

IRRITANCY PROTECTION AGREEMENT



[between] [among]

[] LIMITED

[and]

[] LIMITED

[and]

[] LIMITED]

Property: []

Version 9
March 2018



IRRITANCY PROTECTION AGREEMENT

[between] [among]

- (1) [] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having its Registered Office at [] ("**Landlord**")

[and]
- (2) [] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having its Registered Office at [] ("**Subtenant**")

[and]
- (3) [] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having its Registered Office at [] ("**Guarantor**")

WHEREAS:

- (A) The Landlord is the landlord under the Lease granted in respect of [the Property] [subjects of which the Property forms part];
- (B) The Tenant is the tenant under the Lease and the landlord under the Sublease of the Property;
- (C) The Subtenant is the tenant under the Sublease;
- (D) The Landlord has agreed to grant a direct lease of the Property to the Subtenant in the circumstances set out in this Agreement;
- [(E) The Guarantor is a party to this Agreement for the purpose of confirming its consent to the terms of this Agreement, insofar as such consent may be required, and also to undertake to enter into such documentation as may be required for the purposes of Clauses 3 and 4.]

IT IS AGREED by the Parties as follows:

1. Definitions and Interpretation

1.1 In this Agreement:

"Business Day" means a day on which clearing banks in [Edinburgh, Glasgow and London] are open for normal business;

"Date of Entry" means the day following the date on which the Lease is irritated or otherwise terminated by the Landlord;

"Guarantee" means the guarantee between [] and [] dated [] and registered in the Books of Council and Session on [];]

"LBTT" means land and buildings transaction tax in terms of the Land and Buildings Transaction Tax (Scotland) Act 2013;

"Lease" means the lease between [] and [] dated [] and registered in the Books of Council and Session on [] [and also recorded in the Division of the General Register of Sasines for the County of [] on [] [and the tenant's [interest in] [right to] which is registered in the Land Register of Scotland under Title Number []];

Version 9
March 2018



["**New Guarantee**" means a guarantee by the Guarantor (or in substitution for it such other guarantor(s) as are acceptable to the Landlord) to the Landlord with effect from the Date of Entry on the same terms *mutatis mutandis* as the Guarantee;]

"**New Lease**" means a lease from the Landlord to the Subtenant with effect from the Date of Entry on the same terms *mutatis mutandis* as the Sublease for the unexpired Term, except that any works carried out by or on behalf of the Subtenant (or its predecessors as Tenant under the Sublease) are to be treated by reference to the date of entry under the Sublease and not to the Date of Entry;

"**Parties**" means the Landlord [and] the Subtenant [and the Guarantor];

"**Property**" means ALL and WHOLE [] being the subjects more particularly described in the Sublease;

"**Sublease**" means the sublease between [the Tenant] and [the Subtenant] dated [] and registered in the Books of Council and Session on [] [and also recorded in the Division of the General Register of Sasines for the County of [] on []] [and the Subtenant's [interest in] [right to] which is registered in the Land Register of Scotland under Title Number []];

"**Tenant**" means [] Limited, incorporated under the Companies Acts (Registered Number []) and having its registered office at [] and its permitted successors and assignees under the Lease; and

"**Term**" means the term of the Sublease[together with any continuation of it whether by Act of Parliament, tacit relocation or otherwise].

1.2 In this Agreement, unless otherwise specified or the context otherwise requires:

1.2.1 words importing any gender include all other genders;

1.2.2 words importing the singular number only include the plural number and *vice versa*;

1.2.3 where at any one time there are two or more persons included in the expression the "Subtenant" [or "Guarantor"] obligations contained in this Agreement which are expressed to be made by the "Subtenant" [or "Guarantor"] are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;

1.2.4 in the case where the Subtenant is a firm or partnership:

(a) the obligations of the Subtenant under this Agreement are binding jointly and severally on all persons who are or become partners of the firm at any time and their respective executors and representatives whomsoever as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order;

(b) except in the circumstances set out in Clause 1.2.4 (c) the obligations set out in Clause 1.2.4 (a) remain in full force and effect notwithstanding:

(i) the dissolution of the firm or partnership;

(ii) any change or changes which may take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner; or

(iii) a change in the firm name.

- (c) if any person, who by virtue of his being a partner, is bound to implement the Subtenant's obligations, then on such person ceasing to be a partner (whether by death or retirement or otherwise) the Landlord, on request, will release such person and his representatives from all obligations on the Subtenant under this Agreement subsequent to the date when such person ceases to be a partner (or, if later, the date of such request) provided that it is established to the Landlord's reasonable satisfaction that any such release does not materially prejudicially affect the strength of the Subtenant's financial covenant or its ability to implement its obligations under this Agreement;

- 1.2.5 words importing persons include corporations and *vice versa*;
 - 1.2.6 references to the Lease or to any other document are references to the Lease or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
 - 1.2.7 any reference to a Clause is to the relevant Clause of this Agreement;
 - 1.2.8 unless expressly stated to the contrary in this Agreement, reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and will include any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision;
 - 1.2.9 any phrase introduced by the words "including", "include", "in particular" or any similar expression is illustrative only and is not to be construed as limiting the generality of any preceding words.
- 1.3 The headings in this Agreement are included for convenience only and are to be ignored in construing this Agreement.
2. **Irritancy protection**
- 2.1 If the Lease is irritated by the Landlord then:
- 2.1.1 provided that the Lease was not irritated as a result of an act or omission of the Subtenant or those for whom it is responsible at law, the Landlord will serve a written notice on the Subtenant advising it of the irritancy within [five] Business Days after the date on which the irritancy notice has been served on the Tenant;
 - 2.1.2 the Subtenant will be entitled to require the Landlord to grant to it a New Lease by serving written notice to this effect on the Landlord within [15] Business Days after receipt of the Landlord's notice;
- 2.2 On receipt of the Subtenant's notice the Landlord and the Subtenant will be bound to enter into the New Lease.
3. **New Lease [and New Guarantee]**
- 3.1 Within [15] Business Days from and including the date of receipt of the Subtenant's notice, the Landlord will prepare the engrossment of the New Lease [and the New Guarantee].
 - 3.2 [The Landlord will send the engrossed New Guarantee to the Guarantor's solicitors and the Guarantor will execute the New Guarantee and return it to the Landlord's solicitors within [10] Business Days of receipt of the engrossment by the Guarantor's solicitors.]

- 3.3 [The Landlord will execute the New Guarantee within [10] Business Days of receipt of the New Guarantee duly executed by the Guarantor together with evidence of the valid execution of the New Guarantee.]
- 3.4 The Landlord will send the engrossed New Lease to the Subtenant's solicitors and the Subtenant will execute the New Lease and return it to the Landlord's solicitors together with evidence of the valid execution of the New Lease within [10] Business Days of the date of delivery of the engrossment to the Subtenant's solicitors.
- 3.5 The Landlord will execute the New Lease within [10] Business Days of receipt of the New Lease executed by the Subtenant together with evidence of the valid execution of the New Lease.
- 3.6 If the grant of the New Lease is notifiable for LBTT purposes, the Subtenant will submit to Revenue Scotland within [10] Business Days after the effective date of the transaction an LBTT return.
- 3.7 The Subtenant will, not later than five Business Days after the date of submission of the LBTT return make payment of the correct amount of any LBTT to Revenue Scotland.
- 3.8 If prior to the issue of an electronic submission receipt for the LBTT return, Revenue Scotland rejects the Subtenant's LBTT return, the Subtenant will without delay (a) provide the Landlord with a copy of any such rejection and other relevant correspondence and (b) correct the application and resubmit it and a remittance for the correct amount of the LBTT to Revenue Scotland.
- 3.9 Within [five] Business Days after receipt from Revenue Scotland, the Subtenant will deliver to the Landlord's solicitors a copy of the electronic submission receipt issued by Revenue Scotland and will confirm that any LBTT has been paid [or that arrangements satisfactory for payment of any LBTT are in place and that payment arrangements have been initiated and will not be cancelled or recalled].
- 3.10 The Landlord will, within [five] Business Days after receipt of the electronic submission receipt, and confirmation of payment from the Subtenant, submit the New Lease [, and the New Guarantee] to the Books of Council and Session for registration for preservation and execution and will obtain [three] extracts of [it] [them]. Within [five] Business Days after receipt, the Landlord will deliver one extract of the New Lease [and one extract of the New Guarantee] to the Subtenant.
- 3.11 The Subtenant acknowledges that if it breaches the terms of its obligations in this Clause it will indemnify the Landlord in respect of loss suffered by the Landlord by virtue of such breach.
- 3.12 If the New Lease qualifies to be registered in the Land Register of Scotland, the Subtenant will be responsible for dealing with such registration and will:
 - 3.12.1 within [five] Business Days after receipt by the Subtenant of the electronic submission receipt issued by Revenue Scotland submit the New Lease [, and the New Guarantee] to the Books of Council and Session for registration for preservation and execution and will obtain [three] extracts of [it] [them], and will deliver [two] of the extracts to the Landlord's solicitors within [five] Business Days after receipt of the extracts;
 - 3.12.2 within [10] Business Days after receipt by the Subtenant provide the Landlord with (a) a copy of the Keeper's email acknowledgement of receipt for the application for the Subtenant's interest and (b) a copy of the Keeper's confirmation that the application has been accepted, with a PDF version of the title sheet showing the Subtenant as registered proprietor of the Tenant's right in the New Lease.

- 3.13 From the date of receipt by the Landlord of the Subtenant's notice referred to in Clause 2.2 the Parties will be bound by the terms of the New Lease [and the New Guarantee] as if the New Lease [and New Guarantee] had been executed by the appropriate parties.

4. **[Guarantee**

The Guarantor or any substitute Guarantor is bound to enter into the New Guarantee in accordance with Clause 3.2, failing which the Landlord, at its sole discretion, may refuse to grant the New Lease.]

5. **Costs**

- 5.1 The Subtenant will pay within five Business Days after written demand the costs and expenses reasonably and properly incurred by the Landlord and its solicitors in connection with:

5.1.1 the preparation, execution and completion of this Agreement; [and]

5.1.2 the preparation, execution and completion of the New Lease; and

5.1.3 the preparation, execution and completion of the New Guarantee].

- 5.2 The Subtenant will pay within five Business Days after written demand the costs of registering this Agreement in the Books of Council and Session and obtaining [three] extracts ([two] for the Landlord and [one] for the Subtenant).

- 5.3 The Subtenant will pay within five Business Days after written demand the costs of registering the New Lease [and the New Guarantee] in the Books of Council and Session and, if appropriate, in the Land Register of Scotland and obtaining [two] extracts ([one] for the Landlord and [one] for the Subtenant).

6. **Alienation**

The Landlord undertakes to the Subtenant to bind any party to whom the Landlord disposes of their interest in the Lease [insofar as relating to the Property] either:

- 6.1 to enter into an agreement with the Subtenant on the same terms *mutatis mutandis* as the terms of this Agreement including this Clause; or
- 6.2 if the Parties so agree, to take an assignation of the Landlord's interest in this Agreement from the Landlord.

7. **Notices**

- 7.1 Any notice, request or consent under this Agreement will be in writing.
- 7.2 Any notice to the Subtenant will be sufficiently served if sent by recorded delivery post (if the Subtenant is an incorporated body) to its registered office and (if the Subtenant is a person) to his last known address in Great Britain or Northern Ireland or to the Property and (if the Subtenant is a firm) to the firm and any one or more of its partners at the Property and (in any other case) to the Subtenant at the Property.
- 7.3 Any notice to the Landlord (if an incorporated body) will be sufficiently served if sent by recorded delivery post to its head or registered office and (if the Landlord is a person) will be sufficiently served if sent by recorded delivery post to him at his last known address in Great Britain or Northern Ireland.
- 7.4 [Any notice to the Guarantor (if an incorporated body) will be sufficiently served if sent by recorded delivery post to its head or registered office and (if the Guarantor is a person) will be

sufficiently served if sent by recorded delivery post to him at his last known address in Great Britain or Northern Ireland.]

- 7.5 Any notice sent by recorded delivery post will be deemed duly served at the expiry of two days after the day of posting. In proving service it will be sufficient to prove that the envelope containing the notice was duly addressed to the Subtenant or the Landlord [or the Guarantor] (as the case may be) in accordance with this Clause and posted to the place to which it was so addressed.

8. **Contract (Third Party Rights) (Scotland) Act 2017**

This Agreement does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Agreement.

9. **Consent to registration**

The Parties consent to registration of this Agreement for preservation and execution: IN WITNESS WHEREOF