

# M

COMPANIES FORM No. 466(Scot)

# 466

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

CHFP025

A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge.

Please do not write in this margin

Pursuant to section 410 and 466 of the Companies Act 1985

To the Registrar of Companies  
(Address overleaf - Note 6)

For official use

Company number

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



SC396380

Name of company

\* M Squared Oil and Gas Ltd (the "Company")

\* insert full name of Company

Date of creation of the charge (note 1)

8 January 2015

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

Floating Charge (Charge Code SC39 6380 0001)

Names of the persons entitled to charge

Barclays Bank plc (the "Bank")

Short particulars of all the property charged

RIDER A ATTACHED

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

Dickson Minto W.S  
16 Charlotte Square  
Edinburgh  
EH2 4DF

199

For official use (06/2005)  
COMPANIES HOUSE  
EDINBURGH

08 FEB 2019

FRONT DESK

Post room



\*S7YVP2K2\*

SCT

08/02/2019

#367

COMPANIES HOUSE

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

RIDER B ATTACHED

*Please do not  
write in  
this margin*

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

Date(s) of execution of the instrument of alteration

6 February 2019

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

No Subordinated Creditor may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from a Debtor or any other person in respect of any of the Subordinated Liabilities prior to the Senior Discharge Date, other than the St Andrews Guarantee.

Terms defined in Rider C shall have the same meaning when used above.

Short particulars of any property released from the floating charge

N/A

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

N/A

*Please do not  
write in  
this margin*

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

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

RIDER C ATTACHED

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

*Please do not  
write in  
this margin*

N/A

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

Signed Dickson Munte Date 7/2/19

On behalf of ~~XXXXXX~~ [chargee] †

*A fee is payable to  
Companies House  
in respect of each  
register entry for a  
mortgage or  
charge.  
(See Note 5)*

### Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc, as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act.
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.
6. The address of the Registrar of Companies is: Companies House, 139 Fountainbridge, Edinburgh, EH3 9FF DX 235 Edinburgh or LP - 4 Edinburgh 2

† delete as  
appropriate

**M SQUARED OIL AND GAS LTD**

**(Registered Number SC396380)**

**RIDER A – FORM 466 – (INSTRUMENT OF ALTERATION – DEED OF POSTPONEMENT)**

**Short Particulars of all the property charged**

The whole of the property which is, or may be from time to time while the Floating Charge is in force, comprised in the Company's property and undertaking, including uncalled capital for the time being.

Terms defined in the Form 466 shall have the same meaning when used in this Rider A.

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**M SQUARED OIL AND GAS LTD**

**(Registered Number SC396380)**

**RIDER B – FORM 466 – (INSTRUMENT OF ALTERATION – DEED OF POSTPONEMENT)**

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

M-Squared Lasers Limited - Venture Building, 1 Kelvin Campus, West of Scotland Science Park,  
Maryhill Road, Glasgow, Scotland G20 0SP.

M Squared Oil and Gas Ltd - Venture Building, 1 Kelvin Campus, West of Scotland Science Park,  
Maryhill Road, Glasgow, Scotland G20 0SP.

M Squared Life Limited – Venture Building, 1 Kelvin Campus, West of Scotland Science Park,  
Maryhill Road, Glasgow, Scotland G20 0SP.

Solus Technologies Limited - Venture Building, 1 Kelvin Campus, West of Scotland Science Park,  
Maryhill Road, Glasgow, Scotland G20 0SP.

M-Squared Lasers Inc - 160 Greentree Drive, Suite 101, Dover, Delaware DE19904.

BGF Nominees Limited – 21 Palmer Street, London, SW1H 0AD.

The University Court of the University of St Andrews - College Gate, North Street, St Andrews, Fife,  
KY16 9AJ.

Barclays Bank plc - 1 Churchill Place, Canary Wharf, London E14 5HP.

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**M SQUARED OIL AND GAS LTD**

**(Registered Number SC396380)**

**RIDER C – FORM 466 – (INSTRUMENT OF ALTERATION – DEED OF POSTPONEMENT)**

**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 Subordinated Liabilities are subordinate to the right of payment to the Senior Liabilities. Payment of any amount of the Subordinated Liabilities is conditional upon the Debtors having irrevocably and unconditionally paid in full all of the Senior Liabilities.

Where:

**"BGF"** means BGF Nominees Limited, a company registered in England as company number 10007355 and having its registered office at 21 Palmer Street, London SW1H 0AD.

**"BGF Loan Notes"** means (i) the £3,750,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 27 April 2012 as subsequently amended and restated on 15 July 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018; (ii) the £750,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 06 November 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018; and (iii) the £900,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 24 March 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018.

**"BGF Subordinated Liabilities"** means any Liabilities owed by a Group Company to BGF including, but not limited to, the Liabilities arising under the BGF Loan Notes.

**"Borrower"** means M-Squared Lasers Limited, registered in Scotland as company number SC243330 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP.

**"Debtor"** means the Borrower or a Guarantor.

**"Group Company"** means in relation to a Debtor, that Debtor, any Subsidiary or holding company from time to time of a Debtor and any Subsidiary from time to time of a holding company of that Debtor.

**"Guarantee"** means:

(A) the unlimited corporate guarantee given on 09 January 2015 by the Guarantors (other than M Squared Life); and

(B) the unlimited guarantee given on or about the date of the Deed of Postponement by M Squared Life,

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each in favour of the Senior Creditor in respect of the Loan Facility.

**"Guarantors"** means the Company, Solus, M-Squared US, and M Squared Life.

**"Liabilities"** means all present and future liabilities and obligations at any time, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

(A) any investment, refinancing, novation, deferral or extension;

(B) any claim for breach of representation, warranty or undertaking or an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;

(C) any claim for damages or restitution; and

(D) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of these amounts in any insolvency or other proceedings.

**"Loan Facility"** means the Sterling Single Currently Revolving Loan Key Terms (Floating Rate (Screen Rate)) and the Sterling or Single Currency Revolving Loan (Floating Rate (Screen Rate)) Terms and Conditions incorporated therein entered into or to be entered into on or about the date of the Deed of Postponement between, amongst others, the Borrower (as borrower) and the Senior Creditor (as lender).

**"M Squared Life"** means M Squared Life Limited, registered in Scotland as company number SC522938 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP.

**"M-Squared US"** means M-Squared Lasers Inc, registered in Delaware as company number 4930155 and having its registered office at 160 Greentree Drive, Suite 101, Dover, Delaware, DE19904.

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations), including (without limitation) any exercise of any right of set-off.

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Senior Creditor"** means Barclays Bank plc and its successors and assignees.

**"Senior Discharge Date"** means the date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Senior Creditor, whether or not as a result of any enforcement,

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and the Senior Creditor is not under any further obligation to provide financial accommodation to any Debtor under any of the Senior Finance Documents.

**"Senior Finance Documents"** means the Loan Facility, each Guarantee, the Existing Security (as defined in the Loan Facility), the New Security (as defined in the Loan Facility), the EFG Loans (as defined in the Loan Facility), the Overdraft Facility (as defined in the Loan Facility), the Deed of Postponement and any other agreement, deed, document or instrument evidencing or constituting any Liabilities of the Debtors (or any of them) owed to the Senior Creditor from time to time howsoever arising.

**"Senior Liabilities"** means Liabilities owed by a Debtor to the Senior Creditor under or in connection with the Senior Finance Documents or any other Liabilities of the Debtors (or any of them) owed to the Senior Creditor from time to time howsoever arising.

**"Solus"** means Solus Technologies Limited, registered in Scotland as company number SC303447 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Glasgow, Scotland G20 0SP.

**"St Andrews"** means The University Court of the University of St Andrews, incorporated under the Universities (Scotland) Acts 1858 to 1966 and having its principal office at College Gate, North Street, St Andrews, Fife, KY16 9AJ.

**"St Andrews Guarantee"** means the guarantee granted by the Borrower in favour of St Andrews in relation to M Squared Life's obligations under the St Andrews Loan Note Instrument.

**"St Andrews Loan Notes"** means £672,000 loan notes issued by M Squared Life in favour of St Andrews due 2023 and any other loan notes issued by M Squared Life to St Andrews from time to time which are capable of being or becoming repayable prior to the Senior Discharge Date.

**"St Andrews Loan Note Instrument"** means the loan note instruments dated on or around the date of the Deed of Postponement made by M Squared Life constituting the St Andrews Loan Notes and any other additional loan note instrument made by M Squared Life in favour of St Andrews from time to time constituting loan notes which are capable of being or becoming repayable prior to the Senior Discharge Date.

**"St Andrews Subordinated Liabilities"** means any Liabilities owed by a Group Company to St Andrews arising under the St Andrews Loan Notes, the St Andrews Guarantee and any other agreement or document which creates or purports to create any Liabilities of a type which as at the date of the Deed of Postponement arise under the St Andrews Loan Notes or the St Andrews Guarantee.

**"Subordinated Liabilities"** means the BGF Subordinated Liabilities and/or the St Andrews Subordinated Liabilities.

**"Subordinated Creditor"** means each of BGF and St Andrews.

**"Subsidiary"** means a subsidiary undertaking as defined in the Companies Act 2006.

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**FILE COPY**

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

COMPANY NO. 396380  
CHARGE CODE SC39 6380 0001

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 6 FEBRUARY 2019 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 8 FEBRUARY 2019

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 8  
JANUARY 2015

BY M SQUARED OIL AND GAS LTD

IN FAVOUR OF  
BARCLAYS BANK PLC

GIVEN AT COMPANIES HOUSE, EDINBURGH 12 FEBRUARY 2019



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Dated: 6 FEBRUARY 2019

**EXECUTION VERSION**

# Deed of Postponement

between

**M-Squared Lasers Limited**  
as Borrower

**M Squared Oil and Gas Limited**  
**Solus Technologies Limited**  
**M-Squared Lasers Inc**  
**M Squared Life Limited**  
as Guarantors

**BGF Nominees Limited (a/c BGF Investments LP)**  
**The University Court of the University of St Andrews**  
as Subordinated Creditors

and

**Barclays Bank PLC**  
as Senior Creditor

WE CERTIFY THAT, SAVE FOR MATERIAL  
REDACTED PURSUANT TO SECTION 859G  
OF THE COMPANIES ACT 2006, THIS COPY  
INSTRUMENT IS A CORRECT COPY OF  
THE ORIGINAL INSTRUMENT



DICKSON MINTO W.S.

DATE: 7/2/19

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**THIS AGREEMENT** is dated **6 FEBRUARY**

2019 and made

**BETWEEN:**

- (1) **M-SQUARED LASERS LIMITED**, registered in Scotland as company number SC243330 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP (the "**Borrower**");
- (2) **M SQUARED OIL AND GAS LIMITED**, registered in Scotland as company number SC396380 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP ("**M Squared Oil**");
- (3) **M SQUARED LIFE LIMITED**, registered in Scotland as company number SC522938 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP (the "**M Squared Life**");
- (4) **SOLUS TECHNOLOGIES LIMITED**, registered in Scotland as company number SC303447 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP ("**Solus**");
- (5) **M-SQUARED LASERS INC.**, registered in Delaware as company number 4930155 and having its registered office at 160 Greentree Drive, Suite 101, Dover, Delaware, DE19904 ("**M-Squared US**" and, together with M Squared Oil, M Squared Life and Solus, the "**Guarantors**");
- (6) **BGF NOMINEES LIMITED**, a company registered in England as company number 10007355 and having its registered office at 21 Palmer Street, London, SW1H 0AD ("**BGF**");
- (7) **THE UNIVERSITY COURT OF THE UNIVERSITY OF ST ANDREWS**, incorporated under the Universities (Scotland) Acts 1858 to 1966 and having its principal office at College Gate, North Street, St Andrews, Fife, KY16 9AJ ("**St Andrews**"); and
- (8) **BARCLAYS BANK PLC**, as senior creditor (the "**Senior Creditor**", which expression includes its successors and assigns).

**BACKGROUND:**

- (A) The Debtors and each Subordinated Creditor enter into this Agreement in connection with the Loan Facility.
- (B) It is intended that this Agreement takes effect as a deed notwithstanding the fact that a Party may only execute this Agreement under hand.
- (C) This Agreement replaces and supersedes in full the deed of postponement dated 26 November 2018 made between, amongst others, the Borrower, BGF Investments LP acting by its General Partner Business Growth Fund PLC and the Senior Creditor (the "**Existing Postponement Agreement**") and the Existing Postponement Agreement shall cease to have any effect upon the date of this Agreement.

**IT IS AGREED** as follows:

## **1. Definitions and Interpretation**

### **1.1 Definitions**

**"BGF Loan Notes"** means (i) the £3,750,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 27 April 2012 as subsequently amended and restated on 15 July 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018; (ii) the £750,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 6 November 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018; and (iii) the £900,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 24 March 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018.

**"BGF Subordinated Liabilities"** means any Liabilities owed by a Group Company to BGF including, but not limited to, the Liabilities arising under the BGF Loan Notes.

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

**"Debtor"** means the Borrower or a Guarantor.

**"Distress Event"** means any of:

- (A) the Senior Creditor terminating the facility made available under the Loan Facility or any EFG Loan (as defined in the Loan Facility), declaring that any amount payable under the Senior Finance Documents is payable on demand or demanding payment of any amount due and payable under the Senior Finance Documents; or
- (B) the enforcement of any Transaction Security.

**"Distressed Disposal"** means a disposal of an asset of, or the shares in, the capital of a Debtor which is:

- (A) being effected by enforcement of the Transaction Security; or
- (B) being effected after the occurrence of a Distress Event by the Senior Creditor.

**"Enforcement Action"** means:

- (A) the acceleration of any Subordinated Liabilities or the making of any declaration that any Subordinated Liabilities are prematurely due and payable;
- (B) the making of any declaration that any Subordinated Liabilities are payable on demand;
- (C) the making of a demand in relation to a Subordinated Liability that is payable on demand;
- (D) the exercise of any right to require a Debtor to acquire any Subordinated Liability (including exercising any put or call option against a Debtor for the redemption or purchase of any Subordinated Liability);
- (E) the exercise of any right of set-off, account combination or payment netting against a Debtor in respect of any Subordinated Liabilities;

- (F) the suing for, commencing or joining of any legal or arbitration proceedings against a Debtor to recover any Subordinated Liabilities;
- (G) the entering into of any composition, compromise, assignment or arrangement with a Debtor, or any person who has given any Security, guarantee or indemnity or other assurance against loss in respect of the Subordinated Liabilities; or
- (H) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of a Debtor, or any person who has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Subordinated Liabilities, or any of a Debtor's assets or any suspension of payments or moratorium of any indebtedness of a Debtor, or any analogous procedure or step in any jurisdiction.

**"Group Company"** means in relation to a Debtor, that Debtor, any Subsidiary or holding company from time to time of a Debtor and any Subsidiary from time to time of a holding company of that Debtor.

**"Guarantee"** means:

- (A) the unlimited corporate guarantee given on 09 January 2015 by the Guarantors (other than M Squared Life); and
- (B) the unlimited guarantee given on or about the date of this Agreement by M Squared Life,

each in favour of the Senior Creditor in respect of the Loan Facility.

**"Insolvency Event"** means, in relation to a Debtor:

- (A) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of a Debtor, a moratorium is declared in relation to any indebtedness of a Debtor or an administrator is appointed to a Debtor;
- (B) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (C) the appointment of any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of a Debtor or any of its assets; or
- (D) any analogous procedure or step is taken in any jurisdiction.

**"Liabilities"** means all present and future liabilities and obligations at any time, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (A) any investment, refinancing, novation, deferral or extension;
- (B) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (C) any claim for damages or restitution; and

- (D) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**"Loan Facility"** means the Sterling Single Currency Revolving Loan Key Terms (Floating Rate (Screen Rate)) and the Sterling or Single Currency Revolving Loan (Floating Rate (Screen Rate)) Terms and Conditions incorporated therein entered into or to be entered into on or about the date of this Agreement between, amongst others, the Borrower (as borrower) and the Senior Creditor (as lender).

**"Party"** means a party to this Agreement.

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations), including (without limitation) any exercise of any right of set-off.

**"Permitted Payment"** means:

- (A) any scheduled payment of interest pursuant to and in accordance with the terms of the BGF Loan Notes and/or the St Andrews Loan Note Instrument (as such terms are set out in the form of such documents as at the date of this Agreement);
- (B) any scheduled repayment of principal pursuant to and in accordance with the terms of the BGF Loan Notes and/or the St Andrews Loan Note Instrument provided the Senior Creditor has provided its prior written consent (such consent not to be unreasonably withheld);
- (C) an amount not exceeding £35,000 (plus VAT) per annum (and increasing by no more than 3.00 per cent. of that amount per annum) as payment of an annual fee in respect of the BGF Subordinated Liabilities; or
- (D) reimbursement by the Borrower of any expenses (plus any additional value added tax) reasonably and properly incurred by any BGF Director, Independent Director and/or Observer in carrying out his duties and in monitoring BGF's investment in the Borrower.

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Senior Discharge Date"** means the date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Senior Creditor, whether or not as the result of any enforcement, and the Senior Creditor is not under any further obligation to provide financial accommodation to any Debtor under any of the Senior Finance Documents.

**"Senior Finance Documents"** means the Loan Facility, each Guarantee, the Existing Security (as defined in the Loan Facility), the New Security (as defined in the Loan Facility), the EFG Loans (as defined in the Loan Facility), the Overdraft Facility (as defined in the Loan Facility) this Agreement and any other agreement, deed, document or instrument evidencing or constituting any Liabilities of the Debtors (or any of them) owed to the Senior Creditor from time to time howsoever arising.



**"Senior Liabilities"** means the Liabilities owed by a Debtor to the Senior Creditor under or in connection with the Senior Finance Documents or any other Liabilities of the Debtors (or any of them) owed to the Senior Creditor from time to time howsoever arising.

**"St Andrews Guarantee"** means the guarantee granted by the Borrower in favour of St Andrews in relation to M Squared Life's obligations under the St Andrews Loan Note Instrument.

**"St Andrews Loan Notes"** means the £672,000 loan notes issued by M Squared Life in favour of St Andrews due 2023 and any other loan notes issued by M Squared Life to St Andrews from time to time which are capable of being or becoming repayable prior to the Senior Discharge Date.

**"St Andrews Loan Note Instrument"** means the loan note instruments dated on or around the date of this Agreement made by M Squared Life constituting the St Andrews Loan Notes and any other additional loan note instrument made by M Squared Life in favour of St Andrews from time to time constituting loan notes which are capable of being or becoming repayable prior to the Senior Discharge Date.

**"St Andrews Subordinated Liabilities"** means any Liabilities owed by a Group Company to St Andrews arising under the St Andrews Loan Notes, the St Andrews Guarantee and any other agreement or document which creates or purports to create any Liabilities of a type which as at the date of this Agreement arise under the St Andrews Loan Notes or the St Andrews Guarantee.

**"Subordinated Creditor"** means each of BGF and St Andrews.

**"Subordinated Liabilities"** means the BGF Subordinated Liabilities and/or the St Andrews Subordinated Liabilities.

**"Subsidiary"** means a subsidiary undertaking as defined in the Companies Act 2006.

**"Transaction Security"** means the Security created or evidenced or expressed to be created or evidenced under the Senior Finance Documents.

## 1.2 Construction

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

- (1) a **"Debtor"**, the **"Senior Creditor"** or the **"Subordinated Creditor"** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (2) **"assets"** includes present and future properties, revenues and rights of every description;
- (3) any agreement or instrument is a reference to that agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- (4) **"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;
- (5) a **"person"** includes any individual, 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);

(6) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and

(7) a provision of law is a reference to that provision as amended or re-enacted.

(B) Clause headings are for ease of reference only.

(C) Any obligations or liabilities of the Subordinated Creditors under or pursuant to this Agreement are given or entered into on a several basis.

### 1.3 Third Party Rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

## 2. Ranking and priority

2.1 The Subordinated Liabilities are subordinate in right of payment to the Senior Liabilities. Payment of any amount of the Subordinated Liabilities is conditional upon the Debtors having irrevocably and unconditionally paid in full all of the Senior Liabilities.

2.2 This Agreement does not purport to rank any of the Subordinated Liabilities as between themselves.

## 3. Subordinated Liabilities

### 3.1 Restriction on Payment

Prior to the Senior Discharge Date, no Debtor shall make any Payment of the Subordinated Liabilities and no Subordinated Creditor shall call for or receive any such Payment at any time, except for a Permitted Payment.

### 3.2 Payment obligations continue

The Debtor shall not be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted by the operation of clause 3.1 (Restriction on Payment) even if its obligation to make that Payment is restricted by the terms of that clause.

### 3.3 No acquisition of Subordinated Liabilities

Prior to the Senior Discharge Date, no Debtor shall:

(A) enter into any transaction to:

- (1) purchase by way of assignment or transfer;
- (2) enter into any sub-participation in respect of; or
- (3) enter into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights and benefits in respect of any or all of the Subordinated Liabilities; or

- (B) beneficially own all or any part of the share capital of a company that is party to any transaction referred to in clause 3.3(A).

#### **3.4 No disposal of Subordinated Liabilities**

Prior to the Senior Discharge Date, no Subordinated Creditor shall assign, mortgage or dispose of the Subordinated Liabilities except:

- (A) with the prior written consent of the Senior Creditor; or
- (B) in the case of St Andrews only, an assignment or transfer by St Andrews in accordance with the terms of the St Andrews Loan Note Instrument,

and in each case provided that the transferee or assignee agrees (in form and substance satisfactory to the Senior Creditor acting reasonably) to be bound by and assume the same obligations under this Agreement as the relevant Subordinated Creditor.

#### **3.5 Amendments and waivers**

Prior to the Senior Discharge Date, no Subordinated Creditor may amend, waive or agree the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted other than an amendment or waiver or agreement which:

- (A) has the prior written consent of the Senior Creditor;
- (B) is to correct a manifest error; or
- (C) is minor and administrative in nature and does not prejudice the interests of the Senior Creditor.

#### **3.6 Security**

No Subordinated Creditor may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from a Debtor or any other person in respect of any of the Subordinated Liabilities prior to the Senior Discharge Date, other than the St Andrews Guarantee.

#### **3.7 Restriction on Enforcement**

No Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Senior Discharge Date unless the prior written consent of the Senior Creditor is obtained.

### **4. Effect of Insolvency Event**

#### **4.1 Payment of distributions**

After the occurrence of an Insolvency Event in relation to a Debtor, each Subordinated Creditor shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of a Debtor to pay that distribution to the Senior Creditor until the Senior Liabilities have been irrevocably and unconditionally paid in full.

#### **4.2 Set-Off**

To the extent that any Subordinated Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to a

Debtor, the relevant Subordinated Creditor shall pay an amount equal to the amount of the Subordinated Liabilities owed to it which are discharged by that set-off to the Senior Creditor for application against the Senior Liabilities.

#### **4.3 Non cash distributions**

If the Senior Creditor receives a distribution in a form other than in cash in respect of any of the Senior Liabilities, the Senior Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Senior Liabilities.

#### **4.4 Filing of claims**

After the occurrence of an Insolvency Event in relation to a Debtor, each Subordinated Creditor irrevocably authorises the Senior Creditor, on its behalf, to:

- (A) take any Enforcement Action against any Debtor;
- (B) demand, sue, prove and give receipt for any or all of the Subordinated Liabilities relating to that Subordinated Creditor;
- (C) collect and receive all distributions on, or on account of, any or all of the Subordinated Liabilities relating to that Subordinated Creditor; and
- (D) file claims, take proceedings and do all other things the Senior Creditor considers reasonably necessary to recover the Subordinated Liabilities relating to that Subordinated Creditor.

#### **4.5 Subordinated Creditors' actions**

Each Subordinated Creditor shall:

- (A) do all things that the Senior Creditor reasonably requests in order to give effect to this clause 4; and
- (B) If the Senior Creditor is not entitled to take any of the actions contemplated by this clause 4 or if the Senior Creditor reasonably requests that the relevant Subordinated Creditor take that action, undertake that action itself in accordance with the instructions of the Senior Creditor (on such terms as the Senior Creditor may reasonably require) to enable the Senior Creditor to take such action.

### **5. Turnover of Receipts**

#### **5.1 Turnover by a Subordinated Creditor**

If at any time prior to the Senior Discharge Date, a Subordinated Creditor receives or recovers:

- (A) any Payment or distribution of, or on account of or in relation to, any of the Subordinated Liabilities relating to that Subordinated Creditor; or
- (B) any amount by way of set-off in respect of any of the Subordinated Liabilities owed to it; or
- (C) any other amount on account of, or in relation to, any of the Subordinated Liabilities relating to that Subordinated Creditor,

which, in each case, is not a Permitted Payment or a payment for which the prior written consent of the Senior Creditor has been obtained, that Subordinated Creditor will:

- (1) In relation to receipts and recoveries not received or recovered by way of set-off hold the amount of that receipt or recovery on trust for the Senior Creditor and as soon as reasonably practicable (and in any event within 2 Business Days of receipt or recovery) pay that amount to the Senior Creditor for application against the Senior Liabilities; and
- (2) In relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Senior Creditor for application against the Senior Liabilities.

## **5.2 Saving provision**

If, for any reason, any of the trusts expressed to be created in this clause 5 should fail or be unenforceable, the relevant Subordinated Creditor will as soon as reasonably practicable (and in any event within 2 Business Days of receipt or recovery) pay an amount equal to that receipt or recovery to the Senior Creditor for application against the Senior Liabilities.

## **6. Distressed Disposals**

If a Distressed Disposal is being effected, the Senior Creditor is irrevocably authorised (at the cost of a Debtor and without any consent, sanction, authority or further confirmation from any Subordinated Creditor or any Debtor), to release any Group Company from all or any part of the Subordinated Liabilities and any other claim of a Subordinated Creditor over that Group Company's assets, on behalf of the relevant Subordinated Creditor.

## **7. Consents and override**

### **7.1 Consents**

Any waiver or consent granted by or on behalf of the Senior Creditor in respect of any Senior Finance Document (other than this Agreement) will also be deemed to have been given by each Subordinated Creditor if any transaction or circumstances would, in the absence of that waiver or consent by that Subordinated Creditor conflict with the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities relating to that Subordinated Creditor are constituted or result in a potential event of default or an event of default (however described) under the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities relating to that Subordinated Creditor are constituted.

### **7.2 Agreement to override**

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted to the contrary.

## **8. Information**

### **8.1 Defaults**

Each Subordinated Creditor must notify the Senior Creditor of any event of default or potential default (howsoever described) under terms of any of the documents or instruments pursuant to which the Subordinated Liabilities relating to that Subordinated Creditor are constituted promptly upon becoming aware of it.

## **8.2 Amount of Subordinated Liabilities**

Each Subordinated Creditor must on request by the Senior Creditor notify it of details of the amount of the Subordinated Liabilities relating to that Subordinated Creditor.

## **9. Proceeds**

### **9.1 Order of application**

Subject to clause 9.2 (*Prospective liabilities*), all amounts from time to time received or recovered under this Agreement shall be applied:

- (A) first, by the Senior Creditor for application towards the discharge of the Senior Liabilities in the order selected by the Senior Creditor;
- (B) secondly, after the Senior Discharge Date, in payment to the Subordinated Creditors for application towards the discharge of the Subordinated Liabilities which shall be applied in proportion to the debts due to each creditor by reference to the total amount of the Subordinated Liabilities (as if any release pursuant to Clause 6 (*Distressed Disposals*) has not taken place); and
- (C) thirdly, and only once the Subordinated Liabilities have been discharged in full, in payment of the surplus (if any) to a Debtor or other person entitled to it.

### **9.2 Prospective liabilities**

Until the Senior Discharge Date, the Senior Creditor (or any trustee or agent on its behalf) may:

- (A) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and neither the Debtors nor a Subordinated Creditor shall be entitled to the benefit of the same; and
- (B) hold in a suspense account any moneys received or recovered by it under this Agreement.

## **10. Changes to the Parties**

### **10.1 Assignments and transfer by a Debtor or a Subordinated Creditor**

Other than where a Subordinated Creditor has assigned or otherwise disposed of all of its Subordinated Liabilities under clause 3.4 (*No disposal of Subordinated Liabilities*) to an assignee or transferee who has agreed to be bound by and assume the same obligations under the terms of that clause in form and substance satisfactory to the Senior Creditor, neither a Debtor nor a Subordinated Creditor may assign any of its rights or transfer any of its rights or obligations under this Agreement.

### **10.2 Assignments and transfer by the Senior Creditor**

The Senior Creditor may assign any of its rights or transfer any of its rights or obligations under this Agreement to any person to whom it is permitted to assign its rights or transfer any of its rights or obligations under the terms of the Loan Facility, any EFG Loan or the Overdraft Facility.

**11. Set-off**

The Senior Creditor may set off any matured obligation due from a Subordinated Creditor under this Agreement) against any matured obligation owed by the Senior Creditor to that Subordinated Creditor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Senior Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**12. Notices**

**12.1 Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by email or letter to the email address or address (as applicable) identified with its name below.

**13. Preservation**

**13.1 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 that provision under the law of any other jurisdiction will in any way be affected or impaired.

**13.2 No Impairment**

If, at any time after its date, any provision of a Senior Finance Document (including this Agreement) or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted, neither the binding nature nor the enforceability of that provision or any other provision of that Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted will be impaired as against the other party(ies) to that Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted.

**13.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**13.4 Waiver of defences**

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this clause 13.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (A) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (B) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of a Debtor;
- (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 Debtor or other 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 Debtor or other person;
- (E) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted or any other document or security;
- (F) any unenforceability, illegality or invalidity of any obligation of any person under any Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted or any other document or security;
- (G) any Intermediate Payment of any of the Senior Liabilities in whole or in part; or
- (H) any insolvency or similar proceedings.

#### **13.5 Priorities not affected**

Except as otherwise provided in this Agreement the priorities referred to in clause 2 (Ranking and Priority) will:

- (A) not be affected by any intermediate reduction or increase in, amendment or variation to any of the Senior Finance Documents or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted, or by any variation or satisfaction of, any of the Senior Liabilities or the Subordinated Liabilities or any other circumstances;
- (B) apply regardless of the order in which or dates upon which this Agreement and the other Senior Finance Documents or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted are executed or registered or notice of them is given to any person.

#### **14. Duration**

This Agreement shall cease to have effect on and from the Senior Discharge Date.

#### **15. Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.



**16. Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

**17. Enforcement**

**17.1 Jurisdiction**

- (A) The courts of England 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) (a "Dispute").
- (B) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (C) This clause 17.1 is for the benefit of the Senior Creditor only. As a result, the Senior Creditor shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Creditor may take concurrent proceedings in any number of jurisdictions.

**This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by a Debtor and the Subordinated Creditors and is intended to be and is delivered by them as a deed on the date specified above.**

**SIGNATURES**

**The Debtors**

Signed as a deed on behalf of M-SQUARED  
LASERS LIMITED, by

[Redacted Signature]

Name DR GRAEME MALCOLM  
Director

In the presence of:

[Redacted Signature]

Name of witness:

YVETTE GIRONNINI

Address of Witness:

[Redacted Address]

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of M SQUARED  
OIL AND GAS LIMITED, by

[Redacted Signature]

Name DE GRAEME MALCOLM  
Director

In the presence of:

[Redacted Signature]

Name of witness:

YVETTE GIMMINI

Address of Witness:

[Redacted Address]

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of M SQUARED  
LIFE LIMITED, by

...

Name DR GRAEME MALCOLM  
Director

In the presence of:

.....

Name of witness:

YVETTE GINNINI.....

Address of Witness:

.....  
.....  
.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of SOLUS  
TECHNOLOGIES LIMITED, by

.....  
[Redacted Signature]

Name DR GRAEME MALCOLM  
Director

In the presence of:

.....  
[Redacted Signature]

Name of witness:

Yvette GINNINI

Address of Witness:

.....  
[Redacted Address]  
.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of  
M-SQUARED LASERS INC, by

...

Name DL Graeme Malcolm  
Director

In the presence of:

...

Name of witness:

Yvette Ginnini

Address of Witness:

...

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

**The Subordinated Creditors**

Signed as a deed on behalf of BGF  
NOMINEES LIMITED acting by its

attorney

In the presence of



Attorney

Signature of witness:



Name of witness:

Yvette Gionnini

Address of witness:



Occupation of witness:

PERSONAL ASSISTANT

Address: 13-15 York Buildings, London, WC2N 6JU

Email: [Matthew.Reed@bpf.co.uk](mailto:Matthew.Reed@bpf.co.uk)

Attention: Matthew Reed, Chief Operating Officer

Signed as a deed on behalf of THE  
UNIVERSITY COURT OF THE UNIVERSITY  
OF ST ANDREWS, by  
acting with the authority of the Court

.....

Name .....  
Authorised Signatory

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: College Gate, North Street, St Andrews, Fife, KY16 9AJ

Email: [findir@st-andrews.ac.uk](mailto:findir@st-andrews.ac.uk)

Attention: Andy Goor, Finance Director



**The Senior Creditor**

**BARCLAYS BANK PLC**

**By: .....**

**Address: 1 Churchill Place, Canary Wharf, London, E14 5HP**

**Email: joseph.coles@barclays.com**

**Attention: Joseph Coles**

Dated: 6 FEBRUARY 2019

**EXECUTION VERSION**

# Deed of Postponement

between

M-Squared Lasers Limited  
as Borrower


M Squared Oil and Gas Limited  
Solus Technologies Limited  
M-Squared Lasers Inc  
M Squared Life Limited  
as Guarantors

BGF Nominees Limited (a/c BGF Investments LP)  
The University Court of the University of St Andrews  
as Subordinated Creditors

and

Barclays Bank PLC  
as Senior Creditor

WE CERTIFY THAT, SAVE FOR MATERIAL  
REDACTED PURSUANT TO SECTION 859G  
OF THE COMPANIES ACT 2006, THIS COPY  
INSTRUMENT IS A CORRECT COPY OF  
THE ORIGINAL INSTRUMENT

  
\_\_\_\_\_  
DICKSON MINTO W.S.

DATE: 7/2/19

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**THIS AGREEMENT** is dated **6 FEBRUARY**

2019 and made

**BETWEEN:**

- (1) **M-SQUARED LASERS LIMITED**, registered in Scotland as company number SC243330 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP (the "**Borrower**");
- (2) **M SQUARED OIL AND GAS LIMITED**, registered in Scotland as company number SC396380 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP ("**M Squared Oil**");
- (3) **M SQUARED LIFE LIMITED**, registered in Scotland as company number SC522938 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP (the "**M Squared Life**");
- (4) **SOLUS TECHNOLOGIES LIMITED**, registered in Scotland as company number SC303447 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP ("**Solus**");
- (5) **M-SQUARED LASERS INC.**, registered in Delaware as company number 4930155 and having its registered office at 160 Greentree Drive, Suite 101, Dover, Delaware, DE19904 ("**M-Squared US**" and, together with M Squared Oil, M Squared Life and Solus, the "**Guarantors**");
- (6) **BGF NOMINEES LIMITED**, a company registered in England as company number 10007355 and having its registered office at 21 Palmer Street, London, SW1H 0AD ("**BGF**");
- (7) **THE UNIVERSITY COURT OF THE UNIVERSITY OF ST ANDREWS**, incorporated under the Universities (Scotland) Acts 1858 to 1966 and having its principal office at College Gate, North Street, St Andrews, Fife, KY16 9AJ ("**St Andrews**"); and
- (8) **BARCLAYS BANK PLC**, as senior creditor (the "**Senior Creditor**", which expression includes its successors and assigns).

**BACKGROUND:**

- (A) The Debtors and each Subordinated Creditor enter into this Agreement in connection with the Loan Facility.
- (B) It is intended that this Agreement takes effect as a deed notwithstanding the fact that a Party may only execute this Agreement under hand.
- (C) This Agreement replaces and supersedes in full the deed of postponement dated 26 November 2018 made between, amongst others, the Borrower, BGF Investments LP acting by its General Partner Business Growth Fund PLC and the Senior Creditor (the "**Existing Postponement Agreement**") and the Existing Postponement Agreement shall cease to have any effect upon the date of this Agreement.

**IT IS AGREED** as follows:

## **1. Definitions and Interpretation**

### **1.1 Definitions**

**"BGF Loan Notes"** means (i) the £3,750,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 27 April 2012 as subsequently amended and restated on 15 July 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018; (ii) the £750,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 6 November 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018; and (iii) the £900,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 24 March 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018.

**"BGF Subordinated Liabilities"** means any Liabilities owed by a Group Company to BGF including, but not limited to, the Liabilities arising under the BGF Loan Notes.

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

**"Debtor"** means the Borrower or a Guarantor.

**"Distress Event"** means any of:

- (A) the Senior Creditor terminating the facility made available under the Loan Facility or any EFG Loan (as defined in the Loan Facility), declaring that any amount payable under the Senior Finance Documents is payable on demand or demanding payment of any amount due and payable under the Senior Finance Documents; or
- (B) the enforcement of any Transaction Security.

**"Distressed Disposal"** means a disposal of an asset of, or the shares in, the capital of a Debtor which is:

- (A) being effected by enforcement of the Transaction Security; or
- (B) being effected after the occurrence of a Distress Event by the Senior Creditor.

**"Enforcement Action"** means:

- (A) the acceleration of any Subordinated Liabilities or the making of any declaration that any Subordinated Liabilities are prematurely due and payable;
- (B) the making of any declaration that any Subordinated Liabilities are payable on demand;
- (C) the making of a demand in relation to a Subordinated Liability that is payable on demand;
- (D) the exercise of any right to require a Debtor to acquire any Subordinated Liability (including exercising any put or call option against a Debtor for the redemption or purchase of any Subordinated Liability);
- (E) the exercise of any right of set-off, account combination or payment netting against a Debtor in respect of any Subordinated Liabilities;

- (F) the suing for, commencing or joining of any legal or arbitration proceedings against a Debtor to recover any Subordinated Liabilities;
- (G) the entering into of any composition, compromise, assignment or arrangement with a Debtor, or any person who has given any Security, guarantee or indemnity or other assurance against loss in respect of the Subordinated Liabilities; or
- (H) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of a Debtor, or any person who has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Subordinated Liabilities, or any of a Debtor's assets or any suspension of payments or moratorium of any indebtedness of a Debtor, or any analogous procedure or step in any jurisdiction.

**"Group Company"** means in relation to a Debtor, that Debtor, any Subsidiary or holding company from time to time of a Debtor and any Subsidiary from time to time of a holding company of that Debtor.

**"Guarantee"** means:

- (A) the unlimited corporate guarantee given on 09 January 2015 by the Guarantors (other than M Squared Life); and
- (B) the unlimited guarantee given on or about the date of this Agreement by M Squared Life,

each in favour of the Senior Creditor in respect of the Loan Facility.

**"Insolvency Event"** means, in relation to a Debtor:

- (A) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of a Debtor, a moratorium is declared in relation to any indebtedness of a Debtor or an administrator is appointed to a Debtor;
- (B) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (C) the appointment of any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of a Debtor or any of its assets; or
- (D) any analogous procedure or step is taken in any jurisdiction.

**"Liabilities"** means all present and future liabilities and obligations at any time, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (A) any investment, refinancing, novation, deferral or extension;
- (B) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (C) any claim for damages or restitution; and

- (D) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**"Loan Facility"** means the Sterling Single Currency Revolving Loan Key Terms (Floating Rate (Screen Rate)) and the Sterling or Single Currency Revolving Loan (Floating Rate (Screen Rate)) Terms and Conditions incorporated therein entered into or to be entered into on or about the date of this Agreement between, amongst others, the Borrower (as borrower) and the Senior Creditor (as lender).

**"Party"** means a party to this Agreement.

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations), including (without limitation) any exercise of any right of set-off.

**"Permitted Payment"** means:

- (A) any scheduled payment of interest pursuant to and in accordance with the terms of the BGF Loan Notes and/or the St Andrews Loan Note Instrument (as such terms are set out in the form of such documents as at the date of this Agreement);
- (B) any scheduled repayment of principal pursuant to and in accordance with the terms of the BGF Loan Notes and/or the St Andrews Loan Note Instrument provided the Senior Creditor has provided its prior written consent (such consent not to be unreasonably withheld);
- (C) an amount not exceeding £35,000 (plus VAT) per annum (and increasing by no more than 3.00 per cent. of that amount per annum) as payment of an annual fee in respect of the BGF Subordinated Liabilities; or
- (D) reimbursement by the Borrower of any expenses (plus any additional value added tax) reasonably and properly incurred by any BGF Director, Independent Director and/or Observer in carrying out his duties and in monitoring BGF's investment in the Borrower.

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Senior Discharge Date"** means the date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Senior Creditor, whether or not as the result of any enforcement, and the Senior Creditor is not under any further obligation to provide financial accommodation to any Debtor under any of the Senior Finance Documents.

**"Senior Finance Documents"** means the Loan Facility, each Guarantee, the Existing Security (as defined in the Loan Facility), the New Security (as defined in the Loan Facility), the EFG Loans (as defined in the Loan Facility), the Overdraft Facility (as defined in the Loan Facility) this Agreement and any other agreement, deed, document or instrument evidencing or constituting any Liabilities of the Debtors (or any of them) owed to the Senior Creditor from time to time howsoever arising.

**"Senior Liabilities"** means the Liabilities owed by a Debtor to the Senior Creditor under or in connection with the Senior Finance Documents or any other Liabilities of the Debtors (or any of them) owed to the Senior Creditor from time to time howsoever arising.

**"St Andrews Guarantee"** means the guarantee granted by the Borrower in favour of St Andrews in relation to M Squared Life's obligations under the St Andrews Loan Note Instrument.

**"St Andrews Loan Notes"** means the £672,000 loan notes issued by M Squared Life in favour of St Andrews due 2023 and any other loan notes issued by M Squared Life to St Andrews from time to time which are capable of being or becoming repayable prior to the Senior Discharge Date.

**"St Andrews Loan Note Instrument"** means the loan note instruments dated on or around the date of this Agreement made by M Squared Life constituting the St Andrews Loan Notes and any other additional loan note instrument made by M Squared Life in favour of St Andrews from time to time constituting loan notes which are capable of being or becoming repayable prior to the Senior Discharge Date.

**"St Andrews Subordinated Liabilities"** means any Liabilities owed by a Group Company to St Andrews arising under the St Andrews Loan Notes, the St Andrews Guarantee and any other agreement or document which creates or purports to create any Liabilities of a type which as at the date of this Agreement arise under the St Andrews Loan Notes or the St Andrews Guarantee.

**"Subordinated Creditor"** means each of BGF and St Andrews.

**"Subordinated Liabilities"** means the BGF Subordinated Liabilities and/or the St Andrews Subordinated Liabilities.

**"Subsidiary"** means a subsidiary undertaking as defined in the Companies Act 2006.

**"Transaction Security"** means the Security created or evidenced or expressed to be created or evidenced under the Senior Finance Documents.

## 1.2 Construction

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

- (1) a **"Debtor"**, the **"Senior Creditor"** or the **"Subordinated Creditor"** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (2) **"assets"** includes present and future properties, revenues and rights of every description;
- (3) any agreement or instrument is a reference to that agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- (4) **"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;
- (5) a **"person"** includes any individual, 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);



(6) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and

(7) a provision of law is a reference to that provision as amended or re-enacted.

(B) Clause headings are for ease of reference only.

(C) Any obligations or liabilities of the Subordinated Creditors under or pursuant to this Agreement are given or entered into on a several basis.

### 1.3 Third Party Rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

## 2. Ranking and priority

2.1 The Subordinated Liabilities are subordinate in right of payment to the Senior Liabilities. Payment of any amount of the Subordinated Liabilities is conditional upon the Debtors having irrevocably and unconditionally paid in full all of the Senior Liabilities.

2.2 This Agreement does not purport to rank any of the Subordinated Liabilities as between themselves.

## 3. Subordinated Liabilities

### 3.1 Restriction on Payment

Prior to the Senior Discharge Date, no Debtor shall make any Payment of the Subordinated Liabilities and no Subordinated Creditor shall call for or receive any such Payment at any time, except for a Permitted Payment.

### 3.2 Payment obligations continue

The Debtor shall not be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted by the operation of clause 3.1 (*Restriction on Payment*) even if its obligation to make that Payment is restricted by the terms of that clause.

### 3.3 No acquisition of Subordinated Liabilities

Prior to the Senior Discharge Date, no Debtor shall:

(A) enter into any transaction to:

(1) purchase by way of assignment or transfer;

(2) enter into any sub-participation in respect of; or

(3) enter into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights and benefits in respect of any or all of the Subordinated Liabilities; or

- (B) beneficially own all or any part of the share capital of a company that is party to any transaction referred to in clause 3.3(A).

### **3.4 No disposal of Subordinated Liabilities**

Prior to the Senior Discharge Date, no Subordinated Creditor shall assign, mortgage or dispose of the Subordinated Liabilities except:

- (A) with the prior written consent of the Senior Creditor; or
- (B) in the case of St Andrews only, an assignment or transfer by St Andrews in accordance with the terms of the St Andrews Loan Note Instrument,

and in each case provided that the transferee or assignee agrees (in form and substance satisfactory to the Senior Creditor acting reasonably) to be bound by and assume the same obligations under this Agreement as the relevant Subordinated Creditor.

### **3.5 Amendments and waivers**

Prior to the Senior Discharge Date, no Subordinated Creditor may amend, waive or agree the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted other than an amendment or waiver or agreement which:

- (A) has the prior written consent of the Senior Creditor;
- (B) is to correct a manifest error; or
- (C) is minor and administrative in nature and does not prejudice the interests of the Senior Creditor.

### **3.6 Security**

No Subordinated Creditor may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from a Debtor or any other person in respect of any of the Subordinated Liabilities prior to the Senior Discharge Date, other than the St Andrews Guarantee.

### **3.7 Restriction on Enforcement**

No Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Senior Discharge Date unless the prior written consent of the Senior Creditor is obtained.

## **4. Effect of Insolvency Event**

### **4.1 Payment of distributions**

After the occurrence of an Insolvency Event in relation to a Debtor, each Subordinated Creditor shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of a Debtor to pay that distribution to the Senior Creditor until the Senior Liabilities have been irrevocably and unconditionally paid in full.

### **4.2 Set-Off**

To the extent that any Subordinated Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to a

Debtor, the relevant Subordinated Creditor shall pay an amount equal to the amount of the Subordinated Liabilities owed to it which are discharged by that set-off to the Senior Creditor for application against the Senior Liabilities.

#### **4.3 Non cash distributions**

If the Senior Creditor receives a distribution in a form other than in cash in respect of any of the Senior Liabilities, the Senior Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Senior Liabilities.

#### **4.4 Filing of claims**

After the occurrence of an Insolvency Event in relation to a Debtor, each Subordinated Creditor irrevocably authorises the Senior Creditor, on its behalf, to:

- (A) take any Enforcement Action against any Debtor;
- (B) demand, sue, prove and give receipt for any or all of the Subordinated Liabilities relating to that Subordinated Creditor;
- (C) collect and receive all distributions on, or on account of, any or all of the Subordinated Liabilities relating to that Subordinated Creditor; and
- (D) file claims, take proceedings and do all other things the Senior Creditor considers reasonably necessary to recover the Subordinated Liabilities relating to that Subordinated Creditor.

#### **4.5 Subordinated Creditors' actions**

Each Subordinated Creditor shall:

- (A) do all things that the Senior Creditor reasonably requests in order to give effect to this clause 4; and
- (B) if the Senior Creditor is not entitled to take any of the actions contemplated by this clause 4 or if the Senior Creditor reasonably requests that the relevant Subordinated Creditor take that action, undertake that action itself in accordance with the instructions of the Senior Creditor (on such terms as the Senior Creditor may reasonably require) to enable the Senior Creditor to take such action.

### **5. Turnover of Receipts**

#### **5.1 Turnover by a Subordinated Creditor**

If at any time prior to the Senior Discharge Date, a Subordinated Creditor receives or recovers:

- (A) any Payment or distribution of, or on account of or in relation to, any of the Subordinated Liabilities relating to that Subordinated Creditor; or
- (B) any amount by way of set-off in respect of any of the Subordinated Liabilities owed to it; or
- (C) any other amount on account of, or in relation to, any of the Subordinated Liabilities relating to that Subordinated Creditor,

which, in each case, is not a Permitted Payment or a payment for which the prior written consent of the Senior Creditor has been obtained, that Subordinated Creditor will:

- (1) In relation to receipts and recoveries not received or recovered by way of set-off hold the amount of that receipt or recovery on trust for the Senior Creditor and as soon as reasonably practicable (and in any event within 2 Business Days of receipt or recovery) pay that amount to the Senior Creditor for application against the Senior Liabilities; and
- (2) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Senior Creditor for application against the Senior Liabilities.

## **5.2 Saving provision**

If, for any reason, any of the trusts expressed to be created in this clause 5 should fail or be unenforceable, the relevant Subordinated Creditor will as soon as reasonably practicable (and in any event within 2 Business Days of receipt or recovery) pay an amount equal to that receipt or recovery to the Senior Creditor for application against the Senior Liabilities.

## **6. Distressed Disposals**

If a Distressed Disposal is being effected, the Senior Creditor is irrevocably authorised (at the cost of a Debtor and without any consent, sanction, authority or further confirmation from any Subordinated Creditor or any Debtor), to release any Group Company from all or any part of the Subordinated Liabilities and any other claim of a Subordinated Creditor over that Group Company's assets, on behalf of the relevant Subordinated Creditor.

## **7. Consents and override**

### **7.1 Consents**

Any waiver or consent granted by or on behalf of the Senior Creditor in respect of any Senior Finance Document (other than this Agreement) will also be deemed to have been given by each Subordinated Creditor if any transaction or circumstances would, in the absence of that waiver or consent by that Subordinated Creditor conflict with the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities relating to that Subordinated Creditor are constituted or result in a potential event of default or an event of default (however described) under the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities relating to that Subordinated Creditor are constituted.

### **7.2 Agreement to override**

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted to the contrary.

## **8. Information**

### **8.1 Defaults**

Each Subordinated Creditor must notify the Senior Creditor of any event of default or potential default (howsoever described) under terms of any of the documents or instruments pursuant to which the Subordinated Liabilities relating to that Subordinated Creditor are constituted promptly upon becoming aware of it.

## **8.2 Amount of Subordinated Liabilities**

Each Subordinated Creditor must on request by the Senior Creditor notify it of details of the amount of the Subordinated Liabilities relating to that Subordinated Creditor.

## **9. Proceeds**

### **9.1 Order of application**

Subject to clause 9.2 (*Prospective liabilities*), all amounts from time to time received or recovered under this Agreement shall be applied:

- (A) **first**, by the Senior Creditor for application towards the discharge of the Senior Liabilities in the order selected by the Senior Creditor;
- (B) **secondly**, after the Senior Discharge Date, in payment to the Subordinated Creditors for application towards the discharge of the Subordinated Liabilities which shall be applied in proportion to the debts due to each creditor by reference to the total amount of the Subordinated Liabilities (as if any release pursuant to Clause 6 (*Distressed Disposals*) has not taken place); and
- (C) **thirdly**, and only once the Subordinated Liabilities have been discharged in full, in payment of the surplus (if any) to a Debtor or other person entitled to it.

### **9.2 Prospective liabilities**

Until the Senior Discharge Date, the Senior Creditor (or any trustee or agent on its behalf) may:

- (A) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and neither the Debtors nor a Subordinated Creditor shall be entitled to the benefit of the same; and
- (B) hold in a suspense account any moneys received or recovered by it under this Agreement.

## **10. Changes to the Parties**

### **10.1 Assignments and transfer by a Debtor or a Subordinated Creditor**

Other than where a Subordinated Creditor has assigned or otherwise disposed of all of its Subordinated Liabilities under clause 3.4 (*No disposal of Subordinated Liabilities*) to an assignee or transferee who has agreed to be bound by and assume the same obligations under the terms of that clause in form and substance satisfactory to the Senior Creditor, neither a Debtor nor a Subordinated Creditor may assign any of its rights or transfer any of its rights or obligations under this Agreement.

### **10.2 Assignments and transfer by the Senior Creditor**

The Senior Creditor may assign any of its rights or transfer any of its rights or obligations under this Agreement to any person to whom it is permitted to assign its rights or transfer any of its rights or obligations under the terms of the Loan Facility, any EFG Loan or the Overdraft Facility.

## **11. Set-off**

The Senior Creditor may set off any matured obligation due from a Subordinated Creditor under this Agreement) against any matured obligation owed by the Senior Creditor to that Subordinated Creditor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Senior Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **12. Notices**

### **12.1 Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by email or letter to the email address or address (as applicable) identified with its name below.

## **13. Preservation**

### **13.1 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 that provision under the law of any other jurisdiction will in any way be affected or impaired.

### **13.2 No Impairment**

If, at any time after its date, any provision of a Senior Finance Document (including this Agreement) or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted, neither the binding nature nor the enforceability of that provision or any other provision of that Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted will be impaired as against the other party(ies) to that Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted.

### **13.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### **13.4 Waiver of defences**

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this clause 13.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (A) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (B) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of a Debtor;
- (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 Debtor or other 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 Debtor or other person;
- (E) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted or any other document or security;
- (F) any unenforceability, illegality or invalidity of any obligation of any person under any Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted or any other document or security;
- (G) any intermediate Payment of any of the Senior Liabilities in whole or in part; or
- (H) any insolvency or similar proceedings.

### **13.5 Priorities not affected**

Except as otherwise provided in this Agreement the priorities referred to in clause 2 (*Ranking and Priority*) will:

- (A) not be affected by any intermediate reduction or increase in, amendment or variation to any of the Senior Finance Documents or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted, or by any variation or satisfaction of, any of the Senior Liabilities or the Subordinated Liabilities or any other circumstances;
- (B) apply regardless of the order in which or dates upon which this Agreement and the other Senior Finance Documents or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted are executed or registered or notice of them is given to any person.

### **14. Duration**

This Agreement shall cease to have effect on and from the Senior Discharge Date.

### **15. Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**16. Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

**17. Enforcement**

**17.1 Jurisdiction**

- (A) The courts of England 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) (a "Dispute").
- (B) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (C) This clause 17.1 is for the benefit of the Senior Creditor only. As a result, the Senior Creditor shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Creditor may take concurrent proceedings in any number of jurisdictions.

**This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by a Debtor and the Subordinated Creditors and is intended to be and is delivered by them as a deed on the date specified above.**



## SIGNATURES

### The Debtors

Signed as a deed on behalf of M-SQUARED  
LASERS LIMITED, by

.....

Name .....  
Director

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of M SQUARED  
OIL AND GAS LIMITED, by

.....

Name .....  
Director

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of M SQUARED  
LIFE LIMITED, by

.....

Name .....  
Director

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of SOLUS  
TECHNOLOGIES LIMITED, by

.....

Name .....  
Director

*In the presence of:*

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of  
M-SQUARED LASERS INC, by

.....

Name .....  
Director

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

**The Subordinated Creditors**

Signed as a deed on behalf of BGF  
NOMINEES LIMITED acting by its

attorney

.....  
**Attorney**

in the presence of

**Signature of witness:**

.....

**Name of witness:**

.....

**Address of witness:**

.....

.....

.....

**Occupation of witness:**

.....

**Address:** 13-15 York Buildings, London, WC2N 6JU

**Email:** Matthew.Reed@bgf.co.uk

**Attention:** Matthew Reed, Chief Operating Officer

Signed as a deed on behalf of THE  
UNIVERSITY COURT OF THE UNIVERSITY  
OF ST ANDREWS, by  
acting with the authority of the Court

[Redacted Signature]

Name ANDREW GOOR  
Authorised Signatory

In the presence of:

[Redacted Witness Signature]

Name of witness:

JULIA SHARON GRIFFITHS

Address of Witness:

[Redacted Witness Address]

Address: College Gate, North Street, St Andrews, Fife, KY16 9AJ

Email: [findir@st-andrews.ac.uk](mailto:findir@st-andrews.ac.uk)

Attention: Andy Goor, Finance Director

**The Senior Creditor**

**BARCLAYS BANK PLC**

**By: .....**

**Address: 1 Churchill Place, Canary Wharf, London, E14 5HP**

**Email: joseph.coles@barclays.com**

**Attention: Joseph Coles**



Dated: 6 FEBRUARY 2019

**EXECUTION VERSION**

# Deed of Postponement

between

**M-Squared Lasers Limited**  
as Borrower

**M Squared Oil and Gas Limited**  
**Solus Technologies Limited**  
**M-Squared Lasers Inc**  
**M Squared Life Limited**  
as Guarantors

**BGF Nominees Limited (a/c BGF Investments LP)**  
**The University Court of the University of St Andrews**  
as Subordinated Creditors

and

**Barclays Bank PLC**  
as Senior Creditor

WE CERTIFY THAT, SAVE FOR MATERIAL  
REDACTED PURSUANT TO SECTION 859G  
OF THE COMPANIES ACT 2006, THIS COPY  
INSTRUMENT IS A CORRECT COPY OF  
THE ORIGINAL INSTRUMENT

Dickson Minto  
DICKSON MINTO W.S.  
DATE: 7/2/19.

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**THIS AGREEMENT** is dated 6 FEBRUARY

2019 and made

**BETWEEN:**

- (1) **M-SQUARED LASERS LIMITED**, registered in Scotland as company number SC243330 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP (the "**Borrower**");
- (2) **M SQUARED OIL AND GAS LIMITED**, registered in Scotland as company number SC396380 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP ("**M Squared Oil**");
- (3) **M SQUARED LIFE LIMITED**, registered in Scotland as company number SC522938 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP (the "**M Squared Life**");
- (4) **SOLUS TECHNOLOGIES LIMITED**, registered in Scotland as company number SC303447 and having its registered office at Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road, Glasgow, Scotland G20 0SP ("**Solus**");
- (5) **M-SQUARED LASERS INC.**, registered in Delaware as company number 4930155 and having its registered office at 160 Greentree Drive, Suite 101, Dover, Delaware, DE19904 ("**M-Squared US**" and, together with M Squared Oil, M Squared Life and Solus, the "**Guarantors**");
- (6) **BGF NOMINEES LIMITED**, a company registered in England as company number 10007355 and having its registered office at 21 Palmer Street, London, SW1H 0AD ("**BGF**");
- (7) **THE UNIVERSITY COURT OF THE UNIVERSITY OF ST ANDREWS**, incorporated under the Universities (Scotland) Acts 1858 to 1966 and having its principal office at College Gate, North Street, St Andrews, Fife, KY16 9AJ ("**St Andrews**"); and
- (8) **BARCLAYS BANK PLC**, as senior creditor (the "**Senior Creditor**", which expression includes its successors and assigns).

**BACKGROUND:**

- (A) The Debtors and each Subordinated Creditor enter into this Agreement in connection with the Loan Facility.
- (B) It is intended that this Agreement takes effect as a deed notwithstanding the fact that a Party may only execute this Agreement under hand.
- (C) This Agreement replaces and supersedes in full the deed of postponement dated 26 November 2018 made between, amongst others, the Borrower, BGF Investments LP acting by its General Partner Business Growth Fund PLC and the Senior Creditor (the "**Existing Postponement Agreement**") and the Existing Postponement Agreement shall cease to have any effect upon the date of this Agreement.

**IT IS AGREED** as follows:

## **1. Definitions and Interpretation**

### **1.1 Definitions**

**"BGF Loan Notes"** means (i) the £3,750,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note Instrument of the Borrower dated 27 April 2012 as subsequently amended and restated on 15 July 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018; (ii) the £750,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 6 November 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018; and (iii) the £900,000 loan notes issued by the Borrower in favour of BGF pursuant to a loan note instrument of the Borrower dated 24 March 2014 and as amended by letters of variation dated 01 June 2017 and 05 September 2018.

**"BGF Subordinated Liabilities"** means any Liabilities owed by a Group Company to BGF including, but not limited to, the Liabilities arising under the BGF Loan Notes.

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

**"Debtor"** means the Borrower or a Guarantor.

**"Distress Event"** means any of:

- (A) the Senior Creditor terminating the facility made available under the Loan Facility or any EFG Loan (as defined in the Loan Facility), declaring that any amount payable under the Senior Finance Documents is payable on demand or demanding payment of any amount due and payable under the Senior Finance Documents; or
- (B) the enforcement of any Transaction Security.

**"Distressed Disposal"** means a disposal of an asset of, or the shares in, the capital of a Debtor which is:

- (A) being effected by enforcement of the Transaction Security; or
- (B) being effected after the occurrence of a Distress Event by the Senior Creditor.

**"Enforcement Action"** means:

- (A) the acceleration of any Subordinated Liabilities or the making of any declaration that any Subordinated Liabilities are prematurely due and payable;
- (B) the making of any declaration that any Subordinated Liabilities are payable on demand;
- (C) the making of a demand in relation to a Subordinated Liability that is payable on demand;
- (D) the exercise of any right to require a Debtor to acquire any Subordinated Liability (including exercising any put or call option against a Debtor for the redemption or purchase of any Subordinated Liability);
- (E) the exercise of any right of set-off, account combination or payment netting against a Debtor in respect of any Subordinated Liabilities;

- (F) the suing for, commencing or joining of any legal or arbitration proceedings against a Debtor to recover any Subordinated Liabilities;
- (G) the entering into of any composition, compromise, assignment or arrangement with a Debtor, or any person who has given any Security, guarantee or indemnity or other assurance against loss in respect of the Subordinated Liabilities; or
- (H) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of a Debtor, or any person who has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Subordinated Liabilities, or any of a Debtor's assets or any suspension of payments or moratorium of any indebtedness of a Debtor, or any analogous procedure or step in any jurisdiction.

**"Group Company"** means in relation to a Debtor, that Debtor, any Subsidiary or holding company from time to time of a Debtor and any Subsidiary from time to time of a holding company of that Debtor.

**"Guarantee"** means:

- (A) the unlimited corporate guarantee given on 09 January 2015 by the Guarantors (other than M Squared Life); and
- (B) the unlimited guarantee given on or about the date of this Agreement by M Squared Life,

each in favour of the Senior Creditor in respect of the Loan Facility.

**"Insolvency Event"** means, in relation to a Debtor:

- (A) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of a Debtor, a moratorium is declared in relation to any indebtedness of a Debtor or an administrator is appointed to a Debtor;
- (B) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (C) the appointment of any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of a Debtor or any of its assets; or
- (D) any analogous procedure or step is taken in any jurisdiction.

**"Liabilities"** means all present and future liabilities and obligations at any time, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (A) any investment, refinancing, novation, deferral or extension;
- (B) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (C) any claim for damages or restitution; and

- (D) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any Insolvency or other proceedings.

**"Loan Facility"** means the Sterling Single Currency Revolving Loan Key Terms (Floating Rate (Screen Rate)) and the Sterling or Single Currency Revolving Loan (Floating Rate (Screen Rate)) Terms and Conditions incorporated therein entered into or to be entered into on or about the date of this Agreement between, amongst others, the Borrower (as borrower) and the Senior Creditor (as lender).

**"Party"** means a party to this Agreement.

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations), including (without limitation) any exercise of any right of set-off.

**"Permitted Payment"** means:

- (A) any scheduled payment of interest pursuant to and in accordance with the terms of the BGF Loan Notes and/or the St Andrews Loan Note Instrument (as such terms are set out in the form of such documents as at the date of this Agreement);
- (B) any scheduled repayment of principal pursuant to and in accordance with the terms of the BGF Loan Notes and/or the St Andrews Loan Note Instrument provided the Senior Creditor has provided its prior written consent (such consent not to be unreasonably withheld);
- (C) an amount not exceeding £35,000 (plus VAT) per annum (and increasing by no more than 3.00 per cent. of that amount per annum) as payment of an annual fee in respect of the BGF Subordinated Liabilities; or
- (D) reimbursement by the Borrower of any expenses (plus any additional value added tax) reasonably and properly incurred by any BGF Director, Independent Director and/or Observer in carrying out his duties and in monitoring BGF's investment in the Borrower.

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Senior Discharge Date"** means the date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Senior Creditor, whether or not as the result of any enforcement, and the Senior Creditor is not under any further obligation to provide financial accommodation to any Debtor under any of the Senior Finance Documents.

**"Senior Finance Documents"** means the Loan Facility, each Guarantee, the Existing Security (as defined in the Loan Facility), the New Security (as defined in the Loan Facility), the EFG Loans (as defined in the Loan Facility), the Overdraft Facility (as defined in the Loan Facility) this Agreement and any other agreement, deed, document or instrument evidencing or constituting any Liabilities of the Debtors (or any of them) owed to the Senior Creditor from time to time howsoever arising.

**"Senior Liabilities"** means the Liabilities owed by a Debtor to the Senior Creditor under or in connection with the Senior Finance Documents or any other Liabilities of the Debtors (or any of them) owed to the Senior Creditor from time to time howsoever arising.

**"St Andrews Guarantee"** means the guarantee granted by the Borrower in favour of St Andrews in relation to M Squared Life's obligations under the St Andrews Loan Note Instrument.

**"St Andrews Loan Notes"** means the £672,000 loan notes issued by M Squared Life in favour of St Andrews due 2023 and any other loan notes issued by M Squared Life to St Andrews from time to time which are capable of being or becoming repayable prior to the Senior Discharge Date.

**"St Andrews Loan Note Instrument"** means the loan note instruments dated on or around the date of this Agreement made by M Squared Life constituting the St Andrews Loan Notes and any other additional loan note instrument made by M Squared Life in favour of St Andrews from time to time constituting loan notes which are capable of being or becoming repayable prior to the Senior Discharge Date.

**"St Andrews Subordinated Liabilities"** means any Liabilities owed by a Group Company to St Andrews arising under the St Andrews Loan Notes, the St Andrews Guarantee and any other agreement or document which creates or purports to create any Liabilities of a type which as at the date of this Agreement arise under the St Andrews Loan Notes or the St Andrews Guarantee.

**"Subordinated Creditor"** means each of BGF and St Andrews.

**"Subordinated Liabilities"** means the BGF Subordinated Liabilities and/or the St Andrews Subordinated Liabilities.

**"Subsidiary"** means a subsidiary undertaking as defined in the Companies Act 2006.

**"Transaction Security"** means the Security created or evidenced or expressed to be created or evidenced under the Senior Finance Documents.

## 1.2 Construction

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

- (1) a **"Debtor"**, the **"Senior Creditor"** or the **"Subordinated Creditor"** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (2) **"assets"** includes present and future properties, revenues and rights of every description;
- (3) any agreement or instrument is a reference to that agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- (4) **"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;
- (5) a **"person"** includes any individual, 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);

(6) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and

(7) a provision of law is a reference to that provision as amended or re-enacted.

(B) Clause headings are for ease of reference only.

(C) Any obligations or liabilities of the Subordinated Creditors under or pursuant to this Agreement are given or entered into on a several basis.

### 1.3 Third Party Rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

## 2. Ranking and priority

2.1 The Subordinated Liabilities are subordinate in right of payment to the Senior Liabilities. Payment of any amount of the Subordinated Liabilities is conditional upon the Debtors having irrevocably and unconditionally paid in full all of the Senior Liabilities.

2.2 This Agreement does not purport to rank any of the Subordinated Liabilities as between themselves.

## 3. Subordinated Liabilities

### 3.1 Restriction on Payment

Prior to the Senior Discharge Date, no Debtor shall make any Payment of the Subordinated Liabilities and no Subordinated Creditor shall call for or receive any such Payment at any time, except for a Permitted Payment.

### 3.2 Payment obligations continue

The Debtor shall not be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted by the operation of clause 3.1 (*Restriction on Payment*) even if its obligation to make that Payment is restricted by the terms of that clause.

### 3.3 No acquisition of Subordinated Liabilities

Prior to the Senior Discharge Date, no Debtor shall:

(A) enter into any transaction to:

- (1) purchase by way of assignment or transfer;
- (2) enter into any sub-participation in respect of; or
- (3) enter into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights and benefits in respect of any or all of the Subordinated Liabilities; or



- (B) beneficially own all or any part of the share capital of a company that is party to any transaction referred to in clause 3.3(A).

### **3.4 No disposal of Subordinated Liabilities**

Prior to the Senior Discharge Date, no Subordinated Creditor shall assign, mortgage or dispose of the Subordinated Liabilities except:

- (A) with the prior written consent of the Senior Creditor; or
- (B) in the case of St Andrews only, an assignment or transfer by St Andrews in accordance with the terms of the St Andrews Loan Note Instrument,

and in each case provided that the transferee or assignee agrees (in form and substance satisfactory to the Senior Creditor acting reasonably) to be bound by and assume the same obligations under this Agreement as the relevant Subordinated Creditor.

### **3.5 Amendments and waivers**

Prior to the Senior Discharge Date, no Subordinated Creditor may amend, waive or agree the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted other than an amendment or waiver or agreement which:

- (A) has the prior written consent of the Senior Creditor;
- (B) is to correct a manifest error; or
- (C) is minor and administrative in nature and does not prejudice the interests of the Senior Creditor.

### **3.6 Security**

No Subordinated Creditor may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from a Debtor or any other person in respect of any of the Subordinated Liabilities prior to the Senior Discharge Date, other than the St Andrews Guarantee.

### **3.7 Restriction on Enforcement**

No Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Senior Discharge Date unless the prior written consent of the Senior Creditor is obtained.

## **4. Effect of Insolvency Event**

### **4.1 Payment of distributions**

After the occurrence of an Insolvency Event in relation to a Debtor, each Subordinated Creditor shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of a Debtor to pay that distribution to the Senior Creditor until the Senior Liabilities have been irrevocably and unconditionally paid in full.

### **4.2 Set-Off**

To the extent that any Subordinated Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to a

Debtor, the relevant Subordinated Creditor shall pay an amount equal to the amount of the Subordinated Liabilities owed to it which are discharged by that set-off to the Senior Creditor for application against the Senior Liabilities.

#### **4.3 Non cash distributions**

If the Senior Creditor receives a distribution in a form other than in cash in respect of any of the Senior Liabilities, the Senior Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Senior Liabilities.

#### **4.4 Filing of claims**

After the occurrence of an Insolvency Event in relation to a Debtor, each Subordinated Creditor irrevocably authorises the Senior Creditor, on its behalf, to:

- (A) take any Enforcement Action against any Debtor;
- (B) demand, sue, prove and give receipt for any or all of the Subordinated Liabilities relating to that Subordinated Creditor;
- (C) collect and receive all distributions on, or on account of, any or all of the Subordinated Liabilities relating to that Subordinated Creditor; and
- (D) file claims, take proceedings and do all other things the Senior Creditor considers reasonably necessary to recover the Subordinated Liabilities relating to that Subordinated Creditor.

#### **4.5 Subordinated Creditors' actions**

Each Subordinated Creditor shall:

- (A) do all things that the Senior Creditor reasonably requests in order to give effect to this clause 4; and
- (B) If the Senior Creditor is not entitled to take any of the actions contemplated by this clause 4 or if the Senior Creditor reasonably requests that the relevant Subordinated Creditor take that action, undertake that action itself in accordance with the instructions of the Senior Creditor (on such terms as the Senior Creditor may reasonably require) to enable the Senior Creditor to take such action.

### **5. Turnover of Receipts**

#### **5.1 Turnover by a Subordinated Creditor**

If at any time prior to the Senior Discharge Date, a Subordinated Creditor receives or recovers:

- (A) any Payment or distribution of, or on account of or in relation to, any of the Subordinated Liabilities relating to that Subordinated Creditor; or
- (B) any amount by way of set-off in respect of any of the Subordinated Liabilities owed to it; or
- (C) any other amount on account of, or in relation to, any of the Subordinated Liabilities relating to that Subordinated Creditor,

which, in each case, is not a Permitted Payment or a payment for which the prior written consent of the Senior Creditor has been obtained, that Subordinated Creditor will:

- (1) In relation to receipts and recoveries not received or recovered by way of set-off hold the amount of that receipt or recovery on trust for the Senior Creditor and as soon as reasonably practicable (and in any event within 2 Business Days of receipt or recovery) pay that amount to the Senior Creditor for application against the Senior Liabilities; and
- (2) In relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Senior Creditor for application against the Senior Liabilities.

## **5.2 Saving provision**

If, for any reason, any of the trusts expressed to be created in this clause 5 should fail or be unenforceable, the relevant Subordinated Creditor will as soon as reasonably practicable (and in any event within 2 Business Days of receipt or recovery) pay an amount equal to that receipt or recovery to the Senior Creditor for application against the Senior Liabilities.

## **6. Distressed Disposals**

If a Distressed Disposal is being effected, the Senior Creditor is irrevocably authorised (at the cost of a Debtor and without any consent, sanction, authority or further confirmation from any Subordinated Creditor or any Debtor), to release any Group Company from all or any part of the Subordinated Liabilities and any other claim of a Subordinated Creditor over that Group Company's assets, on behalf of the relevant Subordinated Creditor.

## **7. Consents and override**

### **7.1 Consents**

Any waiver or consent granted by or on behalf of the Senior Creditor in respect of any Senior Finance Document (other than this Agreement) will also be deemed to have been given by each Subordinated Creditor if any transaction or circumstances would, in the absence of that waiver or consent by that Subordinated Creditor conflict with the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities relating to that Subordinated Creditor are constituted or result in a potential event of default or an event of default (however described) under the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities relating to that Subordinated Creditor are constituted.

### **7.2 Agreement to override**

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted to the contrary.

## **8. Information**

### **8.1 Defaults**

Each Subordinated Creditor must notify the Senior Creditor of any event of default or potential default (howsoever described) under terms of any of the documents or instruments pursuant to which the Subordinated Liabilities relating to that Subordinated Creditor are constituted promptly upon becoming aware of it.

## **8.2 Amount of Subordinated Liabilities**

Each Subordinated Creditor must on request by the Senior Creditor notify it of details of the amount of the Subordinated Liabilities relating to that Subordinated Creditor.

## **9. Proceeds**

### **9.1 Order of application**

Subject to clause 9.2 (*Prospective liabilities*), all amounts from time to time received or recovered under this Agreement shall be applied:

- (A) **first**, by the Senior Creditor for application towards the discharge of the Senior Liabilities in the order selected by the Senior Creditor;
- (B) **secondly**, after the Senior Discharge Date, in payment to the Subordinated Creditors for application towards the discharge of the Subordinated Liabilities which shall be applied in proportion to the debts due to each creditor by reference to the total amount of the Subordinated Liabilities (as if any release pursuant to Clause 6 (*Distressed Disposals*) has not taken place); and
- (C) **thirdly**, and only once the Subordinated Liabilities have been discharged in full, in payment of the surplus (if any) to a Debtor or other person entitled to it.

### **9.2 Prospective liabilities**

Until the Senior Discharge Date, the Senior Creditor (or any trustee or agent on its behalf) may:

- (A) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and neither the Debtors nor a Subordinated Creditor shall be entitled to the benefit of the same; and
- (B) hold in a suspense account any moneys received or recovered by it under this Agreement.

## **10. Changes to the Parties**

### **10.1 Assignments and transfer by a Debtor or a Subordinated Creditor**

Other than where a Subordinated Creditor has assigned or otherwise disposed of all of its Subordinated Liabilities under clause 3.4 (*No disposal of Subordinated Liabilities*) to an assignee or transferee who has agreed to be bound by and assume the same obligations under the terms of that clause in form and substance satisfactory to the Senior Creditor, neither a Debtor nor a Subordinated Creditor may assign any of its rights or transfer any of its rights or obligations under this Agreement.

### **10.2 Assignments and transfer by the Senior Creditor**

The Senior Creditor may assign any of its rights or transfer any of its rights or obligations under this Agreement to any person to whom it is permitted to assign its rights or transfer any of its rights or obligations under the terms of the Loan Facility, any EFG Loan or the Overdraft Facility.

**11. Set-off**

The Senior Creditor may set off any matured obligation due from a Subordinated Creditor under this Agreement) against any matured obligation owed by the Senior Creditor to that Subordinated Creditor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Senior Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**12. Notices**

**12.1 Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by email or letter to the email address or address (as applicable) identified with its name below.

**13. Preservation**

**13.1 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 that provision under the law of any other jurisdiction will in any way be affected or impaired.

**13.2 No Impairment**

If, at any time after its date, any provision of a Senior Finance Document (including this Agreement) or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted, neither the binding nature nor the enforceability of that provision or any other provision of that Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted will be impaired as against the other party(ies) to that Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted.

**13.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**13.4 Waiver of defences**

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this clause 13.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (A) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (B) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of a Debtor;
- (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 Debtor or other 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 Debtor or other person;
- (E) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted or any other document or security;
- (F) any unenforceability, illegality or invalidity of any obligation of any person under any Senior Finance Document or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted or any other document or security;
- (G) any intermediate Payment of any of the Senior Liabilities in whole or in part; or
- (H) any insolvency or similar proceedings.

#### **13.5 Priorities not affected**

Except as otherwise provided in this Agreement the priorities referred to in clause 2 (*Ranking and Priority*) will:

- (A) not be affected by any intermediate reduction or increase in, amendment or variation to any of the Senior Finance Documents or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted, or by any variation or satisfaction of, any of the Senior Liabilities or the Subordinated Liabilities or any other circumstances;
- (B) apply regardless of the order in which or dates upon which this Agreement and the other Senior Finance Documents or the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted are executed or registered or notice of them is given to any person.

#### **14. Duration**

This Agreement shall cease to have effect on and from the Senior Discharge Date.

#### **15. Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**16. Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

**17. Enforcement**

**17.1 Jurisdiction**

- (A) The courts of England 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) (a "Dispute").
- (B) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (C) This clause 17.1 is for the benefit of the Senior Creditor only. As a result, the Senior Creditor shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Creditor may take concurrent proceedings in any number of jurisdictions.

This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by a Debtor and the Subordinated Creditors and is intended to be and is delivered by them as a deed on the date specified above.

## SIGNATURES

### The Debtors

Signed as a deed on behalf of M-SQUARED  
LASERS LIMITED, by

.....

Name .....  
Director

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm



Signed as a deed on behalf of M SQUARED  
OIL AND GAS LIMITED, by

.....

Name .....  
Director

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of M SQUARED  
LIFE LIMITED, by

.....

Name .....  
Director

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of SOLUS  
TECHNOLOGIES LIMITED, by

.....

Name .....  
Director

In the presence of:

.....

Name of witness:  
.....

Address of Witness:  
.....  
.....  
.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

Signed as a deed on behalf of  
M-SQUARED LASERS INC, by

.....

Name .....  
Director

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: Venture Building, 1 Kelvin Campus, West of Scotland Science Park, Maryhill Road,  
Glasgow, Scotland G20 0SP

Email: Graeme.Malcolm@m2lasers.com

Attention: Graeme Malcolm

**The Subordinated Creditors**

Signed as a deed on behalf of BGF  
NOMINEES LIMITED acting by its

attorney

In the presence of

.....  
**Attorney**

**Signature of witness:**

.....  
**Name of witness:**

.....  
**Address of witness:**

.....  
**Occupation of witness:**

**Address:** 13-15 York Buildings, London, WC2N 6JU

**Email:** Matthew.Reed@bgf.co.uk

**Attention:** Matthew Reed, Chief Operating Officer

Signed as a deed on behalf of THE  
UNIVERSITY COURT OF THE UNIVERSITY  
OF ST ANDREWS, by  
acting with the authority of the Court

.....

Name .....  
Authorised Signatory

In the presence of:

.....

Name of witness:

.....

Address of Witness:

.....

.....

.....

Address: College Gate, North Street, St Andrews, Fife, KY16 9AJ

Email: [findir@st-andrews.ac.uk](mailto:findir@st-andrews.ac.uk)

Attention: Andy Goor, Finance Director

The Senior Creditor

BARCLAYS BANK PLC

By: 

LORRAINE ROCKSTUHL  
INDUSTRY DIRECTOR

Address: 1 Churchill Place, Canary Wharf, London, E14 5HP

Email: joseph.coles@barclays.com

Attention: Joseph Coles