

DATED

20

HSBC BANK PLC

and

[FUNDER]

and

[COMPANY]

DEED OF PRIORITY

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BETWEEN

- (1) **HSBC BANK PLC** (Company Number 14259), whose address for service is: Securities Processing Centre, PO Box 6304, Coventry CV3 9JY (the “**Bank**”);
- (2) [] (Company Number []), registered office: [] (the “**Funder**”); and
- (3) [] [(Company Number []), registered office: []], whose address for service is: [] (the “**Company**”).

BACKGROUND

- (A) The Company has entered into, or will enter into, the Bank Security Documents to secure the Bank Debt.
- (B) The Company has entered into, or will enter into, the Funder Security Documents to secure the Funder Debt.
- (C) The Bank and the Funder have agreed that the priority of the Bank Security Documents and the Funder Security Documents for the Bank Debt and the Funder Debt respectively shall be as set out in this Deed.
- (D) The Company has agreed to enter into this Deed to acknowledge its terms and to give certain covenants to the Creditors.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context requires otherwise, the following expressions shall have the following meanings:

“**Bank Debt**” means the aggregate amount of the principal interest charges and other moneys and liabilities from time to time remaining owing or incurred to the Bank whether presently or contingently and secured by the Bank Security Documents.

“**Bank Security Documents**” means all present and future mortgages, charges (whether fixed or floating, legal or equitable), pledges, liens, assignments by way of security or other security interests securing any obligation of the Company to the Bank including but not limited to the security referred to in Part I of the Schedule.

“**Creditors**” means collectively (and where the context requires, individually) the Bank and the Funder and their respective successors in title and assigns.

“**Debts**” means collectively (and when the context requires, individually) the Bank Debt and the Funder Debt.

“**Funder Debt**” means the aggregate amount of the principal interest charges and other moneys and liabilities from time to time remaining owing or incurred to the Funder whether presently or contingently and secured by the Funder Security Documents.

“**Funder Priority Assets**” means [INSERT DESCRIPTION]

“**Funder Security Documents**” means all present and future mortgages, charges (whether fixed or floating, legal or equitable), pledges, liens, assignments by way of security or other security interests securing any obligation of the Company to the

Funder including but not limited to the security referred to in Part II of the Schedule.

“**Securities**” means together the Bank Security Documents and the Funder Security Documents and “**Security**” means either or both of them as the context permits.

“**Special Account**” means an account in the name of the Company held with the Bank and designated as the special account pursuant to Clause 7.1.

1.2 In this Deed, unless the context otherwise requires:

1.2.1 references to any of the parties shall be construed so as to include their respective successors and permitted assignees;

1.2.2 references to a “Clause” or to a “Schedule” are references to a Clause of or a Schedule of this Deed;

1.2.3 references to this Deed shall be to this Deed as amended, varied, supplemented or novated from time to time;

1.2.4 references to any statute, law, decree or regulations shall be treated as references to such statute, law, decree or regulations as re-enacted, amended, extended or replaced from time to time;

1.2.5 headings are inserted for ease of reference only and shall be ignored in the construction of this Deed; and

1.2.6 words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated associations and partnerships and vice versa.

1.3 If there shall be any conflict or inconsistency between any provision of this Deed and any provision contained within a Security, the provisions of this Deed shall prevail.

2 CONSENTS

2.1 Each of the Creditors confirms its consent to the creation of the other Creditor’s Security.

2.2 The Company confirms and warrants to each of the Creditors that it has not ceased to carry on business, that as far as it is aware no floating charge given by it has as at the date of this Deed crystallised and that it is not aware of any event having occurred or about to occur which could result directly in the crystallisation of any such floating charge.

3 PRIORITIES

3.1 Save as may be otherwise agreed in writing from time to time by the Creditors, all receipts, recoveries and realisations pursuant to the enforcement of the Securities shall be applied in satisfying the monies, obligations and liabilities thereby secured as follows:

3.1.1 in respect of realisations of the Funder Priority Assets only:

3.1.1.1 firstly to the Funder, without limit; and

3.1.1.2 secondly to the Bank; and

3.1.2 in respect of realisations of all other assets of the Company other than the

Funder Priority Assets:

3.1.2.1 firstly to the Bank, without limit; and

3.1.2.2 secondly to the Funder.

3.2 The amount of any receiver's or administrator's remuneration and all outgoings, costs, charges, expenses, liabilities and payments ranking by statute for payment in priority to the amount secured by the Securities shall be deducted from all receipts and recoveries under the relevant Security prior to their application towards the discharge or satisfaction of the amounts secured by the Securities.

4 CONTINUING SECURITY

4.1 Nothing in this Deed shall affect the status of the Securities as continuing security, nor shall the ranking of the Securities specified in Clause 3 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 Securities, including, but not limited to:

4.1.1 the nature of the various Securities and the order of their execution or registration;

4.1.2 any provision contained in any of the Securities;

4.1.3 the respective date (or dates) on which any person received notice of the existence or creation of any of the Securities;

4.1.4 the respective date (or dates) on which monies may be, or have been, advanced or become owing or payable as Funder Debt or Bank Debt or secured under the Funder's Security or Bank's Security (as applicable);

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

4.1.6 the existence at any time of a credit balance on any current or other account of the Company;

4.1.7 the appointment of any liquidator, receiver, administrator or other similar officer either in respect of the Company or over all or any part of the Company's assets; or

4.1.8 any amendment or supplement to or variation of any document evidencing the Debt.

4.2 Notwithstanding the provisions of Clause 4.1 above, if all or any of the Creditors' respective Securities shall be released or are or become wholly or partly invalid or unenforceable or shall not extend to particular assets of the Company, such Creditor 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 the Creditors shall not themselves challenge the validity or enforceability of the Securities.

4.3 Nothing in this Deed shall affect or prejudice the respective rights and remedies of the Creditors under the Securities which shall continue in full force and effect in accordance with their respective terms subject only to the provisions of this Deed.

5 ENFORCEMENT OF SECURITY

- 5.1 The Funder hereby irrevocably undertakes in favour of the Bank that it shall not take steps to appoint a receiver or an administrator, appoint a receiver or an administrator or otherwise enforce its Security, unless it has received the prior written consent of the Bank or it has given the Bank not less than two days prior written notice of its intention to do so and such notice has duly expired.
- 5.2 Subject to Clause 5.1, the Creditors shall consult and co-operate with each other to the intent (without any requirement) that:
- 5.2.1 the Securities shall so far as practicable be enforced by the same method and at the same time; and
- 5.2.2 in the case of an appointment of a receiver by a Creditor under its Security the same person shall be appointed receiver by the other Creditor (if the Creditor shall also make such an appointment),
- provided always that (for the avoidance of doubt) the Bank may enforce the Bank's Security in such manner as it shall determine in its absolute discretion.
- 5.3 Subject to Clause 5.1 if either Creditor shall appoint a receiver or administrator under its Security or shall otherwise enforce or exercise its Security, it shall promptly give written notice thereof to the other Creditor.
- 5.4 If either Creditor shall have any books or records of the Company in its possession, it will provide such access to those books or records as may reasonably be required by any receiver or administrator appointed by the other Creditor.

6 QUALIFYING FLOATING CHARGE HOLDER RIGHTS

The Funder agrees that in respect of the right of the Bank to appoint an administrator that the Funder irrevocably waives its rights (if any) as holder of a prior floating charge to receive notice from the Bank of the proposed appointment of an administrator which may be required pursuant to the Insolvency Act 1986 (as amended). The Funder as the holder of any prior qualifying floating charge (if any) hereby consents to the appointment by the Bank of an administrator notwithstanding that no notice of intention to appoint an administrator within the meaning of paragraph 15(1)(b) of Schedule B1 to the Insolvency Act 1986 shall have been given to it.

7 FIXED CHARGE ON BOOK DEBTS AND OPERATION OF ACCOUNTS

- 7.1 If and so long as the Bank's Security shall include a fixed charge over book debts the Funder shall not without the Bank's prior written consent require the Company to pay any of its debts into any bank or other account or to any person or persons other than into the Special Account for the time being designated by the Bank for that purpose or if no such Special Account shall for the time being be so designated by the Bank to the Company's current account for the time being with the Bank.
- 7.2 Nothing in this Deed or any other agreement between the Creditors and the Company shall prevent the Bank operating the bank accounts of the Company in the ordinary course of banking business including, without limitation, collecting cheques and other payment orders via any medium, electronic or otherwise and accepting monies for credit for the Company's bank accounts and allowing the Company to draw cheques and make other payments and generally to withdraw funds from its bank accounts or from exercising its rights to combine and set off any credit balances against any indebtedness of the Company to the Bank.

8 TIME AND INDULGENCE

Each of the Creditors shall be entitled to grant time or indulgence or to release or compound, or otherwise deal with its Security or any guarantee at any time held by them without reference to the other Creditor except to the extent regulated by this Deed.

9 INSURANCE PROCEEDS AND CUSTODY OF DOCUMENTS

9.1 In the event of any money being received under any insurance covering any of the property or assets charged under the Securities such money shall (subject to the rights of prior encumbrances if any) be applied in replacing, restoring or reinstating the property or assets destroyed, damaged or lost unless the Bank otherwise directs in writing.

9.2 The Bank shall be entitled, but not obliged, to hold each title or other document relating to any asset subject to the Bank's Security. The Funder may inspect any such documents provided it gives reasonable prior written notice to the Bank.

10 INFORMATION

10.1 During the continuance of the Securities the Bank and the Funder shall be at liberty from time to time to disclose to each other information concerning the Company and the Company's financial and other affairs in such manner and to such extent as the Bank and the Funder shall from time to time desire.

10.2 Each Creditor acknowledges the right of the other to the production and delivery of copies of the documents comprising or referred to in its Security.

11 CURRENCY

Without prejudice to the respective rights and obligations of the parties to this Deed set out in the other provisions of this Deed any sums for the time being denominated in a currency other than sterling shall for the purposes only of this Deed be deemed to be converted on the relevant date into sterling at the Bank's spot selling rate of exchange for the relevant currency against sterling.

12 FACILITIES

Nothing contained in this Deed shall bind or oblige the Creditors to make any advances or accommodation to the Company or to grant banking or other facilities to the Company.

13 TERMINATION

This Deed shall cease to have effect when either of the Securities shall have been fully discharged.

14 COMPLIANCE WITH COVENANTS

The Company shall observe and perform all the covenants in the Bank's Security relating to all assets of the Company charged by the Bank's Security. Such observance and performance shall be deemed to constitute compliance with the covenants in the Funder's Security relating to such assets.

15 THE COMPANY'S ACKNOWLEDGEMENT

15.1 The Company acknowledges the priorities recorded in this Deed and agrees to observe the provisions of this Deed at all times and not in any way prejudice or affect the enforcement of such provisions.

15.2 The Company is party to this Deed to acknowledge the terms of this Deed and to accept the obligations on its part contained within this Deed. The Company shall not be entitled to rely upon or enforce any of the terms of this Deed as against any of the Creditors.

16 ENTIRE AGREEMENT

This Deed forms the entire agreement between the parties relating to the priority of their respective Securities and the application of the proceeds thereof and supersedes all earlier meetings, discussions, negotiations, correspondence, faxes, emails, letters, transactions, communications, understandings and arrangements of any kind so relating.

17 FORBEARANCE, FAILURES AND WAIVERS

17.1 No forbearance or failure by any party to exercise or assert or claim any rights or entitlement hereunder shall be construed (in the absence of a written agreement to a waiver or a written confirmation of a past waiver) as a waiver of that right or entitlement.

17.2 No waiver of any breach of any term of this Deed shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of a particular breach.

18 VARIATIONS

Save as otherwise provided herein, any variation of this Deed shall be binding only if it is recorded in a document signed by or on behalf of each Creditor.

19 EXPENSES

The Company shall pay, on demand, all reasonable costs and expenses (including VAT on them) incurred by each Creditor in connection with the preparation, negotiation and execution of this Deed, any amendment, supplement or waiver of it and any action to implement its terms, including legal advice in relation to this Deed.

20 SEVERABILITY

The provisions of this Deed shall be severable and distinct from each other. If at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of each of the remaining provisions of this Deed shall not in any way be affected, prejudiced or impaired thereby.

21 THIRD PARTY RIGHTS

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999.

22 PURCHASER

No purchaser dealing with any of the Creditors or any administrator or receiver appointed by any of them shall be concerned in any way with the provisions of this Deed and shall assume that the Creditors or any such administrator or receiver as the case may be are acting in accordance with the provisions of this Deed.

23 COUNTERPARTS

This Deed may be executed simultaneously in any number of 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.

24 NOTICES

- 24.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Deed shall be in writing.
- 24.2 Any such notice or other communication shall be sent to the address in the description of the parties above or as advised in accordance with Clause 24.3 and, if so addressed, shall be treated as having been duly given or made as follows:
- 24.2.1 if delivered by courier or handed over in person - at the time of delivery/handing over; or
- 24.2.2 if sent by post - 48 hours from the date of posting.
- 24.3 The address for service in accordance with Clause 24.2 shall be the recipient's address as detailed at the beginning of this Deed. However a party may notify the other parties to this Deed of an alternative address for the purposes of Clause 24.2 provided that such notification shall only be effective on:
- 24.3.1 the date specified in the notification as the date on which the change is to take place; or
- 24.3.2 if no date is specified, the date falling five clear Business Days after notice of any such change has been given.
- 24.4 For the avoidance of doubt, the parties agree that the provisions of this Clause shall not apply in relation to the service of any document by which any legal proceedings are commenced or continued or forming any part of such proceedings.

25 ASSIGNMENT

None of the Creditors shall assign, transfer, charge or otherwise dispose of any of its Security or any of its rights or obligations under it, or agree or attempt to do so unless the assignee or relevant transferee shall have agreed in writing that the assignment or transfer shall be subject to the terms of this Deed and that the assignee or transferee shall if so required by any of the Creditors (including the assignor or transferor) execute such document in confirmation of it as may be reasonably required.

26 LAW AND JURISDICTION

- 26.1 This Deed will be governed by and construed in accordance with English law and all claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this Deed, its subject matter, negotiation or formation will be determined in accordance with English law.
- 26.2 The Creditors and the Company submit to the non-exclusive jurisdiction of the courts of England and Wales in relation to all claims, disputes, differences or other matters (including non-contractual claims, disputes, differences or other matters) arising out of or in connection with this Deed.

IN WITNESS whereof the parties hereto have executed this Deed and have delivered it on the day and year first above written.

SCHEDULE

The Securities

Part I – the Bank Security Documents

Date

Particulars

Part II – the Funder Security Documents

Date

Particulars

Signed and Delivered)
by.....)
)
as Attorney of)
HSBC BANK PLC)
in the presence of: -)

.....
Attorney

.....
(Full name of witness)

.....
(Signature of witness)

Address

.....

Occupation

Executed as a deed by)
[THE FUNDER])
acting by

..... Director

..... Director/Secretary

Signed as a Deed)
by.....)
a director of)
[THE FUNDER])
in the presence of: -)

.....
Director (sole signatory only)

.....
(Full name of witness)

.....
(Signature of witness)

Address

.....

Occupation

Signed as a Deed)
by.....)
a director of)
[THE COMPANY])
in the presence of: -)

.....
Director (sole signatory only)

.....
(Full name of witness)

.....
(Signature of witness)

Address

.....

Occupation

Executed as a Deed by)
[THE COMPANY])
acting by

.....Director

.....Director/Secretary