

# **SUBORDINATION AGREEMENT**

**Fiven ASA**

as Issuer

and

**Tosca Intermediate Holdings SARL**

as Subordinated Shareholder

and

**Nordic Trustee & Agency AB (publ)**

as Agent on behalf of the Senior Creditors

**21 December 2023**

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This Subordination Agreement (this "**Agreement**") is dated 21 December 2023 and made between:

- (a) **FIVEN ASA**, with Reg. No. 922 224 129, a public limited liability company incorporated under the laws of Norway (the "**Issuer**");
- (b) **TOSCA INTERMEDIATE HOLDINGS SARL**, a private limited liability company (*société à responsabilité limitée*) incorporated and existing under the laws of Luxembourg, having its registered office at 2A, rue Nicolas Bové, L - 1253 Luxembourg, Grand Duchy of Luxembourg and registered with the Luxembourg Trade and Companies Register (*Registre de commerce et des sociétés, Luxembourg*) under number B232665 (the "**Original Subordinated Shareholder**"); and
- (c) **NORDIC TRUSTEE & AGENCY AB (PUBL)**, Swedish Reg. No. 556882-1879 (the "**Agent**") acting as agent on behalf of the Senior Creditors (as defined below).

## Background

- A. The Issuer and the Agent have entered into terms and conditions for senior secured sustainability-linked floating rate bonds 2023/2026 (ISIN: SE0021148764) (the "**Terms and Conditions**") dated 5 December 2023 pursuant to which the Issuer has issued debt instruments in an initial aggregate amount of EUR 110,000,000 and may issue subsequent debt instruments in an aggregate amount, including the initial bonds, of up to EUR 170,000,000 (the "**Bonds**").
- B. The Original Subordinated Shareholder has granted and/or may grant Shareholder Loans (as defined in the Terms and Conditions) to the Issuer.
- C. Subject to the Terms and Conditions a shareholder of the Issuer may from time to time grant further Shareholder Loans to the Issuer.
- D. The Issuer, the Original Subordinated Shareholder and the Agent are entering into this Agreement as a condition precedent for the issue of the disbursement of the Net Proceeds from the Proceeds Account (each as defined in the Terms and Conditions).

## 1. Definitions and Interpretation

### 1.1 Definitions

"**Acceding Subordinated Shareholder**" means any party which becomes a party to this Agreement in accordance with Clause 12 (*Accessions*).

"**Accession Undertaking**" means an undertaking in substantially the form set out in Schedule 1 (*Form of Accession Undertaking*).

"**Brussels Ibis Regulation**" means the regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

"**Senior Creditors**" means the Bondholders and the Agent.

"**Senior Debt**" means all present and future obligations and liabilities of the Issuer to the Senior Creditors under the Finance Documents (including for the avoidance of doubt, all obligations and liabilities under the Bonds and the Agency Agreement).

**"Subordinated Debt"** means all present and future payment obligations of the Issuer to the Subordinated Shareholders, including without limitation (i) the debt owed under the Shareholder Loans and (ii) any dividends to be paid by the Issuer to the Subordinated Shareholders.

**"Subordinated Shareholder"** means the Original Subordinated Shareholder(s) and any party which becomes a party to this Agreement as a Subordinated Shareholder in accordance with the terms of Clause 12 (*Accessions*).

**"Subordination Period"** means the period from the date of this Agreement until the date on which the Senior Debt has been fully and irrevocably paid and discharged.

## **1.2 Interpretation**

Unless otherwise defined in this Agreement, terms defined in the Terms and Conditions as at the date of this Agreement shall have the same meaning when used in this Agreement and the rules of construction set out in Clause 1.2 of the Terms and Conditions as of the date of this Agreement shall apply also to this Agreement save that any reference to the Terms and Conditions in this Agreement shall be a reference to the Terms and Conditions as at the date of this Agreement.

## **2. Superiority of this Agreement**

All documents evidencing Subordinated Debt are subject to the terms of this Agreement. In the event of any inconsistency between any document evidencing Subordinated Debt and this Agreement, this Agreement shall prevail.

## **3. Ranking and Priority**

Unless expressly provided to the contrary in this Agreement, the Senior Debt and the Subordinated Debt shall rank in right and priority of payment in the following order:

- (a) *first*, the Senior Debt; and
- (b) *secondly*, the Subordinated Debt.

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

## **4. Representations**

- (a) The Issuer and each Subordinated Shareholder represents and warrants to the Senior Creditors and the Agent that:
  - (i) it is a corporation, duly incorporated or formed and validly existing under the laws of each relevant jurisdiction;
  - (ii) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
  - (iii) 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.
- (b) All representations set out in paragraph (a) above are made by the Issuer, the Original Subordinated Shareholder and/or the Acceding Subordinated Shareholder on the date of this Agreement or on the date on which it becomes an Acceding Subordinated Lender in accordance with Clause 12 (*Accessions*) (as applicable).

## 5. Undertakings

- (a) During the Subordination Period, the Subordinated Shareholders undertake not to, without the Agent's (acting on the instructions of the Senior Creditors) consent:
  - (i) demand or receive payment, prepayment or repayment of, or interest on, or accept discharge by way of set-off, of any Subordinated Debt (except as expressly permitted by paragraph (d) below);
  - (ii) receive or permit to subsist, any Security or other encumbrance, or receive or allow to subsist any financial support, for any Subordinated Debt;
  - (iii) assign, transfer or otherwise dispose of any Subordinated Debt to a third party unless the transferee accedes to this Agreement as a Subordinated Shareholder; or
  - (iv) commence any proceedings against the Issuer in respect of any Subordinated Debt (including applying for enforcement of any amount outstanding or for the liquidation or bankruptcy).
- (b) During the Subordination Period, the Issuer undertakes not to make any payment in relation to, or grant any Security for, any Subordinated Debt (except as expressly permitted by paragraph (d) below) or otherwise take or omit to take any action whereby the subordination of the Subordinated Debt agreed in this Agreement might be impaired.
- (c) During the Subordination Period, the Subordinated Shareholders and the Issuer may not exercise any rights of subrogation (Sw. *regressrätt*) to the rights of the Senior Creditors.
- (d) Notwithstanding paragraph (a)(i) and (b) above, during the Subordination Period:
  - (i) the Subordinated Shareholders may demand or receive payment, prepayment or repayment of, or interest on, or accept discharge by way of set-off, of any Subordinated Debt if expressly permitted by Clause 14.2 (*Restricted Payments*) of the Terms and Conditions; and
  - (ii) the Issuer may make any payment in relation to any Subordinated Debt if expressly permitted by Clause 14.2 (*Restricted Payments*) of the Terms and Conditions.

## **6. Conversion**

If an enforcement of the Security created pursuant to the Security Documents over the shares issued in the Issuer occurs, the Original Subordinated Shareholder must, if requested by the Agent, release and discharge any Subordinated Debt specified by the Agent, by way of converting it to shareholders' contribution (Sw. *aktieägartillskott*), forgiveness of liabilities, or in any other way deemed appropriate by the Agent.

## **7. Subordination in Case of Insolvency**

In the insolvency, bankruptcy, liquidation or company reorganisation of the Issuer:

- (a) the Subordinated Shareholders shall in relation to any outstanding Subordinated Debt take all actions available to it in order to act in accordance with the reasonable directions of the Agent if any Senior Debt is outstanding; and
- (b) each Subordinated Shareholder shall procure that any distributions with respect to any Subordinated Debt by the bankruptcy administrator or liquidator, or any other person making the distribution, are made (or promptly paid over to) to the Agent, to the extent necessary to repay the Senior Debt in full.

## **8. Turnover**

If at any time a Subordinated Shareholder receives or recovers a payment or distribution of any kind in respect of the Subordinated Debt not explicitly permitted by this Agreement, or if a Subordinated Shareholder receives or recovers any payment or distribution in respect of a Subordinated Debt in insolvency, bankruptcy, liquidation or company reorganisation of the Issuer, then such Subordinated Shareholder shall promptly pay all such amounts to the Agent, to the extent necessary to repay the Senior Debt in full. Pending such payment to the Agent, the relevant Subordinated Shareholder shall hold these amounts on a separate account on behalf of the Senior Creditors.

## **9. Amendments to the Terms for the Subordinated Debt**

During the Subordination Period, the Issuer and the Subordinated Shareholders may not without the prior written consent of the Agent take any action, or otherwise agree, to amend or alter any document evidencing a Subordinated Debt save for amendments or alterations which do not adversely affect the interest of the Senior Creditors nor the ranking or subordination contemplated by this Agreement.

## **10. Miscellaneous**

- (a) All moneys (or other consideration) obtained by the Agent under this Agreement, shall be applied by the Agent in accordance with Clause 16 (*Distribution of Proceeds*) of the Terms and Conditions.
- (b) The subordination provided for in this Agreement will not be affected by:
  - (i) any time, waiver or consent granted to, or composition with, or release of, the Issuer or any other person;

- (ii) 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 Issuer 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;
- (iii) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (iv) any amendment (however fundamental) or replacement of any document or Security;
- (v) any unenforceability, illegality or invalidity of any obligation of any person under this Agreement or any other document or Security; or
- (vi) any fluctuation in or partial repayment or prepayment of the Senior Debt.

## **11. Assignment**

- (a) When a Bond is transferred from one Bondholder to another, all rights under this Agreement shall automatically be transferred to the new Bondholder.
- (b) A Bondholder may at any time assign its rights and/or obligations under this Agreement, provided that such assignment is permitted under the Finance Documents. When a Bond is transferred from one Bondholder to another, all rights of such Bondholder, in respect of the Bonds transferred under this Agreement shall automatically be transferred to the new Bondholder.
- (c) The Agent may (in its capacity as Senior Creditor) at any time assign its rights and/or obligations under this Agreement, provided that such assignment is permitted under the Finance Documents and provided the Agent's rights under the Finance Documents are assigned simultaneously to the same assignee.
- (d) Neither the Issuer nor any Subordinated Shareholder may assign any of its rights and/or obligations under this Agreement, unless the Agent has consented thereto in writing prior to such assignment.

## **12. Accessions**

Subject to the Terms and Conditions, a shareholder of the Issuer may from time to time grant a Shareholder Loan to the Issuer provided that such shareholder has acceded as a Subordinated Shareholder to this Agreement by executing and delivering to the Agent an Accession Undertaking (as set out in Schedule 1 (*Form of Accession Undertaking*)).

## **13. Notices**

### **13.1 Communication**

The terms of Clause 27 (*Notices and Press Releases*) of the Terms and Conditions shall apply as if incorporated into this Agreement and any notice given under or in connection with this Agreement with references in such clause to "Finance Documents" being deemed references to this Agreement, and the parties hereto agree to be bound by terms *mutatis mutandis* identical

to those applying (pursuant to Clause 27 (*Notices and Press Releases*) of the Terms and Conditions) to the parties of that document.

### **13.2 Addresses**

The address of each party under this Agreement for any communication or document to be made or delivered under or in connection with this Agreement shall be given at the address of such relevant party as set out under Clause 27 (*Notices and Press Releases*) of the Terms and Conditions or if not set out therein the address registered with the Swedish Companies Registration Office (Sw. *Bolagsverket*) when the communication is dispatched.

## **14. Governing Law and Jurisdiction**

- (a) This Agreement is governed by Swedish law.
  - (b) Subject to Clause 14(c), the courts of Sweden have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement). The Stockholm District Court (Sw. *Stockholms tingsrätt*) shall be court of first instance.
  - (c) Clause 14(b) is for the benefit of the Senior Creditors only. As a result, none of the Senior Creditors shall be prevented from taking proceedings in any other courts with jurisdiction over any other party or any of its assets and with respect to the Original Subordinated Shareholder, in any other courts having jurisdiction in accordance with the Brussels Ibis Regulation, or where any asset of the Original Subordinated Shareholder is situated. To the extent allowed by law, they may take concurrent proceedings in any number of jurisdictions.
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## SCHEDULE 1

### FORM OF ACCESSION UNDERTAKING

To: Nordic Trustee & Agency AB (publ)

This undertaking is made on [date] by [insert full name of new Subordinated Shareholder] (the "**Acceding Party**") in relation to a subordination agreement (the "**Subordination Agreement**") dated 21 December 2023 between amongst others Nordic Trustee & Agency AB (publ) as Agent on behalf of the Senior Creditors, Fiven ASA as Issuer and Tosca Intermediate Holdings SARL as Original Subordinated Shareholder. Terms defined in the Subordination Agreement shall, unless otherwise defined in this undertaking, bear the same meaning when used in this undertaking.

#### **We undertake as follows:**

The Acceding Party confirms that it intends to be party to the Subordination Agreement as a Subordinated Shareholder and undertakes to perform all the obligations expressed to be assumed by a Subordinated Shareholder under the Subordination Agreement and agrees that it shall be bound by all the provisions of the Subordination Agreement as if it had been an original party to the Subordination Agreement and that it shall provide the Agent with any information reasonably requested in relation to itself and its capacity as Subordinated Shareholder.

This undertaking shall be governed by, and construed in accordance with, Swedish law.


#### **The Acceding Party**

[Insert full name of new Subordinated Shareholder]

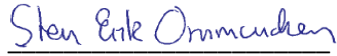
By:

**FIVEN ASA**

as Issuer

  
\_\_\_\_\_


Name: Falk AST Chairman of the Board

  
\_\_\_\_\_

Name: Stein Erik Ommundsen

**TOSCA INTERMEDIATE HOLDINGS SARL**

as Subordinated Shareholder

  
\_\_\_\_\_

Name: Falk Ast  
Title: CEO FIVEN Group

  
\_\_\_\_\_

Name: Stein Erik Ommundsen  
Title: General Manager Fiven ASA & Authorized Signatory

**NORDIC TRUSTEE & AGENCY AB (PUBL)**

as Agent on behalf of the Senior Creditors

\_\_\_\_\_

Name:

\_\_\_\_\_

Name:

**FIVEN ASA**

as Issuer

\_\_\_\_\_

Name:

\_\_\_\_\_

Name:

**TOSCA INTERMEDIATE HOLDINGS SARL**

as Subordinated Shareholder

\_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Name:

Title:

**NORDIC TRUSTEE & AGENCY AB (PUBL)**

as Agent on behalf of the Senior Creditors



Name:

**Adam Kastengren Sandberg**

\_\_\_\_\_

Name: