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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

7

SC155016

Name of company

**\* Mackay's Ltd. (the "Chargor")***\* insert full name  
of company*

Date of creation of the charge (note 1)

10 February 2011

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

Floating Charge (the "Charge")

Names of the persons entitled to the charge

HSBC Invoice Finance (UK) Limited ("HIF")

Short particulars of all the property charged

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 Company (the "Assets")Presenter's name address and  
reference (if any):Shepherd and Wedderburn LLP  
1 Exchange Crescent  
Conference Square  
Edinburgh  
EH3 8UL

For official use (02/06)

Charges Section

FRIDAY

SCT      \*S99YJG0Q\*      #76  
COMPANIES HOUSE

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

Please see the paper apart to this Form M466.

*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

3 July 2020

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

Please see the paper apart to this Form M466.

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

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write in  
this margin*

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

#### 1. Ranking and subordination of debt

The Finance Parties and the Chargor agree that:

- (a) the Senior Debt ranks and shall rank in priority to the Junior Debt in all respects;
- (b) the Junior Debt is and shall be subordinated to the Senior Debt; and
- (c) no payments shall (except as otherwise provided in this deed) be made by any person in respect of the Junior Debt while the Senior Debt is outstanding.

#### 2. Ranking and subordination of security

The Finance Parties and the Chargor agree that the Transaction Security shall rank as follows:

- (a) in respect of the Book Debts and the proceeds of sale of the Book Debts:

- (i) first, the HIF Security to the extent of the HIF Debt; then
- (ii) second, the Bank Security to the extent of the Bank Debt; then
- (iii) third, the Junior Security to the extent of the Junior Debt; and

- (b) in respect of the remainder of the Security Assets:

- (i) first, the Bank Security to the extent of the Bank Debt; then
- (ii) second, the HIF Security to the extent of the HIF Debt; then
- (iii) third, the Junior Security to the extent of the Junior Debt.

Please see paper apart to this Form M466 for definitions.

Continuation of the 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

Signed Wadeamul Kumar for and on behalf of Shepherd and Waddesburn Date 22/07/2020  
On behalf of [company] [chargee] WSP

#### Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. 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

☐ delete as  
appropriate

**This is the paper apart referred to in the foregoing Form M466 in respect of MacKay's Ltd. (SC155016).**

**Names and addresses of the persons who have executed the instrument of alteration**

1. **The Chargor** whose registered office is at Unit 4, James Chalmers Road, Kirkton Industrial Estate, Arbroath, Angus DD11 3LR.
2. **HIF** whose registered office is at 21 Farncombe Rd., Worthing, Sussex BN11 2BW.
3. **HSBC UK Bank PLC** whose registered office is at 1 Centenary Square, Birmingham B1 1HQ (the "Bank")
4. **Scottish Enterprise** whose principal office is at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ (the "Junior Lender").

**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**

**1. Chargor undertakings**

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- 1.1 So long as the Senior Debt is outstanding, the Chargor shall not:
- 1.1.1 create, or allow to exist, any Security (other than Junior Security) over any of its assets for, or any guarantee for or in respect of, any of the Junior Debt or in respect of a loan or credit provided to the Junior Lender by another person; or
  - 1.1.2 take, or omit to take, any action which may impair the ranking or the subordination set out in the instrument of alteration.

**2. Junior Lender undertakings**

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**2.1 No payment, Security or guarantee**

The Junior Lender undertakes to the Senior Finance Parties that, so long as the Senior Debt is outstanding, it shall not

- 2.1.1 allow to exist or receive the benefit of any Security (other than Junior Security), or receive the benefit of any guarantee, from any person in respect of the Junior Debt unless:
  - (i) the benefit of such Security or guarantee is conferred on the Senior Finance Parties at, or prior to, that time in such manner and such form as the Senior Finance Parties may reasonably require; or
  - (ii) the Senior Finance Parties have declined to take the benefit of such Security or guarantee (without prejudice to their respective rights to take such Security or guarantee at a later time); or
- 2.1.2 take, or omit to take, any action which may impair the ranking or the subordination set out in the instrument of alteration.

## 2.2 No other arrangements

The Junior Lender shall not make any arrangement which would place, or which aims to place, the Junior Lender in a position similar to that in which it would be if the Junior Debt had been secured by Security (other than the Junior Security).

**Definitions referred to in (i) the 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, and (ii) the statement of 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:**

**"Bank Debt"** means all Liabilities which are or may become payable or owing by the Chargor to the Bank under the Bank Debt Documents;

**"Bank Debt Document"** means:

- (a) the loan agreement dated 23 August 2017 between HSBC Bank plc and the Chargor originally in relation to a £1,800,000 loan as amended by side letters dated 5 September 2017 and 10 April 2018 and as amended and restated by an amendment and restatement letter dated on or around the effective date of the instrument of alteration between the Bank and the Chargor;
- (b) the loan agreement dated 16 March 2018 between HSBC Bank plc and the Chargor originally in relation to a £2,000,000 loan as amended by a side letter dated 13 November 2018 and as amended and restated by an amendment and restatement letter dated on or around the effective date of the instrument of alteration between the Bank and the Chargor;
- (c) the overdraft facility letter dated 23 February 2018 between HSBC Bank plc and the Chargor in relation to a £750,000 overdraft facility;
- (d) the terms and conditions in relation to a BACS facility with a limit of £200,000 provided by the Bank to the Chargor;
- (e) the terms and conditions entered into in May 2012 in relation to a credit card facility with a limit of £30,000 provided by the Bank to the Chargor;
- (f) the floating charge granted by the Chargor in favour of HSBC Bank plc created on 10 February 2011.
- (g) the standard security granted by the Chargor in favour of HSBC Bank plc in respect of the property at Unit 4 James Chalmers Road, Kirkton Industrial Estate, Arbroath, Angus, DD11 3LR dated 23 March 2011 and registered in the Land Register of Scotland under title number ANG43462 on 4 April 2011.
- (h) the assignment granted by the Chargor in favour of HSBC Bank plc dated 30 March 2011; and
- (i) the pledge granted by the Chargor in favour of HSBC Bank plc dated 10 February 2011;

**"Bank Security"** means any Security in favour of the Bank created by a Bank Security Document;

**"Bank Security Document"** means:

- (a) the floating charge granted by the Chargor in favour of HSBC Bank plc created on 10 February 2011.
- (b) the standard security granted by the Chargor in favour of HSBC Bank plc in respect of the property at Unit 4 James Chalmers Road, Kirkton Industrial Estate, Arbroath, Angus, DD11 3LR dated 23 March 2011 and registered in the Land Register of Scotland under title number ANG43462 on 4 April 2011.
- (c) the assignment granted by the Chargor in favour of HSBC Bank plc dated 30 March 2011.
- (d) the pledge granted by the Chargor in favour of HSBC Bank plc dated 10 February 2011,

and any other document under which Security is created, whether at the effective date of the instrument of alteration or at any later date, which secures any of the Bank Debt;

**"Book Debts"** means any debt or other obligation (including any tax, duty or interest), present, future or contingent, any customer under a contract of sale and all associated rights. A debt, where the context permits, shall include part of a debt;

**"Finance Parties"** means the Senior Finance Parties and the Junior Lender together;

**"HIF Agreement"** means the agreement for the purchase of debts between HIF and the Chargor;

**"HIF Debt"** means all Liabilities which are or may become payable or owing by the Chargor to HIF under the HIF Debt Documents;

**"HIF Debt Documents"** means:

- (a) the HIF Agreement; and
- (b) the floating charge granted by the Chargor in favour of HIF created on 10 February 2011;

**"HIF Security"** means any Security in favour of HIF created by a HIF Security Document;

**"HIF Security Document"** means the floating charge granted by the Chargor in favour of HIF created on 10 February 2011, and any other document under which Security is created, whether at the effective date of the instrument of alteration or at any later date, which secures any of the HIF Debt;

**"Junior Debt"** means all Liabilities which are or may become payable or owing by the Chargor to the Junior Lender under the Junior Debt Documents or otherwise;

**"Junior Debt Document"** means:

- (a) the loan agreement between the Junior Lender and the Chargor comprising (i) a loan confirmation between the Junior Lender and the Chargor dated 30 March 2020 (as amended by a side letter dated on or around the effective date of the instrument of alteration), and (ii) the Junior Lender's standard loan terms and conditions.
- (b) the floating charge granted by the Chargor in favour of the Junior Lender with an effective date of on or around the effective date of the instrument of alteration;

**"Junior Security"** means any Security in favour of the Junior Lender created by a Junior Security Document;

**"Junior Security Document"** means the floating charge granted by the Chargor in favour of the Junior Lender with an effective date of on or around the effective date of the instrument of alteration, and any other document under which Security is created, whether at the effective date of the instrument of alteration or at any later date, which secures any of the Junior Debt and is permitted to be taken pursuant to the instrument of alteration;

**"Liabilities"** means all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or guarantor and/or in any other capacity;

**"Security Assets"** means all of the assets of the Chargor which from time to time are, or are expressed to be, the subject of the Transaction Security;

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

**"Senior Debt"** means the Bank Debt and the HIF Debt;

**"Senior Finance Parties"** means the Bank and HIF;

**"Senior Security"** means the Bank Security and the HIF Security; and

**"Transaction Security"** means the Junior Security and the Senior Security.



**FILE COPY**

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

COMPANY NO. 155016

CHARGE NO. 7

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 3 JULY 2020 WERE DELIVERED  
PURSUANT TO SECTION 878 OF THE COMPANIES ACT 2006  
ON 24 JULY 2020

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 10  
FEBRUARY 2011

BY MACKAY'S LTD.

IN FAVOUR OF  
HSBC INVOICE FINANCE (UK) LIMITED

FOR SECURING ALL SUMS DUE OR TO BECOME DUE

GIVEN AT COMPANIES HOUSE, EDINBURGH 28 JULY 2020



**Companies House**



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



We hereby certify that, save for material redacted pursuant to s.859G of the Companies Act 2006, this is a true copy of the original.

Signed:

Date: 21 July 2020

For and on behalf of Shepherd and Wedderburn LLP



**SHEPHERD+WEDDERBURN**

**INTERCREDITOR DEED**

among

**MACKAY'S LTD.**

**HSBC INVOICE FINANCE (UK) LIMITED**

**HSBC UK BANK PLC**

and

**SCOTTISH ENTERPRISE**

Shepherd and Wedderburn LLP  
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Canterbury Square  
Edinburgh EX3 8UL  
DX 861870 Edinburgh 83  
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THIS DEED is made among:

- (1) MACKAY'S LTD. incorporated under the Companies Act in Scotland with registered number SC160016 whose registered office is at Unit 4, James Chalmers Road, Kildon Industrial Estate, Arbroath, Angus DD11 3LR (the "Obligor");
- (2) HSBC INVOICE FINANCE (UK) LIMITED incorporated under the Companies Act in England and Wales with registered number 00758857 whose registered office is at 21 Farncombe Rd., Worthing, Sussex BN11 2BW ("HIF");
- (3) HSBC UK BANK PLC incorporated under the Companies Act in England and Wales with registered number 08828412 whose registered office is at 1 Centenary Square, Birmingham B1 1HQ (the "Bank" and, together with HIF, the "Senior Finance Parties" and each a "Senior Finance Party"); and
- (4) SCOTTISH ENTERPRISE established under the Enterprise and New Towns (Scotland) Act 1980 whose principal office is at Atrium Court, 50 Waterloo Street, Glasgow G2 8HQ (the "Junior Lender").

#### BACKGROUND

- (A) The Senior Finance Parties have agreed to provide the Senior Debt to the Obligor and the Junior Lender has agreed to provide the Junior Debt to the Obligor. The Finance Parties have agreed that the priority of their respective debts and security shall be as set out in this deed.
- (B) The Obligor has agreed to enter this deed to acknowledge its terms and to give certain undertakings to the Finance Parties.

#### AGREED TERMS

##### 1. Definitions and Interpretation

###### 1.1 Definitions

The following definitions apply in this deed:

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"Bank Debt" means all Liabilities which are or may become payable or owing by the Obligor to the Bank under the Bank Debt Documents.

"Bank Debt Document" means any document referred to in Part 1 of the Schedule.

"Bank Security" means any Security in favour of the Bank created by a Bank Security Document.

"Bank Security Document" means any document referred to in paragraph 2 of Part 1 of the Schedule and any other document under which Security is created, whether at the effective date of this deed or at any later date, which secures any of the Bank Debt.

"Bank Debt" has the meaning given to "Debt" in the document referred to in paragraph 1 of Part 2 of the Schedule.

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

"Competitive Sales Process" means:

- (a) any auction or other competitive sales process conducted with the advice of a Financial Adviser appointed by, or approved by, a Senior Finance Party pursuant to clause 11.6.4; or

- (b) any enforcement of the Transaction Security carried out by way of auction or other competitive sales process pursuant to requirements of applicable law.

"Consent" means any consent, approval, release or waiver or agreement to any amendment.

"Debt Document" means each of the Junior Debt Documents and the Senior Debt Documents.

"Distressed Disposal" means a disposal of an asset of the Obligor which is:

- (a) being effected at the request of a Senior Finance Party in circumstances where the Transaction Security has become enforceable; or
- (b) being effected by enforcement of the Transaction Security.

"Enforcement Action" means any of the following action by any Finance Party:

- (a) demanding repayment, or payment, of any of the Liabilities secured by the Security constituted by any of its Security Documents (other than a demand for payment on the due date);
- (b) enforcing any of the Security constituted by any of its Security Documents;
- (c) taking possession of any asset subject to any of the Security constituted by any of its Security Documents;
- (d) presenting, or joining in, an application for an administration order or a petition for a winding-up order to be made in relation to the Obligor;
- (e) initiating, or supporting or taking, any step with a view to any voluntary arrangement or trust deed or assignment for the benefit of creditors or similar proceeding involving the Obligor; or
- (f) issuing a notice of intention to appoint an administrator or appointing an administrator of the Obligor.

"Excess Cashflow Prepayment" means a mandatory prepayment under paragraph 3 (b) of the General Terms and Conditions of the Bank Debt Document referred to in paragraph 1.1 of Part 1 of the Schedule.

"Financial Adviser" means:

- (a) any independent commercial property adviser;
- (b) any independent investment bank;
- (c) any independent accountancy firm; or
- (d) any other independent professional services firm.

"Finance Parties" means the Senior Finance Parties and the Junior Lender together, and

"Finance Party" means any of the Finance Parties.

"HIF Debt" means all Liabilities which are or may become payable or owing by the Obligor to HIF under the HIF Debt Documents.

"HIF Debt Document" means any document referred to in Part 2 of the Schedule.

"HIF Security" means any Security in favour of HIF created by a HIF Security Document.

"HIF Security Document" means any document referred to in paragraph 2 of Part 2 of the Schedule and any other document under which Security is created, whether at the effective date of this deed or at any later date, which secures any of the HIF Debt.

"Holding Company" means, in relation to a person, any other person in respect of which it is a Subsidiary.

"Junior Debt" means all Liabilities which are or may become payable or owing by the Obligor to the Junior Lender under the Junior Debt Documents or otherwise.

"Junior Debt Document" means any document referred to in Part 3 of the Schedule.

"Junior Security" means any Security in favour of the Junior Lender created by a Junior Security Document.

"Junior Security Document" means any document referred to in paragraph 2 of Part 3 of the Schedule and any other document under which Security is created, whether at the effective date of this deed or at any later date, which secures any of the Junior Debt and is permitted to be taken pursuant to this deed.

"Liabilities" means all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or guarantor and/or in any other capacity.

"Permitted Payment" means a payment to the Junior Lender permitted under clause 5.1.

"Receiver" means a receiver, receiver and manager or administrative receiver appointed by a Finance Party pursuant to the provisions of its Security Documents.

**"Right"** means any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, ranking in liquidation or otherwise and whether from contribution or otherwise.

**"Security Assets"** means all of the assets of the Obligor which from time to time are, or are expressed to be, the subject of the Transaction Security.

**"Security Document"** means each of the Senior Security Documents and the Junior Security Documents.

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

**"Senior Debt"** means the Bank Debt and the HIF Debt.

**"Senior Debt Document"** means each of the Bank Debt Documents and the HIF Debt Documents.

**"Senior Principal"** means, at any time, and in relation to the Senior Debt Documents, the then aggregate (without double counting) of:

- (a) the outstanding principal of the Senior Debt; and
- (b) the available commitments of the Senior Finance Parties, under the Senior Debt Documents.

**"Senior Principal Limit"** means a total amount not exceeding £8,273,380 in aggregate.

**"Senior Security"** means the Bank Security and the HIF Security.

**"Senior Security Document"** means each of the Bank Security Documents and the HIF Security Documents.

**"Subsidiary"** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

**"Transaction Security"** means the Junior Security and the Senior Security.

## 1.2 Interpretation

In this deed:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- 1.2.2 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);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assignees and permitted transferees and this deed shall be binding on, and ensure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assignees and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.9 a reference to this deed (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.10 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or the Schedule annexed and executed as relative to, this deed and a reference to a paragraph is to a paragraph of the Schedule;

- 1.2.11 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;
- 1.2.12 a reference to an "amendment" includes a novation, re-enactment, supplement or variation (and "amended" shall be construed accordingly);
- 1.2.13 a reference to "assets" includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.14 a reference to an "authorisation" includes an approval, authorisation, consent, exemption, filing, licence, materialisation, registration and resolution;
- 1.2.15 a reference to "determined" or "determines" means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.16 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; and
- 1.2.17 in relation to a HIF Debt Document, unless the context otherwise requires, a reference to:
- (i) "principal" means advance payments by HIF on account of the purchase price of Book Debts; and
  - (ii) "commitment" means the value of such advance payments that the Obligor may take from HIF;
  - (iii) "repayment" includes payment of the repurchase price of Book Debts;
  - (iv) "interest" includes a discounting charge, service charge or credit protection charge; and
  - (v) "redrawing" includes taking further advance payments on account of the purchase price of Book Debts.

### 1.3 Schedule

The Schedule forms part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedule.

### 1.4 Clawback

If a Senior Finance Party considers that an amount paid in respect of the Senior Debt is capable of being avoided or otherwise set aside on the liquidation or administration of the Obligor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

### 1.5 Senior Finance Parties' rights and obligations

The rights and obligations of each Senior Finance Party under this deed are separate and independent rights and obligations.

## 2. Priorities

### 2.1 Senior Finance Parties consent to Junior Security

The Senior Finance Parties:

- 2.1.1 consent to the creation or subsistence (as appropriate) of the Junior Security; and
- 2.1.2 confirm that the creation or subsistence of the Junior Security does not constitute a default by the Obligor under any of the Senior Debt Documents.

### 2.2 Junior Lender consent to Senior Debt Documents

The Junior Lender:

- 2.2.1 consents to:
  - (i) the creation or subsistence (as appropriate) of the Senior Security; and
  - (ii) the sale, factoring and discounting of (or other dealing by the Obligor with) Book Debts in terms of the HIF Debt Documents; and
- 2.2.2 confirms that:
  - (i) the creation or subsistence of the Senior Security; and

- (I) the sale, factoring and discounting of (or other dealing by the Obligor with) Book Debts in terms of the HIF Debt Documents, do not constitute a default by the Obligor under any of the Junior Debt Documents.

**2.3 Ranking and subordination of debt**

The Finance Parties and the Obligor agree that:

- 2.3.1 the Senior Debt ranks and shall rank in priority to the Junior Debt in all respects;  
 2.3.2 the Junior Debt is and shall be subordinated to the Senior Debt; and  
 2.3.3 no payments shall (except as otherwise provided in this deed) be made by any person in respect of the Junior Debt while the Senior Debt is outstanding.

**2.4 Ranking and subordination of security**

The Finance Parties and the Obligor agree that the Transaction Security shall rank as follows:

- 2.4.1 In respect of the Book Debts and the proceeds of sale of the Book Debts:  
 (i) first, the HIF Security to the extent of the HIF Debt; then  
 (ii) second, the Bank Security to the extent of the Bank Debt; then  
 (iii) third, the Junior Security to the extent of the Junior Debt; and  
 2.4.2 In respect of the remainder of the Security Assets:  
 (i) first, the Bank Security to the extent of the Bank Debt; then  
 (ii) second, the HIF Security to the extent of the HIF Debt; then  
 (iii) third, the Junior Security to the extent of the Junior Debt.

**2.5 Monies received by Junior Lender**

If the Junior Lender receives any monies in contravention of this deed it shall hold those monies in trust for, and promptly pay or transfer them to, the Senior Finance Parties for application towards the Senior Debt until the Senior Debt is irrevocably discharged.

**2.6 Failure of trust**

If for any reason, a trust in favour of, or a holding of property for, the Senior Finance Parties under this deed is invalid or unenforceable, the Junior Lender shall pay and deliver to the Senior Finance Parties in cash or in kind an amount (or, if in kind, a value) equal to the payment, receipt or recovery which it would otherwise have been bound to hold in trust for, or as property of, the Senior Finance Parties.

**2.7 Continuing status of security**

Nothing in this deed shall affect the status of the Security Documents as continuing security, nor shall the ranking of the Transaction Security in clause 2.4 be affected by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the relative priorities of the Security constituted by the Security Documents, including, but not limited to:

- 2.7.1 the nature of the Security constituted by the Security Documents and the order of their execution or registration;  
 2.7.2 any provision contained in any of the Security Documents;  
 2.7.3 the respective date (or dates) on which any person received notice of the existence or creation of any Security constituted by any Security Document;  
 2.7.4 the respective date (or dates) on which monies may be, or have been, advanced or become owing or payable under a Debt Document or secured under a Security Document;  
 2.7.5 any fluctuation from time to time in the amount of Liabilities secured by a Security Document and in particular, without limitation, any reduction to nil of the Liabilities so secured;  
 2.7.6 the existence at any time of a credit balance on any current or other account of the Obligor;  
 2.7.7 the appointment of any liquidator, Receiver, administrator or other similar officer either in respect of the Obligor or over all or any part of the Obligor's assets;  
 2.7.8 any amendment or supplement to, or variation of, any Debt Document; or

2.7.9 the provisions of section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 or sections 484 or 486 of the Companies Act 1985 or any other rule of law which might operate to the contrary.

**2.8 No challenge to security**

No Finance Party shall challenge or question:

- 2.8.1 the validity or enforceability of any Security constituted by a Security Document;
- 2.8.2 the nature of any Security constituted by a Security Document; or
- 2.8.3 without prejudice to the generality of the foregoing, whether any Security constituted by a Security Document is fixed or floating.

**2.9 Variation of security**

Each floating charge comprised in the Transaction Security is varied to the extent specified in this deed and this deed shall be construed and receive effect as an instrument of alteration within the meaning of section 486 of the Companies Act 1985.

**3. Obligor undertakings**

**3.1 So long as the Senior Debt is outstanding, the Obligor shall not:**

- 3.1.1 pay, repay or make any distribution in respect of any of the Junior Debt in cash or in kind except for a Permitted Payment;
- 3.1.2 buy or acquire any of the Junior Debt;
- 3.1.3 exercise any right of set-off against the Junior Debt except in respect of a Permitted Payment;
- 3.1.4 make a loan or provide credit to the Junior Lender;
- 3.1.5 create, or allow to exist, any Security (other than Junior Security) over any of its assets for, or any guarantee for or in respect of, any of the Junior Debt or in respect of a loan or credit provided to the Junior Lender by another person; or
- 3.1.6 take, or omit to take, any action which may impair the ranking or the subordination set out in this deed.

**4. Junior Lender undertakings**

**4.1 No payment, Security or guarantee**

The Junior Lender undertakes to the Senior Finance Parties that, so long as the Senior Debt is outstanding, it shall not:

- 4.1.1 demand, take, accept or receive any payment or distribution in respect, or on account, of the Junior Debt in cash or in kind or apply any money or property in discharge of the Junior Debt other than a Permitted Payment;
- 4.1.2 allow to exist or receive the benefit of any Security (other than Junior Security), or receive the benefit of any guarantee, from any person in respect of the Junior Debt unless:
  - (i) the benefit of such Security or guarantee is conferred on the Senior Finance Parties at, or prior to, that time in such manner and such form as the Senior Finance Parties may reasonably require; or
  - (ii) the Senior Finance Parties have declined to take the benefit of such Security or guarantee (without prejudice to their respective rights to take such Security or guarantee at a later time); or
- 4.1.3 take, or omit to take, any action which may impair the ranking or the subordination set out in this deed.

**4.2 No set-off**

The Junior Lender shall not claim any right of set-off, abatement or any other extinction or reduction in respect of any liability which it has to the Obligor, other than in respect of a Permitted Payment.

**4.3 No other arrangements**

The Junior Lender shall not make any arrangement which would place, or which aims to place, the Junior Lender in a position similar to that in which it would be if:



- 4.3.1 it had received a payment in respect of the Junior Debt; or  
 4.3.2 the Junior Debt had been secured by Security (other than the Junior Security).

## **5. Permitted payments**

### **5.1 Permitted payments**

The Obligor may, subject to clause 5.2:

- 5.1.1 make each payment of interest, and all amounts relating to interest, on the Junior Debt on the relevant due date;  
 5.1.2 pay any fees, costs and expenses due to the Junior Lender; and  
 5.1.3 make each scheduled repayment of principal of the Junior Debt, in accordance with the Junior Debt Documents.

### **5.2 When Permitted Payments can be made**

The payments permitted by clause 5.1 may only be made if:

- 5.2.1 no step has been taken by the Junior Lender:  
 (i) to enforce any Junior Security; or  
 (ii) for the winding up, dissolution, administration or reorganisation of the Obligor or the appointment of a liquidator, Receiver, administrator or other similar officer of the Obligor or any of its assets; and  
 5.2.2 no notice has been given to the Junior Lender by a Senior Finance Party that:  
 (i) an event of default, termination event or other early repayment event has occurred under the Senior Debt Documents; or  
 (ii) a Senior Finance Party has demanded the immediate repayment of any amount under a Senior Debt Document which is payable on demand.

## **6. Preservation of rights**

### **6.1 No waiver of rights**

No delay in exercising rights and remedies in respect of the Senior Debt or the Junior Debt, or the Senior Security or the Junior Security, because of any term of this deed postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

### **6.2 Junior Debt remains due and payable**

The Junior Debt shall remain owing, or due and payable, from the Obligor, and interest and default interest will accrue on missed payments in accordance with the terms of the Junior Debt Documents, despite any term of this deed that might postpone, subordinate or prevent payment of the Junior Debt.

## **7. Co-operation by Obligor and Junior Lender**

A Senior Finance Party may require the Obligor and the Junior Lender, either jointly or separately, to sign any document and take any steps to protect, or give effect to, that Senior Finance Party's rights under this deed, or any similar or related purpose and the Obligor and the Junior Lender shall promptly comply with any such requirement.

## **8. Preservation of subordination**

### **8.1 Continuing subordination**

The subordination provisions in this deed constitute continuing subordination and shall benefit the ultimate balance of all the Senior Debt, regardless of any intermediate payment or discharge in whole or in part.

### **8.2 Waiver of defences**

The subordination in this deed, and the obligations of the Junior Lender under this deed, will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the subordination, or any of those obligations, including (without limitation and whether or not known to any party):

- 8.2.1 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which a Finance Party may or after the effective date of this deed have from or against the Obligor or any other person;
- 8.2.2 any act or omission by a Finance Party or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Obligor or any other person;
- 8.2.3 any termination, amendment, variation, novation, replacement or supplement of or to any Debt Document;
- 8.2.4 any grant of time, indulgence, waiver or concession to the Obligor or any other person;
- 8.2.5 any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Obligor or any other person;
- 8.2.6 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Obligor or any other person under any Debt Document or any other document or security; or
- 8.2.7 any claim or enforcement of payment from the Obligor or any other person.

### 8.3 Immediate recourse

The Senior Finance Parties shall not be obliged, before claiming the benefit of this deed, to:

- 8.3.1 take any action or obtain judgment in any court against the Obligor or any other person;
- 8.3.2 make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Obligor or any other person; or
- 8.3.3 make, demand, enforce or seek to enforce any claim, right or remedy against the Obligor or any other person.

### 8.4 Non-competition

The Junior Lender warrants to the Senior Finance Parties that it has not taken or received, and shall not take, exercise or receive the benefit of any Right from or against the Obligor, its liquidator, an administrator or any other person in connection with any liability of, or payment by, the Junior Lender under this deed but:

- 8.4.1 if any such Right is taken, exercised or received by the Junior Lender, that Right and all monies at any time received or held in respect of that Right shall be held by the Junior Lender on trust for the Senior Finance Parties for application in or towards the discharge of the Senior Debt; and
- 8.4.2 on demand by the Senior Finance Parties, the Junior Lender shall promptly transfer, assign or pay to the Senior Finance Parties all other Rights and all monies from time to time held on trust by the Junior Lender under this clause 8.4.

## 9. Waiver and amendment of Debt Documents and Consents

### 9.1 Restricted waivers and amendments

Neither the Obligor nor any Finance Party shall agree any modification, waiver or amendment to, or make any other agreement affecting, any Debt Document without the prior written consent of the other Finance Parties which would:

- 9.1.1 increase the commitments of the Senior Finance Parties under any Senior Debt Document by an amount that would result in the Senior Principal exceeding the Senior Principal Limit;
- 9.1.2 increase the commitments of the Junior Lender under any Junior Debt Document or constitute any further Junior Debt;
- 9.1.3 amend or vary the schedule for repayment of principal under a Debt Document;
- 9.1.4 increase the margin or change the basis on which the interest payable is calculated under a Debt Document;
- 9.1.5 increase the fees, costs and expenses payable by the Obligor to a Finance Party under a Debt Document;
- 9.1.6 amend or vary the financial covenants under a Debt Document; or

- 9.1.7 amend or vary the nature of any event of default, termination event or other early repayment event under a Debt Document.
- 9.2 **Permitted waivers and amendments**  
Nothing in clause 9.1 shall prevent:
- 9.2.1 any change in interest or margin permitted by a Debt Document under the calculation of additional costs, gross-up, substitute basis, default interest, minimum annual charge or other provisions;
- 9.2.2 a Senior Finance Party agreeing (except in relation to any term loan facility comprised in the Senior Debt Documents at the date of this deed) that any part of the Senior Debt which is repaid or prepaid should remain available for redrawing, provided that, as a result, the amount of the Senior Principal is not increased beyond the Senior Principal Limit; or
- 9.2.3 HIF changing any retention, prepayment percentage or funding limit which applies under a HIF Debt Document, provided that, as a result, the amount of the Senior Principal is not increased beyond the Senior Principal Limit.
- 9.3 **Senior Consents**  
If a Senior Finance Party gives, in respect of a Senior Finance Document and, where it is reasonably practicable to do so, following consultation with the Junior Lender, any Consent which is permitted by the terms of this deed, the Junior Lender:
- 9.3.1 will (or will be deemed to) give a corresponding Consent in equivalent terms in relation to the Junior Debt Documents; and
- 9.3.2 will do anything (including executing any document) that the Senior Finance Parties may reasonably require to give effect to this clause.
- 9.4 **Junior Consents**  
If the Junior Lender is to provide a Consent under a Junior Finance Document in respect of which a corresponding Consent is not required under the Senior Finance Documents, the Junior Lender shall consult with the Senior Finance Parties regarding such Consent and exercise its rights relative thereto as instructed by the Bank.
- 9.5 **Senior Cash Sweep**  
Until the Junior Debt has been satisfied in full, no Excess Cashflow Prepayment shall be made to the Bank without the prior written consent of the Junior Lender.
- 10. Insurance and custody of documents**
- 10.1 **Insurance**  
In the event of any monies being received or recovered in respect of any claim under any insurance policy covering any of the Security Assets, such monies shall (subject to the rights of prior charge holders, if any) be applied in replacing, restoring or reinstating the Security Assets destroyed, damaged or lost, unless HIF otherwise directs in writing that such monies are applied towards the Senior Debt in accordance with the terms of this deed.
- 10.2 **Title documents**  
The Senior Finance Parties shall be entitled, but not obliged, to hold each title or other document relating to any asset subject to Senior Security. The Junior Lender may inspect any such documents provided it gives reasonable prior written notice to the Senior Finance Parties.
- 11. Senior Debt enforcement**
- 11.1 **Consultation with Junior Lender**  
Subject to clause 11.3, a Senior Finance Party shall consult the Junior Lender before taking Enforcement Action.
- 11.2 **Junior Lender response**  
If a Senior Finance Party consults the Junior Lender under clause 11.1:
- 11.2.1 the Junior Lender shall respond as quickly as is reasonably practicable;
- 11.2.2 the Finance Parties shall consult together with a view to agreeing the method of enforcement or other relevant action and, where appropriate, with a view to agreeing a suitable person to be appointed as Receiver or administrator (and such consultation

and agreement shall also precede any removal of any Receiver or administrator and any appointment of a successor); and

11.2.3 If appropriate, the Finance Parties shall co-operate with each other in realising the Security Assets.

**11.3 When consultation not required**

A Senior Finance Party may take any Enforcement Action, without consulting or reaching agreement with the Junior Lender, if it reasonably believes that taking any such action immediately is necessary to protect its interests.

**11.4 Actions not invalid or ineffective**

11.4.1 No action taken by a Senior Finance Party shall be invalid or ineffective because of its failure to consult with the Junior Lender under this clause 11, or because of its failure to reach agreement with the Junior Lender under clause 11.2.

11.4.2 In respect of the right of HIF to appoint an administrator, the Bank and the Junior Lender irrevocably waive their rights (if any) as holder of a prior floating charge to receive notice from HIF of the proposed appointment of an administrator which may be required pursuant to the Insolvency Act 1986. The Bank and the Junior Lender as the holders of any prior qualifying floating charge (if any) hereby consent to the appointment by HIF of an administrator notwithstanding that no notice of intention to appoint an administrator within the meaning of paragraph 16(1)(b) of Schedule B1 to the Insolvency Act 1986 shall have been given to the Bank or the Junior Lender (as applicable).

**11.5 Notification of action taken**

As soon as reasonably practicable after a Senior Finance Party takes any Enforcement Action in accordance with clause 11.3, it shall inform the Junior Lender of the action taken and, if a Receiver or administrator has been appointed, consult with the Junior Lender with a view to that Receiver's or administrator's appointment continuing or, if that is not agreed, to the appointment of others to act jointly with him.

**11.6 Fair value**

11.6.1 In the case of a Distressed Disposal effected by, or at the request of, a Senior Finance Party, that Senior Finance Party shall take reasonable care to obtain a fair market price or value having regard to the prevailing market conditions (though the Senior Finance Parties shall have no obligation to postpone (or request the postponement of) any Distressed Disposal in order to achieve a higher price or value).

11.6.2 A Senior Finance Party may seek to satisfy the requirement in clause 11.6.1 in any manner.

11.6.3 Without prejudice to the generality of clause 11.6.2, the requirement in clause 11.6.1 shall be satisfied (and as between the Finance Parties and the Obligor shall be conclusively presumed to be satisfied) and a Senior Finance Party will be taken to have discharged all its obligations in this respect under this deed, the other Debt Documents and generally at law if:

- (i) that Distressed Disposal is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law;
- (ii) that Distressed Disposal is made by, at the direction of or under the control of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer (or any analogous officer in any jurisdiction) appointed in respect of the Obligor or the assets of the Obligor;
- (iii) that Distressed Disposal is made pursuant to the exercise of a power of sale under the Transaction Security exercised in accordance with applicable law;
- (iv) that Distressed Disposal is made pursuant to a Competitive Sales Process; or
- (v) a Financial Adviser appointed by a Senior Finance Party pursuant to clause 11.6.4 has delivered an opinion that the proceeds received or recovered in connection with that Distressed Disposal are fair from a financial point of view taking into account all relevant circumstances.

- 11.6.4 A Senior Finance Party may engage or approve the engagement of (in each case on such terms as it may determine), pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with a Distressed Disposal.
- 11.7 **Collateral securities and marshalling**  
The Junior Lender waives any right it has, or may have in the future, in respect of any Senior Security under the doctrines of collateral securities or marshalling.
- 11.8 **Co-operation by Junior Lender**  
The Junior Lender will, at the request of a Senior Finance Party or any Receiver or administrator appointed by a Senior Finance Party, join in such documents or otherwise take such action as may be reasonably required by a Senior Finance Party or such Receiver or administrator to facilitate the disposal of any asset subject to Senior Security whether or not there will be any balance of proceeds available for the Junior Lender arising from that disposal.
- 12. Junior Debt enforcement**
- 12.1 **Compliance with Senior Finance Parties directions**  
The Junior Lender shall comply with any directions given to it by a Senior Finance Party relating to taking any of the following actions:
- 12.1.1 presenting an application for an administration order or a petition for a winding-up order to be made in relation to the Obligor;
- 12.1.2 joining in, or opposing, such an application or a petition; or
- 12.1.3 voting for or against, or accepting or rejecting:
- (i) any proposal in a voluntary arrangement or administration in relation to the Obligor or in its winding up;
- (ii) any scheme of arrangement proposed in relation to the Obligor; or
- (iii) any rescheduling, refinancing or reorganisation agreement or moratorium in respect of any debts of the Obligor.
- 12.2 **Junior Debt default**  
If an event of default, termination event or other early repayment event occurs under the Junior Debt Documents, the Junior Lender shall:
- 12.2.1 immediately give notice of that event to the Senior Finance Parties; and
- 12.2.2 not, without the prior consent of the Senior Finance Parties, commence or take any Enforcement Action until the earlier of:
- (i) 180 days after serving notice of the occurrence of that event on the Senior Finance Parties; and
- (ii) confirmation by the Senior Finance Parties of the irrevocable discharge in full of the Senior Debt.
- 12.3 **Senior Finance Parties action**  
A Senior Finance Party may, following receipt of a notice of the occurrence of an event of default, termination event or other early repayment event under the Junior Debt Documents from the Junior Lender under clause 12.2.1, take whatever action it deems, in its absolute discretion (but always subject to the terms of this deed), appropriate in respect of the Senior Debt (subject to clause 11.6.1 in the case of a Distressed Disposal effected by, or at the request of, that Senior Finance Party).
- 13. Application of proceeds**
- 13.1 **Priorities**  
The priority of the Finance Parties shall stand (regardless of the order of execution, registration or notice or otherwise) so that all amounts from time to time received or recovered by a Finance Party pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Security constituted by any of the Security Documents shall, after providing for all reasonable outgoings, costs, charges, expenses and liabilities of enforcement, exercising rights on winding up and payments ranking in priority as a matter of law, be applied in the following order of priority:

- 13.1.1 first, in or towards discharge of the Senior Debt;
  - 13.1.2 second, once the Senior Debt has been fully discharged, in or towards discharge of the Junior Debt; and
  - 13.1.3 third, once the Junior Debt has been fully discharged, to the Obligor or any other person entitled to it.
  - 13.2 **Preferential payments**
    - 13.2.1 The Junior Lender shall bring into account any preferential payments received by it under sections 58 or 175 of the Insolvency Act 1986.
    - 13.2.2 A claim in respect of a preferential debt within the meaning of section 386 of the Insolvency Act 1986 shall be met firstly out of the Security Assets (other than the Book Debts) and only if such Security Assets are insufficient to cover such claims shall the same be met out of the Book Debts.
  - 13.3 **Purchaser protection**  
No purchaser dealing with a Finance Party or any Receiver or administrator shall be concerned in any way with the provisions of this deed, but shall assume that that Finance Party or Receiver or administrator, as the case may be, is acting in accordance with the provisions of this deed.
  - 14. **Obligor insolvency**


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  - 14.1 **Junior Lender**  
If the Obligor is wound up or goes into administration, the Junior Lender shall take all steps it reasonably can to:
    - 14.1.1 recover all amounts which may be due to it from the Obligor (or any third party) in respect of the Junior Debt;
    - 14.1.2 exercise its rights (howsoever arising) against any property in respect of any such amounts; and
    - 14.1.3 claim in that administration or winding-up.
  - 14.2 **Payment to Senior Finance Parties**  
The Junior Lender shall pay all monies received by it as a result of steps it takes in accordance with clause 14.1 to the Senior Finance Parties, after deducting all reasonable costs and expenses (including legal fees and expenses) incurred in recovering those monies.
  - 14.3 **Suspense account**  
Each Senior Finance Parties shall hold all monies received by it under clause 14.2 in a suspense account and shall, as soon as it is reasonably apparent to it that the Senior Debt will not be fully discharged, apply them in reduction of the Senior Debt or otherwise in accordance with clause 13.
  - 14.4 **No payment by Obligor**  
Between the Obligor and its creditors, no payments or receipts under clause 14.2 shall be deemed to constitute payment by the Obligor to the Senior Finance Parties in respect of the Senior Debt.
  - 14.5 **Subrogation**  
If payments made by the Junior Lender to the Senior Finance Parties under this clause result in the Senior Debt being fully discharged, the Junior Lender shall, to the extent of those payments, be subrogated to the rights of the Senior Finance Parties under the Senior Security Documents to receive payments or distributions of assets under the Senior Security Documents until the Junior Debt has been fully discharged.
15. **Refinancing of Senior Debt**


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- 15.1 **Refinancing of Senior Debt**  
The Junior Lender agrees that, subject to clause 15.2:
  - 15.1.1 the Senior Debt may be refinanced at any time by any person, whether or not that person is a Senior Finance Party or an Affiliate of a Senior Finance Party; and
  - 15.1.2 the new debt shall be treated as Senior Debt for the purposes of this deed, provided that where a new finance party is not a Senior Finance Party or an Affiliate of a Senior Finance Party, it is a bank, financial institution or trust, fund or other entity which is

regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets.

**15.2 Conditions applicable to new Senior Debt**

**15.2.1** The terms of any refinancing (including maturity) of the Senior Debt shall not be more onerous for the Obligor than the terms of the Senior Debt.

**15.2.2** Each new finance party in respect of the refinanced Senior Debt shall before, or at the same time as, it becomes a finance party of the refinanced Senior Debt, execute and deliver to the Junior Lender, a deed (in a form reasonably satisfactory to the Junior Lender) in which that finance party undertakes to be bound by the terms of this deed *mutatis mutandis*.

**16. Power of attorney**

**16.1 Appointment of attorney**

By way of security, each of the Obligor and the Junior Lender irrevocably appoints each Senior Finance Party, jointly and separately, to be its attorney and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things which the Obligor or the Junior Lender is required to execute and do under this deed.

**16.2 Ratification of acts of attorney**

Each of the Obligor and the Junior Lender ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in clause 16.1.

**17. Expenses**

**17.1 Negotiation and amendment costs and expenses**

The Obligor shall, promptly on demand, pay to, or reimburse, each Finance Party, 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 that Finance Party in connection with:

**17.1.1** the negotiation, preparation and execution of this deed; or

**17.1.2** any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) relating to this deed,

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 or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Obligor) at the rate and in the manner specified in the relevant Debt Document.

**17.2 Enforcement costs and expenses**

The Obligor shall, on demand, pay to each Finance Party the amount of all costs and expenses (including legal, printing and out-of-pocket expenses) incurred by that Finance Party in connection with enforcing, preserving any rights under, or monitoring the provisions of this deed or instructing a Financial Adviser as permitted under this deed.

**18. Duration**

This deed shall cease to have effect when the Senior Debt has, to the satisfaction of the Senior Finance Parties, been irrevocably and unconditionally paid and discharged in full.

**19. Restrictions on assignment**

**19.1 Assignment by Junior Lender**

The Junior Lender shall not assign or transfer any of its rights and benefits under this deed, or any Junior Debt Document, without first requiring the assignee or transferee to execute and deliver to the Senior Finance Parties a deed in which the assignee or transferee agrees to be bound by the terms of this deed.

**19.2 Assignment by Senior Finance Parties**

The Senior Finance Parties shall not assign or transfer any of their respective rights and benefits under this deed, or any Senior Debt Document, without first requiring the assignee or transferee to execute and deliver to the Junior Lender a deed in which the assignee or transferee agrees to be bound by the terms of this deed.

**20. Obligor's acknowledgements****20.1 Obligor's acknowledgement and consent**

The Obligor acknowledges the terms of this deed and consents to the Finance Parties communicating with each other about the Obligor's affairs for the purposes of this deed.

**20.2 No reliance by Obligor**

The Obligor further acknowledges that none of the provisions entered into by the Finance Parties are for the benefit of the Obligor, nor may they be enforced or relied on by the Obligor.

**21. Remedies, waivers, amendments and consents****21.1 Amendments**

Any amendment to this deed shall be in writing and signed by, or on behalf of, each party, except that:

21.1.1 a Senior Finance Party does not need the Junior Lender's consent to an amendment to this deed (and the Junior Lender need not be party to any amendment document) that only alters the Obligor's obligations to that Senior Finance Party and the corresponding rights of that Senior Finance Party;

21.1.2 the Junior Lender does not need any Senior Finance Party's consent to an amendment to this deed (and the Senior Finance Parties need not be party to any amendment document) that only alters the Obligor's obligations to the Junior Lender and the corresponding rights of the Junior Lender; and

21.1.3 no Finance Party needs the Obligor's consent to an amendment to this deed (and the Obligor need not be party to any amendment document) that only alters the obligations of one Finance Party to another Finance Party and the corresponding rights of that other Finance Party.

**21.2 Waivers and consents**

21.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, 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.

21.2.2 A failure to exercise, or a delay by a party in exercising, any right or remedy provided under this deed 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 deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by a Finance Party shall be effective unless it is in writing.

**21.3 Rights and remedies**

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

**22. Severance**

If any provision (or part of a provision) of this deed 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 deed.



**23. Entire agreement**

This deed constitutes the entire agreement between the parties and supersedes and replaces any previous agreement, understanding, undertaking or arrangement of any nature between the parties relating to the subject matter of this deed.

**24. Counterparts**

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

24.2 Where executed in counterparts:

24.2.1 this deed will not take effect until each of the counterparts has been delivered;

24.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;

24.2.3 the date of delivery may be inserted in the recital clause in the blank provided for the effective date of this deed.

**25. Third party rights**

This deed 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 deed.

**26. Notices****26.1 Delivery**

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

26.1.1 in writing;

26.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

26.1.3 sent to:

(i) the Obligor at its registered office or any place of business or activity, or the fax number, last known to the relevant Finance Party;

(ii) HIF at:  
HSBC Invoice Finance (UK) Limited  
Securities Department  
21 Farncombe Road  
Worthing  
West Sussex  
BN11 2BW  
Fax: 01903 825325

Attention: The Securities Team

(iii) the Bank at:  
HSBC UK Bank plc  
Securities Processing Centre  
PO Box 6304  
Coventry  
CV3 9JY  
Fax: 0114 2820399

(iv) the Junior Lender at:  
Scottish Enterprise  
Atrium Court  
50 Waterloo Street  
Glasgow  
G6 6HQ  
Fax: Not applicable  
Attention: Director of Investment

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

**26.2 Receipt**

Any notice or other communication given under or in connection with this deed shall be deemed to be received:

**26.2.1** If delivered by hand, at the time it is left at the relevant address;

**26.2.2** If posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

**26.2.3** If sent by fax, when received in legible form.

A notice or other communication given as described in clause 26.2.1 or clause 26.2.3 on a day which 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.

**26.3 Service of proceedings**

This clause 26 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**27. Governing law and jurisdiction**

**27.1 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.

**27.2 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 deed or its subject matter or formation. Nothing in this clause shall limit the right of the Senior Finance Parties to take proceedings against the Obligor or the Junior Lender 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.

**28. Consent to registration**

Each party consents to the registration of this deed for preservation.

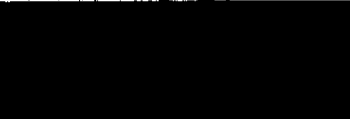
IN WITNESS WHEREOF this deed consisting of this and the 16 preceding pages and the Schedules of three parts has been executed in counterpart by the parties as underated, with an effective date of 3rd July 2020:

Subscribed for and on behalf of MACKAY'S LTD by:



signature of witness

HELEN May GRANT  
full name of above (print)



Address of witness



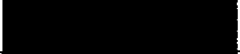


signature of director

CONRAD Paul GRANT  
full name of above (print)

3rd July 2020  
date of signing

Edinburgh  
place of signing

Subscribed for and on behalf of HSBC INVOICE FINANCE (UK) LIMITED by:

	
signature of witness	signature of authorized signatory/attorney
<u>LOZ DEBELLIS</u>	<u>RICHARD CORTHINE</u>
full name of above (print)	full name of above (print)
	<u>31/7/2020</u>
Address of witness	date of signing
	<u>WORTHING</u>
	place of signing

Subscribed for and on behalf of HSBC UK BANK PLC by:

signature of witness	signature of authorized signatory/attorney
full name of above (print)	full name of above (print)
	date of signing
Address of witness	place of signing

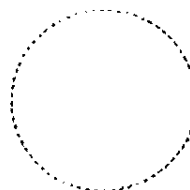
Subscribed for and on behalf of HSBC INVOICE FINANCE (UK) LIMITED by:

signature of witness	signature of authorised signatory/attorney
full name of above (print)	full name of above (print)
	date of signing
Address of witness	place of signing

Subscribed for and on behalf of HSBC UK BANK PLC by:

signature of witness	signature of authorised signatory/attorney
DONNA MCKINTOSH full name of above (print)	SARA BAKER MCKINTOSH full name of above (print)
	03/07/20 date of signing
Address of witness	12001-3322 place of signing

Sealed with the common seal of SCOTTISH ENTERPRISE



Subscribed for and on behalf of SCOTTISH ENTERPRISE by:



CAROLYN JANE GALBRAITH  
full name of above (print)



Address of witness



ERIC ROGER GALBRAITH  
full name of above (print)

03 JULY 2020  
date of signing

GLASGOW  
place of signing

**SCHEDULE  
DEBT DOCUMENTS**

This is the schedule referred to in the foregoing intercreditor deed among Mackay's Ltd., HSBC Invoice Finance (UK) Limited, HSBC UK Bank PLC and Scottish Enterprise.

**Part 1  
Bank Debt Documents**

1. **Bank facility documents**
  - 1.1 Loan agreement dated 23 August 2017 between HSBC Bank plc and the Obligor originally in relation to a £1,800,000 loan as amended by side letters dated 5 September 2017 and 10 April 2018 and as amended and restated by an amendment and restatement letter dated on or around the effective date of this deed between the Bank and the Obligor.
  - 1.2 Loan agreement dated 16 March 2018 between HSBC Bank plc and the Obligor originally in relation to a £2,000,000 loan as amended by a side letter dated 13 November 2018 and as amended and restated by an amendment and restatement letter dated on or around the effective date of this deed between the Bank and the Obligor.
  - 1.3 Overdraft facility letter dated 23 February 2018 between HSBC Bank plc and the Obligor in relation to a £750,000 overdraft facility.
  - 1.4 Terms and conditions in relation to a SACS facility with a limit of £200,000 provided by the Bank to the Obligor.
  - 1.5 Terms and conditions entered into in May 2012 in relation to a credit card facility with a limit of £30,000 provided by the Bank to the Obligor.
2. **Bank security documents**
  - 2.1 Floating charge granted by the Obligor in favour of HSBC Bank plc created on 10 February 2011.
  - 2.2 Standard security granted by the Obligor in favour of HSBC Bank plc in respect of the property at Unit 4 James Chalmers Road, Kirkton Industrial Estate, Arbroath, Angus, DD11 3LR dated 23 March 2011 and registered in the Land Register of Scotland under title number ANG43462 on 4 April 2011.
  - 2.3 Assignment granted by the Obligor in favour of HSBC Bank plc dated 30 March 2011.
  - 2.4 Pledge granted by the Obligor in favour of HSBC Bank plc dated 10 February 2011.

**Part 2  
HIF Debt Documents**

1. **HIF facility documents**  
Agreement for the purchase of debts between HIF and the Obligor.
2. **HIF security documents**  
Floating charge granted by the Obligor in favour of HIF created on 10 February 2011.

**Part 3  
Junior Debt Documents**

1. **Junior facility documents**  
Loan agreement between the Junior Lender and the Obligor comprising (i) a loan confirmation between the Junior Lender and the Obligor dated 30 March 2020 (as amended by a side letter dated on or around the effective date of this deed), and (ii) the Junior Lender's standard loan terms and conditions.
2. **Junior security documents**  
Floating charge granted by the Obligor in favour of the Junior Lender with an effective date of on or around the effective date of this deed.

\*\*\*\*\*  
Director

for and on behalf of MACKAY'S LTD

\*\*\*\*\*  
Authorised signatory/attorney

for and on behalf of HSBC INVOICE FINANCE  
(UK) LIMITED

\*\*\*\*\*  
Authorised signatory/attorney

for and on behalf of HSBC UK BANK PLC

\*\*\*\*\*  
Authorised signatory/attorney

for and on behalf of SCOTTISH ENTERPRISE



**Part 3**  
**Junior Debt Documents**

1. **Junior facility documents**  
Loan agreement between the Junior Lender and the Obligor comprising (i) a loan confirmation between the Junior Lender and the Obligor dated 30 March 2020 (as amended by a side letter dated on or around the effective date of this deed), and (ii) the Junior Lender's standard loan terms and conditions.
2. **Junior security documents**  
Floating charge granted by the Obligor in favour of the Junior Lender with an effective date of on or around the effective date of this deed.

.....  
Director

for and on behalf of MACKAY'S LTD

.....  
Authorised signatory/attorney

for and on behalf of HSBC INVOICE FINANCE  
(UK) LIMITED

.....  
Authorised signatory/attorney

for and on behalf of HSBC UK BANK PLC

.....  
Authorised signatory/attorney

for and on behalf of SCOTTISH ENTERPRISE

**Part 3**  
**Junior Debt Documents**

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Loan agreement between the Junior Lender and the Obligor comprising (i) a loan confirmation between the Junior Lender and the Obligor dated 30 March 2020 (as amended by a side letter dated on or around the effective date of this deed), and (ii) the Junior Lender's standard loan terms and conditions.
2. **Junior security documents**  
Floating charge granted by the Obligor in favour of the Junior Lender with an effective date of on or around the effective date of this deed.

\_\_\_\_\_  
Director  
for and on behalf of MACKAY'S LTD

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Authorised signatory/attorney  
for and on behalf of HSBC INVOICE FINANCE  
(UK) LIMITED

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Authorised signatory/attorney  
for and on behalf of HSBC UK BANK PLC

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Authorised signatory/attorney  
for and on behalf of SCOTTISH ENTERPRISE

**Part 3**  
**Junior Debt Documents**

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Loan agreement between the Junior Lender and the Obligor comprising (i) a loan confirmation between the Junior Lender and the Obligor dated 30 March 2020 (as amended by a side letter dated on or around the effective date of this deed), and (ii) the Junior Lender's standard loan terms and conditions.
2. **Junior security documents**  
Floating charge granted by the Obligor in favour of the Junior Lender with an effective date of on or around the effective date of this deed.

.....  
Director

for and on behalf of MACKAY'S LTD

.....  
Authorised signatory/attorney

for and on behalf of HSBC INVOICE FINANCE  
(UK) LIMITED

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Authorised signatory/attorney

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Authorised signatory/attorney

for and on behalf of SCOTTISH ENTERPRISE