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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

* insert full name
of company

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

For official use

Company number

3

SC033670

Name of company

* John P Fenton & Sons Limited

Date of creation of the charge (note 1)

30 December 2021

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

Unity Trust Bank PLC

Short particulars of all the property charged

All property, assets and rights (including uncalled capital) of John P Fenton & Sons Limited, both
present and future which are or may be from time to time comprised in the property and undertaking of
John P Fenton & Sons Limited.

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

James Horton
CMS Cameron McKenna
Nabarro Olswang LLP,
Saltire Court, 20 Castle Terrace,
Edinburgh EH1 2EN

For official use (02/06)

Charges Section

Post room

TUESDAY



SAVZ329V

SCT

18/01/2022

#209

COMPANIES HOUSE

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

FERRIE HEALTHCARE LIMITED (Company Number SC688912) - c/o Blackadders LLP, 6/1 Mercantile Chambers, 53 Bothwell Street, Glasgow, Scotland G2 6TS;
JOHN P FENTON & SONS LIMITED (Company Number SC033670) - Unit 8A, Greenhills Shopping Centre, East Kilbride, Glasgow, Scotland G75 8TT;
FELICITY GABRIELLE CROMBIE of 7 Mulberry Road, Newlands, Glasgow, G43 2TR; and
UNITY TRUST BANK PLC (Company Number 01713124) - Four Brindleyplace, Birmingham, B1 2JB.

*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

30 December 2021.

Date of Delivery 30 December 2021.

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

N/A

Short particulars of any property released from the floating charge

N/A

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

N/A

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

*Please do not
write in
this margin*

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

Each of the Senior Lender and the Subordinated Lender for their respective right, title and interest consent to the constitution by the Borrower and/or the Guarantor (as applicable) of the Security Documents and the Subordinated Security Documents and agree that:

- the Security Documents and the Subordinated Security Documents will rank in the following order of priority:


First: the Security Documents to the extent of the Senior Indebtedness; and

Second: the Subordinated Security Documents to the extent of the Subordinated Indebtedness

- in so far as it may be necessary to give effect to the provisions of this Agreement each of the Security Documents and the Subordinated Security Documents which is a floating charge is hereby varied or altered to the extent specified herein and this Agreement shall be deemed to be an Instrument of Alteration (in terms of Section 466, Companies Act 1985 as amended) of each Security Document and each such Subordinated Security Document.

(See Clause 2 of the attached instrument of alteration for full details and the definitions section of the attached instrument of alteration for the defined terms).

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

Signed  Date 18 January 2021
On behalf of [company] [chargee] ☒ For and on behalf of CMS Cameron McKenna Nabarro Olswang LLP

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



FILE COPY

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

COMPANY NO. 33670
CHARGE CODE SC03 3670 0003

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 30 DECEMBER 2021 WERE
DELIVERED PURSUANT TO SECTION 466 OF THE COMPANIES
ACT 1985
ON 18 JANUARY 2022

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 30
DECEMBER 2021

BY JOHN P FENTON & SONS LIMITED

IN FAVOUR OF
UNITY TRUST BANK PLC

GIVEN AT COMPANIES HOUSE, EDINBURGH 18 JANUARY 2022

I CERTIFY THAT, SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006, THIS COPY INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL CERTIFIED TO BE A TRUE AND COMPLETE COPY OF THE ORIGINAL

Keith Simpson

For and on behalf of:

CMS Cameron McKenna Nabarro Olswang LLP
Saltire Court, 20 Castle Terrace, Edinburgh EH1 2EN

Dated 30/12/ 2021

Date: 13/1/22

FERRIE HEALTHCARE LIMITED
as Borrower

and

JOHN P FENTON & SONS LIMITED
as Guarantor

and

FELICITY GABRIELLE CROMBIE
as Subordinated Lender

and

UNITY TRUST BANK PLC
as Senior Lender

INTERCREDITOR AGREEMENT



CMS Cameron McKenna Nabarro Olswang LLP
Saltire Court
20 Castle Terrace
Edinburgh
EH1 2EN
T +44 131 228 8000
F +44 131 228 8888

Ref: UNI084.00056

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THIS INTERCREDITOR AGREEMENT IS MADE ON30/12/..... 2021

BETWEEN:

- (1) **FERRIE HEALTHCARE LIMITED**, a company incorporated in Scotland under the Companies Acts (company number SC688912) and having its registered office c/o Blackadders LLP, 6/1 Mercantile Chambers, 53 Bothwell Street, Glasgow, Scotland G2 6TS (the "Borrower");
- (2) **JOHN P FENTON & SONS LIMITED**, a company incorporated in Scotland under the Companies Acts (Company Number SC033670), having its Registered Office at Unit 8A, Greenhills Shopping Centre, East Kilbride, Glasgow, Scotland G75 8TT (the "Guarantor");
- (2) **FELICITY GABRIELLE CROMBIE** of 7 Mulberry Road, Newlands, Glasgow, G43 2TR (the "Subordinated Lender"); and
- (3) **UNITY TRUST BANK PLC** (Company Number 01713124) having its registered office at Four Brindleyplace, Birmingham, B1 2JB (the "Senior Lender").

WHEREAS:

- (A) By a facility agreement dated on or around the date of this Agreement (the "Facility Agreement") made between the Borrower as borrower and the Senior Lender as lender, the Senior Lender has agreed to make certain facilities available to the Borrower on the terms and subject to the conditions contained in the Facility Agreement and in security therefor the Borrower and the Guarantor have granted the Security Documents to which they are party.
- (B) The Borrower has on or around the date of this Agreement issued £750,000 guaranteed, secured and interest bearing loan notes (the "Loan Notes") to the Subordinated Lender pursuant to a loan note instrument dated on or around the date of the Agreement (the "Loan Note Instrument") and in security for the Borrower's obligations to the Subordinated Lender in connection with the Loan Notes the Borrower and the Guarantor have granted the Subordinated Security Documents to which they are party.
- (C) It is a condition precedent to the availability of the facilities to be made available under the Facility Agreement that, inter alia, the indebtedness of the Borrower to the Subordinated Lender be subordinated upon the terms of this Agreement.

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE as follows:

1. Definitions and Interpretation

- 1.1 Terms defined in the Facility Agreement shall, unless otherwise defined in this Agreement, have the same meaning when used in this Agreement and in addition in this Agreement:

"Effective Date": means the date on which the Borrower first draws down under the Facility Agreement.

"Event of Default" has the meaning given to it in the Facility Agreement;

"Insolvency": means the Borrower or Guarantor:

- a) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or admits its inability to pay its debts as they fall due; or
- b) becomes unable to pay its debts as they fall due or otherwise becomes insolvent; or
- c) suspends making any payments with respect to all or any class of its debts or announces an intention to do so, or a moratorium or suspension of payments is declared in respect of any of its financial indebtedness.

"Insolvency Event": means any of the events referred to in the Schedule to this Agreement.

"Permitted Payment": means a payment expressly permitted by the terms of Clause 2.6.

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

"Security Documents" means the following:

- a) a floating charge granted by the Borrower in favour of the Senior Lender dated on or around the date of this Agreement;
- b) a floating charge granted by the Guarantor in favour of the Senior Lender dated on or around the date of this Agreement; and
- c) a cross company guarantee granted by the Borrower and the Guarantor in favour of the Senior Lender.

"Senior Indebtedness": means the aggregate of all moneys and liabilities, whether of principal, interest, charges, commissions, costs (on a full indemnity basis) or otherwise in whatever currency which may now or at any time hereafter be due owing or incurred by the Borrower to the Senior Lender under the terms of or in connection with the Facility Agreement and whether actual or contingent and whether alone or jointly with others, as principal, cautioner, guarantor, surety or otherwise and in whatever name or style and a reference to the "Senior Indebtedness" includes a reference to all or any part of the Senior Indebtedness.

"Subordinated Indebtedness": means the Loan Notes and all other sums of whatsoever kind due and to become due from the Borrower to the Subordinated Lender in connection with the Loan Notes, whether of principal or interest, present, future, actual or contingent and whether as principal or as surety and howsoever arising and a reference to the "Subordinated Indebtedness" includes a reference to all or any part of the Subordinated Indebtedness.

"Subordinated Security Documents": means the following:

- a) a floating charge granted by the Borrower in favour of the Subordinated Lender dated on or around the date of this Agreement;
- b) a floating charge granted by the Guarantor in favour of the Subordinated Lender dated on or around the date of this Agreement; and

- c) a corporate guarantee granted by the Guarantor in favour of the Subordinated Lender.

"Subordination Period": means the period commencing on the Effective Date and ending on the date (as certified by the Senior Lender in writing) on which the Borrower is under no further, present, future, actual or contingent liability in respect of the Senior Indebtedness.

Construction

- 1.2 Unless a contrary indication appears, a reference in this Agreement to:
- 1.2.1 without prejudice to any requirement to obtain consent to the same, the "Senior Lender", the "Subordinated Lender", the "Borrower" or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
 - 1.2.2 "assets" includes present and future properties, revenues and rights of every description;
 - 1.2.3 "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - 1.2.4 a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality); and
 - 1.2.5 a provision of law is a reference to that provision as amended or re-enacted.
- 1.3 An Event of Default is "continuing" if it has not been waived in writing by the Senior Lender.
- 1.4 Except to the extent that this Agreement provides otherwise, words and expressions that are defined in provisions of the Companies Act 2006 shall be read as having those meanings.
- 1.5 Any reference in this Agreement to any Finance Document or any other agreement or other document shall be construed as a reference to that Finance Document or that other agreement or document as the same may have been, or may from time to time be, restated, varied, amended, supplemented, substituted, novated or assigned, whether or not as a result of any of the same:
- 1.5.1 there is an increase or decrease in any facility made available under that Finance Document or other agreement or document or an increase or decrease in the period for which any facility is available or in which it is repayable;
 - 1.5.2 any additional, further or substituted facility to or for such facility is provided;
 - 1.5.3 any rate of interest, commission or fees or relevant purpose is changed;
 - 1.5.4 the identity of the parties is changed;

- 1.5.5 the identity of the providers of any security is changed;
- 1.5.6 there is an increased or additional liability on the part of any person; or
- 1.5.7 a new agreement is effectively created or deemed to be created.

1.6 Clause headings are for ease of reference only.

Third Party Rights

1.7 Unless expressly provided to the contrary in this Agreement, a person who is not a party to this Agreement has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or to enjoy the benefit of any term of this Agreement.

1.8 Notwithstanding any term of this Agreement, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time.

2. Subordination/Ranking

2.1 During the Subordination Period and subject to the terms of this Agreement, the Subordinated Indebtedness shall be subordinated in all respects to the Senior Indebtedness.

2.2 The Subordinated Lender agrees with the Senior Lender that during the Subordination Period it will not:

2.2.1 (save by way of or in connection with each Permitted Payment):

- (a) accept payment, repayment, prepayment or any distribution in respect of, or on account of, the Subordinated Indebtedness in cash or in kind;
- (b) exercise any right of set-off, combination of accounts or lien or exercise or accept any transfer of assets from the Borrower (or any other source) in satisfaction of the Subordinated Indebtedness;
- (c) amend or agree to amend any document entered into between it and the Borrower (and whether made between the Borrower and the Subordinated Lender alone or together with any other person) evidencing or providing for the Subordinated Indebtedness in such a manner as to terminate, impair or have any adverse effect upon the subordination of the Subordinated Indebtedness to the Senior Indebtedness;
- (d) require or purport to require the Borrower to redeem, purchase, cancel or reduce any of its share or loan capital or to declare or to pay any dividend (whether interim or final and whether in cash, in specie, bonus issue or otherwise howsoever) (a "Dividend");

2.2.2 (other than by way of the Subordinated Security Documents) take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Subordinated Indebtedness;

- 2.2.3 sell, assign, transfer or otherwise dispose of any of the Subordinated Indebtedness or its rights under the Subordinated Security Documents, other than in accordance with the terms of the Loan Note Instrument and the Subordinated Security Documents and provided any assignee or transferee to whom its rights are sold, assigned or transferred has executed a novation of the Subordinated Lender's obligations under this Agreement or executed an agreement in the same terms as this Agreement in its capacity as Subordinated Lender; or
- 2.2.4 take or omit to take any other action whereby the subordination of the Subordinated Indebtedness to the Senior Indebtedness on the terms set out in this Agreement might be terminated, impaired or adversely affected,

in each case without the prior written consent of the Senior Lender.

- 2.3 Each of the Borrower and the Guarantor agrees with the Senior Lender and the Subordinated Lender that during the Subordination Period it will not:

- 2.3.1 (save by way of or in connection with each Permitted Payment):

- (a) repay, prepay, redeem, purchase or otherwise discharge or release the Subordinated Indebtedness;
- (b) discharge Subordinated Indebtedness by set-off or any right of combination of accounts save only to the extent that it may be required to do so at law or if the same occurs automatically by operation of law (but not, in either case, by reason of any contract or agreement);
- (c) amend or agree to amend any document entered into between it and the Subordinated Lender (and whether made between it and the Subordinated Lender alone or together with any other person) evidencing or providing for the Subordinated Indebtedness in such a manner as to terminate, impair or have any adverse effect upon the subordination of the Subordinated Indebtedness to the Senior Indebtedness;
- (d) give any financial support to any person to enable it to do any of the things referred to in Clauses 2.3.1(a) to 2.3.1(c) (inclusive) above;
- (e) make any payment or distribution of any kind whatsoever in respect of, or on account of, the purchase or other acquisition of the Subordinated Indebtedness;
- (f) redeem, purchase, cancel or reduce any of its share or loan capital or purport or attempt to do so;
- (g) take or omit to take any other action whereby the subordination of the Subordinated Indebtedness to the Senior Indebtedness on the terms set out in this Agreement might be terminated, impaired or adversely affected; or

- 2.3.2 (other than by way of the Subordinated Security Documents) create or permit to subsist any Security, guarantee, indemnity or other assurance against loss in respect of the Subordinated Indebtedness,

in each case without the prior written consent of the Senior Lender.

- 2.4 Until the Subordination Period has expired, the Subordinated Lender will not:

2.4.1 demand (other than in respect of a Permitted Payment) payment of, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand, sue for or enforce by execution or otherwise any principal, interest, cost or other sums in respect of the Subordinated Indebtedness;

2.4.2 recover (other than by way of Permitted Payment) all or any part of the Subordinated Indebtedness (including, without limitation, by exercising any right of set-off or combination of accounts);

2.4.3 exercise or enforce any Security or rights against guarantors or sureties or any other rights under any other document or agreement in relation to (or given in support of) the Subordinated Indebtedness;

2.4.4 petition, apply or vote for, or take any step (including the appointment of any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer) in relation to, the winding up, dissolution, administration or reorganisation of the Borrower or its assets or any analogous step or procedure in any jurisdiction (any such step or procedure being referred to in this Agreement as the "Insolvency of the Borrower"); or

2.4.5 claim or rank as a creditor in the Insolvency of the Borrower other than in accordance with Clause 3 (*Turnover of Receipts on Insolvency*).

- 2.5 The Subordinated Lender has agreed that it will not advance any loans to the Borrower other than in accordance with the Loan Note Instrument or otherwise with the consent of the Senior Lender.

- 2.6 Notwithstanding the terms of this Agreement, each of the following payments may be made by the Borrower to the Subordinated Lender during the Subordination Period (each a "Permitted Payment"):

2.6.1 monthly instalments of interest due in accordance with clauses 2.1 and 2.2 of the Loan Note Instrument (which payments may be made by the Borrower to the Subordinated Lender regardless of any failure on the part of the Borrower to comply with any covenants (financial or otherwise) or other obligations owed by the Borrower to the Senior Lender, whether pursuant to the Facility Agreement or otherwise);

2.6.2 the making of a payment in such amount as is required so as to procure the redemption of the Loan Notes then outstanding at par and in full pursuant to Condition 3.1 of the Loan Note Instrument;

2.6.3 the making of payments in the amount of each Interim Redemption Amount (as defined in the Loan Note Instrument) (or part thereof) due in accordance with Conditions 3.2 and 3.3 of the Loan Note Instrument provided that (i) immediately prior to the payment of an Interim Redemption Amount (or part

thereof) the Borrower is compliant with the financial covenants set out in Schedule 6 of the Facility Agreement, (ii) the Borrower will remain compliant with such financial covenants after such payment has been made to the Subordinated Lender and (iii) immediately prior to the receipt of the relevant payment, the Subordinated Lender has not received notice from the Senior Lender of the occurrence any breach by the Borrower of any such financial covenant(s); and

- 2.6.4 any other payment made by the Borrower to the Subordinated Lender in connection with the redemption of the Loan Notes or amounts due under the Loan Note Instrument which is made with the prior written consent of the Senior Lender,

but not otherwise.

- 2.7 Each of the Senior Lender and the Subordinated Lender for their respective right, title and interest consent to the constitution by the Borrower and/or the Guarantor (as applicable) of the Security Documents and the Subordinated Security Documents and agree that:

- 2.7.1 the Security Documents and the Subordinated Security Documents will rank in the following order of priority:

First: the Security Documents to the extent of the Senior Indebtedness; and

Second: the Subordinated Security Documents to the extent of the Subordinated Indebtedness

- 2.7.2 in so far as it may be necessary to give effect to the provisions of this Agreement each of the Security Documents and the Subordinated Security Documents which is a floating charge is hereby varied or altered to the extent specified herein and this Agreement shall be deemed to be an Instrument of Alteration (in terms of Section 466, Companies Act 1985 as amended) of each Security Document and each such Subordinated Security Document.

- 2.8 Notwithstanding any other rule of law which might operate to the contrary effect, the provisions of Clause 2.7 as to ranking of the Security Documents and the Subordinated Security Documents shall be valid and effective irrespective of the dates or times at which the Security Documents and the Subordinated Security Documents were executed or constituted or registered and irrespective of the dates on which sums have been or may be advanced to or otherwise drawn by the Borrower, none of the other parties hereto having any concern with the composition of or fluctuations in the sums due to the Senior Lender.

- 2.9 All sums which have been or shall hereafter be placed to the debit of any account or accounts of the Borrower with the Senior Lender shall be as fully and effectually secured by and under and in terms of the Security Documents all as if the said sums or had been so placed before the granting of the respective Security Documents and the Subordinated Security Documents.

- 2.10 As between the Senior Lender and the Subordinated Lender it is agreed that in the event of this Agreement being regarded by a receiver, administrator or liquidator of the Borrower as failing to bind him in the distribution of the assets, or the proceeds of sale of the assets of, the Borrower and the Senior Lender suffers loss as a result of making of any form of distribution to the Subordinated Lender contrary to the terms of

the Agreement, the Subordinated Lender will so compensate the Senior Lender to the extent to which the Subordinated Lender may be lucratus by such prejudice.

3. Turnover of Receipts on an Insolvency

3.1 If the Insolvency of the Borrower occurs, or if any other Insolvency Event occurs in relation to the Borrower at any time during the Subordination Period, then:

3.1.1 the Subordinated Indebtedness will be postponed and subordinated to the Senior Indebtedness and (if required by the Senior Lender but not otherwise) the Subordinated Lender will in good time file any proof or other claim necessary for the recovery of the Subordinated Indebtedness; and

3.1.2 any payment or distribution of any kind or character and all and any rights in respect of such payment or obligation, whether in cash, securities or other property, which is payable or deliverable upon or with respect to the Subordinated Indebtedness by a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer of the Borrower and which is made or paid to or received by the Subordinated Lender or to which it is entitled will be held in trust by its recipient for the Senior Lender and will immediately be paid, transferred or assigned to the Senior Lender for application towards the Senior Indebtedness until the Senior Indebtedness is irrevocably paid in full.

3.2 The Subordinated Lender irrevocably authorises the Senior Lender to demand, sue and prove for, collect and receive every payment or distribution referred to in Clause 3.1 above and discharge liability therefor and to file claims and take such other proceedings, in the name of the Senior Lender or in the name of the Subordinated Lender or otherwise, as the Senior Lender may deem necessary or advisable for the enforcement of this Agreement.

3.3 The liquidator or other insolvency representative or trustee of the Borrower is authorised by the Subordinated Lender to apply any assets or moneys received by him in accordance with the terms of this Agreement.

3.4 If the Senior Lender receives any distribution in respect of any of the Subordinated Indebtedness other than in cash, the Senior Lender may realise the distribution as it sees fit and the Senior Indebtedness shall not be deemed reduced by the distribution save to the extent that the realisation proceeds are applied towards payment of the Senior Indebtedness.

3.5 The Subordinated Lender agrees with the Senior Lender that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to the Borrower as instructed by the Senior Lender.

4. Turnover of Receipts Generally

In the event that during the Subordination Period, in contravention of the provisions of this Agreement, the Subordinated Lender receives or recovers any sum, securities, property, Security or other proceeds in respect of, or on account of, the Subordinated Indebtedness, then it shall immediately upon the same occurring pay such sum and/or, in the case of any set-off, combination of accounts or similar actions, an amount equal to the amount so set off and/or assign or transfer any such securities, property or Security delivered or received, as the case may be, to the Senior Lender for application

by the Senior Lender against, or for retention on account of, the Senior Indebtedness and, until so paid, assigned or transferred, shall hold the same on trust for the Senior Lender absolutely until the Senior Indebtedness has been fully paid and discharged.

5. Failure of Trusts

If, for any reason, any of the trusts expressed to be created in this Agreement should fail or be unenforceable or cannot be given effect to, the Subordinated Lender (and any agent or trustee on its behalf) shall promptly pay an amount equal to the relevant receipt, payment, distribution or other recovery which would otherwise have been required to be held in trust in accordance with the terms of this Agreement to the Senior Lender for application in or towards discharge of the Senior Indebtedness.

6. Further Assurance

The Subordinated Lender shall execute and deliver to the Senior Lender such deeds, documents and other instruments as may be reasonably requested by the Senior Lender from time to time in order to enable the Senior Lender to enforce, protect or perfect any and all rights or claims pursuant to this Agreement or as contemplated by this Agreement upon or with respect to the Subordinated Indebtedness and/or to collect and receive any and all payments, distributions, dividends, securities, Security or property which may be payable or deliverable at any time upon or with respect to the Subordinated Indebtedness during the Subordination Period.

7. Preservation of Subordination

7.1 The provisions of this Agreement will not be affected by any intermediate payment or discharge in whole or in part of the Senior Indebtedness and, without prejudice to Clause 2.6, the Subordinated Indebtedness, or any other matter whatsoever and shall be binding upon the Subordinated Lender and the Borrower and shall enure to the benefit of the Senior Lender and its successors, assignees, transferees and substitutes.

7.2 The Subordinated Lender shall not, by virtue of any payment or distribution or other benefit in respect of the Subordinated Indebtedness received by the Senior Lender, be entitled to any right of subrogation until the Senior Indebtedness has been fully paid and discharged.

7.3 The subordination effected by this Agreement and the obligations of the Subordinated Lender and the Borrower under this Agreement shall not be affected by any act, omission or circumstance which but for this Clause 7.3 might operate to release or otherwise exonerate it from its obligations under this Agreement or affect such obligations including, without limitation and whether or not known to the Subordinated Lender, the Borrower or the Senior Lender or any of them:

7.3.1 any time, waiver or consent granted to, or composition with, the Borrower or other person;

7.3.2 the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of the Borrower;

7.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

- 7.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or other person;
 - 7.3.5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of any Finance Documents or any other document or security;
 - 7.3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Documents or any other document or security; or
 - 7.3.7 any insolvency or similar proceedings.
- 7.4 Any money received by the Senior Lender in connection with this Agreement may be placed to the credit of a suspense account with a view to preserving the rights of the Senior Lender to prove for the whole of its claims against the Borrower or any other person liable and, until applied by the Senior Lender in or towards satisfaction of the Senior Indebtedness, the same shall not be treated as reduced or discharged by any such receipt. Amounts standing to the credit of any such suspense account shall bear interest at a rate considered by the Senior Lender, acting reasonably, to be a fair market rate.
- 7.5 Upon the payment and discharge in full of the Senior Indebtedness, the Senior Lender shall as soon as practicable thereafter notify the Borrower and the Subordinated Lender of that payment and discharge (but without any liability for failing to do so).
- 7.6 Notwithstanding any other provision of this Agreement, postponing, subordinating or preventing the payment of the Subordinated Indebtedness, the Subordinated Indebtedness concerned shall solely as between the Borrower and the Subordinated Lender remain owing or due and payable in accordance with the terms of the Loan Note Instrument and interest and default interest will accrue on missed payment(s) accordingly and no delay in exercising rights and remedies under any of the Loan Note Instrument or the Subordinated Security Documents by reason of any terms of this Agreement postponing or preventing such exercise shall operate as a waiver of those rights and remedies.

8. Acknowledgment

The Borrower and Guarantor are each a party to this Agreement for the purpose of acknowledging the subordination arrangements recorded in this Agreement and undertakes with the Senior Lender and the Subordinated Lender to observe the provisions of this Agreement at all times and not in any way to prejudice or affect the enforcement of such provisions or to do or suffer anything which would be a breach of the terms of this Agreement. The Borrower and Guarantor further acknowledges that none of the provisions of this Agreement which are entered into by the Senior Lender and the Subordinated Lender are for the benefit of the Borrower and Guarantor, nor may they be enforced or relied on by the Borrower and Guarantor.

9. Representations

9.1 The Borrower and Guarantor each represent and warrant in respect of itself only to the Senior Lender in terms of this Clause 9.1:

9.1.1 it is a limited liability company, duly incorporated or formed and validly existing under the laws of Scotland;

9.1.2 the obligations of the Borrower and Guarantor expressed to be assumed by it this Agreement are, subject to any general principles of law limiting its legal, valid, binding and enforceable obligations;

9.1.3 the entry into and performance by it of this Agreement does not and will not:

(a) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or

(b) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets;

9.1.4 no litigation, arbitration, administrative or judicial proceedings or investigations of, or before, any court, arbitral body or agency are current or, to its knowledge, pending or threatened, against the Borrower or Guarantor; and

9.1.5 there is not subsisting any unsatisfied judgment or award given against the Borrower or the Guarantor by any court arbitrator or other body.

9.2 The Subordinated Lender represents and warrants on the date of this Agreement in respect of itself only to the Senior Lender in terms of this Clause 9.2:

9.2.1 the Subordinated Lender is an individual residing in Scotland;

9.2.2 the obligations of the Subordinated Lender expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its legal, valid, binding and enforceable obligations;

9.2.3 no litigation, arbitration, administrative or judicial proceedings or investigations of, or before, any court, arbitral body or agency are current or, to her knowledge, pending or threatened, against the Subordinated Lender; and

9.2.4 there is not subsisting any unsatisfied judgment or award given against the Subordinated Lender by any court arbitrator or other body.

10. Assignment

10.1 Subject to Clause 2.2.3 in the case of the Subordinated Lender, neither the Borrower nor the Subordinated Lender shall be entitled to assign or transfer the whole or any part of its rights or obligations under this Agreement without the prior written consent of the Senior Lender.

10.2 The Senior Lender may assign, charge or transfer all or any of its rights under this Agreement as provided by Clause 8 of Schedule 3 to the Facility Agreement.

- 10.3 The Senior Lender may disclose any information about the Borrower and this Agreement as the Senior Lender shall consider appropriate to any actual or proposed direct or indirect successor or to any person to whom information is required to be disclosed by any applicable law or regulation.

11. Counterparts

- 11.1 This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

12. Notices

Communications in Writing

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

Addresses

- 12.2 The address and fax number (if applicable) or e-mail address, and the department or officer, if any, for whose attention the communication is to be made, of the Borrower, the Guarantor, the Subordinated Lender and the Senior Lender for any communication or document to be made or delivered under or in connection with this Agreement is:

- 12.3 The address and FAO details of the Borrower and the Guarantor are:

Address: c/o Blackadders LLP, 6/1 Mercantile Chambers, 53 Bothwell Street, Glasgow G2 6TS

email: [REDACTED]

FAO: Peter Duff

or such other address and/or FAO details as the Borrower or Guarantor may notify to the other parties to this Agreement by not less than five Business Days' notice.

- 12.4 The address and details of the Subordinated Lender is:

Address: 7 Mulberry Road, Newlands, Glasgow G43 2TR

FAO: Felicity Gabrielle Crombie

or such other address as the Subordinated Lender may notify to the other parties to this Agreement by not less than five Business Days' notice.

- 12.5 The address, facsimile number and FAO details of the Senior Lender are:

Address: Four Brindleyplace, Birmingham B1 2JB

Facsimile: 0345 113 0003

FAO: Lending Administration Team

or such other address, facsimile or FAO details as the Senior Lender may notify to the other parties to this Agreement by not less than five Business Days' notice.

Delivery

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

12.6.1 by letter addressed to the relevant recipient sent by first class post to or left at the recipient's last known address or at the recipient's registered office (in the case of any corporate entity); or, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; and

12.6.2 by fax or other electronic means to the last known fax number or electronic mail address of the relevant recipient.

- 12.7 If sent by post, the demand or notice will be taken to have been made or given at noon the second day following the date the letter was posted. If sent by fax or other electronic means, the demand or notice will be taken to have been made or given at the time of transmission.

- 12.8 Unless otherwise advised by the Senior Lender any notices given by the Borrower to the Senior Lender under this Agreement will be delivered to the Senior Lender's office specified under Clause 12.5 above and shall not be effective until actually received by it and then only if it is expressly marked of the attention of the Lending Administration Team.

- 12.9 Any communication or document which becomes effective, in accordance with Clauses 12.6 and 12.7 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following business day.

13. Waivers, Remedies Cumulative

No failure or delay by the Senior Lender in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

14. Partial Invalidity

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

15. Amendments

Save as otherwise specifically provided in this Agreement, any variation or amendment of this Agreement shall be binding only if it is recorded in a document signed by or on behalf of the Senior Lender and the Subordinated Lender. The Borrower agrees that the Senior Lender and the Subordinated Lender may (without prejudicing the obligations of the Borrower under this Agreement) vary or amend the priorities and other provisions of this Agreement without requiring the consent, approval or agreement of the Borrower.

16. Governing Law

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

17. Enforcement

Jurisdiction of Scottish courts

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

17.3 Clauses 17.1 and 17.2 above are for the benefit of the Senior Lender only. As a result, the Senior Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Lender may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF: these presents consisting of this and the preceding 14 pages and the Schedule are executed as follows:

THE BORROWER

**SUBSCRIBED FOR and ON BEHALF OF
FERRIE HEALTHCARE LIMITED**

.....
Director

by DANIEL FERRIE

in the presence of:

Witness signature:

Witness name: DANIEL DEMARCO

Witness address: ST BOTHELL ST. GUILFORD

Place of Signing: EAST KILBRIDE

Date of Signing: 30/12/2021

THE GUARANTOR

**SUBSCRIBED FOR and ON BEHALF OF
JOHN P FENTON & SONS LIMITED**

.....
Director

by DANIEL FERRIE

in the presence of:

Witness signature:

Witness name: DANIEL DEMARCO

Witness address: ST BOTHELL ST. GUILFORD

Place of Signing: EAST KILBRIDE

Date of Signing: 30/12/2021

THE SUBORDINATED LENDER

EXECUTED by

in the presence of:

.....
Felicity Gabrielle Crombie

Witness signature:

Witness name:

Witness address:

Place of Signing:

Date of Signing:

.....
PAUL GERRHESON

.....
40 RUE ST VINCENT STREET, GLASGOW G2 5TF

.....
GLASGOW

.....
30/12/21

THE SENIOR LENDER

**SUBSCRIBED FOR and ON BEHALF OF
UNITIV TRUST BANK PLC**

.....
Authorised Signatory

by

in the presence of:

Witness signature:

Witness name:

Witness address:

Place of Signing:

Date of Signing:

Schedule
Insolvency Events

1. The Borrower or Guarantor:
 - 1.1. ceases or threatens to cease to carry on its business or a significant part of it (except as part of a solvent reconstruction approved by the Senior Lender and the Subordinated Lender);
 - 1.2. is unable or admits an inability to pay its debts as they fall due; or
 - 1.3. suspends 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.
2. A moratorium is declared or takes effect in respect of any indebtedness of the Borrower or the Guarantor (as the case may be).
3. The value of the assets of the Borrower or the Guarantor (as the case may be) are less than its liabilities (taking into account contingent and prospective liabilities).
4. Any action, legal proceedings or other procedural steps taken, or notice given, in relation to:
 - 4.1. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, strike off, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower or the Guarantor;
 - 4.2. a composition, compromise, assignment or arrangement with any creditor of the Borrower or the Guarantor;
 - 4.3. the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Borrower or any of its assets or the Guarantor or any of its assets; or
 - 4.4. the enforcement of any standard security, assignment in security, charge (fixed or floating), lien or other encumbrance or right in security over any of the assets of the Borrower or the Guarantor,or any analogous procedure or step is taken in any jurisdiction.

Dated 30 December 2021

FERRIE HEALTHCARE LIMITED
as Borrower

and

JOHN P FENTON & SONS LIMITED
as Guarantor

and

FELICITY GABRIELLE CROMBIE
as Subordinated Lender

and

UNITY TRUST BANK PLC
as Senior Lender

INTERCREDITOR AGREEMENT



CMS Cameron McKenna Nabarro Olswang LLP
Saltire Court
20 Castle Terrace
Edinburgh
EH1 2EN
T +44 131 228 8000
F +44 131 228 8888

Ref: UNI084.00056

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THIS INTERCREDITOR AGREEMENT IS MADE ON 30 December 2021
BETWEEN:

- (1) **FERRIE HEALTHCARE LIMITED**, a company incorporated in Scotland under the Companies Acts (company number SC688912) and having its registered office c/o Blackadders LLP, 6/1 Mercantile Chambers, 53 Bothwell Street, Glasgow, Scotland G2 6TS (the "**Borrower**");
- (2) **JOHN P FENTON & SONS LIMITED**, a company incorporated in Scotland under the Companies Acts (Company Number SC033670), having its Registered Office at Unit 8A, Greenhills Shopping Centre, East Kilbride, Glasgow, Scotland G75 8TT (the "**Guarantor**");
- (2) **FELICITY GABRIELLE CROMBIE** of 7 Mulberry Road, Newlands, Glasgow, G43 2TR (the "**Subordinated Lender**"); and
- (3) **UNITY TRUST BANK PLC** (Company Number 01713124) having its registered office at Four Brindleyplace, Birmingham, B1 2JB (the "**Senior Lender**").

WHEREAS:

- (A) By a facility agreement dated on or around the date of this Agreement (the "**Facility Agreement**") made between the Borrower as borrower and the Senior Lender as lender, the Senior Lender has agreed to make certain facilities available to the Borrower on the terms and subject to the conditions contained in the Facility Agreement and in security therefor the Borrower and the Guarantor have granted the Security Documents to which they are party.
- (B) The Borrower has on or around the date of this Agreement issued £750,000 guaranteed, secured and interest bearing loan notes (the "**Loan Notes**") to the Subordinated Lender pursuant to a loan note instrument dated on or around the date of the Agreement (the "**Loan Note Instrument**") and in security for the Borrower's obligations to the Subordinated Lender in connection with the Loan Notes the Borrower and the Guarantor have granted the Subordinated Security Documents to which they are party.
- (C) It is a condition precedent to the availability of the facilities to be made available under the Facility Agreement that, inter alia, the indebtedness of the Borrower to the Subordinated Lender be subordinated upon the terms of this Agreement.

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE as follows:

1. Definitions and Interpretation

- 1.1 Terms defined in the Facility Agreement shall, unless otherwise defined in this Agreement, have the same meaning when used in this Agreement and in addition in this Agreement:

"Effective Date": means the date on which the Borrower first draws down under the Facility Agreement.

"Event of Default" has the meaning given to it in the Facility Agreement;

"Insolvency": means the Borrower or Guarantor:

- a) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or admits its inability to pay its debts as they fall due; or
- b) becomes unable to pay its debts as they fall due or otherwise becomes insolvent; or
- c) suspends making any payments with respect to all or any class of its debts or announces an intention to do so, or a moratorium or suspension of payments is declared in respect of any of its financial indebtedness.

"Insolvency Event": means any of the events referred to in the Schedule to this Agreement.

"Permitted Payment": means a payment expressly permitted by the terms of Clause 2.6.

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

"Security Documents" means the following:

- a) a floating charge granted by the Borrower in favour of the Senior Lender dated on or around the date of this Agreement;
- b) a floating charge granted by the Guarantor in favour of the Senior Lender dated on or around the date of this Agreement; and
- c) a cross company guarantee granted by the Borrower and the Guarantor in favour of the Senior Lender.

"Senior Indebtedness": means the aggregate of all moneys and liabilities, whether of principal, interest, charges, commissions, costs (on a full indemnity basis) or otherwise in whatever currency which may now or at any time hereafter be due owing or incurred by the Borrower to the Senior Lender under the terms of or in connection with the Facility Agreement and whether actual or contingent and whether alone or jointly with others, as principal, cautioner, guarantor, surety or otherwise and in whatever name or style and a reference to the "Senior Indebtedness" includes a reference to all or any part of the Senior Indebtedness.

"Subordinated Indebtedness": means the Loan Notes and all other sums of whatsoever kind due and to become due from the Borrower to the Subordinated Lender in connection with the Loan Notes, whether of principal or interest, present, future, actual or contingent and whether as principal or as surety and howsoever arising and a reference to the "Subordinated Indebtedness" includes a reference to all or any part of the Subordinated Indebtedness.

"Subordinated Security Documents": means the following:

- a) a floating charge granted by the Borrower in favour of the Subordinated Lender dated on or around the date of this Agreement;
- b) a floating charge granted by the Guarantor in favour of the Subordinated Lender dated on or around the date of this Agreement; and

- c) a corporate guarantee granted by the Guarantor in favour of the Subordinated Lender.

"Subordination Period": means the period commencing on the Effective Date and ending on the date (as certified by the Senior Lender in writing) on which the Borrower is under no further, present, future, actual or contingent liability in respect of the Senior Indebtedness.

Construction

- 1.2 Unless a contrary indication appears, a reference in this Agreement to:
 - 1.2.1 without prejudice to any requirement to obtain consent to the same, the "Senior Lender", the "Subordinated Lender", the "Borrower" or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
 - 1.2.2 "assets" includes present and future properties, revenues and rights of every description;
 - 1.2.3 "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - 1.2.4 a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality); and
 - 1.2.5 a provision of law is a reference to that provision as amended or re-enacted.
- 1.3 An Event of Default is "continuing" if it has not been waived in writing by the Senior Lender.
- 1.4 Except to the extent that this Agreement provides otherwise, words and expressions that are defined in provisions of the Companies Act 2006 shall be read as having those meanings.
- 1.5 Any reference in this Agreement to any Finance Document or any other agreement or other document shall be construed as a reference to that Finance Document or that other agreement or document as the same may have been, or may from time to time be, restated, varied, amended, supplemented, substituted, novated or assigned, whether or not as a result of any of the same:
 - 1.5.1 there is an increase or decrease in any facility made available under that Finance Document or other agreement or document or an increase or decrease in the period for which any facility is available or in which it is repayable;
 - 1.5.2 any additional, further or substituted facility to or for such facility is provided;
 - 1.5.3 any rate of interest, commission or fees or relevant purpose is changed;
 - 1.5.4 the identity of the parties is changed;

- 1.5.5 the identity of the providers of any security is changed;
- 1.5.6 there is an increased or additional liability on the part of any person; or
- 1.5.7 a new agreement is effectively created or deemed to be created.

1.6 Clause headings are for ease of reference only.

Third Party Rights

- 1.7 Unless expressly provided to the contrary in this Agreement, a person who is not a party to this Agreement has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or to enjoy the benefit of any term of this Agreement.
- 1.8 Notwithstanding any term of this Agreement, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time.

2. Subordination/Ranking

- 2.1 During the Subordination Period and subject to the terms of this Agreement, the Subordinated Indebtedness shall be subordinated in all respects to the Senior Indebtedness.
- 2.2 The Subordinated Lender agrees with the Senior Lender that during the Subordination Period it will not:

2.2.1 (save by way of or in connection with each Permitted Payment):

- (a) accept payment, repayment, prepayment or any distribution in respect of, or on account of, the Subordinated Indebtedness in cash or in kind;
- (b) exercise any right of set-off, combination of accounts or lien or exercise or accept any transfer of assets from the Borrower (or any other source) in satisfaction of the Subordinated Indebtedness;
- (c) amend or agree to amend any document entered into between it and the Borrower (and whether made between the Borrower and the Subordinated Lender alone or together with any other person) evidencing or providing for the Subordinated Indebtedness in such a manner as to terminate, impair or have any adverse effect upon the subordination of the Subordinated Indebtedness to the Senior Indebtedness;
- (d) require or purport to require the Borrower to redeem, purchase, cancel or reduce any of its share or loan capital or to declare or to pay any dividend (whether interim or final and whether in cash, in specie, bonus issue or otherwise howsoever) (a "Dividend");

2.2.2 (other than by way of the Subordinated Security Documents) take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Subordinated Indebtedness;

- 2.2.3 sell, assign, transfer or otherwise dispose of any of the Subordinated Indebtedness or its rights under the Subordinated Security Documents, other than in accordance with the terms of the Loan Note Instrument and the Subordinated Security Documents and provided any assignee or transferee to whom its rights are sold, assigned or transferred has executed a novation of the Subordinated Lender's obligations under this Agreement or executed an agreement in the same terms as this Agreement in its capacity as Subordinated Lender; or
- 2.2.4 take or omit to take any other action whereby the subordination of the Subordinated Indebtedness to the Senior Indebtedness on the terms set out in this Agreement might be terminated, impaired or adversely affected,

in each case without the prior written consent of the Senior Lender.

- 2.3 Each of the Borrower and the Guarantor agrees with the Senior Lender and the Subordinated Lender that during the Subordination Period it will not:

- 2.3.1 (save by way of or in connection with each Permitted Payment):

- (a) repay, prepay, redeem, purchase or otherwise discharge or release the Subordinated Indebtedness;
- (b) discharge Subordinated Indebtedness by set-off or any right of combination of accounts save only to the extent that it may be required to do so at law or if the same occurs automatically by operation of law (but not, in either case, by reason of any contract or agreement);
- (c) amend or agree to amend any document entered into between it and the Subordinated Lender (and whether made between it and the Subordinated Lender alone or together with any other person) evidencing or providing for the Subordinated Indebtedness in such a manner as to terminate, impair or have any adverse effect upon the subordination of the Subordinated Indebtedness to the Senior Indebtedness;
- (d) give any financial support to any person to enable it to do any of the things referred to in Clauses 2.3.1(a) to 2.3.1(c) (inclusive) above;
- (e) make any payment or distribution of any kind whatsoever in respect of, or on account of, the purchase or other acquisition of the Subordinated Indebtedness;
- (f) redeem, purchase, cancel or reduce any of its share or loan capital or purport or attempt to do so;
- (g) take or omit to take any other action whereby the subordination of the Subordinated Indebtedness to the Senior Indebtedness on the terms set out in this Agreement might be terminated, impaired or adversely affected; or

- 2.3.2 (other than by way of the Subordinated Security Documents) create or permit to subsist any Security, guarantee, indemnity or other assurance against loss in respect of the Subordinated Indebtedness,

in each case without the prior written consent of the Senior Lender.

- 2.4 Until the Subordination Period has expired, the Subordinated Lender will not:

- 2.4.1 demand (other than in respect of a Permitted Payment) payment of, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand, sue for or enforce by execution or otherwise any principal, interest, cost or other sums in respect of the Subordinated Indebtedness;
- 2.4.2 recover (other than by way of Permitted Payment) all or any part of the Subordinated Indebtedness (including, without limitation, by exercising any right of set-off or combination of accounts);
- 2.4.3 exercise or enforce any Security or rights against guarantors or sureties or any other rights under any other document or agreement in relation to (or given in support of) the Subordinated Indebtedness;
- 2.4.4 petition, apply or vote for, or take any step (including the appointment of any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer) in relation to, the winding up, dissolution, administration or reorganisation of the Borrower or its assets or any analogous step or procedure in any jurisdiction (any such step or procedure being referred to in this Agreement as the "Insolvency of the Borrower"); or
- 2.4.5 claim or rank as a creditor in the Insolvency of the Borrower other than in accordance with Clause 3 (*Turnover of Receipts on Insolvency*).

- 2.5 The Subordinated Lender has agreed that it will not advance any loans to the Borrower other than in accordance with the Loan Note Instrument or otherwise with the consent of the Senior Lender.

- 2.6 Notwithstanding the terms of this Agreement, each of the following payments may be made by the Borrower to the Subordinated Lender during the Subordination Period (each a "Permitted Payment"):

- 2.6.1 monthly instalments of interest due in accordance with clauses 2.1 and 2.2 of the Loan Note Instrument (which payments may be made by the Borrower to the Subordinated Lender regardless of any failure on the part of the Borrower to comply with any covenants (financial or otherwise) or other obligations owed by the Borrower to the Senior Lender, whether pursuant to the Facility Agreement or otherwise);
- 2.6.2 the making of a payment in such amount as is required so as to procure the redemption of the Loan Notes then outstanding at par and in full pursuant to Condition 3.1 of the Loan Note Instrument;
- 2.6.3 the making of payments in the amount of each Interim Redemption Amount (as defined in the Loan Note Instrument) (or part thereof) due in accordance with Conditions 3.2 and 3.3 of the Loan Note Instrument provided that (i) immediately prior to the payment of an Interim Redemption Amount (or part

thereof) the Borrower is compliant with the financial covenants set out in Schedule 6 of the Facility Agreement , (ii) the Borrower will remain compliant with such financial covenants after such payment has been made to the Subordinated Lender and (iii) immediately prior to the receipt of the relevant payment, the Subordinated Lender has not received notice from the Senior Lender of the occurrence any breach by the Borrower of any such financial covenant(s); and

- 2.6.4 any other payment made by the Borrower to the Subordinated Lender in connection with the redemption of the Loan Notes or amounts due under the Loan Note Instrument which is made with the prior written consent of the Senior Lender,

but not otherwise.

- 2.7 Each of the Senior Lender and the Subordinated Lender for their respective right, title and interest consent to the constitution by the Borrower and/or the Guarantor (as applicable) of the Security Documents and the Subordinated Security Documents and agree that:

- 2.7.1 the Security Documents and the Subordinated Security Documents will rank in the following order of priority:

First: the Security Documents to the extent of the Senior Indebtedness; and

Second: the Subordinated Security Documents to the extent of the Subordinated Indebtedness

- 2.7.2 in so far as it may be necessary to give effect to the provisions of this Agreement each of the Security Documents and the Subordinated Security Documents which is a floating charge is hereby varied or altered to the extent specified herein and this Agreement shall be deemed to be an Instrument of Alteration (in terms of Section 466, Companies Act 1985 as amended) of each Security Document and each such Subordinated Security Document.

- 2.8 Notwithstanding any other rule of law which might operate to the contrary effect, the provisions of Clause 2.7 as to ranking of the Security Documents and the Subordinated Security Documents shall be valid and effective irrespective of the dates or times at which the Security Documents and the Subordinated Security Documents were executed or constituted or registered and irrespective of the dates on which sums have been or may be advanced to or otherwise drawn by the Borrower, none of the other parties hereto having any concern with the composition of or fluctuations in the sums due to the Senior Lender.

- 2.9 All sums which have been or shall hereafter be placed to the debit of any account or accounts of the Borrower with the Senior Lender shall be as fully and effectually secured by and under and in terms of the Security Documents all as if the said sums or had been so placed before the granting of the respective Security Documents and the Subordinated Security Documents.

- 2.10 As between the Senior Lender and the Subordinated Lender it is agreed that in the event of this Agreement being regarded by a receiver, administrator or liquidator of the Borrower as failing to bind him in the distribution of the assets, or the proceeds of sale of the assets of, the Borrower and the Senior Lender suffers loss as a result of making of any form of distribution to the Subordinated Lender contrary to the terms of

the Agreement, the Subordinated Lender will so compensate the Senior Lender to the extent to which the Subordinated Lender may be lucratus by such prejudice.

3. Turnover of Receipts on an Insolvency

3.1 If the Insolvency of the Borrower occurs, or if any other Insolvency Event occurs in relation to the Borrower at any time during the Subordination Period, then:

3.1.1 the Subordinated Indebtedness will be postponed and subordinated to the Senior Indebtedness and (if required by the Senior Lender but not otherwise) the Subordinated Lender will in good time file any proof or other claim necessary for the recovery of the Subordinated Indebtedness; and

3.1.2 any payment or distribution of any kind or character and all and any rights in respect of such payment or obligation, whether in cash, securities or other property, which is payable or deliverable upon or with respect to the Subordinated Indebtedness by a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer of the Borrower and which is made or paid to or received by the Subordinated Lender or to which it is entitled will be held in trust by its recipient for the Senior Lender and will immediately be paid, transferred or assigned to the Senior Lender for application towards the Senior Indebtedness until the Senior Indebtedness is irrevocably paid in full.

3.2 The Subordinated Lender irrevocably authorises the Senior Lender to demand, sue and prove for, collect and receive every payment or distribution referred to in Clause 3.1 above and discharge liability therefor and to file claims and take such other proceedings, in the name of the Senior Lender or in the name of the Subordinated Lender or otherwise, as the Senior Lender may deem necessary or advisable for the enforcement of this Agreement.

3.3 The liquidator or other insolvency representative or trustee of the Borrower is authorised by the Subordinated Lender to apply any assets or moneys received by him in accordance with the terms of this Agreement.

3.4 If the Senior Lender receives any distribution in respect of any of the Subordinated Indebtedness other than in cash, the Senior Lender may realise the distribution as it sees fit and the Senior Indebtedness shall not be deemed reduced by the distribution save to the extent that the realisation proceeds are applied towards payment of the Senior Indebtedness.

3.5 The Subordinated Lender agrees with the Senior Lender that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to the Borrower as instructed by the Senior Lender.

4. Turnover of Receipts Generally

In the event that during the Subordination Period, in contravention of the provisions of this Agreement, the Subordinated Lender receives or recovers any sum, securities, property, Security or other proceeds in respect of, or on account of, the Subordinated Indebtedness, then it shall immediately upon the same occurring pay such sum and/or, in the case of any set-off, combination of accounts or similar actions, an amount equal to the amount so set off and/or assign or transfer any such securities, property or Security delivered or received, as the case may be, to the Senior Lender for application

by the Senior Lender against, or for retention on account of, the Senior Indebtedness and, until so paid, assigned or transferred, shall hold the same on trust for the Senior Lender absolutely until the Senior Indebtedness has been fully paid and discharged.

5. Failure of Trusts

If, for any reason, any of the trusts expressed to be created in this Agreement should fail or be unenforceable or cannot be given effect to, the Subordinated Lender (and any agent or trustee on its behalf) shall promptly pay an amount equal to the relevant receipt, payment, distribution or other recovery which would otherwise have been required to be held in trust in accordance with the terms of this Agreement to the Senior Lender for application in or towards discharge of the Senior Indebtedness.

6. Further Assurance

The Subordinated Lender shall execute and deliver to the Senior Lender such deeds, documents and other instruments as may be reasonably requested by the Senior Lender from time to time in order to enable the Senior Lender to enforce, protect or perfect any and all rights or claims pursuant to this Agreement or as contemplated by this Agreement upon or with respect to the Subordinated Indebtedness and/or to collect and receive any and all payments, distributions, dividends, securities, Security or property which may be payable or deliverable at any time upon or with respect to the Subordinated Indebtedness during the Subordination Period.

7. Preservation of Subordination

- 7.1 The provisions of this Agreement will not be affected by any intermediate payment or discharge in whole or in part of the Senior Indebtedness and, without prejudice to Clause 2.6, the Subordinated Indebtedness, or any other matter whatsoever and shall be binding upon the Subordinated Lender and the Borrower and shall enure to the benefit of the Senior Lender and its successors, assignees, transferees and substitutes.
- 7.2 The Subordinated Lender shall not, by virtue of any payment or distribution or other benefit in respect of the Subordinated Indebtedness received by the Senior Lender, be entitled to any right of subrogation until the Senior Indebtedness has been fully paid and discharged.
- 7.3 The subordination effected by this Agreement and the obligations of the Subordinated Lender and the Borrower under this Agreement shall not be affected by any act, omission or circumstance which but for this Clause 7.3 might operate to release or otherwise exonerate it from its obligations under this Agreement or affect such obligations including, without limitation and whether or not known to the Subordinated Lender, the Borrower or the Senior Lender or any of them:
- 7.3.1 any time, waiver or consent granted to, or composition with, the Borrower or other person;
 - 7.3.2 the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of the Borrower;
 - 7.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

- 7.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or other person;
 - 7.3.5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of any Finance Documents or any other document or security;
 - 7.3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Documents or any other document or security; or
 - 7.3.7 any insolvency or similar proceedings.
- 7.4 Any money received by the Senior Lender in connection with this Agreement may be placed to the credit of a suspense account with a view to preserving the rights of the Senior Lender to prove for the whole of its claims against the Borrower or any other person liable and, until applied by the Senior Lender in or towards satisfaction of the Senior Indebtedness, the same shall not be treated as reduced or discharged by any such receipt. Amounts standing to the credit of any such suspense account shall bear interest at a rate considered by the Senior Lender, acting reasonably, to be a fair market rate.
- 7.5 Upon the payment and discharge in full of the Senior Indebtedness, the Senior Lender shall as soon as practicable thereafter notify the Borrower and the Subordinated Lender of that payment and discharge (but without any liability for failing to do so).
- 7.6 Notwithstanding any other provision of this Agreement, postponing, subordinating or preventing the payment of the Subordinated Indebtedness, the Subordinated Indebtedness concerned shall solely as between the Borrower and the Subordinated Lender remain owing or due and payable in accordance with the terms of the Loan Note Instrument and interest and default interest will accrue on missed payment(s) accordingly and no delay in exercising rights and remedies under any of the Loan Note Instrument or the Subordinated Security Documents by reason of any terms of this Agreement postponing or preventing such exercise shall operate as a waiver of those rights and remedies.

8. Acknowledgment

The Borrower and Guarantor are each a party to this Agreement for the purpose of acknowledging the subordination arrangements recorded in this Agreement and undertakes with the Senior Lender and the Subordinated Lender to observe the provisions of this Agreement at all times and not in any way to prejudice or affect the enforcement of such provisions or to do or suffer anything which would be a breach of the terms of this Agreement. The Borrower and Guarantor further acknowledges that none of the provisions of this Agreement which are entered into by the Senior Lender and the Subordinated Lender are for the benefit of the Borrower and Guarantor, nor may they be enforced or relied on by the Borrower and Guarantor.

9. Representations

9.1 The Borrower and Guarantor each represent and warrant in respect of itself only to the Senior Lender in terms of this Clause 9.1:

- 9.1.1 it is a limited liability company, duly incorporated or formed and validly existing under the laws of Scotland;
- 9.1.2 the obligations of the Borrower and Guarantor expressed to be assumed by it this Agreement are, subject to any general principles of law limiting its legal, valid, binding and enforceable obligations;
- 9.1.3 the entry into and performance by it of this Agreement does not and will not:
 - (a) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
 - (b) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets;
- 9.1.4 no litigation, arbitration, administrative or judicial proceedings or investigations of, or before, any court, arbitral body or agency are current or, to its knowledge, pending or threatened, against the Borrower or Guarantor; and
- 9.1.5 there is not subsisting any unsatisfied judgment or award given against the Borrower or the Guarantor by any court arbitrator or other body.

9.2 The Subordinated Lender represents and warrants on the date of this Agreement in respect of itself only to the Senior Lender in terms of this Clause 9.2:

- 9.2.1 the Subordinated Lender is an individual residing in Scotland;
- 9.2.2 the obligations of the Subordinated Lender expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its legal, valid, binding and enforceable obligations;
- 9.2.3 no litigation, arbitration, administrative or judicial proceedings or investigations of, or before, any court, arbitral body or agency are current or, to her knowledge, pending or threatened, against the Subordinated Lender; and
- 9.2.4 there is not subsisting any unsatisfied judgment or award given against the Subordinated Creditor by any court arbitrator or other body.

10. Assignment

10.1 Subject to Clause 2.2.3 in the case of the Subordinated Lender, neither the Borrower nor the Subordinated Lender shall be entitled to assign or transfer the whole or any part of its rights or obligations under this Agreement without the prior written consent of the Senior Lender.

10.2 The Senior Lender may assign, charge or transfer all or any of its rights under this Agreement as provided by Clause 8 of Schedule 3 to the Facility Agreement.

- 10.3 The Senior Lender may disclose any information about the Borrower and this Agreement as the Senior Lender shall consider appropriate to any actual or proposed direct or indirect successor or to any person to whom information is required to be disclosed by any applicable law or regulation.

11. Counterparts

- 11.1 This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

12. Notices

Communications in Writing

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

Addresses

- 12.2 The address and fax number (if applicable) or e-mail address, and the department or officer, if any, for whose attention the communication is to be made, of the Borrower, the Guarantor, the Subordinated Lender and the Senior Lender for any communication or document to be made or delivered under or in connection with this Agreement is:

- 12.3 The address and FAO details of the Borrower and the Guarantor are:

Address: c/o Blackadders LLP, 6/1 Mercantile Chambers, 53 Bothwell Street, Glasgow G2 6TS

email: [REDACTED]

FAO: Peter Duff

or such other address and/or FAO details as the Borrower or Guarantor may notify to the other parties to this Agreement by not less than five Business Days' notice.

- 12.4 The address and details of the Subordinated Lender is:

Address: 7 Mulberry Road, Newlands, Glasgow G43 2TR

FAO: Felicity Gabrielle Crombie

or such other address as the Subordinated Lender may notify to the other parties to this Agreement by not less than five Business Days' notice.

- 12.5 The address, facsimile number and FAO details of the Senior Lender are:

Address: Four Brindleyplace, Birmingham B1 2JB

Facsimile: 0345 113 0003

FAO: Lending Administration Team

or such other address, facsimile or FAO details as the Senior Lender may notify to the other parties to this Agreement by not less than five Business Days' notice.

Delivery

- 12.6 Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
- 12.6.1 by letter addressed to the relevant recipient sent by first class post to or left at the recipient's last known address or at the recipient's registered office (in the case of any corporate entity); or, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; and
- 12.6.2 by fax or other electronic means to the last known fax number or electronic mail address of the relevant recipient.
- 12.7 If sent by post, the demand or notice will be taken to have been made or given at noon the second day following the date the letter was posted. If sent by fax or other electronic means, the demand or notice will be taken to have been made or given at the time of transmission.
- 12.8 Unless otherwise advised by the Senior Lender any notices given by the Borrower to the Senior Lender under this Agreement will be delivered to the Senior Lender's office specified under Clause 12.5 above and shall not be effective until actually received by it and then only if it is expressly marked of the attention of the Lending Administration Team.
- 12.9 Any communication or document which becomes effective, in accordance with Clauses 12.6 and 12.7 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following business day.

13. Waivers, Remedies Cumulative

No failure or delay by the Senior Lender in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

14. Partial Invalidity

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

15. Amendments

Save as otherwise specifically provided in this Agreement, any variation or amendment of this Agreement shall be binding only if it is recorded in a document signed by or on behalf of the Senior Lender and the Subordinated Lender. The Borrower agrees that the Senior Lender and the Subordinated Lender may (without prejudicing the obligations of the Borrower under this Agreement) vary or amend the priorities and other provisions of this Agreement without requiring the consent, approval or agreement of the Borrower.

16. Governing Law

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

17. Enforcement

Jurisdiction of Scottish courts

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

17.2 The parties to this Agreement 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.

17.3 Clauses 17.1 and 17.2 above are for the benefit of the Senior Lender only. As a result, the Senior Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Lender may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF: these presents consisting of this and the preceding 14 pages and the Schedule are executed as follows:

THE BORROWER

**SUBSCRIBED FOR and ON BEHALF OF
FERRIE HEALTHCARE LIMITED**

.....
Director

by

in the presence of:

Witness signature:

Witness name:

Witness address:

Place of Signing:

Date of Signing:

THE GUARANTOR

**SUBSCRIBED FOR and ON BEHALF OF
JOHN P FENTON & SONS LIMITED**

.....
Director

by

in the presence of:

Witness signature:

Witness name:

Witness address:

Place of Signing:

Date of Signing:

THE SUBORDINATED LENDER

EXECUTED by

in the presence of:

.....
Felicity Gabrielle Crombie

Witness signature:

Witness name:

Witness address:

Place of Signing:

Date of Signing:

THE SENIOR LENDER

**SUBSCRIBED FOR and ON BEHALF OF
UNTY TRUST BANK PLC**

by Carmel Randell
by

Decoded by:
[REDACTED]
9A08758526B0406
Authorised Signatory

in the presence of:

Witness signature: [REDACTED]

Witness name: **Brian Randell**

Witness address: **37, Arran Road, Birmingham, B34 6DD**

Place of Signing: **Birmingham**

Date of Signing: **30 December 2021**

Schedule

Insolvency Events

1. The Borrower or Guarantor:
 - 1.1. ceases or threatens to cease to carry on its business or a significant part of it (except as part of a solvent reconstruction approved by the Senior Lender and the Subordinated Lender);
 - 1.2. is unable or admits an inability to pay its debts as they fall due; or
 - 1.3. suspends 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.
2. A moratorium is declared or takes effect in respect of any indebtedness of the Borrower or the Guarantor (as the case may be).
3. The value of the assets of the Borrower or the Guarantor (as the case may be) are less than its liabilities (taking into account contingent and prospective liabilities).
4. Any action, legal proceedings or other procedural steps taken, or notice given, in relation to:
 - 4.1. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, strike off, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower or the Guarantor;
 - 4.2. a composition, compromise, assignment or arrangement with any creditor of the Borrower or the Guarantor;
 - 4.3. the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Borrower or any of its assets or the Guarantor or any of its assets; or
 - 4.4. the enforcement of any standard security, assignment in security, charge (fixed or floating), lien or other encumbrance or right in security over any of the assets of the Borrower or the Guarantor,or any analogous procedure or step is taken in any jurisdiction.