

DEPOSIT AGREEMENT



between

[] **LIMITED**

and

[] **LIMITED**

Property: []

Version 13
January 2023



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DEPOSIT AGREEMENT

between

[] **LIMITED**, incorporated under the Companies Acts (Registered Number []) and having its Registered Office at [], and includes where the context so requires its successors as Landlord under the Lease ("Landlord")

and

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

WHEREAS:

- (A) The Landlord is the landlord under the Lease;
- (B) The Tenant is the tenant under the Lease;
- (C) The Landlord has requested, and the Tenant has agreed to lodge with the Landlord, the Deposit which is to be held by the Landlord as security for the due performance by the Tenant of its obligations under the Lease.

The Parties agree 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;

"Deposit" means the sum of [] POUNDS (£[]) Sterling [together with the sum of [] POUNDS (£[]) Sterling (being the equivalent of VAT on it)] or such greater sum(s) as will, from time to time, be required in terms of Clause 2.3;

"Deposit Account" means an account in the name of the Landlord in terms of Clause 2 which will be an interest-bearing account only if such an account is generally available in the UK for rent deposits;

"Deposit Fund" means the balance (including any Interest) of the Deposit Account at any given time;

"Interest" means any interest accruing on the Deposit Account from time to time;

"Lease" means the lease between [] and [] dated [] and [about to be] 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 []];

"Parties" means the Landlord and the Tenant;

"Prescribed Rate" means the rate of interest payable in respect of late payment of rent and other sums due in terms of the Lease;

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

"Term" means the term of the Lease together with any continuation whether by Act of Parliament, tacit relocation or otherwise; and

"**VAT**" means value added tax as provided for in the Value Added Tax Act 1994 and any tax similar or equivalent to value added tax or performing a similar fiscal function.

- 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 only include the plural and vice versa;
 - 1.2.3 words importing the whole are to be treated as including reference to any part of the whole;
 - 1.2.4 where at any one time there are two or more persons included in the expression "Tenant", obligations contained in this Agreement which are expressed to be made by the Tenant are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;
 - 1.2.5 words importing individuals include corporations and vice versa;
 - 1.2.6 references to this Agreement or to any other document are to be construed as references to this Agreement 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, schedule or part of the schedule is to the relevant clause, schedule or part of the schedule of or to this Agreement;
 - 1.2.8 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words; and
 - 1.2.9 any obligation on, or right granted or reserved to, the Landlord may be fulfilled or exercised by managing agents in place of or in addition to the Landlord.
- 1.3 The headings in this Agreement are included for convenience only and are to be ignored in construing this Agreement.

2. **Deposit Account and Deposit Fund**

- 2.1 The Tenant will pay to the Landlord the Deposit and, within five Business Days after receipt, the Landlord will place the Deposit in the Deposit Account to be held, subject to the remaining provisions of this Agreement, throughout the Term.
- 2.2 In so far as not applied by the Landlord in accordance with the provisions of this Agreement, the Deposit Fund will be held by the Landlord in trust for both the Landlord and the Tenant so that the Landlord will have the right to apply the Deposit Fund in accordance with the provisions of this Agreement and the Tenant retains its right to the Interest (in accordance with the provisions of Clause 3.2) and its reversionary interest in the Deposit Fund.
- 2.3 The Tenant will be required at all times to maintain the Deposit Fund in an amount not less than the Deposit [so that throughout the duration of this Agreement the Deposit will be the equivalent of [] months rent payable under the Lease from time to time] and if:
 - 2.3.1 the annual rent payable under the Lease is increased from time to time in accordance with any provisions for review contained in the Lease,
 - 2.3.2 the Landlord withdraws any part of the Deposit Fund in accordance with provisions of this Agreement, [or]
 - 2.3.3 [the rate of VAT increases, or]

2.3.4 [for any other reason whatsoever, the Deposit Fund becomes less than the Deposit]

then the Tenant will lodge with the Landlord within five Business Days after written demand such further sum (certified by the Landlord as aftermentioned) as represents the difference between the Deposit Fund and the Deposit at the time in question, failing which interest will run on such sum at the Prescribed Rate from the date of demand until the date of payment.

3. **Interest Earned on Deposit Account**

3.1 Interest will beneficially accrue to and be the property of the Tenant and the Tenant will be responsible for accounting for it to HM Revenue & Customs. Without prejudice to the Tenant's obligation to account to HM Revenue & Customs for the Interest, the Landlord will be entitled to advise HM Revenue & Customs of the name and address of the Tenant and the amount of the Interest.

3.2 The Interest will be left in the Deposit Account and will form part of the Deposit Fund.

3.3 The Tenant will be entitled (but not more frequently than once in any year) by written demand to require the Landlord to uplift from the Deposit Account an amount equal to any Interest and, subject to any deductions required to be made by the Landlord at law, to pay it to the Tenant provided that no such payment will be made if:

- 3.3.1 at the date of such demand, the Tenant has not complied with its monetary obligations under the Lease; or
- 3.3.2 such payment would cause the Deposit Fund to be less than the Deposit.

4. **Provision of Account Details**

4.1 On reasonable written request from the Tenant (but not more frequently than once in every year), the Landlord will provide the Tenant with:

- 4.1.1 details of the Deposit Account; and
- 4.1.2 a written statement of the Interest.

4.2 The Landlord will, on payment to the Tenant of the Deposit Fund in accordance with Clause 6, provide the Tenant with a written statement showing all deposits and withdrawals made by the Landlord and all Interest received or remitted by it to the Tenant in accordance with the provisions of this Agreement.

5. **Withdrawals by the Landlord**

The Landlord may, at any time, withdraw and pay to themselves from the Deposit Fund:

5.1 on each occasion that the Tenant fails to pay the rent or other sums (whether or not any formal demand has been made) for which the Tenant is responsible in terms of the Lease or under this Agreement, an amount equal to such rent or other sums due plus any VAT chargeable and interest due on them as provided for in the Lease;

5.2 on each occasion that the Tenant is in breach of any of its obligations under the Lease and such breach has not been remedied within such reasonable time as may be determined by the Landlord (having regard to the nature and extent of the breach) and notified in writing to the Tenant, a sum or sums plus any VAT chargeable on them as will meet or go towards meeting the cost to the Landlord of making good such breach and all loss suffered by the Landlord as a consequence of such breach (including, without prejudice to the foregoing generality, the professional costs properly incurred by the Landlord);

5.3 if:

- 5.3.1 the Tenant goes into liquidation, including provisional liquidation or a petition is presented or resolution proposed or passed for its liquidation;
- 5.3.2 the Tenant has a receiver appointed in respect of any part of its undertaking or assets;
- 5.3.3 [the Tenant (not being a corporate body) has its estates sequestrated or becomes insolvent or apparently insolvent or signs a trust deed for creditors or effects or proposes any general composition with its creditors;]
- 5.3.4 the Tenant is dissolved, struck off or otherwise ceases to exist;
- 5.3.5 the Tenant has an administrator appointed or a petition is presented for the appointment of an administrator or notice of intention to appoint an administrator is given;
- 5.3.6 the Tenant begins negotiations in relation to, enters into proposes or makes, institutes or gives notice of or indicates an intention to institute a voluntary arrangement or composition in respect of its debts (or any class of them) or affairs including a company voluntary arrangement, a scheme of arrangement or restructuring plan, or any court order is made or meeting is held in relation to any such arrangement or composition, or approval of any of such arrangement or composition takes effect;
- 5.3.7 a moratorium procedure is commenced or steps are taken to obtain a moratorium (including a moratorium in terms of Part A1 of the Insolvency Act 1986), or, any other proceedings for the benefit of the Tenant's creditors are commenced under any law, regulation or procedure relating to the reconstruction or readjustment of debt;
- 5.3.8 the Tenant becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 5.3.9 an event occurs in any jurisdiction in relation to the Tenant which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs 5.3.1- 5.3.8 above;

the whole of the Deposit Fund; and

- 5.4 if the Lease is irritated for any reason, the whole of the Deposit Fund.

6. **Return of Deposit Fund**

The Landlord will pay to the Tenant the Deposit Fund within one month after:

- 6.1 the intimation of any permitted assignation by the Tenant of its interest under the Lease;
- 6.2 the expiry of the Term, provided that the Tenant has then complied with its obligations under the Lease;
- 6.3 the renunciation by the Tenant of its interest under the Lease;
- 6.4 [the date on which the Tenant has provided to the Landlord audited annual accounts disclosing that the net pre-tax profits of the Tenant for each of the three consecutive financial years of the Tenant immediately preceding the date on which such audited accounts are produced exceed three times the aggregate of:
 - 6.4.1 the annual rent and any service charge payable in terms of the Lease, and
 - 6.4.2 the non-domestic rates (or equivalent) for the Property then payable]; or
- 6.5 such earlier date as the Landlord may, in its sole discretion, determine.

7. Landlord's Remedies

- 7.1 Any breach by the Tenant of the provisions of this Agreement will constitute a breach of the Tenant's obligations under the Lease and the Landlord will be entitled to exercise its rights of irritancy and others under the Lease in relation to any such breach of this Agreement and the Landlord's rights contained in this Agreement will be in addition to, and without prejudice to, its rights and remedies under the Lease.
- 7.2 The Tenant acknowledges that, subject only to Clause 7.1, this Agreement and the holding by the Landlord of the Deposit Fund will be a matter entirely separate from the Lease and will not be a defence (whether by way of set-off or otherwise) to any action for payment by the Landlord under the Lease or to any irritancy of the Lease.

8. Alienation

- 8.1 If the Landlord disposes of its interest as the Landlord under the Lease, it will:
 - 8.1.1 assign to the party acquiring such interest the Landlord's rights and obligations under this Agreement; and
 - 8.1.2 transfer to such party the Deposit Fund.

- 8.2 The Tenant is not entitled to assign its interest in this Agreement.

9. Costs

- 9.1 The Tenant will pay to the Landlord within five Business Days after written demand all bank costs in connection with the operation of the Deposit Account, failing which the Landlord will, without prejudice to its other rights and remedies, be entitled to pay them out of the Deposit Fund.
- 9.2 [Each of the Parties will bear its own costs and expenses] [The Tenant will pay within five Business Days after written demand the costs and expenses reasonably and properly incurred by the Landlord] in connection with the preparation and completion of this Agreement.
- 9.3 The Tenant 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 Tenant).

10. Certificate

A certificate or statement signed by any authorised signatory on behalf of the Landlord will be conclusive and binding on the Parties, except in the case of manifest or demonstrable error.

11. 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.

12. Applicable Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the law of Scotland and in so far as not already subject to it, the Parties irrevocably submit to the exclusive jurisdiction of the Scottish Courts.

13. **Consent to Registration**

The Parties consent to registration of this Agreement and of any certificate or statement under it for preservation and execution: IN WITNESS WHEREOF