

# M

CHWP000

COMPANIES FORM No. 466(Scot)

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

# 466

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

To the Registrar of Companies  
(Address overleaf - Note 5)

For official use

Company number



SC371345

Name of company

\* Dieselec Holdings Limited

\* insert full name  
of company

Date of creation of the charge (note 1)

1 May 2020

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

Santander UK Plc

Short particulars of all the property charged

Floating charge covers all property and undertaking of the Company

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

Harper Macleod LLP  
The Ca'd'oro  
45 Gordon Street  
Glasgow  
G1 3PE

For official use (02/06)

Charges Section

Post room

SATURDAY



SCT

\*S95NKU9\*

23/05/2020

#93

COMPANIES HOUSE

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

Please see Paper Apart, Part A

*Please do not  
write in  
this margin*

***Please complete  
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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this margin*

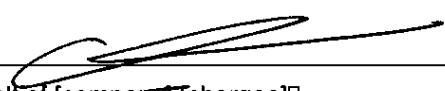
***Please complete  
legibly, preferably  
in black type, or  
bold block lettering***

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***

Signed  Date 19/5/2020  
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. The address of the Registrar of Companies is: Companies Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF DX 235 Edinburgh

This is the paper apart referred to in the foregoing Form 466 relative to an instrument of alteration dated 13 May 2020 (the "Ranking Agreement") in respect of the floating charge by Dieselec Holdings Limited in favour of Santander UK Plc created on 1 May 2020 and registered at Companies House on 15 May 2020.

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

**Additional Debt** means, in relation to any Debt:

- (a) any refinancing, novation, deferral or extension of that Debt;
- (b) any further advance which may be made under any agreement supplemental to any relevant Document, together with all related interest, fees and costs;
- (c) any claim for damages or restitution in the event of rescission of that Debt or otherwise in connection with any Document;
- (d) any claim against the Borrower arising from any recovery by the Borrower or any other person of a payment or discharge in respect of that Debt on the grounds of preference or otherwise;
- (e) any claim for breach of representation, warranty, undertaking or in respect of an event of default (howsoever defined) or under any indemnity in connection with any relevant Document ;and/or
- (f) any amounts (such as post-insolvency interest) which would otherwise be included in any of paragraphs (a) to (e) of this definition but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings;

**Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company, in each case, from time to time;

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

**Documents** means the Senior Documents and the Subordinated Documents;

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary;

**Secured Party** means Santander UK plc and its Affiliates

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

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

**Senior Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to any Secured Party in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations;

**Senior Debt Documents** means each agreement or other document evidencing or recording the terms of any Senior Debt;

**Senior Discharge Date** means the date on which Santander notifies the Subordinated Creditor and the Borrower in writing that it is satisfied that all of the Senior Debt has been unconditionally and irrevocably paid and discharged in full, whether or not as the result of an enforcement, and all commitments of any Secured Party to the Borrower have been cancelled;

**Senior Documents** means the Senior Debt Documents and the Senior Security Documents;



**Senior Security** means the Security constituted by the Senior Security Documents;

**Senior Security Documents** means:

- a) the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of Santander on or around the date of the Ranking Agreement
- b) any other document entered into at any time by the Borrower creating any guarantee, indemnity, Security or other assurance in favour of any Secured Party as security for any of the Senior Debt and
- c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs **Error! Reference source not found.** and a) above;

**Subordinated Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to the Subordinated Creditor (or any of its Affiliates) including, without limitation, under or in connection with any Subordinated Document in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations;

**Subordinated Debt Documents** means each and every agreement or other document evidencing or recording the terms of any Subordinated Debt

**Subordinated Documents** means the Subordinated Debt Documents and the Subordinated Security Documents;

**Subordinated Security** means the Security constituted by the Subordinated Security Document;

**Subordinated Security Document** means the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of the Subordinated Creditor on 10 September 2010 and registered at Companies House on 17 September 2010; and

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

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

- 1) **Santander UK Plc** (company number 2294747) and having its registered office at 2 Triton Square, Regent's Place, London NW1 3AN ("**Santander**");
- 2) **Dieslec Holdings Limited** (company number SC371345) and having its registered office at Cadder House 160 Clobber Road, Milngavie, Glasgow, G62 7LW; (the "**Borrower**"); and
- 3) **Nevis Capital LLP** (company number SO301116) and having its registered office is at 221 West George Street, Glasgow, Scotland, G2 2ND (the "**Subordinated Creditor**").

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

Subscribed:

- a) for and on behalf of the Santander on 4 May 2020;
  - b) for and on behalf of the Borrower on 1 May 2020; and
  - c) for and on behalf of the Subordinated Creditor on 1 May 2020,
- and delivered on 13 May 2020.

**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**



At any time before its Senior Discharge Date the Borrower will not, except with the prior written consent of Santander, create, or permit to subsist, any Security over any of its assets, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security).

**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 Security Documents shall rank in the following order of priority notwithstanding (i) the terms of the documents constituting the Security Documents; (ii) the terms of any instrument of alteration dated prior to this Agreement affecting any of the Security Documents; (iii) the dates of execution, recording, registration or intimation; and/or (iv) any law or regulation to the contrary:

(a) the Senior Security Documents to the extent of the Senior Debt; then

(b) the Subordinated Security Document to the extent of the Subordinated Debt

and such priority will not be affected by any intermediate reduction in the principal amount secured by any of the Senior Security Documents or by any intermediate reduction in or satisfaction of the Senior Debt.





**FILE COPY**

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

COMPANY NO. 371345  
CHARGE CODE SC37 1345 0002

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 13 MAY 2020 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 23 MAY 2020

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 1  
MAY 2020

BY DIESELEC HOLDINGS LIMITED

IN FAVOUR OF  
SANTANDER UK PLC

GIVEN AT COMPANIES HOUSE, EDINBURGH 26 MAY 2020



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



Dated 13 May 2020

**DIESELEC HOLDINGS LIMITED**  
(as Borrower)

**NEVIS CAPITAL LLP**  
(as Subordinated Creditor)


**Santander UK plc**

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**RANKING AGREEMENT**

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I certify that, save for material redacted pursuant to s.859G of the Companies Act 2006 as applied by s.466(4E) of the Companies Act 1985, this copy instrument of alteration is a correct copy of the original instrument of alteration.

Signature   
ANDREW RONALD  
Date 15 MAY 2020

Harper Macleod LLP

This Agreement is delivered on 13 MAY 2020

2020

**Amongst**

- (1) **Dieselec Holdings Limited** (registered in Scotland with number SC371345) whose registered office is at Cadder House 160 Clobber Road, Milngavie, Glasgow, G62 7LW (as **Borrower**);
- (2) **Nevis Capital LLP** (registered in Scotland with number SO301116) whose registered office is at 221 West George Street, Glasgow, Scotland, G2 2ND (as **Subordinated Creditor**); and
- (3) **Santander UK plc** (registered in England with number 2294747) whose registered office is at 2 Triton Square, Regent's Place, London NW1 3AN as security trustee for each of itself and each Secured Party (**Santander**, which expression shall include its successors in title, assigns and transferees).

**It is agreed**

**1 Definitions and Interpretation**

**1.1 Definitions**

In this Agreement:

**Additional Debt** means, in relation to any Debt:

- (a) any refinancing, novation, deferral or extension of that Debt
- (b) any further advance which may be made under any agreement supplemental to any relevant Document, together with all related interest, fees and costs
- (c) any claim for damages or restitution in the event of rescission of that Debt or otherwise in connection with any Document
- (d) any claim against the Borrower arising from any recovery by the Borrower or any other person of a payment or discharge in respect of that Debt on the grounds of preference or otherwise
- (e) any claim for breach of representation, warranty, undertaking or in respect of an event of default (howsoever defined) or under any indemnity in connection with any relevant Document and/or
- (f) any amounts (such as post-insolvency interest) which would otherwise be included in any of paragraphs (a) to (e) of this definition but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings

**Administrator** has the same meaning as in Schedule B1 to the Insolvency Act 1986

**Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company, in each case, from time to time

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London

**Consent** means any consent, approval, release, waiver or agreement to amend

**Debt** means the Senior Debt and the Subordinated Debt

**Documents** means the Senior Documents and the Subordinated Documents

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

- (a) demand payment of, declare prematurely due and payable, or otherwise seek to accelerate payment of, or place on demand, all or any part of that Debt
- (b) recover all or any part of that Debt (including by exercising any rights of set-off or combination of accounts)
- (c) exercise or enforce directly or indirectly any rights under or pursuant to the provisions of any guarantee, surety or any security document, or other document (including the crystallisation of any floating charge) in relation to, or given in support of, all or any part of that Debt
- (d) petition for (or take any other steps which may lead to) an Insolvency Event in relation to the Borrower or
- (e) commence or support legal proceedings against the Borrower

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary

**Insolvency Event** means in relation to the Borrower:

- (a) it is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities)
- (c) a moratorium is declared in respect of any indebtedness of it (irrespective of whether such moratorium subsequently ends)
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, sequestration, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of it
  - (ii) a composition, compromise, assignment or arrangement with or for the benefit of any of its creditors
  - (iii) the appointment of a liquidator, Receiver, Administrator, compulsory manager, trustee, custodian or other similar officer in respect of it or any of its assets or
  - (iv) enforcement of any Security over any of its assets

or any analogous procedure or step is taken in any jurisdiction (but, in each case, not including any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement) and/or

- (e) any expropriation, attachment, sequestration, distress or execution or any other legal or analogous process in any jurisdiction which affects any of its assets and is not dismissed or discharged within 14 days of the commencement of such process

**Party** means a party for the time being to this Agreement

**Receiver** means an administrative receiver, a receiver and manager or a receiver

**Secured Party** means Santander UK plc and its Affiliates

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

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

**Senior Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to any Secured Party in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Senior Debt Documents** means each agreement or other document evidencing or recording the terms of any Senior Debt

**Senior Default** means an event of default howsoever defined in any Senior Document or the occurrence of any other event which entitles any Secured Party to accelerate, demand repayment of or demand delivery of cash collateral in respect of the Senior Debt (or any part thereof)

**Senior Discharge Date** means the date on which Santander notifies the Subordinated Creditor and the Borrower in writing that it is satisfied that all of the Senior Debt has been unconditionally and irrevocably paid and discharged in full, whether or not as the result of an enforcement, and all commitments of any Secured Party to the Borrower have been cancelled

**Senior Documents** means the Senior Debt Documents and the Senior Security Documents

**Senior Security** means the Security constituted by the Senior Security Documents

**Senior Security Documents** means:

- (a) the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of Santander on or around the date of this Agreement
- (b) any other document entered into at any time by the Borrower creating any guarantee, indemnity, Security or other assurance in favour of any Secured Party as security for any of the Senior Debt and
- (c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs **Error! Reference source not found.** and (a) above

**Subordinated Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to the Subordinated Creditor (or any of its Affiliates) including, without limitation, under or in connection with any Subordinated Document in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Subordinated Debt Documents** means each and every agreement or other document evidencing or recording the terms of any Subordinated Debt

**Subordinated Documents** means the Subordinated Debt Documents and the Subordinated Security Documents

**Subordinated Security** means the Security constituted by the Subordinated Security Documents

**Subordinated Security Document** means the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of the Subordinated Creditor on 10 September 2010 and registered at Companies House on 17 September 2010

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006

## 1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) Santander, an Affiliate of Santander, the Subordinated Creditor or the Borrower, shall be construed so as to include its successors in title, assignees and transferees;
  - (ii) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
  - (iii) a Document or any other document, agreement or instrument is a reference to that Document or other document, agreement or instrument as amended, novated, supplemented or restated (however fundamentally);
  - (iv) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (v) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a **person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality), or any other entity or body of any description;

- (vii) **a regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (viii) **a provision of law** is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Agreement; and
  - (ix) **sterling** and £ shall be construed as a reference to the lawful currency of the United Kingdom.
- (b) Clause headings are for ease of reference only.
  - (c) Any word importing the singular shall include the plural and vice versa.
  - (d) A Senior Default is **continuing** if it has not been waived to the satisfaction of Santander.
  - (e) A **payment** includes a distribution, prepayment or repayment and references to **pay** include distribute, prepay or repay.

### 1.3 Third party rights

Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or enjoy the benefit of any term of this Agreement or any other document issued or entered into under or in connection with it.

### 1.4 Conflict

In the event of any conflict between the terms of this Agreement and the terms of any other Document, the terms of this Agreement will prevail.

## 2 Consent

### 2.1 Santander consent

Santander consents to the entry by the Borrower into, and the subsidence of, the Subordinated Security Documents and the Subordinated Debt Documents (as in force at the date of this Agreement)

### 2.2 Subordinated Creditor consent

The Subordinated Creditor consents to the entry by the Borrower into, and the subsidence of, the Senior Security Documents and the Senior Debt Documents.

**3 Ranking****3.1 Ranking of Debt**

The Senior Debt will at all times rank in right and priority of payment ahead of the Subordinated Debt.

**3.2 Ranking of Security**

The Security Documents shall rank in the following order of priority notwithstanding (i) the terms of the documents constituting the Security Documents; (ii) the terms of any instrument of alteration dated prior to this Agreement affecting any of the Security Documents; (iii) the dates of execution, recording, registration or intimation; and/or (iv) any law or regulation to the contrary:

- (a) the Senior Security Documents to the extent of the Senior Debt; then
- (b) the Subordinated Security Document to the extent of the Subordinated Debt

and such priority will not be affected by any intermediate reduction in the principal amount secured by any of the Senior Security Documents or by any intermediate reduction in or satisfaction of the Senior Debt.

**3.3 Continuation**

The ranking provided for in this clause 3 shall not be affected by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the relative ranking of the Debt, including, but not limited to:

- (a) any provision contained in any of the Documents;
- (b) section 464 or 466 of the Companies Act 1985;
- (c) section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970;
- (d) the date upon which any Debt arose;
- (e) whether a person is obliged to advance any such Debt;
- (f) the date or order of execution, delivery, registration, filing or giving of notice of any Document;
- (g) any fluctuations from time to time in the amount of, or any intermediate discharge in whole or in part of, any Debt;
- (h) the granting of time or any other indulgence to the Borrower or any other person;
- (i) the existence at any time of a credit balance on any current or other account of the Borrower;
- (j) the appointment of any liquidator, receiver, administrator or other similar officer either in respect of the Borrower or over all or any part of the Borrower's assets; or
- (k) any amendment or supplement to or variation of any Document.

**4 Undertakings****4.1 Undertakings of the Borrower**

At any time on or before the Senior Discharge Date, the Borrower will not, except with the prior written consent of Santander:

- (a) make, or take any action to make, any payment in respect of, or on account of, or purchase, redeem or otherwise acquire any of, the Subordinated Debt in cash or in kind except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt)
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt)
- (c) create, or permit to subsist, any Security over any of its assets, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);
- (d) give any financial support (including, without limitation, the giving of any guarantee, indemnity or other assurance against financial loss, the making of any deposit or the taking of any participation) to any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking and/or subordination of the Subordinated Debt provided for in this Agreement being prejudiced or impaired in any respect;
- (f) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt;
- (g) incur any financial indebtedness that ranks ahead of the Subordinated Debt other than Senior Debt; or
- (h) petition for (or take any other steps which may lead to) an Insolvency Event in respect of the Borrower.

**4.2 Undertakings of Subordinated Creditor**

At any time on or before the Senior Discharge Date, the Subordinated Creditor will not, except with the prior written consent of Santander:

- (a) demand, receive or take any action to receive any payment in respect of, or on account of, any of the Subordinated Debt in cash or in kind or apply any money or property in or towards discharge of any of the Subordinated Debt except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (c) receive, or permit to subsist, any Security over any asset of the Borrower, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);



- (d) receive or permit to subsist any financial support (including without limitation, any guarantee, indemnity or other assurance against financial loss, any deposit or any participation) from any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) allow any of the Subordinated Debt to be subordinated to any person other than in accordance with this Agreement or as may arise by operation of law;
- (f) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking, priority and/or subordination of the Subordinated Debt and/or the Subordinated Security provided for in this Agreement being prejudiced or impaired in any respect;
- (g) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt or Subordinated Security; or
- (h) take any Enforcement Action except to the extent expressly required under clause 8 (Enforcement Action).

## **5 Permitted payments of Subordinated Debt**

At any time on or before the Senior Discharge Date, the Borrower may pay in cash and the Subordinated Creditor may receive scheduled payments of the principal amount of the Subordinated Debt and interest thereon on the dates and in the amounts specified in the Subordinated Documents (as in force as at the date of this Agreement) provided that no Senior Default has occurred and is continuing or would result from such payment. .

## **6 Turnover**

### **6.1 Turnover**

If at any time on or before the Senior Discharge Date:

- (a) the Subordinated Creditor receives or recovers a payment or distribution of any kind in respect of or on account of any of the Subordinated Debt which is not expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) the Subordinated Creditor receives or recovers proceeds pursuant to any action required under clause 8 (Enforcement Action);
- (c) any of the Subordinated Debt is discharged by set-off, combination of accounts or otherwise in a manner which is not expressly permitted by clause 4 (Undertakings); or
- (d) the Borrower makes any payment or distribution of any kind in respect of or on account of the purchase or other acquisition of any of the Subordinated Debt,

other than pursuant to clause 14 (Application of recoveries) (the amount of each such payment, distribution, set-off or combination being a **Turnover Amount**), the Subordinated Creditor will promptly pay an amount equal to the lesser of:

- (i) that Turnover Amount; and
- (ii) the amount of the Senior Debt,

to Santander for application in accordance with clause 14 (Application of recoveries) and, pending that payment, will hold such amount on trust for Santander (and Santander acknowledges notice of such trust).

## **6.2 Recovering Creditor's rights**

- (a) Any amount paid by the Subordinated Creditor to Santander under clause 6.1 (Turnover Payment) shall be treated as having been paid by the Borrower and shall be applied by Santander in accordance with clause 14 (Application of recoveries).
- (b) On application by Santander, pursuant to clause 14 (Application of recoveries), of a Turnover Payment, as between the Borrower and the Subordinated Creditor an amount equal to the Turnover Payment will be treated as not having been paid by the Borrower and, to the extent of an amount equal to such Turnover Payment only, no reduction or discharge of any Subordinated Debt shall result from any receipt or recovery of an amount by the Subordinated Creditor which is so applied by Santander.

6.3 Nothing in this clause 6 or any other provision of this Agreement is intended to or shall create a charge or other Security.

## **7 Subordination on Insolvency**

### **7.1 Filing of claims and voting**

- (a) Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the Subordinated Debt will be postponed and subordinated to the Senior Debt and Santander may and is irrevocably authorised by the Subordinated Creditor to:
  - (i) demand, claim, enforce and prove for;
  - (ii) exercise all powers of convening meetings, voting and representation in respect of;
  - (iii) file claims and proofs, give receipts and take all proceedings and do all other things which Santander considers necessary or advisable to recover; and
  - (iv) collect and receive all payments and distributions of any kind in respect of or on account of,the Subordinated Debt due from the Borrower.
- (b) Subject to clause 7.1(d), the Subordinated Creditor undertakes not to take any of the actions referred to in clause 7.1(a).
- (c) The Subordinated Creditor will provide all forms of proxy and of representation requested by Santander for the purpose of clause 7.1(a) and do all other things that Santander reasonably requests in order to give effect to this clause 7.1.
- (d) If, for whatever reason, Santander is not entitled to take, or does not wish to take, any of the actions listed in clause 7.1(a), the Subordinated Creditor undertakes to promptly take any action and give any notices which Santander requires from time to time.

- (e) Without prejudice to clause 11 (Consents and override), nothing in this clause 7 will entitle Santander to exercise or require the Subordinated Creditor to exercise such power of voting or representation to waive or amend any of the provisions of the Subordinated Documents or waive, reduce, discharge or extend the due date for payment of or reschedule any of the Subordinated Debt.

## 7.2 Distributions

Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the person responsible for the distribution of the assets of the Borrower or their proceeds shall be directed by the Subordinated Creditor to pay any distributions or proceeds in respect of any of the Subordinated Debt owed to them direct to Santander for application in accordance with clause 14 (Application of recoveries) until the Senior Debt has been paid in full.

## 8 Enforcement Action

At any time on or before the Senior Discharge Date, when a Senior Default is continuing the Subordinated Creditor will take such Enforcement Action in relation to the Subordinated Debt due to it which Santander in its absolute discretion directs it to take.

## 9 Distressed Disposal

- 9.1 If a Distressed Disposal is being effected, Santander is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from the Borrower or the Subordinated Creditor), to release the Borrower from all or any part of its liabilities in respect of the Subordinated Debt and/or the Subordinated Security.
- 9.2 If Santander has exercised any of its powers granted pursuant to clause 9.1, the Subordinated Creditor shall immediately upon request by Santander do all and any such things as are necessary to give effect to such release (at the cost of the Borrower).
- 9.3 The net proceeds of a Distressed Disposal shall be paid to Santander for application in accordance with clause 14 (Application of recoveries) as if those proceeds were the proceeds of an enforcement of the Senior Security.
- 9.4 For the purposes of this clause 9, a **Distressed Disposal** shall mean a disposal of any of the assets of the Borrower which is (a) being effected in circumstances where the Senior Security has become enforceable, (b) being effected by enforcement of the Senior Security or (c) being effected by the Subordinated Creditor after the enforcement of any Senior Security or after service by Santander of a notice of acceleration in accordance with the terms of any Senior Debt Document (an **Acceleration Notice**) or after Santander has served a demand following service of an Acceleration Notice.

## 10 Non-subrogation

At any time on or before the Senior Discharge Date, the Subordinated Creditor will not be subrogated to or entitled to exercise any of the rights of Santander under the Senior Documents.

**11 Consents and override****11.1 Deemed consent**

Subject to clause 11.2, if, at any time on or before the Senior Discharge Date, Santander gives a Consent in respect of the Senior Documents then the Subordinated Creditor will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Subordinated Documents; and
- (b) execute any document or deed and do anything else necessary to give effect to this clause.

**11.2 Excluded consents**

Clause 11.1 shall not apply to any Consent which has the effect of extending the due date for, or reducing the amount of, or changing the currency of, any payment due to the Subordinated Creditor or changing any terms by reference to which any such payment is to be calculated or made.

**11.3 Non-objection**

The Subordinated Creditor shall not have any remedy against Santander by reason of any transaction entered into between Santander and the Borrower or any requirement or condition imposed by Santander on the Borrower which breaches or is, or causes, a default under any of the Documents, unless entered into in breach of the terms of this Agreement.

**11.4 Agreement override**

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

**12 Protection of subordination****12.1 Continuing subordination**

The subordination provisions in this Agreement constitute a continuing subordination and benefit to the ultimate balance of the Senior Debt regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

**12.2 Waiver of defences**

The provisions in this Agreement will not be affected by any act, omission, matter or thing which but for this clause 12 would reduce, release or otherwise prejudice the subordination in this Agreement or the obligations of the Subordinated Creditor or the Borrower under this Agreement including, without limitation:

- (a) any time, waiver or consent granted to, or composition with any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person or any non-presentation or non-observance of any formality or other

requirement in respect of any instrument or any failure to realise the full value of any Security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (e) any amendment (however fundamental) or replacement of any document;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any document;
- (g) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Borrower under any of the Senior Documents resulting from any insolvency, liquidation or dissolution proceedings or from any law or regulation; or
- (h) any intermediate payment or discharge of any of the Senior Debt.

### **12.3 Immediate recourse**

The Subordinated Creditor waives any right it may have of first requiring Santander to proceed against, or enforce any other rights or Security or claim payment from, any person before claiming the benefit of the priority and subordination provided for under this Agreement. This waiver applies irrespective of any law or any provision of a Document to the contrary.

## **13 Preservation of rights**

13.1 Notwithstanding any provision of this Agreement postponing, subordinating or preventing the payment of any of the Subordinated Debt as between the Borrower and the Subordinated Creditor, the Subordinated Debt shall remain owing or due and payable in accordance with the terms of the Subordinated Documents, and interest and default interest (if applicable) will continue to accrue in accordance with the terms of the Subordinated Documents.

13.2 No delay in exercising rights and remedies under any of the Subordinated Documents by reason of any term of this Agreement postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

## **14 Application of recoveries**

### **14.1 Order of application**

Subject to the rights of any prior or preferential creditor, Santander or any Receiver shall hold on trust, to apply at any time as Santander (in its absolute discretion) or any Receiver (in its absolute discretion) sees fit, all amounts paid to it in accordance with this Agreement, all proceeds of realisation or enforcement of the Security and all amounts received or recovered by it pursuant to the terms of any Document as follows:

- (a) first, in or towards payment of all costs and expenses incurred by Santander or any Receiver in connection with:
  - (i) any realisation or enforcement of the Senior Security taken in accordance with the terms of this Agreement; or
  - (ii) any action taken at the request of Santander under clause 7.1 (Filing of claims and voting);

- (b) secondly, in or towards payment to Santander for application towards the discharge of the Senior Debt (in accordance with the terms of the Senior Documents);
- (c) thirdly, if the Borrower is not under any further actual or contingent liability under any Senior Document, in payment to any person to whom Santander is obliged to pay in priority to the Borrower; and
- (d) fourthly, the balance, if any, in payment to the Borrower or other persons entitled to it.

#### 14.2 General

Clause 14.1 will override any appropriation made by the Borrower.

#### 14.3 Appropriations

At any time on or before the Senior Discharge Date, Santander may (subject to the terms of this Agreement and any other Senior Documents):

- (a) apply any monies received by it under this Agreement to the Senior Debt owed to it in such order as it may determine; and
- (b) hold any monies received by it under this Agreement in a suspense account (bearing interest at a market rate usual for an account of that type) unless and until all monies received by it are sufficient in aggregate to result in the Senior Discharge Date.

#### 15 Representations and warranties

The Subordinated Creditor represents and warrants to and for the benefit of Santander that:

- (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power to own its property and assets and to carry on its business as it is being conducted;
- (b) the Documents to which it is a party are within its powers and have been duly authorised and executed by it;
- (c) this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms and the entry into and performance by it of this Agreement does not and will not conflict with any law or regulation applicable to it, its *constitutional documents* or with any agreement or instrument binding upon its or any of its assets;
- (d) the Documents to which it is a party (copies of which have been provided to Santander on or before the date of this Agreement) contain all the terms and conditions of the Subordinated Debt owed to it and the Subordinated Security; and
- (e) it is the sole legal and beneficial owner of the Subordinated Debt and the Subordinated Security owed to it free from any Security or subordination in favour of any person except any existing under this Agreement.

#### 16 Status of the Borrower

The Borrower shall not have any rights under this Agreement and none of the representations or undertakings by the Subordinated Creditor in this Agreement are given (or deemed to be given) to or for the benefit of the Borrower.

**17 Attorney**

The Subordinated Creditor hereby irrevocably appoints Santander as its attorney and mandatory (with full power of substitution and delegation) in its name and acting on its behalf to do anything which it has authorised Santander to do under this Agreement or which it is required and legally able to do under this Agreement but has failed to do.

**18 Information****18.1 Defaults**

The Borrower shall within five Business Days upon becoming aware of its occurrence notify in writing Santander and the Subordinated Creditor of the occurrence of a default, an event of default or potential event of default (howsoever described) under, or in respect of the terms of any Document.

**18.2 Other Information**

The Subordinated Creditor shall, upon request by Santander, provide to Santander any information, including without limitation details of the amount of outstanding Subordinated Debt, that Santander may reasonably specify as being necessary or desirable to enable Santander to perform its rights and obligations under this Agreement.

**18.3 Consent to disclosure**

*Notwithstanding any agreement to the contrary, the Borrower consents to the disclosure by the Subordinated Creditor or Santander to each other of such information concerning the Borrower as that Subordinated Creditor or Santander shall see fit.*

**19 Changes to the Parties****19.1 Successors and assignees**

This Agreement will be binding upon, and continue for the benefit of, the successors and assignees of the Parties.

**19.2 Borrower**

The Borrower may not assign any of its rights (if any) nor transfer any of its rights (if any) or obligations under this Agreement.

**19.3 Subordinated Creditor**

The Subordinated Creditor may not assign any of its rights nor transfer any of its rights, benefits or obligations in respect of any of the Subordinated Documents, the Subordinated Debt or the Subordinated Security, without the prior written consent of Santander.

**19.4 Santander**

Santander may at any time assign all or any of its respective rights and benefits under this Agreement to any party to whom the Secured Parties transfer or assign all or any part of the Senior Debt.

**20 Notices**

All communication to be made under or in connection with this Agreement must be in writing. Santander may make or deliver any communication or document to be made under or in connection with this Agreement to the Borrower at the Borrower's registered address, or to the Subordinated Creditor at the Subordinated Creditor's registered address. Any communication or document made or delivered by Santander will be effective at the time of personal delivery or at 9.00am on the second Business Day after posting. Any communication or document made or delivered by the Borrower or by the Subordinated Creditor to Santander must be addressed to Santander Operations Middle Office Securities, Ops Block, Ground Floor Area 3A, Bridle Road, Bootle, Merseyside L30 4GB and will be effective on receipt, if received before 4.00pm on a Business Day, or otherwise on the next Business Day.

**21 Walvers**

- 21.1 No failure to exercise, nor any delay in exercising, on the part of any Party, any right, under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, or remedy prevent or restrict any further exercise of that or any other right or remedy.
- 21.2 No waiver of any breach of any term of this Agreement shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.
- 21.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**22 Presentation****22.1 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 such provision under the law of any other jurisdiction, will in any way be affected or impaired.

**22.2 No Impairment**

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

**22.3 Compensation**

Each of Santander and the Subordinated Creditor hereby agrees that, if this Agreement is regarded by any one or more liquidators, Receivers or Administrators of the Borrower as failing to bind him or them, any party or parties who will have benefited as a result of any action by any one or more of such liquidators, Receivers or Administrators will forthwith compensate the party or parties who will have been correspondingly prejudiced to the extent of the provisions as to ranking set out in clause 3.2 (Ranking of Security).



**23 Counterparts and delivery**

23.1 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts.

23.2 Where executed in counterpart:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

23.3 If this Agreement is not executed in counterparts, this Agreement shall be delivered on the date on which the last party signed this Agreement.

23.4 The parties to this Agreement, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (**Counterparts Act**), nominate Harper Macleod LLP to take delivery of all counterparts of this Agreement. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement.

**24 Governing law**

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

**25 Enforcement**

**25.1 Jurisdiction of Scottish courts**

- (a) 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) (**Dispute**).
- (b) 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.

- (c) This clause 25 is for the benefit of Santander. As a result, Santander shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Santander may take concurrent proceedings in any number of jurisdictions.

In witness whereof these presents consisting of this and the preceding 17 pages are executed by the parties hereto as follows:

**Borrower**

**Dieselec Holdings Limited**

at

on

in the presence of:

) .....  
) Director  
) .....  
) Full Name

.....  
Signature of witness

Full name .....

Address .....

.....

**Board Approval**

We hereby certify that the acceptance of, and entry into, this Agreement was approved by a resolution of the board of directors of the Borrower properly passed on.....

Date .....

Signed .....(Director)

**Subordinated Creditor**

**Nevis Capital LLP**

at

on

in the presence of:

) .....

) Member

)

) .....

) Full Name

.....  
Signature of witness

Full name .....

Address .....

.....  
***Members' Approval***

We hereby certify that the acceptance of, and entry into, this Agreement was approved by a resolution of the members of the Subordinated Creditor properly passed on.....

Date .....

Signed.....(Member)

**Santander**

Subscribed for and on behalf of  
Santander UK plc as security trustee  
at GLASGOW

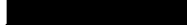
on 5TH MAY 2020

**in the presence of:**

**Signature of witness**

Full name ..... CAROLINE PIERRE

Address 287 St. Vincent St  
Glasgow G2 5NB

)   
 ) Authorised Signatory  
 ) DEBORAH GALLACHER  
 ) Full Name

Dated 13 MAY 2020

**DIESELEC HOLDINGS LIMITED**  
(as Borrower)

**NEVIS CAPITAL LLP**  
(as Subordinated Creditor)

**Santander UK plc**

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**RANKING AGREEMENT**

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This Agreement is delivered on

18 MAY

2020

**Amongst**

- (1) **Diselec Holdings Limited** (registered in Scotland with number SC371345) whose registered office is at Cadder House 160 Clober Road, Milngavie, Glasgow, G62 7LW (as **Borrower**);
- (2) **Nevis Capital LLP** (registered in Scotland with number SO301116) whose registered office is at 221 West George Street, Glasgow, Scotland, G2 2ND (as **Subordinated Creditor**); and
- (3) **Santander UK plc** (registered in England with number 2294747) whose registered office is at 2 Triton Square, Regent's Place, London NW1 3AN as security trustee for each of itself and each Secured Party (**Santander**, which expression shall include its successors in title, assigns and transferees).

**It is agreed****1. Definitions and interpretation****1.1 Definitions**

In this Agreement:

**Additional Debt** means, in relation to any Debt:

- (a) any refinancing, novation, deferral or extension of that Debt
- (b) any further advance which may be made under any agreement supplemental to any relevant Document, together with all related interest, fees and costs
- (c) any claim for damages or restitution in the event of rescission of that Debt or otherwise in connection with any Document
- (d) any claim against the Borrower arising from any recovery by the Borrower or any other person of a payment or discharge in respect of that Debt on the grounds of preference or otherwise
- (e) any claim for breach of representation, warranty, undertaking or in respect of an event of default (howsoever defined) or under any indemnity in connection with any relevant Document and/or
- (f) any amounts (such as post-insolvency interest) which would otherwise be included in any of paragraphs (a) to (e) of this definition but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings

**Administrator** has the same meaning as in Schedule B1 to the Insolvency Act 1986**Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company, in each case, from time to time**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London**Consent** means any consent, approval, release, waiver or agreement to amend

**Debt** means the Senior Debt and the Subordinated Debt

**Documents** means the Senior Documents and the Subordinated Documents

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

- (a) demand payment of, declare prematurely due and payable, or otherwise seek to accelerate payment of, or place on demand, all or any part of that Debt
- (b) recover all or any part of that Debt (including by exercising any rights of set-off or combination of accounts)
- (c) exercise or enforce directly or indirectly any rights under or pursuant to the provisions of any guarantee, surety or any security document, or other document (including the crystallisation of any floating charge) in relation to, or given in support of, all or any part of that Debt
- (d) petition for (or take any other steps which may lead to) an Insolvency Event in relation to the Borrower or
- (e) commence or support legal proceedings against the Borrower

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary

**Insolvency Event** means in relation to the Borrower:

- (a) it is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities)
- (c) a moratorium is declared in respect of any indebtedness of it (irrespective of whether such moratorium subsequently ends)
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, sequestration, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of it
  - (ii) a composition, compromise, assignment or arrangement with or for the benefit of any of its creditors
  - (iii) the appointment of a liquidator, Receiver, Administrator, compulsory manager, trustee, custodian or other similar officer in respect of it or any of its assets or
  - (iv) enforcement of any Security over any of its assets

or any analogous procedure or step is taken in any jurisdiction (but, in each case, not including any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement) and/or

- (e) any expropriation, attachment, sequestration, distress or execution or any other legal or analogous process in any jurisdiction which affects any of its assets and is not dismissed or discharged within 14 days of the commencement of such process

**Party** means a party for the time being to this Agreement

**Receiver** means an administrative receiver, a receiver and manager or a receiver

**Secured Party** means Santander UK plc and its Affiliates

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

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

**Senior Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to any Secured Party in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Senior Debt Documents** means each agreement or other document evidencing or recording the terms of any Senior Debt

**Senior Default** means an event of default howsoever defined in any Senior Document or the occurrence of any other event which entitles any Secured Party to accelerate, demand repayment of or demand delivery of cash collateral in respect of the Senior Debt (or any part thereof)

**Senior Discharge Date** means the date on which Santander notifies the Subordinated Creditor and the Borrower in writing that it is satisfied that all of the Senior Debt has been unconditionally and irrevocably paid and discharged in full, whether or not as the result of an enforcement, and all commitments of any Secured Party to the Borrower have been cancelled

**Senior Documents** means the Senior Debt Documents and the Senior Security Documents

**Senior Security** means the Security constituted by the Senior Security Documents

**Senior Security Documents** means:

- (a) the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of Santander on or around the date of this Agreement
- (b) any other document entered into at any time by the Borrower creating any guarantee, indemnity, Security or other assurance in favour of any Secured Party as security for any of the Senior Debt and
- (c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs Error! Reference source not found. and (a) above



**Subordinated Debt** means all present and future liabilities and obligations due, owing or incurred by the Borrower to the Subordinated Creditor (or any of its Affiliates) including, without limitation, under or in connection with any Subordinated Document in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety together with any Additional Debt relating to such liabilities and obligations

**Subordinated Debt Documents** means each and every agreement or other document evidencing or recording the terms of any Subordinated Debt

**Subordinated Documents** means the Subordinated Debt Documents and the Subordinated Security Documents

**Subordinated Security** means the Security constituted by the Subordinated Security Documents

**Subordinated Security Document** means the bond and floating charge over the assets of the Borrower granted by the Borrower in favour of the Subordinated Creditor on 10 September 2010 and registered at Companies House on 17 September 2010

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006

## 1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) Santander, an Affiliate of Santander, the Subordinated Creditor or the Borrower, shall be construed so as to include its successors in title, assignees and transferees;
  - (ii) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
  - (iii) a Document or any other document, agreement or instrument is a reference to that Document or other document, agreement or instrument as amended, novated, supplemented or restated (however fundamentally);
  - (iv) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (v) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a **person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality), or any other entity or body of any description;

- (vii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self regulatory or other authority or organisation;
- (viii) a provision of law is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re enacted or replaced (whether with or without modification) whether before or after the date of this Agreement, and
- (ix) **sterling** and **£** shall be construed as a reference to the lawful currency of the United Kingdom.
- (b) Clause headings are for ease of reference only.
- (c) Any word importing the singular shall include the plural and vice versa.
- (d) A Senior Default is **continuing** if it has not been waived to the satisfaction of Santander.
- (e) A **payment** includes a distribution, prepayment or repayment and references to **pay** include distribute, prepay or repay.

### 1.3 Third party rights

Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or enjoy the benefit of any term of this Agreement or any other document issued or entered into under or in connection with it.

### 1.4 Conflict

In the event of any conflict between the terms of this Agreement and the terms of any other Document, the terms of this Agreement will prevail.

## 2 Consent

### 2.1 Santander consent

Santander consents to the entry by the Borrower into, and the subsidence of, the Subordinated Security Documents and the Subordinated Debt Documents (as in force at the date of this Agreement)

### 2.2 Subordinated Creditor consent

The Subordinated Creditor consents to the entry by the Borrower into, and the subsidence of, the Senior Security Documents and the Senior Debt Documents.

### **3 Ranking**

#### **3.1 Ranking of Debt**

The Senior Debt will at all times rank in right and priority of payment ahead of the Subordinated Debt.

#### **3.2 Ranking of Security**

The Security Documents shall rank in the following order of priority notwithstanding (i) the terms of the documents constituting the Security Documents; (ii) the terms of any instrument of alteration dated prior to this Agreement affecting any of the Security Documents; (iii) the dates of execution, recording, registration or intimation; and/or (iv) any law or regulation to the contrary:

- (a) the Senior Security Documents to the extent of the Senior Debt; then
- (b) the Subordinated Security Document to the extent of the Subordinated Debt

and such priority will not be affected by any intermediate reduction in the principal amount secured by any of the Senior Security Documents or by any intermediate reduction in or satisfaction of the Senior Debt.

#### **3.3 Continuation**

The ranking provided for in this clause 3 shall not be affected by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the relative ranking of the Debt, including, but not limited to:

- (a) any provision contained in any of the Documents;
- (b) section 464 or 466 of the Companies Act 1985;
- (c) section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970;
- (d) the date upon which any Debt arose;
- (e) whether a person is obliged to advance any such Debt;
- (f) the date or order of execution, delivery, registration, filing or giving of notice of any Document;
- (g) any fluctuations from time to time in the amount of, or any intermediate discharge in whole or in part of, any Debt;
- (h) the granting of time or any other indulgence to the Borrower or any other person;
- (i) the existence at any time of a credit balance on any current or other account of the Borrower;
- (j) the appointment of any liquidator, receiver, administrator or other similar officer either in respect of the Borrower or over all or any part of the Borrower's assets; or
- (k) any amendment or supplement to or variation of any Document.

**4 Undertakings****4.1 Undertakings of the Borrower**

At any time on or before the Senior Discharge Date, the Borrower will not, except with the prior written consent of Santander:

- (a) make, or take any action to make, any payment in respect of, or on account of, or purchase, redeem or otherwise acquire any of, the Subordinated Debt in cash or in kind except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt)
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt)
- (c) create, or permit to subsist, any Security over any of its assets, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);
- (d) give any financial support (including, without limitation, the giving of any guarantee, indemnity or other assurance against financial loss, the making of any deposit or the taking of any participation) to any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking and/or subordination of the Subordinated Debt provided for in this Agreement being prejudiced or impaired in any respect;
- (f) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt;
- (g) incur any financial indebtedness that ranks ahead of the Subordinated Debt other than Senior Debt; or
- (h) petition for (or take any other steps which may lead to) an Insolvency Event in respect of the Borrower.

**4.2 Undertakings of Subordinated Creditor**

At any time on or before the Senior Discharge Date, the Subordinated Creditor will not, except with the prior written consent of Santander:

- (a) demand, receive or take any action to receive any payment in respect of, or on account of, any of the Subordinated Debt in cash or in kind or apply any money or property in or towards discharge of any of the Subordinated Debt except, in each case, to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise except to the extent expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (c) receive, or permit to subsist, any Security over any asset of the Borrower, or any guarantee, for any of the Subordinated Debt (other than the Subordinated Security);

- (d) receive or permit to subsist any financial support (including without limitation, any guarantee, indemnity or other assurance against financial loss, any deposit or any participation) from any person for or in connection with any of the Subordinated Debt (other than the Subordinated Security);
- (e) allow any of the Subordinated Debt to be subordinated to any person other than in accordance with this Agreement or as may arise by operation of law;
- (f) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking, priority and/or subordination of the Subordinated Debt and/or the Subordinated Security provided for in this Agreement being prejudiced or impaired in any respect;
- (g) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt or Subordinated Security; or
- (h) take any Enforcement Action except to the extent expressly required under clause 8 (Enforcement Action).

## **5 Permitted payments of Subordinated Debt**

At any time on or before the Senior Discharge Date, the Borrower may pay in cash and the Subordinated Creditor may receive scheduled payments of the principal amount of the Subordinated Debt and interest thereon on the dates and in the amounts specified in the Subordinated Documents (as in force as at the date of this Agreement) provided that no Senior Default has occurred and is continuing or would result from such payment. .

## **6 Turnover**

### **6.1 Turnover**

If at any time on or before the Senior Discharge Date:

- (a) the Subordinated Creditor receives or recovers a payment or distribution of any kind in respect of or on account of any of the Subordinated Debt which is not expressly permitted by clause 5 (Permitted payments of Subordinated Debt);
- (b) the Subordinated Creditor receives or recovers proceeds pursuant to any action required under clause 8 (Enforcement Action);
- (c) any of the Subordinated Debt is discharged by set-off, combination of accounts or otherwise in a manner which is not expressly permitted by clause 4 (Undertakings); or
- (d) the Borrower makes any payment or distribution of any kind in respect of or on account of the purchase or other acquisition of any of the Subordinated Debt,

other than pursuant to clause 14 (Application of recoveries) (the amount of each such payment, distribution, set-off or combination being a **Turnover Amount**), the Subordinated Creditor will promptly pay an amount equal to the lesser of:

- (i) that Turnover Amount; and
- (ii) the amount of the Senior Debt,

to Santander for application in accordance with clause 14 (Application of recoveries) and, pending that payment, will hold such amount on trust for Santander (and Santander acknowledges notice of such trust).

## **6.2 Recovering Creditor's rights**

- (a) Any amount paid by the Subordinated Creditor to Santander under clause 6.1 (Turnover Payment) shall be treated as having been paid by the Borrower and shall be applied by Santander in accordance with clause 14 (Application of recoveries).
- (b) On application by Santander, pursuant to clause 14 (Application of recoveries), of a Turnover Payment, as between the Borrower and the Subordinated Creditor an amount equal to the Turnover Payment will be treated as not having been paid by the Borrower and, to the extent of an amount equal to such Turnover Payment only, no reduction or discharge of any Subordinated Debt shall result from any receipt or recovery of an amount by the Subordinated Creditor which is so applied by Santander.

6.3 Nothing in this clause 6 or any other provision of this Agreement is intended to or shall create a charge or other Security.

## **7 Subordination on insolvency**

### **7.1 Filing of claims and voting**

- (a) Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the Subordinated Debt will be postponed and subordinated to the Senior Debt and Santander may and is irrevocably authorised by the Subordinated Creditor to:
  - (i) demand, claim, enforce and prove for;
  - (ii) exercise all powers of convening meetings, voting and representation in respect of;
  - (iii) file claims and proofs, give receipts and take all proceedings and do all other things which Santander considers necessary or advisable to recover; and
  - (iv) collect and receive all payments and distributions of any kind in respect of or on account of,the Subordinated Debt due from the Borrower.
- (b) Subject to clause 7.1(d), the Subordinated Creditor undertakes not to take any of the actions referred to in clause 7.1(a).
- (c) The Subordinated Creditor will provide all forms of proxy and of representation requested by Santander for the purpose of clause 7.1(a) and do all other things that Santander reasonably requests in order to give effect to this clause 7.1.
- (d) If, for whatever reason, Santander is not entitled to take, or does not wish to take, any of the actions listed in clause 7.1(a), the Subordinated Creditor undertakes to promptly take any action and give any notices which Santander requires from time to time.

- (e) Without prejudice to clause 11 (Consents and override), nothing in this clause 7 will entitle Santander to exercise or require the Subordinated Creditor to exercise such power of voting or representation to waive or amend any of the provisions of the Subordinated Documents or waive, reduce, discharge or extend the due date for payment of or reschedule any of the Subordinated Debt.

## 7.2 Distributions

Upon the occurrence of an Insolvency Event in relation to the Borrower at any time on or before the Senior Discharge Date, the person responsible for the distribution of the assets of the Borrower or their proceeds shall be directed by the Subordinated Creditor to pay any distributions or proceeds in respect of any of the Subordinated Debt owed to them direct to Santander for application in accordance with clause 14 (Application of recoveries) until the Senior Debt has been paid in full.

## 8 Enforcement Action

At any time on or before the Senior Discharge Date, when a Senior Default is continuing the Subordinated Creditor will take such Enforcement Action in relation to the Subordinated Debt due to it which Santander in its absolute discretion directs it to take.

## 9 Distressed Disposal

- 9.1 If a Distressed Disposal is being effected, Santander is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from the Borrower or the Subordinated Creditor), to release the Borrower from all or any part of its liabilities in respect of the Subordinated Debt and/or the Subordinated Security.

- 9.2 If Santander has exercised any of its powers granted pursuant to clause 9.1, the Subordinated Creditor shall immediately upon request by Santander do all and any such things as are necessary to give effect to such release (at the cost of the Borrower).

- 9.3 The net proceeds of a Distressed Disposal shall be paid to Santander for application in accordance with clause 14 (Application of recoveries) as if those proceeds were the proceeds of an enforcement of the Senior Security.

- 9.4 For the purposes of this clause 9, a **Distressed Disposal** shall mean a disposal of any of the assets of the Borrower which is (a) being effected in circumstances where the Senior Security has become enforceable, (b) being effected by enforcement of the Senior Security or (c) being effected by the Subordinated Creditor after the enforcement of any Senior Security or after service by Santander of a notice of acceleration in accordance with the terms of any Senior Debt Document (an **Acceleration Notice**) or after Santander has served a demand following service of an **Acceleration Notice**.

## 10 Non-subrogation

At any time on or before the Senior Discharge Date, the Subordinated Creditor will not be subrogated to or entitled to exercise any of the rights of Santander under the Senior Documents.

**11 Consents and override****11.1 Deemed consent**

Subject to clause 11.2, if, at any time on or before the Senior Discharge Date, Santander gives a Consent in respect of the Senior Documents then the Subordinated Creditor will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Subordinated Documents; and
- (b) execute any document or deed and do anything else necessary to give effect to this clause.

**11.2 Excluded consents**

Clause 11.1 shall not apply to any Consent which has the effect of extending the due date for, or reducing the amount of, or changing the currency of, any payment due to the Subordinated Creditor or changing any terms by reference to which any such payment is to be calculated or made.

**11.3 Non-objection**

The Subordinated Creditor shall not have any remedy against Santander by reason of any transaction entered into between Santander and the Borrower or any requirement or condition imposed by Santander on the Borrower which breaches or is, or causes, a default under any of the Documents, unless entered into in breach of the terms of this Agreement.

**11.4 Agreement override**

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

**12 Protection of subordination****12.1 Continuing subordination**

The subordination provisions in this Agreement constitute a continuing subordination and benefit to the ultimate balance of the Senior Debt regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

**12.2 Waiver of defences**

The provisions in this Agreement will not be affected by any act, omission, matter or thing which but for this clause 12 would reduce, release or otherwise prejudice the subordination in this Agreement or the obligations of the Subordinated Creditor or the Borrower under this Agreement including, without limitation:

- (a) any time, waiver or consent granted to, or composition with any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person or any non presentation or non-observance of any formality or other



requirement in respect of any instrument or any failure to realise the full value of any Security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (e) any amendment (however fundamental) or replacement of any document;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any document;
- (g) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Borrower under any of the Senior Documents resulting from any insolvency, liquidation or dissolution proceedings or from any law or regulation; or
- (h) any intermediate payment or discharge of any of the Senior Debt.

### **12.3 Immediate recourse**

The Subordinated Creditor waives any right it may have of first requiring Santander to proceed against, or enforce any other rights or Security or claim payment from, any person before claiming the benefit of the priority and subordination provided for under this Agreement. This waiver applies irrespective of any law or any provision of a Document to the contrary.

## **13 Preservation of rights**

13.1 Notwithstanding any provision of this Agreement postponing, subordinating or preventing the payment of any of the Subordinated Debt as between the Borrower and the Subordinated Creditor, the Subordinated Debt shall remain owing or due and payable in accordance with the terms of the Subordinated Documents, and interest and default interest (if applicable) will continue to accrue in accordance with the terms of the Subordinated Documents.

13.2 No delay in exercising rights and remedies under any of the Subordinated Documents by reason of any term of this Agreement postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

## **14 Application of recoveries**

### **14.1 Order of application**

Subject to the rights of any prior or preferential creditor, Santander or any Receiver shall hold on trust, to apply at any time as Santander (in its absolute discretion) or any Receiver (in its absolute discretion) sees fit, all amounts paid to it in accordance with this Agreement, all proceeds of realisation or enforcement of the Security and all amounts received or recovered by it pursuant to the terms of any Document as follows:

- (a) first, in or towards payment of all costs and expenses incurred by Santander or any Receiver in connection with:
  - (i) any realisation or enforcement of the Senior Security taken in accordance with the terms of this Agreement; or
  - (ii) any action taken at the request of Santander under clause 7.1 (Filing of claims and voting);

- (b) secondly, in or towards payment to Santander for application towards the discharge of the Senior Debt (in accordance with the terms of the Senior Documents);
- (c) thirdly, if the Borrower is not under any further actual or contingent liability under any Senior Document, in payment to any person to whom Santander is obliged to pay in priority to the Borrower; and
- (d) fourthly, the balance, if any, in payment to the Borrower or other persons entitled to it.

#### 14.2 General

Clause 14.1 will override any appropriation made by the Borrower.

#### 14.3 Appropriations

At any time on or before the Senior Discharge Date, Santander may (subject to the terms of this Agreement and any other Senior Documents):

- (a) apply any monies received by it under this Agreement to the Senior Debt owed to it in such order as it may determine; and
- (b) hold any monies received by it under this Agreement in a suspense account (bearing interest at a market rate usual for an account of that type) unless and until all monies received by it are sufficient in aggregate to result in the Senior Discharge Date.

#### 15 Representations and warranties

The Subordinated Creditor represents and warrants to and for the benefit of Santander that:

- (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power to own its property and assets and to carry on its business as it is being conducted;
- (b) the Documents to which it is a party are within its powers and have been duly authorised and executed by it;
- (c) this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms and the entry into and performance by it of this Agreement does not and will not conflict with any law or regulation applicable to it, its constitutional documents or with any agreement or instrument binding upon it or any of its assets;
- (d) the Documents to which it is a party (copies of which have been provided to Santander on or before the date of this Agreement) contain all the terms and conditions of the Subordinated Debt owed to it and the Subordinated Security; and
- (e) it is the sole legal and beneficial owner of the Subordinated Debt and the Subordinated Security owed to it free from any Security or subordination in favour of any person except any existing under this Agreement.

#### 16 Status of the Borrower

The Borrower shall not have any rights under this Agreement and none of the representations or undertakings by the Subordinated Creditor in this Agreement are given (or deemed to be given) to or for the benefit of the Borrower.

**17 Attorney**

The Subordinated Creditor hereby irrevocably appoints Santander as its attorney and mandatory (with full power of substitution and delegation) in its name and acting on its behalf to do anything which it has authorised Santander to do under this Agreement or which it is required and legally able to do under this Agreement but has failed to do.

**18 Information****18.1 Defaults**

The Borrower shall within five Business Days upon becoming aware of its occurrence notify in writing Santander and the Subordinated Creditor of the occurrence of a default, an event of default or potential event of default (howsoever described) under, or in respect of the terms of any Document.

**18.2 Other information**

The Subordinated Creditor shall, upon request by Santander, provide to Santander any information, including without limitation details of the amount of outstanding Subordinated Debt, that Santander may reasonably specify as being necessary or desirable to enable Santander to perform its rights and obligations under this Agreement.

**18.3 Consent to disclosure**

Notwithstanding any agreement to the contrary, the Borrower consents to the disclosure by the Subordinated Creditor or Santander to each other of such information concerning the Borrower as that Subordinated Creditor or Santander shall see fit.

**19 Changes to the Parties****19.1 Successors and assignees**

This Agreement will be binding upon, and continue for the benefit of, the successors and assignees of the Parties.

**19.2 Borrower**

The Borrower may not assign any of its rights (if any) nor transfer any of its rights (if any) or obligations under this Agreement.

**19.3 Subordinated Creditor**

The Subordinated Creditor may not assign any of its rights nor transfer any of its rights, benefits or obligations in respect of any of the Subordinated Documents, the Subordinated Debt or the Subordinated Security, without the prior written consent of Santander.

**19.4 Santander**

Santander may at any time assign all or any of its respective rights and benefits under this Agreement to any party to whom the Secured Parties transfer or assign all or any part of the Senior Debt.

**20 Notices**

All communication to be made under or in connection with this Agreement must be in writing. Santander may make or deliver any communication or document to be made under or in connection with this Agreement to the Borrower at the Borrower's registered address, or to the Subordinated Creditor at the Subordinated Creditor's registered address. Any communication or document made or delivered by Santander will be effective at the time of personal delivery or at 9.00am on the second Business Day after posting. Any communication or document made or delivered by the Borrower or by the Subordinated Creditor to Santander must be addressed to Santander Operations Middle Office Securities, Ops Block, Ground Floor Area 3A, Bridle Road, Bootle, Merseyside L30 4GB and will be effective on receipt, if received before 4.00pm on a Business Day, or otherwise on the next Business Day.

**21 Waivers**

- 21.1 No failure to exercise, nor any delay in exercising, on the part of any Party, any right, under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, or remedy prevent or restrict any further exercise of that or any other right or remedy.
- 21.2 No waiver of any breach of any term of this Agreement shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.
- 21.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**22 Presentation****22.1 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 such provision under the law of any other jurisdiction, will in any way be affected or impaired.

**22.2 No impairment**

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

**22.3 Compensation**

Each of Santander and the Subordinated Creditor hereby agrees that, if this Agreement is regarded by any one or more liquidators, Receivers or Administrators of the Borrower as failing to bind him or them, any party or parties who will have benefited as a result of any action by any one or more of such liquidators, Receivers or Administrators will forthwith compensate the party or parties who will have been correspondingly prejudiced to the extent of the provisions as to ranking set out in clause 3.2 (Ranking of Security).

**23 Counterparts and delivery**

**23.1** This Agreement may be executed in any number of counterparts and by the parties on separate counterparts.

**23.2** Where executed in counterpart:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

**23.3** If this Agreement is not executed in counterparts, this Agreement shall be delivered on the date on which the last party signed this Agreement.

**23.4** The parties to this Agreement, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (Counterparts Act), nominate Harper Macleod LLP to take delivery of all counterparts of this Agreement. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement.

**24 Governing law**

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

**25 Enforcement**

**25.1** Jurisdiction of Scottish courts

- (a) 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) (Dispute).
- (b) 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.

In witness whereof these presents consisting of this and the preceding 17 pages are executed by the parties hereto as follows:

**Dieselec Holdings Limited**

**Director**

Full Name

**Signature of witness**

Full name CHRISTINA CAIRE MURRE

Address 30 EARLS GATE

BOTHWELL, GLASGOW, GTI 83P.

### **Board Approval**

We hereby certify that the acceptance of, and entry into, this Agreement was approved by a resolution of the board of directors of the Borrower properly passed on 1 MAY 2020

Date \_\_\_\_\_

Signed \_\_\_\_\_(Director)

Subordinated Creditor

Nevis Capital LLP

at GLASGOW

on 1 MAY 2020

Member

BRIN ARROW

Full Name

in the presence of

Signature of witness

Full name RUCE GRAHAM

Address 2/2 572 ALEXANDRA PARADE,

GLASGOW, G3 3BP

Members' Approval

We hereby certify that the acceptance of, and entry into, this Agreement was approved by a resolution of the members of the Subordinated Creditor properly passed on 1 MAY 2020

Date 01/05/20

Signed (Member)