

DATED THIS

DAY OF

20

**(1) THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND
(as Security Trustee)**

(2) (Junior Lender)

(3) (Borrower)

DEED OF PRIORITY



THIS DEED is made the _____ day of _____ 20____

BETWEEN

- (1) **THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND** having its head office at 40 Mespil Road, Dublin 4, Ireland (“the **Bank**”) as security trustee for each of **The Governor and Company of the Bank of Ireland** and **Bank of Ireland (UK) PLC** – incorporated in England & Wales with company number 07022885 whose registered office is at Bow Bells House, Bread Street, London EC4M 9BE to the extent that any monies or obligations are owed to them (together the “**Senior Lenders**” and each a “**Senior Lender**”)
- (2) [_____] Bank PLC (Company number _____) whose registered office is at _____ (“the **Junior Lender**”)
- (3) _____ [(Company number _____)
whose registered office is at _____] [of _____] (the “**Borrower**”)

BACKGROUND

- (A) Either or both of the Senior Lenders has agreed to provide or has provided the Bank Debt to the Borrower and the Borrower has entered into, or will enter into, the Bank Security Documents to secure the Bank Debt.
- (B) The Junior Lender has agreed to provide or has provided the Junior Debt to the Borrower and the Borrower has entered into, or will enter into the Junior Security Documents to secure the Junior Debt
- (C) The Senior Lenders and the Junior Lender have agreed that the priority of their respective debts and security shall be as set out in this Deed.
- (D) The Borrower has agreed to enter this Deed to acknowledge its terms and to give certain covenants to the Lenders.

NOW THIS DEED WITNESSES and IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in this Deed.

Bank Debt: all Liabilities which are or may become payable or owing by the Borrower to either Senior Lender including, without limitation, under the Bank Security Documents.

Bank Security Documents: any document under which Security is created whether at the date of this Deed or any later date securing any Liability of the Borrower to either

Senior Lender including but not limited to the security documents referred to in Part 1 of the Schedule.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Junior Debt: all Liabilities which are or may become payable or owing by the Borrower to the Junior Lender including under the Junior Security Documents.

Junior Security Documents: any document under which Security is created whether at the date of this Deed or any later date securing any Liability of the Borrower to the Junior Lender including but not limited to the security documents referred to in Part 2 of the Schedule.

Lenders: the Senior Lenders and the Junior Lender together, and **Lender** means any of the Lenders.

Liabilities: all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity.

Receiver: a receiver, receiver and manager or administrative receiver appointed by either Lender pursuant to the provisions of its Security Documents.

Security: all present and future mortgages, charges (whether fixed or floating, legal or equitable), pledges, liens, hypothecations, guarantees, indemnities, assignments by way of security or other collateral documents or security interests securing any obligation of the Borrower or any other person or any other agreement or arrangement having a similar effect.

Security Document: each of the Bank Security Documents and the Junior Security Documents.

1.2 In this Deed:

- (a) references to a “clause” or to a “Schedule” are references to a clause or Schedule of this Deed. Clause and Schedule headings shall not affect the interpretation of this Deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors in title, permitted assigns and permitted transferees;
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors, permitted assigns and permitted transferees;

- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2. **CONSENTS**

Each Lender consents to the creation or subsistence (as appropriate) of the other Lender's Security and confirms that the creation or subsistence of the other Lender's Security does not constitute a default by the Borrower under any of that Lender's Security Documents.

3. **PRIORITIES AND APPLICATION OF MONIES**

3.1 The Lenders and the Borrower agree that:

3.1.1 all Bank Debt and all other moneys due or owing by the Borrower to the Senior Lenders (or either of them) shall rank and be secured and recoverable under the Bank's Security Documents in priority to the Junior Debt or any other moneys secured by the Junior Security Documents notwithstanding that the said advances and moneys or any of them were made by or became due to a Senior Lender after that Senior Lender had notice of the Junior Security Documents or after the date of this Deed;

3.1.2 the Junior Debt is and shall be postponed to and rank after the Bank Debt.

3.2 Nothing in this Deed shall affect the status of the Security Documents as continuing security, nor shall the priority and ranking of the Senior Lenders and the Junior Lender be affected by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the relative priorities of the Security Documents including but not limited to:

3.2.1 the nature of any of the Security created by the Security Documents and the order of execution, registration or the respective date(s) on which any person received notice of the existence or creation of any Security Document;

3.2.2 any provision contained in any of the Security Documents;

3.2.3 the respective date(s) on which money may be or have been advanced or become owing or payable to either Lender or secured under a Security Document;

3.2.4 any fluctuation from time to time in the amount of the Liabilities secured by a Security Document and in particular, without limitation, any reduction to nil of the Liabilities so secured;

3.2.5 the existence at any time of a credit balance on any current or other account of the Borrower or credit balance on any current account

- 3.2.6 the appointment of any Receiver, liquidator, administrator, trustee in bankruptcy or other similar officer either in respect of the Borrower or over all or any part of the Borrower's assets.
- 3.3 All monies received pursuant to enforcement of the Bank Security Documents and/or the Junior Security Documents or realisation of all or any of the Security constituted by any of the Security Documents shall be applied in the following order of priority, after providing for any Receiver's or administrator's remuneration and all reasonable outgoings, costs, charges, expenses and liabilities of enforcement, exercising rights on winding up and payments ranking by statute or as a matter of law for payment in priority to the amount secured by the Security Documents:
- 3.3.1 first, in or towards discharge of the Bank Debt [to the extent of £_____ (_____ pounds sterling) in aggregate principal amount (or such greater amount as from time to time be agreed in writing by the Junior Lender)] **OR** [without limit] and in addition interest thereon up to the date of payment and all costs, charges and expenses relating thereto at any time due and payable by the Borrower to the Senior Lenders;
- 3.3.2 second, [once the Bank Debt has been fully discharged] in or towards discharge of the Junior Debt to the extent of £_____ (_____ pounds sterling) in aggregate principal amount (or such greater amount as from time to time be agreed in writing by the Bank) and in addition interest thereon up to the date of payment and all costs, charges and expenses relating thereto at any time due and payable by the Borrower to the Junior Lender;
- 3.3.3 thirdly, [once the Junior Debt has been fully discharged] in discharge of any balance of the Bank Debt; and
- 3.3.4 fourthly, in discharge of any balance of the Junior Debt.
- 3.4 The Bank shall not be obliged to bring into account any preferential payments received by either Senior Lender under section 386 of, and Schedule 6 to, the Insolvency Act 1986 (as amended, updated or replaced from time to time) or which is otherwise capable of being avoided or otherwise set aside on the insolvency of the Borrower or any one of them or otherwise.
- 3.5 If any money is received under any insurance covering any of the assets of the Borrower, such money shall be applied in replacing, restoring or reinstating the assets destroyed or damaged unless both Lenders jointly direct otherwise in writing.
- 4. RESTRICTIONS ON PAYMENTS/NEW SECURITY**
- 4.1 Except with the prior written consent of the Bank, no payments shall be made by the Borrower to the Junior Lender or pursuant to the Junior Security Documents while any sums remain due and owing from the Borrower to the Secured Parties save for payments of interest in accordance with the terms of the facility letter/loan agreement between the Borrower and the Junior Lender as at the date of this Deed (which shall not be amended, varied, consolidated or otherwise dealt with without the consent in

writing of the Bank) or trade sums due and payable by the Borrower to the Junior Lender in the ordinary course of business and not related to any loan between the Junior Lender and the Borrower.

- 4.2 Any monies or other sums received by the Junior Lender, or by any other party pursuant to the Junior Security Documents, in contravention of this Deed shall be paid to the Bank immediately following receipt and shall be deemed to be held on trust for the Bank until the date of such payment.
- 4.3 Except with the prior consent of the Bank, the Junior Lender shall not, while any debt remains due and outstanding from the Borrower to either Senior Lender, demand, take, accept or receive any payment or distribution in respect of, or on account of, the Junior Debt, or apply any money or property in discharge of the same.
- 4.4 The Junior Lender shall not prove any debt in an insolvency process in competition with either Senior Lender so as to diminish any dividend or other advantage that would or might come to the Senior Lenders.
- 4.5 The Junior Lender shall not take any security interest or guarantee in respect of the sums secured by the Junior Security Documents, nor take any action whereby the postponement set out in this Deed may be impaired.

5. ENFORCEMENT OF SECURITY

5.1 The Junior Lender shall not:

- 5.1.1 serve demand for payment of all or any of the Junior Debt; or
- 5.1.2 take any step to crystallise any floating charge (save for any automatic crystallisation of a floating charge) contained in any Junior Security Document or;
- 5.1.3 take enforcement action pursuant to the Junior Security Documents; or
- 5.1.4 present, or join in, an application for an administration order or a petition for a winding-up / bankruptcy order (as appropriate) to be made in relation to the Borrower, or initiate, or support or take, any step with a view to any voluntary arrangement or assignment for the benefit of creditors or similar proceeding involving the Borrower or issue a notice of intention to appoint an administrator or appoint an administrator of the Borrower

while any sum or sums remain due and owing by the Borrower to the Secured Parties unless it has received the prior written consent of the Bank or it has given the Bank not less than ten Business Day's prior written notice of its intention to do so and such notice has duly expired without objection from the Bank.

5.2 The Bank (or the relevant Senior Lender) shall consult the Junior Lender before:

- 5.2.1 it serves a demand for payment of the Bank Debt on the Borrower (other than a demand for payment on the due date);

- 5.2.2 it serves a notice on the Borrower to the effect that the Bank Debt is immediately due and payable;
 - 5.2.3 it takes any step to crystallise any floating charge (save for any automatic crystallisation of a floating charge) contained in any Bank Security Document;
 - 5.2.3 it takes any step to enforce any Bank Security Document, whether by appointing a Receiver, exercising its power of sale or otherwise; [or]
 - 5.2.4 it presents, or joins in, an application for an administration order or a petition for a winding-up order to be made in relation to the Borrower or it initiates, or supports or takes, any step with a view to any voluntary arrangement or assignment for the benefit of creditors or similar proceeding involving the Borrower or it issues a notice of intention to appoint an administrator or appoints an administrator of the Borrower.
- 5.3 If either Senior Lender consults the Junior Lender under clause 5.2:
- 5.3.1 the Junior Lender shall respond as quickly as is reasonably practicable;
 - 5.3.2 the Lenders shall consult together with a view to agreeing the method of enforcement or other relevant action and, where appropriate, with a view to agreeing a suitable person to be appointed as Receiver (and such consultation and agreement shall also precede any removal of any Receiver and any appointment of a successor); and
 - 5.3.3 if appropriate, the Lenders shall co-operate with each other in realising the assets subject to the Security Documents.
- 5.4 Either Senior Lender may take any action referred to in clause 5.2, without consulting or reaching agreement with the Junior Lender, if it reasonably believes that taking any such action immediately is necessary to protect its interests. No action taken by either Senior Lender in accordance with this clause 5.4 shall be invalid or ineffective because of its failure to consult or reach agreement with the Junior Lender.
- 5.5 As soon as reasonably practicable after taking any action in accordance with clause 5.4, the Bank shall inform the Junior Lender of the action taken and, if a Receiver has been appointed, consult with the Junior Lender with a view to that Receiver's appointment continuing or, if that is not agreed, to the appointment of others to act jointly with him.
- 5.6 The Junior Lender will, at the request of either Senior Lender or any Receiver appointed by either Senior Lender, join in such documents or otherwise take such action as may be reasonably required by that Senior Lender or such Receiver to facilitate the disposal of any asset secured by a Bank Security Document whether or not there will be any balance of proceeds available for the Junior Lender arising from that disposal.
- 5.7 The Junior Lender waives its rights (if any) as the holder of a prior floating charge to receive notice from the Senior Lender(s) of the proposed appointment of an administrator which may be required pursuant to Paragraph 15 of Schedule B1 of the Insolvency Act 1986 (as amended).

- 5.8 In accordance with Paragraph 15 of Schedule B1 of the Insolvency Act 1986 (as amended) the Junior Lender as the holder of any prior floating charge hereby consents to the appointment by the Senior Lender(s) of an Administrator.
- 5.8 Each of the Lenders hereby appoints by way of security the other as its attorney with full power of substitution for the other and in its name and on its behalf and as its act and deed to execute, seal and deliver and otherwise perfect any consent which may be required for the purposes of the appointment of an administrator by the other to facilitate the exercise by the other of any of its rights and powers under Clause 5 of this Deed provided that such power of attorney may only be exercised in circumstances where either the Senior Lenders or the Junior Lender is (a) in breach of the terms of this Deed; or (b) not acting reasonably.

6. BORROWER COVENANTS

So long as any Senior Debt remains due and outstanding, the Borrower shall not:

- 6.1 (subject to clause 4.1 above) pay, repay or make any distribution to the Junior Lender in cash or in kind and whether on account of principal, interest or damages for breach of the terms of the Junior Security Documents;
- 6.2 buy or acquire any of the Junior Debt;
- 6.3 exercise any right of set-off against the Junior Debt;
- 6.4 make a loan or provide credit to the Junior Lender;
- 6.5 create, or allow to exist, any security interest over any of its assets for, or any guarantee for or in respect of, any loan or credit provided to the Junior Lender by another person;
- 6.6 vary, waive or release any terms relating to the Junior Debt;
- 6.7 discharge, release or reduce any part of the debt secured by the Junior Security Documents by set-off, netting, any right of combination of accounts or any other manner;
- 6.8 enter into any arrangement with the Junior Lender not to enforce the Borrower's obligations to the Junior Lender;
- 6.9 take or omit any action whereby the postponement of the Junior Security Documents under this Deed might be terminated, impaired or adversely affected; or
- 6.10 assign or transfer any of its rights or obligations pursuant to the Junior Security Documents.

7 AMENDMENT TO FACILITIES

- 7.1 Neither the Junior Lender nor the Borrower shall agree any modification or amendment to, nor make any other agreement affecting, the arrangements relating to the Junior Debt or the Junior Security Documents without the prior written consent of the Bank.
- 7.2 Nothing in this clause 7 shall prevent the Senior Lenders from amending, varying, renewing, replacing, refinancing the Bank Debt or from granting time or indulgence to the Borrower or otherwise dealing with the Bank Debt and/or the Bank Security Documents (including releasing or compounding any Bank Security Document or guarantee at any time held by the Senior Lenders) without reference to the Junior Lender (except to the extent regulated by this Deed) and the Junior Lender shall raise no objection to any such matter. Any such amendment, variance, renewal, replacement or refinancing of any Bank Debt shall not affect this Deed.

8 DURATION

- 8.1 This Deed shall cease to have effect when to the satisfaction of the Bank, all Bank Debt has been fully and effectually paid and discharged, which shall be the latest of:
- 8.1.1 the date on which the last payment of such debts is made by the Borrower, if the Secured Lenders are satisfied that payment by the Borrower will not result in sections 238 to 246 (or where the Borrower is an individual, sections 339 to 349A) of the Insolvency Act 1986 being invoked;
- 8.1.2 the second anniversary of that payment unless, before that second anniversary, a petition is presented on which the winding up / bankruptcy (as appropriate) of the Borrower is commenced; or
- 8.1.3 the date on which the winding up / bankruptcy of the Borrower is concluded.

9 ACKNOWLEDGEMENT OF THE BORROWER

The Borrower acknowledges the terms of this Deed and consents to the Lenders communicating with each other about the Borrower's affairs for the purposes of this Deed. The Borrower further acknowledges that none of the provisions entered into by the Lenders are for the benefit of the Borrower, nor may they be enforced or relied upon by the Borrower.

10 REGISTRATION

The parties to this Deed hereby apply to the Chief Land Registrar to note in the appropriate manner at the Land Registry the priority arrangements contained in this Deed insofar as the same affect any registered land comprised in the assets charged by the Security Documents. The failure to register this Deed, or any defect in registration, will not affect the intention behind this Deed and the provisions of this Deed shall remain valid and enforceable notwithstanding any such non-registration or defective registration.

11 GENERAL PROVISIONS

- 11.1 If all or any of a Lender's respective Security Documents shall be released or are or become wholly or partly invalid or unenforceable or shall not extend to particular assets of the Borrower, such Lender shall bear any loss resulting and shall not be entitled to share in monies derived from assets over which it has no effective security but neither Lender shall challenge or question the validity or enforceability of the other Lender's Security Documents or the nature of the Security created thereby.
- 11.2 The Junior Lender shall not assign or transfer any of its rights or benefits under this Deed or any Junior Security Document without the prior written consent of the Bank. The Bank shall be free to assign or transfer its rights or benefits under this Deed or the Bank Security Documents.
- 11.3 The Junior Lender agrees that the Bank's Debt may be refinanced at any time by any person whether or not that person is a Senior Lender and that the new debt shall rank with the priority specified, and be secured in the manner agreed, in this Deed.
- 11.4 The Borrower and the Junior Lender hereby agree that all deeds and documents which require to be deposited by the Borrower under the terms of the Bank Security and/or the Junior Security Documents shall be held and deposited with the Bank during the subsistence of the Bank Security.
- 11.5 Notwithstanding the creation of the Junior Security Documents, the accounts of the Borrower with the Senior Lenders and the accounts secured by the Junior Security Documents will remain operative and the rule in Clayton's Case shall be deemed not to operate against the interests of the Senior Lenders or the Junior Lender.
- 11.6 Nothing contained in this Deed shall bind either Lender to make any advance or grant banking facilities or other accommodation to the Borrower.
- 11.7 A third party (being any person other than a Lender, its successors and assigns, any Receiver or delegate) has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term in this Deed.
- 11.8 This Deed forms the entire agreement between the parties relating to the priority of their respective Security Documents and the application of the proceeds thereof and supersedes all earlier meetings, discussions, negotiations, correspondence and communications of any kind.
- 11.9 Save as otherwise provided herein, any variation of this Deed shall be binding only if it is recorded in writing.
- 11.10 Each notice or other communication required to be given under or in connection with this Deed shall be:
 - (a) in writing;
 - (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
 - (c) sent to:

- (i) the Bank at:
[ADDRESS]
Attention: [NAME] Email: [ADDRESS]
- (ii) the Junior Lender at:
[ADDRESS]
Attention: [NAME] Email: [ADDRESS]
- (iii) the Borrower at:
[ADDRESS]
Attention: [NAME] Email: [ADDRESS]

or to such other address or email address as is notified in writing by one party to the others from time to time.

Any notice or other communication given under or in connection with this Deed shall be deemed to be received:

- (d) if delivered by hand, at the time it is left at the relevant address;
- (e) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (f) if sent by email, when sent provided no notice that the email message has not been successfully delivered is not subsequently received.

A notice or other communication given as described in this clause on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

This notice clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.11 This Deed may be executed in counterparts and by the different parties hereto on separate counterparts each of which when so executed and delivered shall be an original but all the counterparts shall together constitute one and the same instrument.

11.12 The provisions of this Deed shall be governed by and interpreted in accordance with the laws of England, and the parties hereto submit to the exclusive jurisdiction of the English courts in relation to any dispute arising hereunder. This clause applies for the exclusive benefit of the Bank, and shall not preclude the Bank from bringing any action against the Junior Lender or the Borrower in any other jurisdiction

IN WITNESS whereof the parties hereto have executed and delivered this Deed as a deed the day and year first herein written.

SCHEDULE

Part 1 (Bank Security Documents)

Part 2 (Junior Lender Security Documents)

Security Trustee

The Seal of

**THE GOVERNOR AND COMPANY OF THE
BANK OF IRELAND (as Security Trustee)**

Was affixed hereto by authority of the Directors

in the presence of:-

Authorised Signatory/Secretary

Junior Lender

The Common Seal of _____ **LIMITED**

was affixed hereto pursuant to a resolution

of its board of directors in the presence of:

OR

EXECUTED AS A DEED by _____ **LIMITED**

Acting by _____
Director (Print Name)

And by _____
Director/Secretary

pursuant to a Resolution of its
Board of Directors by dated _____

Signature of Director

Signature of Director/Secretary

OR

EXECUTED AS A DEED by _____ **LIMITED**

Acting by _____,
Director (Print Name)

Pursuant to a Resolution of its
Board of Directors dated _____

in the presence of:

Signature of Director

Borrower

The Common Seal of _____ **LIMITED**

was affixed hereto pursuant to a resolution

of its board of directors in the presence of:

OR

EXECUTED AS A DEED by _____ **LIMITED**

Acting by _____

Director (Print Name)

And by _____

Director/Secretary

pursuant to a Resolution of its
Board of Directors by dated _____

Signature of Director

Signature of Director/Secretary

OR

EXECUTED AS A DEED by _____ **LIMITED**

Acting by _____,

Director (Print Name)

Pursuant to a Resolution of its
Board of Directors dated _____

in the presence of:

Signature of Director

OR (where the Borrower is an individual)

EXECUTED AS A DEED by

in the presence of:

Signature of Borrower