

# M

CHFP021

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.

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write in  
this margin*

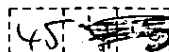
Pursuant to section 410 and 466 of the Companies Act 1985

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

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

For official use

Company number



SC030987

Name of company

• Barclay & Mathieson Limited having its registered office at Shieldhall Works, 180 Hardgate Road,  
Glasgow, G51 4TB (the "Company")

*\* insert full name  
of company*

Date of creation of the charge (note 1)

20 March 2015

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

Composite Guarantee and Debenture (including Floating Charge) ("Debenture")

Names of the persons entitled to the charge

PNC Business Credit a trading style of PNC Financial Services UK Limited, a company registered in  
England and Wales with number 07341483 and having its registered office at PNC House, 34-36  
Perrymount Road, Haywards Heath, West Sussex, RH16 3DN ("PNC")

Short particulars of all the property charged

In terms of the floating charge contained in clause 6 of the Debenture, all the Company's present and  
future (1) assets and undertaking (wherever located) which are not effectively charged by way of first  
fixed mortgage or charge or assigned pursuant to clause 5.1 (Fixed Charges), clause 5.2 (Security  
assignments) or any other provision of the Debenture; and (2) (whether or not effectively so charged or  
assigned) heritable property and all other property and assets in Scotland.

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

SC9/BW2/PN168 X005  
Morton Fraser LLP  
DX ED119  
Edinburgh

For official use (02/06)  
Charges Section

SATURDAY



SCT  
#20  
28/03/2015  
COMPANIES HOUSE

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

See attached schedule.

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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

20 March 2015

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

1. No Security Obligor shall (and no Subordinated Creditor will permit or require any Security Obligor to):  
1.1 secure or grant any Security Interest for all or any part of any of the Subordinated Creditor Debt other than:  
1.1.1. the Security Interests created by the Subordinated Creditor Security detailed in part 1 of schedule 2 to the Intercreditor Deed, or  
1.1.2. with the prior written consent of PNC (or otherwise as permitted pursuant to the Intercreditor Deed).

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*

1. For the purposes of the Insolvency Act 1986 (as amended from time to time) each Subordinated Creditor confirms for the benefit of PNC that the PNC Floating Charges have priority over the Subordinated Creditor Floating Charges, notwithstanding the date of creation of such floating charges.

2. For the avoidance of doubt, nothing contained within the Intercreditor Deed is intended to rank any floating charge contained within the Creditor Securities before any fixed charge within the Creditor Securities.

In the interpretation of the foregoing:

"Creditor Securities" means the PNC Security and the Subordinated Creditor Security (any of which is a "Creditor Security");

"Creditors" means PNC and the Subordinated Creditors (each a "Creditor");

"Intra Group Lender" means MBM Group in its capacity as intra group lender;

"Lenders" means Breal Capital, Alcyon and the Pension Scheme (each a "Lender"), in their capacities as lenders;

"Master Facilities Agreement" means the master facilities agreement dated the same date as the Intercreditor Deed and made between (1) PNC, (2) the Obligor, (3) the Security Obligors, and (4) MBM Group as Parent, pursuant to which PNC has agreed to make certain accounts receivables facilities and certain asset based lending facilities available to the Obligor;

"Obligor" means the Company in its capacity as obligor;

"Parent Loan Agreement" has the meaning given to it in the Master Facilities Agreement;

"PNC Debt" means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Security Obligors to PNC;

"PNC Floating Charges" means all and any floating charges comprised within the PNC Security which are qualifying floating charges within the meaning of paragraph 14 of schedule B1 to the Insolvency Act 1986;

"PNC Security" means all fixed and floating charges and other guarantee or security documents (including, without limitation, the security listed in part 1 of schedule 2 (Finance Documents) of the Intercreditor Deed) which are from time to time entered into by the Security Obligors (or any of them) in favour of PNC as security for, or guaranteeing, any or all of the PNC Debt;

"Security Interest" means any mortgage charge or security (whether fixed or floating), pledge, lien, hypothecation, trust, trust arrangement for the purposes of providing security, assignment, assignment by way of security, tracing or other equitable right, or:

- (a) any other agreement or arrangement having the effect of conferring security (including any such interest arising under or in connection with any letter of credit;
- (b) any other security interest of any kind or preferring any obligation of any person; or
- (c) any other guarantee, indemnity, warranty, agreement or arrangement having the effect of conferring security;

"Security Obligors" means Clydeside, MBM Group and the Company in their capacities as security obligors;

"Security Trustee" means Breal Capital in its capacity as security trustee for the Lenders;

"Shareholder Loan Agreement" has the meaning given to it in the Master Facilities Agreement;

"Shareholders" means Breal Capital, Alcyon, the Pension Scheme, MBM Group and the Company (each a "Shareholder") in their capacities as shareholders;

"Subordinated Creditor" means each Lender, the Intra Group Lender, the Security Trustee and each Shareholder (together, the "Subordinated Creditors");

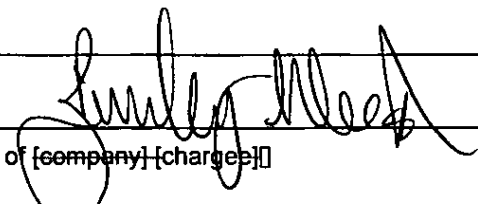
"Subordinated Creditor Debt" means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Security Obligors to the Subordinated Creditors pursuant to the Subordinated Creditor Documents;

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

"Subordinated Creditor Documents" means the Parent Loan Agreement, the Shareholder Loan Agreement and any other document in connection with the Subordinated Creditor Security or which would obligate a Security Obligor to make a dividend payment contrary to the terms of the Intercreditor Deed;

"Subordinated Creditor Floating Charges" means all and any floating charges comprised within the Subordinated Creditor Security which are qualifying floating charges within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986; and

"Subordinated Creditor Security" means all fixed and floating charges and other guarantee or security documents (including, without limitation, the security listed in part 2 of schedule 2 (Finance Documents) of the Intercreditor Deed) which are from time to time entered into by the Security Obligors (or any of them) in favour of a Subordinated Creditor as security for, or guaranteeing, any or all of the Subordinated Creditor Debt.

Signed  Date 27/3/2015  
On behalf of ~~[company]~~ ~~[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. ☐ 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

## SCHEDULE

### Names, and addresses of the persons who have executed the instrument of alteration

Where a party has executed the instrument of alteration (the "Intercreditor Deed") in more than one capacity, each capacity in which such party has executed the Intercreditor Deed is stated below.

1. PNC;
2. Breal Capital Limited (company number 09147981) with its registered office at 4th Floor, 7/10 Chandos Street, London W1G 9DQ ("**Breal Capital**") (in its capacities as (i) lender, (ii) security trustee and (iii) shareholder);
3. Alcyon Capital Limited (company number 08159171) with its registered office at 4th Floor, 7/10 Chandos Street, London W1G 9DQ ("**Alcyon**") (in its capacities as (i) lender and (ii) shareholder);
4. The Trustees of the Asheton Pension Scheme c/o Organon Pension Trustees Limited, Kingsgate, Wellington Road North, Stockport, SK4 1LW (the "**Pension Scheme**") (in its capacities as (i) lender and (ii) shareholder);
5. the Company (in its capacities as (i) obligor, (ii) security obligor and (iii) shareholder);
6. Clydeside Steel Fabrications Limited (company number SC034675) with its registered office at Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB ("**Clydeside**");
7. MBM Group Services Limited (company number 09453951) with its registered office at 4th Floor, 7/10 Chandos Street, London W1G 9DQ ("**MBM Group**") (in its capacities as (i) intra group lender, (ii) security obligor and (iii) shareholder).



**FILE COPY**

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

COMPANY NO. 30987  
CHARGE CODE SC03 0987 0045

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 20 MARCH 2015 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 28 MARCH 2015

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 20  
MARCH 2015

BY BARCLAY & MATHIESON LIMITED

IN FAVOUR OF  
PNC BUSINESS CREDIT A TRADING STYLE OF PNC FINANCIAL  
SERVICES UK LTD

GIVEN AT COMPANIES HOUSE, EDINBURGH 10 APRIL 2015



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

CERTIFIED A TRUE COPY  
For and on behalf of  
Morton Fraser LLP

Date :

27/03/15

MULTI OBLIGOR INTERCREDITOR FOR USE WITH MFA

*of Related Intercreditor Deed*  
*Salt*

DATED

20 MARCH

2015

(1) PNC BUSINESS CREDIT  
a trading style of PNC FINANCIAL SERVICES UK LTD  
as PNC

(2) THE COMPANIES NAMED IN PART 1 OF SCHEDULE 1  
as Lenders

(3) MBM GROUP SERVICES LIMITED  
as Intra Group Lender

(4) THE COMPANY NAMED IN PART 2 OF SCHEDULE 1  
as Obligor

(5) THE COMPANIES NAMED IN PART 3 OF SCHEDULE 1  
as Security Obligors

(6) BREAL CAPITAL LIMITED  
as Security Trustee for the Lenders

(7) THE COMPANIES NAMED IN PART 4 OF SCHEDULE 1  
as Shareholders

INTERCREDITOR DEED

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THIS INTERCREDITOR DEED is made on

20 MARCH

2015

**BETWEEN**

- (1) **PNC BUSINESS CREDIT** a trading style of **PNC FINANCIAL SERVICES UK LTD** a company registered in England and Wales with the number 07341483 and having its registered office at PNC House, 34-36 Perrymount Road, Haywards Heath, West Sussex RH16 3DN ("**PNC**");
- (2) **THE COMPANIES NAMED IN PART 1 OF SCHEDULE 1** (as "**Lenders**" and each a "**Lender**");
- (3) **MBM GROUP SERVICES LIMITED** a company registered in England and Wales with the number 09453951 and having its registered office at 4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ ("**Intra Group Lender**");
- (4) **THE COMPANY NAMED IN PART 2 OF SCHEDULE 1** (as "**Obligor**");
- (5) **THE COMPANIES NAMED IN PART 3 OF SCHEDULE 1** (as "**Security Obligors**");
- (6) **BREAL CAPITAL LIMITED** a company registered in England and Wales with the number 09147981 and having its registered office at 4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ (as security trustee for the Lenders) ("**Security Trustee**");
- (7) **THE COMPANIES NAMED IN PART 4 OF SCHEDULE 1** (as "**Shareholders**" and each a "**Shareholder**").

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Intercreditor Deed:

- (a) terms defined in, or construed for the purposes of, the Master Facilities Agreement or the PNC Security have the same meanings when used in this Intercreditor Deed (unless the same are otherwise defined in this Intercreditor Deed); and

- (b) the following terms have the following meanings:

**"Administrator"** has the meaning given to it in Schedule B1 to the Insolvency Act 1986;

**"Creditor Securities"** means the PNC Security and the Subordinated Creditor Security (any of which is a "**Creditor Security**");

**"Creditors"** means PNC and the Subordinated Creditors (each a "**Creditor**");

**"Debt"** means the PNC Debt and the Subordinated Creditor Debt;

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

- (a) demand payment, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand all or any part of the Debt; or
- (b) recover all or any part of the Debt (including by exercising any right of set-off or combination of accounts); or
- (c) exercise or enforce directly or indirectly any right against 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 Debt (including under the Creditor Securities); or
- (d) petition or apply for, vote in favour of, or take any other steps or action which may lead to, an Insolvency Event in relation to any member of the Group; or
- (e) commence legal proceedings against any member of the Group;

**"Group"** shall have the meaning given to it in the Master Facilities Agreement;

**"Insolvency Event"** means:

- (a) any resolution is passed or order made for the winding up, liquidation, dissolution, administration or reorganisation of any Security Obligor (save in connection with an amalgamation or reconstruction previously approved in writing by PNC); or
- (b) any Security Obligor becomes subject to any insolvency, bankruptcy, administration, reorganisation, receivership, liquidation, dissolution or other similar proceedings, whether voluntary or involuntary (and whether or not involving insolvency) (save in connection with an amalgamation or reconstruction previously approved in writing by PNC); or
- (c) any Security Obligor assigns its assets, or enters into any arrangement, for the benefit of its creditors generally (other than a solvent reorganisation previously approved by PNC); or
- (d) any Security Obligor becomes subject to any distribution of its assets, or if any analogous event occurs in any jurisdiction; or
- (e) the directors of any Security Obligor take any formal step in relation to obtaining a moratorium or making a proposal for a voluntary arrangement under Part I of the Insolvency Act 1986 or any other suspension of payments with its creditors;

**"Inventory"** shall have the meaning given to it in the PNC Security;

**"Inventory Insurances"** shall have the meaning given to it in the PNC Security;

**"Master Facilities Agreement"** means the master facilities agreement dated the same date as this Intercreditor Deed and made between (1) PNC, (2) Obligor, (3) the Security Obligors, and (4) MBM Group Services Limited (company number 09453951) as Parent, pursuant to which PNC has agreed to make certain accounts receivables facilities and certain asset based lending facilities available to the Obligor;

**"Non-Vesting A/R"** shall have the meaning given to it in the PNC Security;

**"Other Proceeds"** shall have the meaning given to it in the PNC Security;

**"Permitted Payment"** means, subject at all times to the Permitted Payment Conditions:

- (a) a management fee of £20,000 payable monthly by the Obligor to the Parent;
- (b) contingent upon receipt by the Parent of the £20,000 monthly management fee from the Obligor referenced at paragraph (a) above, a payment of £20,000 from the Parent to the Security Trustee;
- (c) interest (at a rate of 10%) payable monthly to the Intra Group Lender pursuant to the terms of the Parent Loan Agreement;
- (d) a fee of £275,000 payable by the Obligor to Breal Consulting Limited (company no. 07976596), payable in one instalment of £175,000 within one calendar month of the Commencement Date and in one instalment of £100,000 upon PNC providing express prior written consent; and
- (e) a fee of £50,000 payable by the Obligor to the Parent on the Commencement Date in relation to the arrangement fee due to the Parent in respect of the Parent Loan Agreement;

**"Permitted Payment Conditions"** means the before any payment outlined in the definition of Permitted Payment may be made on a proposed date (the **"Proposed Payment Date"**), PNC must be satisfied that no Default is continuing at the Proposed Payment Date and no Default would result from the payment or distribution;

**"PNC Debt"** means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Security Obligors to PNC;

**"PNC Floating Charges"** means all and any floating charges comprised within the PNC Security which are qualifying floating charges within the meaning of paragraph 14 of schedule B1 to the Insolvency Act 1986;

**"PNC Security"** means all fixed and floating charges and other guarantee or security documents (including, without limitation, the security listed in part 1 of schedule 2 (*Finance Documents*)) which are from time to time entered into by the Security Obligors (or any of them) in favour of PNC as security for, or guaranteeing, any or all of the PNC Debt;

**"Real Property"** shall have the meaning given to it in the PNC Security;

**"Real Property Insurances"** shall have the meaning given to it in the PNC Security;

**"Security Interest"** means any mortgage charge or security (whether fixed or floating), pledge, lien, hypothecation, trust, trust arrangement for the purposes of providing security, assignment, assignment by way of security, tracing or other equitable right, or:

- (a) any other agreement or arrangement having the effect of conferring security (including any such interest arising under or in connection with any letter of credit;
- (b) any other security interest of any kind or preferring any obligation of any person; or
- (c) any other guarantee, indemnity, warranty, agreement or arrangement having the effect of conferring security;

**"Security Trust Deed"** means the security trust deed dated on or about the date of this Deed between the Lenders;

**"Subordinated Creditor"** means each Lender, the Intra Group Lender, the Security Trustee and each Shareholder (together, the **"Subordinated Creditors"**);

**"Subordinated Creditor Debt"** means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Security Obligors to the Subordinated Creditors pursuant to the Subordinated Creditor Documents;

**"Subordinated Creditor Documents"** means the Parent Loan Agreement, the Shareholder Loan Agreement and any other document in connection with the Subordinated Creditor Security or which would obligate a Security Obligor to make a dividend payment contrary to the terms of this Deed;

**"Subordinated Creditor Floating Charges"** means all and any floating charges comprised within the Subordinated Creditor Security which are qualifying floating charges within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986; and

**"Subordinated Creditor Security"** means all fixed and floating charges and other guarantee or security documents (including, without limitation, the security listed in part 2 of schedule 2 (*Finance Documents*)) which are from time to time entered into by the Security Obligors (or any of them) in favour of a Subordinated Creditor as security for, or guaranteeing, any or all of the Subordinated Creditor Debt.

## 1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Intercreditor Deed to:
  - (i) defined parties shall be construed (subject to the provisions of clause 19 (*Amendment*)) so as to include their respective successors in title, permitted transferees and permitted assigns (whether immediate or derivative);
  - (ii) **"this Intercreditor Deed"** includes any document expressed to be supplemental to this Intercreditor Deed or expressed to be collateral with it or which is entered into pursuant to or in accordance with the provisions of this Intercreditor Deed;
  - (iii) any other documents shall be references to such documents as amended and/or restated from time to time and be deemed to include any instruments amending, varying, supplementing, novating or replacing the terms thereof from time to time (in each case where any necessary consents or waivers have been obtained pursuant to the terms of the Master Facilities Agreement or this Intercreditor Deed);
  - (iv) any statute or statutes or section or sections of any statute shall be deemed to be a reference to legislation of the United Kingdom or any statutory modification, re-enactment or replacement of it for the time being in force; and
  - (v) the singular includes the plural and vice versa.

- (b) References to schedules and clauses are to the schedules and clauses of or to this Intercreditor Deed.
- (c) Clause and schedule headings are for convenience only and shall not affect the construction of this Intercreditor Deed.

### **1.3 Conflict**

In the event of any conflict or inconsistency arising between any of the provisions of this Intercreditor Deed and all or any of the provisions of the Creditor Securities, the provisions of this Intercreditor Deed shall prevail.

## **2. PURPOSE OF THIS INTERCREDITOR DEED**

### **2.1 Agreement to regulate claims**

Each of the Creditors agrees to regulate certain matters relating to any Creditor Security and any Debt in the manner set out in this Intercreditor Deed.

### **2.2 Purpose**

Each Security Obligor:

- (a) enters into this Intercreditor Deed for the purpose of acknowledging the arrangements between the Creditors and regulating their respective claims against the Security Obligors; and
- (b) in furtherance thereof irrevocably waives any rights which it may now or in the future have to challenge or have set aside any arrangement agreed between the Creditors (or any of them).

### **2.3 Security Obligors not beneficiaries of Creditor undertakings**

None of the undertakings in this Intercreditor Deed on the part of any Creditor is given to or for the benefit of the Security Obligors or shall be enforceable by any of the Security Obligors.

### **2.4 Security Obligor undertaking**

- (a) Each of the parties to this Intercreditor Deed agree to enter into a separate ranking agreement in connection with the grant of any security interest over any heritable property situated in Scotland, recording the same priority arrangements as set out in this Intercreditor Deed.
- (b) Each of the Security Obligors undertakes to each of the Creditors to observe the provisions of this Intercreditor Deed at all times and not in any way to prejudice or affect the enforcement of such provisions or the subordinations contemplated by this Intercreditor Deed or to do or suffer anything to be done which would be a breach of the terms of this Intercreditor Deed.

### **3. MASTER FACILITIES AGREEMENT**

#### **3.1 Acknowledgement**

Each party hereto acknowledges and agrees that, in determining the PNC Debt, PNC shall be entitled at all times to operate any composite accounting or netting arrangements available to it to establish the net indebtedness due to it from the Security Obligors (or any of them) by exercising any rights of set-off or combination of accounts in priority to any security rights of a Subordinated Creditor.

#### **3.2 A/R release**

(a) Each Subordinated Creditor:

- (i) acknowledges that pursuant to the terms of the Master Facilities Agreement the Obligor has assigned its A/R to PNC and the proceeds of certain A/R may be held on trust by the Obligor for PNC;
- (ii) consents to the Obligor having entered into the Master Facilities Agreement; and
- (iii) agrees that all A/R which (A) are or shall be vested in PNC, or (B) held on trust for PNC by virtue of the terms of the Master Facilities Agreement are (if subject to a security assignment) re-assigned to the Obligor and in any event released from the Subordinated Creditor Security.

(b) For the avoidance of doubt and subject to the terms of this Intercreditor Deed, the Subordinated Creditor Security shall remain in full force and effect in relation to any A/R which may at any time be re-assigned by PNC to the Obligor.

(c) The application of any charge created by the Subordinated Creditor Security to any sums due from PNC to the Obligors from time to time shall be subject to all or any rights or defence or set-off or combination of accounts whether actual or contingent which PNC may have against the Security Obligors at any time.

#### **3.3 Proceeds of A/R**

For the avoidance of doubt, each of the parties to this Intercreditor Deed acknowledge and agree that the proceeds of any A/R created before or after the enforcement of any Subordinated Creditor Security constitute a realisation of any A/R payable to PNC in accordance with the terms of the Master Facilities Agreement or this Intercreditor Deed, and such proceeds are not a realisation of any other asset of the Obligor.

### **4. COMPLIANCE WITH COVENANTS**

Each of the Security Obligors shall observe and perform all the covenants in the PNC Security relating to its assets charged pursuant to such security.

### **5. RANKING OF DEBT**

The PNC Debt shall rank in priority to the Subordinated Creditor Debt.

## **6. APPLICATION OF RECOVERIES**

### **6.1 Application of recoveries**

Subject to the rights of any prior or preferential encumbrancers or creditors, and save as provided by law, the net proceeds of enforcement of the security conferred by the Creditor Securities, all recoveries by a Creditor pursuant to the Creditor Securities and all amounts paid to a Creditor under this Intercreditor Deed shall be applied in the following order:

- (a) firstly, in payment of all costs, charges and expenses incurred by or on behalf of PNC or any Receiver appointed under the Creditor Securities (or any part of them) and of the remuneration of the Receiver in connection with such enforcement;
- (b) secondly, in payment of all costs, charges and expenses incurred by or on behalf of PNC in connection with such enforcement;
- (c) thirdly, in payment to PNC for application towards discharge of the PNC Debt;
- (d) fourthly, in payment to the Subordinated Creditors for application towards discharge of the Subordinated Creditor Debt; and
- (e) lastly, in payment of the surplus (if any) to the Security Obligor concerned or other person entitled thereto.

### **6.2 No default under Creditor Securities**

Each of the Creditors agrees and acknowledges that no Security Obligor shall be deemed to be in default under any of the provisions of a Creditor Security to the extent that any such Security Obligor is at such time in compliance with the relevant provisions in the PNC Security.

### **6.3 Continuing security**

Subject to the provisions of this Intercreditor Deed, the PNC Security and the Subordinated Creditor Security shall rank as continuing securities 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 monies, obligations and liabilities from time to time due, owing or incurred to PNC or a Subordinated Creditor or by the existence at any time of a credit balance on any current or other account of PNC or a Subordinated Creditor.

## **7. ENFORCEMENT OF CREDITOR SECURITIES**

### **7.1 Enforcement**

Each Subordinated Creditor hereby irrevocably undertakes in favour of PNC that no Subordinated Creditor will take any Enforcement Action in relation to any Subordinated Creditor Security without the prior written consent of PNC.

### **7.2 Consultation and co-operation**

Subject to clause 7.1 above, the Creditors shall consult and co-operate with each other to the intent (without any requirement) that:

- (a) the Creditor Securities shall so far as practicable be enforced by the same method and at the same time;
- (b) in the case of an appointment of a receiver by a Creditor under its Creditor Security, the same person(s) shall be appointed by the other Creditor (if that other Creditor also wishes to make such an appointment).

### **7.3 Notice**

Subject to clause 7.1 above, if either Creditor takes any Enforcement Action or otherwise enforces or exercises its Creditor Security it shall promptly give written notice thereof to the other Creditor.

### **7.4 Books and records**

If either Creditor has in its possession the books or records of a Security Obligor it will provide such access to those books or records as may reasonably be required by a receiver appointed by the other Creditor.

## **8. RANKING OF FLOATING CHARGES**

### **8.1 Priority**

For the purposes of the Insolvency Act 1986 (as amended from time to time) each Subordinated Creditor confirms for the benefit of PNC that the PNC Floating Charges have priority over the Subordinated Creditor Floating Charges, notwithstanding the date of creation of such floating charges.

### **8.2 Notice**

Without prejudice to the priority accorded to the PNC Floating Charges by clause 6.1 (*Priority*) of this Intercreditor Deed and insofar as the Subordinated Creditor Floating Charges (or any of them) are prior floating charges within the meaning of paragraph 15 of schedule B1 to the Insolvency Act 1986 each Subordinated Creditor hereby irrevocably waives its right to receive any notice that PNC may be obliged to give in accordance with that paragraph and consents to the appointment of an administrator by PNC.

### **8.3 Other**

For the avoidance of doubt, nothing contained within this Intercreditor Deed is intended to rank any floating charge contained within the Creditor Securities before any fixed charge within the Creditor Securities.

## **9. INTENTIONALLY BLANK**

## **10. UNDERTAKINGS**

### **10.1 No Security Obligor shall (and no Subordinated Creditor will permit or require any Security Obligor to):**

- (a) secure or grant any Security Interest for all or any part of any of the Subordinated Creditor Debt other than



- (i) the Security Interests created by the Subordinated Creditor Security detailed in part 1 of schedule 2, or
    - (ii) with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed;
  - (b) without prejudice to clause 1.2, amend or seek to amend any of the Subordinated Creditor Documents or any other agreement directly connected thereto, except with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed) in a manner that would:
    - (i) result in an increase in the amount of, or acceleration of the timing of, any payments due to be made by the Security Obligors under any such document other than by way of a Permitted Payment provided always that this shall not prejudice or affect the revolving nature of the Inventory Facility (as defined in the Master Facility Agreement) to be provided to the Obligor by PNC; or
    - (ii) otherwise adversely affect the interests of PNC;
  - (c) pay, prepay, redeem, purchase or otherwise acquire any of the Subordinated Creditor Debt, other than the Permitted Payments, or with the prior written consent of PNC.
- 10.2 Except with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed), each Subordinated Creditor undertakes to PNC that it shall not take, accept or receive the benefit of any Security Interest or other security interest from the Security Obligors or any other member of the Group in respect of the Subordinated Creditor Debt or otherwise.
- 10.3 Except with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed), the Subordinated Creditor undertakes to PNC that it shall not amend or seek to amend any of the Subordinated Creditor Documents or any other agreement directly connected thereto in a manner that would:
- (a) result in an increase in the amount of, or acceleration of the timing of, any payments due to be made by the Security Obligors under any such documents other than by way of a Permitted Payment; or
  - (b) otherwise adversely affect the interests of PNC.

## **11. PERMITTED PAYMENTS AND CLAWBACKS**

- 11.1 No Security Obligor shall be permitted to make (and no Subordinated Creditor shall be entitled to receive and retain) any payment to a Subordinated Creditor, including without limitation:
- (a) any dividend;
  - (b) any repayment of principal or interest;
  - (c) any prepayment of principal or interest; or
  - (d) any fee,

in respect of the Subordinated Creditor Debt and Subordinated Creditor Documents, except for the Permitted Payments defined in this Intercreditor Deed which are subject at all times to the Permitted Payment Conditions.

- 11.2 If a Subordinated Creditor receives a payment in respect of any Subordinated Creditor Debt from a Security Obligor which is not a Permitted Payment or otherwise in breach of this Intercreditor Deed, it shall hold such sums absolutely on trust for PNC to be paid to PNC within 2 Business Days of receipt by it unless PNC first confirms in writing to the relevant recipient that such payment made be retained by it.
- 11.3 Any monies received by a Subordinated Creditor and repaid by that Subordinated Creditor under clause 11.2 shall be deemed never to have been paid by the relevant Security Obligor to that Subordinated Creditor.

## **12. SUBORDINATION COVENANTS**

### **12.1 Subject to clause 7.1:**

- (a) a Subordinated Creditor or any agent or trustee on behalf of it will not ask, demand, sue, claim, take or receive from the Security Obligors, by cash receipt, set-off or in any other manner whatsoever, the whole or any part of the Subordinated Creditor Debt other than to take or receive from the Security Obligors the Permitted Payments in accordance with this Intercreditor Deed;
- (b) in respect of the Subordinated Creditor Debt, a Subordinated Creditor or any agent or trustee on behalf of any of it will not petition or apply for or vote in favour of any resolution or take any other steps for the winding-up, dissolution or administration of any of the Security Obligors including the service of a statutory demand or the presentation of a petition of the exercise by any company in the Group of any of its rights as the legal or beneficial holders of shares in any other Group company to call for or to vote in favour of the winding up of any Security Obligor;
- (c) in respect of the Subordinated Creditor Debt, a Subordinated Creditor or an agent or trustee on behalf of any of them shall not obtain or enforce any judgment in respect of any sums due and owing to it by the Security Obligors;
- (d) a Subordinated Creditor or any agent or trustee on behalf of any of it shall not call or enforce (or take any steps to do so) any of the Subordinated Creditor Debt or otherwise exercise its rights and powers in relation thereto against the Security Obligors to the extent that to do so would result in a Default occurring or any event of default or similar event occurring under any other of the PNC Documents except with the prior written consent of PNC; and
- (e) a Subordinated Creditor shall procure that its agents, trustees and/or nominee(s), shall comply with the provisions of this clause 12.

- 12.2 Promptly after a Subordinated Creditor becomes aware of the occurrence of any event which entitles any of them to demand repayment of any liability owed to it by a Security Obligor, it shall notify PNC in writing of that event.

### 13. SUBORDINATION ON INSOLVENCY

#### 13.1 If:

- (a) there occurs any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of any of the Security Obligors or the proceeds thereof, to creditors of any of the Security Obligors by reason of the liquidation, dissolution or other winding-up of any of the Security Obligors or its businesses or any sale, receivership or insolvency or assignment for the benefit of creditors; or
- (b) any of the Security Obligors goes into liquidation or becomes subject to any insolvency or rehabilitation proceeding, administration or voluntary arrangement or any proceeding similar to any of the foregoing,

then:

- (i) the Subordinated Creditor Debt shall thereupon immediately be postponed and subordinated to the PNC Debt and each Subordinated Creditor will file any proof or other claim necessary for the recovery of the Subordinated Debt;
- (ii) any payment or distribution of any kind or character and all and any rights in respect thereof, whether in cash, securities or other property which is payable or deliverable upon or with respect to the Subordinated Creditor Debt or any part thereof by a liquidator, administrator or receiver (or the equivalent thereof) of any of the Security Obligors or its estate made to or paid to, or received by a Subordinated Creditor shall be held in trust by the recipient for PNC and shall forthwith be paid or, as required by PNC transferred or assigned to PNC for application in accordance with clause 6.1; and
- (iii) if the trust referred to in clause 13.1(b)(ii) above fails to cannot be given effect, a Subordinated Creditor (so as also to bind any agent or trustee on its behalf) receiving any such payment or distribution will pay an amount equal to such payment or distribution to PNC upon demand by PNC for application in accordance with clause 6.1.

#### 13.2 Following such event noted in clause 13.1 above:

- (a) each Subordinated Creditor irrevocably authorises and empowers PNC to demand, sue and prove for, collect and receive every payment or distribution referred to in clause 13.1 and give acquittance thereof to file claims and take such other proceedings, in PNC's own name or in the name of the Subordinated Creditor or otherwise, as PNC may deem necessary (acting reasonably) for the enforcement of this Intercreditor Deed;
- (b) each Subordinated Creditor will execute and deliver to PNC such powers of attorney, assignments or other instruments as may be requested by PNC in order to enable PNC to enforce any and all claims upon or with respect to the Subordinated Creditor Debt or any part thereof and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or with respect to the

Subordinated Creditor Debt or any part thereof in accordance with the terms of this Intercreditor Deed; and

- (c) the liquidator, administrator or other insolvency representative or trustee of any of the Security Obligors or the estate is hereby authorised by the Subordinated Creditor and PNC to apply any assets or monies received by them in accordance with the terms of this Intercreditor Deed.

#### **14. SET-OFF**

No Subordinated Creditor shall set off any liability of any Security Obligor to it against any amount payable by that Subordinated Creditor to any Security Obligor. If any part of the Subordinated Creditor Debt is discharged in whole or in part by way of set-off, that Subordinated Creditor will promptly pay to PNC for application against the PNC Debt an amount equal to the amount discharged by such set-off.

#### **15. CONSENT AND WAIVER**

##### **15.1 Consent**

Each of the Creditors hereby consents to the creation and continuance of the PNC Security and the Subordinated Creditor Security.

##### **15.2 Waiver of defences**

The subordination provisions in this Intercreditor Deed and the obligations of the Creditors and the Security Obligors under this Intercreditor Deed will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release, prejudice or otherwise exonerate the subordination hereunder or any of those obligations in whole or in part, including, without limitation:

- (a) any time or waiver granted to, or composition with, a Security Obligor or other person; or
- (b) 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 Security Obligor or any other person under the documentation evidencing the Creditor Securities or otherwise or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security; or
- (c) any legal limitation, unenforceability, illegality or invalidity of any obligation of a Security Obligor or any other person, or any Creditor Security or any other document or security or subject to this Intercreditor Deed, any amendment or variation of the terms of the PNC Documents or the Subordinated Creditor Documents or any other document.

##### **15.3 Immediate recourse**

Each Subordinated Creditor waives any right it may have of first requiring PNC to proceed against or enforce any other rights or security or claim payment from any person before claiming the benefit of the security conferred by the PNC Security or of the obligations of a Subordinated Creditor under this Intercreditor Deed. PNC may refrain from applying or enforcing any money, rights or security as it deems appropriate.

## **16. REPRESENTATIONS AND WARRANTIES**

Each party to this Intercreditor Deed represents and warrants to and for the benefit of each of the other parties to this Intercreditor Deed that:

- (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power to own its property and assets and carry on its business;
- (b) it has the power to enter into and comply with its obligations under this Intercreditor Deed; and
- (c) it has taken all necessary action to authorise the entry into and compliance with its obligations under this Intercreditor Deed and to ensure that its obligations under this Intercreditor Deed are valid, binding and enforceable on it.

## **17. EFFECT OF THIS INTERCREDITOR DEED**

### **17.1 Limitation**

Nothing contained in this Intercreditor Deed shall:

- (a) require any of the Creditors to make any advance or to provide any facility to the Security Obligors; or
- (b) as between the Security Obligors and either of the Creditors, affect or prejudice any rights or remedies of the Creditors under the Creditor Securities which shall remain in full force and effect according to their tenor as effective security for all monies, obligations and liabilities therein mentioned.

### **17.2 Effect of Intercreditor Deed**

The provisions of this Intercreditor Deed shall regulate the rights and obligations of the parties under the Creditor Securities which shall in all respects take effect and be subject to the provisions of this Intercreditor Deed.

### **17.3 Further advances**

It is agreed and acknowledged by all the parties to this Intercreditor Deed that the Creditors may make further monies available which shall, if so advanced, constitute PNC Debt and Subordinated Creditor Debt, respectively.

## **18. TRUST**

Any payments made to and/or received and/or retained by a Creditor in contravention of the terms of this Intercreditor Deed shall be held on trust for the other Creditor and shall be paid to that other Creditor for application towards that other Creditor's Debt.

## **19. AMENDMENT**

This Intercreditor Deed shall not be varied or amended in any way except in writing signed by all parties other than the Security Obligors.

**20. CHANGES TO THE PARTIES**

**20.1 Successors and assigns**

This Intercreditor Deed shall be binding upon and enure to the benefit of each party hereto and each of their permitted successors and assigns.

**20.2 No transfer by Security Obligors**

No Security Obligor shall be entitled to assign or transfer all or any of its rights, benefits and obligations hereunder.

**20.3 Assignment by Creditors**

No Subordinated Creditor shall assign, transfer, charge or otherwise dispose of any Creditor Security or any of its rights or obligations under any document evidencing any Creditor Security to any person (a "Transferee") or agree or attempt to do so without (a) the prior written consent of the other Creditor, and (b) until the Transferee has executed an Intercreditor Deed on substantially the same terms as this Intercreditor Deed.

**21. INFORMATION**

Each Security Obligor authorises each Creditor to disclose to each other Creditor all information coming into its possession and relating to it or the Group as a whole.

**22. NOTICES**

**22.1 Communications in writing**

All communications to be made under or in connection with this Intercreditor Deed shall be made in writing and, unless otherwise stated, may be made by fax, electronic mail or letter and shall be made or delivered to the relevant person at its address and/or facsimile number and/or electronic mail set out under its name at the end of this Intercreditor Deed, or at such other address and/or facsimile and/or electronic mail as that person may hereafter advise to the other parties to this Intercreditor Deed in writing.

**22.2 Delivery**

Any notice to any person hereunder shall be deemed to have been given:

- (a) if delivered personally, at the time of such delivery;
- (b) if posted, two Business Days following the day on which it was despatched by first class mail (airmail, if appropriate) postage prepaid; and
- (c) if sent by facsimile transmission, when received in legible form,

and any communication or document to be made or delivered to a Creditor will be effective only if it is expressly marked for the attention of the department or officer identified with the execution of that Creditor below (or any substitute department or officer as a Creditor shall specify for this purpose).

If any communication is made by way of electronic mail, any communication between the parties will be effective only when actually received in readable form. Any electronic

communication which becomes effective in accordance with Clause 22.2 after 5pm, shall be deemed only to become effective on the following day.

**23. PARTIAL INVALIDITY**

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

**24. REMEDIES AND WAIVERS**

**24.1 Waiver, rights and remedies**

No failure to exercise, nor any delay in exercising, on the part of a Creditor, any right or remedy under this Intercreditor Deed shall operate as a waiver thereof, 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 Intercreditor Deed are cumulative and not exclusive of any rights or remedies provided by law.

**24.2 Waivers**

A waiver or other consent given by a Creditor under this Intercreditor Deed will be effective if given in writing and then only in the instance and for the purpose for which it is given.

**25. COUNTERPARTS**

This Intercreditor Deed 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 Intercreditor Deed.

**26. THIRD PARTY RIGHTS**

A person who is not a party to this Intercreditor Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Intercreditor Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to such legislation.

**27. GOVERNING LAW AND JURISDICTION**

This Intercreditor Deed and any non-contractual disputes arising out of or in connection with this Intercreditor Deed are governed by the laws of England and Wales. Each party to this Intercreditor Deed irrevocably submits to the jurisdiction of the courts of England and Wales.

**IN WITNESS** of which this Intercreditor Deed has been duly executed by PNC, the Subordinated Creditors, the Obligor, each Security Obligor, the Security Trustee and the Shareholders as a deed and has been delivered on the date specified on page 1 of this Intercreditor Deed.

# SCHEDULE 1

## Parties

### Part 1 - Lenders

Name	Company number	Registered office
Breal Capital Limited	09147981	4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ
Alcyon Capital Limited	08159171	4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ
The Trustees of the Asheton Pension Scheme	N/A	c/o Organon Pension Trustees Limited, Kingsgate, Wellington Road North, Stockport, SK4 1LW

### Part 2 - Obligor

Name	Company number	Registered office
Barclay & Mathieson Limited	SC030987	Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB

### Part 3 - Security Obligors

Name	Company number	Registered office
Clydeside Steel Fabrications Limited	SC034675	Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB
MBM Group Services Limited	09453951	4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ
Barclay & Mathieson Limited	SC030987	Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB



#### Part 4 - Shareholders

Shareholder	Company in which shares are held	Number of shares
Breal Capital Limited (company number 09147981)	MBM Group Services Limited (company number 09453951)	7400 ordinary shares of £50 each
Alcyon Capital Limited (company number 08159171)	MBM Group Services Limited (company number 09453951)	1600 ordinary shares of £50 each
The Trustees of the Asheton Pension Scheme	MBM Group Services Limited (company number 09453951)	1000 ordinary shares of £50 each
MBM Group Services Limited (company number 09453951)	Barclay & Mathieson Limited (company number SC030987)	8,600 ordinary shares of £8,600 each
Barclay & Mathieson Limited (company number SC030987)	Clydeside Steel Fabrications Limited (company number SC034675)	100 ordinary shares of £1 each

## SCHEDULE 2

### Finance Documents

#### Part 1 - PNC Security

Description of PNC Security	Names of Security Obligors granting PNC Security	Date security granted
Composite Guarantee and Debenture	Clydeside Steel Fabrications Limited	On or around the date of this Deed
Composite Guarantee and Debenture	MBM Group Services Limited	On or around the date of this Deed
Composite Guarantee and Debenture	Barclay & Mathieson Limited	On or around the date of this Deed
Scottish Share Pledge	Barclay & Mathieson Limited	On or around the date of this Deed
Scottish Share Pledge	MBM Group Services Limited	On or around the date of this Deed

#### Part 2 - Subordinated Creditor Security

Description of Subordinated Creditor Security	Names of Security Obligors granting Subordinated Creditor Security	Date security granted
All assets debenture	Barclay & Mathieson Limited	On or around the date of this Deed
All assets debenture	MBM Group Services Limited	On or around the date of this Deed

#### Part 3 - Master Facilities Agreement

Name of Obligor	Date of Master Facilities Agreement
Barclay & Mathieson Limited	On or around the date of this Deed

## EXECUTION PAGES

**PNC**

**PNC BUSINESS CREDIT** a trading style of **PNC FINANCIAL SERVICES UK LIMITED**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by **PNC** )  
**BUSINESS CREDIT** a trading style of **PNC** )  
**FINANCIAL SERVICES UK LIMITED** )  
acting by: )

Authorised Signatory

Authorised Signatory

**Address:** PNC House, 34-36 Perrymount Road, Haywards Heath, West Sussex RH16 3DN

**Facsimile No:** 01444 475849

**Attention:** The Directors, PNC Business Credit

## THE LENDERS

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BREAL** )  
**CAPITAL LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the  
first date specified on page 1 by **ALCYON**  
**CAPITAL LIMITED** acting by:

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MICHAEL** )  
**ANTHONY WELDEN** acting as a trustee of )  
the Asheton Pension Scheme for an on behalf of  
**THE TRUSTEES OF THE ASHETON**  
**PENSION SCHEME:**

Duly authorised signatory \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** Organon Pension Trustees Limited,  
Kingsgate, Wellington Road North, Stockport, SK4 1LW

**Facsimile No:** 0161 429 9675

#### **THE OBLIGOR**

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BARCLAY &** )  
**MATHIESON LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

Facsimile No: 020 7447 9001

#### THE INTRA GROUP LENDER

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MBM GROUP** )  
**SERVICES LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

Facsimile No: 020 7447 9001

#### THE SECURITY OBLIGORS

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MBM GROUP** )  
**SERVICES LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

Facsimile No: 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **CLYDESIDE** )  
**STEEL FABRICATIONS LIMITED** acting )  
by:

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

Facsimile No: 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BARCLAY &** )  
**MATHIESON LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

DATED 20 March 2015

(1) PNC BUSINESS CREDIT  
a trading style of PNC FINANCIAL SERVICES UK LTD  
as PNC

(2) THE COMPANIES NAMED IN PART 1 OF SCHEDULE 1  
as Lenders

(3) MBM GROUP SERVICES LIMITED  
as Intra Group Lender

(4) THE COMPANY NAMED IN PART 2 OF SCHEDULE 1  
as Obligor

(5) THE COMPANIES NAMED IN PART 3 OF SCHEDULE 1  
as Security Obligors

(6) BREAL CAPITAL LIMITED  
as Security Trustee for the Lenders

(7) THE COMPANIES NAMED IN PART 4 OF SCHEDULE 1  
as Shareholders

**INTERCREDITOR DEED**

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BARCLAY &** )  
**MATHIESON LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001



Address: 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

Facsimile No: 020 7447 9001

#### THE SECURITY TRUSTEE

Executed as a deed, but not delivered until the  
first date specified on page 1 by **BREAL**  
**CAPITAL LIMITED** acting by:

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

Facsimile No: 020 7447 9001

#### THE SHAREHOLDERS

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BREAL** )  
**CAPITAL LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

Facsimile No: 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **ALCYON** )  
**CAPITAL LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 3 Morelondon Riverside, London SE1  
2RE

**Facsimile No:** 0203 283 4001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MICHAEL** )  
**ANTHONY WELDEN** acting as a trustee of )  
the Asheton Pension Scheme for an on behalf of  
**THE TRUSTEES OF THE ASHETON**  
**PENSION SCHEME:**

Duly authorised signatory \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** Organon Pension Trustees Limited,  
Kingsgate, Wellington Road North, Stockport, SK4 1LW

**Facsimile No:** 0161 429 9675

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MBM GROUP** )  
**SERVICES LIMITED** acting by: )

Director \_\_\_\_\_

Director/Secretary \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

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THIS INTERCREDITOR DEED is made on 20 March

2015

**BETWEEN**

- (1) **PNC BUSINESS CREDIT** a trading style of **PNC FINANCIAL SERVICES UK LTD** a company registered in England and Wales with the number 07341483 and having its registered office at PNC House, 34-36 Perrymount Road, Haywards Heath, West Sussex RH16 3DN ("PNC");
- (2) **THE COMPANIES NAMED IN PART 1 OF SCHEDULE 1** (as "Lenders" and each a "Lender");
- (3) **MBM GROUP SERVICES LIMITED** a company registered in England and Wales with the number 09453951 and having its registered office at 4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ ("Intra Group Lender");
- (4) **THE COMPANY NAMED IN PART 2 OF SCHEDULE 1** (as "Obligor");
- (5) **THE COMPANIES NAMED IN PART 3 OF SCHEDULE 1** (as "Security Obligor");
- (6) **BREAL CAPITAL LIMITED** a company registered in England and Wales with the number 09147981 and having its registered office at 4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ (as security trustee for the Lenders) ("Security Trustee");
- (7) **THE COMPANIES NAMED IN PART 4 OF SCHEDULE 1** (as "Shareholders" and each a "Shareholder").

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Intercreditor Deed:

(a) terms defined in, or construed for the purposes of, the Master Facilities Agreement or the PNC Security have the same meanings when used in this Intercreditor Deed (unless the same are otherwise defined in this Intercreditor Deed); and

(b) the following terms have the following meanings:

"Administrator" has the meaning given to it in Schedule B1 to the Insolvency Act 1986;

"Creditor Securities" means the PNC Security and the Subordinated Creditor Security (any of which is a "Creditor Security");

"Creditors" means PNC and the Subordinated Creditors (each a "Creditor");

"Debt" means the PNC Debt and the Subordinated Creditor Debt;

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

- (a) demand payment, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand all or any part of the Debt; or
- (b) recover all or any part of the Debt (including by exercising any right of set-off or combination of accounts); or
- (c) exercise or enforce directly or indirectly any right against 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 Debt (including under the Creditor Securities); or
- (d) petition or apply for, vote in favour of, or take any other steps or action which may lead to, an Insolvency Event in relation to any member of the Group; or
- (e) commence legal proceedings against any member of the Group;

**"Group"** shall have the meaning given to it in the Master Facilities Agreement;

**"Insolvency Event"** means:

- (a) any resolution is passed or order made for the winding up, liquidation, dissolution, administration or reorganisation of any Security Obligor (save in connection with an amalgamation or reconstruction previously approved in writing by PNC); or
- (b) any Security Obligor becomes subject to any insolvency, bankruptcy, administration, reorganisation, receivership, liquidation, dissolution or other similar proceedings, whether voluntary or involuntary (and whether or not involving insolvency) (save in connection with an amalgamation or reconstruction previously approved in writing by PNC); or
- (c) any Security Obligor assigns its assets, or enters into any arrangement, for the benefit of its creditors generally (other than a solvent reorganisation previously approved by PNC); or
- (d) any Security Obligor becomes subject to any distribution of its assets, or if any analogous event occurs in any jurisdiction; or
- (e) the directors of any Security Obligor take any formal step in relation to obtaining a moratorium or making a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986 or any other suspension of payments with its creditors;

**"Inventory"** shall have the meaning given to it in the PNC Security;

**"Inventory Insurances"** shall have the meaning given to it in the PNC Security;

**"Master Facilities Agreement"** means the master facilities agreement dated the same date as this Intercreditor Deed and made between (1) PNC, (2) Obligor, (3) the Security Obligors, and (4) MBM Group Services Limited (company number 09453951) as Parent, pursuant to which PNC has agreed to make certain accounts receivables facilities and certain asset based lending facilities available to the Obligor;

**"Non-Vesting A/R"** shall have the meaning given to it in the PNC Security;

**"Other Proceeds"** shall have the meaning given to it in the PNC Security;

**"Permitted Payment"** means, subject at all times to the Permitted Payment Conditions:

- (a) a management fee of £20,000 payable monthly by the Obligor to the Parent;
- (b) contingent upon receipt by the Parent of the £20,000 monthly management fee from the Obligor referenced at paragraph (a) above, a payment of £20,000 from the Parent to the Security Trustee;
- (c) interest (at a rate of 10%) payable monthly to the Intra Group Lender pursuant to the terms of the Parent Loan Agreement;
- (d) a fee of £275,000 payable by the Obligor to Breal Consulting Limited (company no. 07976596), payable in one instalment of £175,000 within one calendar month of the Commencement Date and in one instalment of £100,000 upon PNC providing express prior written consent; and
- (e) a fee of £50,000 payable by the Obligor to the Parent on the Commencement Date in relation to the arrangement fee due to the Parent in respect of the Parent Loan Agreement;

**"Permitted Payment Conditions"** means the before any payment outlined in the definition of Permitted Payment may be made on a proposed date (the **"Proposed Payment Date"**), PNC must be satisfied that no Default is continuing at the Proposed Payment Date and no Default would result from the payment or distribution;

**"PNC Debt"** means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Security Obligors to PNC;

**"PNC Floating Charges"** means all and any floating charges comprised within the PNC Security which are qualifying floating charges within the meaning of paragraph 14 of schedule B1 to the Insolvency Act 1986;

**"PNC Security"** means all fixed and floating charges and other guarantee or security documents (including, without limitation, the security listed in part 1 of schedule 2 (*Finance Documents*)) which are from time to time entered into by the Security Obligors (or any of them) in favour of PNC as security for, or guaranteeing, any or all of the PNC Debt;

**"Real Property"** shall have the meaning given to it in the PNC Security;

**"Real Property Insurances"** shall have the meaning given to it in the PNC Security;

**"Security Interest"** means any mortgage charge or security (whether fixed or floating), pledge, lien, hypothecation, trust, trust arrangement for the purposes of providing security, assignment, assignment by way of security, tracing or other equitable right, or:

- (a) any other agreement or arrangement having the effect of conferring security (including any such interest arising under or in connection with any letter of credit;
- (b) any other security interest of any kind or preferring any obligation of any person; or
- (c) any other guarantee, indemnity, warranty, agreement or arrangement having the effect of conferring security;

**"Security Trust Deed"** means the security trust deed dated on or about the date of this Deed between the Lenders;

**"Subordinated Creditor"** means each Lender, the Intra Group Lender, the Security Trustee and each Shareholder (together, the **"Subordinated Creditors"**);

**"Subordinated Creditor Debt"** means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Security Obligors to the Subordinated Creditors pursuant to the Subordinated Creditor Documents;

**"Subordinated Creditor Documents"** means the Parent Loan Agreement, the Shareholder Loan Agreement and any other document in connection with the Subordinated Creditor Security or which would obligate a Security Obligor to make a dividend payment contrary to the terms of this Deed;

**"Subordinated Creditor Floating Charges"** means all and any floating charges comprised within the Subordinated Creditor Security which are qualifying floating charges within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986; and

**"Subordinated Creditor Security"** means all fixed and floating charges and other guarantee or security documents (including, without limitation, the security listed in part 2 of schedule 2 (*Finance Documents*)) which are from time to time entered into by the Security Obligors (or any of them) in favour of a Subordinated Creditor as security for, or guaranteeing, any or all of the Subordinated Creditor Debt.

## 1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Intercreditor Deed to:
- (i) defined parties shall be construed (subject to the provisions of clause 19 (*Amendment*)) so as to include their respective successors in title, permitted transferees and permitted assigns (whether immediate or derivative);
  - (ii) **"this Intercreditor Deed"** includes any document expressed to be supplemental to this Intercreditor Deed or expressed to be collateral with it or which is entered into pursuant to or in accordance with the provisions of this Intercreditor Deed;
  - (iii) any other documents shall be references to such documents as amended and/or restated from time to time and be deemed to include any instruments amending, varying, supplementing, novating or replacing the terms thereof from time to time (in each case where any necessary consents or waivers have been obtained pursuant to the terms of the Master Facilities Agreement or this Intercreditor Deed);
  - (iv) any statute or statutes or section or sections of any statute shall be deemed to be a reference to legislation of the United Kingdom or any statutory modification, re-enactment or replacement of it for the time being in force; and
  - (v) the singular includes the plural and vice versa.

- (b) References to schedules and clauses are to the schedules and clauses of or to this Intercreditor Deed.
- (c) Clause and schedule headings are for convenience only and shall not affect the construction of this Intercreditor Deed.

### **1.3 Conflict**

In the event of any conflict or inconsistency arising between any of the provisions of this Intercreditor Deed and all or any of the provisions of the Creditor Securities, the provisions of this Intercreditor Deed shall prevail.

## **2. PURPOSE OF THIS INTERCREDITOR DEED**

### **2.1 Agreement to regulate claims**

Each of the Creditors agrees to regulate certain matters relating to any Creditor Security and any Debt in the manner set out in this Intercreditor Deed.

### **2.2 Purpose**

Each Security Obligor:

- (a) enters into this Intercreditor Deed for the purpose of acknowledging the arrangements between the Creditors and regulating their respective claims against the Security Obligors; and
- (b) in furtherance thereof irrevocably waives any rights which it may now or in the future have to challenge or have set aside any arrangement agreed between the Creditors (or any of them).

### **2.3 Security Obligors not beneficiaries of Creditor undertakings**

None of the undertakings in this Intercreditor Deed on the part of any Creditor is given to or for the benefit of the Security Obligors or shall be enforceable by any of the Security Obligors.

### **2.4 Security Obligor undertaking**

- (a) Each of the parties to this Intercreditor Deed agree to enter into a separate ranking agreement in connection with the grant of any security interest over any heritable property situated in Scotland, recording the same priority arrangements as set out in this Intercreditor Deed.
- (b) Each of the Security Obligors undertakes to each of the Creditors to observe the provisions of this Intercreditor Deed at all times and not in any way to prejudice or affect the enforcement of such provisions or the subordinations contemplated by this Intercreditor Deed or to do or suffer anything to be done which would be a breach of the terms of this Intercreditor Deed.



## **6. APPLICATION OF RECOVERIES**

### **6.1 Application of recoveries**

Subject to the rights of any prior or preferential encumbrancers or creditors, and save as provided by law, the net proceeds of enforcement of the security conferred by the Creditor Securities, all recoveries by a Creditor pursuant to the Creditor Securities and all amounts paid to a Creditor under this Intercreditor Deed shall be applied in the following order:

- (a) firstly, in payment of all costs, charges and expenses incurred by or on behalf of PNC or any Receiver appointed under the Creditor Securities (or any part of them) and of the remuneration of the Receiver in connection with such enforcement;
- (b) secondly, in payment of all costs, charges and expenses incurred by or on behalf of PNC in connection with such enforcement;
- (c) thirdly, in payment to PNC for application towards discharge of the PNC Debt;
- (d) fourthly, in payment to the Subordinated Creditors for application towards discharge of the Subordinated Creditor Debt; and
- (e) lastly, in payment of the surplus (if any) to the Security Obligor concerned or other person entitled thereto.

### **6.2 No default under Creditor Securities**

Each of the Creditors agrees and acknowledges that no Security Obligor shall be deemed to be in default under any of the provisions of a Creditor Security to the extent that any such Security Obligor is at such time in compliance with the relevant provisions in the PNC Security.

### **6.3 Continuing security**

Subject to the provisions of this Intercreditor Deed, the PNC Security and the Subordinated Creditor Security shall rank as continuing securities 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 monies, obligations and liabilities from time to time due, owing or incurred to PNC or a Subordinated Creditor or by the existence at any time of a credit balance on any current or other account of PNC or a Subordinated Creditor.

## **7. ENFORCEMENT OF CREDITOR SECURITIES**

### **7.1 Enforcement**

Each Subordinated Creditor hereby irrevocably undertakes in favour of PNC that no Subordinated Creditor will take any Enforcement Action in relation to any Subordinated Creditor Security without the prior written consent of PNC.

### **7.2 Consultation and co-operation**

Subject to clause 7.1 above, the Creditors shall consult and co-operate with each other to the intent (without any requirement) that:

### **3. MASTER FACILITIES AGREEMENT**

#### **3.1 Acknowledgement**

Each party hereto acknowledges and agrees that, in determining the PNC Debt, PNC shall be entitled at all times to operate any composite accounting or netting arrangements available to it to establish the net indebtedness due to it from the Security Obligors (or any of them) by exercising any rights of set-off or combination of accounts in priority to any security rights of a Subordinated Creditor.

#### **3.2 A/R release**

(a) Each Subordinated Creditor:

- (i) acknowledges that pursuant to the terms of the Master Facilities Agreement the Obligor has assigned its A/R to PNC and the proceeds of certain A/R may be held on trust by the Obligor for PNC;
  - (ii) consents to the Obligor having entered into the Master Facilities Agreement; and
  - (iii) agrees that all A/R which (A) are or shall be vested in PNC, or (B) held on trust for PNC by virtue of the terms of the Master Facilities Agreement are (if subject to a security assignment) re-assigned to the Obligor and in any event released from the Subordinated Creditor Security.
- (b) For the avoidance of doubt and subject to the terms of this Intercreditor Deed, the Subordinated Creditor Security shall remain in full force and effect in relation to any A/R which may at any time be re-assigned by PNC to the Obligor.
- (c) The application of any charge created by the Subordinated Creditor Security to any sums due from PNC to the Obligors from time to time shall be subject to all or any rights or defence or set-off or combination of accounts whether actual or contingent which PNC may have against the Security Obligors at any time.

#### **3.3 Proceeds of A/R**

For the avoidance of doubt, each of the parties to this Intercreditor Deed acknowledge and agree that the proceeds of any A/R created before or after the enforcement of any Subordinated Creditor Security constitute a realisation of any A/R payable to PNC in accordance with the terms of the Master Facilities Agreement or this Intercreditor Deed, and such proceeds are not a realisation of any other asset of the Obligor.

### **4. COMPLIANCE WITH COVENANTS**

Each of the Security Obligors shall observe and perform all the covenants in the PNC Security relating to its assets charged pursuant to such security.

### **5. RANKING OF DEBT**

The PNC Debt shall rank in priority to the Subordinated Creditor Debt.

- (i) the Security Interests created by the Subordinated Creditor Security detailed in part 1 of schedule 2, or
    - (ii) with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed;
  - (b) without prejudice to clause 1.2, amend or seek to amend any of the Subordinated Creditor Documents or any other agreement directly connected thereto, except with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed) in a manner that would:
    - (i) result in an increase in the amount of, or acceleration of the timing of, any payments due to be made by the Security Obligors under any such document other than by way of a Permitted Payment provided always that this shall not prejudice or affect the revolving nature of the Inventory Facility (as defined in the Master Facility Agreement) to be provided to the Obligor by PNC; or
    - (ii) otherwise adversely affect the interests of PNC;
  - (c) pay, prepay, redeem, purchase or otherwise acquire any of the Subordinated Creditor Debt, other than the Permitted Payments, or with the prior written consent of PNC.
- 10.2 Except with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed), each Subordinated Creditor undertakes to PNC that it shall not take, accept or receive the benefit of any Security Interest or other security interest from the Security Obligors or any other member of the Group in respect of the Subordinated Creditor Debt or otherwise.
- 10.3 Except with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed), the Subordinated Creditor undertakes to PNC that it shall not amend or seek to amend any of the Subordinated Creditor Documents or any other agreement directly connected thereto in a manner that would:
- (a) result in an increase in the amount of, or acceleration of the timing of, any payments due to be made by the Security Obligors under any such documents other than by way of a Permitted Payment; or
  - (b) otherwise adversely affect the interests of PNC.

## **11. PERMITTED PAYMENTS AND CLAWBACKS**

- 11.1 No Security Obligor shall be permitted to make (and no Subordinated Creditor shall be entitled to receive and retain) any payment to a Subordinated Creditor, including without limitation:
- (a) any dividend;
  - (b) any repayment of principal or interest;
  - (c) any prepayment of principal or interest; or
  - (d) any fee,

- (a) the Creditor Securities shall so far as practicable be enforced by the same method and at the same time;
- (b) in the case of an appointment of a receiver by a Creditor under its Creditor Security, the same person(s) shall be appointed by the other Creditor (if that other Creditor also wishes to make such an appointment).

### **7.3 Notice**

Subject to clause 7.1 above, if either Creditor takes any Enforcement Action or otherwise enforces or exercises its Creditor Security it shall promptly give written notice thereof to the other Creditor.

### **7.4 Books and records**

If either Creditor has in its possession the books or records of a Security Obligor it will provide such access to those books or records as may reasonably be required by a receiver appointed by the other Creditor.

## **8. RANKING OF FLOATING CHARGES**

### **8.1 Priority**

For the purposes of the Insolvency Act 1986 (as amended from time to time) each Subordinated Creditor confirms for the benefit of PNC that the PNC Floating Charges have priority over the Subordinated Creditor Floating Charges, notwithstanding the date of creation of such floating charges.

### **8.2 Notice**

Without prejudice to the priority accorded to the PNC Floating Charges by clause 6.1 (*Priority*) of this Intercreditor Deed and insofar as the Subordinated Creditor Floating Charges (or any of them) are prior floating charges within the meaning of paragraph 15 of schedule B1 to the Insolvency Act 1986 each Subordinated Creditor hereby irrevocably waives its right to receive any notice that PNC may be obliged to give in accordance with that paragraph and consents to the appointment of an administrator by PNC.

### **8.3 Other**

For the avoidance of doubt, nothing contained within this Intercreditor Deed is intended to rank any floating charge contained within the Creditor Securities before any fixed charge within the Creditor Securities.

## **9. INTENTIONALLY BLANK**

## **10. UNDERTAKINGS**

### **10.1 No Security Obligor shall (and no Subordinated Creditor will permit or require any Security Obligor to):**

- (a) secure or grant any Security Interest for all or any part of any of the Subordinated Creditor Debt other than

in respect of the Subordinated Creditor Debt and Subordinated Creditor Documents, except for the Permitted Payments defined in this Intercreditor Deed which are subject at all times to the Permitted Payment Conditions.

- 11.2 If a Subordinated Creditor receives a payment in respect of any Subordinated Creditor Debt from a Security Obligor which is not a Permitted Payment or otherwise in breach of this Intercreditor Deed, it shall hold such sums absolutely on trust for PNC to be paid to PNC within 2 Business Days of receipt by it unless PNC first confirms in writing to the relevant recipient that such payment made be retained by it.
- 11.3 Any monies received by a Subordinated Creditor and repaid by that Subordinated Creditor under clause 11.2 shall be deemed never to have been paid by the relevant Security Obligor to that Subordinated Creditor.

## **12. SUBORDINATION COVENANTS**

### **12.1 Subject to clause 7.1:**

- (a) a Subordinated Creditor or any agent or trustee on behalf of it will not ask, demand, sue, claim, take or receive from the Security Obligors, by cash receipt, set-off or in any other manner whatsoever, the whole or any part of the Subordinated Creditor Debt other than to take or receive from the Security Obligors the Permitted Payments in accordance with this Intercreditor Deed;
- (b) in respect of the Subordinated Creditor Debt, a Subordinated Creditor or any agent or trustee on behalf of any of it will not petition or apply for or vote in favour of any resolution or take any other steps for the winding-up, dissolution or administration of any of the Security Obligors including the service of a statutory demand or the presentation of a petition or the exercise by any company in the Group of any of its rights as the legal or beneficial holders of shares in any other Group company to call for or to vote in favour of the winding up of any Security Obligor;
- (c) in respect of the Subordinated Creditor Debt, a Subordinated Creditor or an agent or trustee on behalf of any of them shall not obtain or enforce any judgment in respect of any sums due and owing to it by the Security Obligors;
- (d) a Subordinated Creditor or any agent or trustee on behalf of any of it shall not call or enforce (or take any steps to do so) any of the Subordinated Creditor Debt or otherwise exercise its rights and powers in relation thereto against the Security Obligors to the extent that to do so would result in a Default occurring or any event of default or similar event occurring under any other of the PNC Documents except with the prior written consent of PNC; and
- (e) a Subordinated Creditor shall procure that its agents, trustees and/or nominee(s), shall comply with the provisions of this clause 12.

- 12.2 Promptly after a Subordinated Creditor becomes aware of the occurrence of any event which entitles any of them to demand repayment of any liability owed to it by a Security Obligor, it shall notify PNC in writing of that event.

### **13. SUBORDINATION ON INSOLVENCY**

13.1 If:

- (a) there occurs any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of any of the Security Obligors or the proceeds thereof, to creditors of any of the Security Obligors by reason of the liquidation, dissolution or other winding-up of any of the Security Obligors or its businesses or any sale, receivership or insolvency or assignment for the benefit of creditors; or
- (b) any of the Security Obligors goes into liquidation or becomes subject to any insolvency or rehabilitation proceeding, administration or voluntary arrangement or any proceeding similar to any of the foregoing,

then:

- (i) the Subordinated Creditor Debt shall thereupon immediately be postponed and subordinated to the PNC Debt and each Subordinated Creditor will file any proof or other claim necessary for the recovery of the Subordinated Debt;
- (ii) any payment or distribution of any kind or character and all and any rights in respect thereof, whether in cash, securities or other property which is payable or deliverable upon or with respect to the Subordinated Creditor Debt or any part thereof by a liquidator, administrator or receiver (or the equivalent thereof) of any of the Security Obligors or its estate made to or paid to, or received by a Subordinated Creditor shall be held in trust by the recipient for PNC and shall forthwith be paid or, as required by PNC transferred or assigned to PNC for application in accordance with clause 6.1; and
- (iii) if the trust referred to in clause 13.1(b)(ii) above fails to cannot be given effect, a Subordinated Creditor (so as also to bind any agent or trustee on its behalf) receiving any such payment or distribution will pay an amount equal to such payment or distribution to PNC upon demand by PNC for application in accordance with clause 6.1.

13.2 Following such event noted in clause 13.1 above:

- (a) each Subordinated Creditor irrevocably authorises and empowers PNC to demand, sue and prove for, collect and receive every payment or distribution referred to in clause 13.1 and give acquittance thereof to file claims and take such other proceedings, in PNC's own name or in the name of the Subordinated Creditor or otherwise, as PNC may deem necessary (acting reasonably) for the enforcement of this Intercreditor Deed;
- (b) each Subordinated Creditor will execute and deliver to PNC such powers of attorney, assignments or other instruments as may be requested by PNC in order to enable PNC to enforce any and all claims upon or with respect to the Subordinated Creditor Debt or any part thereof and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or with respect to the

Subordinated Creditor Debt or any part thereof in accordance with the terms of this Intercreditor Deed; and

- (c) the liquidator, administrator or other insolvency representative or trustee of any of the Security Obligors or the estate is hereby authorised by the Subordinated Creditor and PNC to apply any assets or monies received by them in accordance with the terms of this Intercreditor Deed.

#### **14. SET-OFF**

No Subordinated Creditor shall set off any liability of any Security Obligor to it against any amount payable by that Subordinated Creditor to any Security Obligor. If any part of the Subordinated Creditor Debt is discharged in whole or in part by way of set-off, that Subordinated Creditor will promptly pay to PNC for application against the PNC Debt an amount equal to the amount discharged by such set-off.

#### **15. CONSENT AND WAIVER**

##### **15.1 Consent**

Each of the Creditors hereby consents to the creation and continuance of the PNC Security and the Subordinated Creditor Security.

##### **15.2 Waiver of defences**

The subordination provisions in this Intercreditor Deed and the obligations of the Creditors and the Security Obligors under this Intercreditor Deed will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release, prejudice or otherwise exonerate the subordination hereunder or any of those obligations in whole or in part, including, without limitation:

- (a) any time or waiver granted to, or composition with, a Security Obligor or other person; or
- (b) 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 Security Obligor or any other person under the documentation evidencing the Creditor Securities or otherwise or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security; or
- (c) any legal limitation, unenforceability, illegality or invalidity of any obligation of a Security Obligor or any other person, or any Creditor Security or any other document or security or subject to this Intercreditor Deed, any amendment or variation of the terms of the PNC Documents or the Subordinated Creditor Documents or any other document.

##### **15.3 Immediate recourse**

Each Subordinated Creditor waives any right it may have of first requiring PNC to proceed against or enforce any other rights or security or claim payment from any person before claiming the benefit of the security conferred by the PNC Security or of the obligations of a Subordinated Creditor under this Intercreditor Deed. PNC may refrain from applying or enforcing any money, rights or security as it deems appropriate.

## **16. REPRESENTATIONS AND WARRANTIES**

Each party to this Intercreditor Deed represents and warrants to and for the benefit of each of the other parties to this Intercreditor Deed that:

- (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power to own its property and assets and carry on its business;
- (b) it has the power to enter into and comply with its obligations under this Intercreditor Deed; and
- (c) it has taken all necessary action to authorise the entry into and compliance with its obligations under this Intercreditor Deed and to ensure that its obligations under this Intercreditor Deed are valid, binding and enforceable on it.

## **17. EFFECT OF THIS INTERCREDITOR DEED**

### **17.1 Limitation**

Nothing contained in this Intercreditor Deed shall:

- (a) require any of the Creditors to make any advance or to provide any facility to the Security Obligors; or
- (b) as between the Security Obligors and either of the Creditors, affect or prejudice any rights or remedies of the Creditors under the Creditor Securities which shall remain in full force and effect according to their tenor as effective security for all monies, obligations and liabilities therein mentioned.

### **17.2 Effect of Intercreditor Deed**

The provisions of this Intercreditor Deed shall regulate the rights and obligations of the parties under the Creditor Securities which shall in all respects take effect and be subject to the provisions of this Intercreditor Deed.

### **17.3 Further advances**

It is agreed and acknowledged by all the parties to this Intercreditor Deed that the Creditors may make further monies available which shall, if so advanced, constitute PNC Debt and Subordinated Creditor Debt, respectively.

## **18. TRUST**

Any payments made to and/or received and/or retained by a Creditor in contravention of the terms of this Intercreditor Deed shall be held on trust for the other Creditor and shall be paid to that other Creditor for application towards that other Creditor's Debt.

## **19. AMENDMENT**

This Intercreditor Deed shall not be varied or amended in any way except in writing signed by all parties other than the Security Obligors.



**20. CHANGES TO THE PARTIES**

**20.1 Successors and assigns**

This Intercreditor Deed shall be binding upon and enure to the benefit of each party hereto and each of their permitted successors and assigns.

**20.2 No transfer by Security Obligors**

No Security Obligor shall be entitled to assign or transfer all or any of its rights, benefits and obligations hereunder.

**20.3 Assignment by Creditors**

No Subordinated Creditor shall assign, transfer, charge or otherwise dispose of any Creditor Security or any of its rights or obligations under any document evidencing any Creditor Security to any person (a "Transferee") or agree or attempt to do so without (a) the prior written consent of the other Creditor, and (b) until the Transferee has executed an Intercreditor Deed on substantially the same terms as this Intercreditor Deed.

**21. INFORMATION**

Each Security Obligor authorises each Creditor to disclose to each other Creditor all information coming into its possession and relating to it or the Group as a whole.

**22. NOTICES**

**22.1 Communications in writing**

All communications to be made under or in connection with this Intercreditor Deed shall be made in writing and, unless otherwise stated, may be made by fax, electronic mail or letter and shall be made or delivered to the relevant person at its address and/or facsimile number and/or electronic mail set out under its name at the end of this Intercreditor Deed, or at such other address and/or facsimile and/or electronic mail as that person may hereafter advise to the other parties to this Intercreditor Deed in writing.

**22.2 Delivery**

Any notice to any person hereunder shall be deemed to have been given:

- (a) if delivered personally, at the time of such delivery;
- (b) if posted, two Business Days following the day on which it was despatched by first class mail (airmail, if appropriate) postage prepaid; and
- (c) if sent by facsimile transmission, when received in legible form,

and any communication or document to be made or delivered to a Creditor will be effective only if it is expressly marked for the attention of the department or officer identified with the execution of that Creditor below (or any substitute department or officer as a Creditor shall specify for this purpose).

If any communication is made by way of electronic mail, any communication between the parties will be effective only when actually received in readable form. Any electronic

communication which becomes effective in accordance with Clause 22.2 after 5pm, shall be deemed only to become effective on the following day.

**23. PARTIAL INVALIDITY**

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

**24. REMEDIES AND WAIVERS**

**24.1 Waiver, rights and remedies**

No failure to exercise, nor any delay in exercising, on the part of a Creditor, any right or remedy under this Intercreditor Deed shall operate as a waiver thereof, 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 Intercreditor Deed are cumulative and not exclusive of any rights or remedies provided by law.

**24.2 Waivers**

A waiver or other consent given by a Creditor under this Intercreditor Deed will be effective if given in writing and then only in the instance and for the purpose for which it is given.

**25. COUNTERPARTS**

This Intercreditor Deed 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 Intercreditor Deed.

**26. THIRD PARTY RIGHTS**

A person who is not a party to this Intercreditor Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Intercreditor Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to such legislation.

**27. GOVERNING LAW AND JURISDICTION**

This Intercreditor Deed and any non-contractual disputes arising out of or in connection with this Intercreditor Deed are governed by the laws of England and Wales. Each party to this Intercreditor Deed irrevocably submits to the jurisdiction of the courts of England and Wales.

**IN WITNESS** of which this Intercreditor Deed has been duly executed by PNC, the Subordinated Creditors, the Obligor, each Security Obligor, the Security Trustee and the Shareholders as a deed and has been delivered on the date specified on page 1 of this Intercreditor Deed.

**SCHEDULE 1****Parties****Part 1 - Lenders**

Name	Company number	Registered office
Breal Capital Limited	09147981	4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ
Alcyon Capital Limited	08159171	4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ
The Trustees of the Asheton Pension Scheme	N/A	c/o Organon Pension Trustees Limited, Kingsgate, Wellington Road North, Stockport, SK4 1LW

**Part 2 - Obligor**

Name	Company number	Registered office
Barclay & Mathieson Limited	SC030987	Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB

**Part 3 - Security Obligors**

Name	Company number	Registered office
Clydeside Steel Fabrications Limited	SC034675	Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB
MBM Group Services Limited	09453951	4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ
Barclay & Mathieson Limited	SC030987	Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB

#### Part 4 - Shareholders

Shareholder	Company in which shares are held	Number of shares
Breal Capital Limited (company number 09147981)	MBM Group Services Limited (company number 09453951)	7400 ordinary shares of £50 each
Alcyon Capital Limited (company number 08159171)	MBM Group Services Limited (company number 09453951)	1600 ordinary shares of £50 each
The Trustees of the Asheton Pension Scheme	MBM Group Services Limited (company number 09453951)	1000 ordinary shares of £50 each
MBM Group Services Limited (company number 09453951)	Barclay & Mathieson Limited (company number SC030987)	8,600 ordinary shares of £8,600 each
Barclay & Mathieson Limited (company number SC030987)	Clydeside Steel Fabrications Limited (company number SC034675)	100 ordinary shares of £1 each

## SCHEDULE 2

### Finance Documents

#### Part 1 - PNC Security

Description of PNC Security	Names of Security Obligors granting PNC Security	Date security granted
Composite Guarantee and Debenture	Clydeside Steel Fabrications Limited	On or around the date of this Deed
Composite Guarantee and Debenture	MBM Group Services Limited	On or around the date of this Deed
Composite Guarantee and Debenture	Barclay & Mathieson Limited	On or around the date of this Deed
Scottish Share Pledge	Barclay & Mathieson Limited	On or around the date of this Deed
Scottish Share Pledge	MBM Group Services Limited	On or around the date of this Deed

#### Part 2 - Subordinated Creditor Security

Description of Subordinated Creditor Security	Names of Security Obligors granting Subordinated Creditor Security	Date security granted
All assets debenture	Barclay & Mathieson Limited	On or around the date of this Deed
All assets debenture	MBM Group Services Limited	On or around the date of this Deed

#### Part 3 - Master Facilities Agreement

Name of Obligor	Date of Master Facilities Agreement
Barclay & Mathieson Limited	On or around the date of this Deed

EXECUTION PAGES

PNC

**PNC BUSINESS CREDIT** a trading style of **PNC FINANCIAL SERVICES UK LIMITED**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by **PNC** )  
**BUSINESS CREDIT** a trading style of **PNC** )  
**FINANCIAL SERVICES UK LIMITED** )  
acting by: )

Authorised Signatory \_\_\_\_\_

Authorised Signatory \_\_\_\_\_

**Address:** PNC House, 34-36 Perrymount Road, Haywards Heath, West Sussex RH16 3DN

**Facsimile No:** 01444 475849

**Attention:** The Directors, PNC Business Credit

**THE LENDERS**

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BREAL** )  
**CAPITAL LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the  
first date specified on page 1 by **ALCYON**  
**CAPITAL LIMITED** acting by:

In the presence of:

Witness signature

Witness name

Witness address

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MICHAEL** )  
**ANTHONY WELDON** acting as a trustee of )  
the Asheton Pension Scheme for an on behalf of  
**THE TRUSTEES OF THE ASHETON**  
**PENSION SCHEME:**

Duly authorised signatory \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** Organon Pension Trustees Limited,  
Kingsgate, Wellington Road North, Stockport, SK4 1LW

**Facsimile No:** 0161 429 9675

#### **THE OBLIGOR**

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BARCLAY &** )  
**MATHIESON LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: [◆]

Facsimile No: [◆]

#### THE INTRA GROUP LENDER

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MBM GROUP** )  
**SERVICES LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: [◆]

Facsimile No: [◆]

#### THE SECURITY OBLIGORS

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MBM GROUP** )  
**SERVICES LIMITED** acting by: )



Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: [◆]

Facsimile No: [◆]

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **CLYDESIDE** )  
**STEEL FABRICATIONS LIMITED** acting )  
by:

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: [◆]

Facsimile No: [◆]

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BARCLAY &** )  
**MATHIESON LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: [◆]

Facsimile No: [◆]

### THE SECURITY TRUSTEE

Executed as a deed, but not delivered until the  
first date specified on page 1 by **BREAL**  
**CAPITAL LIMITED** acting by:

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

### THE SHAREHOLDERS

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BREAL** )  
**CAPITAL LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **ALCYON** )  
**CAPITAL LIMITED** acting by: )

Director

In the presence of:

Witness signature

Witness name

Witness address

**Address:** 3 More London Riverside, London SE1  
2RE

**Facsimile No:** 0203 283 4001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MICHAEL** )  
**ANTHONY WELDON** acting as a trustee of )  
the Asheton Pension Scheme for an on behalf of  
**THE TRUSTEES OF THE ASHETON**  
**PENSION SCHEME:**

Duly authorised signatory \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** Organon Pension Trustees Limited,  
Kingsgate, Wellington Road North, Stockport, SK4 1LW

**Facsimile No:** 0161 429 9675

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MBM GROUP** )  
**SERVICES LIMITED** acting by: )

Director \_\_\_\_\_

Director/Secretary \_\_\_\_\_

**Address:** [◆]

**Facsimile No:** [◆]

Executed as a deed, but not delivered until the )

first date specified on page 1 by BARCLAY & )  
MATHESON LIMITED acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

Address: [◆]

Facsimile No: [◆]

MULTI OBLIGOR INTERCREDITOR FOR USE WITH MFA

DATED 20 March 2015

(1) PNC BUSINESS CREDIT  
a trading style of PNC FINANCIAL SERVICES UK LTD  
as PNC

(2) THE COMPANIES NAMED IN PART 1 OF SCHEDULE 1  
as Lenders

(3) MBM GROUP SERVICES LIMITED  
as Intra Group Lender

(4) THE COMPANY NAMED IN PART 2 OF SCHEDULE 1  
as Obligor

(5) THE COMPANIES NAMED IN PART 3 OF SCHEDULE 1  
as Security Obligors

(6) BREAL CAPITAL LIMITED  
as Security Trustee for the Lenders

(7) THE COMPANIES NAMED IN PART 4 OF SCHEDULE 1  
as Shareholders

**INTERCREDITOR DEED**

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THIS INTERCREDITOR DEED is made on

20<sup>th</sup> March

2015

**BETWEEN**

- (1) **PNC BUSINESS CREDIT** a trading style of **PNC FINANCIAL SERVICES UK LTD** a company registered in England and Wales with the number 07341483 and having its registered office at PNC House, 34-36 Perrymount Road, Haywards Heath, West Sussex RH16 3DN ("PNC");
- (2) **THE COMPANIES NAMED IN PART 1 OF SCHEDULE 1** (as "Lenders" and each a "Lender");
- (3) **MBM GROUP SERVICES LIMITED** a company registered in England and Wales with the number 09453951 and having its registered office at 4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ ("Intra Group Lender");
- (4) **THE COMPANY NAMED IN PART 2 OF SCHEDULE 1** (as "Obligor");
- (5) **THE COMPANIES NAMED IN PART 3 OF SCHEDULE 1** (as "Security Obligors");
- (6) **BREAL CAPITAL LIMITED** a company registered in England and Wales with the number 09147981 and having its registered office at 4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ (as security trustee for the Lenders) ("Security Trustee");
- (7) **THE COMPANIES NAMED IN PART 4 OF SCHEDULE 1** (as "Shareholders" and each a "Shareholder").

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Intercreditor Deed:

- (a) terms defined in, or construed for the purposes of, the Master Facilities Agreement or the PNC Security have the same meanings when used in this Intercreditor Deed (unless the same are otherwise defined in this Intercreditor Deed); and

- (b) the following terms have the following meanings:

**"Administrator"** has the meaning given to it in Schedule B1 to the Insolvency Act 1986;

**"Creditor Securities"** means the PNC Security and the Subordinated Creditor Security (any of which is a "Creditor Security");

**"Creditors"** means PNC and the Subordinated Creditors (each a "Creditor");

**"Debt"** means the PNC Debt and the Subordinated Creditor Debt;

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

- (a) demand payment, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand all or any part of the Debt; or
- (b) recover all or any part of the Debt (including by exercising any right of set-off or combination of accounts); or
- (c) exercise or enforce directly or indirectly any right against 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 Debt (including under the Creditor Securities); or
- (d) petition or apply for, vote in favour of, or take any other steps or action which may lead to, an Insolvency Event in relation to any member of the Group; or
- (e) commence legal proceedings against any member of the Group;

**"Group"** shall have the meaning given to it in the Master Facilities Agreement;

**"Insolvency Event"** means:

- (a) any resolution is passed or order made for the winding up, liquidation, dissolution, administration or reorganisation of any Security Obligor (save in connection with an amalgamation or reconstruction previously approved in writing by PNC); or
- (b) any Security Obligor becomes subject to any insolvency, bankruptcy, administration, reorganisation, receivership, liquidation, dissolution or other similar proceedings, whether voluntary or involuntary (and whether or not involving insolvency) (save in connection with an amalgamation or reconstruction previously approved in writing by PNC); or
- (c) any Security Obligor assigns its assets, or enters into any arrangement, for the benefit of its creditors generally (other than a solvent reorganisation previously approved by PNC); or
- (d) any Security Obligor becomes subject to any distribution of its assets, or if any analogous event occurs in any jurisdiction; or
- (e) the directors of any Security Obligor take any formal step in relation to obtaining a moratorium or making a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986 or any other suspension of payments with its creditors;

**"Inventory"** shall have the meaning given to it in the PNC Security;

**"Inventory Insurances"** shall have the meaning given to it in the PNC Security;

**"Master Facilities Agreement"** means the master facilities agreement dated the same date as this Intercreditor Deed and made between (1) PNC, (2) Obligor, (3) the Security Obligors, and (4) MBM Group Services Limited (company number 09453951) as Parent, pursuant to which PNC has agreed to make certain accounts receivables facilities and certain asset based lending facilities available to the Obligor;

**"Non-Vesting A/R"** shall have the meaning given to it in the PNC Security;

**"Other Proceeds"** shall have the meaning given to it in the PNC Security;



**"Permitted Payment"** means, subject at all times to the Permitted Payment Conditions:

- (a) a management fee of £20,000 payable monthly by the Obligor to the Parent;
- (b) contingent upon receipt by the Parent of the £20,000 monthly management fee from the Obligor referenced at paragraph (a) above, a payment of £20,000 from the Parent to the Security Trustee;
- (c) interest (at a rate of 10%) payable monthly to the Intra Group Lender pursuant to the terms of the Parent Loan Agreement;
- (d) a fee of £275,000 payable by the Obligor to Breal Consulting Limited (company no. 07976596), payable in one instalment of £175,000 within one calendar month of the Commencement Date and in one instalment of £100,000 upon PNC providing express prior written consent; and
- (e) a fee of £50,000 payable by the Obligor to the Parent on the Commencement Date in relation to the arrangement fee due to the Parent in respect of the Parent Loan Agreement;

**"Permitted Payment Conditions"** means the before any payment outlined in the definition of Permitted Payment may be made on a proposed date (the **"Proposed Payment Date"**), PNC must be satisfied that no Default is continuing at the Proposed Payment Date and no Default would result from the payment or distribution;

**"PNC Debt"** means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Security Obligors to PNC;

**"PNC Floating Charges"** means all and any floating charges comprised within the PNC Security which are qualifying floating charges within the meaning of paragraph 14 of schedule B1 to the Insolvency Act 1986;

**"PNC Security"** means all fixed and floating charges and other guarantee or security documents (including, without limitation, the security listed in part 1 of schedule 2 (*Finance Documents*)) which are from time to time entered into by the Security Obligors (or any of them) in favour of PNC as security for, or guaranteeing, any or all of the PNC Debt;

**"Real Property"** shall have the meaning given to it in the PNC Security;

**"Real Property Insurances"** shall have the meaning given to it in the PNC Security;

**"Security Interest"** means any mortgage charge or security (whether fixed or floating), pledge, lien, hypothecation, trust, trust arrangement for the purposes of providing security, assignment, assignment by way of security, tracing or other equitable right, or:

- (a) any other agreement or arrangement having the effect of conferring security (including any such interest arising under or in connection with any letter of credit;
- (b) any other security interest of any kind or preferring any obligation of any person; or
- (c) any other guarantee, indemnity, warranty, agreement or arrangement having the effect of conferring security;

**"Security Trust Deed"** means the security trust deed dated on or about the date of this Deed between the Lenders;

**"Subordinated Creditor"** means each Lender, the Intra Group Lender, the Security Trustee and each Shareholder (together, the **"Subordinated Creditors"**);

**"Subordinated Creditor Debt"** means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Security Obligors to the Subordinated Creditors pursuant to the Subordinated Creditor Documents;

**"Subordinated Creditor Documents"** means the Parent Loan Agreement, the Shareholder Loan Agreement and any other document in connection with the Subordinated Creditor Security or which would obligate a Security Obligor to make a dividend payment contrary to the terms of this Deed;

**"Subordinated Creditor Floating Charges"** means all and any floating charges comprised within the Subordinated Creditor Security which are qualifying floating charges within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986; and

**"Subordinated Creditor Security"** means all fixed and floating charges and other guarantee or security documents (including, without limitation, the security listed in part 2 of schedule 2 (*Finance Documents*)) which are from time to time entered into by the Security Obligors (or any of them) in favour of a Subordinated Creditor as security for, or guaranteeing, any or all of the Subordinated Creditor Debt.

## 1.2 Interpretation

(a) Unless a contrary indication appears, any reference in this Intercreditor Deed to:

- (i) defined parties shall be construed (subject to the provisions of clause 19 (*Amendment*)) so as to include their respective successors in title, permitted transferees and permitted assigns (whether immediate or derivative);
- (ii) **"this Intercreditor Deed"** includes any document expressed to be supplemental to this Intercreditor Deed or expressed to be collateral with it or which is entered into pursuant to or in accordance with the provisions of this Intercreditor Deed;
- (iii) any other documents shall be references to such documents as amended and/or restated from time to time and be deemed to include any instruments amending, varying, supplementing, novating or replacing the terms thereof from time to time (in each case where any necessary consents or waivers have been obtained pursuant to the terms of the Master Facilities Agreement or this Intercreditor Deed);
- (iv) any statute or statutes or section or sections of any statute shall be deemed to be a reference to legislation of the United Kingdom or any statutory modification, re-enactment or replacement of it for the time being in force; and
- (v) the singular includes the plural and vice versa.

- (b) References to schedules and clauses are to the schedules and clauses of or to this Intercreditor Deed.
- (c) Clause and schedule headings are for convenience only and shall not affect the construction of this Intercreditor Deed.

### **1.3 Conflict**

In the event of any conflict or inconsistency arising between any of the provisions of this Intercreditor Deed and all or any of the provisions of the Creditor Securities, the provisions of this Intercreditor Deed shall prevail.

## **2. PURPOSE OF THIS INTERCREDITOR DEED**

### **2.1 Agreement to regulate claims**

Each of the Creditors agrees to regulate certain matters relating to any Creditor Security and any Debt in the manner set out in this Intercreditor Deed.

### **2.2 Purpose**

Each Security Obligor:

- (a) enters into this Intercreditor Deed for the purpose of acknowledging the arrangements between the Creditors and regulating their respective claims against the Security Obligors; and
- (b) in furtherance thereof irrevocably waives any rights which it may now or in the future have to challenge or have set aside any arrangement agreed between the Creditors (or any of them).

### **2.3 Security Obligors not beneficiaries of Creditor undertakings**

None of the undertakings in this Intercreditor Deed on the part of any Creditor is given to or for the benefit of the Security Obligors or shall be enforceable by any of the Security Obligors.

### **2.4 Security Obligor undertaking**

- (a) Each of the parties to this Intercreditor Deed agree to enter into a separate ranking agreement in connection with the grant of any security interest over any heritable property situated in Scotland, recording the same priority arrangements as set out in this Intercreditor Deed.
- (b) Each of the Security Obligors undertakes to each of the Creditors to observe the provisions of this Intercreditor Deed at all times and not in any way to prejudice or affect the enforcement of such provisions or the subordinations contemplated by this Intercreditor Deed or to do or suffer anything to be done which would be a breach of the terms of this Intercreditor Deed.

### **3. MASTER FACILITIES AGREEMENT**

#### **3.1 Acknowledgement**

Each party hereto acknowledges and agrees that, in determining the PNC Debt, PNC shall be entitled at all times to operate any composite accounting or netting arrangements available to it to establish the net indebtedness due to it from the Security Obligors (or any of them) by exercising any rights of set-off or combination of accounts in priority to any security rights of a Subordinated Creditor.

#### **3.2 A/R release**

(a) Each Subordinated Creditor:

- (i) acknowledges that pursuant to the terms of the Master Facilities Agreement the Obligor has assigned its A/R to PNC and the proceeds of certain A/R may be held on trust by the Obligor for PNC;
- (ii) consents to the Obligor having entered into the Master Facilities Agreement; and
- (iii) agrees that all A/R which (A) are or shall be vested in PNC, or (B) held on trust for PNC by virtue of the terms of the Master Facilities Agreement are (if subject to a security assignment) re-assigned to the Obligor and in any event released from the Subordinated Creditor Security.

(b) For the avoidance of doubt and subject to the terms of this Intercreditor Deed, the Subordinated Creditor Security shall remain in full force and effect in relation to any A/R which may at any time be re-assigned by PNC to the Obligor.

(c) The application of any charge created by the Subordinated Creditor Security to any sums due from PNC to the Obligors from time to time shall be subject to all or any rights or defence or set-off or combination of accounts whether actual or contingent which PNC may have against the Security Obligors at any time.

#### **3.3 Proceeds of A/R**

For the avoidance of doubt, each of the parties to this Intercreditor Deed acknowledge and agree that the proceeds of any A/R created before or after the enforcement of any Subordinated Creditor Security constitute a realisation of any A/R payable to PNC in accordance with the terms of the Master Facilities Agreement or this Intercreditor Deed, and such proceeds are not a realisation of any other asset of the Obligor.

### **4. COMPLIANCE WITH COVENANTS**

Each of the Security Obligors shall observe and perform all the covenants in the PNC Security relating to its assets charged pursuant to such security.

### **5. RANKING OF DEBT**

The PNC Debt shall rank in priority to the Subordinated Creditor Debt.

## **6. APPLICATION OF RECOVERIES**

### **6.1 Application of recoveries**

Subject to the rights of any prior or preferential encumbrancers or creditors, and save as provided by law, the net proceeds of enforcement of the security conferred by the Creditor Securities, all recoveries by a Creditor pursuant to the Creditor Securities and all amounts paid to a Creditor under this Intercreditor Deed shall be applied in the following order:

- (a) firstly, in payment of all costs, charges and expenses incurred by or on behalf of PNC or any Receiver appointed under the Creditor Securities (or any part of them) and of the remuneration of the Receiver in connection with such enforcement;
- (b) secondly, in payment of all costs, charges and expenses incurred by or on behalf of PNC in connection with such enforcement;
- (c) thirdly, in payment to PNC for application towards discharge of the PNC Debt;
- (d) fourthly, in payment to the Subordinated Creditors for application towards discharge of the Subordinated Creditor Debt; and
- (e) lastly, in payment of the surplus (if any) to the Security Obligor concerned or other person entitled thereto.

### **6.2 No default under Creditor Securities**

Each of the Creditors agrees and acknowledges that no Security Obligor shall be deemed to be in default under any of the provisions of a Creditor Security to the extent that any such Security Obligor is at such time in compliance with the relevant provisions in the PNC Security.

### **6.3 Continuing security**

Subject to the provisions of this Intercreditor Deed, the PNC Security and the Subordinated Creditor Security shall rank as continuing securities 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 monies, obligations and liabilities from time to time due, owing or incurred to PNC or a Subordinated Creditor or by the existence at any time of a credit balance on any current or other account of PNC or a Subordinated Creditor.

## **7. ENFORCEMENT OF CREDITOR SECURITIES**

### **7.1 Enforcement**

Each Subordinated Creditor hereby irrevocably undertakes in favour of PNC that no Subordinated Creditor will take any Enforcement Action in relation to any Subordinated Creditor Security without the prior written consent of PNC.

### **7.2 Consultation and co-operation**

Subject to clause 7.1 above, the Creditors shall consult and co-operate with each other to the intent (without any requirement) that:

- (a) the Creditor Securities shall so far as practicable be enforced by the same method and at the same time;
- (b) in the case of an appointment of a receiver by a Creditor under its Creditor Security, the same person(s) shall be appointed by the other Creditor (if that other Creditor also wishes to make such an appointment).

### **7.3 Notice**

Subject to clause 7.1 above, if either Creditor takes any Enforcement Action or otherwise enforces or exercises its Creditor Security it shall promptly give written notice thereof to the other Creditor.

### **7.4 Books and records**

If either Creditor has in its possession the books or records of a Security Obligor it will provide such access to those books or records as may reasonably be required by a receiver appointed by the other Creditor.

## **8. RANKING OF FLOATING CHARGES**

### **8.1 Priority**

For the purposes of the Insolvency Act 1986 (as amended from time to time) each Subordinated Creditor confirms for the benefit of PNC that the PNC Floating Charges have priority over the Subordinated Creditor Floating Charges, notwithstanding the date of creation of such floating charges.

### **8.2 Notice**

Without prejudice to the priority accorded to the PNC Floating Charges by clause 6.1 (*Priority*) of this Intercreditor Deed and insofar as the Subordinated Creditor Floating Charges (or any of them) are prior floating charges within the meaning of paragraph 15 of schedule B1 to the Insolvency Act 1986 each Subordinated Creditor hereby irrevocably waives its right to receive any notice that PNC may be obliged to give in accordance with that paragraph and consents to the appointment of an administrator by PNC.

### **8.3 Other**

For the avoidance of doubt, nothing contained within this Intercreditor Deed is intended to rank any floating charge contained within the Creditor Securities before any fixed charge within the Creditor Securities.

## **9. INTENTIONALLY BLANK**

## **10. UNDERTAKINGS**

### **10.1 No Security Obligor shall (and no Subordinated Creditor will permit or require any Security Obligor to):**

- (a) secure or grant any Security Interest for all or any part of any of the Subordinated Creditor Debt other than

- (i) the Security Interests created by the Subordinated Creditor Security detailed in part 1 of schedule 2, or
    - (ii) with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed;
  - (b) without prejudice to clause 1.2, amend or seek to amend any of the Subordinated Creditor Documents or any other agreement directly connected thereto, except with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed) in a manner that would:
    - (i) result in an increase in the amount of, or acceleration of the timing of, any payments due to be made by the Security Obligors under any such document other than by way of a Permitted Payment provided always that this shall not prejudice or affect the revolving nature of the Inventory Facility (as defined in the Master Facility Agreement) to be provided to the Obligor by PNC; or
    - (ii) otherwise adversely affect the interests of PNC;
  - (c) pay, prepay, redeem, purchase or otherwise acquire any of the Subordinated Creditor Debt, other than the Permitted Payments, or with the prior written consent of PNC.
- 10.2 Except with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed), each Subordinated Creditor undertakes to PNC that it shall not take, accept or receive the benefit of any Security Interest or other security interest from the Security Obligors or any other member of the Group in respect of the Subordinated Creditor Debt or otherwise.
- 10.3 Except with the prior written consent of PNC (or otherwise as permitted pursuant to this Intercreditor Deed), the Subordinated Creditor undertakes to PNC that it shall not amend or seek to amend any of the Subordinated Creditor Documents or any other agreement directly connected thereto in a manner that would:
- (a) result in an increase in the amount of, or acceleration of the timing of, any payments due to be made by the Security Obligors under any such documents other than by way of a Permitted Payment; or
  - (b) otherwise adversely affect the interests of PNC.

## **11. PERMITTED PAYMENTS AND CLAWBACKS**

- 11.1 No Security Obligor shall be permitted to make (and no Subordinated Creditor shall be entitled to receive and retain) any payment to a Subordinated Creditor, including without limitation:
- (a) any dividend;
  - (b) any repayment of principal or interest;
  - (c) any prepayment of principal or interest; or
  - (d) any fee,

in respect of the Subordinated Creditor Debt and Subordinated Creditor Documents, except for the Permitted Payments defined in this Intercreditor Deed which are subject at all times to the Permitted Payment Conditions.

- 11.2 If a Subordinated Creditor receives a payment in respect of any Subordinated Creditor Debt from a Security Obligor which is not a Permitted Payment or otherwise in breach of this Intercreditor Deed, it shall hold such sums absolutely on trust for PNC to be paid to PNC within 2 Business Days of receipt by it unless PNC first confirms in writing to the relevant recipient that such payment made be retained by it.
- 11.3 Any monies received by a Subordinated Creditor and repaid by that Subordinated Creditor under clause 11.2 shall be deemed never to have been paid by the relevant Security Obligor to that Subordinated Creditor.

## **12. SUBORDINATION COVENANTS**

### **12.1 Subject to clause 7.1:**

- (a) a Subordinated Creditor or any agent or trustee on behalf of it will not ask, demand, sue, claim, take or receive from the Security Obligors, by cash receipt, set-off or in any other manner whatsoever, the whole or any part of the Subordinated Creditor Debt other than to take or receive from the Security Obligors the Permitted Payments in accordance with this Intercreditor Deed;
- (b) in respect of the Subordinated Creditor Debt, a Subordinated Creditor or any agent or trustee on behalf of any of it will not petition or apply for or vote in favour of any resolution or take any other steps for the winding-up, dissolution or administration of any of the Security Obligors including the service of a statutory demand or the presentation of a petition of the exercise by any company in the Group of any of its rights as the legal or beneficial holders of shares in any other Group company to call for or to vote in favour of the winding up of any Security Obligor;
- (c) in respect of the Subordinated Creditor Debt, a Subordinated Creditor or an agent or trustee on behalf of any of them shall not obtain or enforce any judgment in respect of any sums due and owing to it by the Security Obligors;
- (d) a Subordinated Creditor or any agent or trustee on behalf of any of it shall not call or enforce (or take any steps to do so) any of the Subordinated Creditor Debt or otherwise exercise its rights and powers in relation thereto against the Security Obligors to the extent that to do so would result in a Default occurring or any event of default or similar event occurring under any other of the PNC Documents except with the prior written consent of PNC; and
- (e) a Subordinated Creditor shall procure that its agents, trustees and/or nominee(s), shall comply with the provisions of this clause 12.



- 12.2 Promptly after a Subordinated Creditor becomes aware of the occurrence of any event which entitles any of them to demand repayment of any liability owed to it by a Security Obligor, it shall notify PNC in writing of that event.

### **13. SUBORDINATION ON INSOLVENCY**

13.1 If:

- (a) there occurs any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of any of the Security Obligors or the proceeds thereof, to creditors of any of the Security Obligors by reason of the liquidation, dissolution or other winding-up of any of the Security Obligors or its businesses or any sale, receivership or insolvency or assignment for the benefit of creditors; or
- (b) any of the Security Obligors goes into liquidation or becomes subject to any insolvency or rehabilitation proceeding, administration or voluntary arrangement or any proceeding similar to any of the foregoing,

then:

- (i) the Subordinated Creditor Debt shall thereupon immediately be postponed and subordinated to the PNC Debt and each Subordinated Creditor will file any proof or other claim necessary for the recovery of the Subordinated Debt;
- (ii) any payment or distribution of any kind or character and all and any rights in respect thereof, whether in cash, securities or other property which is payable or deliverable upon or with respect to the Subordinated Creditor Debt or any part thereof by a liquidator, administrator or receiver (or the equivalent thereof) of any of the Security Obligors or its estate made to or paid to, or received by a Subordinated Creditor shall be held in trust by the recipient for PNC and shall forthwith be paid or, as required by PNC transferred or assigned to PNC for application in accordance with clause 6.1; and
- (iii) if the trust referred to in clause 13.1(b)(ii) above fails to cannot be given effect, a Subordinated Creditor (so as also to bind any agent or trustee on its behalf) receiving any such payment or distribution will pay an amount equal to such payment or distribution to PNC upon demand by PNC for application in accordance with clause 6.1.

13.2 Following such event noted in clause 13.1 above:

- (a) each Subordinated Creditor irrevocably authorises and empowers PNC to demand, sue and prove for, collect and receive every payment or distribution referred to in clause 13.1 and give acquittance thereof to file claims and take such other proceedings, in PNC's own name or in the name of the Subordinated Creditor or otherwise, as PNC may deem necessary (acting reasonably) for the enforcement of this Intercreditor Deed;
- (b) each Subordinated Creditor will execute and deliver to PNC such powers of attorney, assignments or other instruments as may be requested by PNC in order to enable PNC to enforce any and all claims upon or with respect to the Subordinated Creditor Debt or any part thereof and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or with respect to the

Subordinated Creditor Debt or any part thereof in accordance with the terms of this Intercreditor Deed; and

- (c) the liquidator, administrator or other insolvency representative or trustee of any of the Security Obligors or the estate is hereby authorised by the Subordinated Creditor and PNC to apply any assets or monies received by them in accordance with the terms of this Intercreditor Deed.

#### **14. SET-OFF**

No Subordinated Creditor shall set off any liability of any Security Obligor to it against any amount payable by that Subordinated Creditor to any Security Obligor. If any part of the Subordinated Creditor Debt is discharged in whole or in part by way of set-off, that Subordinated Creditor will promptly pay to PNC for application against the PNC Debt an amount equal to the amount discharged by such set-off.

#### **15. CONSENT AND WAIVER**

##### **15.1 Consent**

Each of the Creditors hereby consents to the creation and continuance of the PNC Security and the Subordinated Creditor Security.

##### **15.2 Waiver of defences**

The subordination provisions in this Intercreditor Deed and the obligations of the Creditors and the Security Obligors under this Intercreditor Deed will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release, prejudice or otherwise exonerate the subordination hereunder or any of those obligations in whole or in part, including, without limitation:

- (a) any time or waiver granted to, or composition with, a Security Obligor or other person; or
- (b) 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 Security Obligor or any other person under the documentation evidencing the Creditor Securities or otherwise or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security; or
- (c) any legal limitation, unenforceability, illegality or invalidity of any obligation of a Security Obligor or any other person, or any Creditor Security or any other document or security or subject to this Intercreditor Deed, any amendment or variation of the terms of the PNC Documents or the Subordinated Creditor Documents or any other document.

##### **15.3 Immediate recourse**

Each Subordinated Creditor waives any right it may have of first requiring PNC to proceed against or enforce any other rights or security or claim payment from any person before claiming the benefit of the security conferred by the PNC Security or of the obligations of a Subordinated Creditor under this Intercreditor Deed. PNC may refrain from applying or enforcing any money, rights or security as it deems appropriate.

## **16. REPRESENTATIONS AND WARRANTIES**

Each party to this Intercreditor Deed represents and warrants to and for the benefit of each of the other parties to this Intercreditor Deed that:

- (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power to own its property and assets and carry on its business;
- (b) it has the power to enter into and comply with its obligations under this Intercreditor Deed; and
- (c) it has taken all necessary action to authorise the entry into and compliance with its obligations under this Intercreditor Deed and to ensure that its obligations under this Intercreditor Deed are valid, binding and enforceable on it.

## **17. EFFECT OF THIS INTERCREDITOR DEED**

### **17.1 Limitation**

Nothing contained in this Intercreditor Deed shall:

- (a) require any of the Creditors to make any advance or to provide any facility to the Security Obligors; or
- (b) as between the Security Obligors and either of the Creditors, affect or prejudice any rights or remedies of the Creditors under the Creditor Securities which shall remain in full force and effect according to their tenor as effective security for all monies, obligations and liabilities therein mentioned.

### **17.2 Effect of Intercreditor Deed**

The provisions of this Intercreditor Deed shall regulate the rights and obligations of the parties under the Creditor Securities which shall in all respects take effect and be subject to the provisions of this Intercreditor Deed.

### **17.3 Further advances**

It is agreed and acknowledged by all the parties to this Intercreditor Deed that the Creditors may make further monies available which shall, if so advanced, constitute PNC Debt and Subordinated Creditor Debt, respectively.

## **18. TRUST**

Any payments made to and/or received and/or retained by a Creditor in contravention of the terms of this Intercreditor Deed shall be held on trust for the other Creditor and shall be paid to that other Creditor for application towards that other Creditor's Debt.

## **19. AMENDMENT**

This Intercreditor Deed shall not be varied or amended in any way except in writing signed by all parties other than the Security Obligors.

## **20. CHANGES TO THE PARTIES**

### **20.1 Successors and assigns**

This Intercreditor Deed shall be binding upon and enure to the benefit of each party hereto and each of their permitted successors and assigns.

### **20.2 No transfer by Security Obligors**

No Security Obligor shall be entitled to assign or transfer all or any of its rights, benefits and obligations hereunder.

### **20.3 Assignment by Creditors**

No Subordinated Creditor shall assign, transfer, charge or otherwise dispose of any Creditor Security or any of its rights or obligations under any document evidencing any Creditor Security to any person (a "Transferee") or agree or attempt to do so without (a) the prior written consent of the other Creditor, and (b) until the Transferee has executed an Intercreditor Deed on substantially the same terms as this Intercreditor Deed.

## **21. INFORMATION**

Each Security Obligor authorises each Creditor to disclose to each other Creditor all information coming into its possession and relating to it or the Group as a whole.

## **22. NOTICES**

### **22.1 Communications in writing**

All communications to be made under or in connection with this Intercreditor Deed shall be made in writing and, unless otherwise stated, may be made by fax, electronic mail or letter and shall be made or delivered to the relevant person at its address and/or facsimile number and/or electronic mail set out under its name at the end of this Intercreditor Deed, or at such other address and/or facsimile and/or electronic mail as that person may hereafter advise to the other parties to this Intercreditor Deed in writing.

### **22.2 Delivery**

Any notice to any person hereunder shall be deemed to have been given:

- (a) if delivered personally, at the time of such delivery;
- (b) if posted, two Business Days following the day on which it was despatched by first class mail (airmail, if appropriate) postage prepaid; and
- (c) if sent by facsimile transmission, when received in legible form,

and any communication or document to be made or delivered to a Creditor will be effective only if it is expressly marked for the attention of the department or officer identified with the execution of that Creditor below (or any substitute department or officer as a Creditor shall specify for this purpose).

If any communication is made by way of electronic mail, any communication between the parties will be effective only when actually received in readable form. Any electronic

communication which becomes effective in accordance with Clause 22.2 after 5pm, shall be deemed only to become effective on the following day.

**23. PARTIAL INVALIDITY**

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

**24. REMEDIES AND WAIVERS**

**24.1 Waiver, rights and remedies**

No failure to exercise, nor any delay in exercising, on the part of a Creditor, any right or remedy under this Intercreditor Deed shall operate as a waiver thereof, 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 Intercreditor Deed are cumulative and not exclusive of any rights or remedies provided by law.

**24.2 Waivers**

A waiver or other consent given by a Creditor under this Intercreditor Deed will be effective if given in writing and then only in the instance and for the purpose for which it is given.

**25. COUNTERPARTS**

This Intercreditor Deed 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 Intercreditor Deed.

**26. THIRD PARTY RIGHTS**

A person who is not a party to this Intercreditor Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Intercreditor Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to such legislation.

**27. GOVERNING LAW AND JURISDICTION**

This Intercreditor Deed and any non-contractual disputes arising out of or in connection with this Intercreditor Deed are governed by the laws of England and Wales. Each party to this Intercreditor Deed irrevocably submits to the jurisdiction of the courts of England and Wales.

**IN WITNESS** of which this Intercreditor Deed has been duly executed by PNC, the Subordinated Creditors, the Obligor, each Security Obligor, the Security Trustee and the Shareholders as a deed and has been delivered on the date specified on page 1 of this Intercreditor Deed.

# SCHEDULE 1

## Parties

### Part 1 - Lenders

Name	Company number	Registered office
Breal Capital Limited	09147981	4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ
Alcyon Capital Limited	08159171	4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ
The Trustees of the Asheton Pension Scheme	N/A	c/o Organon Pension Trustees Limited, Kingsgate, Wellington Road North, Stockport, SK4 1LW

### Part 2 - Obligor

Name	Company number	Registered office
Barclay & Mathieson Limited	SC030987	Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB

### Part 3 - Security Obligors

Name	Company number	Registered office
Clydeside Steel Fabrications Limited	SC034675	Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB
MBM Group Services Limited	09453951	4th Floor, 7/10 Chandos Street, London, United Kingdom W1G 9DQ
Barclay & Mathieson Limited	SC030987	Shieldhall Works, 180 Hardgate Road, Glasgow G51 4TB

**Part 4 - Shareholders**

<b>Shareholder</b>	<b>Company in which shares are held</b>	<b>Number of shares</b>
Breal Capital Limited (company number 09147981)	MBM Group Services Limited (company number 09453951)	7400 ordinary shares of £50 each
Alcyon Capital Limited (company number 08159171)	MBM Group Services Limited (company number 09453951)	1600 ordinary shares of £50 each
The Trustees of the Asheton Pension Scheme	MBM Group Services Limited (company number 09453951)	1000 ordinary shares of £50 each
MBM Group Services Limited (company number 09453951)	Barclay & Mathieson Limited (company number SC030987)	8,600 ordinary shares of £8,600 each
Barclay & Mathieson Limited (company number SC030987)	Clydeside Steel Fabrications Limited (company number SC034675)	100 ordinary shares of £1 each

## SCHEDULE 2

### Finance Documents

#### Part 1 - PNC Security

Description of PNC Security	Names of Security Obligors granting PNC Security	Date security granted
Composite Guarantee and Debenture	Clydeside Steel Fabrications Limited	On or around the date of this Deed
Composite Guarantee and Debenture	MBM Group Services Limited	On or around the date of this Deed
Composite Guarantee and Debenture	Barclay & Mathieson Limited	On or around the date of this Deed
Scottish Share Pledge	Barclay & Mathieson Limited	On or around the date of this Deed
Scottish Share Pledge	MBM Group Services Limited	On or around the date of this Deed

#### Part 2 - Subordinated Creditor Security

Description of Subordinated Creditor Security	Names of Security Obligors granting Subordinated Creditor Security	Date security granted
All assets debenture	Barclay & Mathieson Limited	On or around the date of this Deed
All assets debenture	MBM Group Services Limited	On or around the date of this Deed

#### Part 3 - Master Facilities Agreement

Name of Obligor	Date of Master Facilities Agreement
Barclay & Mathieson Limited	On or around the date of this Deed



**EXECUTION PAGES**

**PNC**

**PNC BUSINESS CREDIT** a trading style of **PNC FINANCIAL SERVICES UK LIMITED**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by **PNC** )  
**BUSINESS CREDIT** a trading style of **PNC** )  
**FINANCIAL SERVICES UK LIMITED** )  
acting by: )

Authorised Signatory \_\_\_\_\_

Authorised Signatory \_\_\_\_\_

**Address:** PNC House, 34-36 Perrymount Road, Haywards Heath, West Sussex RH16 3DN

**Facsimile No:** 01444 475849

**Attention:** The Directors, PNC Business Credit

**THE LENDERS**

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BREAL** )  
**CAPITAL LIMITED** acting by:

Director

In the presence of:

Witness signature \_\_\_\_\_

Witness name

Witness address

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the  
first date specified on page 1 by **ALCYON**  
**CAPITAL LIMITED** acting by:

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MICHAEL** )  
**ANTHONY WELDEN** acting as a trustee of )  
the Asheton Pension Scheme for an on behalf of  
**THE TRUSTEES OF THE ASHETON**  
**PENSION SCHEME:**

Duly authorised signatory,

In the presence of:

Witness signature

Witness name

Witness address

**Address:** Organon Pension Trustees Limited,  
Kingsgate, Wellington Road North, Stockport, SK4 1LW

**Facsimile No:** 0161 429 9675

#### **THE OBLIGOR**

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BARCLAY &** )  
**MATHIESON LIMITED** acting by: )

Director

In the presence of:

Witness signature

Witness name

Witness address

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

#### **THE INTRA GROUP LENDER**

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MBM GROUP** )  
**SERVICES LIMITED** acting by: )

Director

In the presence of:

Witness signature

Witness name

Witness address

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

#### **THE SECURITY OBLIGORS**

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MBM GROUP** )  
**SERVICES LIMITED** acting by: )

Director

In the presence of:

Witness signature

Witness name

Witness address

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **CLYDESIDE** )  
**STEEL FABRICATIONS LIMITED** acting )  
by: /

Director

In the presence of:

Witness signature

Witness name

Witness address

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BARCLAY &** )  
**MATHIESON LIMITED** acting by: )

Director

In the presence of:

Witness signature

Witness name

Witness address

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

#### THE SECURITY TRUSTEE

Executed as a deed, but not delivered until the  
first date specified on page 1 by **BREAL**  
**CAPITAL LIMITED** acting by:

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

#### THE SHAREHOLDERS

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BREAL** )  
**CAPITAL LIMITED** acting by

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **ALCYON** )  
**CAPITAL LIMITED** acting by: )

Director \_\_\_\_\_

In the presence of:

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** 3 Morelondon Riverside, London SE1  
2RE

**Facsimile No:** 0203 283 4001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MICHAEL** )  
**ANTHONY WELDEN** acting as a trustee of )  
the Asheton Pension Scheme for an on behalf of  
**THE TRUSTEES OF THE ASHETON**  
**PENSION SCHEME:** -

Duly authorised signatory ,

In the presence of:


Witness signature 

Witness name \_\_\_\_\_

Witness address \_\_\_\_\_

**Address:** Organon Pension Trustees Limited,  
Kingsgate, Wellington Road North, Stockport, SK4 1LW

**Facsimile No:** 0161 429 9675

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **MBM GROUP** )   
**SERVICES LIMITED** acting by: )

Director \_\_\_\_\_

*In the presence of*  
Director/Secretary \_\_\_\_\_

**Address:** 4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001

Executed as a deed, but not delivered until the )  
first date specified on page 1 by **BARCLAY &** )  
**MATHESON LIMITED** acting by: )

Director                    \_

In the presence of:

Witness signature        \_

Witness name            \_

Witness address         \_

**Address:**        4<sup>th</sup> Floor, 7/10 Chandos Street, London  
W1G 9DQ

**Facsimile No:** 020 7447 9001