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CHWP000

COMPANIES FORM No. 466(Scot)

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

466

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

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

* insert full name
of company

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

For official use

Company number

1112

SC014456

Name of company

* Whyte and Mackay Limited

Date of creation of the charge (note 1)

7 December 2018

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

Floating Charge

Names of the persons entitled to the charge

Bank of Scotland plc

Short particulars of all the property charged

the whole of the property (including uncalled capital) which is or may be from time to time comprised in the property and undertaking of the Company

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

Dentons UK and Middle East LLP
1 George Square
Glasgow G2 1AL
Ref: 104563.05318

For official use (02/06)

Charges Section

Post room

FRIDAY



S7KSK6RL

SCT

14/12/2018

#273

COMPANIES HOUSE

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

1. Bank of Scotland plc, The Mound, Edinburgh, EH1 1YZ ("BoS")
2. Whyte and Mackay Group Limited, 4th Floor, St. Vincent Plaza, 319 St. Vincent Street, Glasgow, Scotland, G2 5RG (the "Subordinated Creditor")
3. Whyte and Mackay Limited, 4th Floor, St. Vincent Plaza, 319 St. Vincent Street, Glasgow, Scotland, G2 5RG (the "Company")

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write in
this margin*

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

Date(s) of execution of the instrument of alteration

7 December 2018

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

4. During the Security Period, the Company will not (and the Subordinated Creditor will not require the Company to):-
 - 4.1 create or permit to subsist any Security over any of its assets for all or part of the Subordinated Debt or any guarantee (or other assurance against financial loss) for or in respect of all or any part of the Subordinated Debt, in either case other than by the security conferred by the Subordinated Floating Charge entered into or before the date of the instrument of alteration

Short particulars of any property released from the floating charge

N/A

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

N/A

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

*Please do not
write in
this margin*

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

2.1 BoS and the Subordinated Creditor hereby agree, and the Company acknowledges, that the BoS Debt shall rank for all purposes and at all times ahead of the Subordinated Debt.

3.1 BoS and the Subordinated Creditor agree and the Company acknowledges that the BoS Floating Charge and the Subordinated Floating Charge shall rank as follows:-

3.1.1 FIRST: the BoS Floating Charge shall rank first (to the extent of the BoS Debt in full);

3.1.2 SECOND: thereafter, upon the satisfaction in full of the BoS Floating Charge, the Subordinated Floating Charge.

3.4 Subject to the provisions of the instrument of alteration, the BoS Floating Charge and the Subordinated Floating Charge shall rank as continuing security for the payment and discharge of all the liabilities and obligations the payment and/or discharge of which are thereby secured and shall not be affected by any fluctuation in the moneys, obligations and liabilities from time to time due, owing or incurred by BoS or by the existence at any time of a credit balance on any current or other account of the Company with BoS.

8.1 If an Insolvency Event occurs in respect of the Company during the Security Period then:-

(a) the Subordinated Debt will be postponed and subordinated to the BoS Debt and (if required by BoS but not otherwise) the Subordinated Creditor will file any proof or other claim necessary for the recovery of the Subordinated Debt.

Definitions

"BoS Debt" means all or any monies and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to BoS by the Company, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not BoS shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which BoS may in the course of its business charge or incur in respect of any of those matters or for keeping the Company's accounts, and so that interest shall be computed and compounded according to the usual BoS rates and practice as well after as before any demand made or decree obtained.

"BoS Floating Charge" means the floating charge granted by the Company in favour of BoS dated on or around the date of the instrument of alteration.

"Insolvency Event" means:

(a) any application, notice, resolution or order is made, passed or given for or in connection with the winding up, liquidation, dissolution, administration or reorganisation of the Company;

(b) the Company becomes subject to any insolvency, reorganisation, receivership (whether relating to all or some only of its assets), liquidation, dissolution or other similar proceedings, whether voluntary or involuntary and whether or not involving insolvency;

(c) the Company assigns all or any of its assets for the benefit of its creditors generally (or any class thereof) or enters into any composition or arrangement with its creditors generally or any arrangement is ordered or declared by a court of competent jurisdiction whereby all or any of its affairs and/or assets are submitted to the control of, or are protected from, its creditors;

(d) the Company becomes subject to any distribution of its assets in consequence of insolvency, reorganisation, liquidation, dissolution or administration; or

(e) any event analogous to any of the foregoing shall occur in relation to the Company or any of its assets in any jurisdiction.

"Security Period" means the period from the date of the instrument of alteration to the date on which the BoS Debt is repaid in full and no commitment by BoS to provide facilities to the Company remains in effect.

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

"Subordinated Debt" means all present and future sums, liabilities and obligations (whether actual and contingent, present or future) payable or owing by the company to the Subordinated Creditor under the Subordinated Documents.

"Subordinated Loan Agreement" means any loan agreement between the Company and the Subordinated Creditor entered into from time to time in accordance with Clause 5.3 of the instrument of alteration.

"Subordinated Documents" means the Subordinated Loan Agreement and the Subordinated Floating Charge.

"Subordinated Floating Charge" means the floating charge granted by the Company in favour of the Subordinated Creditor dated 6 July 2016.

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

Signed  Date 13-12-18

On behalf of ~~company~~ (chargee) ☐

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act. ☐ delete as appropriate
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 Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF
DX 235 Edinburgh or LP - 4 Edinburgh 2



FILE COPY

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

COMPANY NO. 14456
CHARGE CODE SC01 4456 0112

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 7 DECEMBER 2018 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985
ON 14 DECEMBER 2018

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 7
DECEMBER 2018

BY WHYTE AND MACKAY LIMITED

IN FAVOUR OF
BANK OF SCOTLAND PLC

GIVEN AT COMPANIES HOUSE, EDINBURGH 19 DECEMBER 2018



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



INTERCREDITOR AGREEMENT

between

BANK OF SCOTLAND PLC

WHYTE & MACKAY LIMITED

and

WHYTE & MACKAY GROUP LIMITED

Certified True Copy

Solicitor

13/12/2018

DENTONS UK AND MIDDLE
EAST LLP

IMPORTANT NOTICE: We recommend that you consult your solicitor or other independent legal adviser before executing this document.

INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** is entered into between:

- (1) **BANK OF SCOTLAND PLC** (Company Number SC327000) having its registered office at The Mound, Edinburgh EH1 1YZ ("BoS").
- (2) **WHYTE & MACKAY GROUP LIMITED** (Company No. SC221954) having its registered office at 4th Floor St. Vincent Plaza, 319 St. Vincent Street, Glasgow, Scotland, G2 5RG (the "**Subordinated Creditor**"); and
- (3) **WHYTE & MACKAY LIMITED** (Company No. SC014456) having its registered office at 4th Floor St. Vincent Plaza, 319 St. Vincent Street, Glasgow, Scotland, G2 5RG (the "**Company**").

NOW IT IS AGREED as follows:-

1. Purpose of this Agreement

- 1.1. *In consideration of BoS entering into the BoS Documents, the Subordinated Creditor agrees to regulate its rights under the Subordinated Documents as set out in this Agreement.*
- 1.2. The Company enters into this Agreement to acknowledge and agree the arrangements between it, BoS and the Subordinated Creditor and none of the undertakings given in this Agreement are given to or enforceable by the Company.

2. Ranking of Debt

- 2.1. BoS and the Subordinated Creditor hereby agree, and the Company acknowledges, that the BoS Debt shall rank for all purposes and at all times ahead of the Subordinated Debt.

3. Ranking of Security

- 3.1. BoS and the Subordinated Creditor agree and the Company acknowledges that the BoS Floating Charge and the Subordinated Floating Charge shall rank as follows:-
 - 3.1.1. **FIRST:** the BoS Floating Charge shall rank first (to the extent of the BoS Debt in full);
 - 3.1.2. **SECOND:** thereafter, upon the satisfaction in full of the BoS Floating Charge, the Subordinated Floating Charge.
- 3.2. If BoS agrees to release the Company's assets from the security conferred by the BoS Floating Charge, the Subordinated Creditor will promptly execute each such release and each other necessary document to permit those assets to be held by the Company or any acquirer from it free from the security conferred by the Subordinated Floating Charge.
- 3.3. The Subordinated Creditor agrees that during the Security Period documents of title to the property and assets charged by the Subordinated Floating Charge shall be held by BoS and may be dealt with by BoS without reference to or consent of the Subordinated Creditor. BoS agrees to deliver all such

documents to the Subordinated Creditor or other person entitled to them at the end of the Security Period.

- 3.4. Subject to the provisions of this Agreement, the BoS Floating Charge and the Subordinated Floating Charge shall rank as continuing security for the payment and discharge of all the liabilities and obligations the payment and/or discharge of which are thereby secured and shall not be affected by any fluctuation in the moneys, obligations and liabilities from time to time due, owing or incurred to BoS or by the existence at any time of a credit balance on any current or other account of the Company with BoS.
- 3.5. BoS and the Subordinated Creditor agree and confirm that all moneys received by any administrator, administrative receiver, receiver and/or manager appointed under the BoS Floating Charge or from realisation of the security and guarantees conferred by the BoS Floating Charge or otherwise shall be applied in the order set out in clause 12 of this Agreement.
- 3.6. Each of BoS and the Subordinated Creditor hereby consent to the creation of the security conferred by the BoS Floating Charge and the Subordinated Floating Charge.
- 3.7. The Subordinated Creditor will not in any circumstances be subrogated to any of the rights of BoS (whether by way of security, guarantee or otherwise) under the BoS Documents.

4. Undertakings of the Company

During the Security Period, the Company will not (and the Subordinated Creditor will not require the Company to):-

- 4.1. create or permit to subsist any Security over any of its assets for all or part of the Subordinated Debt or any guarantee (or other assurance against financial loss) for or in respect of all or any part of the Subordinated Debt, in either case other than by the security conferred by the Subordinated Floating Charge entered into on or before the date of this Agreement;
- 4.2. pay, repay, prepay, redeem, purchase or otherwise discharge or release any of the Subordinated Debt;
- 4.3. amend any of the terms of the Subordinated Documents, save to the extent expressly permitted by the BoS Documents;
- 4.4. discharge any of the Subordinated Debt by set-off or any right of combination of accounts save only to the extent it may be required to do so or if the same occurs automatically by operation of law (but not, in either case, by reason of any contract or agreement);
- 4.5. give any financial support to any person to enable it to do any of the things referred to in clause 4.1 to 4.4 (inclusive) above;
- 4.6. take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Subordinated Debt or any part thereof may be impaired or adversely affected;
- 4.7. change its business in any way which would result in it becoming a 'relevant financial institution' for the purposes of clause 2 of The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014. The Company shall promptly provide BoS with copies of any information that BoS may from time to time reasonably request in connection with the Company's status in respect of this clause 4.7; or

- 4.8. carry on any business which would constitute 'excluded activities' 'in terms of Part 2 of the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014.

5. Undertakings of Subordinated Creditor

- 5.1. During the Security Period the Subordinated Creditor will not:-
- 5.1.1. demand or accept payment, repayment, prepayment or any distribution in respect of, or on account of, any Subordinated Debt in cash or in kind or accelerate, declare payable on demand or enforce by execution or otherwise any principal, interest, cost or other sums in respect of the Subordinated Debt or part thereof;
 - 5.1.2. exercise any right of set-off, combination of accounts or lien or exercise or accept any transfer of rights, property or assets from the Company (or any other source) in satisfaction of the Subordinated Debt or part thereof;
 - 5.1.3. claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of the Company, other than in accordance with clause 6.2;
 - 5.1.4. take, receive or permit to subsist any Security or any guarantee (or other assurance against financial loss) for, or in respect of, any Subordinated Debt, other than in terms of the Subordinated Floating Charge entered into on or before the date of this Agreement;
 - 5.1.5. amend, vary, waive or release any provision of the Subordinated Documents in any way which, in the opinion of BoS, is likely to have an adverse effect upon the interests of BoS under the BoS Documents;
 - 5.1.6. sell, transfer or otherwise dispose of any of the Subordinated Debt, other than in accordance with clause 13.5;
 - 5.1.7. take any Enforcement Action involving the Company, other than in terms of clause 6;
 - 5.1.8. take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Subordinated Debt or any part thereof may be impaired or adversely affected;
 - 5.1.9. not change its business in any way which would result in it becoming a 'relevant financial institution' for the purposes of clause 2 of The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014. The Subordinated Creditors shall promptly provide BoS with copies of any information that BoS may from time to time reasonably request in connection with the Subordinated Creditors status in respect of this clause 5.1.9;
 - 5.1.10. not carry on any business which would constitute 'excluded activities' 'in terms of Part 2 of the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014.
- 5.2. During the Security Period, the Subordinated Creditor undertakes to BoS that it shall comply with its obligations under this Agreement and (subject to such obligations) the Subordinated Documents.

- 5.3. The Subordinated Creditor and the Company each undertake to BoS, that (a) any loans made available from time to time by the Subordinated Creditor to the Company shall be documented pursuant to a Subordinated Loan Agreement, (b) copies of the relevant Subordinated Loan Agreement shall be provided to BoS as soon as practicable following a loan being advanced and (c) that the Subordinated Creditor or the Company shall notify BoS of the amount of any loan within 3 Business Days of such loan being made available.

6. Permitted Enforcement

- 6.1. Subject to clause 6.2 below, the Subordinated Creditor may not take any Enforcement Action prior to the end of the Security Period without the prior written consent of BoS.
- 6.2. The restriction in clause 6.1 will not apply to the Subordinated Creditors if:-
- 6.2.1. BoS has enforced the security conferred by the BoS Floating Charge other than by the exercise by BoS of any set-off or similar rights; or
 - 6.2.2. a court makes a winding-up order or an order for the dissolution or liquidation of the Company or a liquidator or an administrator or equivalent is appointed to the Company, other than in any such case as a result of action taken by (or on behalf of) the Subordinated Creditor; or
 - 6.2.3. BoS demands payment of or declares payable all or any part of the BoS Debt owed to it (other than any part of the BoS Debt repayable on demand).

7. Release of Security and Consents

- 7.1. If, during the Security Period, any assets of the Company are being sold pursuant to a power of sale or otherwise in terms of the BoS Floating Charge at a time when a Default is continuing, the Subordinated Creditor shall on the written request of BoS (in favour of BoS and the Company) provide a consent in writing to the sale and release of the assets which are the subject of the sale from any security constituted by the Subordinated Documents.
- 7.2. If, during the Security Period, BoS has agreed any amendment, consent, approval or waiver with or in connection with the BoS Documents, such amendment, consent, approval or waiver shall be binding on the Subordinated Creditor and the Subordinated Creditor shall be deemed to have done the same and to have made an equivalent or equal amendment, consent, approval or waiver under, of or in respect of, the Subordinated Documents.
- 7.3. The Subordinated Creditor hereby undertakes to do such things and execute all such documents as BoS may reasonably require to give effect to clauses 7.1 and/or 7.2.
- 7.4. Nothing in clauses 7.1 or 7.2 shall result in the reduction in the amount of the Subordinated Debt or in any delay or postponement of the payment of all or any part of the Subordinated Debt.

8. Subordination on Insolvency

- 8.1. If an Insolvency Event occurs in respect of the Company during the Security Period then:-

- (a) the Subordinated Debt will be postponed and subordinated to the BoS Debt and (if required by BoS but not otherwise) the Subordinated Creditor will file any proof or other claim necessary for the recovery of the Subordinated Debt;
 - (b) *any payment or distribution of any kind or character and all and any rights in respect of such payment or distribution, whether in cash, securities or other property, which is payable or deliverable upon or with respect to all or part of the Subordinated Debt by a liquidator, administrator, administrative receiver or receiver (or equivalent) of the Company or its estate made or paid to or received by the Subordinated Creditor or to which the Subordinated Creditor is entitled, will be held in trust by its recipient for BoS and will immediately be paid or, transferred or assigned to BoS for application in the order set out in clause 12 of this Agreement; and*
 - (c) if the trust referred to in sub-clause (b) above fails or cannot be given effect to, the Subordinated Creditor (and any agent or trustee on their behalf) receiving any such payment or distribution *will pay an amount equal to such payment or distribution to BoS for application in the order set out in clause 12 of this Agreement.*
- 8.2. The Subordinated Creditor hereby irrevocably authorises BoS to demand, sue and prove for, collect and receive every payment or distribution referred to in clause 8.1 and discharge liability therefor and to file claims and take such other proceedings, in the name of BoS or in the name of the Subordinated Creditor or otherwise, as BoS may deem necessary or advisable for the enforcement of this Agreement.
- 8.3. The Subordinated Creditor will execute and deliver to BoS such powers of attorney, assignments or other instruments as may be necessary to enable BoS to enforce any claims upon or with respect to all or part of the Subordinated Debt which are permitted by this Clause 8, and to collect and receive any payments or distributions which may be payable or deliverable at any time upon or with respect to all or part of the Subordinated Debt as permitted by this Clause 8.
- 8.4. The liquidator or other insolvency representative or trustee of the Company or its estate is hereby authorised by the Subordinated Creditor to apply any assets or monies received by him in accordance with the terms of this Agreement.

9. Contravention

- 9.1. If at any time prior to the expiry of the Security Period:-
- 9.1.1. the Subordinated Creditor receives or recovers a payment or distribution of any kind whatsoever in respect of or on account of any Subordinated Debt;
 - 9.1.2. the Subordinated Creditor receives or recovers any proceeds pursuant to any Enforcement Action;
 - 9.1.3. the Company makes any payment or distribution of any kind whatsoever in respect of, or on account of the purchase or other acquisition of, any Subordinated Debt;
 - 9.1.4. all or any of the Subordinated Debt is discharged by set-off, combination of accounts or otherwise;
- the recipient or beneficiary of such payment, distribution, set-off or combination will promptly pay all such amounts or distributions to BoS for

application in the order set out in clause 12 of this Agreement after deducting the costs, liabilities and expenses (if any) reasonably incurred in recovering or receiving such payment or distribution and, pending such payment, will hold these amounts and distributions on trust (or otherwise separated from its assets) and on behalf of BoS.

- 9.2. The Subordinated Debt will, as between the Company and the Subordinated Creditor, be deemed not to have been reduced or discharged to the extent of any payment or distribution to BoS under clause 9.1.

10. New Money

- 10.1. The Subordinated Creditor agrees that the BoS Debt may be refinanced and/or that its terms may be amended and that any amounts borrowed or obligations incurred by the Company in refinancing the BoS Debt (whether or not the amount of such BoS Debt is greater than the amount made available at the date of this Agreement) will be BoS Debt within the meaning of this Agreement and will rank in priority to the Subordinated Debt on substantially the terms set out in this Agreement. Without limit to the generality of the foregoing, all amounts made available by BoS to the Company from time to time by way of working capital (howsoever described) will be BoS Debt within the meaning of this Agreement, whether made available in terms of the BoS Facility Agreement or otherwise.
- 10.2. The Subordinated Creditor agrees that BoS may, at its discretion, make further advances to the Company and each such advance will be deemed to constitute BoS Debt for the purposes of this Agreement.

11. Waiver of Defences

- 11.1. The subordination effected or intended to be effected by this Agreement and the obligations of the Subordinated Creditor under it shall not be affected by any act, omission or circumstances which but for this provision might operate to release the Subordinated Creditor from their obligations or affect such obligations or such subordination including, without limitation and whether or not known to the Subordinated Creditor or any other person:-
- 11.1.1. any time, indulgence or waiver granted to, or composition with the Company or any other person;
 - 11.1.2. the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce, any rights, remedies or securities against or granted by the Company or any other person;
 - 11.1.3. any unenforceability, illegality, invalidity or frustration of any obligation of any of the Company under the BoS Documents or of any other person under any other document;
 - 11.1.4. any amendment to or variation of the terms of the BoS Documents or any other document;
 - 11.1.5. any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Company under any BoS Document resulting from any insolvency, liquidation or dissolution proceedings or from any law or regulation.
- 11.2. This Agreement shall apply in respect of the BoS Debt irrespective of any intermediate payment of any of the BoS Debt and shall apply to the ultimate balance of the BoS Debt.

- 11.3. Notwithstanding any of the provisions of this Agreement postponing, subordinating or delaying the payment of all or any of the Subordinated Debt, such Subordinated Debt shall as between the Company and the Subordinated Creditor remain owing or due and payable in accordance with the terms of the Subordinated Documents.

12. Application of Monies

- 12.1. BoS and the Subordinated Creditor agree and (subject to the claims of any creditors ranking in priority to or *pari passu* with the claims of BoS and/or the Subordinated Creditor hereunder) direct any liquidator, administrator, administrator or receiver (or equivalent officer) to procure that any Inventory Recoveries are distributed in full prior to the distribution of Remaining Asset Recoveries and that all such monies recovered under or by virtue of the BoS Floating Charge and/or the Subordinated Floating Charge following enforcement thereof shall be applied in the following order:-

- 12.1.1. in or towards payment of all costs, charges and expenses of or incidental to the enforcement of the BoS Floating Charge or the Subordinated Floating Charge (as the case may be);

12.1.2. *In respect of Inventory Recoveries:*

- (a) Firstly in or towards satisfaction of the BoS Debt in such order as BoS may from time to time require until satisfaction of the BoS Debt in full; and
- (b) Secondly, following satisfaction in full of the BoS Debt, in or towards satisfaction of the Subordinated Debt; and
- (c) Thirdly, following satisfaction in full of the Subordinated Debt, any surplus shall be paid to the Company (or any other person) entitled to such surplus;

12.1.3. *In respect of Remaining Asset Recoveries following distribution in full of any Inventory Recoveries:*

- (a) Firstly in or towards satisfaction of the BoS Debt in such order as BoS may from time to time require until satisfaction of the BoS Debt in full;
- (b) Secondly, following satisfaction in full of the BoS Debt, in or towards satisfaction of the Subordinated Debt; and
- (c) Thirdly, following satisfaction in full of the Subordinated Debt, any surplus shall be paid to the Company (or any other person) entitled to such surplus,

and provided always that in no circumstances shall such monies received or recovered be applied towards satisfaction of any of the Subordinated Debt whatsoever, prior to the satisfaction in full of the BoS Debt.

- 12.2. The Company and BoS hereby agree that nothing contained in this Agreement shall limit the right of BoS, if and for so long as BoS (in its discretion) shall consider it appropriate, to place all or any money arising from the enforcement of the BoS Floating Charge into a suspense account, without any obligation to apply the same or any part of such money in or towards the discharge of any of the BoS Debt until such time as all amounts held by or on behalf of BoS are sufficient to irrevocably and unconditionally discharge the

BoS Debt in full, at which time such amounts shall be applied in discharge of any of the BoS Debt.

- 12.3. Any amount received hereunder by BoS in a currency other than that in which the BoS Debt is denominated and payable shall be converted into Sterling at such rate of exchange as on the date of payment and in such market as is determined by BoS to be appropriate for such conversion. The Company shall pay the costs of such conversion and nothing in this Agreement shall entitle the Company to pay the BoS Debt in a currency other than Sterling.
- 12.4. BoS may apply any monies received by it to any liability in respect of the BoS Debt in such order or manner as it may determine.

13. Assignment and Transfer

- 13.1. This Agreement shall enure to and be binding on the permitted successors and assignees of the parties to this agreement.
- 13.2. The Company may not assign, transfer or otherwise dispose of all or any of its rights, obligations or benefits under this Agreement.
- 13.3. BoS shall be entitled to assign, transfer, securitise or otherwise dispose of the whole or any part of the benefit of this Agreement (a "Transfer") to any person (the "Transferee") in any manner that it sees fit to whom all or a corresponding part of its rights and benefits and, where applicable, obligations under any BoS Document are assigned, transferred, securitised or otherwise disposed of in accordance with the provisions of them. Following such Transfer the Company and the Subordinated Creditor shall have recourse only to the Transferee in respect of that portion of BoS's obligations transferred to the Transferee.
- 13.4. The provisions of paragraph 31 (Confidentiality) of Schedule 1 of the BoS Facility Agreement shall apply *mutatis mutandis* to this Agreement.
- 13.5. The Subordinated Creditor hereby undertakes to BoS that it shall not sell, transfer or otherwise dispose of all or any part of its Subordinated Debt to any person unless such purchaser or transferee of any of the Subordinated Debt enters into an Accession Agreement at or prior to the completion of such sale or transfer.

14. Miscellaneous

- 14.1. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement hereof nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired.
- 14.2. No failure to exercise, nor delay in exercising, any right or remedy under this Agreement by BoS will operate as a waiver of such rights and remedies, nor will any single or partial exercise of any other 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 are not exclusive of any rights or remedies provided by law.
- 14.3. During the Security Period, BoS and the Subordinated Creditor may disclose to each other information concerning the Company and its affairs in such manner and to such extent as BoS and the Subordinated Creditor may wish and the Company consents to such disclosure.

14.4. If there is any conflict between the terms of this Agreement and the Subordinated Documents, this Agreement shall prevail.

15. Amendment

This Agreement shall not be varied or amended in any way except in writing signed by each of the Subordinated Creditor, the Company and BoS.

16. Instrument of Alteration

16.1. The parties acknowledge and agree that this Agreement is an instrument of alteration in terms of Section 466 of the Companies Act 1985.

16.2. The Subordinated Creditor confirms and undertakes to BoS that it will within 21 days of the date of this Agreement register the required details of this Agreement at Companies House in order for this Agreement to constitute a valid instrument of alteration in respect of the Subordinated Floating Charge.

17. Power of Attorney

Each of the Company and the Subordinated Creditor irrevocably appoints BoS as its attorney to do anything which such person has authorised BoS to do under this Agreement or which such person is required to do under this Agreement but, in either case, has failed to do for a period of five Business Days after receiving notice from BoS requiring it to do so.

18. Notices

18.1. Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

18.2. The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is that identified with its name below or any substitute address, fax number or department or officer as the party may notify to the other parties by not less than five Business Days' notice.

18.3. Any communication made or document made or delivered by one person to another under or in connection with this Agreement will only be effective:-

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been delivered to the relevant address or three Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of the address details set out below, if addressed to that department or officer.

18.4. Any communication or document to be made or delivered to BoS will be effective only when actually received by BoS and then only if it is expressly marked for the attention of the department or officer identified with BoS' signature below (or any substitute department or officer as BoS shall specify for this purpose).

19. Registration

The Company, the Subordinated Creditor and BoS consent to the registration of this Agreement for preservation.

20. Counterparts

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

21. Third Party Rights

This Agreement does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Agreement or otherwise.

22. Governing Law

This Agreement shall be governed by and construed according to Scots law.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 9 pages together with the Schedule is executed as follows and delivered for the purposes of the Legal Writings (Counterparts and Delivery)(Scotland) Act 2015 on the date set out on page 11 of this document:

THE SUBORDINATED CREDITOR

EXECUTED for and on behalf of

WHYTE AND MACKAY GROUP LIMITED

At: GLASGOW

On: 05/12/18

By: Director

In the presence of:

Witness Signature.....

Witness Name.....SIÂN LAURIE.....

Witness Address.....

Witness Occupation.....SOLICITOR.....

THE COMPANY

EXECUTED for and on behalf of

WHYTE AND MACKAY LIMITED

At: GLASGOW

On: 05/12/18

By: Director

In the presence of:

Witness Signature.....

Witness Name.....SIAN LAURIE

Witness Address.....

Witness Occupation.....SOLICITOR

THE BANK

EXECUTED for and on behalf of
BANK OF SCOTLAND PLC

At:

On:

By:..... Duly Appointed Attorney

In the presence of:

Witness Signature.....

Witness Name.....

Witness Address.....

Witness Occupation.....

DATE OF DELIVERY7 DECEMBER 2018

THE COMPANY

EXECUTED for and on behalf of

WHYTE AND MACKAY LIMITED

At:

On:

By: Director

In the presence of:

Witness Signature.....

Witness Name.....

Witness Address.....

Witness Occupation.....

THE BANK

EXECUTED for and on behalf of

BANK OF SCOTLAND PLC

At: GLASGOW

On: 6 DECEMBER 2018

By: [REDACTED] Duly Appointed Attorney

In the presence of:

Witness Signature..... [REDACTED]

Witness Name..... LORNA HENDERSON

Witness Address..... [REDACTED]

Witness Occupation..... SOLICITOR

DATE OF DELIVERY 7 DECEMBER 2018

THIS IS THE SCHEDULE IN TWO PARTS REFERRED TO IN THE PRECEDING INTER CREDITOR AGREEMENT BETWEEN WHYTE AND MACKAY LIMITED, WHYTE AND MACKAY GROUP LIMITED AND BANK OF SCOTLAND PLC.

THE SCHEDULE

PART 1

Accession Agreement

This Agreement is made

BY: [] of [] (the "Acceding Party") in favour of BANK OF SCOTLAND PLC

and is SUPPLEMENTAL to an inter creditor agreement (the "Inter Creditor Agreement") dated ● 20● and made between (1) the Company (as defined therein), (2) the Subordinated Creditor (as defined) therein and (3) Bank of Scotland plc.

NOW IT IS AGREED AS FOLLOWS

1. Words and expressions defined in the Inter Creditor Agreement shall have the same meaning in this Agreement.
2. The Acceding Party confirms it has been supplied with a copy of the Inter Creditor Agreement and that [] (the "Transferor") has agreed to transfer to it [the Subordinated Debt] detailed in the Schedule to this Agreement.
3. The Acceding Party undertakes to BoS for the benefit of BoS (including its respective assignees, transferees and successors in title) to be bound by all the terms of the Inter Creditor Agreement capable of applying to it to the intent and effect that the Acceding Party shall be a party to the Inter Creditor Agreement with effect from the date of this Agreement.
4. This Agreement shall be governed by and construed according to Scots law.

IN WITNESS WHEREOF [insert wording]

THE SCHEDULE

[Details of Subordinated Debt]

[Insert execution provisions]

THE SCHEDULE

PART 2

Definitions and Interpretation

1. Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:-

"Accession Agreement" means an accession agreement in favour of BoS substantially in the form set out in Part 1 of the Schedule (or in such other form as BoS shall approve in writing);

"BoS Ancillary Facility Letter" means the facility letter dated on or around the date hereof from BoS to the Company in relation to the ancillary facilities provided by BoS from time to time (as amended, restated, supplemented, novated or replaced from time to time).

"BoS Debt" means all or any monies and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to BoS by the Company, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not BoS shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which BoS may in the course of its business charge or incur in respect of any of those matters or for keeping the Company's accounts, and so that interest shall be computed and compounded according to the usual BoS rates and practice as well after as before any demand made or decree obtained;

"BoS Documents" means the BoS Facility Agreement, the BoS Ancillary Facility Letter, the Hedging Documents, and the BoS Floating Charge;

"BoS Facility Agreement" means the asset based lending agreement between the Company and BoS dated on or around the date of this Agreement (as amended, restated, supplemented, novated or replaced from time to time);

"BoS Floating Charge" means the floating charge granted by the Company in favour of BoS dated on or around the date of this Agreement;

"Default" has the meaning given to the term in the BoS Facility Agreement;

"Enforcement Action" means any action whatsoever to:

- (a) demand payment of, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand, all or any part of the *Subordinated Debt*;
- (b) recover all or any part of the *Subordinated Debt* (including, without limitation, by exercising any right of set-off or combination of accounts);
- (c) exercise or enforce any security right or rights against guarantors or sureties or any other rights under any other document or agreement in relation to (or given in support of) all or any part of the *Subordinated Debt* (including, without limitation, under the *Subordinated Floating Charge*);
- (d) petition for (or take any other steps or action which may lead to) an

Insolvency Event in relation to the Company;

- (e) *commence legal proceedings against any Group Company;*

"Hedging Documents" means the form of ISDA master agreement, schedule and associated confirmations used from time to time by BoS for entities like the Company together with all other documents referred to in, or supplemental to, such documentation;

"Insolvency Event" means:

- (a) any application, notice, resolution or order is made, passed or given for or in connection with the winding up, liquidation, dissolution, administration or reorganisation of the Company;
- (b) the Company becomes subject to any insolvency, reorganisation, receivership (whether relating to all or some only of its assets), liquidation, dissolution or other similar proceedings, whether voluntary or involuntary and whether or not involving insolvency;
- (c) the Company assigns all or any of its assets for the benefit of its creditors generally (or any class thereof) or enters into any composition or arrangement with its creditors generally or any arrangement is ordered or declared by a court of competent jurisdiction whereby all or any of its affairs and/or assets are submitted to the control of, or are protected from, its creditors;
- (d) the Company becomes subject to any distribution of its assets in consequence of insolvency, reorganisation, liquidation, dissolution or administration; or
- (e) any event analogous to any of the foregoing shall occur in relation to the Company or any of its assets in any jurisdiction;

"Inventory" means raw materials, work in progress and unsold finished goods owned by the Company and which constitutes the stock-in-trade of the Company;

"Inventory Recoveries" means any recovery by a liquidator, administrator, administrator or receiver (or equivalent officer) which represents the proceeds arising from enforcement of the BoS Floating Charge or the Subordinated Floating Charge in respect of Inventory;

"Remaining Asset Recoveries" means any recovery by a liquidator, administrator, administrator or receiver (or equivalent officer) or any other party which represents the proceeds arising from enforcement of the BoS Floating Charge or the Subordinated Floating Charge in respect of any assets of the Company other than Inventory;

"Security Period" means the period from the date of this Agreement to the date on which the BoS Debt is repaid in full and no commitment by BoS to provide facilities to the Company remains in effect;

"Subordinated Debt" means all present and future sums, liabilities and obligations (whether actual and contingent, present or future) payable or owing by the Company to the Subordinated Creditor under the Subordinated Documents;

"Subordinated Documents" means the Subordinated Loan Agreement and the Subordinated Floating Charge;

"Subordinated Floating Charge" means the floating charge granted by the

Company in favour of the Subordinated Creditor dated 6 July 2016;

"Subordinated Loan Agreement" means any loan agreement between the Company and the Subordinated Creditor entered into from time to time in accordance with Clause 5.3;

2. Interpretation

In this Agreement, unless a contrary intention appears:-

- (a) a reference to statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant legislation;
- (b) a reference to "control" of any company shall be interpreted in accordance with Section 995 of the Income Tax Act 2007;
- (c) a reference to "including" shall not be construed as limiting the generality of the words preceding it;
- (d) a reference to this Agreement shall include the Schedules;
- (e) any term or phrase defined in the Companies Act 2006 (as amended from time to time) shall bear the same meaning in this Agreement;
- (f) words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- (g) a reference to this Agreement and to any provisions of it or to any other document referred to in this Agreement shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;
- (h) a reference to any person is to be construed to include references to a corporation, firm, company, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;
- (i) a reference to any person is to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- (j) clause headings are for ease of reference only and are not to affect the interpretation of this Agreement;
- (k) any reference to the Subordinated Creditor includes any agent or trustee (howsoever described) holding any Security Rights or other rights for or on behalf of all or any of such Subordinated Creditor;
- (l) words and expressions defined in the BoS Facility Agreement shall bear the same meanings when used in this Agreement.