

# M

CHFP021

COMPANIES FORM No. 466(Scot)

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

# 466

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

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

5

SC602568

Name of company

\* SALUS (ABBEY COURT) LTD (the "Company")

Date of creation of the charge (note 1)

19 September 2019

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

Fiduciam Nominees Limited (Company no: 09672341) as Security Agent

Short particulars of all the property charged

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

COMPANIES HOUSE  
EDINBURGH

09 OCT 2019

FRONT DESK

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

FAO Thomas Pullar  
Morton Fraser LLP  
Quartermile Two  
2 Lister Square  
Edinburgh  
EH3 9GL

For official use (02/06)

Charges Section

Post room

WEDNESDAY



SCT \*S8FOX4UA\* 09/10/2019 #337  
COMPANIES HOUSE

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

- (1) **Fiduciam Nominees Limited**, company number 09672341, Josaron House, 2nd Floor, 5-7 John Prince's Street, London W1G 0JN (the "**Fiduciam Lender**");
- (2) **Fiduciam Nominees Limited**, company number 09672341, Josaron House, 2nd Floor, 5-7 John Prince's Street, London W1G 0JN (the "**Security Agent**");
- (3) **Salus (Abbey Court) Ltd**, company number SC602568, Abbey Court Care Home 34 Abbey Green Street, Easterhouse, Glasgow, Scotland, G34 0JH (the "**Company**"); and
- (4) **Graham Duffy**, 7 Jean Maclean Place, Bishopbriggs, Glasgow, G64 3BJ (the "**Subordinated Creditor**").

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this margin*

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

Date(s) of execution of the instrument of alteration

- (1) 18 September 2019  
(2) 19 September 2019  
(3) 17 September 2019  
(4) 17 September 2019

Delivered on: 19 September 2019

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

1. The Company undertakes to each Finance Party that, at all times during the Subordination Period, it will not receive the benefit of any Guarantee from any person in respect of the Subordinated Debt.
2. The Subordinated Creditor undertakes to the Company and separately with the Fiduciam Lender and Security Agent that, at all times during the Subordination Period, it will not, without prior written consent of the Security Agent accept or permit to subsist any Security Interest over any of the assets of the Company or any other party for any of the Subordinated Debt, other than the Subordinated Security.

See paper apart for definitions. Unless otherwise defined in this Form 466, or in the paper apart, capitalised terms used in this Form 466 shall have the meaning given to them in the Investment of Alteration.

Short particulars of any property released from the floating charge

N/A

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

N/A

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

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

The parties to the Instrument of Alteration agree that the benefit of the Senior Security and Subordinated Security will accrue to the Security Agent (in its capacity as agent of and trustee for the Lenders) until all Senior Debt has been paid; after which the benefit of the Subordinated Security accrues to the Subordinated Creditor.

See paper apart for definitions. Unless otherwise defined in this Form 466, or in the paper apart, capitalised terms used in this Form 466 shall have the meaning given to them in the Instrument of Alteration.

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

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this margin*

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

Signed John Alun Date \_\_\_\_\_

On behalf of ~~company~~ chargee for Maton Fraser LLP

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

**Notes**

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



**FILE COPY**

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

COMPANY NO. 602568  
CHARGE CODE SC60 2568 0005

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 19 SEPTEMBER 2019 WERE  
DELIVERED PURSUANT TO SECTION 466 OF THE COMPANIES  
ACT 1985  
ON 9 OCTOBER 2019

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 19  
SEPTEMBER 2019

BY SALUS (ABBAY COURT) LTD

IN FAVOUR OF  
FIDUCIAM NOMINEES LIMITED (AS SECURITY AGENT)

GIVEN AT COMPANIES HOUSE, EDINBURGH 10 OCTOBER 2019



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

## Paper Apart - Form 466

The following definitions apply to the Instrument of Alteration:

**"Guarantee"** means any guarantee, indemnity or other assurance against financial loss;

**"Subordination Period"** means the period beginning on the date of delivery of this Deed and ending on the date upon which. (i) the Security Agent confirms in writing that the whole of the Senior Debt has been unconditionally and irrevocably paid and discharged in full and all commitments of the Finance Parties to the Borrower have been cancelled; or (ii) the Security Agent consents in writing that, as per the confirmation of the Subordinated Creditor to the Security Agent, the Subordinated Debt has been unconditionally and irrevocably paid and discharged in full and all commitments of the Subordinated Creditor to the Borrower have been cancelled.

**"Senior Debt"** means the Senior Loan, plus (for the avoidance of doubt, without any double counting) up to 12 months' default and normal interest, fees, and costs, including any costs associated with enforcement or realisation of the security, including costs of receivers or administrators, but excluding any interest or fee payments received from the Borrower or associated entities during the term of the loan; and all sums, liabilities and obligations payable or owing by the Borrower to the Finance Parties irrespective of whether they are:

- (a) present or future;
- (b) actual, prospective or contingent;
- (c) ascertained or unascertained;
- (d) owed or incurred by or on account of the Borrower alone or severally or jointly with another person;
- (e) owed or incurred to or for the account of a Finance Party, alone or severally or jointly with another person;
- (f) owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for a breach of contract or tort or on any other ground), losses, costs, expenses, or on any other account; or
- (f) comprise any combination of the above, together with:
  - (a) any refinancing, novation, refunding, deferral or extension of any of those liabilities;
  - (b) any further advances made by any Lender under any agreement expressed to be supplemental to the Facility Agreement, plus all interest, fees and costs in connection with such advances;
  - (c) any claim for damages or restitution in the event of rescission of any of those liabilities or otherwise in connection with the Finance Documents,
  - (d) any claim against the Borrower flowing from any recovery by the Borrower of a payment or discharge in respect of those liabilities on grounds of unfair preference, gratuitous alienation or otherwise;
  - (e) any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability of the same in any insolvency or other proceedings affecting the Borrower; and
  - (f) any liability arising in substitution or exchange for, or any modification of any of the above, in connection with any plan or arrangement relating to the Borrower;

**"Senior Loan"** means all liabilities and obligations which are or may become payable or owing by the Borrower to the Finance Parties under the Facility Agreement;

**"Subordinated Debt"** means the Subordinated Loan, plus (for the avoidance of doubt, without any double-counting) interest, fees, and costs, including any costs associated with enforcement or realisation of the security, including cost of receivers or administrators, and all sums, liabilities and obligations payable or owing by the Borrower to the Subordinated Creditor including under or in relation to the Subordinated Loan irrespective of whether they are:

- (a) present or future;
- (b) actual, prospective or contingent;
- (c) ascertained or unascertained;

- (d) owed or incurred by or on account of the Borrower alone or severally or jointly with another person;
- (e) owed or incurred to or for the account of the Subordinated Creditor severally or jointly with another person;
- (f) owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for a breach of contract or tort or in respect of any contribution claim or counter-indemnity obligation or on any other ground) losses, costs, expenses, or on any other account; or
- (g) comprise any combination of the above, together with:
  - (a) any refinancing, novation, refunding, deferral or extension of any of those liabilities;
  - (b) any claim for damages or restitution in the event of rescission of any of those liabilities or otherwise;
  - (c) any claim against the Borrower flowing from any recovery by the Borrower of a payment or discharge in respect of those liabilities on grounds of unfair preference, gratuitous alienation or otherwise;
  - (d) any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability of the same in any insolvency or other proceedings affecting the Borrower; and
  - (e) any liability arising in substitution or exchange for, or any modification of any of the above, in connection with any plan or arrangement relating to the Borrower;

**"Finance Party"** has the meaning given to that term in the Facility Agreement but shall also include any Secured Party (as such term is defined in the Facility Agreement);

**"Facility Agreement"** means a facility agreement dated on or about the date of this Form 466 and made between the Fiduciam Lender, Security Agent and the Borrower and any agreement entered into under or supplemental to it or amending, restating or novating it;

**"Subordinated Security"** means any Security Interest in favour of the Subordinated Creditor;

**"Security Interest"** means any mortgage, standard security, debenture, floating charge, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment or assignation by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;

**"Lenders"** has the meaning given to that term in the Facility Agreement;

**"Finance Documents"** has the meaning given to that term in the Facility Agreement;

This is the paper apart referred to in the foregoing Form 466 relative to an instrument of alteration delivered on 20 September 2019 (the "Ranking Agreement") in respect of the floating charge by G A Engineering (Group) Limited in favour of IGF Business Credit Limited created on 29 June 2017 and registered at Companies House on 6 July 2017.

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

**"BoS Charges"** means the BoS Floating Charges and the BoS Pledge;

**"BoS Floating Charges"** means BoS GAES Floating Charge, the BoS Pryme Floating Charge and the Relevant BoS Floating Charges;

**"BoS GAES Floating Charge"** means the floating charge over all of the property, rights and assets of GAES, given by GAES to BoS created on 15 January 2001 and registered with the Registrar of Companies on 19 January 2001, which is a qualifying floating charge within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986;

**"BoS Pledge"** means any fixed security over a blocked account of Pryme (the **"Cash Collateral Account"**) (the balance of such account shall not, except with the prior written consent of IGF, at any time exceed £250,000) held with BoS or another lender in order to provide that lender with cash cover for any credit card, bonding line or similar exposure;

**"BoS Pryme Floating Charge"** means the floating charge over all of the property, rights and assets of Pryme, given by Pryme to BoS created on 10 September 2015 and registered with the Registrar of Companies on 23 September 2015, which is a qualifying floating charge within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986;

**"Dundee Property"** means the subjects known as and forming Unit 5 Tom Johnston Road, Dundee being the whole subjects registered in the Land Register of Scotland under Title Number ANG21495;

**"Financiers"** means IGF, BoS, SR and HR and **"Financier"** shall mean any of them;

**"GAES Assets"** means all of the property, rights and assets whatsoever of GAES;

**"IGF Charges"** means the IGF Floating Charges and the IGF Debenture;

**"IGF Debenture"** means the English law all assets debenture given by GAENW to IGF created on 29 June 2017 and registered with the Registrar of Companies on 4 July 2017 including a floating charge which is a qualifying floating charge within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986;

**"IGF Floating Charges"** means the IGF GAES Floating Charge, the IGF Pryme Floating Charge and the Relevant IGF Floating Charges;

**"IGF GAES Floating Charge"** means the floating charge over all the property, rights and assets of GAES, given by GAES to IGF created on 29 June 2017 and registered with the Registrar of Companies on 6 July 2017, which is a qualifying floating charge within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986;

**"IGF Pryme Floating Charge"** means the floating charge over all the property, rights and assets of Pryme, given by Pryme to IGF, created on 29 June 2017 and registered with the Registrar of Companies on 6 July 2017 which is a qualifying floating charge within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986;

**"Obligors"** means GAES, GAENW, GAESHD, Pryme, and GA Group;

**"Pryme Assets"** means all of the property, rights and assets whatsoever of Pryme;

**"Relevant Assets"** means all of the property, rights and assets of the Relevant BoS Obligors;

**"Relevant BoS Floating Charges"** means the floating charges over all of the property, rights and assets of each Relevant BoS Obligor, given by the Relevant BoS Obligors to BoS being (1) the floating charge granted by GAENW in favour of BoS, created on 10 September 2015 and registered at Companies House on 23 September 2015, (2) the bond and floating charge granted by GAESHD in favour of BoS, created on 10 February 2005 and registered at Companies House on 18 February 2005, and (3) the floating charge granted by GA Group in favour of BoS created on 10 September 2015 and registered at Companies House on 23 September 2015, which are qualifying floating charges within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986;

**"Relevant BoS Obligors"** means the Obligors other than GAES, Sengs and Pryme;

**"Relevant IGF Charges"** means the Relevant IGF Floating Charges and the IGF Debenture;

**"Relevant IGF Floating Charges"** means the floating charges over all the property, rights and assets of each Obligor (other than GAES, GAENW, Sengs and Pryme) given by each Obligor (other than GAES, GAENW, Sengs and Pryme) in favour of IGF, each created on 29 June 2017 and registered with the Registrar of Companies on 6 July 2017 which are qualifying floating charges within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986;

**"Remaining GAES Assets"** means the GAES Assets other than the Dundee Property;

**"Remaining Pryme Assets"** means the Pryme Assets other than the Cash Collateral Account;

**"Ross Fixed Charge"** means the standard security over the Dundee Property granted by GAES in favour of SR and HR created on 15 December 2016 and registered with the Registrar of Companies on 22 December 2016;

**"Securities"** means the BoS Charges, the IGF Charges, and the Ross Fixed Charge together and **"Security"** means any one of them;

**"Sengs"** means Sengs Engineering Solutions Limited (registered number SC425789).

#### **PART 1 NAMES, AND ADDRESSES OF THE PERSONS WHO HAVE EXECUTED THE INSTRUMENT OF ALTERATION**

- 1 IGF Business Credit Limited - Kingsgate, High Street, Redhill, RH1 1SG (**"IGF"**);
- 2 Bank of Scotland plc - The Mound, Edinburgh, EH1 1YZ (**"BoS"**);
- 3 Stuart Paul William Ross - West Fairview, Watson Street, Banchory, Kincardineshire (**"SR"**);
- 4 Hamish Hector Lawrence Ross - 16 Arbeadie Avenue, Banchory, Kincardineshire (**"HR"**);
- 5 G.A. Engineering (Scotland) Ltd - 11 Tom Johnston Road, West Pitkerro Industrial Estate, Dundee, DD4 8XD (**"GAES"**);
- 6 G A Engineering (North West) Limited - 11 Tom Johnston Road, West Pitkerro Industrial Estate, Dundee, DD4 8XD (**"GAENW"**);
- 7 GA Engineering (Sliding Head Division) Limited - Fowler Road, West Pitkerro Industrial Estate, Dundee, DD5 3RU (**"GAESHD"**);
- 8 Pryme Group Holdings Limited (previously known as Pryme Group Limited) - 11 Tom Johnston Road, West Pitkerro Industrial Estate, Dundee, Tayside, DD4 8XD (**"Pryme"**);
- 9 G A Engineering (Group) Limited - 11 Tom Johnston Road, West Pitkerro Industrial Estate, Dundee, Tayside, DD4 8XD (**"GA Group"**).

**PART 2**  
**DATES OF EXECUTION OF THE INSTRUMENT OF ALTERATION**

- 1 for and on behalf of **IGF** on 16 September 2019;
- 2 for and on behalf of **BoS** on 13 September 2019;
- 3 for and on behalf of **SR** on 27 August 2019;
- 4 for and on behalf of **HR** on 27 August 2019;
- 5 for and on behalf of **GAES** on 4 September 2019;
- 6 for and on behalf of **GAENW** on 4 September 2019;
- 7 for and on behalf of **GAESHD** on 4 September 2019;
- 8 for and on behalf of **Pryme** on 4 September 2019;
- 9 for and on behalf of **GA Group** on 4 September 2019;

and delivered on 20 September 2019.

**PART 3**  
**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**

**3 Ranking**

3.1 Notwithstanding the terms of the Securities, any provisions as to ranking contained in them and their respective dates of creation or registration, the Financiers and the Obligors hereby agree that the Securities shall, subject to clause 3.2, rank in the following order of priority:-

3.1.1 In respect of the Dundee Property and the proceeds thereof:

3.1.1.1 first, the Ross Fixed Charge shall rank to the extent of the sums secured thereby;

3.1.1.2 second, the IGF GAES Floating Charge to the extent of the sums secured thereby; and

3.1.1.3 third, the BoS GAES Floating Charge to the extent of the sums secured thereby.

3.1.2 In respect of the Remaining GAES Assets and the proceeds thereof:

3.1.2.1 first, the IGF GAES Floating Charge to the extent of the sums secured thereby; and

3.1.2.2 second, BoS GAES Floating Charge to the extent of the sums secured thereby

3.1.3 In respect of the Cash Collateral Account and the proceeds thereof:

3.1.3.1 first, the BoS Pledge shall rank to the extent of the sums secured thereby;

3.1.3.2 second, the BoS Pryme Floating Charge to the extent of the sums secured thereby; and

3.1.3.3 third, the IGF Pryme Floating Charge to the extent of the sums secured thereby.

3.1.4 In respect of the Remaining Pryme Assets and the proceeds thereof:

3.1.4.1 first, the IGF Pryme Floating Charge to the extent of the sums secured thereby; and

3.1.4.2 second, BoS Pryme Floating Charge to the extent of the sums secured thereby

3.1.5 In respect of the Relevant Assets and the proceeds thereof:

3.1.5.1 first, the Relevant IGF Charges to the extent of the sums secured thereby; and

3.1.5.2 second, the Relevant BoS Floating Charges to the extent of the sums secured thereby.

- 3.4 Without prejudice to the priority provisions of the Ranking Agreement, for the purposes of the Insolvency Act 1986 (as amended by the Enterprise Act 2002) BoS, SR and HR each hereby confirms for the benefit of IGF that the IGF Charges are to be treated as having priority over their respective Securities to the extent provided in the Ranking Agreement notwithstanding the date of creation of such IGF Charges.



CERTIFIED A TRUE COPY  
For and on behalf of  
Morton Fraser LLP  
Date 7 October 2019

## SUBORDINATION DEED

BETWEEN

FIDUCIAM NOMINEES LIMITED  
as Lender and Security Agent

SALUS (ABBAY COURT) LTD

GRAHAM DUFFY

**MORTON FRASER** ●  
LAWYERS



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THIS DEED is dated ~~19 SEPTEMBER~~ 2019, and for the purposes of Clause 18 (Counterparts and delivery) delivered, on ~~19 SEPTEMBER~~ 2019 and is made between:

#### **PARTIES**

- (1) Fiduciam Nominees Limited, a company incorporated and registered in England and Wales with company number 09672341 whose registered office is at Josaron House, 2<sup>nd</sup> Floor, 5-7 John Prince's Street, London W1G 0JN (the "**Fiduciam Lender**")
- (2) Fiduciam Nominees Limited, a company incorporated and registered in England and Wales with company number 09672341 whose registered office is at Josaron House, 2<sup>nd</sup> Floor, 5-7 John Prince's Street, London W1G 0JN as security agent and trustee for the Finance Parties under the Facility Agreement (as defined below) (in this capacity the "**Security Agent**")
- (3) Salus (Abbey Court) Ltd a company incorporated in Scotland with company number SC602568 whose registered office is at Abbey Court Care Home 34 Abbey Green Street, Easterhouse, Glasgow, Scotland, G34 0JH (the "**Borrower**")
- (4) Graham Duffy of 7 Jean MacLean Place, Bishopbriggs, Glasgow, G64 3BJ (the "**Subordinated Creditor**").

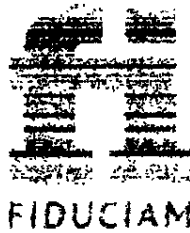
#### **BACKGROUND**

- (A) The Fiduciam Lender has provided or has agreed to provide the Senior Loan to the Borrower and the Subordinated Creditor has provided or has agreed to provide the Subordinated Loan to the Borrower.
- (B) It is a condition precedent to the utilisation of the Facility Agreement that the Borrower and Subordinated Creditor enter into this Deed with the Fiduciam Lender and the Security Agent.
- (C) The Subordinated Creditor has agreed with the other Parties that the ranking of its respective debts and any respective security shall be as set out in this Deed

#### **AGREED TERMS**

##### **1. Definitions and interpretation**

- 1.1 Unless defined otherwise in this Deed, or the context requires otherwise, all words or expressions defined in the Facility Agreement have the same meaning in this Deed.



1.2 The following definitions apply to this Deed:

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England or Scotland on which commercial banks are open for general business in London and Edinburgh;

**"Debt"** means the Senior Debt and the Subordinated Debt;

**"Enforcement Action"** means any action including but not limited to

- (a) demand or accelerate payment of any of the Debt or make any of the Debt payable on demand, or
- (b) crystallise or purport to crystallise any floating charge under any Security Interest; or
- (c) enforce or require the enforcement of any Security Interest, or
- (d) make a demand against the Borrower or any guarantor, under any Guarantee, or
- (e) either directly or indirectly, petition for, or take any steps to initiate, an Insolvency Event, or
- (f) exercise any right of set-off, counterclaim or combination or similar right or procedure against or in respect of the Borrower (except to give effect to a Permitted Payment),

**"Facility Agreement"** means a facility agreement dated on or about the date hereof and made between the Fiduciam Lender, Security Agent and the Borrower (as referred to in Part 1A of the Schedule) and any agreement entered into under or supplemental to it or amending, restating or novating it;

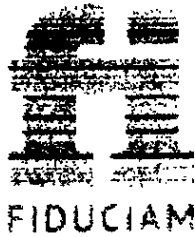
**"Finance Documents"** has the meaning given to that term in the Facility Agreement;

**"Finance Party"** has the meaning given to that term in the Facility Agreement but shall also include any Secured Party (as such term is defined in the Facility Agreement),

**"Guarantee"** means any guarantee, indemnity or other assurance against financial loss;

**"Insolvency Event"** means any one or more of the following

- (a) the passing of a resolution or the making of an order to wind up, liquidate, enter into administration, reorganise or dissolve the Borrower,
- (b) the appointment of a receiver, administrative receiver, administrator, manager, trustee or judicial factor in respect of the Borrower or over any of the assets or undertakings of the Borrower,
- (c) the entering into by the Borrower of any voluntary arrangement or composition, assignment, trust deed or arrangement with its creditors or its ceasing or suspending payment of its debts,
- (d) any insolvency, bankruptcy, sequestration, liquidation of the Borrower,



- (e) an / person taking possession of any of the assets of the Borrower pursuant to any charge or other encumbrance; or
- (f) any event analogous to those in paragraphs (a) to (e) above occurs in relation to the Borrower, including in any jurisdiction;

**"Lender"** has the meaning given to that term in the Facility Agreement;

**"Party"** means a party to this Deed;

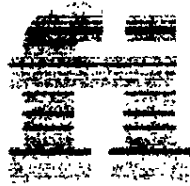
**"Permitted Payment"** means a payment to the Subordinated Creditor permitted under clause 5,

**"Securities"** means the Senior Security and the Subordinated Security,

**"Security Interest"** means any mortgage, standard security, debenture, floating charge, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment or assignation by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect,

**"Senior Debt"** means the Senior Loan, plus (for the avoidance of doubt, without any double-counting) up to 12 months' default and normal interest, fees, and costs, including any costs associated with enforcement or realisation of the security, including costs of receivers or administrators, but excluding any interest or fee payments received from the Borrower or associated entities during the term of the loan, and all sums, liabilities and obligations payable or owing by the Borrower to the Finance Parties irrespective of whether they are

- (a) present or future,
- (b) actual, prospective or contingent,
- (c) ascertained or unascertained,
- (d) owed or incurred by or on account of the Borrower alone or severally or jointly with another person,
- (e) owed or incurred to or for the account of a Finance Party, alone or severally or jointly with another person;
- (f) owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for a breach of contract or tort or on any other ground), losses, costs, expenses, or on any other account, or
- (f) comprise any combination of the above,  
together with:
  - (a) any refinancing, novation, refunding, deferral or extension of any of those liabilities,
  - (b) any further advances made by any Lender under any agreement expressed to be supplemental to the Facility Agreement, plus all interest, fees and



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costs in connection with such advances,

- (c) any claim for damages or restitution in the event of rescission of any of those liabilities or otherwise in connection with the Finance Documents,
- (d) any claim against the Borrower flowing from any recovery by the Borrower of a payment or discharge in respect of those liabilities on grounds of unfair preference, gratuitous alienation or otherwise,
- (e) any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability of the same in any insolvency or other proceedings affecting the Borrower, and
- (f) any liability arising in substitution or exchange for, or any modification of any of the above, in connection with any plan or arrangement relating to the Borrower;

**"Senior Default"** means an Event of Default as defined in the Facility Agreement;

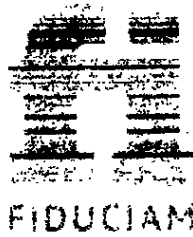
**"Senior Loan"** means all liabilities and obligations which are or may become payable or owing by the Borrower to the Finance Parties under the Facility Agreement;

**"Senior Security"** means any present or future Security Interest or Guarantee or similar counter-indemnity obligation in favour of the Security Agent (in its capacity as security agent and trustee for the Finance Parties) in respect of the payment of any Senior Debt,

**"Senior Security Document"** means any document referred to in Part 1B of the Schedule and any additional document entered into by an Obligor creating or expressed to create any Senior Security in favour of the Security Agent (in its capacity as security agent and trustee for the Finance Parties),

**"Subordinated Debt"** means the Subordinated Loan, plus (for the avoidance of doubt, without any double-counting) interest, fees, and costs, including any costs associated with enforcement or realisation of the security, including cost of receivers or administrators, and all sums, liabilities and obligations payable or owing by the Borrower to the Subordinated Creditor including under or in relation to the Subordinated Loan irrespective of whether they are:

- (a) present or future,
- (b) actual, prospective or contingent;
- (c) ascertained or unascertained,
- (d) owed or incurred by or on account of the Borrower alone or severally or jointly with another person;
- (e) owed or incurred to or for the account of the Subordinated Creditor severally or jointly with another person,
- (f) owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts,



damages (whether for a breach of contract or tort or in respect of any contribution claim or counter-indemnity obligation or on any other ground) losses, costs, expenses, or on any other account, or

(g) comprise any combination of the above,  
together with:

- (a) any refinancing, novation, refunding, deferral or extension of any of those liabilities;
- (b) any claim for damages or restitution in the event of rescission of any of those liabilities or otherwise,
- (c) any claim against the Borrower flowing from any recovery by the Borrower of a payment or discharge in respect of those liabilities on grounds of unfair preference, gratuitous alienation or otherwise,
- (d) any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability of the same in any insolvency or other proceedings affecting the Borrower; and
- (e) any liability arising in substitution or exchange for, or any modification of any of the above, in connection with any plan or arrangement relating to the Borrower;

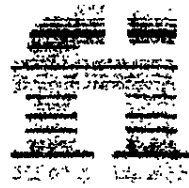
**"Subordinated Default"** means an Event of Default as defined in the Subordinated Facility Agreement or any other documents evidencing or constituting the Subordinated Debt,

**"Subordinated Facility Agreement"** means the document referred to in Part 2A of the Schedule,

**"Subordinated Loan"** means all liabilities and obligations which are or may become payable or owing by the Borrower to the Subordinated Creditor under the Subordinated Facility Agreement,

**"Subordinated Security"** means any Security Interest in favour of the Subordinated Creditor,

**"Subordinated Security Document"** means any document referred to in Part 2B of the Schedule and any additional document entered into by the Borrower creating or expressed to create any Subordinated Security in favour of the Subordinated Creditor,



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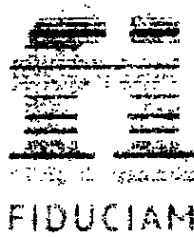
**"Subordination Period"** means the period beginning on the date of delivery of this Deed and ending on the date upon which (i) the Security Agent confirms in writing that the whole of the Senior Debt has been unconditionally and irrevocably paid and discharged in full and all commitments of the Finance Parties to the Borrower have been cancelled; or (ii) the Security Agent consents in writing that, as per the confirmation of the Subordinated Creditor to the Security Agent, the Subordinated Debt has been unconditionally and irrevocably paid and discharged in full and all commitments of the Subordinated Creditor to the Borrower have been cancelled.

### 1.3 Construction

- 1.3.1 Unless the contrary intention is expressed, all defined terms in the Facility Agreement have the same meaning here.
- 1.3.2 If any provision of this Deed shall conflict with any term of the Facility Agreement then the relevant term of the Facility Agreement shall prevail
- 1.3.3 Unless the contrary intention appears, references in this Deed to:
  - (a) any party to this Deed shall be construed so as to include its successors in time, permitted assignees and permitted transferees,
  - (b) "in connection with", "under" "pursuant to", "by virtue of" or "in relation to" shall include each of the others;
  - (c) an obligation of the Borrower and/or the Subordinated Creditor to do something includes an obligation to procure that it is done and an obligation not to do something includes an obligation not to permit, suffer or allow it,
  - (d) references to this Deed or any agreement, deed or document are references to them in force for the time being as amended, varied, supplemented or consolidated from time to time; and
  - (e) unless the context otherwise requires, words in the singular shall include the plural, words in the plural shall include the singular (including, for the avoidance of doubt any expressions defined in this Deed) and a reference to one gender shall include a reference to the other genders.

### 2. Subordination and ranking

- 2.1 The Parties agree that the Subordinated Debt is subordinated to the Senior Debt in all respects and that the Subordinated Debt shall rank behind the Senior Debt.
- 2.2 The Parties agree that the benefit of the Senior Security and Subordinated Security will accrue to the Security Agent (in its capacity as agent of and trustee for the Lenders) until all Senior Debt has been paid, after which the benefit of the Subordinated Security accrues to the Subordinated Creditor.



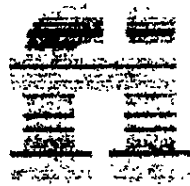
- 2.3 The subordination effected by this Deed applies at all times, including if and while the Borrower is in liquidation

### 3. Undertakings

#### 3.1 Undertakings of the Borrower

The Borrower undertakes to each Finance Party that, at all times during the Subordination Period, it will not

- (a) pay, prepay or repay, redeem, purchase or make any distribution in respect of the Subordinated Debt in cash or in kind and whether on account of principal, interest or damages for breach of the terms of the Subordinated Debt, other than Permitted Payments (if any),
- (b) discharge, release or reduce any of the Subordinated Debt by set-off, netting, any right of combination of accounts or in any other manner,
- (c) buy or acquire any of the Subordinated Debt, directly or through the intermediation of a person,
- (d) assign or transfer its rights or obligations in respect of the Subordinated Debt;
- (e) create or permit to subsist any Security Interest over any of its assets for, or any Guarantee for or in respect of, any of the Subordinated Debt other than the Subordinated Security,
- (f) amend, vary, waive or release any term of the Subordinated Debt and Subordinated Security (which shall include but not be limited to increasing the amount of Subordinated Debt or granting additional Subordinated Security),
- (g) enter into an arrangement for the benefit of the Subordinated Creditor where the value provided by the Borrower exceeds the value received by the Borrower,
- (h) provide credit to the Subordinated Creditor, or provide a Guarantee, or Security Interest (other than the Subordinated Security) in respect of any liability of the Subordinated Creditor,
- (i) procure a person to provide credit to the Subordinated Creditor, or provide a Guarantee, or Security Interest (other than the Subordinated Security) in respect of any liability of the Subordinated Creditor,
- (j) make any distribution of its assets, whether in cash, shares or otherwise, to the Subordinated Creditor, other than Permitted Payments (if any),
- (k) assume any additional debt, enter into any further loan or credit arrangement, without the written consent of the Security Agent; nor



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- (l) take or omit to take any action whereby the subordination of the Subordinated Debt under this Deed might be terminated, impaired or adversely affected

### 3.2 Undertakings of the Subordinated Creditor

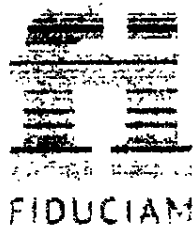
3.2.1 The Subordinated Creditor undertakes to with the Borrower and separately with the Fiduciam Lender and Security Agent that, at all times during the Subordination Period, it will not, without prior written consent of the Security Agent

- (a) demand, sue, claim, prove for, accept or receive payment, prepayment or repayment of, or any distribution in respect or on account of, any of the Subordinated Debt in cash or in kind and whether on account of principal, interest or, damages for breach of the terms of the Subordinated Debt, other than Permitted Payments (if any),
- (b) discharge, release or reduce any of the Subordinated Debt by set-off, netting, any right of combination of accounts or in any other manner,
- (c) assign, transfer, charge or otherwise dispose of its rights or obligations in respect of the Subordinated Debt;
- (d) accept or permit to subsist any Security Interest over any of the assets of the Borrower or any other party for any of the Subordinated Debt, other than the Subordinated Security;
- (e) receive the benefit of any Guarantee from any person in respect of the Subordinated Debt,
- (f) amend, vary, waive or release any term of any of the Subordinated Debt and Subordinated Security,
- (g) increase the amount of Subordinated Debt in any way;
- (h) enter into an arrangement for its benefit where the value provided by the Borrower exceeds the value received by the Borrower;
- (i) receive credit from the Borrower, or permit the Borrower or any person to grant any Guarantee or Security Interest (other than the Subordinated Security) in respect of any of the Subordinated Creditor's liabilities;
- (j) receive any kind of distribution of the Borrower's assets, whether in cash, shares or otherwise, other than Permitted Payments (if any),
- (k) take or omit to take any action whereby the subordination of the Subordinated Debt under this Deed might be terminated, impaired or adversely affected,
- (l) challenge the nature, validity or enforceability of any Security Interest constituted by the Senior Security Document;



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- (m) make any arrangement which would place, or which aims to place, the Subordinated Creditor in a position similar to that in which it would be if it had received payment in respect of the Subordinated Debt (other than Permitted Payments) or the Subordinated Debt has been secured by security other than the Subordinated Security,
  - (n) make any application or take any step (including presentation of a petition, convening a meeting or passing a resolution) or otherwise give support in case of an Insolvency Event, nor
  - (o) take any Enforcement Action, directly or through third parties.
- 3.2.2 The Subordinated Creditor further undertakes to the Borrower and separately with the Fiduciam Lender and Security Agent that, at all times during the Subordination Period, it will remain entitled to the Subordinated Debt free from any Security Interest (other than the Subordinated Security), option, subordination, trust or other rights in favour of any person, and will procure that the Subordinated Debt is not subject to any set-off, counterclaim or other defence.
- 3.2.3 If the Security Agent (in its capacity as security agent and trustee for the Finance Parties) considers that an amount paid in respect of the Senior Debt is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.
- 4. Permitted Payments**
  - 4.1 Provided that no Senior Default has occurred that has not been waived in writing by the Security Agent (in its capacity as security agent and trustee for the Finance Parties), the Borrower may pay and the Subordinated Creditor may receive and retain any payment agreed by the Security Agent (in its capacity as security agent and trustee for the Finance Parties), in writing.
  - 4.2 The payments set out in clause 4.1 are only permitted and may only be made if
    - (a) no step has been taken to enforce any Senior Security or Subordinated Security,
    - (b) no event of default, other termination event or potential event of default (as defined in the Finance Documents and Subordinated Facility Agreement or any other documents evidencing or constituting the Subordinated Debt) has occurred, is continuing and has not been remedied or waived, and
    - (c) no step has been taken for the winding up, dissolution, administration or reorganisation of the Borrower or the appointment of a liquidator, receiver, administrator or other similar officer of the Borrower or any of its assets



5. Turnover and turnover trust

5.1 If at any time

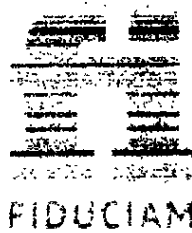
- (a) the Subordinated Creditor receives or recovers any benefit, payment, distribution or Security Interest in cash or in kind in respect of, or on account of, the Subordinated Debt, other than a Permitted Payment (if any); or
- (b) the Subordinated Creditor receives or recovers the proceeds of enforcement of any Security Interest (including the Subordinated Security) or Guarantee in relation to the Subordinated Debt, or
- (c) any of the Subordinated Debt is discharged by set-off, netting, counterclaim, or by exercise of any right of combination of accounts, or in any other manner,

the Subordinated Creditor will hold (up to the amount certified by the Security Agent to be the value of the Senior Debt) the monies so recovered or received on trust for the Finance Parties and will immediately pay to the Security Agent (in its capacity as security agent and trustee for the Finance Parties) the amount so received (whether or not the trust established in clause 6.1 is valid and/or enforceable) (or discharged as contemplated by Clause 6.1(c)) for application against, or retention on account of, the Senior Debt, unless the Security Agent agrees in writing that the Subordinated Creditor may accept such payment towards the Subordinated Debt.

5.2 If the Subordinated Creditor fails to observe and perform its obligations in this Clause 6, the Security Agent is irrevocably authorised to effect the same on behalf of the Subordinated Creditor.

5.3 If any of the trusts referred to in this Deed fails or cannot be given effect to, the Subordinated Creditor will, upon demand and without deduction, pay to the Security Agent (in its capacity as security agent and trustee for the Finance Parties) (for application against or retention on account of the Senior Debt) an amount equal to the relevant amount, as if the trust were in effect.

5.4 Any such distribution paid by the Subordinated Creditor to the Security Agent (in its capacity as security agent and trustee for the Finance Parties) under this Deed shall (so far as permitted by law) be treated as additional monies due from the Borrower to the Subordinated Creditor.



## **6. Subordination on insolvency**

### **6.1 Subordination**

If, at any time during the Subordination Period, any Insolvency Event occurs in relation to the Borrower,

- (a) the Subordinated Debt will be subordinate in right of payment to the Senior Debt; and
- (b) the Subordinated Creditor shall not claim, rank, prove or vote as a creditor of the Borrower unless otherwise directed by the Security Agent and will not take any Enforcement Action, and
- (c) the proceeds of the Subordinated Security shall be allocated and distributed to the payment of the Senior Debt and only when the Senior Debt has been paid off, to the Subordinated Creditor.

### **6.2 Powers of the Security Agent**

The Security Agent may, and is irrevocably authorised on behalf of the Subordinated Creditor to

- (a) claim, enforce and prove for any Subordinated Debt and Subordinated Security,
- (b) file claims and proofs, give receipts and take all such proceedings and do all such things as the Security Agent sees fit to recover the Subordinated Debt and to enforce the Subordinated Security, and
- (c) receive all distributions of the Subordinated Debt for application against, or retention on account of, the Senior Debt,

provided that if the Security Agent is not entitled to or does not wish to do any of the things mentioned in this Clause 6.2, the Subordinated Creditor will do so in good time as directed by the Security Agent.

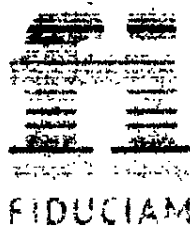
### **6.3 Direction**

The person distributing the assets and proceeds of the Borrower is, by this Deed, directed to pay such distributions in relation to the Subordinated Debt and Subordinated Security directly to the Security Agent (in its capacity as security agent and trustee for the Finance Parties) until the Senior Debt has been irrevocably paid and discharged in full

### **6.4 No service of demand or notice by the Subordinated Creditor**

Except with the prior written consent of the Security Agent, the Subordinated Creditor shall not.

- (a) serve a demand for the payment of any of the Subordinated Debt on the Borrower.



- (b) serve a notice on the Borrower to the effect that any of the Subordinated Debt is immediately due and payable, or
- (c) take any step to crystallise any floating charge (save for any automatic crystallisation of such floating charge) contained in any Subordinated Security Document;
- (d) take any step to enforce any Subordinated Security, whether by appointing a receiver, exercising its power of sale or otherwise, or
- (e) present, or join in, an application for an administration order or a petition for a winding-up order to be made in relation to the Borrower or initiate, or support or take, any step with a view to any voluntary arrangement or assignment or assignation for the benefit of creditors or similar proceeding involving the Borrower or issue a notice of intention to appoint an administrator or appoint an administrator of the Borrower

#### **6.5 Compliance by the Subordinated Creditor with Security Agent directions**

The Subordinated Creditor shall comply with any reasonable directions given to it by the Security Agent relating to taking any of the following actions:

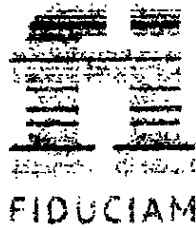
- (a) presenting an application for an administration order or a petition for a winding-up order to be made in relation to the Borrower,
- (b) joining in, or opposing, such an application or a petition, or
- (c) voting for or against, or accepting or rejecting
  - (i) any proposal in a voluntary arrangement, trust deed or administration in relation to the Borrower or in its winding up,
  - (ii) any scheme of arrangement proposed in relation to the Borrower; or
  - (iii) any rescheduling, refinancing or reorganisation agreement or moratorium in respect of any debts of the Borrower.

#### **6.6 Further assurance**

The Subordinated Creditor shall (at its cost) give all such notices and do all such things as the Fiduciam Lender and Security Agent may direct to give effect to this Clause 7

#### **7. Application of monies realised**

- 7.1 All monies received by the Fiduciam Lender or the Security Agent (in its capacity as security agent and trustee for the Finance Parties) in connection with this Deed shall be treated as having been received under the Finance Documents and shall be applied in accordance with the provisions of the Finance Documents and this Deed.



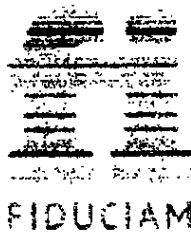
- 7.2 The ranking and priority of the Lenders and Subordinated Creditor shall stand (regardless of the order of execution, delivery, registration or notice or otherwise) so that all amounts from time to time received or recovered by a Finance Party pursuant to the terms of any debt document or in connection with the realisation or enforcement of all or any part of the Senior Security or Subordinated Security, after providing for all reasonable outgoings, costs, charges, expenses and liabilities of enforcement, exercising rights on winding up and payments ranking in priority as a matter of law, be applied in the following order of priority
- (a) first, in or towards discharge of the Senior Debt,
  - (b) second, once the Senior Debt has been fully discharged, in or towards discharge of the Subordinated Debt, and
  - (c) third, after the Subordinated Debt has been fully discharged, to the Borrower or any other person entitled to it.
- 7.3 Neither the Borrower nor the Subordinated Creditor may direct the application by any Finance Party and/or the Security Agent, of any sums received in connection with this Deed

#### **8. Preservation of rights**

- 8.1 The rights of any Finance Party contained in this Deed shall be in addition to and independent of all other rights which it may at any time hold.
- 8.2 The subordination constituted by this Deed and the undertakings and other provisions contained in this Deed shall not be affected in any way by all or any of the following
- (a) any fluctuation in the amounts of the Senior Debt or the Subordinated Debt;
  - (b) the existence of any credit balance on any account of the Borrower with any Lender at any time,
  - (c) any legal limitation, disability, incapacity or other circumstance relating to any person,
  - (d) any step taken with regard to the insolvency or reorganisation of any person or any change in their status, function, control or ownership,
  - (e) the Finance Documents being illegal, invalid, unenforceable or ineffective,
  - (f) time or other indulgence, release, compact or compromise being granted to any person,
  - (g) the nature of the Security Interest constituted by any Senior Security Document and/or any Subordinated Security Document and the order of their execution or registration;
  - (h) any provision contained in a Senior Security Document and/or a Subordinated Security Document;

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- (i) the validity of the appointment of the Security Agent as security agent and trustee for the Finance Parties,
  - (j) the respective date, or dates, on which monies may be, or have been advanced or become owing or payable under a debt document,
  - (k) the appointment of any liquidator, receiver or administrator or other similar officer either in respect of the Borrower or over all or any part of the Borrower's assets,
  - (l) any amendment, variation, novation, replacement, waiver or release of the Finance Documents however fundamental,
  - (m) any failure to take any Security Interest in respect of the Senior Debt,
  - (n) any act or omission by the Security Agent or any other person in taking up, perfecting or enforcing any Security Interest, indemnity, or Guarantee from or against the Borrower or any other person,
  - (o) any delay in exercising rights and remedies in respect of the Senior Debt or the Senior Security,
  - (p) any grant of time, indulgence, waiver or concession by any Finance Party to the Borrower or any other person,
  - (q) any failure to realise the value of, or any release, discharge, exchange or substitution of, any of the Senior Security,
  - (r) the assignation or transfer by novation or otherwise by a Lender of its rights, in part or in whole, under the Finance Documents, or
  - (s) any other act, event or omission which, but for this Clause 9.2, might discharge, impair or otherwise affect the subordination or ranking created by this Deed or any of the obligations of the Subordinated Creditor under this Deed or any of the rights of any Finance Party
- 8.3 The Subordinated Creditor acknowledges that it has no right to receive notice from any Finance Party of any of the matters referred to in this Clause 8 and that its lack of consent to them shall not impair the subordination, ranking and other provisions created by this Deed.
9. **Power of attorney**
- 9.1 The Subordinated Creditor irrevocably appoints the Security Agent as its attorney in its name and on its behalf to execute any documents and do or perfect anything which the Security Agent shall consider appropriate for the purpose of enforcing the Subordinated Creditor's obligations in connection with this Deed

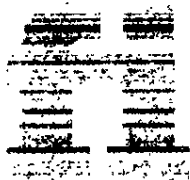


- 9.2 The Subordinated Creditor ratifies and confirms, and agrees to ratify and confirm, anything which its attorney may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in Clause 10.1

**10. Representation and warranties**

The Subordinated Creditor makes the representations and warranties set out in this Clause 10, and the Borrower makes the representations and warranties set out in Clause 11.1 to 11.7 (inclusive) to the Fiduciam Lender and Security Agent on each day during the Subordination Period.

- 10.1 It.
- (a) is a limited liability company or partnership, duly incorporated and validly existing under the laws of its jurisdiction of its incorporation, and
  - (b) has the power to own its assets and carry on the business which it conducts and/or proposes to conduct.
- 10.2 The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations.
- 10.3 The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with
- (a) any law or regulatory requirement applicable to it,
  - (b) its constitutional documents, or
  - (c) any agreement or instrument binding upon it or any of its assets
- 10.4 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- 10.5 Each authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration required or desirable.
- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed, and
  - (b) to make this Deed admissible in evidence in Scotland,
- has been obtained or effected and is in full force and effect.
- 10.6 No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency have been started or threatened against it.

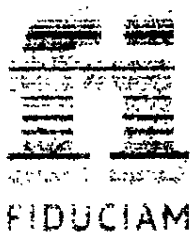


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- 10.7 No step has been taken for its insolvency and no Event of Default has occurred.
- 10.8 The Subordinated Creditor is entitled to the Subordinated Debt, free from any Security Interest (other than the Subordinated Security), option, subordination, ranking or other rights in favour of any person, and the Subordinated Debt is not subject to any set-off, counterclaim or other defence.
- 11. Enforcement**
- 11.1 The Security Agent may commence the enforcement of any of the Senior Security in any manner or by any means it considers necessary or expedient but shall be bound to give written notice of same to the Subordinated Creditor at the time of such enforcement.
- 11.2 Without prejudice to clause 12.1, the Security Agent and/or the Fiduciam Lender shall be entitled to serve a Calling-up Notice or a Notice of Default on the Borrower or raise an action in terms of Section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 under any relevant Senior Security Document but shall be bound to give written notice of same to the Subordinated Creditor.
- 11.3 The Subordinated Creditor shall not be entitled to commence any enforcement action against the Borrower (including, without limitation, by way of service of a Calling-up Notice or a Notice of Default on the Borrower or raising an action in terms of Section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 under the Subordinated Security Document) unless the Subordinated Creditor has sought the prior written consent of the Security Agent to the taking of such enforcement action.
- 12. Assignment and transfer**
- 12.1 Neither the Borrower nor the Subordinated Creditor may assign transfer or otherwise part with its rights or obligations under this Deed without the prior written consent of the Security Agent which, if given, shall be subject to the assignee/transferee entering into a deed of subordination in the same form as this Deed, with the necessary changes.
- 12.2 The Lenders and the Security Agent may at any time transfer, assign or novate all or any part of their respective rights, benefits or obligations in relation to the Senior Debt and/or the Senior Security and/or under this Deed (as applicable).
- 13. Acknowledgments**
- 13.1 The Borrower acknowledges the terms of this Deed and that nothing in this Deed shall affect its liability to the Finance Parties in relation to the Senior Debt.

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- 13.2 The Borrower acknowledges and confirms that the Finance Parties and the Subordinated Creditor have an unrestricted right to give each other information concerning any accounts and facilities of the Borrower.
- 13.3 The Borrower and the Subordinated Creditor agree to supply to any Finance Party on demand true copies of all documents relating to the Subordinated Debt.
- 14. Notices**
- 14.1 Any notice or other communication given to a party under or in connection with this Deed shall be:
- (a) in writing;
  - (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by e-mail; and
  - (c) sent to the contact details as set out on the signing page of this Deed or to any other address or e-mail address as is notified in writing by one party to the other from time to time.
- 14.2 Any notice or other communication given to a party under or in connection with this Deed shall be deemed to have been received:
- (a) if delivered by hand, at the time it is left at the relevant address;
  - (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
  - (c) if sent by e-mail, the Business Day after sending.
- 14.3 A notice or other communication given as described in clause 15.1 and 15.2 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.
- 14.4 A notice or other communication given under or in connection with this Deed sent by email is only valid if the recipient confirms receipt of such e-mail by return e-mail.
- 15. Discharge**
- 15.1 At the end of the Subordination Period, the Security Agent will at the request and cost of the Subordinated Creditor discharge this Deed
- 15.2 No discharge will be of any effect if any Security Interest or payment given or made in respect of the Senior Debt is rescinded, avoided, reduced or invalidated whether in respect of any insolvency or otherwise.



**16. General provisions**

**16.1 Benefit**

The provisions of this Deed are for the benefit of the Finance Parties alone and the Borrower shall not be entitled to claim the benefit of (or seek to enforce) any provision of it.

**16.2 Continuing ranking and priority**

The ranking and priorities created under this Deed are continuing and extend to the balance from time to time, and the continued performance, of the Senior Debt irrespective of any intermediate payment or performance of the Senior Debt.

**16.3 Overriding agreement**

This Deed overrides and supersedes any existing agreement between the Borrower and the Subordinated Creditor so far as inconsistent with the terms of it.

**16.4 Calculation and evidence**

Any certification or determination by a Finance Party of a rate or amount under this Deed will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**16.5 Expenses**

The Subordinated Creditor must pay any Finance Party within three Business Days of demand the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights against the Subordinated Creditor, as appropriate, under this Deed.

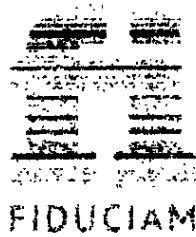
**16.6 Rights of third parties**

16.6.1 Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contract (Third Party Rights (Scotland)) Act 2017.

16.6.2 The Parties may rescind or vary this Deed without the consent of a third party to whom an express right to enforce any of its terms has been provided.

**16.7 Partial invalidity**

The illegality, invalidity or unenforceability for whatever reason of any provision of this Deed in any jurisdiction, shall not affect the legality, validity or enforceability of that provision in any other jurisdiction or the legality, validity or enforceability of the remaining provisions in any jurisdiction.



**16.8 Memorandum**

The Subordinated Creditor shall (if required by a Finance Party) endorse a memorandum of this Deed on the documentation relating to the Subordinated Debt.

**16.9 Variation of Securities**

Insofar as it may be necessary to give effect to the provisions of this Deed the Senior Security and the Subordinated Security are hereby varied and this Deed shall be construed and receive effect as (i) a variation within the meaning of Section 16 of the Conveyancing and Feudal Reform (Scotland) Act 1970 and (ii) an Instrument of Alteration within the meaning of Section 456 of the Companies Act 1985.

**17. Counterparts and delivery**

17.1 This Deed may be executed in any number of counterparts and by each of the Parties on separate counterparts, all as permitted by The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015.

17.2 If executed in counterparts

- (a) this Deed will not take effect until each of the counterparts has been delivered, and
- (b) the date of delivery of this Deed shall be inserted where indicated on the first page of this Deed.

17.3 Where not executed in counterparts, this Deed shall be delivered and become effective on the date agreed between the parties as evidenced by the date inserted on the front page of this Deed or, if no such date is inserted, the date on which the Borrower signed this Deed.

**18. Law and jurisdiction**

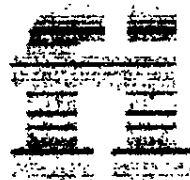
**18.1 Law**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.

**18.2 Jurisdiction**

18.2.1 The courts of Scotland have exclusive jurisdiction to settle any dispute, including, without limitation disputes relating to any non-contractual obligations arising out of or in connection with this Deed (a "Dispute").

18.2.2 The Parties to this Deed 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.



## FIDUCIAM

18.2.3 This clause is for the benefit of the Finance Parties only. Nothing in this clause shall limit the right of the Finance Parties to take proceedings relating to a Dispute in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

### 18.3 Service of process

Each of the Borrower and the Subordinated Creditor irrevocably consent to any process in any legal action or proceedings under clause 18.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

### 18.4 Registration

The Parties consent to the registration of this Deed for preservation and execution.

IN WITNESS WHEREOF these presents consisting of this and the 19 preceding pages together with the Schedule annexed hereto are executed as follows

SUBSCRIBED for and on behalf of FIDUCIAM NOMINEES LIMITED as Lender

by MORTON FRASER LLP acting as Attorney *(itself acting by a member)*  
at EDINBURGH

on 18 SEPTEMBER 2019

Authorised Signatory (Signature)

in the presence of:-

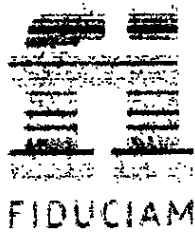
Witness Signature

Witness Full Name

THOMAS PULLAR

Witness Address

MORTON FRASER, 2 LISTER  
SQUARE, EDINBURGH, EH3 9GL



Address for notices      Fiduciam Nominees Ltd, Josaron House, 2<sup>nd</sup> Floor, 5-7 John Prince's Street,  
London W1G 0JN

Email      [notice@fiduciam.co.uk](mailto:notice@fiduciam.co.uk)

Attention:      Company Secretary

SUBSCRIBED for and on behalf of FIDUCIAM NOMINEES LIMITED as Security Agent

by MORTON FRASER LLP acting as Attorney *(itself acting by a member)*

at EDINBURGH

on 19 SEPTEMBER 2018

  
Authorised Signatory (Signature)

in the presence of -

Witness Signature

Witness Full Name

Witness Address

  
THOMAS POLLAR

MORTON FRASER LLP

QUARTER MILE TWO  
ELSTER SQUARE, EDINBURGH  
EH3 9GL

Address for notices      Fiduciam Nominees Ltd, Josaron House, 2<sup>nd</sup> Floor, 5-7 John Prince's Street,  
London W1G 0JN

Email      [notice@fiduciam.co.uk](mailto:notice@fiduciam.co.uk)

Attention      Company Secretary



SUBSCRIBED for and on behalf of SALUS (ABBAY COURT) LTD as Borrower

by ..... JOAN CAMPBELL

at ..... GLASGOW

on ..... 17 SEPTEMBER 2019

Director (Signature)

in the presence of:-

Witness Signature

Witness Full Name

Witness Address

Address for notices:

Abbey Court Care Home, 34 Abbey Green Street, Easterhouse, Glasgow,  
Scotland, G34 0JH

Email:

Attention:

Company Secretary



**FIDUCIAM**

SUBSCRIBED for and on behalf of **GRAHAM DUFFY** as Subordinated Creditor

by ..... GRAHAM DUFFY

at ..... GLASGOW

on ..... 17 SEPTEMBER 2009

.....  
Authorised Signatory (Signature)

in the presence of:-

Witness Signature

.....

Witness Full Name

..... GARRY GOSON

Witness Address

..... 100 QUEEN STREET  
..... GLASGOW

Address for notices: 7 Jean MacLean Place, Bishopbriggs, Glasgow, G64 3BJ

Email:

Attention: Graham Duffy



## **SCHEDULE**

**This is the Schedule referred to in the preceding Subordination Deed between Fiduciam Nominees Limited as Lender and Security Agent, the Borrower and the Subordinated Creditor**

### **PART 1 – Senior Debt**

#### **A Facility Agreement**

FACILITY AGREEMENT for a Facility Amount of £1,140,000 dated on or about the date of this Subordination Deed between the Borrower, the Fiduciam Lender and Security Agent.

#### **B Senior Security Documents**

Standard Security and Floating Charge dated on or about the date of this Subordination Deed between the Borrower and the Security Agent.

### **PART 2 – Subordinated Debt**

#### **A Subordinated Facility Agreement**

None

#### **B Subordinated Security Documents**

None

