

**Temporary and Conditional Release and
Priority Agreement (09/03)**

Date:

Definitions:

Agreement: An Agreement dated [] and entered into by the Company with the Financier under which certain debts due to the Company are to be purchased by the Financier from the Company

Bank: The Royal Bank of Scotland plc whose registered office is situate at 36 St Andrew Square Edinburgh EH2 2YB and whose address for service is at []

Charge: A debenture dated [] and granted by the Company to the Financier creating a fixed charge on all Purchased Debts (to the extent that they fail to vest in the Financier for any reason) and a floating charge on all remaining assets of the Company

Company:

Company's Obligations: All the liabilities of the Company of any kind and in any currency (whether present or future actual or contingent and whether incurred alone or jointly with another) including interest expenses (on a full indemnity basis) commission and banking charges

Debenture: A Debenture dated [] and granted by the Company to the Bank creating a fixed charge on certain assets and a floating charge on the remaining assets of the Company and in particular incorporating a charge on all book debts or other debts now and in the future owing to the Company

Debts: All debts now or in the future due to the Company and (if any) their associated related rights as defined in the Agreement

Financier:

Post Termination Debts: Debts which come into existence after the Release has terminated

Purchased Debts: All or any of the Debts which are purchased by the Financier under the Agreement and which come into existence before the Release has terminated

Release: The release from the Debenture of the Purchased Debts under Clause 1.1

Release and Payment by the Financier

1.1 **The** Bank at the request of the Company releases to the Financier all Purchased Debts from the Debenture with effect from the date of purchase of each Purchased Debt by the Financier pursuant to the Agreement Provided that the Debenture shall remain in full force and effect and the charge on book debts and other debts created by the Debenture shall apply to all Debts other than Purchased Debts and all Purchased Debts which may at any time be re-assigned by the Financier to the Company and subject to the provisions of Clause 5.4 any sums due from the Financier to the Company from time to time

1.2 **In** consideration of such release the Financier (on the irrevocable instructions of the Company) agrees that all payments by the Financier to the Company shall be made by the Financier paying or transmitting the same direct to the Bank for the account of the Company

Information

2.1 **The** Company and the Financier shall send to the Bank upon request statements showing:-

2.1.1 **The** total amount of the Purchased Debts from time to time purchased by the Financier from the Company

2.1.2 **The** state of account from time to time between the Company and the Financier

2.1.3 **Any** other information reasonably required by the Bank in connection with the operation of the Agreement

2.2 **The** Company irrevocably authorises the Financier to provide to the Bank all information requested pursuant to Clause 2.1

Termination

3.1 **The** Bank may terminate the Release on one clear day's written notice to the Financier

3.2 **The** Release shall immediately terminate on the Agreement being terminated for any reason or on the Financier and the Company agreeing to any material variation of the Agreement without the prior written consent of the Bank.

3.3 **The** Financier shall immediately inform the Bank in writing if the Agreement is terminated for any reason

3.4 **On** the Release being terminated it shall cease to have effect in respect of any Post Termination Debts but the Financier's rights in respect of any Purchased Debts shall continue

Deposits with the Bank

4.1 **Notwithstanding** the terms of any charge on the Debts contained in the Charge and any covenant in the Charge or in the Agreement by the Company to pay the proceeds of any Debts into the Company's account with the Financier or with the Bank or some other bank the Financier and the Company agree that the Bank may accept any payment or collect any cheque for the Company's account and the Bank shall not be obliged to pay any sum to the Financier unless the Bank has deliberately procured the payment to the Bank of a sum which to the Bank's knowledge should have been paid to the Financier

4.2 **In** respect of any credit balance from time to time on any account of the Company with the Bank the Bank may notwithstanding any charge over such credit balance contained in the Charge:-

4.2.1 **At** any time prior to the Financier giving to the Bank written notice that the Financier has appointed a Receiver or taken any formal step to enforce its security under the Charge permit the Company to draw upon any such credit balance

4.2.2 **At** any time set-off the whole or any part of the Company's Obligations to the Bank against any such credit balance

Priority

5.1 **The** Bank with the consent of the Company agrees that the Charge shall insofar as it relates to the Purchased Debts but not further or otherwise rank in priority to the Debenture for the payment to the Financier of the Company's Obligations to the Financier without limit as a continuing security and this priority shall not be affected by any fluctuation in the amount from time to time owing by the Company to the Financier nor by the existence at any time of a nil or credit balance on any account of the Company with the Financier. Without prejudice to Clause 4.1 the Company shall comply with its covenant in the Charge to pay the proceeds of the Purchased Debts to the Financier which shall be deemed to be compliance with the equivalent covenant in the Debenture

5.2 **The** Financier with the consent of the Company agrees that subject to Clause 5.1 the Debenture shall rank in priority to the Charge as a continuing security for the payment to the Bank of the Company's Obligations to the Bank without limit and this priority shall not be affected by any fluctuation in the amount from time to time owing by the Company to the Bank nor by the existence at any time of a nil or credit balance on any account of the Company with the Bank

5.3 **Notwithstanding** the terms of the Charge and any covenant in the Charge by the Company to pay any Debts to the Financier the Financier and the Company agree that:-

5.3.1 **Subject** to Clause 5.1 the Company shall comply with its covenant in the Debenture to pay book debts and other debts to the Bank which shall be deemed to be compliance with the equivalent covenant in the Charge

5.3.2 **The** Bank shall be entitled to credit any payments received for the account of the Company in respect of book debts and other debts to any account of the Company with the Bank

- 5.4 **The** application of the charge created by the Debenture to any sums due from the Financier to the Company from time to time shall be subject to any right of defence or set-off which the Financier may have against the Company at any time
- 5.5 **The** Bank and the Financier will hold in trust any money received pursuant to the Debenture or the Charge to give effect to the priorities declared by this Clause
- 5.6 **This** priority agreement shall continue in effect despite any termination of the Release

Invalidity of the Agreement

- 6 **If** the assignment of any Purchased Debt or all the Purchased Debts pursuant to both the Agreement (including any provision in the Agreement by which any Purchased Debt which fails to vest in the Financier is held by the Company in trust for the Financier) and the Charge proves to be ineffective for any reason or not binding upon the Company or any administrator receiver or liquidator of the Company then the Release shall be deemed not to have been given in respect of that Purchased Debt or such Purchased Debts

Enforcement

- 7.1 **Subject** to the Bank and the Financier being entitled to take independent action (except as set out in Clause 7.2 and 7.3) without notice or consultation where either of them considers it necessary to do so the Bank and the Financier agree that if either of them intends to enforce the Debenture or the Charge respectively that party will give notice of such intention to the other of them prior to taking such action and the Bank and the Financier shall consult with each other regarding the appointment of a suitable person as Receiver or Administrator pursuant to the Debenture and the Charge. If the Bank or the Financier takes independent action without such notice or consultation it will forthwith give written notice to the other of such action taken
- 7.2 **The** Financier agrees that it will not apply to the court for an administration order without the prior written consent of the Bank
- 7.3 **The** Financier agrees that it will not take any steps to appoint an administrator until it has given at least two business days written notice to the Bank

Alienation

- 8.1 **This** Release and priority agreement is personal to the Financier and the benefit of it may not be assigned or dealt with by the Financier in any manner
- 8.2 **The** Bank undertakes to the Financier that if at any time the Bank shall assign the Debenture to any third party the assignee shall take any rights under or in relation to the Debenture subject to this Release and priority agreement

Notices

- 9.1 **Any** notice by the Bank may be sent by post or fax or delivered to the Financier at the above address or the Financier's address last known to the Bank
- 9.2 **Any** notice by the Financier may be sent by post or delivered to the Bank at its above address
- 9.3 **A** notice by the Bank or the Financier by first class post shall be deemed served on the next working day after posting
- 9.4 **A** notice by the Bank by fax shall be deemed served at the time of sending

Governing Law

- 10 **This** Release and priority agreement shall be governed by and construed in accordance with English law

Interpretation

- 11.1 **The** expressions "Debenture" and "Charge" include any substituted or further security taken at any time by the Bank or the Financier respectively from the Company but do not include any security which the Bank or the Financier may take from a third party

11.2 **Each** of the provisions of this Release and priority agreement shall be severable and distinct from one another and if one or more of such provisions is invalid or unenforceable the remaining provisions shall not in any way be affected

As Witness the hands of the parties

Signed by)
for and on behalf of the Bank) _____
in the presence of:-)

Witness' Signature - Bank Employee

Signed by)
for and on behalf of the Financier) _____
in the presence of:-) Director

Witness' Signature

Signed by)
for and on behalf of the Company) _____
in the presence of:-) Director

Witness' Signature

