

# 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

3

SC395760

Name of company

\* RHA Technologies Ltd

*\* insert full name  
of company*

Date of creation of the charge (note 1)

26 March 2018

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

Santander UK plc

Short particulars of all the property charged

All the property or undertaking of the company

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

Harper Macleod LLP  
The Ca'd'oro  
45 Gordon Street  
Glasgow  
G1 3PE

For official use (02/06)  
Charges Section

Post room

FRIDAY



\*S97J216P\*

SCT

19/06/2020

#17

COMPANIES HOUSE

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

Please see Paper Apart, Part D

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

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this margin*

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

Signed  Date 17/6/2020

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

**This is the paper apart referred to in the foregoing Form 466 relative to an instrument of alteration dated 5 June 2020 (the "Ranking Agreement") in respect of the floating charge by RHA TECHNOLOGIES LTD in favour of SANTANDER UK PLC created on 26 March 2018 and registered at Companies House on 30 March 2018.**

**The following terms shall have the following meanings in this paper apart:-**

**Additional Debt** means, in relation to any Debt:

- (a) any refinancing, novation, deferral or extension of that Debt
- (b) any further advance which may be made under any agreement supplemental to any relevant Document, together with all related interest, fees and costs
- (c) any claim for damages or restitution in the event of rescission of that Debt or otherwise in connection with any Document
- (d) any claim against the Borrower arising from any recovery by the Borrower or any other person of a payment or discharge in respect of that Debt on the grounds of preference or otherwise
- (e) any claim for breach of representation, warranty, undertaking or in respect of an event of default (howsoever defined) or under any indemnity in connection with any relevant Document and/or
- (f) any amounts (such as post-insolvency interest) which would otherwise be included in any of paragraphs (a) to (e) of this definition but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings

**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, in each case, from time to time

**Debt** means the Senior Debt and the Subordinated Debt

**Documents** means the Senior Documents and the Subordinated Documents

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary

**Secured Party** means Santander UK plc and its Affiliates

**Security** means a mortgage, charge, pledge, lien, assignment, assignation in security, standard security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

**Security Documents** means the Senior Security Documents and the Subordinated Security Document

**Senior Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to any Secured Party in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations



**Senior Debt Documents** means each agreement or other document evidencing or recording the terms of any Senior Debt

**Senior Discharge Date** means the date on which Santander notifies the Subordinated Creditor and the Borrower in writing that it is satisfied that all of the Senior Debt has been unconditionally and irrevocably paid and discharged in full, whether or not as the result of an enforcement, and all commitments of any Secured Party to the Borrower have been cancelled

**Senior Documents** means the Senior Debt Documents and the Senior Security Documents

**Senior Security Documents** means:

- (a) the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of Santander UK plc created on 26 March 2018 and registered at Companies House on 30 March 2018
- (b) any other document entered into at any time by the Borrower creating any guarantee, indemnity, Security or other assurance in favour of any Secured Party as security for any of the Senior Debt and
- (c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs (a) and (b) above

**Subordinated Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to the Subordinated Creditor (or any of its Affiliates) including, without limitation, under or in connection with any Subordinated Document in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Subordinated Debt Documents** means the Subordinated Facility Agreement, the Subordinated Subscription Agreement, the Subordinated Loan Note Instrument and each other agreement or other document evidencing or recording the terms of any Subordinated Debt

**Subordinated Documents** means the Subordinated Debt Documents and the Subordinated Security Document

**Subordinated Facility Agreement** means the £1,500,000 loan agreement between the Borrower and the Subordinated Creditor (comprising the loan confirmation between the Borrower and the Subordinated Creditor originally dated and delivered on 29 March 2019 (as amended and restated pursuant to an amendment and restatement agreement between the Borrower and the Subordinated Creditor dated 4 September 2019 and as further amended pursuant to an amendment letter from the Subordinated Creditor to the Borrower dated, and accepted by the Borrower, on or around the date of the Ranking Agreement) and the Subordinated Creditor's standard loan terms and conditions)

**Subordinated Loan Note Instrument** means the £1,400,000 convertible loan note instrument issued by the Borrower on or around the date of the Ranking Agreement

**Subordinated Security** means the Security constituted by the Subordinated Security Document

**Subordinated Security Document** means the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of the Subordinated Creditor created on 29 March 2019 and registered at Companies House on 3 April 2019



**Subordinated Subscription Agreement** means the subscription agreement among the Borrower, the Subordinated Creditor, Andrew John Reid and Ruth Helena Reid dated on or around the date of the Ranking Agreement

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

**Part A – Names, and addresses of the persons who have executed the instrument of alteration**

- (1) **Santander UK PLC** (registered in England with number 2294747) whose registered office is at 2 Triton Square, Regent's Place, London NW1 3AN for itself and as security trustee for each of itself and each Secured Party ("**Santander**", which expression shall include its successors in title, assignees and transferees);
- (2) **Scottish Enterprise** established by the Enterprise and New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ (the "**Subordinated Creditor**"); and
- (3) **RHA Technologies Ltd** (registered in Scotland with number SC395760) whose registered office is at 69 Haugh Road Glasgow Scotland G3 8TX (the "**Borrower**")

**Part B – Date(s) of execution of the instrument of alteration**

Subscribed:

- (a) for and on behalf of Santander on 4 June 2020;
- (b) for and on behalf of the Subordinated Creditor on 4 June 2020; and
- (c) for and on behalf of the Borrower on 4 June 2020,

and delivered on 5 June 2020.

**Part C - 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**

At any time on or before the Senior Discharge Date, the Borrower will not, except with the prior written consent of Santander create, or permit to subsist, any Security over any of its assets, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security).

**Part D - 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**

The Security Documents shall rank in the following order of priority notwithstanding (i) the terms of the documents constituting the Security Documents; (ii) the terms of any instrument of alteration dated prior to this Agreement affecting any of the Security Documents; (iii) the dates of execution, recording, registration or intimation; and/or (iv) any law or regulation to the contrary:

- (a) the Senior Security Documents to the extent of the Senior Debt; then
- (b) the Subordinated Security Document to the extent of the Subordinated Debt,

and such priority will not be affected by any intermediate reduction in the principal amount secured by any of the Senior Security Documents or by any intermediate reduction in or satisfaction of the Senior Debt.





**FILE COPY**

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

COMPANY NO. 395760  
CHARGE CODE SC39 5760 0003

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 5 JUNE 2020 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 19 JUNE 2020

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 26  
MARCH 2018

BY RHA TECHNOLOGIES LTD

IN FAVOUR OF  
SANTANDER UK PLC

GIVEN AT COMPANIES HOUSE, EDINBURGH 19 JUNE 2020



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Dated 5 June 2020

**RHA TECHNOLOGIES LTD**  
(as Borrower)

**SCOTTISH ENTERPRISE**  
(as Subordinated Creditor)

**SANTANDER UK PLC**

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**RANKING AGREEMENT**

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I certify that, save for material redacted pursuant to s.859G of the Companies Act 2006 as applied by s.466(4E) of the Companies Act 1985, this copy instrument of alteration is a correct copy of the original instrument of alteration.

Signature



Date

17 / 6 / 2020

Harper Macleod LLP



1. The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the human brain, and the second part to a description of the results of the experiments.

This Agreement is delivered on

5 June

2020

**Among**

- (1) **RHA Technologies Ltd** (registered in Scotland with number SC395760) whose registered office is at 69 Haugh Road, Glasgow, Scotland G3 8TX (as **Borrower**);
- (2) **Scottish Enterprise** established by the Enterprise and New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ (as **Subordinated Creditor**); and
- (3) **Santander UK plc** (registered in England with number 2294747) whose registered office is at 2 Triton Square, Regent's Place, London NW1 3AN for itself and as security trustee for each of itself and each Secured Party (**Santander**, which expression shall include its successors in title, assignees and transferees).

**It is agreed**

**1 Definitions and Interpretation**

**1.1 Definitions**

In this Agreement:

**Additional Debt** means, in relation to any Debt:

- (a) any refinancing, novation, deferral or extension of that Debt
- (b) any further advance which may be made under any agreement supplemental to any relevant Document, together with all related interest, fees and costs
- (c) any claim for damages or restitution in the event of rescission of that Debt or otherwise in connection with any Document
- (d) any claim against the Borrower arising from any recovery by the Borrower or any other person of a payment or discharge in respect of that Debt on the grounds of preference or otherwise
- (e) any claim for breach of representation, warranty, undertaking or in respect of an event of default (howsoever defined) or under any indemnity in connection with any relevant Document and/or
- (f) any amounts (such as post-insolvency interest) which would otherwise be included in any of paragraphs (a) to (e) of this definition but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings

**Administrator** has the same meaning as in Schedule B1 to the Insolvency Act 1986

**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, in each case, from time to time

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London

**Change of Control** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Consent** means any consent, approval, release, waiver or agreement to amend

**Conversion Shares** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Debt** means the Senior Debt and the Subordinated Debt

**Documents** means the Senior Documents and the Subordinated Documents

**Enforcement Action** means in relation to any Debt, any action whatsoever to:

- (a) demand payment of, declare prematurely due and payable, or otherwise seek to accelerate payment of, or place on demand, all or any part of that Debt
- (b) recover all or any part of that Debt (including by exercising any rights of set-off or combination of accounts)
- (c) exercise or enforce directly or indirectly any rights under or pursuant to the provisions of any guarantee, surety or any security document, or other document (including the crystallisation of any floating charge) in relation to, or given in support of, all or any part of that Debt
- (d) petition for (or take any other steps which may lead to) an Insolvency Event in relation to the Borrower or
- (e) commence or support legal proceedings against the Borrower (and/or any of the Borrower's directors and/or shareholders in their capacity as such)

**First Tranche Completion** has the meaning given to it in the Subordinated Subscription Agreement (as in force as at the date of this Agreement)

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary

**Investment Shares** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Insolvency Event** means in relation to the Borrower:

- (a) it is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities)
- (c) a moratorium is declared in respect of any indebtedness of it (irrespective of whether such moratorium subsequently ends)

- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, sequestration, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of it
  - (ii) a composition, compromise, assignment or arrangement with or for the benefit of any of its creditors
  - (iii) the appointment of a liquidator, Receiver, Administrator, compulsory manager, trustee, custodian or other similar officer in respect of it or any of its assets or
  - (iv) enforcement of any Security over any of its assets
- or any analogous procedure or step is taken in any jurisdiction (but, in each case, not including any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement) and/or
- (e) any expropriation, attachment, sequestration, distress or execution or any other legal or analogous process in any jurisdiction which affects any of its assets and is not dismissed or discharged within 14 days of the commencement of such process

**Longstop Date** means the date falling 36 months from the First Tranche Completion or such other date as agreed in writing between the Borrower and the Subordinated Creditor which, for the avoidance of doubt, shall not be less than 36 months from the date of the Subordinated Loan Note Instrument

**Multiplied Note Amount** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Ordinary Shares** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Party** means a party for the time being to this Agreement

**Receiver** means an administrative receiver, a receiver and manager or a receiver

**Relevant Fund Raising** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Relevant Shares** has the meaning given to "Senior Shares" in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Secured Party** means Santander UK plc and its Affiliates

**Security** means a mortgage, charge, pledge, lien, assignment, assignation in security, standard security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

**Security Documents** means the Senior Security Documents and the Subordinated Security Document

**Senior Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to any Secured Party in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Senior Debt Documents** means each agreement or other document evidencing or recording the terms of any Senior Debt

**Senior Default** means a default howsoever defined in any Senior Document or the occurrence of any other event which entitles any Secured Party to accelerate, demand repayment of or demand delivery of cash collateral in respect of the Senior Debt (or any part thereof)

**Senior Discharge Date** means the date on which Santander notifies the Subordinated Creditor and the Borrower in writing that it is satisfied that all of the Senior Debt has been unconditionally and irrevocably paid and discharged in full, whether or not as the result of an enforcement, and all commitments of any Secured Party to the Borrower have been cancelled

**Senior Documents** means the Senior Debt Documents and the Senior Security Documents

**Senior Security** means the Security constituted by the Senior Security Documents

**Senior Security Documents** means:

- (a) the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of Santander UK plc created on 26 March 2018 and registered at Companies House on 30 March 2018
- (b) any other document entered into at any time by the Borrower creating any guarantee, indemnity, Security or other assurance in favour of any Secured Party as security for any of the Senior Debt and
- (c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs (a) and (b) above

**Subordinated Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to the Subordinated Creditor (or any of its Affiliates) including, without limitation, under or in connection with any Subordinated Document in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Subordinated Debt Documents** means the Subordinated Facility Agreement, the Subordinated Subscription Agreement, the Subordinated Loan Note Instrument and each other agreement or other document evidencing or recording the terms of any Subordinated Debt

**Subordinated Documents** means the Subordinated Debt Documents and the Subordinated Security Document

**Subordinated Facility Agreement** means the £1,500,000 loan agreement between the Borrower and the Subordinated Creditor (comprising the loan confirmation between the Borrower and the Subordinated Creditor originally dated and delivered on 29 March 2019 (as amended and restated pursuant to an amendment and restatement agreement between the

Borrower and the Subordinated Creditor dated 4 September 2019 and as further amended pursuant to an amendment letter from the Subordinated Creditor to the Borrower dated, and accepted by the Borrower, on or around the date of this Agreement) and the Subordinated Creditor's standard loan terms and conditions)

**Subordinated Loan Note Instrument** means the £1,400,000 convertible loan note instrument issued by the Borrower on or around the date of this Agreement

**Subordinated Loan Notes** means the principal amount from time to time of the £1,400,000 unsecured convertible loan notes constituted by the Subordinated Loan Note Instrument issued to the Subordinated Creditor and paid up and outstanding

**Subordinated Security** means the Security constituted by the Subordinated Security Document

**Subordinated Security Document** means the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of the Subordinated Creditor created on 29 March 2019 and registered at Companies House on 3 April 2019

**Subordinated Subscription Agreement** means the subscription agreement among the Borrower, the Subordinated Creditor, Andrew John Reid and Ruth Helena Reid dated on or around the date of this Agreement

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

**Tranche 1** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Tranche 2** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Tranche 2 Conversion** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Tranche 2 Loan Amount** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

## 1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) Santander, an Affiliate of Santander, the Subordinated Creditor or the Borrower, shall be construed so as to include its successors in title, assignees and transferees;
  - (ii) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
  - (iii) a Document or any other document, agreement or instrument is a reference to that Document or other document, agreement or instrument as amended, novated, supplemented or restated (however fundamentally);
  - (iv) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or

contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (v) **Indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) **a person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality), or any other entity or body of any description;
  - (vii) **a regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (viii) **a provision of law** is a reference to a provision of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Agreement; and
  - (ix) **sterling** and £ shall be construed as a reference to the lawful currency of the United Kingdom.
- (b) Clause headings are for ease of reference only.
  - (c) Any word importing the singular shall include the plural and vice versa.
  - (d) A Senior Default is **continuing** if it has not been waived to the satisfaction of Santander.
  - (e) A **payment** includes a distribution, prepayment or repayment and references to **pay** include distribute, prepay or repay.

### 1.3 Third party rights

Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or enjoy the benefit of any term of this Agreement or any other document issued or entered into under or in connection with it.

### 1.4 Conflict

In the event of any conflict between the terms of this Agreement and the terms of any other Document, the terms of this Agreement will prevail.

**2 Consent**

**2.1 Santander consent**

Santander consents to the entry by the Borrower into, and the subsistence of, the Subordinated Security Document, the Subordinated Facility Agreement, the Subordinated Subscription Agreement and the Subordinated Loan Note Instrument (in each case, as in force at the date of this Agreement).

**2.2 Subordinated Creditor consent**

The Subordinated Creditor consents to the entry by the Borrower into, and the subsistence of, the Senior Security Documents and the Senior Debt Documents.

**3 Ranking**

**3.1 Ranking of Debt**

The Senior Debt will at all times rank in right and priority of payment ahead of the Subordinated Debt.

**3.2 Ranking of Security**

The Security Documents shall rank in the following order of priority notwithstanding (i) the terms of the documents constituting the Security Documents; (ii) the terms of any instrument of alteration dated prior to this Agreement affecting any of the Security Documents; (iii) the dates of execution, recording, registration or intimation; and/or (iv) any law or regulation to the contrary:

- (a) the Senior Security Documents to the extent of the Senior Debt; then
- (b) the Subordinated Security Document to the extent of the Subordinated Debt,

and such priority will not be affected by any intermediate reduction in the principal amount secured by any of the Senior Security Documents or by any intermediate reduction in or satisfaction of the Senior Debt.

**3.3 Continuation**

The ranking provided for in this clause 3 shall not be affected by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the relative ranking of the Debt, including, but not limited to:

- (a) any provision contained in any of the Documents;
- (b) section 464 or 466 of the Companies Act 1985;
- (c) section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970;
- (d) the date upon which any Debt arose;
- (e) whether a person is obliged to advance any such Debt;
- (f) the date or order of execution, delivery, registration, filing or giving of notice of any Document;



- (g) any fluctuations from time to time in the amount of, or any intermediate discharge in whole or in part of, any Debt;
- (h) the granting of time or any other indulgence to the Borrower or any other person;
- (i) the existence at any time of a credit balance on any current or other account of the Borrower;
- (j) the appointment of any liquidator, receiver, administrator or other similar officer either in respect of the Borrower or over all or any part of the Borrower's assets; or
- (k) any amendment or supplement to or variation of any Document.

#### **4 Undertakings**

##### **4.1 Undertakings of the Borrower**

At any time on or before the Senior Discharge Date, the Borrower will not, except with the prior written consent of Santander:

- (a) make, or take any action to make, any payment in respect of, or on account of, or purchase, redeem or otherwise acquire any of, the Subordinated Debt in cash or in kind except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (c) create, or permit to subsist, any Security over any of its assets, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);
- (d) give any financial support (including, without limitation, the giving of any guarantee, indemnity or other assurance against financial loss, the making of any deposit or the taking of any participation) to any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking and/or subordination of the Subordinated Debt provided for in this Agreement being prejudiced or impaired in any respect;
- (f) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt or the Subordinated Security (including, without limitation, any of the terms of the Subordinated Documents);
- (g) incur any financial indebtedness that ranks ahead of the Subordinated Debt other than Senior Debt; or
- (h) petition for (or take any other steps which may lead to) an Insolvency Event in respect of the Borrower.

##### **4.2 Undertakings of Subordinated Creditor**

At any time on or before the Senior Discharge Date, the Subordinated Creditor will not, except with the prior written consent of Santander:

- (a) demand, receive or take any action to receive any payment in respect of, or on account of, any of the Subordinated Debt in cash or in kind or apply any money or property in or towards discharge of any of the Subordinated Debt except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (c) receive, or permit to subsist, any Security over any asset of the Borrower, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);
- (d) receive or permit to subsist any financial support (including, without limitation, any guarantee, indemnity or other assurance against financial loss, any deposit or any participation) from any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) allow any of the Subordinated Debt to be subordinated to any person other than in accordance with this Agreement or as may arise by operation of law;
- (f) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking, priority and/or subordination of the Subordinated Debt and/or the Subordinated Security provided for in this Agreement being prejudiced or impaired in any respect;
- (g) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt or Subordinated Security (including, without limitation, any of the terms of the Subordinated Documents); or
- (h) take any Enforcement Action except to the extent expressly required under clause 8 (Enforcement Action).

## **5 Permitted payments of Subordinated Debt**

### **5.1 Permitted payments**

At any time on or before the Senior Discharge Date, the Borrower may pay in cash, and the Subordinated Creditor may receive:

- (a) the scheduled payments of principal and interest in relation to Tranche 1 in accordance with clause 7.1 and clause 9.1 respectively of the Subordinated Facility Agreement (as in force as at the date of this Agreement);
- (b) the scheduled payments of principal and interest in relation to Tranche 2 in accordance with clause 7.2 and clause 9.2 respectively of the Subordinated Facility Agreement (as in force as at the date of this Agreement); and/or
- (c) the Multiplied Note Amount in respect of the Subordinated Loan Notes on the Longstop Date,

in each case, provided that no Senior Default has occurred and is continuing or would result from such payment.

## 5.2 Permitted conversions

At any time on or before the Senior Discharge Date, the Borrower may:

- (a) issue Conversion Shares to the Subordinated Creditor in full satisfaction of such part of the Tranche 2 Loan Amount as is subject to a Tranche 2 Conversion in accordance with the Subordinated Facility Agreement (as in force as at the date of this Agreement); and/or
- (b) convert all of the Subordinated Loan Notes at the Multiplied Note Amount into, and issue to the Subordinated Creditor in full satisfaction of the Subordinated Loan Notes, Relevant Shares, Ordinary Shares or Investment Shares (as appropriate) on a Relevant Fund Raising before the Longstop Date, on a Change of Control before the Longstop Date or at the election of the Subordinated Creditor where a Relevant Fund Raising has not occurred prior to the Longstop Date, in each case, in accordance with the Subordinated Loan Note Instrument (as in force as at the date of this Agreement).

## 6 Turnover

### 6.1 Turnover

If at any time on or before the Senior Discharge Date:

- (a) the Subordinated Creditor receives or recovers a payment or distribution of any kind in respect of or on account of any of the Subordinated Debt which is not expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) the Subordinated Creditor receives or recovers proceeds pursuant to any action required under clause 8 (Enforcement Action);
- (c) any of the Subordinated Debt is discharged by set-off, combination of accounts or otherwise in a manner which is not expressly permitted by clause 4 (Undertakings); or
- (d) the Borrower makes any payment or distribution of any kind in respect of or on account of the purchase or other acquisition of any of the Subordinated Debt,

other than pursuant to clause 14 (Application of recoveries) (the amount of each such payment, distribution, set-off or combination being a **Turnover Amount**), the Subordinated Creditor will promptly pay an amount equal to the lesser of:

- (i) that Turnover Amount; and
- (ii) the amount of the Senior Debt,

to Santander for application in accordance with clause 14 (Application of recoveries) and, pending that payment, will hold such amount on trust for Santander (and Santander acknowledges notice of such trust).

### 6.2 Recovering Creditor's rights

- (a) Any amount paid by the Subordinated Creditor to Santander under clause 6.1 (**Turnover Payment**) shall be treated as having been paid by the Borrower and shall be applied by Santander in accordance with clause 14 (Application of recoveries).

- (b) On application by Santander, pursuant to clause 14 (Application of recoveries), of a Turnover Payment, as between the Borrower and the Subordinated Creditor an amount equal to the Turnover Payment will be treated as not having been paid by the Borrower and, to the extent of an amount equal to such Turnover Payment only, no reduction or discharge, of any Subordinated Debt shall result from any receipt or *recovery of an amount by the Subordinated Creditor which is so applied by Santander.*

6.3 Nothing in this clause 6 or any other provision of this Agreement is intended to or shall create a charge or other Security.

## **7 Subordination on Insolvency**

### **7.1 Filing of claims and voting**

- (a) Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the Subordinated Debt will be postponed and subordinated to the Senior Debt and Santander may and is irrevocably authorised by the Subordinated Creditor to:
  - (i) demand, claim, enforce and prove for;
  - (ii) exercise all powers of convening meetings, voting and representation in respect of;
  - (iii) file claims and proofs, give receipts and take all proceedings and do all other things which Santander considers necessary or advisable to recover; and
  - (iv) collect and receive all payments and distributions of any kind in respect of or on account of,the Subordinated Debt due from the Borrower.
- (b) Subject to clause 7.1(d), the Subordinated Creditor undertakes not to take any of the actions referred to in clause 7.1(a).
- (c) The Subordinated Creditor will provide all forms of proxy and of representation requested by Santander for the purpose of clause 7.1(a) and do all other things that Santander reasonably requests in order to give effect to this clause 7.1.
- (d) If, for whatever reason, Santander is not entitled to take, or does not wish to take, any of the actions listed in clause 7.1(a), the Subordinated Creditor undertakes to promptly take any action and give any notices which Santander requires from time to time.
- (e) Without prejudice to clause 11 (Consents and override), nothing in this clause 7 will entitle Santander to exercise or require the Subordinated Creditor to exercise such power of voting or representation to waive or amend any of the provisions of the Subordinated Documents or waive, reduce, discharge or extend the due date for payment of or reschedule any of the Subordinated Debt.

### **7.2 Distributions**

Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the person responsible for the distribution of the assets of

the Borrower or their proceeds shall be directed by the Subordinated Creditor to pay any distributions or proceeds in respect of any of the Subordinated Debt owed to it direct to Santander for application in accordance with clause 14 (Application of recoveries) until the Senior Debt has been paid in full.

## 8 Enforcement Action

At any time on or before the Senior Discharge Date, when a Senior Default is continuing the Subordinated Creditor will take such Enforcement Action in relation to the Subordinated Debt due to it which Santander in its absolute discretion directs it to take.

## 9 Distressed Disposal

- 9.1 Subject to clause 9.5, if a Distressed Disposal is being effected, Santander is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from the Borrower or the Subordinated Creditor), to release the Borrower from all or any part of its liabilities in respect of the Subordinated Debt and/or the Subordinated Security.
- 9.2 Subject to clause 9.5, if Santander has exercised any of its powers granted pursuant to clause 9.1, the Subordinated Creditor shall immediately upon request by Santander do all and any such things as are necessary to give effect to such release (at the cost of the Borrower).
- 9.3 The net proceeds of a Distressed Disposal shall be paid to Santander for application in accordance with clause 14 (Application of recoveries) as if those proceeds were the proceeds of an enforcement of the Senior Security.
- 9.4 For the purposes of this clause 9, a **Distressed Disposal** shall mean a disposal of any of the assets of the Borrower which is (a) being effected in circumstances where the Senior Security has become enforceable, (b) being effected by enforcement of the Senior Security or (c) being effected by the Subordinated Creditor after the enforcement of any Senior Security or after service by Santander of a notice of acceleration in accordance with the terms of any Senior Debt Document (an **Acceleration Notice**) or after Santander has served a demand following service of an Acceleration Notice.
- 9.5 Santander shall only be entitled to exercise its authority under clause 9.1, and the Subordinated Creditor shall only be required to comply with its obligations under clause 9.2, provided that, in the case of a Distressed Disposal effected by Santander, Santander has taken reasonable care to obtain a fair market value for the relevant asset(s) having regard to the then prevailing market conditions (though Santander shall have no obligation to postpone any Distressed Disposal in order to achieve a higher value). Santander may seek to satisfy its requirement to take reasonable care to obtain fair market value in this clause 9.5 in any manner and, without prejudice to the generality of the foregoing, such requirement shall be deemed to be satisfied if:
  - (a) that Distressed Disposal is made pursuant to any process or proceedings governed by statute;
  - (b) that Distressed Disposal is made pursuant to any process or proceedings approved or supervised by, or on behalf of, any court of law;
  - (c) 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 Borrower or any of the assets of the Borrower;

- (d) that Distressed Disposal is made pursuant to any enforcement of the Security Documents carried out by way of auction or other competitive sales process;
- (e) that Distressed Disposal is made by way of set-off or balancing of accounts; or
- (f) the Subordinated Creditor has otherwise agreed that the process to effect that Distressed Disposal constitutes obtaining fair market value or that such Distressed Disposal is for fair market value (in each case, howsoever described).

#### **10 Non-subrogation**

The Subordinated Creditor will not, at any time on or before the Senior Discharge Date, be subrogated to or entitled to exercise any of the rights of Santander under the Senior Documents.

#### **11 Consents and override**

##### **11.1 Deemed consent**

Subject to clause 11.2, if, at any time on or before the Senior Discharge Date, Santander gives a Consent in respect of the Senior Documents then the Subordinated Creditor will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Subordinated Documents; and
- (b) execute any document or deed and do anything else necessary to give effect to this clause.

##### **11.2 Excluded consents**

Clause 11.1 shall not apply to any Consent which has the effect of extending the due date for, or reducing the amount of, or changing the currency of, any payment due to the Subordinated Creditor or changing any terms by reference to which any such payment is to be calculated or made.

##### **11.3 Non-objection**

The Subordinated Creditor shall not have any remedy against Santander by reason of any transaction entered into between Santander and the Borrower or any requirement or condition imposed by Santander on the Borrower which breaches or is, or causes, a default under any of the Documents, unless entered into in breach of the terms of this Agreement.

##### **11.4 Agreement override**

Unless expressly stated in this Agreement, this Agreement overrides anything in the Documents to the contrary.

**12 Protection of subordination**

**12.1 Continuing subordination**

The subordination provisions in this Agreement constitute a continuing subordination and benefit to the ultimate balance of the Senior Debt regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

**12.2 Waiver of defences**

The provisions in this Agreement will not be affected by any act, omission, matter or thing which but for this clause 12 would reduce, release or otherwise prejudice the subordination in this Agreement or the obligations of the Subordinated Creditor or the Borrower under this Agreement including, without limitation:

- (a) any time, waiver or consent granted to, or composition with any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (e) any amendment (however fundamental) or replacement of any document;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any document;
- (g) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Borrower under any of the Senior Documents resulting from any insolvency, liquidation or dissolution proceedings or from any law or regulation; or
- (h) any intermediate payment or discharge of any of the Senior Debt.

**12.3 Immediate recourse**

The Subordinated Creditor waives any right it may have of first requiring Santander to proceed against, or enforce any other rights or Security or claim payment from, any person before claiming the benefit of the priority and subordination provided for under this Agreement. This waiver applies irrespective of any law or any provision of a Document to the contrary.

**13 Preservation of rights**

- 13.1** Notwithstanding any provision of this Agreement postponing, subordinating or preventing the payment of any of the Subordinated Debt as between the Borrower and the Subordinated Creditor, the Subordinated Debt shall remain owing or due and payable in accordance with the terms of the Subordinated Documents, and interest and default interest (if applicable) will continue to accrue in accordance with the terms of the Subordinated Documents.

- 13.2 No delay in exercising rights and remedies under any of the Subordinated Documents by reason of any term of this Agreement postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

**14 Application of recoveries**

**14.1 Order of application**

Subject to the rights of any prior or preferential creditor, Santander or any Receiver shall hold on trust, to apply at any time as Santander (in its absolute discretion) or any Receiver (in its absolute discretion) sees fit, all amounts paid to it in accordance with this Agreement, all proceeds of realisation or enforcement of the Security and all amounts received or recovered by it pursuant to the terms of any Document as follows:

- (a) first, in or towards payment of all costs and expenses incurred by Santander or any Receiver in connection with:
  - (i) any realisation or enforcement of the Senior Security taken in accordance with the terms of this Agreement; or
  - (ii) any action taken at the request of Santander under clause 7.1 (Filing of claims and voting);
- (b) secondly, in or towards payment to Santander for application towards the discharge of the Senior Debt (in accordance with the terms of the Senior Documents);
- (c) thirdly, if the Borrower is not under any further actual or contingent liability under any Senior Document, in payment to any person to whom Santander is obliged to pay in priority to the Borrower; and
- (d) fourthly, the balance, if any, in payment to the Borrower or other persons entitled to it.

**14.2 General**

Clause 14.1 will override any appropriation made by the Borrower.

**14.3 Appropriations**

At any time on or before the Senior Discharge Date, Santander may (subject to the terms of this Agreement and any other Senior Documents):

- (a) apply any monies received by it under this Agreement to the Senior Debt owed to it in such order as it may determine; and
- (b) hold any monies received by it under this Agreement in a suspense account (bearing interest at a market rate usual for an account of that type) unless and until all monies received by it are sufficient in aggregate to result in the Senior Discharge Date.

**15 Representations and warranties**

The Subordinated Creditor represents and warrants to and for the benefit of Santander that:

- (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power to own its property and assets and to carry on its business as it is being conducted;



- (b) the Documents to which it is a party are within its powers and have been duly authorised and executed by it;
- (c) this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms and the entry into and performance by it of this Agreement does not and will not conflict with any law or regulation applicable to it, its constitutional documents or with any agreement or instrument binding upon its or any of its assets;
- (d) the Documents to which it is a party (copies of which have been provided to Santander on or before the date of this Agreement) contain all the terms and conditions of the Subordinated Debt owed to it and the Subordinated Security; and
- (e) it is the sole legal and beneficial owner of the Subordinated Debt and the Subordinated Security owed to it free from any Security or subordination in favour of any person except any existing under this Agreement.

**16 Status of the Borrower**

The Borrower shall not have any rights under this Agreement and none of the representations or undertakings by the Subordinated Creditor in this Agreement are given (or deemed to be given) to or for the benefit of the Borrower.

**17 Attorney**

The Subordinated Creditor hereby irrevocably appoints Santander as its attorney (with full power of substitution and delegation) in its name and acting on its behalf to do anything which it has authorised Santander to do under this Agreement or which it is required and legally able to do under this Agreement but has failed to do.

**18 Information**

**18.1 Defaults**

The Borrower shall within five Business Days upon becoming aware of its occurrence notify in writing Santander and the Subordinated Creditor of the occurrence of a default, an event of default or potential event of default (howsoever described) under, or in respect of the terms of any Document.

**18.2 Other information**

The Subordinated Creditor shall, upon request by Santander, provide to Santander any information, including without limitation details of the amount of outstanding Subordinated Debt, that Santander may reasonably specify as being necessary or desirable to enable Santander to perform its rights and obligations under this Agreement.

**18.3 Consent to disclosure**

Notwithstanding any agreement to the contrary, the Borrower consents to the disclosure by the Subordinated Creditor or Santander to each other of such information concerning the Borrower as that Subordinated Creditor or Santander shall see fit.

**19 Changes to the Parties**

**19.1 Successors and assignees**

This Agreement will be binding upon, and continue for the benefit of, the successors and assignees of the Parties.

**19.2 Borrower**

The Borrower may not assign any of its rights (if any) nor transfer any of its rights (if any) or obligations under this Agreement.

**19.3 Subordinated Creditor**

The Subordinated Creditor may not assign any of its rights nor transfer any of its rights, benefits or obligations in respect of any of the Subordinated Documents, this Agreement, the Subordinated Debt or the Subordinated Security, without the prior written consent of Santander.

**19.4 Santander**

Santander may at any time assign all or any of its respective rights and benefits under this Agreement to any party to whom the Secured Parties transfer or assign all or any part of the Senior Debt.

**20 Notices**

All communication to be made under or in connection with this Agreement must be in writing. Santander may make or deliver any communication or document to be made under or in connection with this Agreement to the Borrower at the Borrower's registered address, or to the Subordinated Creditor at the Subordinated Creditor's address noted at the start of this Agreement. Any communication or document made or delivered by Santander will be effective at the time of personal delivery or at 9.00am on the second Business Day after posting. Any communication or document made or delivered by the Borrower or by the Subordinated Creditor to Santander must be addressed to (a) Santander Operations Middle Office Securities, Ops Block, Ground Floor Area 3A, Bridle Road, Bootle, Merseyside L30 4GB and (b) Corporate Banking, 1<sup>st</sup> Floor, 301 St. Vincent Street, Glasgow, G2 5HN (marked for the attention of Michael McGregor), and will be effective on receipt, if received before 4.00pm on a Business Day, or otherwise on the next Business Day.

**21 Waivers**

21.1 No failure to exercise, nor any delay in exercising, on the part of any Party, any right, under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, or remedy prevent or restrict any further exercise of that or any other right or remedy.

21.2 No waiver of any breach of any term of this Agreement shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

21.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**22 Presentation**

**22.1 Partial Invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions, nor the legality, validity or enforceability of such provision under the law of any other jurisdiction, will in any way be affected or impaired.

**22.2 No impairment**

If, at any time after its date, any provision of a Document or this Agreement, is not binding or enforceable in accordance with its terms against a person expressed to be a party to that Document or this Agreement, neither the binding nature nor the enforceability of that provision or any other provision of that Document or this Agreement will be impaired as against the other parties to that Document or the other Parties to this Agreement.

**22.3 Compensation**

Each of Santander and the Subordinated Creditor hereby agrees that, if this Agreement is regarded by any one or more liquidators, Receivers or Administrators of the Company as failing to bind him or them, any party or parties who will have benefited as a result of any action by any one or more of such liquidators, Receivers or Administrators will forthwith compensate the party who will have been correspondingly prejudiced to the extent of the provisions as to ranking set out in clause 3 (Ranking).

**23 Entire Agreement**

This Agreement contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement (including, without limitation, the ranking agreement between the Parties subscribed on 2 and 3 September 2019 and delivered on 4 September 2019).

**24 Counterparts and delivery**

**24.1** This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts.

**24.2** Where executed in counterpart:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the Parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the Parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

**24.3** If this Agreement is not executed in counterparts, this Agreement shall be delivered on the date on which the last party signed this Agreement.

**24.4** The Parties to this Agreement, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (**Counterparts Act**), nominate Harper Macleod LLP to take delivery of all counterparts of this Agreement. The Parties agree that the

provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement.

**25 Governing law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the Scots law.

**26 Enforcement**

**26.1 Jurisdiction of Scottish courts**

- (a) The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (**Dispute**).
- (b) The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

- (c) This clause 26 is for the benefit of Santander. As a result, Santander shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Santander may take concurrent proceedings in any number of jurisdictions.

In witness whereof these presents consisting of this and the preceding 19 pages are executed by the parties hereto as follows:

**Borrower**

RHA Technologies Ltd

at 6 HAUGH ROAD  
GLASGOW

on 4 JUNE 2020

)  
)  
)  
)  
)

Director

Full Name

in the presence of:

Signature of witness


Full name ALISON SKEOCH

Address C/O PINSENT MASONS  
141 BOTHWELL STREET GLASGOW

**Board Approval**

We hereby certify that the acceptance of, and entry into, this Agreement was approved by a resolution of the Board of Directors of the Borrower properly passed on 4 JUNE 2020

Date 4 JUNE 2020

Signed  (Director)

**Subordinated Creditor**

**Scottish Enterprise**

at

on

in the presence of:

) .....  
) **Authorised Signatory**  
) .....  
) **Full Name**

.....  
**Signature of witness**

**Full name** .....

**Address** .....

.....

**Santander**

Subscribed for and on behalf of

**Santander UK plc** for itself and as security  
trustee

at

on

) .....  
) **Authorised Signatory**  
) .....  
) **Full Name**

in the presence of:

.....  
**Signature of witness**

**Full name** .....

**Address** .....

.....

Dated 5 June 2020

**RHA TECHNOLOGIES LTD**  
(as Borrower)

**SCOTTISH ENTERPRISE**  
(as Subordinated Creditor)

**SANTANDER UK PLC**

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**RANKING AGREEMENT**

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This Agreement is delivered on

5 June

2020

Among

- (1) **RHA Technologies Ltd** (registered in Scotland with number SC395760) whose registered office is at 69 Haugh Road, Glasgow, Scotland G3 8TX (as **Borrower**);
- (2) **Scottish Enterprise** established by the Enterprise and New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ (as **Subordinated Creditor**); and
- (3) **Santander UK plc** (registered in England with number 2294747) whose registered office is at 2 Triton Square, Regent's Place, London NW1 3AN for itself and as security trustee for each of itself and each Secured Party (**Santander**, which expression shall include its successors in title, assignees and transferees).

It is agreed

## 1 Definitions and interpretation

### 1.1 Definitions

In this Agreement:

**Additional Debt** means, in relation to any Debt:

- (a) any refinancing, novation, deferral or extension of that Debt
- (b) any further advance which may be made under any agreement supplemental to any relevant Document, together with all related interest, fees and costs
- (c) any claim for damages or restitution in the event of rescission of that Debt or otherwise in connection with any Document
- (d) any claim against the Borrower arising from any recovery by the Borrower or any other person of a payment or discharge in respect of that Debt on the grounds of preference or otherwise
- (e) any claim for breach of representation, warranty, undertaking or in respect of an event of default (howsoever defined) or under any indemnity in connection with any relevant Document and/or
- (f) any amounts (such as post-insolvency interest) which would otherwise be included in any of paragraphs (a) to (e) of this definition but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings

**Administrator** has the same meaning as in Schedule B1 to the Insolvency Act 1986

**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, in each case, from time to time

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London



**Change of Control** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Consent** means any consent, approval, release, waiver or agreement to amend

**Conversion Shares** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Debt** means the Senior Debt and the Subordinated Debt

**Documents** means the Senior Documents and the Subordinated Documents

**Enforcement Action** means in relation to any Debt, any action whatsoever to:

- (a) demand payment of, declare prematurely due and payable, or otherwise seek to accelerate payment of, or place on demand, all or any part of that Debt
- (b) recover all or any part of that Debt (including by exercising any rights of set-off or combination of accounts)
- (c) exercise or enforce directly or indirectly any rights under or pursuant to the provisions of any guarantee, surety or any security document, or other document (including the crystallisation of any floating charge) in relation to, or given in support of, all or any part of that Debt
- (d) petition for (or take any other steps which may lead to) an Insolvency Event in relation to the Borrower or
- (e) commence or support legal proceedings against the Borrower (and/or any of the Borrower's directors and/or shareholders in their capacity as such)

**First Tranche Completion** has the meaning given to it in the Subordinated Subscription Agreement (as in force as at the date of this Agreement)

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary

**Investment Shares** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Insolvency Event** means in relation to the Borrower:

- (a) it is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities)
- (c) a moratorium is declared in respect of any indebtedness of it (irrespective of whether such moratorium subsequently ends)

- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, sequestration, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of it
  - (ii) a composition, compromise, assignment or arrangement with or for the benefit of any of its creditors
  - (iii) the appointment of a liquidator, Receiver, Administrator, compulsory manager, trustee, custodian or other similar officer in respect of it or any of its assets or
  - (iv) enforcement of any Security over any of its assets
- or any analogous procedure or step is taken in any jurisdiction (but, in each case, not including any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement) and/or
- (e) any expropriation, attachment, sequestration, distress or execution or any other legal or analogous process in any jurisdiction which affects any of its assets and is not dismissed or discharged within 14 days of the commencement of such process

**Longstop Date** means the date falling 36 months from the First Tranche Completion or such other date as agreed in writing between the Borrower and the Subordinated Creditor which, for the avoidance of doubt, shall not be less than 36 months from the date of the Subordinated Loan Note Instrument

**Multiplied Note Amount** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Ordinary Shares** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Party** means a party for the time being to this Agreement

**Receiver** means an administrative receiver, a receiver and manager or a receiver

**Relevant Fund Raising** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Relevant Shares** has the meaning given to "Senior Shares" in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Secured Party** means Santander UK plc and its Affiliates

**Security** means a mortgage, charge, pledge, lien, assignment, assignation in security, standard security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

**Security Documents** means the Senior Security Documents and the Subordinated Security Document

**Senior Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to any Secured Party in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Senior Debt Documents** means each agreement or other document evidencing or recording the terms of any Senior Debt

**Senior Default** means a default howsoever defined in any Senior Document or the occurrence of any other event which entitles any Secured Party to accelerate, demand repayment of or demand delivery of cash collateral in respect of the Senior Debt (or any part thereof)

**Senior Discharge Date** means the date on which Santander notifies the Subordinated Creditor and the Borrower in writing that it is satisfied that all of the Senior Debt has been unconditionally and irrevocably paid and discharged in full, whether or not as the result of an enforcement, and all commitments of any Secured Party to the Borrower have been cancelled

**Senior Documents** means the Senior Debt Documents and the Senior Security Documents

**Senior Security** means the Security constituted by the Senior Security Documents

**Senior Security Documents** means:

- (a) the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of Santander UK plc created on 26 March 2018 and registered at Companies House on 30 March 2018
- (b) any other document entered into at any time by the Borrower creating any guarantee, indemnity, Security or other assurance in favour of any Secured Party as security for any of the Senior Debt and
- (c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs (a) and (b) above

**Subordinated Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to the Subordinated Creditor (or any of its Affiliates) including, without limitation, under or in connection with any Subordinated Document in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Subordinated Debt Documents** means the Subordinated Facility Agreement, the Subordinated Subscription Agreement, the Subordinated Loan Note Instrument and each other agreement or other document evidencing or recording the terms of any Subordinated Debt

**Subordinated Documents** means the Subordinated Debt Documents and the Subordinated Security Document

**Subordinated Facility Agreement** means the £1,500,000 loan agreement between the Borrower and the Subordinated Creditor (comprising the loan confirmation between the Borrower and the Subordinated Creditor originally dated and delivered on 29 March 2019 (as amended and restated pursuant to an amendment and restatement agreement between the

Borrower and the Subordinated Creditor dated 4 September 2019 and as further amended pursuant to an amendment letter from the Subordinated Creditor to the Borrower dated, and accepted by the Borrower, on or around the date of this Agreement) and the Subordinated Creditor's standard loan terms and conditions)

**Subordinated Loan Note Instrument** means the £1,400,000 convertible loan note instrument issued by the Borrower on or around the date of this Agreement

**Subordinated Loan Notes** means the principal amount from time to time of the £1,400,000 unsecured convertible loan notes constituted by the Subordinated Loan Note Instrument issued to the Subordinated Creditor and paid up and outstanding

**Subordinated Security** means the Security constituted by the Subordinated Security Document

**Subordinated Security Document** means the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of the Subordinated Creditor created on 29 March 2019 and registered at Companies House on 3 April 2019

**Subordinated Subscription Agreement** means the subscription agreement among the Borrower, the Subordinated Creditor, Andrew John Reid and Ruth Helena Reid dated on or around the date of this Agreement

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

**Tranche 1** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Tranche 2** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Tranche 2 Conversion** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Tranche 2 Loan Amount** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

## 1.2 Interpretation

(a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) Santander, an Affiliate of Santander, the Subordinated Creditor or the Borrower, shall be construed so as to include its successors in title, assignees and transferees;
- (ii) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
- (iii) a Document or any other document, agreement or instrument is a reference to that Document or other document, agreement or instrument as amended, novated, supplemented or restated (however fundamentally);
- (iv) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or

contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (v) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a **person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality), or any other entity or body of any description;
  - (vii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (viii) a provision of law is a reference to a provision of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Agreement; and
  - (ix) **sterling** and **£** shall be construed as a reference to the lawful currency of the United Kingdom.
- (b) Clause headings are for ease of reference only.
  - (c) Any word importing the singular shall include the plural and vice versa.
  - (d) A *Senior Default* is **continuing** if it has not been waived to the satisfaction of Santander.
  - (e) A **payment** includes a distribution, prepayment or repayment and references to **pay** include distribute, prepay or repay.

### 1.3 Third party rights

Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or enjoy the benefit of any term of this Agreement or any other document issued or entered into under or in connection with it.

### 1.4 Conflict

In the event of any conflict between the terms of this Agreement and the terms of any other Document, the terms of this Agreement will prevail.

**2 Consent**

**2.1 Santander consent**

Santander consents to the entry by the Borrower into, and the subsistence of, the Subordinated Security Document, the Subordinated Facility Agreement, the Subordinated Subscription Agreement and the Subordinated Loan Note Instrument (in each case, as in force at the date of this Agreement).

**2.2 Subordinated Creditor consent**

The Subordinated Creditor consents to the entry by the Borrower into, and the subsistence of, the Senior Security Documents and the Senior Debt Documents.

**3 Ranking**

**3.1 Ranking of Debt**

The Senior Debt will at all times rank in right and priority of payment ahead of the Subordinated Debt.

**3.2 Ranking of Security**

The Security Documents shall rank in the following order of priority notwithstanding (i) the terms of the documents constituting the Security Documents; (ii) the terms of any instrument of alteration dated prior to this Agreement affecting any of the Security Documents; (iii) the dates of execution, recording, registration or intimation; and/or (iv) any law or regulation to the contrary:

- (a) the Senior Security Documents to the extent of the Senior Debt; then
- (b) the Subordinated Security Document to the extent of the Subordinated Debt,

and such priority will not be affected by any intermediate reduction in the principal amount secured by any of the Senior Security Documents or by any intermediate reduction in or satisfaction of the Senior Debt.

**3.3 Continuation**

The ranking provided for in this clause 3 shall not be affected by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the relative ranking of the Debt, including, but not limited to:

- (a) any provision contained in any of the Documents;
- (b) section 464 or 466 of the Companies Act 1985;
- (c) section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970;
- (d) the date upon which any Debt arose;
- (e) whether a person is obliged to advance any such Debt;
- (f) the date or order of execution, delivery, registration, filing or giving of notice of any Document;

- (g) any fluctuations from time to time in the amount of, or any intermediate discharge in whole or in part of, any Debt;
- (h) the granting of time or any other indulgence to the Borrower or any other person;
- (i) the existence at any time of a credit balance on any current or other account of the Borrower;
- (j) the appointment of any liquidator, receiver, administrator or other similar officer either in respect of the Borrower or over all or any part of the Borrower's assets; or
- (k) any amendment or supplement to or variation of any Document.

#### **4 Undertakings**

##### **4.1 Undertakings of the Borrower**

At any time on or before the Senior Discharge Date, the Borrower will not, except with the prior written consent of Santander:

- (a) make, or take any action to make, any payment in respect of, or on account of, or purchase, redeem or otherwise acquire any of, the Subordinated Debt in cash or in kind except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (c) create, or permit to subsist, any Security over any of its assets, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);
- (d) give any financial support (including, without limitation, the giving of any guarantee, indemnity or other assurance against financial loss, the making of any deposit or the taking of any participation) to any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking and/or subordination of the Subordinated Debt provided for in this Agreement being prejudiced or impaired in any respect;
- (f) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt or the Subordinated Security (including, without limitation, any of the terms of the Subordinated Documents);
- (g) incur any financial indebtedness that ranks ahead of the Subordinated Debt other than Senior Debt; or
- (h) petition for (or take any other steps which may lead to) an Insolvency Event in respect of the Borrower.

##### **4.2 Undertakings of Subordinated Creditor**

At any time on or before the Senior Discharge Date, the Subordinated Creditor will not, except with the prior written consent of Santander:

- (a) demand, receive or take any action to receive any payment in respect of, or on account of, any of the Subordinated Debt in cash or in kind or apply any money or property in or towards discharge of any of the Subordinated Debt except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (c) receive, or permit to subsist, any Security over any asset of the Borrower, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);
- (d) receive or permit to subsist any financial support (including, without limitation, any guarantee, indemnity or other assurance against financial loss, any deposit or any participation) from any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) allow any of the Subordinated Debt to be subordinated to any person other than in accordance with this Agreement or as may arise by operation of law;
- (f) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking, priority and/or subordination of the Subordinated Debt and/or the Subordinated Security provided for in this Agreement being prejudiced or impaired in any respect;
- (g) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt or Subordinated Security (including, without limitation, any of the terms of the Subordinated Documents); or
- (h) take any Enforcement Action except to the extent expressly required under clause 8 (Enforcement Action).

## **5 Permitted payments of Subordinated Debt**

### **5.1 Permitted payments**

At any time on or before the Senior Discharge Date, the Borrower may pay in cash, and the Subordinated Creditor may receive:

- (a) the scheduled payments of principal and interest in relation to Tranche 1 in accordance with clause 7.1 and clause 9.1 respectively of the Subordinated Facility Agreement (as in force as at the date of this Agreement);
- (b) the scheduled payments of principal and interest in relation to Tranche 2 in accordance with clause 7.2 and clause 9.2 respectively of the Subordinated Facility Agreement (as in force as at the date of this Agreement); and/or
- (c) the Multiplied Note Amount in respect of the Subordinated Loan Notes on the Longstop Date,

in each case, provided that no Senior Default has occurred and is continuing or would result from such payment.



## 5.2 Permitted conversions

At any time on or before the Senior Discharge Date, the Borrower may:

- (a) issue Conversion Shares to the Subordinated Creditor in full satisfaction of such part of the Tranche 2 Loan Amount as is subject to a Tranche 2 Conversion in accordance with the Subordinated Facility Agreement (as in force as at the date of this Agreement); and/or
- (b) convert all of the Subordinated Loan Notes at the Multiplied Note Amount into, and issue to the Subordinated Creditor in full satisfaction of the Subordinated Loan Notes, Relevant Shares, Ordinary Shares or Investment Shares (as appropriate) on a Relevant Fund Raising before the Longstop Date, on a Change of Control before the Longstop Date or at the election of the Subordinated Creditor where a Relevant Fund Raising has not occurred prior to the Longstop Date, in each case, in accordance with the Subordinated Loan Note Instrument (as in force as at the date of this Agreement).

## 6 Turnover

### 6.1 Turnover

If at any time on or before the Senior Discharge Date:

- (a) the Subordinated Creditor receives or recovers a payment or distribution of any kind in respect of or on account of any of the Subordinated Debt which is not expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) the Subordinated Creditor receives or recovers proceeds pursuant to any action required under clause 8 (Enforcement Action);
- (c) any of the Subordinated Debt is discharged by set-off, combination of accounts or otherwise in a manner which is not expressly permitted by clause 4 (Undertakings); or
- (d) the Borrower makes any payment or distribution of any kind in respect of or on account of the purchase or other acquisition of any of the Subordinated Debt,

other than pursuant to clause 14 (Application of recoveries) (the amount of each such payment, distribution, set-off or combination being a **Turnover Amount**), the Subordinated Creditor will promptly pay an amount equal to the lesser of:

- (i) that Turnover Amount; and
- (ii) the amount of the Senior Debt,

to Santander for application in accordance with clause 14 (Application of recoveries) and, pending that payment, will hold such amount on trust for Santander (and Santander acknowledges notice of such trust).

### 6.2 Recovering Creditor's rights

- (a) Any amount paid by the Subordinated Creditor to Santander under clause 6.1 (**Turnover Payment**) shall be treated as having been paid by the Borrower and shall be applied by Santander in accordance with clause 14 (Application of recoveries).

- (b) On application by Santander, pursuant to clause 14 (Application of recoveries), of a Turnover Payment, as between the Borrower and the Subordinated Creditor an amount equal to the Turnover Payment will be treated as not having been paid by the Borrower and, to the extent of an amount equal to such Turnover Payment only, no reduction or discharge of any Subordinated Debt shall result from any receipt or recovery of an amount by the Subordinated Creditor which is so applied by Santander.

6.3 Nothing in this clause 6 or any other provision of this Agreement is intended to or shall create a charge or other Security.

## **7 Subordination on insolvency**

### **7.1 Filing of claims and voting**

- (a) Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the Subordinated Debt will be postponed and subordinated to the Senior Debt and Santander may and is irrevocably authorised by the Subordinated Creditor to:

- (i) demand, claim, enforce and prove for;
- (ii) exercise all powers of convening meetings, voting and representation in respect of;
- (iii) file claims and proofs, give receipts and take all proceedings and do all other things which Santander considers necessary or advisable to recover; and
- (iv) collect and receive all payments and distributions of any kind in respect of or on account of,

the Subordinated Debt due from the Borrower.

- (b) Subject to clause 7.1(d), the Subordinated Creditor undertakes not to take any of the actions referred to in clause 7.1(a).
- (c) The Subordinated Creditor will provide all forms of proxy and of representation requested by Santander for the purpose of clause 7.1(a) and do all other things that Santander reasonably requests in order to give effect to this clause 7.1.
- (d) If, for whatever reason, Santander is not entitled to take, or does not wish to take, any of the actions listed in clause 7.1(a), the Subordinated Creditor undertakes to promptly take any action and give any notices which Santander requires from time to time.
- (e) Without prejudice to clause 11 (Consents and override), nothing in this clause 7 will entitle Santander to exercise or require the Subordinated Creditor to exercise such power of voting or representation to waive or amend any of the provisions of the Subordinated Documents or waive, reduce, discharge or extend the due date for payment of or reschedule any of the Subordinated Debt.

### **7.2 Distributions**

Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the person responsible for the distribution of the assets of

the Borrower or their proceeds shall be directed by the Subordinated Creditor to pay any distributions or proceeds in respect of any of the Subordinated Debt owed to it direct to Santander for application in accordance with clause 14 (Application of recoveries) until the Senior Debt has been paid in full.

## **8 Enforcement Action**

At any time on or before the Senior Discharge Date, when a Senior Default is continuing the Subordinated Creditor will take such Enforcement Action in relation to the Subordinated Debt due to it which Santander in its absolute discretion directs it to take.

## **9 Distressed Disposal**

9.1 Subject to clause 9.5, if a Distressed Disposal is being effected, Santander is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from the Borrower or the Subordinated Creditor), to release the Borrower from all or any part of its liabilities in respect of the Subordinated Debt and/or the Subordinated Security.

9.2 Subject to clause 9.5, if Santander has exercised any of its powers granted pursuant to clause 9.1, the Subordinated Creditor shall immediately upon request by Santander do all and any such things as are necessary to give effect to such release (at the cost of the Borrower).

9.3 The net proceeds of a Distressed Disposal shall be paid to Santander for application in accordance with clause 14 (Application of recoveries) as if those proceeds were the proceeds of an enforcement of the Senior Security.

9.4 For the purposes of this clause 9, a **Distressed Disposal** shall mean a disposal of any of the assets of the Borrower which is (a) being effected in circumstances where the Senior Security has become enforceable, (b) being effected by enforcement of the Senior Security or (c) being effected by the Subordinated Creditor after the enforcement of any Senior Security or after service by Santander of a notice of acceleration in accordance with the terms of any Senior Debt Document (an **Acceleration Notice**) or after Santander has served a demand following service of an Acceleration Notice.

9.5 Santander shall only be entitled to exercise its authority under clause 9.1, and the Subordinated Creditor shall only be required to comply with its obligations under clause 9.2, provided that, in the case of a Distressed Disposal effected by Santander, Santander has taken reasonable care to obtain a fair market value for the relevant asset(s) having regard to the then prevailing market conditions (though Santander shall have no obligation to postpone any Distressed Disposal in order to achieve a higher value). Santander may seek to satisfy its requirement to take reasonable care to obtain fair market value in this clause 9.5 in any manner and, without prejudice to the generality of the foregoing, such requirement shall be deemed to be satisfied if:

- (a) that Distressed Disposal is made pursuant to any process or proceedings governed by statute;
- (b) that Distressed Disposal is made pursuant to any process or proceedings approved or supervised by, or on behalf of, any court of law;
- (c) 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 Borrower or any of the assets of the Borrower;

- (d) that Distressed Disposal is made pursuant to any enforcement of the Security Documents carried out by way of auction or other competitive sales process;
- (e) that Distressed Disposal is made by way of set-off or balancing of accounts; or
- (f) the Subordinated Creditor has otherwise agreed that the process to effect that Distressed Disposal constitutes obtaining fair market value or that such Distressed Disposal is for fair market value (in each case, howsoever described).

**10 Non-subrogation**

The Subordinated Creditor will not, at any time on or before the Senior Discharge Date, be subrogated to or entitled to exercise any of the rights of Santander under the Senior Documents.

**11 Consents and override**

**11.1 Deemed consent**

Subject to clause 11.2, if, at any time on or before the Senior Discharge Date, Santander gives a Consent in respect of the Senior Documents then the Subordinated Creditor will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Subordinated Documents; and
- (b) execute any document or deed and do anything else necessary to give effect to this clause.

**11.2 Excluded consents**

Clause 11.1 shall not apply to any Consent which has the effect of extending the due date for, or reducing the amount of, or changing the currency of, any payment due to the Subordinated Creditor or changing any terms by reference to which any such payment is to be calculated or made.

**11.3 Non-objection**

The Subordinated Creditor shall not have any remedy against Santander by reason of any transaction entered into between Santander and the Borrower or any requirement or condition imposed by Santander on the Borrower which breaches or is, or causes, a default under any of the Documents, unless entered into in breach of the terms of this Agreement.

**11.4 Agreement override**

Unless expressly stated in this Agreement, this Agreement overrides anything in the Documents to the contrary.

**12 Protection of subordination**

**12.1 Continuing subordination**

The subordination provisions in this Agreement constitute a continuing subordination and benefit to the ultimate balance of the Senior Debt regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

**12.2 Waiver of defences**

The provisions in this Agreement will not be affected by any act, omission, matter or thing which but for this clause 12 would reduce, release or otherwise prejudice the subordination in this Agreement or the obligations of the Subordinated Creditor or the Borrower under this Agreement including, without limitation:

- (a) any time, waiver or consent granted to, or composition with any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (e) any amendment (however fundamental) or replacement of any document;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any document;
- (g) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Borrower under any of the Senior Documents resulting from any insolvency, liquidation or dissolution proceedings or from any law or regulation; or
- (h) any intermediate payment or discharge of any of the Senior Debt.

**12.3 Immediate recourse**

The Subordinated Creditor waives any right it may have of first requiring Santander to proceed against, or enforce any other rights or Security or claim payment from, any person before claiming the benefit of the priority and subordination provided for under this Agreement. This waiver applies irrespective of any law or any provision of a Document to the contrary.

**13 Preservation of rights**

- 13.1** Notwithstanding any provision of this Agreement postponing, subordinating or preventing the payment of any of the Subordinated Debt as between the Borrower and the Subordinated Creditor, the Subordinated Debt shall remain owing or due and payable in accordance with the terms of the Subordinated Documents, and interest and default interest (if applicable) will continue to accrue in accordance with the terms of the Subordinated Documents.

- 13.2 No delay in exercising rights and remedies under any of the Subordinated Documents by reason of any term of this Agreement postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

**14 Application of recoveries**

**14.1 Order of application**

Subject to the rights of any prior or preferential creditor, Santander or any Receiver shall hold on trust, to apply at any time as Santander (in its absolute discretion) or any Receiver (in its absolute discretion) sees fit, all amounts paid to it in accordance with this Agreement, all proceeds of realisation or enforcement of the Security and all amounts received or recovered by it pursuant to the terms of any Document as follows:

- (a) first, in or towards payment of all costs and expenses incurred by Santander or any Receiver in connection with:
  - (i) any realisation or enforcement of the Senior Security taken in accordance with the terms of this Agreement; or
  - (ii) any action taken at the request of Santander under clause 7.1 (Filing of claims and voting);
- (b) secondly, in or towards payment to Santander for application towards the discharge of the Senior Debt (in accordance with the terms of the Senior Documents);
- (c) thirdly, if the Borrower is not under any further actual or contingent liability under any Senior Document, in payment to any person to whom Santander is obliged to pay in priority to the Borrower; and
- (d) fourthly, the balance, if any, in payment to the Borrower or other persons entitled to it.

**14.2 General**

Clause 14.1 will override any appropriation made by the Borrower.

**14.3 Appropriations**

At any time on or before the Senior Discharge Date, Santander may (subject to the terms of this Agreement and any other Senior Documents):

- (a) apply any monies received by it under this Agreement to the Senior Debt owed to it in such order as it may determine; and
- (b) hold any monies received by it under this Agreement in a suspense account (bearing interest at a market rate usual for an account of that type) unless and until all monies received by it are sufficient in aggregate to result in the Senior Discharge Date.

**15 Representations and warranties**

The Subordinated Creditor represents and warrants to and for the benefit of Santander that:

- (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power to own its property and assets and to carry on its business as it is being conducted;

- (b) the Documents to which it is a party are within its powers and have been duly authorised and executed by it;
- (c) this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms and the entry into and performance by it of this Agreement does not and will not conflict with any law or regulation applicable to it, its constitutional documents or with any agreement or instrument binding upon its or any of its assets;
- (d) the Documents to which it is a party (copies of which have been provided to Santander on or before the date of this Agreement) contain all the terms and conditions of the Subordinated Debt owed to it and the Subordinated Security; and
- (e) it is the sole legal and beneficial owner of the Subordinated Debt and the Subordinated Security owed to it free from any Security or subordination in favour of any person except any existing under this Agreement.

**16 Status of the Borrower**

The Borrower shall not have any rights under this Agreement and none of the representations or undertakings by the Subordinated Creditor in this Agreement are given (or deemed to be given) to or for the benefit of the Borrower.

**17 Attorney**

The Subordinated Creditor hereby irrevocably appoints Santander as its attorney (with full power of substitution and delegation) in its name and acting on its behalf to do anything which it has authorised Santander to do under this Agreement or which it is required and legally able to do under this Agreement but has failed to do.

**18 Information**

**18.1 Defaults**

The Borrower shall within five Business Days upon becoming aware of its occurrence notify in writing Santander and the Subordinated Creditor of the occurrence of a default, an event of default or potential event of default (howsoever described) under, or in respect of the terms of any Document.

**18.2 Other information**

The Subordinated Creditor shall, upon request by Santander, provide to Santander any information, including without limitation details of the amount of outstanding Subordinated Debt, that Santander may reasonably specify as being necessary or desirable to enable Santander to perform its rights and obligations under this Agreement.

**18.3 Consent to disclosure**

Notwithstanding any agreement to the contrary, the Borrower consents to the disclosure by the Subordinated Creditor or Santander to each other of such information concerning the Borrower as that Subordinated Creditor or Santander shall see fit.

**19 Changes to the Parties**

**19.1 Successors and assignees**

This Agreement will be binding upon, and continue for the benefit of, the successors and assignees of the Parties.

**19.2 Borrower**

The Borrower may not assign any of its rights (if any) nor transfer any of its rights (if any) or obligations under this Agreement.

**19.3 Subordinated Creditor**

The Subordinated Creditor may not assign any of its rights nor transfer any of its rights, benefits or obligations in respect of any of the Subordinated Documents, this Agreement, the Subordinated Debt or the Subordinated Security, without the prior written consent of Santander.

**19.4 Santander**

Santander may at any time assign all or any of its respective rights and benefits under this Agreement to any party to whom the Secured Parties transfer or assign all or any part of the Senior Debt.

**20 Notices**

All communication to be made under or in connection with this Agreement must be in writing. Santander may make or deliver any communication or document to be made under or in connection with this Agreement to the Borrower at the Borrower's registered address, or to the Subordinated Creditor at the Subordinated Creditor's address noted at the start of this Agreement. Any communication or document made or delivered by Santander will be effective at the time of personal delivery or at 9.00am on the second Business Day after posting. Any communication or document made or delivered by the Borrower or by the Subordinated Creditor to Santander must be addressed to (a) Santander Operations Middle Office Securities, Ops Block, Ground Floor Area 3A, Bridle Road, Bootle, Merseyside L30 4GB and (b) Corporate Banking, 1<sup>st</sup> Floor, 301 St. Vincent Street, Glasgow, G2 5HN (marked for the attention of Michael McGregor), and will be effective on receipt, if received before 4.00pm on a Business Day, or otherwise on the next Business Day.

**21 Waivers**

- 21.1 No failure to exercise, nor any delay in exercising, on the part of any Party, any right, under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, or remedy prevent or restrict any further exercise of that or any other right or remedy.
- 21.2 No waiver of any breach of any term of this Agreement shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.
- 21.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.



**22 Presentation**

**22.1 Partial Invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions, nor the legality, validity or enforceability of such provision under the law of any other jurisdiction, will in any way be affected or impaired.

**22.2 No Impairment**

If, at any time after its date, any provision of a Document or this Agreement, is not binding or enforceable in accordance with its terms against a person expressed to be a party to that Document or this Agreement, neither the binding nature nor the enforceability of that provision or any other provision of that Document or this Agreement will be impaired as against the other parties to that Document or the other Parties to this Agreement.

**22.3 Compensation**

Each of Santander and the Subordinated Creditor hereby agrees that, if this Agreement is regarded by any one or more liquidators, Receivers or Administrators of the Company as failing to bind him or them, any party or parties who will have benefited as a result of any action by any one or more of such liquidators, Receivers or Administrators will forthwith compensate the party who will have been correspondingly prejudiced to the extent of the provisions as to ranking set out in clause 3 (Ranking).

**23 Entire Agreement**

This Agreement contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement (including, without limitation, the ranking agreement between the Parties subscribed on 2 and 3 September 2019 and delivered on 4 September 2019).

**24 Counterparts and delivery**

**24.1** This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts.

**24.2** Where executed in counterpart:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the Parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the Parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

**24.3** If this Agreement is not executed in counterparts, this Agreement shall be delivered on the date on which the last party signed this Agreement.

**24.4** The Parties to this Agreement, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (**Counterparts Act**), nominate Harper Macleod LLP to take delivery of all counterparts of this Agreement. The Parties agree that the

provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement.

**25 Governing law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the Scots law.

**26 Enforcement**

**26.1 Jurisdiction of Scottish courts**

- (a) The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (**Dispute**).
- (b) The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

- (c) This clause 26 is for the benefit of Santander. As a result, Santander shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Santander may take concurrent proceedings in any number of jurisdictions.

In witness whereof these presents consisting of this and the preceding 19 pages are executed by the parties hereto as follows:

**Borrower**

RHA Technologies Ltd ) .....  
at ) Director  
 ) .....  
on ) .....  
 ) Full Name  
in the presence of:

.....  
Signature of witness

Full name .....

Address .....

**Board Approval**

We hereby certify that the acceptance of, and entry into, this Agreement was approved by a resolution of the Board of Directors of the Borrower properly passed on.....

Date .....

Signed.....(Director)

**Subordinated Creditor**

**Scottish Enterprise**

at

on

in the presence of:

) .....  
) **Authorised Signatory**  
) .....  
) **Full Name**

.....  
Signature of witness

Full name .....

Address .....

**Santander**

Subscribed for and on behalf of  
**Santander UK plc** for itself and as security  
trustee

at

Glasgow

on 4<sup>th</sup> June 2020

in the presence of:

.....

Signature of witness

Full name Alan Cook

Address 301 St. Vincent Street

Glasgow, G2 5NB

) .....  
) **Authorised Signatory**  
) MICHAEL MCGREGOR  
) **Full Name**

Dated 5 June 2020

**RHA TECHNOLOGIES LTD**  
(as Borrower)

**SCOTTISH ENTERPRISE**  
(as Subordinated Creditor)

**SANTANDER UK PLC**

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**RANKING AGREEMENT**

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This Agreement is delivered on

5 June

2020

Among

- (1) **RHA Technologies Ltd** (registered in Scotland with number SC395760) whose registered office is at 69 Haugh Road, Glasgow, Scotland G3 8TX (as **Borrower**);
- (2) **Scottish Enterprise** established by the Enterprise and New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ (as **Subordinated Creditor**); and
- (3) **Santander UK plc** (registered in England with number 2294747) whose registered office is at 2 Triton Square, Regent's Place, London NW1 3AN for itself and as security trustee for each of itself and each Secured Party (**Santander**, which expression shall include its successors in title, assignees and transferees).

It is agreed

**1 Definitions and interpretation**

**1.1 Definitions**

In this Agreement:

**Additional Debt** means, in relation to any Debt:

- (a) any refinancing, novation, deferral or extension of that Debt
- (b) any further advance which may be made under any agreement supplemental to any relevant Document, together with all related interest, fees and costs
- (c) any claim for damages or restitution in the event of rescission of that Debt or otherwise in connection with any Document
- (d) any claim against the Borrower arising from any recovery by the Borrower or any other person of a payment or discharge in respect of that Debt on the grounds of preference or otherwise
- (e) any claim for breach of representation, warranty, undertaking or in respect of an event of default (howsoever defined) or under any indemnity in connection with any relevant Document and/or
- (f) any amounts (such as post-insolvency interest) which would otherwise be included in any of paragraphs (a) to (e) of this definition but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings

**Administrator** has the same meaning as in Schedule B1 to the Insolvency Act 1986

**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, in each case, from time to time

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London

**Change of Control** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Consent** means any consent, approval, release, waiver or agreement to amend

**Conversion Shares** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Debt** means the Senior Debt and the Subordinated Debt

**Documents** means the Senior Documents and the Subordinated Documents

**Enforcement Action** means in relation to any Debt, any action whatsoever to:

- (a) demand payment of, declare prematurely due and payable, or otherwise seek to accelerate payment of, or place on demand, all or any part of that Debt
- (b) recover all or any part of that Debt (including by exercising any rights of set-off or combination of accounts)
- (c) exercise or enforce directly or indirectly any rights under or pursuant to the provisions of any guarantee, surety or any security document, or other document (including the crystallisation of any floating charge) in relation to, or given in support of, all or any part of that Debt
- (d) petition for (or take any other steps which may lead to) an Insolvency Event in relation to the Borrower or
- (e) commence or support legal proceedings against the Borrower (and/or any of the Borrower's directors and/or shareholders in their capacity as such)

**First Tranche Completion** has the meaning given to it in the Subordinated Subscription Agreement (as in force as at the date of this Agreement)

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary

**Investment Shares** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Insolvency Event** means in relation to the Borrower:

- (a) it is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities)
- (c) a moratorium is declared in respect of any indebtedness of it (irrespective of whether such moratorium subsequently ends)

- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, sequestration, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of it
  - (ii) a composition, compromise, assignment or arrangement with or for the benefit of any of its creditors
  - (iii) the appointment of a liquidator, Receiver, Administrator, compulsory manager, trustee, custodian or other similar officer in respect of it or any of its assets or
  - (iv) enforcement of any Security over any of its assets
- or any analogous procedure or step is taken in any jurisdiction (but, in each case, not including any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement) and/or
- (e) any expropriation, attachment, sequestration, distress or execution or any other legal or analogous process in any jurisdiction which affects any of its assets and is not dismissed or discharged within 14 days of the commencement of such process

**Longstop Date** means the date falling 36 months from the First Tranche Completion or such other date as agreed in writing between the Borrower and the Subordinated Creditor which, for the avoidance of doubt, shall not be less than 36 months from the date of the Subordinated Loan Note Instrument

**Multiplied Note Amount** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Ordinary Shares** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Party** means a party for the time being to this Agreement

**Receiver** means an administrative receiver, a receiver and manager or a receiver

**Relevant Fund Raising** has the meaning given to it in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Relevant Shares** has the meaning given to "Senior Shares" in the Subordinated Loan Note Instrument (as in force as at the date of this Agreement)

**Secured Party** means Santander UK plc and its Affiliates

**Security** means a mortgage, charge, pledge, lien, assignment, assignation in security, standard security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

**Security Documents** means the Senior Security Documents and the Subordinated Security Document



**Senior Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to any Secured Party in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Senior Debt Documents** means each agreement or other document evidencing or recording the terms of any Senior Debt

**Senior Default** means a default howsoever defined in any Senior Document or the occurrence of any other event which entitles any Secured Party to accelerate, demand repayment of or demand delivery of cash collateral in respect of the Senior Debt (or any part thereof)

**Senior Discharge Date** means the date on which Santander notifies the Subordinated Creditor and the Borrower in writing that it is satisfied that all of the Senior Debt has been unconditionally and irrevocably paid and discharged in full, whether or not as the result of an enforcement, and all commitments of any Secured Party to the Borrower have been cancelled

**Senior Documents** means the Senior Debt Documents and the Senior Security Documents

**Senior Security** means the Security constituted by the Senior Security Documents

**Senior Security Documents** means:

- (a) the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of Santander UK plc created on 26 March 2018 and registered at Companies House on 30 March 2018
- (b) any other document entered into at any time by the Borrower creating any guarantee, indemnity, Security or other assurance in favour of any Secured Party as security for any of the Senior Debt and
- (c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs (a) and (b) above

**Subordinated Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to the Subordinated Creditor (or any of its Affiliates) including, without limitation, under or in connection with any Subordinated Document in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Subordinated Debt Documents** means the Subordinated Facility Agreement, the Subordinated Subscription Agreement, the Subordinated Loan Note Instrument and each other agreement or other document evidencing or recording the terms of any Subordinated Debt

**Subordinated Documents** means the Subordinated Debt Documents and the Subordinated Security Document

**Subordinated Facility Agreement** means the £1,500,000 loan agreement between the Borrower and the Subordinated Creditor (comprising the loan confirmation between the Borrower and the Subordinated Creditor originally dated and delivered on 29 March 2019 (as amended and restated pursuant to an amendment and restatement agreement between the

Borrower and the Subordinated Creditor dated 4 September 2019 and as further amended pursuant to an amendment letter from the Subordinated Creditor to the Borrower dated, and accepted by the Borrower, on or around the date of this Agreement) and the Subordinated Creditor's standard loan terms and conditions)

**Subordinated Loan Note Instrument** means the £1,400,000 convertible loan note instrument issued by the Borrower on or around the date of this Agreement

**Subordinated Loan Notes** means the principal amount from time to time of the £1,400,000 unsecured convertible loan notes constituted by the Subordinated Loan Note Instrument issued to the Subordinated Creditor and paid up and outstanding

**Subordinated Security** means the Security constituted by the Subordinated Security Document

**Subordinated Security Document** means the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of the Subordinated Creditor created on 29 March 2019 and registered at Companies House on 3 April 2019

**Subordinated Subscription Agreement** means the subscription agreement among the Borrower, the Subordinated Creditor, Andrew John Reid and Ruth Helena Reid dated on or around the date of this Agreement

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

**Tranche 1** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Tranche 2** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Tranche 2 Conversion** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

**Tranche 2 Loan Amount** has the meaning given to it in the Subordinated Facility Agreement (as in force as at the date of this Agreement)

## 1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) Santander, an Affiliate of Santander, the Subordinated Creditor or the Borrower, shall be construed so as to include its successors in title, assignees and transferees;
  - (ii) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
  - (iii) a Document or any other document, agreement or instrument is a reference to that Document or other document, agreement or instrument as amended, novated, supplemented or restated (however fundamentally);
  - (iv) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or

contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (v) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (vi) **a person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality), or any other entity or body of any description;
- (vii) **a regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (viii) **a provision of law** is a reference to a provision of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Agreement; and
- (ix) **sterling and £** shall be construed as a reference to the lawful currency of the United Kingdom.

- (b) Clause headings are for ease of reference only.
- (c) Any word importing the singular shall include the plural and vice versa.
- (d) A Senior Default is **continuing** if it has not been waived to the satisfaction of Santander.
- (e) A **payment** includes a distribution, prepayment or repayment and references to **pay** include distribute, prepay or repay.

### 1.3 Third party rights

Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or enjoy the benefit of any term of this Agreement or any other document issued or entered into under or in connection with it.

### 1.4 Conflict

In the event of any conflict between the terms of this Agreement and the terms of any other Document, the terms of this Agreement will prevail.

**2 Consent**

**2.1 Santander consent**

Santander consents to the entry by the Borrower into, and the subsistence of, the Subordinated Security Document, the Subordinated Facility Agreement, the Subordinated Subscription Agreement and the Subordinated Loan Note Instrument (in each case, as in force at the date of this Agreement).

**2.2 Subordinated Creditor consent**

The Subordinated Creditor consents to the entry by the Borrower into, and the subsistence of, the Senior Security Documents and the Senior Debt Documents.

**3 Ranking**

**3.1 Ranking of Debt**

The Senior Debt will at all times rank in right and priority of payment ahead of the Subordinated Debt.

**3.2 Ranking of Security**

The Security Documents shall rank in the following order of priority notwithstanding (i) the terms of the documents constituting the Security Documents; (ii) the terms of any instrument of alteration dated prior to this Agreement affecting any of the Security Documents; (iii) the dates of execution, recording, registration or intimation; and/or (iv) any law or regulation to the contrary:

- (a) the Senior Security Documents to the extent of the Senior Debt; then
- (b) the Subordinated Security Document to the extent of the Subordinated Debt,

and such priority will not be affected by any intermediate reduction in the principal amount secured by any of the Senior Security Documents or by any intermediate reduction in or satisfaction of the Senior Debt.

**3.3 Continuation**

The ranking provided for in this clause 3 shall not be affected by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the relative ranking of the Debt, including, but not limited to:

- (a) any provision contained in any of the Documents;
- (b) section 464 or 466 of the Companies Act 1985;
- (c) section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970;
- (d) the date upon which any Debt arose;
- (e) whether a person is obliged to advance any such Debt;
- (f) the date or order of execution, delivery, registration, filing or giving of notice of any Document;

- (g) any fluctuations from time to time in the amount of, or any intermediate discharge in whole or in part of, any Debt;
- (h) the granting of time or any other indulgence to the Borrower or any other person;
- (i) the existence at any time of a credit balance on any current or other account of the Borrower;
- (j) the appointment of any liquidator, receiver, administrator or other similar officer either in respect of the Borrower or over all or any part of the Borrower's assets; or
- (k) any amendment or supplement to or variation of any Document.

#### **4 Undertakings**

##### **4.1 Undertakings of the Borrower**

At any time on or before the Senior Discharge Date, the Borrower will not, except with the prior written consent of Santander:

- (a) make, or take any action to make, any payment in respect of, or on account of, or purchase, redeem or otherwise acquire any of, the Subordinated Debt in cash or in kind except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (c) create, or permit to subsist, any Security over any of its assets, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);
- (d) give any financial support (including, without limitation, the giving of any guarantee, indemnity or other assurance against financial loss, the making of any deposit or the taking of any participation) to any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking and/or subordination of the Subordinated Debt provided for in this Agreement being prejudiced or impaired in any respect;
- (f) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt or the Subordinated Security (including, without limitation, any of the terms of the Subordinated Documents);
- (g) incur any financial indebtedness that ranks ahead of the Subordinated Debt other than Senior Debt; or
- (h) petition for (or take any other steps which may lead to) an Insolvency Event in respect of the Borrower.

##### **4.2 Undertakings of Subordinated Creditor**

At any time on or before the Senior Discharge Date, the Subordinated Creditor will not, except with the prior written consent of Santander:

- (a) demand, receive or take any action to receive any payment in respect of, or on account of, any of the Subordinated Debt in cash or in kind or apply any money or property in or towards discharge of any of the Subordinated Debt except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (c) receive, or permit to subsist, any Security over any asset of the Borrower, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);
- (d) receive or permit to subsist any financial support (including, without limitation, any guarantee, indemnity or other assurance against financial loss, any deposit or any participation) from any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) allow any of the Subordinated Debt to be subordinated to any person other than in accordance with this Agreement or as may arise by operation of law;
- (f) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking, priority and/or subordination of the Subordinated Debt and/or the Subordinated Security provided for in this Agreement being prejudiced or impaired in any respect;
- (g) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt or Subordinated Security (including, without limitation, any of the terms of the Subordinated Documents); or
- (h) take any Enforcement Action except to the extent expressly required under clause 8 (Enforcement Action).

## **5 Permitted payments of Subordinated Debt**

### **5.1 Permitted payments**

At any time on or before the Senior Discharge Date, the Borrower may pay in cash, and the Subordinated Creditor may receive:

- (a) the scheduled payments of principal and interest in relation to Tranche 1 in accordance with clause 7.1 and clause 9.1 respectively of the Subordinated Facility Agreement (as in force as at the date of this Agreement);
- (b) the scheduled payments of principal and interest in relation to Tranche 2 in accordance with clause 7.2 and clause 9.2 respectively of the Subordinated Facility Agreement (as in force as at the date of this Agreement); and/or
- (c) the Multiplied Note Amount in respect of the Subordinated Loan Notes on the Longstop Date,

in each case, provided that no Senior Default has occurred and is continuing or would result from such payment.

## 5.2 Permitted conversions

At any time on or before the Senior Discharge Date, the Borrower may:

- (a) issue Conversion Shares to the Subordinated Creditor in full satisfaction of such part of the Tranche 2 Loan Amount as is subject to a Tranche 2 Conversion in accordance with the Subordinated Facility Agreement (as in force as at the date of this Agreement); and/or
- (b) convert all of the Subordinated Loan Notes at the Multiplied Note Amount into, and issue to the Subordinated Creditor in full satisfaction of the Subordinated Loan Notes, Relevant Shares, Ordinary Shares or Investment Shares (as appropriate) on a Relevant Fund Raising before the Longstop Date, on a Change of Control before the Longstop Date or at the election of the Subordinated Creditor where a Relevant Fund Raising has not occurred prior to the Longstop Date, in each case, in accordance with the Subordinated Loan Note Instrument (as in force as at the date of this Agreement).

## 6 Turnover

### 6.1 Turnover

If at any time on or before the Senior Discharge Date:

- (a) the Subordinated Creditor receives or recovers a payment or distribution of any kind in respect of or on account of any of the Subordinated Debt which is not expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) the Subordinated Creditor receives or recovers proceeds pursuant to any action required under clause 8 (Enforcement Action);
- (c) any of the Subordinated Debt is discharged by set-off, combination of accounts or otherwise in a manner which is not expressly permitted by clause 4 (Undertakings); or
- (d) the Borrower makes any payment or distribution of any kind in respect of or on account of the purchase or other acquisition of any of the Subordinated Debt,

other than pursuant to clause 14 (Application of recoveries) (the amount of each such payment, distribution, set-off or combination being a **Turnover Amount**), the Subordinated Creditor will promptly pay an amount equal to the lesser of:

- (i) that Turnover Amount; and
- (ii) the amount of the Senior Debt,

to Santander for application in accordance with clause 14 (Application of recoveries) and, pending that payment, will hold such amount on trust for Santander (and Santander acknowledges notice of such trust).

### 6.2 Recovering Creditor's rights

- (a) Any amount paid by the Subordinated Creditor to Santander under clause 6.1 (**Turnover Payment**) shall be treated as having been paid by the Borrower and shall be applied by Santander in accordance with clause 14 (Application of recoveries).

- (b) On application by Santander, pursuant to clause 14 (Application of recoveries), of a Turnover Payment, as between the Borrower and the Subordinated Creditor an amount equal to the Turnover Payment will be treated as not having been paid by the Borrower and, to the extent of an amount equal to such Turnover Payment only, no reduction or discharge of any Subordinated Debt shall result from any receipt or recovery of an amount by the Subordinated Creditor which is so applied by Santander.

6.3 Nothing in this clause 6 or any other provision of this Agreement is intended to or shall create a charge or other Security.

## **7 Subordination on insolvency**

### **7.1 Filing of claims and voting**

- (a) Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the Subordinated Debt will be postponed and subordinated to the Senior Debt and Santander may and is irrevocably authorised by the Subordinated Creditor to:

- (i) demand, claim, enforce and prove for;
- (ii) exercise all powers of convening meetings, voting and representation in respect of;
- (iii) file claims and proofs, give receipts and take all proceedings and do all other things which Santander considers necessary or advisable to recover; and
- (iv) collect and receive all payments and distributions of any kind in respect of or on account of,

the Subordinated Debt due from the Borrower.

- (b) Subject to clause 7.1(d), the Subordinated Creditor undertakes not to take any of the actions referred to in clause 7.1(a).
- (c) The Subordinated Creditor will provide all forms of proxy and of representation requested by Santander for the purpose of clause 7.1(a) and do all other things that Santander reasonably requests in order to give effect to this clause 7.1.
- (d) If, for whatever reason, Santander is not entitled to take, or does not wish to take, any of the actions listed in clause 7.1(a), the Subordinated Creditor undertakes to promptly take any action and give any notices which Santander requires from time to time.
- (e) Without prejudice to clause 11 (Consents and override), nothing in this clause 7 will entitle Santander to exercise or require the Subordinated Creditor to exercise such power of voting or representation to waive or amend any of the provisions of the Subordinated Documents or waive, reduce, discharge or extend the due date for payment of or reschedule any of the Subordinated Debt.

### **7.2 Distributions**

Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the person responsible for the distribution of the assets of



the Borrower or their proceeds shall be directed by the Subordinated Creditor to pay any distributions or proceeds in respect of any of the Subordinated Debt owed to it direct to Santander for application in accordance with clause 14 (Application of recoveries) until the Senior Debt has been paid in full.

## **8 Enforcement Action**

At any time on or before the Senior Discharge Date, when a Senior Default is continuing the Subordinated Creditor will take such Enforcement Action in relation to the Subordinated Debt due to it which Santander in its absolute discretion directs it to take.

## **9 Distressed Disposal**

9.1 Subject to clause 9.5, if a Distressed Disposal is being effected, Santander is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from the Borrower or the Subordinated Creditor), to release the Borrower from all or any part of its liabilities in respect of the Subordinated Debt and/or the Subordinated Security.

9.2 Subject to clause 9.5, if Santander has exercised any of its powers granted pursuant to clause 9.1, the Subordinated Creditor shall immediately upon request by Santander do all and any such things as are necessary to give effect to such release (at the cost of the Borrower).

9.3 The net proceeds of a Distressed Disposal shall be paid to Santander for application in accordance with clause 14 (Application of recoveries) as if those proceeds were the proceeds of an enforcement of the Senior Security.

9.4 For the purposes of this clause 9, a **Distressed Disposal** shall mean a disposal of any of the assets of the Borrower which is (a) being effected in circumstances where the Senior Security has become enforceable, (b) being effected by enforcement of the Senior Security or (c) being effected by the Subordinated Creditor after the enforcement of any Senior Security or after service by Santander of a notice of acceleration in accordance with the terms of any Senior Debt Document (an **Acceleration Notice**) or after Santander has served a demand following service of an Acceleration Notice.

9.5 Santander shall only be entitled to exercise its authority under clause 9.1, and the Subordinated Creditor shall only be required to comply with its obligations under clause 9.2, provided that, in the case of a Distressed Disposal effected by Santander, Santander has taken reasonable care to obtain a fair market value for the relevant asset(s) having regard to the then prevailing market conditions (though Santander shall have no obligation to postpone any Distressed Disposal in order to achieve a higher value). Santander may seek to satisfy its requirement to take reasonable care to obtain fair market value in this clause 9.5 in any manner and, without prejudice to the generality of the foregoing, such requirement shall be deemed to be satisfied if:

- (a) that Distressed Disposal is made pursuant to any process or proceedings governed by statute;
- (b) that Distressed Disposal is made pursuant to any process or proceedings approved or supervised by, or on behalf of, any court of law;
- (c) 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 Borrower or any of the assets of the Borrower;*

- (d) that Distressed Disposal is made pursuant to any enforcement of the Security Documents carried out by way of auction or other competitive sales process;
- (e) that Distressed Disposal is made by way of set-off or balancing of accounts; or
- (f) the Subordinated Creditor has otherwise agreed that the process to effect that Distressed Disposal constitutes obtaining fair market value or that such Distressed Disposal is for fair market value (in each case, howsoever described).

#### **10 Non-subrogation**

The Subordinated Creditor will not, at any time on or before the Senior Discharge Date, be subrogated to or entitled to exercise any of the rights of Santander under the Senior Documents.

#### **11 Consents and override**

##### **11.1 Deemed consent**

Subject to clause 11.2, if, at any time on or before the Senior Discharge Date, Santander gives a Consent in respect of the Senior Documents then the Subordinated Creditor will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Subordinated Documents; and
- (b) execute any document or deed and do anything else necessary to give effect to this clause.

##### **11.2 Excluded consents**

Clause 11.1 shall not apply to any Consent which has the effect of extending the due date for, or reducing the amount of, or changing the currency of, any payment due to the Subordinated Creditor or changing any terms by reference to which any such payment is to be calculated or made.

##### **11.3 Non-objection**

The Subordinated Creditor shall not have any remedy against Santander by reason of any transaction entered into between Santander and the Borrower or any requirement or condition imposed by Santander on the Borrower which breaches or is, or causes, a default under any of the Documents, unless entered into in breach of the terms of this Agreement.

##### **11.4 Agreement override**

Unless expressly stated in this Agreement, this Agreement overrides anything in the Documents to the contrary.

## **12 Protection of subordination**

### **12.1 Continuing subordination**

The subordination provisions in this Agreement constitute a continuing subordination and benefit to the ultimate balance of the Senior Debt regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

### **12.2 Waiver of defences**

The provisions in this Agreement will not be affected by any act, omission, matter or thing which but for this clause 12 would reduce, release or otherwise prejudice the subordination in this Agreement or the obligations of the Subordinated Creditor or the Borrower under this Agreement including, without limitation:

- (a) any time, waiver or consent granted to, or composition with any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (e) any amendment (however fundamental) or replacement of any document;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any document;
- (g) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Borrower under any of the Senior Documents resulting from any insolvency, liquidation or dissolution proceedings or from any law or regulation; or
- (h) any intermediate payment or discharge of any of the Senior Debt.

### **12.3 Immediate recourse**

The Subordinated Creditor waives any right it may have of first requiring Santander to proceed against, or enforce any other rights or Security or claim payment from, any person before claiming the benefit of the priority and subordination provided for under this Agreement. This waiver applies irrespective of any law or any provision of a Document to the contrary.

## **13 Preservation of rights**

- 13.1 Notwithstanding any provision of this Agreement postponing, subordinating or preventing the payment of any of the Subordinated Debt as between the Borrower and the Subordinated Creditor, the Subordinated Debt shall remain owing or due and payable in accordance with the terms of the Subordinated Documents, and interest and default interest (if applicable) will continue to accrue in accordance with the terms of the Subordinated Documents.

- 13.2 No delay in exercising rights and remedies under any of the Subordinated Documents by reason of any term of this Agreement postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

**14 Application of recoveries**

**14.1 Order of application**

Subject to the rights of any prior or preferential creditor, Santander or any Receiver shall hold on trust, to apply at any time as Santander (in its absolute discretion) or any Receiver (in its absolute discretion) sees fit, all amounts paid to it in accordance with this Agreement, all proceeds of realisation or enforcement of the Security and all amounts received or recovered by it pursuant to the terms of any Document as follows:

- (a) first, in or towards payment of all costs and expenses incurred by Santander or any Receiver in connection with:
  - (i) any realisation or enforcement of the Senior Security taken in accordance with the terms of this Agreement; or
  - (ii) any action taken at the request of Santander under clause 7.1 (Filing of claims and voting);
- (b) secondly, in or towards payment to Santander for application towards the discharge of the Senior Debt (in accordance with the terms of the Senior Documents);
- (c) thirdly, if the Borrower is not under any further actual or contingent liability under any Senior Document, in payment to any person to whom Santander is obliged to pay in priority to the Borrower; and
- (d) fourthly, the balance, if any, in payment to the Borrower or other persons entitled to it.

**14.2 General**

Clause 14.1 will override any appropriation made by the Borrower.

**14.3 Appropriations**

At any time on or before the Senior Discharge Date, Santander may (subject to the terms of this Agreement and any other Senior Documents):

- (a) apply any monies received by it under this Agreement to the Senior Debt owed to it in such order as it may determine; and
- (b) hold any monies received by it under this Agreement in a suspense account (bearing interest at a market rate usual for an account of that type) unless and until all monies received by it are sufficient in aggregate to result in the Senior Discharge Date.

**15 Representations and warranties**

The Subordinated Creditor represents and warrants to and for the benefit of Santander that:

- (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power to own its property and assets and to carry on its business as it is being conducted;

- (b) the Documents to which it is a party are within its powers and have been duly authorised and executed by it;
- (c) this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms and the entry into and performance by it of this Agreement does not and will not conflict with any law or regulation applicable to it, its constitutional documents or with any agreement or instrument binding upon it or any of its assets;
- (d) the Documents to which it is a party (copies of which have been provided to Santander on or before the date of this Agreement) contain all the terms and conditions of the Subordinated Debt owed to it and the Subordinated Security; and
- (e) it is the sole legal and beneficial owner of the Subordinated Debt and the Subordinated Security owed to it free from any Security or subordination in favour of any person except any existing under this Agreement.

**16 Status of the Borrower**

The Borrower shall not have any rights under this Agreement and none of the representations or undertakings by the Subordinated Creditor in this Agreement are given (or deemed to be given) to or for the benefit of the Borrower.

**17 Attorney**

The Subordinated Creditor hereby irrevocably appoints Santander as its attorney (with full power of substitution and delegation) in its name and acting on its behalf to do anything which it has authorised Santander to do under this Agreement or which it is required and legally able to do under this Agreement but has failed to do.

**18 Information**

**18.1 Defaults**

The Borrower shall within five Business Days upon becoming aware of its occurrence notify in writing Santander and the Subordinated Creditor of the occurrence of a default, an event of default or potential event of default (howsoever described) under, or in respect of the terms of any Document.

**18.2 Other information**

The Subordinated Creditor shall, upon request by Santander, provide to Santander any information, including without limitation details of the amount of outstanding Subordinated Debt, that Santander may reasonably specify as being necessary or desirable to enable Santander to perform its rights and obligations under this Agreement.

**18.3 Consent to disclosure**

Notwithstanding any agreement to the contrary, the Borrower consents to the disclosure by the Subordinated Creditor or Santander to each other of such information concerning the Borrower as that Subordinated Creditor or Santander shall see fit.

**19 Changes to the Parties**

**19.1 Successors and assignees**

This Agreement will be binding upon, and continue for the benefit of, the successors and assignees of the Parties.

**19.2 Borrower**

The Borrower may not assign any of its rights (if any) nor transfer any of its rights (if any) or obligations under this Agreement.

**19.3 Subordinated Creditor**

The Subordinated Creditor may not assign any of its rights nor transfer any of its rights, benefits or obligations in respect of any of the Subordinated Documents, this Agreement, the Subordinated Debt or the Subordinated Security, without the prior written consent of Santander.

**19.4 Santander**

Santander may at any time assign all or any of its respective rights and benefits under this Agreement to any party to whom the Secured Parties transfer or assign all or any part of the Senior Debt.

**20 Notices**

All communication to be made under or in connection with this Agreement must be in writing. Santander may make or deliver any communication or document to be made under or in connection with this Agreement to the Borrower at the Borrower's registered address, or to the Subordinated Creditor at the Subordinated Creditor's address noted at the start of this Agreement. Any communication or document made or delivered by Santander will be effective at the time of personal delivery or at 9.00am on the second Business Day after posting. Any communication or document made or delivered by the Borrower or by the Subordinated Creditor to Santander must be addressed to (a) Santander Operations Middle Office Securities, Ops Block, Ground Floor Area 3A, Bridle Road, Bootle, Merseyside L30 4GB and (b) Corporate Banking, 1<sup>st</sup> Floor, 301 St. Vincent Street, Glasgow, G2 5HN (marked for the attention of Michael McGregor), and will be effective on receipt, if received before 4.00pm on a Business Day, or otherwise on the next Business Day.

**21 Waivers**

- 21.1** No failure to exercise, nor any delay in exercising, on the part of any Party, any right, under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, or remedy prevent or restrict any further exercise of that or any other right or remedy.
- 21.2** No waiver of any breach of any term of this Agreement shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.
- 21.3** The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**22 Presentation**

**22.1 Partial Invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions, nor the legality, validity or enforceability of such provision under the law of any other jurisdiction, will in any way be affected or impaired.

**22.2 No Impairment**

If, at any time after its date, any provision of a Document or this Agreement, is not binding or enforceable in accordance with its terms against a person expressed to be a party to that Document or this Agreement, neither the binding nature nor the enforceability of that provision or any other provision of that Document or this Agreement will be impaired as against the other parties to that Document or the other Parties to this Agreement.

**22.3 Compensation**

Each of Santander and the Subordinated Creditor hereby agrees that, if this Agreement is regarded by any one or more liquidators, Receivers or Administrators of the Company as failing to bind him or them, any party or parties who will have benefited as a result of any action by any one or more of such liquidators, Receivers or Administrators will forthwith compensate the party who will have been correspondingly prejudiced to the extent of the provisions as to ranking set out in clause 3 (Ranking).

**23 Entire Agreement**

This Agreement contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement (including, without limitation, the ranking agreement between the Parties subscribed on 2 and 3 September 2019 and delivered on 4 September 2019).

**24 Counterparts and delivery**

**24.1** This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts.

**24.2** Where executed in counterpart:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the Parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the Parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

**24.3** If this Agreement is not executed in counterparts, this Agreement shall be delivered on the date on which the last party signed this Agreement.

**24.4** The Parties to this Agreement, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (**Counterparts Act**), nominate Harper Macleod LLP to take delivery of all counterparts of this Agreement. The Parties agree that the

provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement.

**25 Governing law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the Scots law.

**26 Enforcement**

**26.1 Jurisdiction of Scottish courts**

- (a) The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (**Dispute**).
- (b) The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.



- (c) This clause 26 is for the benefit of Santander. As a result, Santander shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Santander may take concurrent proceedings in any number of jurisdictions.

In witness whereof these presents consisting of this and the preceding 19 pages are executed by the parties hereto as follows:

**Borrower**

**RHA Technologies Ltd**

at

on

in the presence of:

) .....  
) Director  
) .....  
) Full Name

.....  
Signature of witness

Full name .....

Address .....

**Board Approval**

We hereby certify that the acceptance of, and entry into, this Agreement was approved by a resolution of the Board of Directors of the Borrower properly passed on.....

Date .....

Signed.....(Director)

**Subordinated Creditor**

**Scottish Enterprise**

at GLASGOW  
on 4 JUNE 2020

) .....  
) ERIC ROGER GALBRAITH  
) Full Name

in the presence of:

Signature of witness

Full name CAROLYN JANE GALBRAITH

Address 11 ST CATHERINES ROAD  
GIFFNOCK GL6 6JW

**Santander**

Subscribed for and on behalf of  
**Santander UK plc** for itself and as security  
trustee  
at  
on

) .....  
) Authorised Signatory  
) .....  
) Full Name

in the presence of:

Signature of witness

Full name .....

Address .....