

Deed of Priority

Dated

- (1) []
- (2) []
- (3) []

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This Deed is made on

Between:

- (1) [] (company number) incorporated and registered in England and Wales with company number [] whose registered office is at [] (the "**Senior Creditor**");
- (2) [] incorporated and registered in England and Wales with company number [] whose registered office is at [] (the "**Junior Creditor**");
- (3) [] incorporated and registered in England and Wales with company number [] whose registered office is at [] (the "**Borrower**")

Background:

- (A) The Senior Creditor has provided the Senior Debt to the Borrower and the Borrower has entered into the Senior Security Documents to secure the Senior Debt.
- (B) The Junior Creditor has provided the Junior Debt to the Borrower and the Borrower has entered into the Junior Security Documents to secure the Junior Debt.
- (C) The Senior Creditor and the Junior Creditor have agreed that the priority of the Senior Security Interests and the Junior Security Interests for the Senior Debt and the Junior Debt respectively shall be as set out in this deed.
- (D) The Borrower has agreed to enter into this deed to acknowledge its terms and to give certain covenants to the Creditors.

It is agreed as follows:

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this deed.

" Beneficiaries "	the Creditors, a Receiver or any Delegate;
" Business Day "	a day other than a Saturday, Sunday or public holiday in England when banks in London or the banks in the Isle of Man or are open for business;
" Creditor "	the Senior Creditor or the Junior Creditor;
" Debt Document "	any Junior Debt Document or any Senior Debt Document;
" Delegate "	any person appointed by the Receiver under the terms of the Security Documents and any person appointed as attorney of the Receiver or delegate;

"Enforcement Date"	<p>the Business Day following the date on which a Creditor receives written notice from the other Creditor that the other Creditor has taken action to:</p> <ul style="list-style-type: none"> (a) demand repayment or payment of any of the Liabilities secured by the Security constituted by any of its Security Documents; (b) enforce any of that Security; or (c) take possession of any asset subject to any Security;
"Junior Debt"	all Liabilities which are or may become payable or owing by the Borrower to the Junior Creditor pursuant to the loan agreement dated on or about the date of this Deed between the Borrower and the Junior Creditor and which are secured by any Junior Security Interest;
"Junior Debt Document"	each document in relation to the Junior Debt (including, without limitation, the Junior Security Document);
"Junior Security Document"	a legal charge created over the Property dated on or about the date of this deed granted by the Borrower in favour of the Junior Creditor;
"Junior Security Interest"	any Security in favour of the Junior Creditor created by the Junior Security Document;
"Liabilities"	all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity;
"Property"	the freehold property known as (registered at the land registry with title number);
"Receiver"	a receiver, receiver and manager or administrative receiver appointed by either Creditor pursuant to the provisions of its Security Documents;
"Security"	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;
"Security Document"	any Senior Security Document or any Junior Security Document;

"Senior Debt"	all Liabilities which are or may become payable or owing by the Borrower to the Senior Creditor which are secured by any Senior Security Interest;
"Senior Debt Document"	each document in relation to the Senior Debt (including, without limitation, the Senior Security Document);
"Security Interests"	a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having similar effect;
"Senior Security Document"	a first legal charge created over the Property dated on or about the date of this deed granted by the Borrower in favour of the Senior Creditor
"Senior Security Interest"	any Security in favour of the Senior Creditor created by a Senior Security Document.

1.2 Interpretation

In this deed:

- 1.2.1 clause headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.9 a reference to this deed (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other

agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;

- 1.2.10 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- 1.2.11 any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.12 a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.13 a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.14 a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution; and
- 1.2.15 a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

2 Priority of security

2.1 Senior Creditor consents to Junior Security Interests

2.1.1 The Senior Creditor:

- (a) consents to the creation of the Junior Security Interests, including a second legal charge over the Property;
- (b) confirms that the creation of the Junior Security Interests does not constitute a default by the Borrower under any of the Senior Debt Documents.

2.2 Junior Creditor consents to Senior Security Interests

2.2.1 The Junior Creditor:

- (a) consents to the creation of the Senior Security Interests; and
- (b) confirms that the creation of the Senior Security Interests does not constitute a default by the Borrower under any of the Junior Debt Documents; and
- (c) consents (subject always to clause 6) to a first fixed legal charge and a supporting restriction being entered onto the title of the Property pursuant to the terms of the Senior Security Documents.

2.3 Priority

2.3.1 Each Creditor and the Borrower agree that:

- (a) the Senior Security Interests rank and shall rank, to the extent of the Senior Debt, in priority to the Junior Security Interests; and
- (b) the Junior Security Interests are and shall be postponed to, and rank after, the Senior Security Interests.

2.4 Continuing status of security

2.4.1 Nothing in this deed shall affect the status of the Security Documents as continuing security, nor shall the ranking of the Security specified in clause 2.3 be affected by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the relative priorities of the Security constituted by the Security Documents, including, but not limited to:

- (a) the nature of any of the Security constituted by the Security Documents and the order of its execution or registration;
- (b) any provision contained in any of the Security Documents;
- (c) the respective date (or dates) on which any person received notice of the existence or creation of any Security constituted by any Security Document;
- (d) the respective date (or dates) on which monies may be, or have been, advanced or become owing or payable under a Debt Document or secured under a Security Document;
- (e) any fluctuation from time to time in the amount of Liabilities secured by a Security Document and in particular, without limitation, any reduction to nil of the Liabilities so secured;
- (f) the existence at any time of a credit balance on any current or other account of the Borrower;
- (g) the appointment of any Receiver or other similar officer either in respect of the Borrower or over all or any part of the Borrower's assets; or
- (h) any amendment or supplement to or variation of any Debt Document; or
- (i) any change in the value of any assets which are the subject of the Senior Security Document;
- (j) any damage to the assets which are the subject of the Senior Security Document.

2.5 Invalidity of security

2.5.1 If all or any of the Senior Security Interests or Junior Security Interests:

- (a) are released; or

(b) are or become wholly or partly invalid or unenforceable,

the Senior Creditor or Junior Creditor agree that the provisions of clause 8 shall continue to apply so that any proceeds which are realised or any amounts that are paid by the Borrower must first be paid towards the discharge of the Senior Debt.

2.6 No challenge to security or priority

2.6.1 Neither Creditor shall challenge or question:

- (a) the validity or enforceability of any Security constituted by a Security Document;
- (b) the nature of any Security constituted by a Security Document; or
- (c) without prejudice to the generality of the foregoing, whether any Security constituted by a Security Document is fixed or floating;
- (d) the priority set out in this Deed.

3 Borrower covenants

3.1 So long as the Senior Debt is outstanding, the Borrower covenants with the Senior Creditor that they shall not:

3.1.1 create, or allow to subsist, any Security (other than a Junior Security Interest) over any of its assets (including the Property), or any guarantee, for or in respect of any of the Junior Debt or in respect of a loan or credit provided to the Junior Creditor by another person; or

3.1.2 take, or omit to take, any action which may impair the ranking set out in this deed.

4 Preservation of rights

4.1 Rights and remedies not prejudiced

Nothing in this deed shall as between the Borrower and a Creditor affect or prejudice any rights or remedies of a Creditor under its Security Documents.

4.2 No waiver

No delay in exercising rights and remedies in respect of the Senior Debt or the Junior Debt because of any term of this deed postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

5 Insurance and custody of documents

5.1 Insurance

The Senior Creditor may require the Borrower to insure their assets and, before the Enforcement Date, apply any monies received or recovered in respect of any claim under any relevant insurance policy in accordance with the terms of the Senior Debt Documents or such other insurance provisions in the Debt Documents as the Senior Creditor may select. The

Creditors acknowledge that the Borrower's compliance with the insurance obligations so selected shall be a full discharge by the Borrower of their insurance obligations under the Debt Documents.

5.2 Title documents

The Senior Creditor shall be entitled, but not obliged, to hold each title or other document relating to any asset subject to a Senior Security Interest. The Junior Creditor may inspect any such documents provided it gives reasonable prior written notice to the Senior Creditor.

6 Senior Debt enforcement

6.1 Senior Debt enforcement events

The Senior Creditor is entitled, at any time, to take any enforcement action, including (but not limited to) the following enforcement actions listed below without the consent of the Junior Creditor but shall notify the Junior Creditor in writing as soon as possible after doing so:

- 6.1.1 to serve a demand for payment of the Senior Debt on the Borrower (other than a demand for payment on the due date in respect of which no notification is required);
- 6.1.2 to serve a notice on the Borrower to the effect that the Senior Debt is immediately due and payable;
- 6.1.3 to take any step to enforce any Senior Security Interest, whether by appointing a Receiver, exercising its power of sale or otherwise; or
- 6.1.4 to take possession of any asset subject to any of the Senior Security Interest; or
- 6.1.5 to present, or join in, an application for a petition for the bankruptcy of the Borrower or to initiate, or support or take, any step with a view to any individual voluntary arrangement or assignment for the benefit of creditors or similar proceeding involving the Borrower; or
- 6.1.6 if a Receiver appointed by it sells, leases or disposes of an asset subject to any Senior Security Interest or grants an interest in, or right in respect of, such an asset.

6.2 Marshalling

The Junior Creditor waives any right it has, or may have in the future, to marshalling in respect of any Senior Security Interest.

6.3 Co-operation by Junior Creditor

- 6.3.1 The Junior Creditor will, at the request of the Senior Creditor or any Receiver appointed by the Senior Creditor, join in such documents or otherwise take such action as may be reasonably required by the Senior Creditor or such Receiver to facilitate the disposal of any asset subject to a Senior Security Interest whether or not there will be any balance of proceeds available for the Junior Creditor arising from that disposal.

- 6.3.2 The Senior Creditor may require the Borrower and the Junior Creditor, either jointly or severally, to sign any document and take any steps to protect or give effect to the Senior Creditor's rights under this deed or any similar or related purpose.

7 Junior Debt enforcement

7.1 Junior Debt enforcement events

Except with the prior written consent of the Senior Creditor, the Junior Creditor shall not:

- 7.1.1 serve a demand for payment of the Junior Debt on the Borrower (save in circumstances where the Senior Debt is no longer outstanding);
- 7.1.2 serve a notice on the Borrower to the effect that the Junior Debt is immediately due and payable;
- 7.1.3 take any step to enforce any Junior Security Interest, whether by appointing a Receiver, exercising its power of sale or otherwise; or
- 7.1.4 present, or join in, an application for a petition for the bankruptcy of the Borrower or initiate, or support or take, any step with a view to any individual voluntary arrangement or assignment for the benefit of creditors or similar proceeding involving the Borrower.

7.2 Senior Creditor directions to Junior Creditor

The Junior Creditor shall comply with any directions given by the Senior Creditor relating to taking any of the following actions:

- 7.2.1 presenting an application for a petition of bankruptcy to be made in relation to the Borrower;
- 7.2.2 joining in, or opposing, such a petition; or
- 7.2.3 voting for or against, or accepting or rejecting:
 - (a) any proposal in an individual voluntary arrangement in relation to the Borrower; or
 - (b) any scheme of arrangement proposed in relation to the Borrower.

8 Application of proceeds

- 8.1 The priority of the Creditors shall stand (regardless of the order of execution, registration or giving of notice or otherwise) so that all proceeds received by way of repayment (partial or whole), and of enforcement or realisation of all or any of the Security constituted by any of the Security Documents shall, after providing for all reasonable outgoings, costs, charges, expenses and liabilities of enforcement, exercising rights on winding-up and payments ranking in priority as a matter of law, be applied in the following order of priority:

- 8.1.1 first, in or towards the discharge of the Senior Debt;

8.1.2 second, once the Senior Debt has been fully discharged, in or towards discharge of the Junior Debt; and

8.1.3 third, after the Junior Debt has been fully discharged, to the Borrower (if relevant) or any other person entitled to it.

8.2 The Senior Creditors agree that as between each other any proceeds realised in accordance with clause 8.1 shall be split between them on the basis of the proportions set out in the Senior Debt Document.

8.3 Purchaser protection

No purchaser dealing with a Creditor or any Receiver shall be concerned in any way with the provisions of this deed but shall assume that the Creditor or Receiver, as the case may be, is acting in accordance with the provisions of this deed.

9 Expenses

The Borrower shall, promptly, on demand, pay or reimburse each Creditor on a full indemnity basis for all costs and expenses (including legal fees) together with any VAT or similar taxes on such expenses incurred by it in connection with the preparation, execution, and perfection of this deed and any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) relating to this deed.

10 Termination

This deed shall cease to have effect when the Senior Debt has, to the satisfaction of the Senior Creditor, been irrevocably and unconditionally paid and discharged in full.

11 Restrictions on assignments

11.1 Junior Creditor restrictions on assignment and transfer

The Junior Creditor may not assign any of its rights, or transfer any of its rights or obligations, under this deed or any Junior Debt Document without first requiring the assignee or transferee to execute and deliver to the Senior Creditor a deed (in a form satisfactory to the Senior Creditor) in which the assignee or transferee agrees to be bound by the terms of this deed.

11.2 Senior Creditor restrictions on assignment and transfer

The Senior Creditor may assign any of its rights, or transfer any of its rights or obligations, under this deed or any Senior Debt Document at any time.

12 Borrower's acknowledgements

12.1 The Borrower acknowledges the terms of this deed and consent to the Creditors communicating with each other about the Borrower's affairs for the purposes of this deed.

12.2 The Borrower further acknowledges that none of the provisions entered into by the Creditors in this deed are for the benefit of her, nor may they be enforced or relied on by her.

13 Land Registry

The parties to this deed hereby apply to the Land Registrar to note in the appropriate manner at the Land Registry the priority arrangements agreed in this deed in so far as those arrangements affect any registered land over which any Security is or has been granted under or pursuant to any Security Document.

14 Power of Attorney

- 14.1 By way of security, the Junior Creditor irrevocably appoints the Senior Creditor and each Receiver separately to be the attorney of the Junior Creditor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things with the Junior Creditor is required to execute and do under clause 6.3.
- 14.2 The Junior Creditor ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise or purported exercises of all or any of the powers, authorities and discretions referred to in clause 14.1.

15 Amendments and waivers

- 15.1 No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative), except that:
- 15.1.1 the Senior Creditor does not need the Junior Creditor's consent to an amendment to this deed (and the Junior Creditor need not be party to any amendment document) that only alters the Borrower's obligations to the Senior Creditor and the corresponding rights of the Senior Creditor; and
- 15.1.2 neither Creditor needs the Borrower's consent to an amendment to this deed (and neither the Borrower need not be party to any amendment document) that only alters the obligations of one Creditor to the other Creditor and the corresponding rights of that other Creditor.
- 15.2 Any waiver by the Senior Creditor or the Junior Creditor of any terms of this deed, or any consent or approval given by the Senior Creditor or the Junior Creditor under this deed, shall be effective only if given in writing and then only for the purpose and upon the terms for which it is given.

16 Severance

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

17 Counterparts

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

18 Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

19 Notices

19.1 Any notice or other communication given to a party under or in connection with this deed shall be:

19.1.1 in writing;

19.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service; and

19.1.3 sent to the address for each party to this deed as set out at the beginning of this deed or to any other address as is notified in writing by one party to the others from time to time.

19.2 Receipt by Junior Creditor, the Borrower

Any notice or other communication that the Junior Creditor gives to the Borrower or the Senior Creditor gives to another party shall be deemed to have been received:

19.2.1 if delivered by hand, at the time it is left at the relevant address;

19.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

19.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 23.2(a) or clause 23.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

19.3 Receipt by Senior Creditor and Junior Creditor

Any notice or other communication given to the Junior Creditor by the Borrower given to the Senior Creditor shall be deemed to have been received only on actual receipt.

19.4 Service of proceedings

This clause 19 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20 Governing law and jurisdiction

- 20.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 20.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been signed as a deed and delivered on the date first above written

TEMPLATE

Executed as a Deed by)
[])
acting by a director)
in the presence of:-) _____
Director

Witness signature.....

Name of Witness.....

Address of Witness.....

Occupation.....

Executed as Deed by)
[])
acting by a director)
in the presence of:-) _____
Director

Witness signature.....

Name of Witness.....

Address of Witness.....

Occupation.....

Executed as Deed by)
[])
acting by a director)
in the presence of:-) _____
Director

Witness signature.....

Name of Witness.....

Address of Witness.....

Occupation.....