

**THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD TAKE LEGAL ADVICE BEFORE SIGNING.**

**Owner:** \_\_\_\_\_ **Registered No:** \_\_\_\_\_

**Bank:** National Westminster Bank Plc

**Lender:** \_\_\_\_\_

**Bank's Address:** \_\_\_\_\_

## 1. Security

- 1.1 The **Bank's Security** is a Debenture dated \_\_\_ creating fixed and floating charges granted by the Owner (and includes any substituted or further security taken in the future).
- 1.2 The **Lender's Security** is a Debenture dated \_\_\_ creating fixed and floating charges granted by the Owner (and includes any substituted or further security taken in the future).

## 2. Sharing Agreement

- 2.1 The **Bank's Cap** is £\_\_\_ and the **Lender's Cap** is £\_\_\_, or any other Cap amounts as agreed between the Bank and the Lender.
- 2.2 The Bank's and the Lender's Security will rank equally as continuing securities. If either the Bank or the Lender holds an effective fixed charge and the other a floating charge over the same asset or class of assets then the fixed charge will rank in priority to the floating charge and the sharing arrangement will not apply.
- 2.3 The proceeds from the enforcement of any of the Bank's or the Lender's Security and/or any monies received in relation to the payment of i) a moratorium debt; or ii) a priority pre-moratorium debt; or iii) a pre-moratorium debt for which the Owner did not have a payment holiday and which was due by the Owner by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause and/ or as a result of demand for payment being made on the Owner by the Bank or Lender, will be distributed between the Bank and the Lender in proportion to the amount secured by each of the Bank's and the Lender's Security on the **Calculation Date** until either the Bank or the Lender has been repaid. For the purpose of calculating the proportions any excess above the Bank's Cap or the Lender's Cap will be disregarded. This will not limit the total amount recoverable by the Bank or the Lender from its Security.

The Calculation Date is the first date on which either the Bank or the Lender gives notice of intention to enforce their Security or when the Owner is wound up voluntarily or by Court order or an administration order is made.

- 2.4 The Bank and the Lender will hold on trust:
- 2.4.1 any net receipts from the enforcement of their Security or from an administrator or liquidator of the Owner in respect of their Security; and
- 2.4.2 any monies which they receive as payment of:
- 2.4.2.1 a moratorium debt;
  - 2.4.2.2 a priority pre-moratorium debt; or
  - 2.4.2.3 a pre-moratorium debt for which the Owner did not have a payment holiday and which was due by the Owner by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause and/ or as a result of demand for payment being made on the Owner by the Bank or Lender

to give effect to the sharing arrangement under this deed.

- 2.5 The sharing arrangement above will not be affected by;
  - 2.5.1 any fluctuations in the amounts secured by the Security, or any advances being made after the date of this deed.
  - 2.5.2 the existence at any time of a credit balance on any account.
  - 2.5.3 the crystallisation of the Bank's or Lender's floating charge before the other's.

### **3. Transfer**

- 3.1 The Bank or the Lender will ensure when transferring their Security that the transferee enters into a deed with the other party on the same terms as this deed.
- 3.2 References to the **Bank** and the **Lender** include their respective successors.

### **[4 Registration**

- 4.1 The Owner agrees to the registration of this deed at the Land Registry.
- 4.2 The Bank consents to the registration of the Lender's Security at the Land Registry, {on condition that the Lender registers this deed at the same time}<sup>1</sup>.]

### **5. Debts and Deposits**

- 5.1 The Owner will not be in breach of any terms concerning debts in the Bank's or the Lender's Security by reason of complying with terms in the other party's Security.
- 5.2 The Bank and the Lender may credit any payments received in respect of debts to any of the Owner's accounts with the Bank or the Lender.
- 5.3 If a credit balance exists at any time on an account of the Owner with the Bank or the Lender, regardless of whether the other party has any charge over that credit balance, the Bank or the Lender may:
  - 5.3.1 prior to the other party enforcing its security, permit the Owner to draw on the credit balance.
  - 5.3.2 at any time, set off any amount due to it from the Owner against the credit balance.

### **6. Enforcement**

- 6.1 Unless urgent independent action is considered necessary by either party to protect their security interests, the Bank and the Lender will:
  - 6.1.1 give notice to the other of their intention to enforce their Security before any enforcement takes place.
  - 6.1.2 consult with each other over the appointment of a suitable receiver or administrator.
  - 6.1.3 give notice of their intention to exercise any rights under an acceleration or early termination clause or their intention to make demand for payment whilst the Owner is subject to a moratorium before such rights are exercised.
- 6.2 If independent action is considered urgent without notice or consultation, then written notice must be given immediately to the other party and in any event:

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<sup>1</sup> Include where "Lender's Charge" is being granted at same time as sharing arrangement formalised.

- 6.2.1 the Bank or the Lender will not, without giving the other two business days notice, exercise any rights under an acceleration or early termination clause or make demand for payment whilst the Owner is subject to a moratorium.
- 6.2.2 the Bank or the Lender will not, without the other's consent, apply to the court for an administration order.
- 6.2.3 the Bank or the Lender will not, without giving the other two business days notice:
- take steps to appoint an administrator of the Owner or a receiver of any charged property.
  - issue a petition for the winding up of the Owner.

A **business day** is a weekday other than a national holiday.

- 6.3 Any receiver appointed by the [Bank][Lender]<sup>2</sup> has a prior right to possession of the charged property.

## **7. Waiver of Confidentiality**

The Owner agrees that the Bank and the Lender can disclose to each other any confidential information concerning the Owner's business affairs and accounts.

## **8. Title Deeds and Documents**

The Bank is entitled to hold all title deeds and documents relating to any charged property.

## **9. Notices**

- 9.1 All notices must be in writing.
- 9.2 Any notice by the Bank may be sent by post, fax or delivered to the Lender's registered office, or to the contact details last known to the Bank.
- 9.3 Any notice by the Lender may be sent by post or delivered to the Bank's Address.
- 9.4 A notice signed by an official of the Bank or the Lender will be effective at the time of personal delivery; on the second business day after posting; or, if by fax, at the time of sending, if sent before 6.00 p.m. on a business day or otherwise on the next business day.

## **10. Pre-enforcement Receipts**

Only net receipts from the enforcement of the Bank's or the Lender's Security will reduce or count towards the Bank's or the Lender's Cap.  
A receipt is from the "enforcement" of a Security if the Bank or the Lender has exercised a power in the Security to realise any of its security. Repayments or receipts in return for the release of any of the property charged or other rights before the Calculation Date, or the proceeds of set-off at any time, are not receipts from "enforcement" and will not reduce or count towards the Bank's or the Lender's Cap.

## **11. Companies House Registration**

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<sup>2</sup> Dependent upon the first dated charge.

