

# M

CHFP041

COMPANIES FORM No. 466(Scot)

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

# 466

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

Please do not  
write in  
this margin

Pursuant to section 410 and 466 of the Companies Act 1985

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

For official use

Company number

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

20

SC122818

Name of company

\*ATR Lifting Solutions Limited (the **Chargor**)

\* insert full name  
of company

Date of creation of the charge (note 1)

1 November 2013

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

Bond and Floating Charge (the **Floating Charge**)

Names of the persons entitled to the charge

NBGI Private Equity (Tranche II) LP as agent and security trustee for the Secured Parties (the **Security Trustee**)

Short particulars of all the property charged

The whole of the property (including uncalled capital) which is or may be from time to time while the Floating Charge is in force comprised in the property and undertaking of the Chargor.

Presenter's name address and  
reference (if any):  
Dundas & Wilson CS LLP  
Saltire Court  
20 Castle Terrace  
Edinburgh EH1 2EN

For official use (05/2009)

Charges Section

FRIDAY



\*S2L6VG2I\*

SCT

15/11/2013

#4

COMPANIES HOUSE

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

Please do not  
write in  
this margin

See Paper Apart 1.

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

Date(s) of execution of the instrument of alteration

1 November 2013.

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

The Subordinated Creditors may not take, accept or receive the benefit of any Security (other than the Subordinated Security), guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Senior Lender Discharge Date.

See Paper Apart 2 for definitions

Short particulars of any property released from the floating charge

N/A

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

N/A

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

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legibly, preferably  
in black type, or  
bold block lettering

Each of the parties to the instrument of alteration agree that the Senior Security Documents and the Subordinated Security Documents shall rank as follows:

First, the Senior Security Documents; then  
Second, the Subordinated Security Documents.

Each Debtor hereby irrevocably and unconditionally confirms and acknowledges for the benefit of the Senior Lender that:

i. the New Loan Notes fall within the definition of Loan Note Documents pursuant to the terms of the Facilities Agreement;

ii. the NBGI Security falls within the definition of Loan Note Security Documents pursuant to the terms of the Facilities Agreement;

iii. the New Loan Notes shall constitute Subordinated Liabilities pursuant to the terms of the Intercreditor Agreement as Subordinated Liabilities; and

iv. the NBGI Security constitutes Subordinated Security Documents pursuant to the terms of the Intercreditor Agreement and shall, in all respects, be subject to all of the terms of the Intercreditor Agreement as Subordinated Security Documents;

With effect on and from the date of the Deed of Confirmation, the Intercreditor Agreement will be amended and supplemented by the Deed of Confirmation so that all references to the Intercreditor Agreement shall include the Deed of Confirmation and the Deed of Confirmation shall be read as one with the Intercreditor Agreement.

See Paper Apart 2 for definitions

Continued Over

COM466/3

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

Please do not  
write in  
this margin

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

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

Signed

On behalf of [company] [chargee]

  
**For and on behalf of Dundas & Wilson CSLLP**

Date

15/11/13

#### Notes

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

† delete as  
appropriate

**This is the Paper Apart 1 referred to in the foregoing Form 466 in relation to a Bond and Floating Charge granted by ATR Lifting Solutions Limited in favour of the Security Trustee (as defined therein) dated 1 November 2013.**

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

1. NBGI Private Equity Tranche (II) LP (registered in Guernsey with number 1511) having its registered office at 1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey (**NBGI**);
2. Clydesdale Bank plc incorporated and registered in Scotland with company number SC001111 having its registered office at 30 St Vincent Place, Glasgow, G1 2HL (the **Senior Lender**);
3. ATR Offshore Group Limited incorporated and registered in Scotland with company number SC403892 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (the **ATR Group**);
4. ATR Offshore Holdings Limited incorporated and registered in Scotland with company number SC404407 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (**ATR Offshore**);
5. ATR Holdings Limited incorporated and registered in Scotland with company number SC305588 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (**ATR Holdings**);
6. ATR Equipment Solutions Limited incorporated and registered in Scotland with company number SC153427 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (**ATR Equipment**);
7. ATR Power Solutions Limited incorporated and registered in Scotland with company number SC221515 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (**ATR Power**);
8. ATR Overseas Limited incorporated and registered in Scotland with company number SC317260 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (**ATR Overseas**);
9. ATR Caspian Limited incorporated and registered in Gibraltar with company number 74984 having its registered office at Suite 3C, Regal House, Queensway, Gibraltar (**ATR Caspian**);
10. Cosalt Offshore Group Limited incorporated and registered in Scotland with company number SC442522 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (**Cosalt Group**);
11. Cosalt Offshore Holdings Limited incorporated and registered in Scotland with company number SC442496 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (**Cosalt Holdings**);
12. ATR Lifting Solutions Limited incorporated and registered in Scotland with company number SC122818 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (**ATR Lifting**); and
13. Cosalt Offshore Limited incorporated and registered in Scotland with company number SC219765 having its registered office at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen, AB10 1DQ (**Cosalt Offshore**).

**This is the Paper Apart 2 referred to in the foregoing Form 466 in relation to a Bond and Floating Charge granted by ATR Lifting Solutions Limited in favour of the Security Trustee (as defined therein) dated 1 November 2013.**

#### Definitions

**ATR Overdraft Loan Notes** means the £776,543 15% fixed rate secure loan notes 2020 issued pursuant to the ATR Overdraft Loan Note Instrument.

**ATR Overdraft Loan Note Instrument** means the instrument by ATR Group dated on or around the date of the Deed of Confirmation constituting the ATR Overdraft Loan Notes.

**Cosalt Interest Loan Notes** means the £360,847 15% fixed rate secured loan notes 2019 issued pursuant to the Cosalt Interest Loan Note Instrument.

**Cosalt Interest Loan Note Instrument** means the instrument by Cosalt Group constituting the Cosalt Interest Loan Notes dated on 1 November 2013 as assigned to ATR Group pursuant to an assignment and delegation by Cosalt Group in favour of ATR Group dated 1 November 2013.

**Cosalt Investor Loan Notes** means the £3,300,000 15% fixed rate secured loan notes 2019 issued pursuant to the Cosalt Investor Loan Note Instrument.

**Cosalt Investor Loan Note Instrument** means the instrument by Cosalt Group dated 15 February 2013 as assigned to ATR Group pursuant to an assignment and delegation by Cosalt Group in favour of ATR Group dated on or around the date of the Deed of Confirmation.

**Cosalt Obligors** means Cosalt Group, Cosalt Holdings, ATR Lifting and Cosalt Offshore.

**Debt Documents** means each of the Intercreditor Agreement, the Senior Finance Documents, the Security Documents, any agreement evidencing the terms of the Subordinated Liabilities and any other document designated as such by the Senior Lender and ATR Group.

**Debtors** means ATR Offshore, ATR Holdings, ATR Equipment, ATR Power, ATR Overseas, ATR Caspian, Cosalt Group, Cosalt Holdings, ATR Lifting and Cosalt Offshore (and Debtor means any one of the them).

**Deed of Confirmation** means the deed of confirmation among NBGI, the Senior Lender, ATR Group and the Debtors, dated 1 November 2013.

**Facilities Agreement** means the senior facilities agreement made between ATR Group, the Senior Lender and others dated 28 and 29 February 2012 and amended and restated by an amendment and restatement agreement dated on or around 28 June 2012.

**Group** means ATR Offshore, ATR Holdings, Underwater Engineering Services (**UES**) and each of their respective Subsidiaries (per the Facilities Agreement).

**Intercreditor Agreement** means an intercreditor agreement among the Senior Lender, ATR Group and certain of its subsidiaries, the Subordinated Creditors (as defined therein) and NBGI, originally dated 28 and 29 February 2012 and amended and restated on 28 June 2012.

**Investment Agreement** means a subscription and shareholders agreement dated 29 February 2012 and made between *inter alios* NBGI, KM and ATR Offshore.

**Investor Subordinated Documents** means each of (i) the Loan Note Documents other than the UES Vendor Loan Note Instrument, the UES Vendor Loan Notes and the UES Vendor Loan Note Security Documents, and (ii) any other document evidencing the Liabilities of any member of the Group to NBGI which may be in place from time to time.

**KM** means Keith Moorhouse.

**Liabilities** means all present and future liabilities and obligations at any time of any member of the Group to the Senior Lender or to any Subordinated Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- i. any refinancing, novation, deferral or extension;
- ii. any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- iii. any claim for damages or restitution;
- iv. any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

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

**Loan Note Documents** means:

- i. ATR Overdraft Loan Notes;
- ii. ATR Overdraft Loan Note Instrument;
- iii. Cosalt Interest Loan Notes;
- iv. Cosalt Interest Loan Note Instrument;
- v. Cosalt Investor Loan Notes;
- vi. Cosalt Investor Loan Note Instrument; and
- vii. Loan Note Security Documents.

**Loan Note Security Documents** means:

- i. a bond and floating charge granted by each Original Obligor (other than ATR Offshore) in favour of NBGI dated 29 February 2012;
- ii. a guarantee and indemnity granted by each Original Obligor (other than ATR Offshore) in favour of NBGI dated 29 February 2012;
- iii. a security trust deed between *inter alios* each Original Obligor, NBGI and KM dated 29 February 2012;
- iv. a bond and floating charge granted by each Original Obligor (other than ATR Offshore) and UES in favour of NBGI dated on or around 28 June 2012;
- v. a guarantee and indemnity granted by each Original Obligor (other than ATR Offshore) and UES in favour of NBGI dated on or around 28 June 2012;
- vi. a bond and floating charge granted by each of ATR Group, ATR Holdings and UES in favour of each of Julia Riddoch, Jeffrey Riddoch and Christopher Sherry dated on or around 28 June 2012;

- vii. a guarantee or indemnity granted by each of ATR Group, ATR Holdings and UES in favour of each of Julia Riddoch, Jeffrey Riddoch and Christopher Sherry dated on or around 28 June 2012;
- viii. an amendment and restatement agreement dated on or around 28 June 2012 (the **Loan Note Intercreditor and Security Trust Deed Amendment Agreement**) between *inter alios* each Original Obligor, UES, NBGI, KM, Julia Riddoch, Jeffrey Riddoch and Christopher Sherry in relation to an intercreditor and security trust deed dated 29 February 2012 (the **Original Loan Note Intercreditor and Security Trust Deed**).

**NBGI Security** means the bond and floating charges granted by each of the Cosalt Obligors in favour of NBGI (as **Loan Note Security Trustee**) on 1 November 2013.

**New Loan Notes** means the ATR Overdraft Loan Notes, the Cosalt Interest Loan Notes and the Cosalt Investor Loan Notes.

**Original Obligors** means each of the Debtors, other than ATR (2010) Limited, ATR Caspian Limited, ATR Industrial Supplies Limited and ATR Aberdeen Limited.

**Payment** means in respect of any of the Liabilities or any other liabilities or obligations (including for the avoidance of doubt, the payment of any dividends or distributions), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities or other liabilities or obligations (whether principal, interest, fees, commission or otherwise).

**Secured Obligations** means all the Liabilities and all other present and future obligations at any time, owing or incurred by any member of the Group and by each Debtor to the Senior Lender, under the Debt Documents, both actual and contingent and whether incurred solely or jointly, as principal or surety or in any other capacity.

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

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

**Senior Finance Documents** means any document, as defined in the Intercreditor Agreement, designated as a Finance Document by the Senior Lender and ATR Group.

**Senior Lender Discharge Date** means the date on which all Senior Lender Liabilities have been fully and finally discharged to the satisfaction of the Senior Lender (acting reasonably), whether or not as the result of an enforcement, and the Senior Lender is under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

**Senior Lender Liabilities** means the Liabilities owed by the Debtors to the Senior Lender under the Senior Finance Documents.

**Senior Security Documents** means:

- i. each of the Transaction Security Documents;
- ii. any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of the Senior Lender as security for any of the Secured Obligations; and
- iii. any Security granted under any covenant for further assurance in any of the documents set out in paragraph i and ii above.



**Subordinated Creditors** means NBGI and KM.

**Subordinated Liabilities** means the Liabilities owed to the Subordinated Creditors by the Debtors under the Investor Subordinated Documents, the UES Vendor Loan Note Instrument, the UES Vendor Loan Notes, the Loan Note Security Documents, the articles of association of ATR Group, the articles of association of ATR Offshore and the Investment Agreement (including for the avoidance of doubt any dividends or distributions).

**Subordinated Security** means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Subordinated Security Documents.

**Subordinated Security Documents** means the Loan Note Security Documents.

**Subsidiaries** has the meaning given to it in the Intercreditor Agreement.

**Transaction Security Documents** means any document entered into by any borrower or guarantor under the Facilities Agreement (an **Obligor**) creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Senior Finance Documents.

**UES Target** has the meaning given to it in the Facilities Agreement.

**UES Vendors** has the meaning given to it in the Facilities Agreement.

**UES Vendor Loan Notes** means £2,000,000 7% fixed rate secured loan notes 2014 to be issued to Julia Riddoch, Jeffrey Riddoch and Christopher Sherry.

**UES Vendor Loan Note Instrument** means the instrument by ATR Group dated on or around 28 June 2012 constituting the UES Vendor Loan Notes.

**UES Vendor Loan Note Security Documents** means:

- i. the floating charges granted by each of the Original Obligors and the UES Target in favour of the UES Vendors;
- ii. the guarantee and indemnity granted by each of the Original Obligors and the UES Target in favour of each of the UES Vendors; and
- iii. the intercreditor and security trust deed entered into between NBGI, KM, the UES Vendors, the Original Obligors and the UES Target, in each case dated on or around 28 June 2012.



**FILE COPY**

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

COMPANY NO. 122818  
CHARGE CODE SC12 2818 0020

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 1 NOVEMBER 2013 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 15 NOVEMBER 2013

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 1  
NOVEMBER 2013

BY ATR LIFTING SOLUTIONS LIMITED

IN FAVOUR OF  
NBGI PRIVATE EQUITY (TRANCHE II) LP AS AGENT AND  
SECURITY TRUSTEE

GIVEN AT COMPANIES HOUSE, EDINBURGH 19 NOVEMBER 2013



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DEED OF CONFIRMATION

by

NBGI PRIVATE EQUITY (TRANCHE II) LP  
(as Subordinated Creditor and Loan Note Security Trustee)

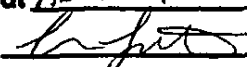
in favour of

CLYDESDALE BANK PLC  
(as Senior Lender)

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re: Intercreditor Agreement originally dated 28 and 29 February 2012  
among, *inter alios*, Clydesdale Bank plc and NBGI Private Equity  
(Tranche II) LP as amended and restated on or around 28 June 2012

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Certified a true copy of the original  
at Aberdeen on 14 Nov 2013 by  
  
Solicitor

B

BLACKWOOD PARTNERS LLP

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**THIS DEED OF CONFIRMATION** is made between:

- (1) **NBGI PRIVATE EQUITY (TRANCHE II) LP** (registered in Guernsey with number 1511) having its registered office at 1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey, in its capacity as both a Subordinated Creditor and the Loan Note Security Trustee pursuant to the terms of the Intercreditor Agreement (**NBGI**);
- (2) **CLYDESDALE BANK PLC** as Senior Lender pursuant to the terms of the Intercreditor Agreement (**the Senior Lender**);
- (3) **ATR OFFSHORE GROUP LIMITED** (registered in Scotland with number SC403892) having its registered office at 6<sup>th</sup> Floor, Union Plaza, 1 Union Wynd, Aberdeen, AB10 1DQ (**the Company**); and
- (3) **THE SUBSIDIARIES** of the Company listed in Part 1 of the Schedule as Debtors pursuant to the terms of the Intercreditor Agreement (together with the Company, **the Debtors**).

**WHEREAS:**

- (A) (1) The Senior Lender, (2) ATR Offshore Group Limited and certain of its subsidiaries, (3) the Subordinated Creditors (as defined therein) and NBGI entered into an intercreditor agreement originally dated 28 and 29 February 2012 and amended and restated on 28 June 2012 a copy of which is attached as Part 2 of the Schedule (as amended and restated **the Intercreditor Agreement**).
- (B) Pursuant to the Intercreditor Agreement, NBGI, as a Subordinated Creditor, gave certain undertakings to the Senior Lender in respect of the Subordinated Liabilities and Subordinated Security (each as defined in the Intercreditor Agreement).
- (C) The Cosalt Obligors acceded to the Intercreditor Agreement as Debtors pursuant to accession deeds dated on or around the date of this Deed.
- (D) The Cosalt Obligors granted, on or around the date of this Deed the NBGI Security.
- (E) The Company has issued or is about to issue (or, as the case may be, has been assigned and delegated) the New Loan Notes.

- (E) The New Loan Notes and the NBGI Security are subject to the provisions of the Intercreditor Agreement as Subordinated Liabilities and Subordinated Security Documents respectively and the Parties and have entered into this Deed by way of confirmation thereof.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 In this Deed:**

**1.1.1** Terms defined in, or construed for the purposes of, the Intercreditor Agreement have the same meanings when used in this Deed (unless the same are otherwise defined in this Deed); and

**1.1.2** at all other times the following terms have the following meanings:

**ATR Overdraft Loan Notes** means the £776,543 15% fixed rate secure loan notes 2020 issued pursuant to the ATR Overdraft Loan Note Instrument.

**ATR Overdraft Loan Note Instrument** means the instrument by the Company dated on or around the date of this Deed constituting the ATR Overdraft Loan Notes.

**Cosalt Interest Loan Notes** means the £360,847 15% fixed rate secured loan noted 2020 issued pursuant to the Cosalt Interest Loan Note Instrument.

**Cosalt Interest Loan Note Instrument** means the instrument by Cosalt Offshore Group Limited constituting the Cosalt Interest Loan Notes dated on or around the date of this Deed as assigned to the Company pursuant to an assignment and delegation by Cosalt Offshore Group Limited in favour of the Company dated on or around the date of this Deed.

**Cosalt Investor Loan Notes** means the £3,300,000 15% fixed rate secured loan notes 2019 issued pursuant to the Cosalt Investor

Loan Note Instrument.

**Cosalt Investor Loan Note Instrument** means the instrument by Cosalt Offshore Group Limited dated 15 February 2013 as assigned to the Company pursuant to an assignation and delegation by Cosalt Offshore Group Limited in favour of the Company dated on or around the date of this Deed.

**Cosalt Obligors** means Cosalt Offshore Group Limited, Cosalt Offshore Holdings Limited, Cosalt Offshore Limited and Cosalt Offshore (UK) Limited.

**Facilities Agreement** means the senior term and revolving facilities agreement originally dated 28 and 29 February 2012 between the Company (and others) and the Senior Lender, as amended and restated on 28 June 2012 and 7 February 2013 and as further amended and restated on or around the date of this Deed.

**NBGI Security** means the bond and floating charges granted by each of the Cosalt Obligors in favour of NBGI as Loan Note Security Trustee on or around the date of this Deed.

**New Loan Notes** means the ATR Overdraft Loan Notes, the Cosalt Interest Loan Notes and the Cosalt Investor Loan Notes.

**Party** means a party to this Deed.

## 1.2 Interpretation

1.2.1 Unless a contrary indication appears, in this Deed the provisions of clause 1.3 (*Construction*) of the Intercreditor Agreement apply to this Deed as though they were set out in full in this Deed, except that references to **this Agreement** will be construed as references to this Deed.

1.2.2 Unless a contrary indication appears, any reference in this Deed to:

- (a) a **Debtor**, the **Senior Lender**, **NBGI**, a **Subordinated Creditor**, the **Loan Note Security Trustee** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) this **Deed**, the **Intercreditor Agreement**, the **Facilities Agreement** and any other **Debt Document** or any other agreement or instrument is a reference to this **Deed**, the **Intercreditor Agreement**, the **Facilities Agreement**, that other **Debt Document** or that other agreement or instrument as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of the Debtor or provides for further advances);
- (c) **including** or **includes** means including or includes without limitation;
- (d) a provision of law is a reference to that provision as amended or re-enacted;
- (e) the singular includes the plural and vice versa; and
- (f) **document** includes any deed, instrument (including negotiable instrument) or other document of any kind.

1.2.3 References to **Clauses** and the **Schedule** are to be construed, unless otherwise stated, as references to **Clauses** of and the **Schedule** to this **Deed** and references to this **Deed** include the **Schedules**.

1.2.4 **Clause** and **Schedule** headings are for convenience only and shall not affect the construction of this **Deed**.

1.2.5 Each confirmation by **NBGI** and the **Debtors** contained in this **Deed** is given by **NBGI** and each **Debtor** for the benefit of the **Senior Lender**.

## 2. **CONFIRMATION**

### 2.1 **Subordinated Creditor**

**NBGI** (as a **Subordinated Creditor** and the **Loan Note Security Trustee**) hereby irrevocably and unconditionally confirms and acknowledges, for the benefit of the **Senior Lender**, that:

- 2.1.1 the **New Loan Notes** fall within the definition of **Loan Note Documents** pursuant to the terms of the **Facilities Agreement**;



- 2.1.2 the NBGI Security falls within the definition of Loan Note Security Documents pursuant to the terms of the Facilities Agreement;
- 2.1.3 the New Loan Notes constitute Subordinated Liabilities pursuant to the terms of the Intercreditor Agreement and shall, in all respects, be subject to all of the terms of the Intercreditor Agreement as Subordinated Liabilities; and
- 2.1.4 the NBGI Security constitutes Subordinated Security Documents pursuant to the terms of the Intercreditor Agreement and shall, in all respects, be subject to all of the terms of the Intercreditor Agreement as Subordinated Security Documents;

## 2.2 Debtors

Each Debtor hereby irrevocably and unconditionally confirms and acknowledges for the benefit of the Senior Lender that:

- 2.2.1 the New Loan Notes fall within the definition of Loan Note Documents pursuant to the terms of the Facilities Agreement;
  - 2.2.2 the NBGI Security falls within the definition of Loan Note Security Documents pursuant to the terms of the Facilities Agreement;
  - 2.2.3 the New Loan Notes constitute Subordinated Liabilities pursuant to the terms of the Intercreditor Agreement and shall, in all respects, be subject to all of the terms of the Intercreditor Agreement as Subordinated Liabilities; and
  - 2.2.4 the NBGI Security constitutes Subordinated Security Documents pursuant to the terms of the Intercreditor Agreement and shall, in all respects, be subject to all of the terms of the Intercreditor Agreement as Subordinated Security Documents;
- 2.3 With effect on and from the date of this Deed, the Intercreditor Agreement will be amended and supplemented by this Deed so that all references to the Intercreditor Agreement shall include this Deed and this Deed shall be read as one with the Intercreditor Agreement.

## 3. PARTIAL INVALIDITY

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any 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.

#### **4. REMEDIES AND WAIVERS**

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

#### **5. AMENDMENTS AND WAIVERS**

Any provision of this Deed may be amended only if the Senior Lender so agrees in writing and any breach of this Deed may be waived before or after it occurs only if the Senior Lender so agrees in writing. A waiver given or consent granted by the Senior Lender under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

#### **6. FURTHER ASSURANCES**

NBGI and each Debtor will promptly, at its own expense, take whatever action the Senior Lender may require for creating, perfecting or protecting the ranking and subordination provisions intended to be created by this Deed and the Intercreditor Agreement.

#### **7. INSTRUMENT OF ALTERATION**

7.1 The Parties acknowledge and agree that this Deed (when read together with the Intercreditor Agreement) is an instrument of alteration in terms of Section 466 of the Companies Act 1985.

7.2 NBGI confirms and undertakes to the Senior Lender that they will within 21 days of the date of this Deed register the required details of this Deed (and the Intercreditor Agreement) at Companies House in order for this Deed (and the Intercreditor Agreement) to constitute a valid instrument of alteration in respect of the NBGI Security.

#### **8. NOTICES**

8.1 Clause 15 (*Notices*) of the Intercreditor Agreement is incorporated into this Deed as if fully set out in this Deed.

- 8.2 The address and fax numbers of each Party for all communications or documents given under or in connection with this Deed are those identified with its name in the execution pages to this Deed or subsequently notified from time to time by the relevant Party for the purposes of the Intercreditor Agreement or this Deed.

9. **GOVERNING LAW**

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

10. **ENFORCEMENT AND JURISDICTION**

- 10.1 The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a **Dispute**).
- 10.2 The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 10.3 This Clause 10.1 is for the benefit of the Senior Lender only. As a result, the Senior Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Lender may take concurrent proceedings in any number of jurisdictions.

10.4 NBGI and each Debtor expressly agrees and consent to the provisions of this Clause 10  
(*Enforcement and Jurisdiction*) and Clause 9 (*Governing law*).

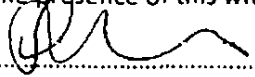
IN WITNESS WHEREOF this Deed consisting of this and the preceding 6 pages together with the Schedule  
hereto in two Parts has been executed as follows:

**SUBORDINATED CREDITOR AND LOAN NOTE SECURITY TRUSTEE**

**SUBSCRIBED FOR AND ON BEHALF OF**  
**NBGI PRIVATE EQUITY (TRANCHE II) LP**  
acting through its Manager  
**NBGI PRIVATE EQUITY LIMITED**  
acting by

 Attorney

in the presence of this witness:

 Witness Signature

Suzanne Malcolm Witness Name

11 Queen's Gardens Address

Aberdeen AB15 4YD

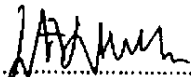
together at Aberdeen

on the 1 day of November 2013


## DEBTORS

SUBSCRIBED FOR AND ON BEHALF OF  
ATR OFFSHORE HOLDINGS LIMITED

by

.....Director

in the presence of this witness:-

.....Witness

HELEN MARY DICKSON.....Full Name

BURNES PAULL LLP,.....Address

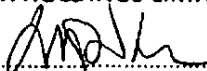
UNION PLAZA, UNION WYND, AB10 1DQ

at ABERDEEN


on 1 NOVEMBER 2013

SUBSCRIBED FOR AND ON BEHALF OF  
ATR HOLDINGS LIMITED

by

.....Director

in the presence of this witness:-

.....Witness

HELEN MARY DICKSON.....Full Name

BURNES PAULL LLP,.....Address

UNION PLAZA, UNION WYND, AB10 1DQ


at ABERDEEN

on 1 NOVEMBER 2013

**SUBSCRIBED FOR AND ON BEHALF OF  
ATR EQUIPMENT SOLUTIONS LIMITED**

by  Director

in the presence of this witness:-

 Witness

HELEN MARY DICKSON Full Name

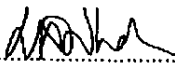
BURNES PAULL LLP Address

UNION PLAZA, UNION WYND, ABIDIDA

at ABERDEEN

on 1 NOVEMBER 2013

**SUBSCRIBED FOR AND ON BEHALF OF  
ATR POWER SOLUTIONS LIMITED**

by  Director

in the presence of this witness:-

 Witness

HELEN MARY DICKSON Full Name

BURNES PAULL LLP Address

UNION PLAZA, UNION WYND, ABIDIDA


at ABERDEEN

on 1 NOVEMBER 2013

**SUBSCRIBED FOR AND ON BEHALF OF  
ATR OVERSEAS LIMITED**

by  Director

in the presence of this witness:-

 Witness

HELEN MARY PICKSON Full Name


BURNESS PAUL LLP Address

UNION PLAZA, UNION WYND, AB10 1DB


at ABERDEEN

on 1 NOVEMBER 2013

**SUBSCRIBED FOR AND ON BEHALF OF  
ATR CASPIAN LIMITED**

by  Director

in the presence of this witness:-

 Witness

HELEN MARY PICKSON Full Name

BURNESS PAUL LLP Address

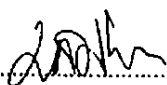
UNION PLAZA, UNION WYND, AB10 1DB

at ABERDEEN


on 1 NOVEMBER 2013

SUBSCRIBED FOR AND ON BEHALF OF  
COSALT OFFSHORE GROUP LIMITED

by

.....Director

in the presence of this witness:-

.....Witness

HELEN MARY PICKSON.....Full Name

BURNES PAULL LLP.....Address

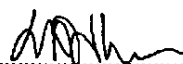
UNION PLAZA, UNION WYND, AB10 1DA

at ABERDEEN


on 1 NOVEMBER 2013

SUBSCRIBED FOR AND ON BEHALF OF  
COSALT OFFSHORE HOLDINGS LIMITED

by

.....Director

in the presence of this witness:-

.....Witness

HELEN MARY PICKSON.....Full Name

BURNES PAULL LLP.....Address

UNION PLAZA, UNION WYND, AB10 1DA

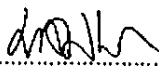
at ABERDEEN

on 1 NOVEMBER 2013

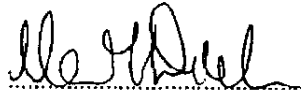


**SUBSCRIBED FOR AND ON BEHALF OF  
COSALT OFFSHORE LIMITED**

by

.....Director

in the presence of this witness:-

.....Witness

HELEN MARY DICKSON.....Full Name

BURNES PAUL LLP.....Address

UNION PLAZA, UNION WIND, AB10 1PA

at ABERDEEN

on 1 NOVEMBER


2013

**SUBSCRIBED FOR AND ON BEHALF OF  
COSALT OFFSHORE (UK) LIMITED**

by

.....Director

in the presence of this witness:-

.....Witness

HELEN MARY DICKSON.....Full Name

BURNES PAUL LLP.....Address

UNION PLAZA, UNION WIND, AB10 1PA

at ABERDEEN

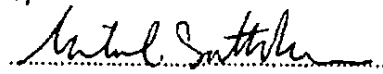
on 1 NOVEMBER

2013

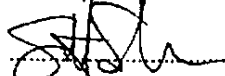
## SENIOR LENDER

Subscribed for and on behalf of  
CLYDESDALE BANK PLC

by

 Authorised Signatory

in the presence of this witness:

 Witness Signature

SCOTT SWANKIE Witness Name

UNION GROVE LANE Witness Address

ABERDEEN

together at ABERDEEN

on the 1 day of NOVEMBER 2013

This is the Schedule referred to in the preceding deed of confirmation between, *inter alios*, NBGI Private Equity (Tranche II) LP, ATR Offshore Group Limited and Clydesdale Bank plc dated 1 November 2013

### Schedule

#### Part 1

#### The Debtors

Company	Registered Office	Registered Number
ATR Offshore Holdings Limited	Union Plaza, 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	SC404407
ATR Holdings Limited	As above	SC305588
ATR Equipment Solutions Limited	As above	SC153427
ATR Power Solutions Limited	As above	SC221515
ATR Overseas Limited	As above	SC317260
ATR Caspian Limited	Suite 3C, Regal House, Queensway, Gibraltar	74984
Cosalt Offshore Group Limited	4 <sup>th</sup> Floor, Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN	SC442522
Cosalt Offshore Holdings Limited	As above	SC442496
Cosalt Offshore Limited	As above	SC219765
Cosalt Offshore (UK) Limited	As above	SC122818

**Part 2**

**Intercreditor Agreement**

*attached*

Certified a true copy of the original  
at Aberdeen on 29 June 2012 by  
K Macaulay  
Solicitor

CLYDESDALE BANK PLC

(as Senior Lender)

NBGI PRIVATE EQUITY (TRANCHE II) LP, KEITH MOORHOUSE, EUAN LEASK AND MIKE  
ROBERTSON

(as Subordinated Creditors)

and

ATR OFFSHORE GROUP LIMITED (FORMERLY NAMED DUNWILCO (1712) LIMITED)

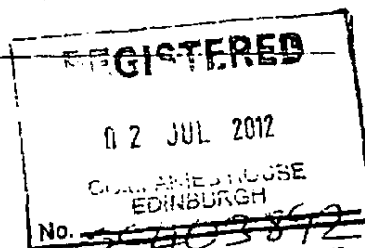
(and others as Original Debtors)

---

AMENDMENT AND RESTATEMENT AGREEMENT

Re: Intercreditor Agreement dated 28 and 29 February 2012

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50404407  
50305588  
50221515  
50335730  
50317260  
50153427  
50272079

B

BLACKWOOD PARTNERS LLP

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## **PARTIES**

- (1) **CLYDESDALE BANK PLC** (the **Senior Lender**);
- (2) **ATR OFFSHORE GROUP LIMITED**, a private limited company incorporated in Scotland (No. SC403892) whose registered office is at Union Plaza 6<sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ (the **Company**);
- (3) **ATR OFFSHORE HOLDINGS LIMITED**, a private limited company incorporated in Scotland (No. SC404407) whose registered office is at Union Plaza 6<sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ (the **Parent**);
- (4) **THE SUBSIDIARIES** of the Company listed in Part 1A of the Schedule as Debtors (together with the Company and the Parent, the **Original Debtors**);
- (5) **THE PARTIES** listed in Part 1B of the Schedule as Subordinated Creditors (together with the Loan Note Security Trustee, the **Subordinated Creditors**);
- (6) **EUAN LEASK** of 10 Moray Place, Aberdeen, AB15 4AF and **MIKE ROBERTSON** of 21 Parkhill Crescent, Dyce, Aberdeen, AB21 7FY (together, the **New Shareholders**); and
- (7) **NBGI PRIVATE EQUITY (TRANCHE II) LP** (registered in Guernsey with number 1511) whose registered office is at 1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey in its capacity as Security Trustee as defined in the ATR Loan Note Security Documents (the **Loan Note Security Trustee**).

## **BACKGROUND**

- (A) By an agreement dated 28 and 29 February 2012 made between the Senior Lender, the Company, the Original Debtors and the Subordinated Creditors, the parties thereto agreed to regulate the payment of liabilities due to the Senior Lender and the Subordinated Creditors (the **Intercreditor Agreement**).
- (B) The Parties have agreed certain amendments to certain of the terms of the Intercreditor Agreement and now wish to amend and restate the Intercreditor Agreement to reflect those changes agreed between them.

## **AGREED TERMS**

### **1 Definitions and Interpretation**

- 1.1 Words defined in the Restated Intercreditor Agreement have, unless expressly defined in this Agreement, or the context otherwise requires, the same meaning in this Agreement (including in the background above).

- 1.2 In addition to the above, in this Agreement:

**Agreement** means this amendment and restatement agreement.

**Effective Date** means the date of this Agreement.

**Party** means a Party to this Agreement, and **Parties**

shall be construed accordingly.

**Restated Intercreditor Agreement** means the Intercreditor Agreement as amended and restated in the form set out in Part 2 of the Schedule.

**Schedule** means the schedule to this Agreement.

- 1.3 References in the Intercreditor Agreement to **this Agreement, hereof, hereunder** and expressions of similar import shall be deemed to be references to the Intercreditor Agreement as amended and restated by this Agreement and to this Agreement.
- 1.4 The provisions of Clauses 1.1 and 1.4, of the Restated Intercreditor Agreement apply to this Agreement as though they were set out in full, except that references to the Restated Intercreditor Agreement are to be construed as references to this Agreement.
- 1.5 A reference in the Restated Intercreditor Agreement to the **date of this Agreement or the date hereof** and expressions of similar import shall be deemed to be references to the date of this Agreement.
- 1.6 A reference in this Agreement to any document or provision of a document is a reference to that document or provision as in force for the time being and as amended, supplemented, novated, restated or replaced from time to time in accordance with the terms thereof (or, as the case may be, with the agreement of the relevant parties), including (save where the context otherwise requires) by virtue of this Agreement.
- 1.7 This Agreement is a Finance Document for the purposes of the Senior Facilities Agreement.

## **2 Amendment to and restatement of the Intercreditor Agreement**

- 2.1 Subject to the terms and conditions of this Agreement, the Intercreditor Agreement shall, with effect on and from the Effective Date, be supplemented, amended and restated and shall be read and construed for all purposes, in the form set out in Part 2 of the Schedule so that the rights and obligations of the Parties relating to their performance on and after the Effective Date under the Intercreditor Agreement shall be governed by, and construed in accordance with the terms of the Restated Intercreditor Agreement.
- 2.2 Without limitation to Clause 2.1 above, the Parties hereby acknowledge and agree that, with effect from the Effective Date, they shall have the rights and take on the obligations ascribed to them under the Restated Intercreditor Agreement.
- 2.3 The Intercreditor Agreement is amended only to the extent set out in this Agreement. In all other respects the terms of the Intercreditor Agreement remain in full force and effect.



**3 Accession of the New Shareholders**

The New Shareholders and the Loan Note Security Trustee agree, with effect on and from (and including) the Effective Date, to accede to the Restated Intercreditor Agreement as Subordinated Creditors, undertake to perform all the obligations expressed to be assumed by a Subordinated Creditor under the Restated Intercreditor Agreement and agree that they shall be bound by all the provisions of the Restated Intercreditor Agreement binding on Subordinated Creditors as if they had been original parties to the Intercreditor Agreement.

**4 Representations and warranties**

On the Effective Date:

3.1 each Subordinated Creditor (including the New Shareholders and the Loan Note Security Trustee) makes the representations and warranties set out in clause 4.16 (*Representations: Subordinated Creditors*) of the Restated Intercreditor Agreement to the Senior Lender; and

3.2 each Party represents and warrants to the other Parties that they have not breached any provision of the Intercreditor Agreement and no such breach would occur as a consequence of the amendments contemplated by this Agreement.

**5 Consents**

Each Party confirms its consent to the restatement and amendment effected by this Agreement.

**6 Miscellaneous**

6.1 The Parties agree to execute all documents and do all things reasonably necessary to give effect to this Agreement.

6.2 Save as expressly provided herein, each Party hereto reserves any right or remedy it may have now or subsequently. This Agreement does not constitute a waiver of any right or remedy other than as expressly set out herein.

**7 Governing law and jurisdiction**

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

7.2 The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a Dispute).

7.3 The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

7.4 This Clause 7 is for the benefit of the Senior Lender only. As a result, the Senior Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Lender may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 3 pages and the schedule hereto in 2 parts has been executed as follows:

**Debtors**

Subscribed for an on behalf of  
**ATR OFFSHORE GROUP LIMITED**

by .....

..... Director

in the presence of this witness:

..... Witness Signature

..... Witness Name

..... Witness Address

.....

together at .....

on the ..... day of ..... 2012

Subscribed for an on behalf of  
**ATR OFFSHORE HOLDINGS LIMITED**

by .....

..... Director

in the presence of this witness:

..... Witness Signature

..... Witness Name

..... Witness Address

.....

together at .....

on the ..... day of ..... 2012

Subscribed for an on behalf of  
**ATR HOLDINGS LIMITED**

by

[Signature] Director

in the presence of this witness:

[Signature] Witness Signature

[Signature] Witness Name

[Signature] Witness Address

[Signature]

together at [Signature]

on the 1 day of 1 2012

Subscribed for an on behalf of  
**ABERDEEN TOOL RENTAL LIMITED**

by

[Signature] Director

in the presence of this witness:

[Signature] Witness Signature

[Signature] Witness Name

[Signature] Witness Address

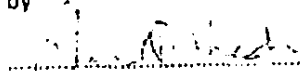
[Signature]

together at [Signature]

on the 1 day of 1 2012

Subscribed for an on behalf of  
**ATR PLANT SERVICES LIMITED**

by

 Director

in the presence of this witness:

..... Witness Signature

..... Witness Name

..... Witness Address

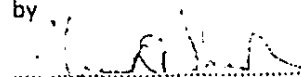
.....

together at .....

on the ..... day of ..... 2012

Subscribed for an on behalf of  
**ATR LIFTING SERVICES LIMITED**

by

 Director

in the presence of this witness:

..... Witness Signature

..... Witness Name

..... Witness Address

.....

together at .....

on the ..... day of ..... 2012

Subscribed for an on behalf of  
**ATR OVERSEAS LIMITED**

by

[Signature] Director

in the presence of this witness:

..... Witness Signature

..... Witness Name

..... Witness Address

together at .....

on the ..... day of ..... 2012

Subscribed for an on behalf of  
**ATR (2010) LIMITED**

by

[Signature] Director

in the presence of this witness:

..... Witness Signature

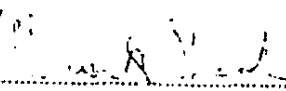
..... Witness Name

..... Witness Address

together at .....

on the ..... day of ..... 2012

Subscribed for an on behalf of  
**ATR INDUSTRIAL SUPPLIES LIMITED**

by  Director

in the presence of this witness:

..... Witness Signature

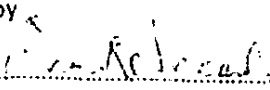
..... Witness Name

..... Witness Address

together at .....

on the ..... day of ..... 2012

Subscribed for an on behalf of  
**ATR ABERDEEN LIMITED**

by  Director

in the presence of this witness:

..... Witness Signature

..... Witness Name


..... Witness Address

together at .....

on the ..... day of ..... 2012

Subscribed for an on behalf of  
ATR CASPIAN LIMITED

by

 Director

in the presence of this witness:

..... Witness Signature

..... Witness Name

..... Witness Address

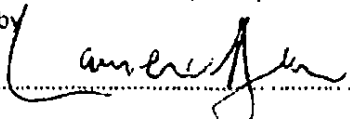
together at .....

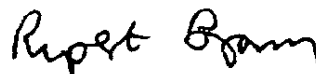
on the ..... day of ..... 2012

Subordinated Creditors (including the New Shareholders and the Loan Note Security Trustee)

Subscribed for an on behalf of  
NBGI PRIVATE EQUITY (TRANCHE II) LP

by

 Member/Authorised Signatory



in the presence of this witness:

..... Witness Signature

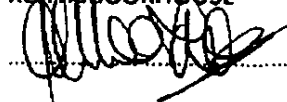
..... Witness Name

..... Witness Address

together at .....

on the ..... day of ..... 2012

Subscribed by  
KEITH MOORHOUSE

  
.....

in the presence of this witness:

..... Witness Signature

..... Witness Name

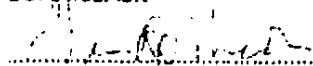
..... Witness Address

.....

together at .....

on the ..... day of ..... 2012

Subscribed by  
EUAN LEASK

  
.....

in the presence of this witness:

..... Witness Signature

..... Witness Name

..... Witness Address

.....

together at .....

on the ..... day of ..... 2012



Subscribed by  
**MIKE ROBERTSON**

*Mike Robertson* *AKA Robertson*

in the presence of this witness:

*[Signature]* ..... Witness Signature

*[Name]* ..... Witness Name

*[Address]* ..... Witness Address

*[Address]* .....

together at *[Address]* .....

on the *[Day]* day of *[Month]* 2012

Subscribed for an on behalf of  
**NBGI PRIVATE EQUITY (TRANCHE II) LP (as Loan Note Security Trustee)**

by

*[Signature]* ..... Member/Authorised Signatory

*Rupert Brown*

in the presence of this witness:

*[Signature]* ..... Witness Signature

*[Name]* ..... Witness Name

*[Address]* ..... Witness Address

*[Address]* .....

together at *[Address]* .....

on the *[Day]* day of *[Month]* 2012

**Senior Lender**

Subscribed for and on behalf of  
**CLYDESDALE BANK PLC**

by

 ..... Authorised Signatory

in the presence of this witness:

..... Witness Signature

..... Witness Name

..... Witness Address

.....  
together at .....

on the ..... day of ..... 2012

This is the Schedule referred to in the preceding amendment and restatement agreement between, amongst others, ATR Offshore Group Limited, Clydesdale Bank PLC, the Subordinated Creditors (as defined therein) and the Debtors (as defined therein) dated 22 June 2012

# SCHEDULE

## Part 1A

### Original Debtors

Name	Company Number	Registered Office / Address	Address for Notices
ATR Offshore Group Limited (formerly named Dunwilco (1712) Limited)	SC403892	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	NBGI Private Equity Limited, Old Change House, 128 Queen Victoria Street, London, EC4V 4BJ  Fax: 0207 661 5667
ATR Offshore Holdings Limited (formerly named Dunwilco (1723) Limited)	SC404407	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR Holdings Limited	SC305588	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
Aberdeen Tool Rental Limited	SC153427	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR Plant Services Limited	SC221515	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR Lifting Services Limited	SC338730	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd,	ATR Group, Denmore Road, Bridge of Don,

		Aberdeen, AB10 1DQ	Aberdeen, AB23 8JW Fax: 01224 222478
ATR Overseas Limited	SC317260	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW Fax: 01224 222478
ATR (2010) Limited	SC172929	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW Fax: 01224 222478
ATR Industrial Supplies Limited	SC274938	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW Fax: 01224 222478
ATR Aberdeen Limited	SC250752	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW Fax: 01224 222478
ATR Caspian Limited	74984	Suite 3C, Regal House, Queensway, Gibraltar	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW Fax: 01224 222478

Part 1B

Subordinated Creditors

Name	Company Number	Registered Office / Address	Address for Notices
NBGI Private Equity (Tranche II) LP	1511	1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey	Investor Manager, Old Change House, 128 Queen Victoria Street, London, EC4V 4BJ  Fax: 0207 661 5667
Keith Moorhouse	N/A	20 Charleston Way, Cove Bay, Aberdeen, AB12 3FA	20 Charleston Way, Cove Bay, Aberdeen, AB12 3FA

**CLYDESDALE BANK PLC**  
(as Senior Lender)

**NBGI PRIVATE EQUITY (TRANCHE II) LP and KEITH MOORHOUSE, EUAN LEASK AND MIKE  
ROBERTSON**  
(as Subordinated Creditors)

And

**ATR OFFSHORE GROUP LIMITED (FORMERLY NAMED DUNWILCO (1712) LIMITED)**  
(and others as Original Debtors)

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**INTERCREDITOR AGREEMENT** originally dated 28 and 29 February 2012 as amended and  
restated on 3 June 2012

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**B**

**BLACKWOOD PARTNERS LLP**

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**THIS AGREEMENT** is made between:

- (1) **CLYDESDALE BANK PLC** (the Senior Lender);
- (2) **ATR OFFSHORE GROUP LIMITED**, a private limited company incorporated in Scotland (No. SC403892) whose registered office is at Union Plaza 6<sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ (the Company);
- (3) **ATR OFFSHORE HOLDINGS LIMITED**, a private limited company incorporated in Scotland (No. SC404407) whose registered office is at Union Plaza 6<sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ (the Parent);
- (4) **THE SUBSIDIARIES** of the Company listed in Part 1A of the Schedule as Debtors (together with the Company and the Parent, the **Original Debtors**);
- (5) **THE PARTIES** listed in Part 1B of the Schedule as Subordinated Creditors (together with the Loan Note Security Trustee, the **Subordinated Creditors**); and
- (6) **NBGI PRIVATE EQUITY (TRANCHE II) LP** (registered in Guernsey with number 1511) whose registered office is at 1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey, in its capacity as Security Trustee as defined in the ATR Loan Note Security Documents (the **Loan Note Security Trustee**).

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

**Definitions**

- 1.1 Words defined in the Senior Facilities Agreement have, unless expressly defined in this Agreement, or the context otherwise requires, the same meaning in this Agreement.
- 1.2 In addition to the above, in this Agreement:

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

**Creditor Accession Undertaking:** means an undertaking substantially in the form set out in Part 3 of the Schedule (*Form of Creditor Accession Undertaking*).

**Debt Document:** means each of this Agreement, the Senior Finance Documents, the Security Documents, any agreement evidencing the terms of the Subordinated Liabilities and any other document designated as such by the Senior Lender and the Company.

**Debtor:** means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 11 (*Changes to the Parties*).

**Debtor Accession Deed:** means:

- (a) a deed substantially in the form set out in Part 2 of the Schedule (*Form of Debtor Accession Deed*); or
- (b) (only in the case of a member of the Group which is acceding as a borrower or guarantor under the Senior Facilities Agreement) an Accession Deed under the Senior Facilities Agreement.

**Debtor Liabilities:** means, in relation to a member of the Group, any liabilities owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group.

**Debtor Resignation Request:** means a notice substantially in the form set out in Part 4 of the Schedule (*Form of Debtor Resignation Request*).

**Delegate:** means any delegate, agent, attorney or co-trustee appointed by the Senior Lender.

**Disposal Proceeds:** has the meaning given to that term in Clause 9 (*Proceeds of Disposals, Recoveries from Report Providers*).

**Distress Event:** means any of:

- (a) a Senior Acceleration Event; or
- (b) the enforcement of any Transaction Security.

**Distressed Disposal:** means a disposal of an asset of a member of the Group which is:

- (a) being effected by the Senior Lender in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security; or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is not a member of the Group with the prior written consent of the Senior Lender.

**EL:** means Euan Leask, residing at 10 Moray Place, Aberdeen, AB15 4AF.

**Enforcement Action:** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for the Senior Lender to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of a demand in relation to a Liability that is payable on demand;
  - (iv) the making of any demand against any member of the Group in relation to any Liabilities of that member of the Group;
  - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability);
  - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right which is otherwise expressly permitted under the

Senior Facilities Agreement to the extent that the exercise of that right gives effect to a Permitted Payment; and

- (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the taking of any steps to enforce or require the enforcement of any Transaction Security or Subordinated Security (including the crystallisation of any floating charge forming part of the Transaction Security or Subordinated Security);
- (c) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 11 (*Changes to the Parties*)); or
- (d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the taking of any action falling within paragraphs (a)(vii) or (d) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods shall not constitute Enforcement Action.

**Excess Cashflow:** means, for any period for which it is being calculated, CFADS for that period less (except to the extent already deducted in calculating CFADS):

- (a) Debt Service for that period; and
- (b) the amount of any voluntary prepayments made under the Finance Documents during that period.

**Insolvency Event:** means, in relation to any member of the Group:

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

**Investor Subordinated Documents:** means each of (i) the Loan Note Documents other than the UES Vendor Loan Note Instrument, the UES Vendor Loan Notes and the UES Vendor Loan Note Security Documents, and (ii) any other document evidencing the Liabilities of any member of the Group to NBGI which may be in place from time to time.

**KM:** means Keith Moorhouse, residing at 20 Charleston Way, Cove Bay, Aberdeen, AB12 3FA.

**Liabilities:** means all present and future liabilities and obligations at any time of any member of the Group to the Senior Lender or to any Subordinated Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

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

**Liabilities Acquisition:** means, in relation to a person and to any Liabilities, a transaction where that person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights and benefits in respect of those Liabilities.

**Loan Note Instruments:** means the ATR Investor Loan Note Instrument, the KM Loan Note Instrument, the UES Investor Loan Note Instrument and the UES Vendor Loan Note Instrument.

**Loan Notes:** means the ATR Investor Loan Notes, the KM Loan Notes, the UES Investor Loan Notes and the UES Vendor Loan Notes.

**MR:** means Mike Robertson, residing at 21 Parkhill Crescent, Dyce, Aberdeen, AB21 7FY.

**NBGI:** means NBGI Private Equity (Tranche II) LP (registered in Guernsey with number 1511) whose registered office is at 1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey.

**NBGI Security Documents:** means the floating charges granted by each Original Obligor and the UES Target in favour of NBGI as security trustee dated on or around 28 June 2012, and the

guarantee and indemnity granted by each Original Obligor and the UES Target in favour of NBGI as security trustee dated on or around 28 June 2012.

**Non-Distressed Disposal:** has the meaning given to that term in Clause 9.2.

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

**Payment:** means, in respect of any Liabilities or any other liabilities or obligations (including for the avoidance of doubt, the payment of any dividends or distributions), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities or other liabilities or obligations (whether principal, interest, fees, commission or otherwise).

**Permitted Payment:** means the Payments permitted by Clause 4.2 (*Permitted Payments*).

**Receiver:** means a receiver or receiver and manager or administrative receiver of the whole or any part of the property that is subject to the Transaction Security.

**Recoveries:** has the meaning given to that term in Clause 10.1 (*Order of Application*).

**Secured Obligations:** means all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor to the Senior Lender under the Debt Documents, both actual and contingent and whether incurred solely or jointly, as principal or surety or in any other capacity.

**Security Documents:** means the Senior Security Documents and the Subordinated Security Documents.

**Senior Acceleration Event:** means the Senior Lender exercising any of its rights under Clause 23.34 (*Acceleration*) of the Senior Facilities Agreement.

**Senior Borrower:** has the meaning given to the term **Borrower** in the Senior Facilities Agreement.

**Senior Default:** means a Default under and as defined in the Senior Facilities Agreement.

**Senior Event of Default:** means an Event of Default under and as defined in the Senior Facilities Agreement.

**Senior Facilities Agreement:** means the senior facilities agreement made between the Company, the Senior Lender and others dated 28 and 29 February 2012 and amended and restated by an amendment and restatement agreement dated on or around 28 June 2012.

**Senior Finance Documents:** has the meaning given to the term **Finance Documents** in the Senior Facilities Agreement.

**Senior Guarantor:** has the meaning given to the term **Guarantor** in the Senior Facilities Agreement.

**Senior Lender Discharge Date:** means the date on which all Senior Lender Liabilities have been fully and finally discharged to the satisfaction of the Senior Lender (acting reasonably), whether or not as the result of an enforcement, and the Senior Lender is under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.

**Senior Lender Liabilities:** means the Liabilities owed by the Debtors to the Senior Lender under the Senior Finance Documents.

**Senior Lender's Spot Rate of Exchange:** means, in respect of the conversion of one currency (the **First Currency**) into another currency (the **Second Currency**) the Senior Lender's spot rate of exchange for the purchase of the **Second Currency** with the **First Currency** in the London foreign exchange market at or about 11:00 am (London time) on a particular day.

**Senior Security Documents:** means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of the Senior Lender as security for any of the Secured Obligations; and
- (c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs (a) and (b) above.

**Shareholders:** means each of KM, EL, MR and NBGI.

**Subordinated Liabilities:** means the Liabilities owed to the Subordinated Creditors by the Debtors under the Investor Subordinated Documents, the UES Vendor Loan Note Instrument, the UES Vendor Loan Notes, the Loan Note Security Documents, the articles of association of the Company, the articles of association of the Parent and the Investment Agreement (including for the avoidance of doubt any dividends or distributions).

**Subordinated Security Documents:** means the Loan Note Security Documents.

**Subordinated Security:** means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Subordinated Security Documents.

**Transaction Security:** means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Senior Security Documents.

**UES Vendor Loan Note Security Documents:** means (i) the floating charges granted by each of the Original Obligors and the UES Target in favour of each of the UES Vendors, (ii) the guarantee and indemnity granted by each of the Original Obligors and the UES Target in favour of each of the UES Vendors, and (iii) the intercreditor and security trust deed entered into between NBGI, KM, the UES Vendors, the Original Obligors and the UES Target, in each case dated on or around 28 June 2012.

**VAT:** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

### **Construction**

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

- 1.3.1 any **Company, Debtor, Party, Senior Borrower, Senior Guarantor, Senior Lender or Subordinated Creditor** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- 1.3.2 any **Creditor, Debtor, Party, Senior Lender or Subordinated Creditor** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- 1.3.3 **assets** includes present and future properties, revenues and rights of every description;
- 1.3.4 a **Debt Document** or any other agreement or instrument is a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- 1.3.5 **enforcing** (or any derivation) any Security shall include the appointment of an administrator of a Debtor;
- 1.3.6 **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.3.7 a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.3.8 a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- 1.3.9 a provision of law is a reference to that provision as amended or re-enacted.

1.4 Section, Clause and Schedule headings are for ease of reference only.

1.5 A Senior Default (other than a Senior Event of Default) is **continuing** if it has not been remedied or waived and a Senior Event of Default is **continuing** if it has not been waived or remedied to the satisfaction of the Senior Lender in writing.

## 2. **Ranking and Priority**

### ***Subordinated Liabilities***

2.1 Subject only to the terms of this Agreement, each of the Parties agrees that the Subordinated Liabilities are postponed and subordinated to the Senior Lender Liabilities.

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

### ***Security***

2.3 Each of the Parties agrees that the Senior Security Documents and the Subordinated Security Documents shall rank as follows:

2.3.1 first, the Senior Security Documents; then

2.3.2 the Subordinated Security Documents.

## 3. **Senior Lender and Senior Lender Liabilities**

### ***Payment of Senior Lender Liabilities***

3.1 The Debtors may make Payments of the Senior Lender Liabilities at any time in accordance with the Senior Finance Documents.



***Amendments and Waivers: Senior Lender***

- 3.2 The Senior Lender may amend or waive the terms of the Senior Finance Documents (other than this Agreement) in accordance with their terms (and subject to any consent required under them) at any time.

***Security: Senior Lender***

- 3.3 The Senior Lender may take, accept or receive the benefit of:
- 3.3.1 any Security in respect of the Senior Lender Liabilities in addition to the Transaction Security; and
  - 3.3.2 any guarantee, indemnity or other assurance against loss in respect of the Senior Lender Liabilities.

**4. Subordinated Creditors and Subordinated Liabilities**

***Restriction on Payment: Subordinated Liabilities***

- 4.1 Prior to the Senior Lender Discharge Date, neither the Company, the Parent nor any other Debtor shall, and the Company shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities (including for the avoidance of doubt any dividends or distributions by the Company or the Parent) at any time unless:
- 4.1.1 that Payment is due on a Closing Date and approved by the Senior Lender; or
  - 4.1.2 that Payment is permitted under Clause 4.2 (*Permitted Payments*); or
  - 4.1.3 the taking or receipt of that Payment is permitted under Clause 4.12 (*Permitted Enforcement: Subordinated Creditors*).

***Permitted Payments***

- 4.2 (a) The Company may make (i) a payment of interest payable under the Investor Loan Note Documents, and/or (ii) a payment of interest and/or principal payable under the UES Vendor Loan Note Documents, and/or (iii) payment of a dividend or other distribution to the Parent, and (b) the Parent may make a payment of a dividend or other distribution to the Shareholders, in each case (other than a payment under the UES Vendor Loan Note Documents) only if the conditions set out in paragraphs 4.2.1 to 4.2.6 below, and in the case of a payment under the UES Vendor Loan Notes Documents, the conditions set out in paragraphs 4.2.2 to 4.2.6 below, are satisfied:
- 4.2.1 no payment shall be made until after 28 February 2014;
  - 4.2.2 the Company has delivered to the Senior Lender the Monthly Financial Statements most recently due under the Senior Facilities Agreement;
  - 4.2.3 the most recent Compliance Certificate delivered to the Senior Lender in accordance with Clause 20 (*Information Undertakings*) of the Senior Facilities Agreement evidences compliance with the terms of Clause 21 (*Financial Covenants*) of the Senior Facilities Agreement;
  - 4.2.4 the payment is made from Excess Cashflow;

- 4.2.5 the Cashflow Cover of the Group for the immediately preceding Quarter Date calculated on the basis that the payment was made on or prior to that Quarter Date would have been at least 1:1;
- 4.2.6 the Company has delivered to the Senior Lender a Compliance Certificate at least 10 Business Days prior to the date of the proposed payment which contains projections for the Group for the period of 12 months following the relevant payment and demonstrates that to the best of the Company's information, knowledge and belief based on the information available to it as at the date of the Compliance Certificate, it will be in compliance with the terms of Clause 21 (*Financial Covenants*) of the Senior Facilities Agreement for the forthcoming 12 months (on the basis that the relevant payment is assumed to have been paid on the relevant date and all necessary adjustments are made to the relevant accounts to reflect this assumption); and
- 4.2.7 no Event of Default is continuing or would occur as a result of the payment being made.

***Payment Obligations Continue***

- 4.3 Neither the Company, the Parent nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clause 4.1 (*Restriction on Payment: Subordinated Liabilities*) and Clause 4.2 (*Permitted Payments*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.
- 4.4 The accrual and annual compounding of the interest in accordance with the Loan Note Instruments will continue notwithstanding the restriction on the ability to make any Payment under Clause 4.1 or 4.2.
- 4.5 Any failure to make a Payment due in respect of the Subordinated Liabilities as a result of the operation of Clause 4.1 or 4.2 will not prevent the occurrence of an Event of Default (as defined in the Loan Note Instruments) as a consequence of that failure to make that Payment.
- 4.6 If any Payment (a **Stopped Payment**) that would otherwise be permitted under clause 4.1 and 4.2 is not made because any of the conditions set out in sub-clauses 4.2.1 to 4.2.7 are not met and the circumstances prohibiting such Payment:
- 4.6.1 in the case of a Payment of the Subordinated Liabilities under the Loan Note Documents, do not apply at the next Interest Payment Date (as defined in the Loan Note Instruments) and assuming that no other such circumstances apply under sub-clauses 4.2.1 to 4.2.7 that would prevent such Stopped Payment being made, the Debtors may pay and the relevant Subordinated Creditor may receive the Stopped Payment on such subsequent Interest Payment Date;
- 4.6.2 in the case of Payment of a dividend or other distribution from the Company to the Parent, or from the Parent to the Shareholders, no longer apply and assuming that no other such circumstances apply under sub-clauses 4.2.1 to 4.2.7 that would prevent such Stopped Payment being made, the Company and/or the Parent may pay and the relevant Shareholder may receive the Stopped Payment.

***No Acquisition of Subordinated Liabilities***

- 4.7 Prior to the Senior Lender Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will:

4.7.1 enter into any Liabilities Acquisition; or

4.7.2 beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any of the Subordinated Liabilities, unless the prior consent of the Senior Lender is obtained.

***Amendments and Waivers: Subordinated Creditors***

4.8 Subject to Clause 4.9, and prior to the Senior Lender Discharge Date, the Subordinated Creditors may not amend or waive the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted at any time.

4.9 The Obligors and the Subordinated Creditors may effect:

4.9.1 administrative changes to the Loan Note Instruments without the consent of the Senior Lender provided that the Obligors send a copy of the amended Loan Note Instruments to the Senior Lender within five Business Days of the relevant amendment being made; and

4.9.2 any change not specified by Clause 4.9.1 to the Loan Note Instruments with the prior written consent of the Senior Lender (such consent not to be unreasonably withheld or delayed) including without limitation any change which is necessary or desirable in order to effect the listing of the Loan Notes.

***Security: Subordinated Creditors***

4.10 The Subordinated Creditors may not take, accept or receive the benefit of any Security (other than the Subordinated Security), guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Senior Lender Discharge Date.

***Restriction on Enforcement: Subordinated Creditors***

4.11 Subject to Clause 4.12 (*Permitted Enforcement: Subordinated Creditors*), no Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Senior Lender Discharge Date.

***Permitted Enforcement: Subordinated Creditors***

4.12 Each Subordinated Creditor may take Enforcement Action available to it but for Clause 4.11 (*Restriction on Enforcement: Subordinated Creditors*) in respect of any of the Subordinated Liabilities if, prior to that action, the Senior Lender has given its prior written consent.

4.13 After the occurrence of an Insolvency Event in relation to any member of the Group, each Subordinated Creditor may (unless the Senior Lender has taken, or has given notice that it intends to take, action on behalf of that Subordinated Creditor in accordance with Clause 5.5 (*Filing of Claims*)) exercise any right it may otherwise have in respect of that member of the Group to:

4.13.1 accelerate any of that member of the Group's Subordinated Liabilities or declare them prematurely due and payable or payable on demand;

- 4.13.2 make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Subordinated Liabilities;
  - 4.13.3 take any steps to enforce any Subordinated Security Documents;
  - 4.13.4 exercise any right of set-off or take or receive any Payment in respect of any Subordinated Liabilities of that member of the Group; or
  - 4.13.5 claim and prove in the liquidation of that member of the Group for the Subordinated Liabilities owing to it.
- 4.14 The Subordinated Creditors may, at their sole discretion, after a Distress Event has occurred and is continuing by giving not less than ten days' notice to the Senior Lender, require the transfer to them (or to a nominee or nominees), in accordance with Clause 11.3 (*Change of Senior Lender*), of all, but not part, of the rights, benefits and obligations in respect of the Senior Lender Liabilities if:
- 4.14.1 that transfer is lawful and subject to 4.14.2 below, otherwise permitted by the terms of the Senior Facilities Agreement;
  - 4.14.2 any conditions relating to such a transfer contained in the Senior Facilities Agreement are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required;
  - 4.14.3 the Senior Lender is paid by the Subordinated Creditors an amount equal to the aggregate of:
    - (a) all of the Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Facilities Agreement if the Senior Facilities were being prepaid by the relevant Debtors on the date of that payment (any repayment fee shall be included notwithstanding that the Senior Lender is assigning or transferring its interests in respect of the Senior Liabilities); and
    - (b) all costs and expenses (including legal fees) incurred by the Senior Lender as a consequence of giving effect to that transfer;
  - 4.14.4 as a result of that transfer the Senior Lender has no further actual or contingent liability to any Debtor under the relevant Debt Documents;
  - 4.14.5 an indemnity is provided from each Subordinated Creditor in a form satisfactory to the Senior Lender (acting reasonably) in respect of all losses which may be sustained or incurred by any Senior Lender in consequence of any sum received or recovered by the Senior Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from the Senior Lender for any reason; and
  - 4.14.6 the transfer is made without recourse to, or representation or warranty from, the Senior Lender, except that the Senior Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

- 4.15 The Senior Lender shall, at the request of the Subordinated Creditors, notify the Subordinated Creditors of the sum of the amounts described in Clauses 4.14.3 above.

***Representations: Subordinated Creditors***

- 4.16 Each Subordinated Creditor represents and warrants to the Senior Lender that:
- 4.16.1 (if a company), it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- 4.16.2 the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- 4.16.3 the entry into and performance by it of this Agreement does not and will not:
- (a) conflict with any law or regulation applicable to it, its constitutional documents (if a company) or any agreement or instrument binding upon it or any of its assets; or
- (b) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

**5. Effect of Insolvency Event**

***Payment of Distributions***

- 5.1 After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to pay that distribution to the Senior Lender until the Senior Lender Liabilities have been paid in full.
- 5.2 The Senior Lender shall apply distributions paid to it under Clause 5.1 above in accordance with Clause 10 (*Application of Proceeds*).

***Set-Off***

- 5.3 To the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Subordinated Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which were discharged by that set-off to the Senior Lender for application in accordance with Clause 10 (*Application of Proceeds*).

***Non-Cash Distributions***

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

***Filing of Claims***

- 5.5 After the occurrence of an Insolvency Event in relation to any member of the Group, the Senior Lender and each Subordinated Creditor irrevocably authorises the Senior Lender, on its behalf, to:

- 5.5.1 take any Enforcement Action (in accordance with the terms of this Agreement) against that member of the Group;
- 5.5.2 demand, sue, prove and give receipt for any or all of that member of the Group's Liabilities;
- 5.5.3 collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and
- 5.5.4 file claims, take proceedings and do all other things the Senior Lender considers reasonably necessary to recover that member of the Group's Liabilities.

***Subordinated Creditors' Actions***

**5.6 Each Subordinated Creditor will:**

- 5.6.1 do all things that the Senior Lender requests in order to give effect to this Clause 5; and
- 5.6.2 if the Senior Lender is not entitled to take any of the actions contemplated by this Clause 5 or if the Senior Lender requests that a Subordinated Creditor take that action, undertake that action itself in accordance with the instructions of the Senior Lender or grant a power of attorney to the Senior Lender (on such terms as the Senior Lender may reasonably require) to enable the Senior Lender to take such action.

**6. Turnover of Receipts**

***Turnover by the Subordinated Creditors***

**6.1 Subject to Clause 6.2 (*Permitted Assurance and Receipts*), if at any time prior to the Senior Lender Discharge Date, any Subordinated Creditor receives or recovers:**

- 6.1.1 any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:
  - (a) a Permitted Payment; or
  - (b) made in accordance with Clause 10 (*Application of Proceeds*);
- 6.1.2 other than where Clause 5.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- 6.1.3 notwithstanding Clauses 6.1.1 and 6.1.2 above, and other than where Clause 5.3 (*Set-Off*) applies, any amount:
  - (a) on account of, or in relation to, any of the Liabilities:
    - (i) after the occurrence of a Distress Event; or
    - (ii) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or

- (b) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,

other than, in each case, any amount received or recovered in accordance with Clause 10 (*Application of Proceeds*);

- 6.1.4 the proceeds of any enforcement of any Transaction Security or Subordinated Security except in accordance with Clause 10 (*Application of Proceeds*); or

- 6.1.5 other than where Clause 5.3 (*Set-Off*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with Clause 10 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Subordinated Creditor will:

- (a) in relation to receipts and recoveries not received or recovered by way of set-off:

- (i) hold an amount of that receipt or recovery equal to the Senior Lender Liabilities (or, if less, the amount received or recovered) on trust for the Senior Lender and promptly pay that amount to the Senior Lender for application in accordance with the terms of this Agreement; and

- (ii) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Senior Lender Liabilities to the Senior Lender for application in accordance with the terms of this Agreement; and

- (b) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Senior Lender for application in accordance with the terms of this Agreement.

#### ***Permitted Assurance and Receipts***

- 6.2 Nothing in this Agreement shall restrict the ability of the Senior Lender or any Subordinated Creditor to:

- 6.2.1 arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or

- 6.2.2 make any assignment or transfer permitted by Clause 11 (*Changes to the Parties*), which:

- (a) is permitted by the Senior Facilities Agreement; and

- (b) is not in breach of Clause 4.7 (*No Acquisition of Subordinated Liabilities*),

and that Senior Lender or Subordinated Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

#### ***Sums Received by Debtors***

- 6.3 Prior to the Senior Discharge Date, if any of the Debtors receives or recovers any sum which, under the terms of any of the Debt Documents, should have been paid to the Senior Lender, that Debtor will:
- 6.3.1 hold an amount of that receipt or recovery equal to the Senior Lender Liabilities (or, if less, the amount received or recovered) on trust for the Senior Lender and promptly pay that amount to the Senior Lender for application in accordance with the terms of this Agreement; and
  - 6.3.2 promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Senior Lender Liabilities to the Senior Lender for application in accordance with the terms of this Agreement.

#### ***Saving Provision***

- 6.4 If, for any reason, any of the trusts expressed to be created in this Clause 6 should fail or be unenforceable, the affected Subordinated Creditor or Debtor will promptly pay an amount equal to that receipt or recovery to the Senior Lender to be held on trust by the Senior Lender for application in accordance with the terms of this Agreement.

#### **7. Redistribution**

##### ***Recovering Creditor's Rights***

- 7.1 Any amount paid by the Subordinated Creditor (a **Recovering Creditor**) to the Senior Lender under Clause 5 (*Effect of Insolvency Event*) or Clause 6 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Debtor to the Senior Lender in accordance with the terms of this Agreement.
- 7.2 On payment to the Senior Lender under Clause 5 (*Effect of Insolvency Event*) or Clause 6 (*Turnover of Receipts*) of a Payment received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Senior Lender (the **Shared Amount**) will be treated as not having been paid by that Debtor.

##### ***Reversal of Redistribution***

- 7.3 If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:
- 7.3.1 the Senior Lender shall pay to the Recovering Creditor an amount equal to the appropriate part of the Shared Amount (the **Redistributed Amount**); and
  - 7.3.2 as between the relevant Debtor and the Senior Lender, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Debtor.

##### ***Deferral of Subrogation***

- 7.4 No Subordinated Creditor or Debtor will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of the Senior Lender which ranks ahead of it in accordance with the priorities set



out in Clause 2 (*Ranking and Priority*) until such time as all of the Senior Lender Liabilities have been irrevocably paid in full.

- 7.5 No Subordinated Creditor will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of the Senior Lender until such time as all of the Liabilities owing to the Senior Lender have been irrevocably paid in full.

## **8. Enforcement of Transaction Security**

### ***Manner of Enforcement***

- 8.1 If the Transaction Security is being enforced by the Senior Lender, the Senior Lender may enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by the Senior Lender) as the Senior Lender sees fit.

### ***Waiver of Rights***

- 8.2 To the extent permitted under applicable law and subject to Clause 10 (*Application of Proceeds*) and Clause 9.7 below, each of the Debtors waives all rights it may otherwise have to require that the Transaction Security or Subordinated Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or Subordinated Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

## **9. Proceeds of Disposals, Recoveries from Report Providers**

### ***Non-Distressed Disposals***

- 9.1 In Clauses 9.2 to 9.4 below, **Disposal Proceeds** means the proceeds of a Non-Distressed Disposal.

- 9.2 If, in respect of a disposal of:

9.2.1 an asset by a Debtor; or

9.2.2 an asset which is subject to the Transaction Security,

to a person or persons outside the Group that disposal is not a Distressed Disposal, (a **Non-Distressed Disposal**), the Senior Lender, Subordinated Creditor and Debtor shall (at the cost of the relevant Debtor or the Company and without any consent, sanction, authority or further confirmation from the Senior Lender, Subordinated Creditor or Debtor) but subject to Clause 9.3 below:

9.2.3 release any Security or any other claim (relating to a Debt Document) over that asset;

9.2.4 where that asset consists of shares in the capital of a Debtor, release any Security or any other claim (relating to a Debt Document) over that Debtor's assets; and

9.2.5 execute and deliver or enter into any release of any Security or any claim described in Clauses 9.2.3 and 9.2.4 above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Senior Lender, be considered necessary or desirable.

- 9.3 If that Non-Distressed Disposal is not made, each release of Security or any claim described in Clause 9.2 above shall have no effect and the Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.
- 9.4 If any Disposal Proceeds are required to be applied in prepayment of the Senior Lender Liabilities then the Disposal Proceeds shall be applied in or towards Payment of the Senior Lender Liabilities in accordance with the terms of the Senior Facilities Agreement and the consent of any other Party shall not be required for that application.

***Distressed Disposals***

- 9.5 If a Distressed Disposal is being effected the Senior Lender, each Subordinated Creditor and each Debtor shall (at the cost of the relevant Debtor or the Company and without any consent, sanction, authority or further confirmation from the Senior Lender, any Subordinated Creditor or Debtor):
- 9.5.1 release the Security or any other claim over that asset and execute and deliver or enter into any release of that Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Senior Lender, be considered necessary or desirable;
- 9.5.2 if the asset which is disposed of consists of shares in the capital of a Debtor, release any Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets;
- 9.5.3 if the asset which is disposed of consists of shares in the capital of any Holding Company of a Debtor, release any Security granted by any Subsidiary of that Holding Company over any of its assets;
- 9.5.4 if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Senior Lender decides to dispose of all or any part of:
- (a) the Liabilities; or
- (b) the Debtor Liabilities,
- owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company:
- (c) (if the Senior Lender does not intend that any transferee of those Liabilities or Debtor Liabilities (the Transferee) will be treated as a Senior Lender for the purposes of this Agreement), execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtor Liabilities provided that notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Senior Lender for the purposes of this Agreement; and
- (d) (if the Senior Lender does intend that any Transferee will be treated as a Senior Lender for the purposes of this Agreement), execute and deliver or enter into any agreement to dispose of:
- (i) all (and not part only) of the Liabilities owed to the Senior Lender; and

(ii) all or part of any Debtor Liabilities; and

9.5.5 if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the **Disposed Entity**) and the Senior Lender decides to transfer to another Debtor (the **Receiving Entity**) all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of the Debtor Liabilities, execute and deliver or enter into any agreement to:

- (a) agree to the transfer of all or part of the obligations in respect of those Debtor Liabilities on behalf of the relevant Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
- (b) accept the transfer of all or part of the obligations in respect of those Debtor Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Debtor Liabilities are to be transferred.

9.6 The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to Clauses 9.5.4 and 9.5.5 above) shall be paid to the Senior Lender for application in accordance with Clause 10 (*Application of Proceeds*) as if those proceeds were the proceeds of an enforcement of the Senior Lender's Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to Clauses 9.5.4 and 9.5.5 above), as if that disposal of Liabilities or Debtor Liabilities had not occurred.

9.7 In the case of a Distressed Disposal (or a disposal of Liabilities pursuant to Clauses 9.5.4(d) and 9.5.5 above) effected by or at the request of the Senior Lender, the Senior Lender shall take reasonable care to obtain a fair market price in the prevailing market conditions (though the Senior Lender shall have no obligation to unduly postpone any such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).

***Acquisition Proceeds and Insurance Proceeds (before Distress Event)***

9.8 So long as the requirements of Clause 9.9 below and, in the case of a claim against the provider of any Report, the requirements of Clauses 9.10 to 9.15 (*Recoveries from Report Providers*) are met, if any Recovery Claim or insurance claim is to be made, or is made, by a Debtor prior to a Distress Event and that Recovery Claim or that insurance claim (or the Acquisition Proceeds of that Recovery Claim or the Insurance Proceeds of that insurance claim) is or are expressed to be subject to the Transaction Security, the Senior Lender, Subordinated Creditors and the Debtors shall (at the cost of the relevant Debtor or the Company and without need of any letter of authority or further confirmation from the Senior Lender, Subordinated Creditor or Debtor):

- 9.8.1 give a consent under or release any Security, or any other claim, over the relevant Acquisition Document or insurance policy solely to the extent necessary to allow that Debtor to make that Recovery Claim or that insurance claim and to comply with that Debtor's obligations in respect of that Recovery Claim and those Acquisition Proceeds or that insurance claim and those Insurance Proceeds under Clause 8.4 (*Insurance and Acquisition Proceeds*) of the Senior Facilities Agreement; and
- 9.8.2 execute and deliver or enter into any such consent under or release of that Security or claim that may, in the discretion of the Senior Lender, be considered necessary or desirable.

- 9.9 If any Acquisition Proceeds or Insurance Proceeds are required to be applied in mandatory prepayment of the Senior Lender Liabilities then those Acquisition Proceeds or Insurance Proceeds shall be applied in or towards Payment of the Senior Lender Liabilities in accordance with the terms of the Senior Facilities Agreement and the consent of any other Party shall not be required for that application.

***Recoveries from Report Providers***

- 9.10 In this Clause 9.10 and Clauses 9.11 to 9.15 below:

**Award Proceeds:** means, in relation to a Net Award, an amount equal to that Net Award.

**Net Award:** means any amount received or recovered by any Party in relation to any Proceedings less reasonable legal costs and expenses incurred by that Party in pursuing such Proceedings and any tax payable by that Party directly as a result of that receipt or recovery.

**Proceedings:** means any litigation, proceedings or other claim against a Report Provider with a view to obtaining a recovery from that Report Provider.

**Report Provider:** means any professional adviser or other person who has provided a Report.

- 9.11 If any Party decides to commence Proceedings in relation to, or resulting from, any of the transactions contemplated by the Debt Documents, it will:

9.11.1 give the other Parties reasonable prior notice of its intention to do so;

9.11.2 give each other Party and any insolvency representative appointed under, or pursuant to the terms of, any Senior Finance Document a reasonable opportunity to be joined into such Proceedings or initiate similar proceedings; and

9.11.3 co-operate with any such persons who are joined in as regards the efficient and effective conduct of such Proceedings,

and, in any event, no Party shall at any time waive any right or claim against any Report Provider without the prior written consent of the Senior Lender.

- 9.12 Notwithstanding any other provision in the Debt Documents, no Debtor or Subordinated Creditor may initiate Proceedings unless and until the Senior Lender has given its prior written consent.

- 9.13 If no Distress Event has occurred at the time of receipt of a Net Award, the Company shall procure that the recipient of that Net Award (if not the Company) shall pay the Award Proceeds to the Company for application in accordance with the terms of the Senior Facilities Agreement.

- 9.14 If a Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award shall pay the Award Proceeds to the Senior Lender and the Senior Lender shall apply those Award Proceeds in accordance with the terms of Clause 10 (*Application of Proceeds*).

- 9.15 The provisions of Clauses 9.10 to 9.14 above shall apply until the Senior Lender Discharge Date.

***Subordinated Creditors' and Debtors' Actions***

- 9.16 Each Subordinated Creditor and Debtor will:

9.16.1 do all things that the Senior Lender requests in order to give effect to this Clause 9 (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Senior Lender may consider to be necessary to give effect to the releases or disposals contemplated by this Clause 9); and

9.16.2 if the Senior Lender is not entitled to take any of the actions contemplated by this Clause 9 or if the Senior Lender requests that the Subordinated Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Senior Lender,

provided that the proceeds of those disposals are applied in accordance with Clauses 9.1 to 9.4 (*Non-Distressed Disposals*) or Clauses 9.5 to 9.7 (*Distressed Disposals*) as the case may be.

## **10. Application of Proceeds**

### ***Order of Application***

10.1 Subject to Clause 10.2 (*Prospective Liabilities*), all amounts from time to time received or recovered by the Senior Lender pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 10, the **Recoveries**) shall be held by the Senior Lender on trust to apply them at any time as the Senior Lender (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 10), in the following order of priority:

10.1.1 in discharging any sums owing to any Receiver or any Delegate;

10.1.2 in payment of all costs and expenses incurred by the Senior Lender in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Senior Lender under Clause 5.6 (*Subordinated Creditors' Actions*);

10.1.3 in payment to the Senior Lender for application towards the discharge of the Senior Lender Liabilities (in accordance with the terms of the Senior Finance Documents);

10.1.4 if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document, in payment to the Loan Note Security Trustee, the Company and/or Parent for application against the Subordinated Liabilities; and

10.1.5 the balance, if any, in payment to the relevant Debtor.

### ***Prospective Liabilities***

10.2 Following a Distress Event the Senior Lender may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Senior Lender with such financial institution (including itself) and for so long as the Senior Lender shall think fit (the interest being credited to the relevant account) for later application under Clause 10.1 (*Order of Application*) in respect of:

10.2.1 any sum payable to any Receiver or any Delegate; and

10.2.2 any part of the Liabilities,

that the Senior Lender reasonably considers, in each case, might become due or owing at any time in the future.

#### ***Investment of Proceeds***

- 10.3 Prior to the application of proceeds received that the Senior Lender is required to apply in accordance with Clause 10.1 (*Order of Application*), the Senior Lender may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Senior Lender with such financial institution (including itself) and for so long as the Senior Lender shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Senior Lender's discretion in accordance with the provisions of this Clause 10, provided that the Senior Lender shall cease to be entitled to do so on the date on which the application (in accordance with the provisions of this Clause 10) of the aggregate amount of such proceeds received would result in the occurrence of the Senior Lender Discharge Date.

#### ***Currency Conversion***

- 10.4 For the purpose of, or pending the discharge of, any of the Secured Obligations the Senior Lender may convert any moneys received or recovered by the Senior Lender from one currency to another, at the Senior Lender's Spot Rate of Exchange.
- 10.5 The obligations of any Debtor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

#### ***Permitted Deductions***

- 10.6 The Senior Lender shall be entitled, in its discretion, to:
- 10.6.1 set aside by way of reserve amounts required to meet; and
- 10.6.2 make and pay,
- any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement.

#### ***Good Discharge***

- 10.7 The Senior Lender is under no obligation to make the payments to other parties under this Agreement in the same currency as that in which the Liabilities owing to the relevant Subordinated Creditor are denominated.

#### ***No Proceedings***

- 10.8 No Party (other than the Senior Lender, any Receiver or Delegate) may take any proceedings against any officer, employee or agent of the Senior Lender, a Receiver or a Delegate in respect of any claim it might have against the Senior Lender, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any property that is subject to the Transaction Security.

#### ***Debtors: Power of Attorney***

- 10.9 Each Debtor by way of security for its obligations under this Agreement irrevocably appoints the Senior Lender to be its attorney to do anything which that Debtor has authorised the Senior Lender or any other Party to do under this Agreement (such appointment to have effect immediately but the powers granted under it to be exercisable only if an Event of Default has occurred and is continuing ) or is itself required to do under this Agreement but has failed to

do for a period of five Business Days or more (and the Senior Lender may delegate that power on such terms as it sees fit).

***Delegation***

- 10.10 Each of the Senior Lender, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Debt Documents.
- 10.11 That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Senior Lender, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate.

**11. Changes to the Parties**

***Assignments and Transfers***

- 11.1 No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this Clause 11.

***Change of Subordinated Creditor***

- 11.2 Subject to Clause 4.7 (*No Acquisition of Subordinated Liabilities*), a Subordinated Creditor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Subordinated Liabilities owed to it if any assignee or transferee has (if not already party to this Agreement as a Subordinated Creditor) acceded to this Agreement, as a Subordinated Creditor, pursuant to Clause 11.4 (*Creditor Accession Undertaking*).

***Change of Senior Lender***

- 11.3 The Senior Lender may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if:
  - 11.3.1 that assignment or transfer is in accordance with the terms of the Senior Facilities Agreement; and
  - 11.3.2 any assignee or transferee has acceded to this Agreement as the Senior Lender, pursuant to Clause 11.4 (*Creditor Accession Undertaking*).

***Creditor Accession Undertaking***

- 11.4 With effect from the date of acceptance by the Senior Lender of a Creditor Accession Undertaking duly executed and delivered to it by the relevant acceding party or, if later, the date specified in that Creditor Accession Undertaking:
  - 11.4.1 any Party ceasing entirely to be the Senior Lender or a Subordinated Creditor shall be discharged from further obligations towards the Senior Lender and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and

- 11.4.2 as from that date, the replacement or new Senior Lender or Subordinated Creditor shall assume the same obligations and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity.

***New Debtor***

- 11.5 If any member of the Group:

11.5.1 incurs any Liabilities; or

11.5.2 gives any security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities,

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with Clause 11.6 below, no later than contemporaneously with the incurrance of those Liabilities or the giving of that assurance.

- 11.6 With effect from the date of acceptance by the Senior Lender of a Debtor Accession Deed duly executed and delivered to the Senior Lender by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as a Debtor.

***Additional Parties***

- 11.7 Each of the Parties appoints the Senior Lender to receive on its behalf each Debtor Accession Deed and Creditor Accession Undertaking delivered to the Senior Lender and the Senior Lender shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the Senior Facilities Agreement.

***Resignation of a Debtor***

- 11.8 The Company may request that a Debtor ceases to be a Debtor by delivering to the Senior Lender a Debtor Resignation Request.

- 11.9 The Senior Lender shall accept a Debtor Resignation Request and notify the Company and each other Party of its acceptance if:

11.9.1 the Company has confirmed that no Senior Default is continuing or would result from the acceptance of the Debtor Resignation Request; and

11.9.2 to the extent that the Senior Lender Discharge Date has not occurred, that Debtor is not, or has ceased to be, a Senior Borrower or a Senior Guarantor.

- 11.10 Upon notification by the Senior Lender to the Company of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

**12. Costs and Expenses**

***Interest on Demand***

- 12.1 If the Senior Lender or a Subordinated Creditor or a Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and



after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 2 per cent. per annum over the rate at which the Senior Lender was being offered, by leading banks in the London interbank market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Senior Lender may from time to time select.

***Enforcement and Preservation Costs***

- 12.2 The Company shall, within three Business Days of demand, pay to the Senior Lender the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights under any Debt Document and the Transaction Security and any proceedings instituted by or against the Senior Lender as a consequence of taking or holding the Transaction Security or enforcing these rights.

**13. Indemnities**

***Company's Indemnity to Senior Lender***

- 13.1 The Company shall promptly and as principal obligor indemnify the Senior Lender against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by it in relation to or arising out of the operation of Clauses 9.5 to 9.7 (*Distressed Disposals*).

**14. Information**

***Information and Dealing***

- 14.1 The Debtors agree that the Senior Lender and the Subordinated Creditors may share information regarding the Debtors and the Debt Documents.

***Notification of Prescribed Events***

- 14.2 If a Senior Acceleration Event occurs the Senior Lender shall notify each other Party.
- 14.3 If the Senior Lender exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.

**15. Notices**

***Communications in Writing***

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

***Addresses***

- 15.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:
- 15.2.1 in the case of the Company, the Parent and the other Original Debtors, that indicated alongside its name in Part 1A of the Schedule;
- 15.2.2 in the case of the Subordinated Creditors and the Loan Note Security Trustee, that indicated alongside its name in Part 1B of the Schedule;

15.2.3 in the case of the Senior Lender:

Address: 56 Carden Place  
Aberdeen  
AB10 1UP

Fax number: 01224 649 475

15.2.4 in the case of each other Party, that notified in writing to the Senior Lender on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer which that Party may notify to the Senior Lender (or the Senior Lender may notify to the other Parties, if a change is made by the Senior Lender) by not less than five Business Days' notice.

***Delivery***

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

15.3.1 if by way of fax, when received in legible form; or

15.3.2 if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 15.2 (*Addresses*), if addressed to that department or officer.

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

15.5 Any communication or document made or delivered to the Company in accordance with Clauses 15.3 and 15.4 above will be deemed to have been made or delivered to each of the Debtors.

***Notification of Address and Fax Number***

15.6 Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 15.2 (*Addresses*) or changing its own address or fax number, the Senior Lender shall notify the other Parties.

***English Language***

15.7 Any notice given under or in connection with this Agreement must be in English.

15.8 All other documents provided under or in connection with this Agreement must be:

15.8.1 in English; or

15.8.2 if not in English, and if so required by the Senior Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

**16. Presentation**

***Partial Invalidity***

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

***No Impairment***

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

***Remedies and Waivers***

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

***Waiver of Defences***

- 16.4 The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 16.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- 16.4.1 any time, waiver or consent granted to, or composition with, any Debtor or other person;
- 16.4.2 the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- 16.4.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 16.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;
- 16.4.5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;
- 16.4.6 any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;

16.4.7 any intermediate Payment of any of the Liabilities owing to the Senior Lender in whole or in part; or

16.4.8 any insolvency or similar proceedings.

***Priorities Not Affected***

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

16.5.1 not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Senior Lender Liabilities or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;

16.5.2 apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and

16.5.3 secure the Senior Lender Liabilities in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

**17. Consents, Amendments and Override**

***Required Consents***

17.1 Subject to Clauses 17.3 and 17.4 (*Exceptions*) this Agreement may be amended or waived only with the consent of the Senior Lender.

***Effectiveness***

17.2 Any amendment, waiver or consent given in accordance with this Clause 17 will be binding on all Parties and the Senior Lender may effect, on behalf of the Senior Lender, any amendment, waiver or consent permitted by this Clause 17.

***Exceptions***

17.3 Subject to Clause 17.4 below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party, the consent of that Party is required.

17.4 Clause 17.3 above shall not apply to:

17.4.1 any release of any Transaction Security, any claim or any Liabilities; or

17.4.2 any consent,

which, in each case, is given in accordance with Clause 9 (*Proceeds of Disposals, Recoveries from Report Providers*).

***Deemed Consent***

17.5 If, at any time prior to the Senior Lender Discharge Date, the Senior Lender gives a Consent in respect of the Senior Finance Documents then, if that action was permitted by the terms of this Agreement, the Subordinated Creditors will (or will be deemed to):

17.5.1 give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and

17.5.2 do anything (including executing any document) that the Senior Lender may reasonably require to give effect to this Clause 17.5.

***Excluded Consents***

17.6 Clause 17.5 (*Deemed Consent*) does not apply to any Consent which has the effect of:

17.6.1 increasing or decreasing the Liabilities;

17.6.2 changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or

17.6.3 changing the terms of this Agreement or of any Security Document.

***No Liability***

17.7 The Senior Lender will not be liable to the Subordinated Creditor or Debtor for any Consent given or deemed to be given under this Clause 17.

***Instrument of Alteration***

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

17.9 The Subordinated Creditors confirm and undertake to the Senior Lender that they will within 21 days of the date of this Agreement register the required details of this Agreement at Companies House in order of this Agreement to constitute a valid instrument of alteration in respect of any floating charges forming part of the Subordinated Security.

***Agreement to Override***

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

**18. Governing Law**

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

**19. Enforcement**

***Jurisdiction***

- 19.1 The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a **Dispute**).
- 19.2 The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 19.3 Clauses 19.1 and 19.2 above are for the benefit of the Senior Lender only. As a result, the Senior Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Lender may take concurrent proceedings in any number of jurisdictions.

This is the Schedule referred to in the preceding Agreement between Clydesdale Bank plc as Senior Lender, NBGI Private Equity (Tranche II) LP, Keith Moorhouse, Euan Leask and Mike Robertson as Subordinated Creditors and ATR Offshore Group Limited and others as Original Debtors.

# SCHEDULE

## Part 1A

### Original Debtors

Name	Company Number	Registered Office / Address	Address for Notices
ATR Offshore Group Limited (formerly named Dunwilco (1712) Limited)	SC403892	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	NBGI Private Equity Limited, Old Change House, 128 Queen Victoria Street, London, EC4V 4BJ  Fax: 0207 661 5667
ATR Offshore Holdings Limited (formerly named Dunwilco (1723) Limited)	SC404407	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR Holdings Limited	SC305588	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
Aberdeen Tool Rental Limited	SC153427	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR Plant Services Limited	SC221515	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR Lifting Services Limited	SC338730	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478

ATR Overseas Limited	SC317260	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR (2010) Limited	SC172929	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR Industrial Supplies Limited	SC274938	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR Aberdeen Limited	SC250752	Union Plaza 6 <sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478
ATR Caspian Limited	74984	Suite 3C, Regal House, Queensway, Gibraltar	ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW  Fax: 01224 222478



**Part 1B**

**Subordinated Creditors**

<b>Name</b>	<b>Company Number</b>	<b>Registered Office / Address</b>	<b>Address for Notices</b>
NBGI Private Equity (Tranche II) LP	1511	1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey	Investor Manager, Old Change House, 128 Queen Victoria Street, London, EC4V 4BJ  Fax: 0207 661 5667
Keith Moorhouse	N/A	20 Charleston Way, Cove Bay, Aberdeen, AB12 3FA	20 Charleston Way, Cove Bay, Aberdeen, AB12 3FA
Euan Leask	N/A	10 Moray Place, Aberdeen, AB15 4AF	10 Moray Place, Aberdeen, AB15 4AF
Mike Robertson	N/A	21 Parkhill Crescent, Dyce, Aberdeen, AB21 7FY	21 Parkhill Crescent, Dyce, Aberdeen, AB21 7FY
The Loan Note Security Trustee	1511	1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey	Investor Manager, Old Change House, 128 Queen Victoria Street, London, EC4V 4BJ  Fax: 0207 661 5667

## Part 2

### Form of Debtor Accession Deed

**THIS AGREEMENT** is made between:

- (1) *[insert full name of new Debtor]* (the **Acceding Debtor**); and
- (2) *[insert full name of current Senior Lender]* (the **Senior Lender**), for itself and each of the other parties to the intercreditor agreement referred to below.

This agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the **Intercreditor Agreement**) originally dated 28 and 29 February 2012 as amended and restated by an amendment and restated agreement dated on or around 28 June 2012 between, amongst others, Clydesdale Bank plc as senior lender, the Subordinated Creditors and the Debtors (each as defined in the Intercreditor Agreement).

The Acceding Debtor intends to [incur Liabilities under the following documents] / [give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

*[insert details (date, parties and description) of relevant documents]*

the Relevant Documents.

**IT IS AGREED** as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
3. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

**THIS AGREEMENT** has been signed on behalf of the Senior Lender and executed as a deed by the Acceding Debtor and is delivered on the date stated above.

**The Acceding Debtor**

*[insert appropriate deed execution block for Acceding Debtor]*

Address for notices:

Address:

Fax:

Attention:

**The Senior Lender**

*[full name of current Senior Lender]*

**By:**

**Date**

### Part 3

#### Form of Creditor Accession Undertaking

To: *[insert full name of current Senior Lender]* for itself and each of the other parties to the Intercreditor Agreement referred to below.

From: *[Acceding Creditor]*

**THIS UNDERTAKING** is made on *[date]* by *[insert full name of new [Senior Lender]/[Subordinated Creditor]]* (the **Acceding [Senior Lender]/[Subordinated Creditor]**) in relation to the intercreditor agreement (the **Intercreditor Agreement**) originally dated 28 and 29 February 2012 as amended and restated by an amendment and restated agreement dated on or around 28 June 2012 between, amongst others, Clydesdale Bank plc as senior lender, the Subordinated Creditors and the Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding *[Senior Lender]/[Subordinated Creditor]* being accepted as a *[Senior Lender]/[Subordinated Creditor]* for the purposes of the Intercreditor Agreement, the Acceding *[Senior Lender]/[Subordinated Creditor]* confirms that, as from *[date]*, it intends to be party to the Intercreditor Agreement as a *[Senior Lender]/[Subordinated Creditor]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Senior Lender]/[Subordinated Creditor]* and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

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

**THIS UNDERTAKING** has been entered into on the date stated above and is executed as a deed by the Acceding *[Senior Lender]/[Subordinated Creditor]*, if it is acceding as a Subordinated Creditor and is delivered on the date stated above].

#### **Acceding *[Senior Lender]/[Subordinated Creditor]***

*[insert appropriate execution block for acceding party. This should be a deed execution block for an Subordinated Creditor]*

Address:

Fax:

Attention:

Accepted by the Senior Lender

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for and on behalf of

*[insert full name of current Senior Lender]*

Date:

Part 4

Form of Debtor Resignation Request

To: [ ] as Senior Lender

From: [Resigning Debtor] and ATR Offshore Group Limited

Dated:

Dear Sirs

**ATR Offshore Group Limited - Intercreditor Agreement originally dated 28 and 29 February 2012 as amended and restated by an amendment and restated agreement dated on or around 28 June 2012 (the Intercreditor Agreement)**

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to Clauses 11.8 to 11.10 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
  - 3.1 no Senior Default is continuing or would result from the acceptance of this request; and
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

ATR Offshore Group Limited

[resigning Debtor]

By:

By: