

DEPOSIT AGREEMENT



between

[]

and

[]

Property: []

Version 7
July 2012



DEPOSIT AGREEMENT

between

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

and

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

WHEREAS:

- (A) The Landlords are the landlords under the Lease;
- (B) The Tenants are the tenants under the Lease;
- (C) The Landlords have requested, and the Tenants have agreed to lodge with the Landlords, the Deposit which is to be held by the Landlords as security for the due performance by the Tenants of their obligations under the Lease.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement:

"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 interest-bearing account in the name of the Landlords in terms of Clause 2;

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

"Interest" means the 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 tenants' interest in which is registered in the Land Register of Scotland under Title Number []];

"Parties" means the Landlords and the Tenants;

"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;

"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;

"Working Day" means any day other than a Saturday, Sunday or a bank, local or statutory holiday in [Edinburgh, Glasgow or London].

- 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 "Tenants", obligations contained in this Agreement which are expressed to be made by the Tenants 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;
 - 1.2.9 any obligation on, or right granted or reserved to, the Landlords may be fulfilled or exercised by managing agents in place of or in addition to the Landlords.
- 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 Tenants will pay to the Landlords the Deposit and, within five Working Days after receipt, the Landlords 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 Landlords in accordance with the provisions of this Agreement, the Deposit Fund will be held by the Landlords in trust for both the Landlords and the Tenants so that the Landlords have the right to apply the Deposit Fund in accordance with the provisions of this Agreement and the Tenants retain their right to the Interest (in accordance with the provisions of Clause 3.2) and their reversionary interest in the Deposit Fund.
- 2.3 The Tenants 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 Landlords withdraw 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 Tenants will lodge with the Landlords within five Working Days after written demand such further sum (certified by the Landlords 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 Tenants and the Tenants will be responsible for accounting for it to HM Revenue & Customs. Without prejudice to the Tenants' obligation to account to HM Revenue & Customs for the Interest, the Landlords will be entitled to advise HM Revenue & Customs of the name and address of the Tenants 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 Tenants will be entitled (but not more frequently than once in any year) by written demand to require the Landlords to uplift from the Deposit Account an amount equal to any Interest and, subject to any deductions required to be made by the Landlords at law, to pay it to the Tenants provided that no such payment will be made if:-
- 3.3.1 at the date of such demand, the Tenants have not complied with their 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 Tenants (but not more frequently than once in every year), the Landlords will provide the Tenants with:-
- 4.1.1 details of the Deposit Account; and
- 4.1.2 a written statement of the Interest.
- 4.2 The Landlords will, on payment to the Tenants of the Deposit Fund in accordance with Clause 6, provide the Tenants with a written statement showing all deposits and withdrawals made by the Landlords and all Interest received or remitted by them to the Tenants in accordance with the provisions of this Agreement.

5. Withdrawals by the Landlords

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

- 5.1 on each occasion that the Tenants fail to pay the rent or other sums (whether or not any formal demand has been made) for which the Tenants are 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 Tenants are in breach of any of their obligations under the Lease and such breach has not been remedied within such reasonable time as may be determined by the Landlords (having regard to the nature and extent of the breach) and notified in writing to the Tenants, a sum or sums plus any VAT chargeable on them as will meet or go towards meeting the cost to the Landlords of making good such breach and all loss suffered by the Landlords as a consequence of such breach (including, without prejudice to the foregoing generality, the professional costs properly incurred by the Landlords);

5.3 on the appointment of a liquidator or a receiver or an administrator to the Tenants or the making of a winding-up order or administration order in respect of the Tenants or the making of a voluntary arrangement in respect of the Tenants, 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 Landlords will pay to the Tenants the Deposit Fund within one month after:-

6.1 the intimation of any permitted assignment by the Tenants of their interest under the Lease;

6.2 the expiry of the Term, provided that the Tenants have then complied with their obligations under the Lease;

6.3 the renunciation by the Tenants of their interest under the Lease;

6.4 [the date on which the Tenants have provided to the Landlords audited annual accounts disclosing that the net pre-tax profits of the Tenants for each of the three consecutive financial years of the Tenants 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 Landlords may, in their sole discretion, determine.

7. **Landlords' Remedies**

7.1 Any breach by the Tenants of the provisions of this Agreement will constitute a breach of the Tenants' obligations under the Lease and the Landlords will be entitled to exercise their rights of irritancy and others under the Lease in relation to any such breach of this Agreement and the Landlords' rights contained in this Agreement will be in addition to, and without prejudice to, their rights and remedies under the Lease.

7.2 The Tenants acknowledge that, subject only to Clause 7.1, this Agreement and the holding by the Landlords 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 Landlords under the Lease or to any irritancy of the Lease.

8. **Alienation**

8.1 If the Landlords dispose of their interest as the landlords under the Lease, they will:-

8.1.1 assign to the party acquiring such interest the rights and obligations under this Agreement; and

8.1.2 transfer to such party the Deposit Fund.

8.2 The Tenants are not entitled to assign their interest in this Agreement.

9. **Costs**

9.1 The Tenants will pay to the Landlords within five Working Days after written demand all bank costs in connection with the operation of the Deposit Account, failing which the Landlords will, without prejudice to their other rights and remedies, be entitled to pay them out of the Deposit Fund.

9.2 [Each of the Parties will bear their own costs and expenses] [The Tenants will pay within five Working Days after written demand the costs and expenses reasonably and properly incurred by the Landlords] in connection with the preparation and completion of this Agreement.

9.3 The Tenants will pay within five Working Days after written demand the costs of registering this Agreement in the Books of Council and Session and obtaining [three] Extracts ([two] for the Landlords and [one] for the Tenants).

10. **Certificate**

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

11. **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 non-exclusive jurisdiction of the Scottish Courts.

12. **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