**This is an important document. You should take independent legal advice before signing**

**RANKING AGREEMENT**

**Definitions**

|  |  |
| --- | --- |
| **Security Agent:****Secured Parties:** | [ ] (registered number [ ]) as security agent for the Secured Parties (as defined below)[ ] (registered number [ ]) and [ ] (registered number [ ]) and their respective successors (and **Secured Party** shall mean any such person). The Lender and the Company acknowledge and agree that the rights and interests of the Security Agent and the Secured Parties under the Ranking Agreement are subject to the terms of the intercreditor agreement entered into between the Security Agent and the Secured Parties in connection with the Company's obligations to the Secured Parties as amended, supplemented, varied or restated from time to time |
| **Security Agent's Floating Charge:** | The Bond and Floating Charge granted by the Customer in favour of the Security Agent [dated [ ]] [dated on or around the date of the Customer's execution of the Ranking Agreement] [and registered in the Register of Companies in Edinburgh on [ ]] |
| **[****Security Agent's Priority:][[1]](#footnote-1)** | [All sums due and to become due to the Secured Parties in any way including all interest, charges and expenses]/[ £ [ ] of principal[ plus interest and expenses]/[plus 1 year's interest and expenses]/[inclusive of interest and expenses]] |
| **[****Security Agent’s Sharing Limit][[2]](#footnote-2)** | £[ ] |
| **Creditors:** | The Security Agent and the Lender |
| **Customer:** | **[ ]** |
| **Lender:** | **[ ]** |
| **Lender's Floating Charge** | The Bond and Floating Charge granted by the Customer in favour of the Lender [dated] [dated on or around the date of the Customer's execution of the Ranking Agreement] [and registered in the Register of Companies in Edinburgh on [ ]] |
| **[Lender's Priority:][[3]](#footnote-3)** | [All sums due and to become due to the Lender in any way including all interest, charges and expenses]/[£[             ] of principal [plus interest and expenses]/[plus 1 year's interest and expenses]/[inclusive of interest and expenses]] |
| **[Lender’s Sharing Limit:][[4]](#footnote-4)** | £[ ] |
| **Parties** | The Creditors and the Customer |
| **Securities:** | The Security Agent’s Floating Charge and the Lender’s Floating Charge |

1. Interpretation
	1. The expressions "Security Agent", "Lender" and "Secured Parties" include their respective successors and assignees.
	2. A reference to a provision of law is to that provision as amended or re-enacted.
2. Consent

The Creditors consent to the creation by the Customer of the Securities.

1. Ranking

[Priority Limits]

The Parties agree that the Securities shall rank in the following order of priority:-

* 1. the [Security Agent's/Lender’s] Floating Charge to the extent of the [Security Agent's/Lender’s] Priority,
	2. the [Lender's/Security Agent’s] Floating Charge to the extent of the [Security Agent's/Lender’s] Priority[and]
	3. [the [Security Agent’s/Lender’s] Floating Charge to an unlimited extent.]

[Sharing]

 The Parties agree that the Securities shall rank on an equal footing so that any sums realised from them shall be shared proportionally between the Creditors in the same ratio as their respective Sharing Limits. This will not limit the total amount recoverable by the Security Agent or the Lender from its Floating Charge.

1. Alteration of Securities

The Ranking Agreement shall be construed and shall receive effect as an Instrument of Alteration within the meaning of section 466 of the Companies Act 1985.

1. Exclusion of legal rules

Notwithstanding the date or dates when sums may be advanced or the Securities were created or any fluctuations from time to time in the sums secured by the Securities or any rule of law which might operate to the contrary effect, the provisions of Clause 3 shall be valid and effective.

1. Assignation

The Creditors and any other Secured Party shall be entitled to assign or otherwise transfer or dispose of the benefit of their respective interests in the Securities without the consent of the other Creditors and other Secured Party, as applicable, provided that the assignee or transferee undertakes in writing to the other Creditor or Secured Party, as the case may be, to be bound by the terms of the Ranking Agreement and to enter into all necessary documentation to give effect to that undertaking.

1. Disclosure of information

During the joint continuance of the Securities each of the Creditors and any Secured Party may disclose to the other information concerning the Customer and its affairs in a manner and to such extent as the Creditors and the Secured Parties shall agree and the Customer consents to such disclosure.

1. Compensation

Each of the Creditors, and the Security Agent on behalf of the Secured Parties, undertakes to the other that in the event of the proceeds of the sale of any assets of the Customer being distributed, whether by an insolvency practitioner or by the Customer, otherwise than in accordance with Clause 3 and the other is prejudiced as a result, it will compensate the other in order to give effect to Clause 3.

1. Preferential payments

In the event of the appointment of a receiver, monitor, administrator or liquidator of the Customer, if any Creditor or Secured Party receives any preferential payment arising from the rules of Insolvency that preferential payment shall not be treated as reducing the Security Agent’s [Priority/Sharing Limit] nor the Lender’s [Priority/Sharing Limit], as the case may be.

1. Duty to Consult
	1. Unless independent action is considered necessary by either of the Creditors to protect their security interests, the Security Agent and the Lender will:

10.1.1 give notice to the other of their intention to enforce their Securities before any enforcement takes place.

10.1.2 consult with each other over the appointment of a suitable receiver or administrator.

10.1.3 give written notice to the other of their intention to exercise any rights under an acceleration or early termination clause or their intention to make demand for payment whilst the Customer is subject to moratorium before any right of acceleration or early termination takes place.

* 1. If independent action is considered necessary without notice or consultation, then written notice must be given immediately to the other party and in any event:

10.2.1 [[the Lender/the Security Agent] as postponed lender will not, without giving [the Security Agent/the Lender]]/[the Security Agent or the Lender will not, without giving the other] two business days written notice exercise any rights under an acceleration or early termination clause or make demand for repayment whilst the Customer is subject to a moratorium.

10.2.2 [[the Lender/the Security Agent] as postponed lender will not, without [the Security Agent’s/the Lender’s] consent]/[the Security Agent or the Lender will not, without the other’s consent,] apply to the court for an administration order.

10.2.3 [[the Lender/the Security Agent] as postponed lender will not, without giving [the Security Agent/the Lender]]/[the Security Agent or the Lender will not, without giving the other] two business days written notice:

- take steps to appoint an administrator or receiver of the Customer; or

- issue a petition for the winding up of the Customer.

1. Severability

If any provision of the Ranking Agreement is or becomes invalid, illegal or unenforceable the validity, legality or enforceability of the remaining terms of the Ranking Agreement shall not be affected.

1. **Other Security**

The Security Agent or any other Secured Party enforcing, releasing or transferring any guarantees or other securities which it may hold on account of the Customer’s obligations will not affect the Ranking Agreement.

1. Governing law

The Ranking Agreement shall be governed by and construed in accordance with the law of Scotland.

**14 Third party beneficiaries**

14.1 The Parties acknowledge and agree that the rights and interests granted to the Security Agent and the Secured Parties under this Ranking Agreement are subject to the terms of the intercreditor agreement entered into between the Security Agent and the Secured Parties in connection with the Customer's obligations to the Secured Parties as amended, supplemented, varied or restated from time to time.

14.2 A Secured Party may enforce and enjoy the benefit of any term of the Ranking Agreement in accordance with the Contract (Third Party Rights) (Scotland) Act 2017.

14.3 The consent of any person who is not a party hereto is not required to rescind or vary the Ranking Agreement at any time.

**15** Testing clause

 The Ranking Agreement is executed as follows:

**Note:** block testing clauses to be added for each of the Parties.

1. Only if ranking is on a priority basis. [↑](#footnote-ref-1)
2. Only if ranking is on a sharing basis [↑](#footnote-ref-2)
3. Only if ranking is on a priority basis. [↑](#footnote-ref-3)
4. Only if ranking is on a sharing basis [↑](#footnote-ref-4)