agreement.

14. POWER OF ATTORNEY

By way of security for the obligations of the Subordinated Creditor under this Agreement, the Subordinated Creditor irrevocably appoints the Senior Creditor as its attorney to do anything which (i) the Subordinated Creditor has authorised the Senior Creditor to do under this Agreement and (ii) is required to do by this Agreement but has failed to do for a period of five Business Days after receiving notice from the Senior Creditor requiring it to do so. The Senior Creditor may delegate this power.

15. EXPENSES

The Subordinated Creditor and the Company shall reimburse or pay to the Senior Creditor on demand the amount of all costs and expenses (including legal and other professional fees plus disbursements) properly incurred by the Senior Creditor (together with any applicable value added tax) in connection with the enforcement against the Subordinated Creditor or that Company (as the case may be) of the Senior Creditor's rights against it under this Agreement:-

- (a) the preparation, negotiation, execution and registration of this Agreement;
- (b) the perfection of this Agreement or any other document entered into by the Company and/or the Senior Creditor and/or the Subordinated Creditor pursuant to this Agreement;
- (c) the exercise or the attempted or purported exercise by or on behalf of the Senior Creditor of any of the powers of the Senior Creditor, and the enforcement, preservation or the attempted or purported enforcement or preservation of this Agreement.

16. NOTICES

- (a) Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.
- (b) The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is:
 - (i) in the case of the Company, that identified with its name below;

- (ii) in the case of the Senior Creditor, that identified with its name below; and
 - (iii) in the case of the Subordinated Creditor, that identified with its name below,
or any substitute address, fax number or department or officer as the Company or the Subordinated Creditor may notify to the Senior Creditor (or the Senior Creditor may notify to the Company and the Subordinated Creditor, if a change is made by the Senior Creditor) by not less than five Business Days' notice.
- (c) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
- (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or two Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
- and, if a particular department or officer is specified as part of its address details provided under clause 16(b), if addressed to that department or officer.
- (d) Any communication or document to be made or delivered to the Senior Creditor will be effective only when actually received by the Senior Creditor and then only if it is expressly marked for the attention of the department or officer identified with the Senior Creditor's signature below (or any substitute department or officer as the Senior Creditor shall specify for this purpose).
- (e) Any communication or document which becomes effective, in accordance with clauses 16(c) to 16(d), after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.
- (f) Promptly upon changing its address or fax number, the Senior Creditor shall notify the Company and the Subordinated Creditor.
- (g) Any communication to be made between the parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if they:
- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (h) Any such electronic communication as specified in clause 16(g) to be made between them may only be made in that way to the extent that they agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (i) Any such electronic communication as specified in clause 16(g) made between them will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by the Company or the Subordinated Creditor to the Senior Creditor only if it is addressed in such a manner as the Senior Creditor shall specify for this purpose.

- (j) Any electronic communication which becomes effective, in accordance with clause 16(h), after 5.00 pm in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (k) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with clauses 16(g) to 16(k) inclusive.

17. CUMULATIVE REMEDIES AND WAIVERS

The rights of each party under this Agreement may be exercised as often as necessary, are cumulative and are in addition to its respective rights under general law and may be waived only in writing and specifically. Delay in the exercise, or non-exercise of any right shall not be a waiver of that right.

18. SEVERABILITY

If any provision of this Agreement is or becomes invalid, illegal or unenforceable, that shall not affect the validity, legality and enforceability of any other provision of this Agreement.

19. STATUS OF COMPANY

- (a) The Company joins in this Agreement for the purpose of acknowledging the priorities, rights and obligations recorded in this Agreement and undertakes with each of the other parties hereto to observe the provisions of this Agreement at all times and not in any way to prejudice or affect the enforcement of such provisions or do or suffer anything which would be inconsistent with the terms of this Agreement.
- (b) The Company shall not have any rights hereunder and none of the undertakings herein contained on the part of the Senior Creditor or the Subordinated Creditor are given (or shall be deemed to have been given) to, or for the benefit of, the Company.

20. TRANSFERS

- (a) The Company shall not assign or transfer any of its rights (if any) or obligations under this Agreement, except with the prior written consent of the Senior Creditor.
- (b) If any Subsidiary of the Company guarantees or otherwise becomes liable for any of the Senior Creditor Debt or the Subordinated Debt or grants security for any Senior Creditor Debt or Subordinated Debt, that Company will procure that such Subsidiary becomes a party hereto by execution of a Deed of Accession.
- (c) Until the Senior Creditor Discharge Date, except with the prior written consent of the Senior Creditor, the Subordinated Creditor shall not:-
 - (i) assign, transfer or dispose of, or create or permit to subsist any Charge over, any of the Subordinated Debt owing to it or its proceeds or any interest in that Subordinated Debt or its proceeds, or any Charge therefor, to or in favour of any person; or
 - (ii) subordinate any of the Subordinated Debt owing to it or its proceeds to any sums owing by the Company to any person other than the Senior Creditor;

- (iii) transfer by novation or otherwise any of its rights or obligations under any Subordinated Document to any person,

unless and in each case that person has been approved by the Senior Creditor and agrees with the parties hereto that he is bound by all the terms of this Agreement as a Subordinated Creditor pursuant to a Deed of Accession.

- (d) The Senior Creditor may assign or otherwise dispose of all or any of its rights under this Agreement to any party to whom it assigns or transfer its rights under the Senior Creditor Documents.
- (e) If the Senior Creditor wishes to assign, novate or transfer any of its rights or obligations under the Senior Creditor Documents to another person, the Senior Creditor shall procure that other person shall become bound by all the terms of this Agreement as the Senior Creditor pursuant to a Deed of Accession.
- (f) The Subordinated Creditor and the Company authorises the Senior Creditor to execute each Deed of Accession and any other document entered into pursuant to this clause 20 on its behalf.

21. INSTRUMENT OF ALTERATION

This Agreement shall take effect as an Instrument of Alteration within the meaning of Section 466 of the Companies Act 1985 so far as applicable to the Security Documents or any of them and so far as necessary to give effect to the provisions contained in this Agreement.

22. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and on such execution, the counterparts shall be treated as a single document pursuant to the Legal Writing (Counterparts and Delivery) (Scotland) Act 2015.

23. GOVERNING LAW

This Agreement is governed by, and construed in accordance with the law of Scotland.

IN WITNESS WHEREOF this Agreement and the Schedule annexed have been executed as follows:

EXECUTED but not delivered until the date of)
delivery specified below for and on behalf of)
WHITE AND MACKAY LIMITED by:)

Director

Full name GRAHAM DONAGHEY

in the presence of this witness

Witness signature

Witness name:

Witness address:

EDINBURGH

6412

at EDINBURGH

on the 6th day of December 2021

EXECUTED but not delivered until the date of)
delivery specified below for and on behalf of THE)
ROYAL BANK OF SCOTLAND PLC by:)

Authorised Signatory

Full name

in the presence of this witness

Witness signature

Witness name:

Witness address:

at

on the day of 2021

23. **GOVERNING LAW**

This Agreement is governed by, and construed in accordance with the law of Scotland.

IN WITNESS WHEREOF this Agreement and the Schedule annexed have been executed as follows:

EXECUTED but not delivered until the date of)
delivery specified below for and on behalf of)
WHITE AND MACKAY LIMITED by:)

Director _____ Full name _____

in the presence of this witness

Witness signature _____

Witness name: _____

Witness address: _____

at

on the _____ day of _____ 2021

EXECUTED but not delivered until the date of)
delivery specified below for and on behalf of **THE**)
ROYAL BANK OF SCOTLAND PLC by:)

Authorised Signatory _____ Full name AC/REACLOY

in the presence of this witness

Witness signature _____

Witness name: NORI GOFAR

Witness address: DLA PIPER UK LLP

1 ST PETER'S SQUARE
MANCHESTER M2 3DE

at LEEDS

on the 2nd day of DECEMBER 2021

EXECUTED but not delivered until the date of)
delivery specified below for and on behalf of)
WHITE AND MACKAY GROUP LIMITED)
by:

Authorised Signatory

Full name

BRYAN DONAGHEY

in the presence of this witness

Witness signature

Witness name:

STEPHANIE DONAGHEY

Witness address:

OSINGA

ENIL

at OSINGA

on the 6th day of December 2021

DATE OF DELIVERY: 7 December 2021

THIS IS THE SCHEDULE 1 REFERRED TO IN THE FOREGOING INTERCREDITOR AGREEMENT AMONG WHYTE AND MACKAY LIMITED, THE ROYAL BANK OF SCOTLAND PLC AND WHYTE AND MACKAY GROUP LIMITED

SCHEDULE 1: THE SECURITY DOCUMENTS

Part 1: Senior Creditor Security Documents

Bond and floating charge granted by the Company in favour of the Senior Creditor dated on or around the date of this Agreement

Part 2: Subordinated Security Documents

Bond and floating charge granted by the Company in favour of the Subordinated Creditor dated 6 July 2016 with charge code SC01 4456 0110

THIS IS THE SCHEDULE 2 REFERRED TO IN THE FOREGOING INTERCREDITOR AGREEMENT AMONG WHYTE AND MACKAY LIMITED, THE ROYAL BANK OF SCOTLAND PLC AND WHYTE AND MACKAY GROUP LIMITED

SCHEDULE 2: FORM OF DEED OF ACCESSION FOR NEW PARTIES

THIS DEED [dated ♦] is supplemental to an intercreditor agreement (the "Intercreditor Agreement") dated [♦] among [Limited] [plc] and others, the Senior Creditor and the Subordinated Creditor referred to therein.

Words and expressions defined in the Intercreditor Agreement have the same meaning when used in this Deed,

[♦] [Limited] [plc] (the "New Party") hereby agrees that it has been supplied with a copy of the Intercreditor Agreement and with each other person who is or who becomes a party to the Intercreditor Agreement that with effect on and from the date hereof it will be bound by the Intercreditor Agreement as [a Company][Senior Creditor][the Subordinated Creditor] as if the New Party had been party to the Intercreditor Agreement in that capacity.

This Deed is governed by the law of Scotland.

IN WITNESS WHEREOF this Deed has been executed [as follows:]

[SUBSCRIBED])
for and on behalf of)
[♦] [Limited] [plc])
[acting by])

Director _____

Director/Secretary _____

at

on the [♦] day of

Executed and delivered for and on behalf of)
[♦] [Limited] [plc] acting by:)
[REPEAT FOR EACH COMPANY])

Director _____

Director/Secretary _____

at

on the [♦] day of

Executed for and on behalf of)
[SENIOR CREDITOR] acting by:)

Director _____

Director/Secretary _____

at

on the [◆] day of

Executed for and on behalf of)
[◆] [Limited] [plc] acting by:)

Director _____

Director/Secretary _____

at

on the [◆] day of