



CHFP021

COMPANIES FORM No. 466(Scot)

**Particulars of an instrument of
alteration to a floating charge created
by a company registered in Scotland****466**

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

*Please do not
write in
this margin*

Pursuant to section 410 and 466 of the Companies Act 1985

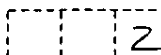
*Please complete
legibly, preferably
in black type, or
bold block lettering*

** insert full name
of company*

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

For official use

Company number



SC223940

Name of company

* DIO LIMITED (THE "CHARGOR")

Date of creation of the charge (note 1)

18 DECEMBER 2012

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

FLOATING CHARGE

Names of the persons entitled to the charge

HSBC BANK PLC

Short particulars of all the property charged

UNDERTAKING & ALL PROPERTY & ASSETS PRESENT & FUTURE, INCLUDING UNCALLED
CAPITAL.

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

HARPER MACLEOD LLP
THE CA'D'ORO
45 GORDON STREET
GLASGOW
G1 3PE
DX 86 GLASGOW

For official use (02/06)

Charges Section

Post room

FRIDAY



S4BCHC4Z

SCT

10/07/2015

#439

COMPANIES HOUSE

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

PLEASE SEE PAPER APART, PART A

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

Date(s) of execution of the instrument of alteration

PLEASE SEE PAPER APART, PART B

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

PLEASE SEE PAPER APART, PART C

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*

PLEASE SEE PAPER APART, PART D

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

*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 _____

Date _____

9/7/15

On behalf of [company] [chargee] ☐

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. ☐ delete as appropriate
For the date of creation of a charge see section 410(5) of the Companies Act.
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. 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

This is the paper apart referred to in the foregoing Form 466 relative to an instrument of alteration dated 3 July 2015 (the "Intercreditor Agreement") in respect of the floating charge by DIO Limited in favour of HSBC Bank plc created on 18 December 2012

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

"2015 Mezzanine Facility Agreement" means the mezzanine facility agreement dated 19 June 2015 between each Company and the Postponed Creditors;

"Additional Bank Loan Arrangements" means:

- 1 the £500,000 BACS facility;
- 2 the £400,000 purchasing cards facility;
- 3 the £50,000 corporate cards facility;
- 4 the \$50,000 FX settlement facility; and
- 5 the £100,000 daylight overdraft facility,

in each case made available by the Bank to Merson;

"Assets" means the whole of the property, assets and undertaking, (including uncalled capital) which is or may be from time to time comprised in each Company's property and undertaking;

"Bank DIO Floating Charge" means the floating charge granted by DIO in favour of the Bank created on 18 December 2012 and registered with the Registrar of Companies on 28 December 2012, in security for the Bank Liabilities;

"Bank Floating Charges" means (i) the Bank Merson Floating Charge; and (ii) the Bank DIO Floating Charge;

"Bank Guarantee" means the guarantee granted on or around the date of the Intercreditor Agreement by each of Merson, DIO, PropCo and Property HoldCo in favour of the Bank;

"Bank Liabilities" means the Liabilities owed by the Companies to the Bank;

"Bank Loan Documents" means:

- 1 the base rate term loan facility letter between Merson and the Bank dated 7 April 2011;
- 2 the overdraft and engagements facility letter between Merson and the Bank dated 30 April 2012 and countersigned on 8 May 2012 (as amended and varied by way of the overdraft and engagement facility letters from the Bank to Merson dated 3 December 2012, 28 February 2013 and 28 February 2015 (and countersigned on 18 December 2012, 6 March 2013 and 3 March 2015 respectively) and by an annual renewal letter from the Bank dated 21 October 2014);
- 3 the £1,120,000 base rate term loan facility letter from the Bank, and countersigned by Merson, on or around the date of the Intercreditor Agreement;
- 4 the Bank Securities;
- 5 the Bank Guarantee; and
- 6 any other document specified as a **"Bank Loan Document"** by the Bank in terms of Clause 3.16.3 of the Intercreditor Agreement;

"Bank Merson Floating Charge" means the floating charge granted by Merson in favour of the Bank created on 13 May 2011 and registered with the Registrar of Companies on 19 May 2011 in security for the Bank Liabilities;

"Bank Securities" means the Bank Floating Charges and the Bank Standard Security;

"Bank Standard Security" means the standard security to be granted by Merson in favour of the Bank on or around the date of the Intercreditor Agreement in respect of the Property;

"Creditors" means the Bank and the Postponed Creditors;

"DIO Assets" means the whole of the property, assets and undertaking (including uncalled capital) which is or may be from time to time comprised in the property and undertaking of DIO;

"Keyman Assignments" means the assignments in security in respect of the life policies of Roderick Angus, Gavin McMurray and others to be granted in favour of the Postponed Creditors in accordance with the terms of the Mezzanine Facility Agreement;

"Liabilities" means all present and future liabilities and obligations whatsoever at any time of any Company to any Creditor under the Loan Documents and/or the Additional Bank Loan Arrangements, 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:

- 1 any refinancing, novation, deferral or extension;
- 2 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;
- 3 any claim for damages or restitution; and
- 4 any claim as a result of any recovery by any Company 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 Documents" means the Bank Loan Documents and the Postponed Creditor Finance Documents;

"Mezzanine Facility Agreement" means (a) until (but excluding) the date upon which all conditions precedent to the availability of facilities under the 2015 Mezzanine Facility Agreement have been satisfied or waived, the mezzanine facility agreement dated 18 December 2012 between each Company and the Postponed Creditors; and (b) from (and including) the date upon which all conditions precedent to the availability of facilities under the 2015 Mezzanine Facility Agreement have been satisfied or waived, the 2015 Mezzanine Facility Agreement;

"Payment" means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations) whether in cash or in kind including by way of set off;

"Postponed Creditors" means Maven and The Scottish Loan Fund;

"Postponed Creditor DIO Floating Charge" means the bond and floating charge granted by DIO over its Assets in respect of the Postponed Creditor Liabilities, created on 18 December 2012 and registered with the Registrar of Companies on 22 December 2012;

"Postponed Creditor Finance Documents" has the meaning given to the term **"Finance Documents"** in the Mezzanine Facility Agreement;

"Postponed Creditor Floating Charges" means (i) the Postponed Creditor Merson Floating Charge; and (ii) the Postponed Creditor DIO Floating Charge;

"Postponed Creditor Liabilities" means the Liabilities owed by the Companies to the Postponed Creditors under or in connection with the Postponed Creditor Finance Documents;

"Postponed Creditor Merson Floating Charge" means the bond and floating charge granted by Merson over its Assets in respect of the Postponed Creditor Liabilities created on 18 December 2012 and registered with the Registrar of Companies on 22 December 2012;

"Postponed Creditor Security Documents" means (i) the Postponed Creditor Floating Charges and (ii) the Keyman Assignments;

"PropCo" means Williams and Co 2012 Ltd incorporated under the Companies Acts (Company Number SC024587) and having its registered office at 292 St. Vincent Street, Glasgow, G2 5TQ;

"Property" means 2 Young Place, Kelvin Industrial Estate, East Kilbride, G74 0TD, registered at the Land Register of Scotland under Title Number LAN 128908;

"Property HoldCo" means Williams and Co 2013 Ltd incorporated under the Companies Acts (Company Number SC333117) and having its registered office at 292 St. Vincent Street, Glasgow, G2 5TQ; and

"Remaining Merson Assets" means the whole of the property, assets and undertaking, (including uncalled capital) which is or may be from time to time comprised in the property and undertaking of Merson, other than the Property.

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

HSBC BANK PLC, incorporated under the Companies Act (Company Number 142559) having its registered office at 8 Canada Square, London, E14 5HQ and its successors, assignees and transferees from time to time (the **"Bank"**);

MAVEN CAPITAL PARTNERS UK LLP, incorporated under the Limited Liability Partnerships Act 2000 (Registered Number OC339387) having its registered office at Queens Chambers, 5 John Dalton Street, Manchester, M2 GET as agent and security trustee for the Scottish Loan Fund L.P. and its successors, assignees and transferees from time to time (**"Maven"**);

SCOTTISH LOAN FUND L.P., a Scottish limited partnership with registered number SL8545 whose principal place of business is at Sutherland House, 149 St Vincent Street, Glasgow, G2 5NW acting by its general partner, **SLF GP LIMITED** (registered number SC391744) whose registered office is at Sutherland House, 149 St Vincent Street, Glasgow G2 5NW (the **"Scottish Loan Fund"**);

MERSON SIGNS LIMITED, incorporated under the Companies Acts (Company Number: SC020547) and having its registered office at 1 Law Place, Nerston Mains Industrial Estate, East Kilbride (**"Merson"**)

and

DIO LIMITED, incorporated under the Companies Acts (Company Number: SC223940) and having its registered office at 1 Law Place, Nerston Mains Industrial Estate, East Kilbride (**"DIO"** together with Merson being referred to as the **"Companies"** and each a **"Company"**).

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

Subscribed for and on behalf of the Bank on 3 July 2015.

Subscribed for and on behalf of Maven on 1 July 2015.

Subscribed for and on behalf of Scottish Loan Fund on 1 July 2015.

Subscribed for and on behalf of Merson on 1 July 2015.

Subscribed for and on behalf of DIO on 1 July 2015.

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

No Company shall grant any fixed or floating charges other than the Bank Securities and the Postponed Creditor Security Documents over all or any of its Assets including its heritable, real or leasehold property without the prior written consent of the Bank and the Postponed Creditors.

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

The Bank, the Postponed Creditors and the Companies each agree that, notwithstanding the respective dates of creation or registration or any provisions as to ranking contained therein, the Bank Securities and the Postponed Creditor Security Documents shall rank in the following order of priority:

- 1 in respect of the Property:
 - (a) first, the Bank Standard Security in respect of all sums secured thereby, without limit;
 - (b) second, the Bank Merson Floating Charge in respect of all sums secured thereby, without limit; and
 - (c) third, the Postponed Creditor Merson Floating Charge in respect of all sums secured thereby, without limit;
- 2 in respect of the Remaining Merson Assets:
 - (a) first, the Bank Merson Floating Charge in respect of all sums secured thereby, without limit; and
 - (b) second, the Postponed Creditor Merson Floating Charge in respect of all sums secured thereby, without limit.
- 3 in respect of the DIO Assets:
 - (a) first, the Bank DIO Floating Charge in respect of all sums secured thereby, without limit; and
 - (b) second, the Postponed Creditor DIO Floating Charge in respect of all sums secured thereby, without limit.



FILE COPY

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

COMPANY NO. 223940
CHARGE NO. 2

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 3 JULY 2015 WERE DELIVERED
PURSUANT TO SECTION 878 OF THE COMPANIES ACT 2006
ON 10 JULY 2015

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 18
DECEMBER 2012

BY DIO LIMITED

IN FAVOUR OF
HSBC BANK PLC

FOR SECURING ALL SUMS DUE OR TO BECOME DUE

GIVEN AT COMPANIES HOUSE, EDINBURGH 17 JULY 2015



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



GLASGOW

9/7/15

CERTIFIED A TRUE COPY

Intercreditor Agreement

HSBC Bank plc

Maven Capital Partners UK LLP

The Scottish Loan Fund L.P.

Merson Signs Limited

and

DIO Limited

Ref:

FAS: 3889

Harper Macleod LLP The Ca'd'oro 45 Gordon Street Glasgow G1 3PE
Tel +44 (0)141 221 8888 Fax +44(0)141 226 4198 e-mail info@harpermacleod.co.uk
www.harpermacleod.co.uk DX GW86 LP 5, Glasgow 6

Glasgow Edinburgh Inverness

Intercreditor Agreement

between

HSBC BANK PLC, incorporated under the Companies Acts (Company Number 14259) having its registered office at 8 Canada Square, London E14 5HQ and its successors, assignees and transferees from time to time (the "**Bank**");

and

MAVEN CAPITAL PARTNERS UK LLP, incorporated under the Limited Liability Partnerships Act 2000 (Registered Number 0C339387) having its registered office at Queens Chambers, 5 John Dalton Street, Manchester M2 GET as agent and security trustee for the Scottish Loan Fund LP and its successors, assignees and transferees from time to time (the "**Maven**");

and

SCOTTISH LOAN FUND L.P., a Scottish limited partnership with registered number SL8545 whose principal place of business is at Sutherland House, 149 St Vincent Street, Glasgow G2 5NW acting by its general partner, **SLF GP LIMITED** (registered number SC391744) whose registered office is at Sutherland House, 149 St Vincent Street, Glasgow G2 5NW (the "**Scottish Loan Fund**");

and

THE COMPANIES named in the Schedule (collectively the "**Companies**" and each a "**Company**").

1 Ranking

1.1 The Bank, the Postponed Creditors and the Companies each agree that the Bank Liabilities and the Postponed Creditor Liabilities shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:

1.1.1 first, the Bank Liabilities without limit; and

1.1.2 second, the Postponed Creditor Liabilities without limit.

1.2 The Bank, the Postponed Creditors and the Companies each agree that, notwithstanding the respective dates of creation or registration or any provisions as to ranking contained therein, the Bank Securities and the Postponed Creditor Security Documents shall rank in the following order of priority:

1.2.1 in respect of the Property:

(a) first, the Bank Standard Security in respect of all sums secured thereby, without limit;

(b) second, the Bank Merson Floating Charge in respect of all sums secured

thereby, without limit; and

- (c) third, the Postponed Creditor Merson Floating Charge in respect of all sums secured thereby, without limit;

1.2.2 in respect of the Remaining Merson Assets:

- (a) first, the Bank Merson Floating Charge in respect of all sums secured thereby, without limit; and
- (b) second, the Postponed Creditor Merson Floating Charge in respect of all sums secured thereby, without limit.

1.2.3 in respect of the DIO Assets:

- (a) first, the Bank DIO Floating Charge in respect of all sums secured thereby, without limit; and
- (b) second, the Postponed Creditor DIO Floating Charge in respect of all sums secured thereby, without limit

1.3 The ranking and priority set out in Clauses 1.1 and 1.2 and the subordination effected by this Agreement shall be a continuing subordination and benefit the ultimate balance of the Bank Liabilities notwithstanding any intermediate payment or discharge of the Bank Liabilities (in whole or in part). Further, neither the ranking and priority set out in Clauses 1.1 and 1.2, the subordination effected by this Agreement nor the obligations of any of the Postponed Creditors under this Agreement shall be affected in any way by any of the following:

1.3.1 the nature of the Encumbrances created by the Bank Securities and the Postponed Creditor Security Documents and the dates of execution, perfection or registration of them;

1.3.2 any provision contained in any of the Securities;

1.3.3 the date or dates on which sums have been or may be advanced or become due, owing or payable under the Bank Securities and the Postponed Creditor Security Documents, respectively;

1.3.4 any fluctuation from time to time in the amounts secured by the Bank Securities or the Postponed Creditor Security Documents including any reduction of those amounts to nil;

1.3.5 the existence of any credit balance on any current or other account of any Company with the Bank;

1.3.6 the appointment of a liquidator, administrative receiver, receiver, administrator or other similar officer in respect of any Company or over all or any part of the Assets;

1.3.7 the granting of time or any other indulgence to any Company or any other person or the release, compounding or otherwise dealing with a Company or any other person;

- 1.3.8 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce any rights or remedies against any Company or any other person by either the Bank or any of the Postponed Creditors;
 - 1.3.9 the provisions of Sections 464 and 466 of the Companies Act 1985 or any other rule of law which might operate to the contrary; or
 - 1.3.10 any other fact, matter or thing which would otherwise affect or impair the ranking, priority and subordination contemplated by this Agreement or the obligations of any Party hereunder.
- 1.4 For the avoidance of doubt, this Agreement supersedes and replaces in all respects and for all purposes any previous agreement, whether written or oral, express or implied, between the parties to it (or any of them) in relation to the subject matter of this Agreement including (without limitation) (i) the intercreditor agreement between the Bank, Maven, Scottish Loan Fund and the Companies entered into on 14, 17 and 18 December 2012 and (ii) the intercreditor agreement between the Bank, Maven, Scottish Loan Fund and the Companies entered into on 17 and 19 June 2015.
- 1.5 The Postponed Creditors each waives any right it may have of requiring the Bank to proceed against, or enforce, any right, Encumbrance or claim for payment the Bank may have before claiming the benefit of this Agreement.
- 1.6 Each Company hereby irrevocably waives any right to appropriate any payments to, or other sum received, recovered or held by, the Bank in or towards discharge of a particular part of the Bank Liabilities and agrees that the Bank shall have the exclusive right to appropriate any such payment or other sum in accordance with the Bank Loan Documents.
- 1.7 Any amount received or recovered by the Bank, any receiver or any delegate in exercise of its rights under this Agreement may be credited to an interest bearing suspense account and that amount may be kept there (with any interest earned being credited to that account) until the Bank is satisfied that all the Bank Liabilities have been discharged in full.
- 1.8 The Parties hereby acknowledge and agree that notwithstanding any other provision of this Agreement, the terms of, and rights, obligations and benefits arising from, the Warrant Instrument are free to be applied and exercised in accordance with its terms without restriction whatsoever.

2 Bank Liabilities

- 2.1 Payments of the Bank Liabilities may be made at any time in accordance with the Bank Loan Documents.
- 2.2 The Bank may amend or waive the terms of the Bank Loan Documents or the Bank Securities at any time.

3 Postponed Creditors Liabilities

- 3.1 No Company shall make, and no Postponed Creditor shall demand or receive, any Payments of the Postponed Creditor Liabilities at any time unless:

- 3.1.1 the Bank Discharge Date has occurred;
 - 3.1.2 that Payment is permitted under Clause 3.2 below; or
 - 3.1.3 the taking or receipt of that Payment is permitted under Clause 3.12 below.
- 3.2 Each Company may, prior to the Bank Discharge Date, make Payments to the Postponed Creditors in respect of the Postponed Creditor Liabilities then due in accordance with the Postponed Creditor Finance Documents if the Bank consents to such payment or if the Payment is a scheduled payment of principal, a voluntary prepayment of principal, a mandatory prepayment of principal, a payment of scheduled fees or a payment of scheduled interest due on principal in accordance with the terms of the Mezzanine Facility Agreement in each case as at the date of this Agreement (or as amended in accordance with the terms of this Agreement) provided that, at that time:
 - 3.2.1 each Company is in compliance with the terms of the Financial Covenants applicable to that Company;
 - 3.2.2 no Payment Default has occurred and is continuing; and
 - 3.2.3 no Stop Notice is outstanding.
- 3.3 A Stop Notice is "outstanding" during the period from the date on which, following the occurrence of a Stop Event, the Bank issues a notice (a "Stop Notice") to the Postponed Creditors (with a copy to the Companies) advising that that Stop Event has occurred and is continuing and confirming that all and any Payments of the Postponed Creditor Liabilities are suspended until the first to occur of:
 - 3.3.1 the date which is 90 days after the date of issue of the Stop Notice;
 - 3.3.2 the date on which the Bank has confirmed to the Postponed Creditors (which it shall do as soon as practicable following the occurrence thereof) that the Stop Event in respect of which that Stop Notice was issued is no longer continuing;
 - 3.3.3 the date on which the Bank cancels that Stop Notice by notice to the Postponed Creditors (with a copy to the Companies); and
 - 3.3.4 the Bank Discharge Date.
- 3.3A For the avoidance of doubt, no payment to a Postponed Creditor shall be permitted at any time under clause 3.2 above when (i) any Company is not in compliance with the terms of the Financial Covenants applicable to that Company and/or (ii) a Payment Default has occurred and is continuing, notwithstanding that at such time no Stop Notice is outstanding (including, without limitation, where a Stop Notice ceases to be outstanding in accordance with clause 3.3.1 above).
- 3.4 No more than one Stop Notice may be served with respect to the same event or set of circumstances.
- 3.5 Any failure to make a Payment due under the Postponed Creditor Finance Documents as a result of the issue of a Stop Notice, the failure by any Company to comply with the Financial Covenants or the occurrence of a Payment Default shall not prevent:
 - 3.5.1 the occurrence of a Mezzanine Event of Default as a consequence of that

failure to make a Payment in relation to the Mezzanine Facility Agreement; or

- 3.5.2 the issue of a Postponed Creditor Enforcement Notice on behalf of the Postponed Creditors in accordance with the terms of this Agreement.
- 3.6 No Company shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Postponed Creditor Finance Document by the operation of this Clause 3 even if its obligation to make that Payment is restricted at any time by the terms of this Clause 3. The accrual and capitalisation (but not payment, until permitted in accordance with Clause 3.2) of interest in accordance with the Mezzanine Facility Agreement shall continue notwithstanding the issue of a Stop Notice.
- 3.7 If:
- 3.7.1 at any time following the issue of a Stop Notice, the failure by any Company to comply with the Financial Covenants, and/or the occurrence of a Payment Default, that Stop Notice ceases to be outstanding and/or (as the case may be) the Payment Default ceases to be continuing and/or (as the case may be) the Bank waives the failure by the Borrower to comply with the Financial Covenants; and
- 3.7.2 the relevant Company then promptly pays to the relevant Postponed Creditor an amount equal to any Payments which had accrued under the Mezzanine Finance Documents and which would have been Postponed Creditor Permitted Payments but for that Stop Notice, failure by any Company to comply with the Financial Covenants and/or Payment Default,
- then any Mezzanine Event of Default which may have occurred as a result of that suspension of Payments shall be waived and any Postponed Creditor Enforcement Notice which may have been issued as a result of that Mezzanine Event of Default shall be waived (but without prejudice to the terms of, and rights and obligation under, the Warrant Instrument in respect of the occurrence of a Mezzanine Event of Default, or any indemnity for costs and expenses by any Company under the Mezzanine Facility Agreement in respect of, or in connection with the occurrence of the relevant Mezzanine Event of Default or the issue of the relevant Postponed Creditor Enforcement Notice), in each case without any further action being required on the part of any of the Postponed Creditors.
- 3.8 Prior to the Bank Discharge Date, neither any of the Postponed Creditors nor any of the Companies may amend, supplement, vary, replace or waive the terms of the Postponed Creditor Finance Documents or enter into any further Postponed Creditor Finance Documents unless the prior written consent of the Bank is obtained (such consent to be at the Bank's discretion, but is not to be unreasonably delayed or withheld).
- 3.9 Each Postponed Creditor and each Company agree that they will not designate a document a "Finance Document" for the purposes of the Mezzanine Facility Agreement without the prior written consent of the Bank but excluding from this obligation the Postponed Creditor Finance Documents entered into on or around the date of this Agreement.
- 3.10 At any time prior to the Bank Discharge Date, no Postponed Creditor may take, accept or receive from any Company the benefit of any Encumbrance, guarantee, indemnity or

other assurance against loss in respect of the Postponed Creditor Liabilities other than (i) the Postponed Creditor Security Documents (ii) the cross-guarantee granted on or around 18 December 2012 by each Company in respect of the Postponed Creditor Liabilities and (iii) the Keyman Assignments, without the prior written consent of the Bank.

3.11 Other than as provided under Clause 3.12 and Clause 3.13, no Postponed Creditor shall be entitled to take any Enforcement Action in respect of any of the Postponed Creditor Liabilities prior to the Bank Discharge Date.

3.12 Subject to Clause 3.13, the Postponed Creditors may take Enforcement Action available to them in respect of any of the Postponed Creditor Liabilities if at the same time as, or prior to, that action:

3.12.1 a Bank Acceleration Event has occurred in which case the Postponed Creditors may take the same Enforcement Action (but in respect of the Postponed Creditor Liabilities) as constitutes that Bank Acceleration Event; or

3.12.2 where:

3.12.2.1 the Postponed Creditors have given notice (a "**Postponed Creditor Enforcement Notice**") to the Bank specifying that a Mezzanine Event of Default has occurred and is continuing; and

3.12.2.2 a period (a "Standstill Period") of not less than 9 calendar months has elapsed from the date on which that Postponed Creditor Enforcement Notice was delivered (or, if earlier, deemed to be delivered) in accordance with this Agreement; and

3.12.2.3 that Mezzanine Event of Default is continuing at the end of the Standstill Period; or

3.12.3 the Bank has given its prior written consent.

3.13 Subject to Clause 4A, after the occurrence of an Insolvency Event in relation to any Company, the Postponed Creditors may exercise any rights they may have against the Companies to:

3.13.1 accelerate any of the Postponed Creditor Liabilities or declare them prematurely due and payable or payable on demand;

3.13.2 make a demand under any guarantee, indemnity or other assurance against loss given by any Company in respect of any Postponed Creditor Liabilities;

3.13.3 exercise any right of set-off or take or receive any Payment in respect of any Postponed Creditor Liabilities; or

3.13.4 claim and prove in the liquidation of any Company for the Postponed Creditor Liabilities owing to it.

3.14 Neither any of the Postponed Creditors nor any of the Companies shall take, or omit to take, any action whereby the ranking, priority and/or subordination contemplated by this Agreement may be impaired.

3.15 No Postponed Creditor shall have any remedy against the Bank by reason of any transaction entered into between the Bank and any Company or any requirement or condition imposed by or on behalf of the Bank on any Company which violates or is or causes a Postponed Creditor Event of Default (howsoever described) under the Postponed Creditor Finance Documents, but without prejudice to any remedies available to the Postponed Creditors for a breach by the Bank of the terms of this Agreement.

3.16 For the avoidance of doubt, the Bank shall be entitled at any time to

3.16.1 take any Enforcement Action in respect of the Bank Liabilities;

3.16.2 take any action whatsoever in respect of the Bank Liabilities following the occurrence of an Insolvency Event; and/or

3.16.3 designate further documents as Bank Loan Documents,

in each case without the consent of any of the Postponed Creditors.

4 Turnover

4.1 If at any time prior to the Bank Discharge Date, any Postponed Creditor receives or recovers:

4.1.1 any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not a Postponed Creditor Permitted Payment; and/or

4.1.2 any amount by way of set off in respect of any of the Liabilities owed to it which does not give effect to a Postponed Creditor Permitted Payment,

that Postponed Creditor shall as soon as reasonably practicable notify the Bank and shall:

(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 Bank Liabilities (or if less, the amount received or recovered) on trust for the Bank and promptly pay that amount to the Bank for application in reduction of the Bank Liabilities as the Bank sees fit; and

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

4.2 If any Company receives or recovers any sum which, under the terms of any of the Loan

Documents, should have been paid to the Bank, that Company shall:

- 4.2.1 hold an amount of that receipt or recovery equal to the Bank Liabilities (or if less, the amount received or recovered) on trust for the Bank and promptly pay that amount to the Bank for application in reduction of the Bank Liabilities as the Bank sees fit; and
- 4.2.2 promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Bank Liabilities to the Bank for application in accordance with the terms of this Agreement.
- 4.3 If, for any reason, any of the trusts expressed to be created in this Clause 4 should fail or be unenforceable, the affected Postponed Creditor or Company (as the case may be) will promptly pay an amount equal to that receipt or recovery to the Bank to be held on trust by the Bank for application in accordance with the terms of this Agreement.
- 4.4 If the Bank receives any distribution otherwise than in cash in respect of the Postponed Creditor Liabilities from any Company or any other source, it may deal with and/or apply the distribution in reduction of the Bank Liabilities as it sees fit provided that it is applied towards the Bank Liabilities in accordance with the terms of this Agreement and the Bank Liabilities shall not be reduced by any such distribution until and except to the extent that any net realisation proceeds are applied towards the Bank Liabilities.

4A Subordination On Insolvency

- 4A.1 Until the Bank Discharge Date, if an Insolvency Event occurs in relation to the Company the following provisions of this clause 4A.1 shall apply.
- 4A.2 While an Insolvency Event is subsisting then, until the Bank Discharge Date, the Postponed Creditor Liabilities will (without prejudice to any other provisions of this Agreement having the effect of subordinating the Postponed Creditor Liabilities) be subordinate in right of payment to the Bank Liabilities.
- 4A.3 While an Insolvency Event is subsisting:
 - (a) the Bank may, and is irrevocably authorised on behalf of each of the Postponed Creditors to:
 - (i) claim, enforce and prove for the Postponed Creditor Liabilities;
 - (ii) file claims and proofs, give receipts and take all such proceedings in respect of filing such claim or proof and do all such things as the Bank reasonably considers necessary to recover the Postponed Creditor Liabilities; and
 - (iii) receive all distributions of the Postponed Creditor Liabilities for application in reduction of the Bank Liabilities as the Bank sees fit; and
 - (b) if and to the extent that the Bank is not entitled to claim, enforce, prove, file claims or proofs, or take proceedings in respect of filing such claim or proof, (or elects not to do so), in respect of the Postponed Creditor Liabilities, the relevant Postponed Creditor will do

so in good time if so requested by the Bank.

Provided that, for the avoidance of doubt, nothing in this clause 4A.3 shall create or be deemed to create security.

4A.4

4A.4.1 Until the Bank Discharge Date, while an Insolvency Event is subsisting:

(a) each Postponed Creditor will:

- (i) pay and distribute on demand to the Bank all distributions in cash or in kind received (and any rights to receive such distributions) by it during the subsistence of such circumstances in respect of the Postponed Creditor Liabilities (and any rights deriving from same), or, in the case of a set-off, pay the equivalent amount on demand, to the Bank for application in reduction of the Bank Liabilities as the Bank sees fit until discharge of the Bank Liabilities; and
- (ii) hold any amounts so received (up to the aggregate of the amount of the Bank Liabilities) on trust for the Bank,

provided that nothing in this clause shall create or be deemed to create a registrable charge;

(b) each Postponed Creditor will direct the receiver, administrator, trustee in bankruptcy, liquidator, assignee or other person distributing the assets of any Company or their proceeds to pay distributions in respect of the Postponed Creditor Liabilities directly to the Bank up to the amount of the Bank Liabilities from time to time; and

(c) each Proposed Creditor will give all such notices and do all such things as the Bank may reasonably request to give effect to this clause 4A.4.

4A.4.2 Provided that, for the avoidance of doubt, nothing in this clause 4A.4 shall create or be deemed to create security.

5 Security Continuing

The Securities shall rank as provided in this Agreement as continuing securities for repayment of the amounts owing to each of the Bank and the Postponed Creditors from time to time by any Company. Notwithstanding the provisions of sections 464 and 465 of the Companies Act 1985 or any other rule of law which might operate to the contrary effect, the foregoing provisions as to ranking shall be valid and effective irrespective of the date or dates on which sums are advanced or are to be advanced by the Bank, or any of the Postponed Creditors, to any Company have been or shall be drawn out by or debited to any Company, the Bank and the Postponed Creditors having no concern over the composition of or fluctuations in the sum or sums due by any Company to any of the other Parties hereto.

6 Agreement

If a receiver or administrator or liquidator of any Company regards this Agreement as failing to bind him or her in the distribution of the proceeds of sale of the Assets (and in as far as the refusal of the receiver or administrator or liquidator to be bound by this Agreement causes prejudice to the Bank or the Postponed Creditors), the Bank and the Postponed Creditors will compensate each other to the extent to which it has benefited as a result of this refusal and to the extent necessary in order to give effect to the subordination contemplated by this Agreement.

7 Negative Pledge

No Company shall grant any fixed or floating charges other than the Bank Securities and the Postponed Creditor Security Documents over all or any of its Assets including its heritable, real or leasehold property without the prior written consent of the Bank and the Postponed Creditors.

8 Enforcement

No Postponed Creditor shall appoint or take any steps to appoint a receiver, administrator, administrative receiver or liquidator of any Company or the Assets other than in accordance with the terms of Clauses 3.12 and 3.13 above.

9 Preferential Payments

The ranking provisions in this Agreement shall not prejudice the right of the Bank to receive Preferential Payments provided that any Preferential Payments payable shall not be counted towards repayment of the Bank Debt for the purposes of calculating the extent of any priority to which the Bank is entitled under Clause 1 (Ranking).

10 Authority to Release Information

During the continuance of each of the Bank Securities and the Postponed Creditor Security Documents, the Bank and the Postponed Creditors may disclose to each other information concerning any Company and its affairs in such manner and to such extent as the Bank and the Postponed Creditors may wish and each Company consents to such disclosure.

11 Consent

11.1 The Bank and the Postponed Creditors consent to the grant by each Company of the Securities.

11.2 Subject to Clause 2.2, where the Bank's consent is required in terms of the Bank Loan Documents and/or the Bank Securities or any other documentation entered into in relation to the facilities advanced under the Bank Loan Documents, and the Bank is agreeable to providing consent, the Bank shall provide notice of its intention to grant consent to the Postponed Creditors in terms of Clause 18 and the Postponed Creditors shall have 5 Business Days in which to intimate to the Bank their objection to such consent being granted, otherwise the Postponed Creditors consent shall be deemed to have been granted. In the event that the Postponed Creditors intimate their objection to such consent being granted, the Bank will endeavour to consult and co-operate with the Postponed Creditors as to whether such consent should be granted and on what terms,

provided that the Bank may grant such consent at any time on such terms as it sees fit where it considers (in its sole discretion) that it is necessary for it to do so.

12 Power of Attorney

Each Postponed Creditor and each Company, irrevocably severally appoints the Bank as its mandatory and attorney to do anything which it (a) has authorised the Bank to do under this Agreement and (b) is required to do by this Agreement but has failed to do for a period of 10 Business Days after receiving notice from the Bank requiring it to do so. The Bank may delegate this power.

13 Variations

- 13.1 The Bank Floating Charges and the Postponed Creditor Floating Charges are varied to the extent specified in this Agreement and this Agreement shall be construed and receive effect as an instrument of alteration within the meaning of Section 466 of the Companies Act 1985.
- 13.2 This Agreement so far as affecting the Bank Standard Security shall be construed and receive effect as a variation within the meaning of Section 16 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

14 Transfers

The Bank shall not assign or transfer the benefit of the Bank Securities and no Postponed Creditor shall assign or transfer the benefit of the Postponed Creditor Security Documents unless the assignee or transferee first agrees in writing with the Bank and/or the Postponed Creditors, as the case may be, to be bound by the provisions of this Agreement.

15 Partial Invalidity

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

16 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of any party to this Agreement, 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.

17 Memorandum

The Postponed Creditors shall ensure that a memorandum of this Agreement shall be endorsed on each of the Mezzanine Facility Agreement and the Postponed Creditor Security Documents.

18 Notices

18.1 Any notice or other communication under this Agreement must be made in writing and must be:

18.1.1 delivered in person or sent by first class recorded delivery post (or the equivalent in the jurisdiction from which the demand, notice or other communication is sent, if sent from outwith the United Kingdom) to the address set out in clause 18.1.4 for the relevant party or, in the case of the Companies, to its registered office; or

18.1.2 sent by fax to the fax number set out in clause 18.1.4 for the relevant party; or

18.1.3 delivered or sent to such other address or fax number, notice of which has been given to and received by the issuer of the demand, notice or other communication in accordance with the provisions of this Clause 18 (Notices).

18.1.4 The addresses for notices or other communications for the Bank and the Postponed Creditors shall be:-

18.1.4.1 in the case of the Bank, 141 Bothwell Street, Glasgow G2 7E0, fax number 08455878548, marked for the attention of Gavin Forsyth; and

18.1.4.2 in the case of the Postponed Creditors, Kintyre House, 205 West George Street, Glasgow, G2 2LW, fax number 4-44 (0)141 248 8093, marked for the attention of David Milroy.

18.2 Subject to Clause 18.3, a notice or other communication will be deemed to be received:

18.2.1 upon delivery if delivered or at noon (Greenwich Mean Time) two Business Days (or seven Business Days if sent to or from a place outwith the United Kingdom) after posting if sent by post; and

18.2.2 at the time shown in the relevant transmission report for the complete fax if sent by fax.

18.3 If a demand, notice or other communication is deemed received after 5pm in the place of receipt or on a non-Business Day it will be deemed to have been received at 9 am on the next Business Day for the purposes of this Agreement.

19 Definitions and Interpretation

In this Agreement:

19.1 **"2015 Mezzanine Facility Agreement"** means the mezzanine facility agreement dated 19 June 2015 between each Company and the Postponed Creditors;

19.2 **"Additional Bank Loan Arrangements"** means:

19.2.1 the £500,000 BACS facility;

19.2.2 the £400,000 purchasing cards facility;

19.2.3 the £50,000 corporate cards facility;

19.2.4 the \$50,000 FX settlement facility; and

19.2.5 the £100,000 daylight overdraft facility,

in each case made available by the Bank to Merson;

19.3 “**Assets**” means the whole of the property, assets and undertaking (including uncalled capital) which is or may be from time to time comprised in each Company’s property and undertaking;

19.4 “**Bank Acceleration Event**” means any exercise by the Bank of its rights of acceleration of the Bank Liabilities following the occurrence of a Bank Event of Default and any consequential rights exercisable by the Bank in such circumstances;

19.5 “**Bank DIO Floating Charge**” means the floating charge granted by DIO in favour of the Bank created on 18 December 2012 and registered with the Registrar of Companies on 28 December 2012, in security for the Bank Liabilities;

19.6 “**Bank Discharge Date**” means the first date on which all Bank Liabilities have been unconditionally and irrevocably fully and finally discharged to the satisfaction of the Bank, whether or not as the result of Enforcement Action, and the Bank is under no further obligation to provide financial accommodation to any Company;

19.7 “**Bank Event of Default**” means any event or circumstance specified as such in the Bank Loan Documents;

19.8 “**Bank Floating Charges**” means (i) the Bank Merson Floating Charge; and (ii) the Bank DIO Floating Charge ;

19.9 “**Bank Guarantee**” means the guarantee granted on or around the date of this Agreement by each of Merson, DIO, PropCo and Property HoldCo in favour of the Bank;

19.10 “**Bank Liabilities**” means the Liabilities owed by the Companies to the Bank;

19.11 “**Bank Loan Documents**” means:

19.11.1 the base rate term loan facility letter between Merson and the Bank dated 7 April 2011;

19.11.2 the overdraft and engagements facility letter between Merson and the Bank dated 30 April 2012 and countersigned on 8 May 2012 (as amended and varied by way of overdraft and engagement facility letters from the Bank to Merson dated 3 December 2012, 28 February 2013 and 28 February 2015 (and countersigned on 18 December 2012, 6 March 2013 and 3 March 2015 respectively) and by an annual renewal letter from the Bank dated 21 October 2014);

19.11.3 the £1,120,000 base rate term loan facility letter from the Bank, and countersigned by Merson, on or around the date of this Agreement;

19.11.4 the Bank Securities;

19.11.5 the Bank Guarantee; and

- 19.11.6 any other document specified as a "Bank Loan Document " by the Bank in terms of Clause 3.16.3;
- 19.12 **"Bank Merson Floating Charge"** means the floating charge granted by Merson in favour of the Bank created on 13 May 2011 and registered with the Registrar of Companies on 19 May 2011 in security for the Bank Liabilities;
- 19.13 **"Bank Securities"** means the Bank Floating Charges and the Bank Standard Security;
- 19.14 **"Bank Standard Security"** means the standard security to be granted by Merson in favour of the Bank on or around the date of this Agreement in respect of the Property;
- 19.15 **"Business Day"** means a day on which banks are generally open for business in Glasgow;
- 19.16 **"Creditors"** means the Bank and the Postponed Creditors;
- 19.17 **"DIO"** means DIO Limited incorporated under the Companies Acts (Company Number SC223940) having its registered office at 1 Law Place, Nerston Mains Industrial Estate, East Kilbride, G74 4QQ;
- 19.18 **"DIO Assets"** means the whole of the property, assets and undertaking (including uncalled capital) which is or may be from time to time comprised in the property and undertaking of DIO;
- 19.19 **"Encumbrance"** means a mortgage, charge (whether fixed or floating), pledge, lien, assignation in security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;
- 19.20 **"Enforcement Action"** means:
- 19.20.1 in relation to any Liabilities:
- 19.20.1.1 the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable;
- 19.20.1.2 the making of any declaration that any Liabilities are payable on demand;
- 19.20.1.3 the making of a demand in relation to a Liability that is payable on demand;
- 19.20.1.4 the making of any demand against any Company in relation to any of its Liabilities to a Creditor;
- 19.20.1.5 the exercise of any right of set-off, account combination, payment netting attachment or execution against any Company in respect of any Liabilities;
- 19.20.1.6 the suing for, commencing or joining of any legal or arbitration proceedings against any Company to recover any Liabilities; or
- 19.20.1.7 the suing for, or the institution of, any creditors process (whether before or after judgement) against any Company in respect of any

obligations owing to it (whether or not for the payment of money) in respect of a Liability;

- 19.20.2 the taking of any steps to enforce or require the enforcement of any Encumbrance or any guarantee, indemnity or other assurance against loss (including without limitation, the Securities and the crystallisation of any floating charge forming part of the Securities) or the exercise of any rights thereunder on default;
- 19.20.3 the entering into of any composition, compromise, assignment or arrangement with any Company;
- 19.20.4 the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrative receiver, administrator or similar officer) in relation to, or with a view to the insolvency, liquidation, winding up, dissolution, receivership, administration or reorganisation of any Company's assets or any suspension of payments or moratorium of any indebtedness of any Company, or any analogous procedure or step in any jurisdiction (whether under the Securities, other Encumbrance or otherwise);
- 19.20.5 bringing or supporting any legal process against any Company or applying or taking any proceedings for an interdict or specific implement (or the equivalent in any jurisdiction) in respect of any Company and/or its obligations,

except that the following shall not constitute Enforcement Action:

- 19.20.5.1 the taking of any action falling within paragraphs 19.20.1.4 or 19.20.4 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; or
- 19.20.5.2 the Postponed Creditors bringing legal proceedings against any person solely for the purpose of:
 - 18.13.4.2.1 obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Loan Document to which it is party;
 - 18.13.4.2.2 obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
 - 18.13.4.2.3 requesting judicial interpretation of any provision of any Loan Document to which it is party with no claim for damages; or
- 19.20.5.3 with reference to the exercise of rights on default referred to at paragraph 19.20.2 above, the rights of the Postponed Creditors on default pursuant to the Keyman Assignments, the rights of the Postponed Creditors pursuant to the Warrant Instrument, and the accrual and capitalization (but not payment) of default interest pursuant to the Postponed Creditor Finance Documents;

- 19.21 **"Financial Covenants"** means each of the financial covenants as that term is defined in the Bank Loan Documents (as such covenants are amended, supplemented or replaced from time to time);
- 19.22 **"Insolvency Event"** means:
- 19.22.1 any resolution is passed or order made for the winding up, liquidation, dissolution, receivership, administration or reorganisation of any Company or any of its assets, a moratorium is declared in relation to any indebtedness of any Company or an administrator is appointed to any Company;
 - 19.22.2 any composition, compromise, assignment or arrangement is made with any of the Companies' creditors;
 - 19.22.3 the appointment of any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Company or any of its assets; or
 - 19.22.4 any analogous procedure or step is taken in any jurisdiction;
- 19.23 **"Keyman Assignments"** means the assignments in security in respect of the life policies of Roderick Angus, Gavin McMurray and others to be granted in favour of the Postponed Creditors in accordance with the terms of the Mezzanine Facility Agreement;
- 19.24 **"Liabilities"** means all present and future liabilities and obligations whatsoever at any time of any Company to any Creditor under the Loan Documents and/or the Additional Bank Loan Arrangements, 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:
- 19.24.1 any refinancing, novation, deferral or extension;
 - 19.24.2 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;
 - 19.24.3 any claim for damages or restitution; and
 - 19.24.4 any claim as a result of any recovery by any Company 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;
- 19.25 **"Loan Documents"** means the Bank Loan Documents and the Postponed Creditor Finance Documents;
- 19.26 **"Merson"** means Merson Signs Limited incorporated under the Companies Acts (Company Number SC020547) having its registered office at 1 Law Place, Nerston Mains Industrial Estate, East Kilbride, G74 4QQ;
- 19.27 **"Mezzanine Event of Default"** means any event or circumstance specified as such in

the Mezzanine Facility Agreement;

- 19.28 **"Mezzanine Facility Agreement"** means (a) until (but excluding) the date upon which all conditions precedent to the availability of facilities under the 2015 Mezzanine Facility Agreement have been satisfied or waived, the mezzanine facility agreement dated 18 December 2012 between each Company and the Postponed Creditors; and (b) from (and including) the date upon which all conditions precedent to the availability of facilities under the 2015 Mezzanine Facility Agreement have been satisfied or waived, the 2015 Mezzanine Facility Agreement;
- 19.29 **"Party"** means a party to this Agreement;
- 19.30 **"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations) whether in cash or in kind including by way of set off;
- 19.31 **"Payment Default"** means an event of default arising under the Bank Loan Documents in respect of a failure by any of the Companies to make any payment under and in accordance with the terms of the Bank Loan Documents;
- 19.32 **"Postponed Creditors"** means Maven and The Scottish Loan Fund;
- 19.33 **"Postponed Creditor DIO Floating Charge"** means the bond and floating charge granted by DIO over its Assets in respect of the Postponed Creditor Liabilities, created on 18 December 2012 and registered with the Registrar of Companies on 22 December 2012;
- 19.34 **"Postponed Creditor Enforcement Notice"** has the meaning given to that term in Clause 3.12.2;
- 19.35 **"Postponed Creditor Finance Documents"** has the meaning given to the term **"Finance Documents"** in the Mezzanine Facility Agreement;
- 19.36 **"Postponed Creditor Floating Charges"** means (i) the Postponed Creditor Merson Floating Charge; and (ii) the Postponed Creditor DIO Floating Charge;
- 19.37 **"Postponed Creditor Liabilities"** means the Liabilities owed by the Companies to the Postponed Creditors under or in connection with the Postponed Creditor Finance Documents;
- 19.38 **"Postponed Creditor Merson Floating Charge"** means the bond and floating charge granted by Merson over its Assets in respect of the Postponed Creditor Liabilities created on 18 December 2012 and registered with the Registrar of Companies on 22 December 2012;
- 19.39 **"Postponed Creditor Permitted Payments"** means payments to the Postponed Creditors permitted under Clause 3.2;
- 19.40 **"Postponed Creditor Security Documents"** means (i) the Postponed Creditor Floating Charges and (ii) the Keyman Assignments;
- 19.41 **"Preferential Payments"** means payments to which a preference attaches in terms of Sections 59, 175 and 386 of the Insolvency Act 1986;

- 19.42 **"PropCo"** means Williams and Co 2012 Ltd incorporated under the Companies Acts (Company Number SC024587) and having its registered office at 292 St. Vincent Street, Glasgow, G2 5TQ;
- 19.43 **"Property"** means 2 Young Place, Kelvin Industrial Estate, East Kilbride, G74 0TD, registered at the Land Register of Scotland under Title Number LAN 128908;
- 19.44 **"Property HoldCo"** means Williams and Co 2013 Ltd incorporated under the Companies Acts (Company Number SC333117) and having its registered office at 292 St. Vincent Street, Glasgow, G2 5TQ;
- 19.45 **"Remaining Merson Assets"** means the whole of the property, assets and undertaking, (including uncalled capital) which is or may be from time to time comprised in the property and undertaking of Merson, other than the Property;
- 19.46 **"Securities"** means the Bank Securities and the Postponed Creditor Security Documents;
- 19.47 **"Standstill Period"** has the meaning given to that term in Clause 3.12.2;
- 19.48 **"Stop Event"** means an event of default under the Bank Loan Documents or a failure by any Company (as appropriate) to comply with the terms of the Financial Covenants;
- 19.49 **"Stop Notice"** has the meaning given to that term in Clause 3.3;
- 19.50 **"Subsidiary"** means a subsidiary within the meaning of section 1159 of the Companies Act 2006; and
- 19.51 **"Warrant Instrument"** has the meaning given to that term in the Mezzanine Facility Agreement.
- 19.52 Unless a contrary indication appears, a reference in this Agreement to:
- 19.52.1 the Bank, any Postponed Creditor, any Company or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
- 19.52.2 without prejudice to any requirement to procure consent to the same, a reference to any agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented, extended or restated; and
- 19.52.3 a provision of law is a reference to that provision as amended or re-enacted.
- 19.53 Clause headings are for ease of reference only.

20 Governing Law

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

21 Jurisdiction

- 21.1 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 or any non-contractual obligation arising out of or in connection with this Agreement) (a "Dispute").

21.2 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.

21.3 This Clause 21 is for the benefit of the Bank and the Postponed Creditors only. As a result, neither the Bank nor the Postponed Creditors shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Bank and the Postponed Creditors may take concurrent proceedings in any number of jurisdictions.

22 Consent to Registration

The parties to this Agreement consent to its registration for preservation.

IN WITNESS WHEREOF these presents consisting of this and the preceding 18 pages together with the Schedule annexed are executed as follows:

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

At.....LONDON.....

On.....3 JULY 2015.....

By.....[Signature].....its Authorised Signatory

before this witness

.....ANTHONY LAMMIE.....Full Name


.....THE CLYDE.....Address

.....45 LONDON STREET.....
.....LONDON E1 3PE.....

Subscribed for and on behalf of MAVEN CAPITAL PARTNERS UK LLP in its capacity as agent and security trustee for and on behalf of SCOTTISH LOAN FUND L.P. acting by its duly authorised attorney

At.....2 WALKER STREET, EDINBURGH

On.....1 JULY 2015

By..........Attorney -
ALAN ROBERTSON

before this witness

.....MARTIN M'LAGAN.....Full Name

.....2 WALKER STREET.....Address

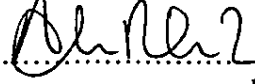
.....EDINBURGH



Subscribed by SLF GP LIMITED as general partner of SCOTTISH LOAN FUND L.P. acting by its duly authorised attorney

At.....2 WALKER STREET, EDINBURGH

On.....1 JULY 2015

By..........Attorney
ALAN ROBERTSON

before this witness

.....MARTIN M'LAGAN.....Full Name

.....2 WALKER STREET.....Address

.....EDINBURGH



Subscribed for and on behalf of **DIO LIMITED**

At..... Glasgow

On..... 11/7/15

By..... 

its Authorised Signatory

before this witness



..... Full Name

..... DUNCAN CATNIE

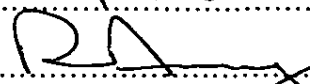
Address

..... 2 BLYTHSWOOD SQUARE, GLASGOW

Subscribed for and on behalf of **MERSON SIGNS LIMITED**

At..... Glasgow

On..... 11/7/15

By..... 

its Authorised Signatory

before this witness



..... DUNCAN CATNIE Full Name

..... 2 BLYTHSWOOD SQUARE Address

..... GLASGOW

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING
INTERCREDITOR AGREEMENT BETWEEN HSBC BANK PLC, MAVEN
CAPITAL PARTNERS UK LLP, THE SCOTTISH LOAN FUND LP, MERSON
SIGNS LIMITED AND DIO LIMITED**

The Companies

Name	Registered Office	Country of Incorporation	Registered No.
Merson Signs Limited	1 Law Place, Nerston Mains Industrial Estate, East Kilbride	Scotland	SC020547
Dio Limited	1 Law Place, Nerston Mains Industrial Estate, East Kilbride	Scotland	SC223940