|  |
| --- |
| **Charge and Assignment - Bank Account(s)** |
| **[insert name of licensee]**  **THE ENVIRONMENTAL PROTECTION AGENCY** |
| **DATED [⦁]** |

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This deed is dated [●] and is **BETWEEN**

1. **[INSERT NAME OF ACCOUNT HOLDER]** a company incorporated under the laws of Ireland(registration number [ ]), having its registered office at [ ] (the “**Licensee**”); and
2. **THE ENVIRONMENTAL PROTECTION AGENCY** of PO Box 3000, Johnstown Castle Estate, Wexford, County Wexford (the “**EPA**”),

each a “**Party**” and, together, the “**Parties**”.

**BACKGROUND**

1. The Licensee [owns and] operates the Licensed Site.
2. Pursuant to the Licence, the Licensee is permitted to carry out the activities set out in the Licence at the Licensed Site. The Licence is administered by the EPA.
3. Pursuant to the Licence, the Licensee is required to put in place certain financial provisions as security for the cost of the Licensee’s Obligations.
4. The Licensee has agreed to execute this Deed, including the undertakings, covenants, agreements, warranties and acknowledgements contained in this Deed, for the purposes of providing financial security in favour of the EPA for the Licensee’s Obligations.

**THE PARTIES AGREE** as follows:

# Definitions and Interpretation

In this Deed (including the Background) the following terms shall, unless the context otherwise requires, have the following meanings:

[In this Deed (including the Background and unless otherwise defined in this Deed) capitalised terms shall have the meaning given to them in the Funding and Drawdown Agreement and the following terms shall, unless the context otherwise requires, have the following meanings:][[1]](#footnote-1)

[“**Business Day**” means any day of the week except a Saturday, Sunday or a bank or public holiday in Ireland.]

“**Conveyancing Act**” means the Land and Conveyancing Law Reform Act 2009.

“**Default Rate**” means with respect to any amount which is not paid when demanded under this Deed, the rate per annum equal to 1% over three month EURIBOR (as certified by the EPA or its bankers), calculated and applied on a daily basis.

“**Deposit[s][[2]](#footnote-2)**” means all moneys for the time being and from time to time standing to the credit of the Secured Account[s] together with all entitlements to interest and the debt[s] represented thereby and all other rights and benefits accruing in connection therewith.

“**Enforcement Event**” means any of the events specified in Clause 8.2.

[“**Environment**” means the environment generally including all of its physical and ecological aspects including:

1. land including the sea bed and any natural or man-made structures;
2. water including rivers, lakes (man-made or natural), canals, the ocean (whether within or without territorial waters), ground waters and waters in drains and sewers; and
3. air including air within buildings and other natural and man-made structures above or below ground,

and Environmental is construed accordingly.]

[“**Environmental Law**” means all and any applicable law, including common law, statute, bye-law and subordinate legislation, customary law, regulations and directives and judgments and decisions, including notices, orders or circulars, of any court or authority competent to make such judgment or decision compliance with which is applicable in Ireland and which is mandatory for the Licensee with regard to Environmental Matters or the protection of the Environment.]

[“**Environmental Matters**” means any matter arising out of, relating to, or resulting from:

1. the pollution, contamination or protection of the Environment;
2. human health or safety, including laws relating to public and workers’ health and safety;
3. health and safety of animal and plant life;
4. emissions, discharges or releases into the Environment of chemicals or any other pollutants or contaminants or industrial, radioactive, dangerous, toxic or hazardous substances or waste (whether in solid, semi-solid, liquid or gaseous form and including noises and genetically modified organisms); or
5. the manufacture, processing, use treatment, storage, distribution, disposal, transport or handling of the substances or wastes described at paragraph (d) above.]

“**Funding and Drawdown Agreement**” means the Funding and Drawdown Agreement entered into between the Licensee and the Agency dated on or about the date hereof.[[3]](#footnote-3)

[“**Insolvency**” in relation to a person means that it:

1. is dissolved;
2. becomes unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
3. makes a general assignment, arrangement or composition with or for the benefit of its creditors;
4. institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation, or the jurisdiction of its head or home office, a proceeding seeking a declaration of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
5. has instituted against it a proceeding seeking a declaration of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
6. results in a declaration of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
7. is not dismissed, discharged, stayed or restrained in each case within 14 days of the institution or presentation thereof;
8. has a resolution passed for its winding-up or liquidation;
9. seeks or becomes subject to the appointment of an administrator, examiner, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
10. has a creditor take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 14 days thereafter;
11. causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
12. takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

and **Insolvent** is construed accordingly.]

[“**Known Liabilities**” means all present and future Environmental obligations and/or liabilities in connection with (a) the closure, decommissioning and/or residuals management of the Licensed Site (or any part of it); and/or (b) the rehabilitation, remediation, restoration, on-going emissions control, monitoring and/or aftercare of the Licensed Site (or any part of it) following closure.]

[“**Licence**” means the [insert] issued by the EPA on [**insert**] with Licence register number [**insert**] as [[**revised, amended or extended**]] by [**Insert details of any amendments to the applicable Licence**], as may be revised, amended or extended from time to time.]

“**Licensee**” means [ ], a company registered in Ireland with company number [ ].[[4]](#footnote-4)

“**Licence Breach**” means the occurrence of any event which is a breach, default, termination event or failure to observe, perform, fulfil, carry out and/or discharge the Licensee's Obligations, whatsoever or howsoever described.

[“**Licensee’s Obligations**” means all present and future obligations and/or liabilities of the Licensee (a) in respect of the Known Liabilities and/or the Unknown Liabilities, whether under Environmental Law, the Licence and/or the Plan; and/or (b) under this Deed. Any reference to the Licensee’s Obligations includes a reference to any or all of them.]

[“**Licensed Site**” means the land and property which is the subject of the Licence, being the [property known as [insert location of licensed site] / the Licensee’s [insert nature of the licensed operations] facility at [insert location of licensed site]] and everything on, in, attached to or forming part of that property, facility, installation, site and those lands.]

“**Receiver**” means any one or more receivers and/or managers appointed by the EPA pursuant to this Deed.

“**Secured Account[s]**” means the bank account[s] opened in the name of the Licensee the details of which are specified in Schedule 1 (or such other account or accounts as may be substituted for or replace or supersede such account[s] from time to time or any additional or substitute account hereafter opened in addition to or in substitution for such account[s] and any sub-accounts of such account[s]).

“**Secured Assets**” means all of the rights, property, assets and undertaking of the Licensee the subject of the security created pursuant to, or evidenced or expressed, or intended to be created, or evidenced pursuant to, this Deed. Any reference to the “**Secured Assets**” includes a reference to all or any part of them;

“**Security**” means the Security Interests created or evidenced or expressed or intended to be created or evidenced by or pursuant to this Deed.

“**Security Interest**” includes any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement or other security arrangement or agreement and any other agreement or arrangement having substantially the same economic effect.

“**Security Period**” means the period from the date of this Deed until the date upon which all of the Licensee’s Obligations shall have been unconditionally and irrevocably paid, discharged, performed or observed in full or upon which all of the Security has been unconditionally and irrevocably released and discharged.

[“**Unknown Liabilities**” means all present and future Environmental liabilities and obligations (whether under the Licence or Environmental Law) arising out of or in connection with incidents, accidents and/or other changes of circumstances from the norm with actual or potential negative consequences in relation to the Licensed Site and/or any other part of the Environment affected by any such incident, accident or other change of circumstance.]

[“**Works**” means the works carried out, or to be carried out, in order to effect, implement and complete the Plan and ensure compliance with the Licensee’s Obligations (including any unanticipated works which the EPA reasonably concludes are required in order to effect, implement and complete the Plan and/or ensure compliance with the Licensee’s Obligations).]

## Interpretation

In this Deed:

any reference to a person, if the context so requires or admits, include a company, partnership or unincorporated association;

words importing the singular, where the context so requires or admits, include the plural and vice versa and reference to the masculine, feminine or neuter genders include references to the other genders;

any reference to a Clause or Schedule is a reference to a Clause or Schedule (as the case may be) of this Deed and any reference in a Clause to a sub-clause, paragraph or sub-paragraph is a reference to a sub-clause, paragraph or sub-paragraph of the Clause in which the reference is contained;

the contents of the Schedules form an integral part of this Deed and have as full effect as if they were incorporated in the body of this Deed and the expressions **this Deed** and **the Deed** as used in the Schedules mean this Deed and any reference to this Deed is deemed to include the Schedules;

the headings and captions to the Clauses and Schedules in this Deed are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Deed;

any reference to any legislation, order or regulation in this Deed includes reference to any extension, modification, replacement or re-enactment of it from time to time in force and all regulations and orders from time to time made under it and any analogous provision or rule under any applicable law for the time being in force;

a reference to any document includes that document as it has been or may be, subject to and in accordance with its terms or by operation of law, amended, restated, supplemented, varied, assigned, novated, or otherwise from time to time;

terms such as **including, in particular**, **such as**, and **for example** are not to be read as exhaustive, or to limit, but may extend the generality of the provisions to which they relate;

this Deed shall not be interpreted contra proferentum;

any reference to the Licensee or the EPA shall, where the context so admits, include each of their successors and permitted assigns as the case may be and, in respect of the EPA’s successors and permitted assigns, each such person is entitled to enforce and rely upon this Deed as if named in this Deed;

section 75 of the Land and Conveyancing Law Reform Act 2009 does not apply to this Deed; and

the Insolvency of the Licensee or disclaimer of the Licence does not limit or affect the Licensee’s Obligations for the purposes of this Deed and in such a case the Licensee’s Obligations (including all obligations, responsibilities, liabilities and duties under them) are deemed to be the exact same as they would have been but for the Insolvency of the Licensee or disclaimer of the Licence.

# COVENANT TO PAY

The Licensee hereby undertakes, covenants and agrees, on demand by the EPA, to:

observe, perform, fulfil, carry out and/or discharge the Licensee's Obligations; and/or

pay the cost of any Works to the EPA.

With respect to any amount which is due (whether upon the making of a demand or otherwise) by the Licensee to the EPA in respect of the Licensee’s Obligations and/or this Deed, the Licensee shall pay interest at the Default Rate from the due date to the date of actual payment (after as well as before any demand is made or any judgment is obtained). Interest payable under this Clause shall be compounded with rests on such days as the EPA shall from time to time decide but without prejudice to the right of the EPA to require payment of such interest when due.

# SECURITY

The Licensee, as legal and beneficial owner of the Secured Assets, hereby **CHARGES** by way of first fixed charge and (in so far as the charge is ineffective as a first fixed charge for whatever reason) **ASSIGNS** by way of a first security assignment in favour of the EPA all of its present and future right, title, benefit and interest in and to the Secured Account[s] and the Deposit[s], as a continuing security for the payment, discharge, performance and observance of the Licensee’s Obligations and all and any obligations and liabilities hereby covenanted to be paid, discharged, performed or observed.

The Licensee shall notify the bank or financial institution at which the Secured Account[s] [is/are] held that it has so charged and assigned the Secured Account[s], using a form of notice (or notices) prescribed for that purpose by the EPA which shall be substantially in the form set out in Schedule 2 and the Licensee shall procure that the bank or financial institution so notified shall execute an acknowledgement (or acknowledgements) of assignment substantially in the form also set out in Schedule 2.

The Licensee and the EPA each acknowledge that, as at the date of this Deed, the Licensee has deposited the sum of €[ ] into the Secured Account.

# RELEASE

If all of the Licensee’s Obligations have been paid, discharged, performed or observed, to the satisfaction of the EPA (in its absolute discretion), the EPA shall at the request and cost of the Licensee execute such documents as may be necessary to release the Security.

Any release, discharge or settlement between the Licensee and the EPA shall be conditional upon no security, disposition or payment to the EPA by the Licensee, or any other person, being void, set aside or ordered to be refunded pursuant to any enactment of law relating to bankruptcy, liquidation, administration, examinership or insolvency, or for any other reason whatsoever. If such condition shall not be fulfilled, the EPA shall be entitled to enforce this Deed subsequently to the full extent of the Licensee’s Obligations as if such release, discharge or settlement had not occurred and any such payment had not been made. The EPA may in its absolute discretion retain the Security under this Deed for a period of one week plus such statutory period within which such security, disposition or payment can be avoided, set aside or ordered to be refunded after the Licensee’s Obligations have been paid, discharged, performed or observed in full, notwithstanding any release, discharge or settlement given or made by the EPA on, or as a consequence of, such termination of liability.

# COVENANTS

## Restrictions on Dealing

The Licensee shall, during the Security Period, open and maintain the Secured Account[s] and undertakes to comply with all obligations on its part contained in this Deed.

The EPA shall have sole control of the Secured Account[s] and the Licensee shall not at any time during the Security Period be entitled to:

deal with or withdraw or transfer the Deposit[s] or any part of [it/them] or direct that any payment be made from the Secured Account[s] or to any person [other than with the prior written consent of the EPA];

create or permit to subsist any Security Interest over the Secured Account[s] or the Deposit[s], other than in favour of the EPA;

sell, transfer, assign, licence, part with possession of or otherwise dispose of in any manner the Secured Account[s] or the Deposit[s]; and

create or grant (or purport to create or grant) or permit to subsist any interest in the Secured Assets in favour of a third party.

The Deposit shall be available to be applied in satisfaction of the Licensee’s Obligations by the EPA [as it sees fit / upon the occurrence of an Enforcement Event].

## Additional Covenants

The Licensee hereby covenants with the EPA that, during the Security Period, the Licensee shall:

Do or permit to be done each and every act or thing which the EPA may from time to time require to be done for the purpose of enforcing or giving effect to the EPA’s rights in respect of the Secured Assets and this Deed and will allow the Licensee’s name to be used as and when required by the EPA for that purpose.

Pay to the EPA on demand all moneys whatsoever which the EPA shall or may expend in the protection, maintenance or enforcement of the Security together with interest thereon at the Default Rate from the date on which such expenditure was incurred by the EPA until the date of reimbursement thereof by the Licensee (both before and after any relevant judgment, winding up or bankruptcy of the Licensee).

Promptly inform the EPA of any event as soon as it becomes aware of same, or of the receipt of any notice, which may affect the fulfilment by the Licensee of any of the Licensee’s covenants or obligations under this Deed.

Give to the EPA or such person or persons as the EPA may for that purpose appoint such information as the EPA or such other person or persons aforesaid shall require as to all matters relating to its business or otherwise relating to its affairs.

Not do, or cause or permit to be done, anything which may in any way depreciate, jeopardise or otherwise prejudice the value of the Security.

Promptly inform the EPA of any event as soon as the Licensee becomes aware of same, or of the receipt of any notice (including, without limitation, any notice issued under Section 1001 or 1002 of the Taxes Consolidation Act, 1997), which may or is likely to affect the fulfilment by the Licensee of any of the Licensee’s covenants or obligations under this Deed, or which may affect the Licensee’s ability to carry on the Licensee’s business.

# FURTHER ASSURANCES

The Licensee shall at any time during the Security Period at its own cost promptly and duly execute and do all such assurances, acts and things as the EPA may require for perfecting or protecting the Security over the Secured Assets or for facilitating the realisation of the same and the exercise of all powers, authorities and discretions vested in the EPA or in any Receiver of the Secured Assets or in any delegate (or sub-delegate) including, without prejudice to the generality of the foregoing, to execute and sign in favour of the EPA or its nominees and to deliver to the EPA all such transfers and assignments and make all such payments, as the EPA may specify in such notice for the purpose of vesting the same in the EPA or its nominees or any purchaser absolutely, and shall, in particular, execute all mortgages, charges, transfers, conveyances, assignments and assurances of the Secured Assets whether to the EPA or to its nominee(s) and give all notices, orders and directions which the EPA may think expedient.

# REPRESENTATIONS AND WARRANTIES

[The Licensee represents and warrants to the EPA that the statements in Clause [12] (Representations and Warranties) of the Funding and Drawdown Agreement are true and correct in all respects and shall be construed to form part of this Deed as if they were set out in this Deed in full.]**[[5]](#footnote-5)**

The Licensee represents and warrants to the EPA that the statements in the succeeding paragraphs of this Clause 7 (Representations and Warranties) are true and correct in all respects. The Licensee hereby covenants with the EPA to indemnify and hold harmless and keep the EPA indemnified on demand from and against any liabilities, damages, losses, costs, expenses, claims, proceedings, actions and demands arising out of or as a result of any breach of or inaccuracy in any of the statements in the succeeding paragraphs of this Clause 7.

The Licensee hereby acknowledges that it has made the representations and warranties contained in this Clause 7 to the EPA with the intention of inducing the EPA to enter into this Deed.

The Licensee hereby represents and warrants that:

It is duly incorporated and validly existing under the law of its jurisdiction of incorporation.

It has, and covenants that it will at all times have, the necessary legal capacity and power to execute this Deed and perform its obligations under this Deed.

It has obtained all necessary authorisations, consents, registrations, notarisations, legalisations and notifications required in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect.

This Deed constitutes its legal, valid and binding obligations.

The execution of this Deed and the performance of its obligations under this Deed will not:

conflict with its constitutional documentation;

conflict with any laws binding on it; or

conflict with or result in default under any document agreement or instrument which is binding upon it or any of its assets nor result in the creation of any Security Interest over any of its assets; and

No litigation, arbitration, action or administrative proceedings are taking place, pending or threatened before any court or EPA which might restrain the Licensee from entering into and performing and/or enforcing and/or complying with this Deed.

It is not in breach of or in default under any agreement to which the Licensee is a party or which is binding on the Licensee or any of its assets or under any statutory obligation whatsoever (including the payment of any due taxes) where such breach or default could adversely affect the Licensee’s ability to perform its obligations under this Deed.

Under the laws of its place of incorporation and (if different) Ireland in force at the date of this Deed, the claims of the EPA against the Licensee under this Deed will rank at least pari passu with the claims of all its other creditors save those whose claims are preferred solely by any bankruptcy, insolvency, liquidation or other similar laws of general application.

It has not taken any corporate action nor have any other steps been taken or legal proceedings been started or threatened against it for its winding-up, dissolution or re-organisation or for the appointment of a receiver, an examiner, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues.

It will not be required to make any deduction or withholding from any payment it may make under or in connection with this Deed.

It is and will at all times during the Security Period be solely and absolutely entitled to all of the Secured Assets free from all Security Interests, rights of set-off or any other claims whatsoever (except for the rights of the EPA under this Deed).

Its centre of main interests (as that term is used in Article 3(1) of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the “**Regulation**”)) is situated in Ireland and it has no “establishment” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

The Licensee make the representations and warranties set out in this Clause 7 on the date of this Deed.

The representations and warranties in this this Clause 7 shall continue and are deemed to be made by the Licensee on each day until this Deed is released by t the EPA.

Each representation and warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation and warranty is deemed to be made.

# WHEN SECURITY BECOMES ENFORCEABLE

The Licensee’s Obligations shall immediately be deemed to be due to be observed, performed, fulfilled, carried out and/or discharged and all powers conferred on the EPA under this Deed and pursuant to the common law and any legislation, order or regulation (including (but not limited to) the right and powers of a mortgagee under the Conveyancing Act, as varied or extended by this Deed) shall become exercisable by the EPA and all rights of the Licensee to deal for any purpose whatsoever with the Secured Assets shall cease immediately on or at any time after the occurrence of an Enforcement Event, whatever the reason for such Enforcement Event, and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment decree or governmental body.

The occurrence of any of the following events shall constitute an Enforcement Event:

if any of the Licensee’s Obligations are not observed, performed, fulfilled, carried out and/or discharged by the Licensee when the same ought to observed, performed, fulfilled, carried out and/or discharged;

if the Licensee defaults in the due observance, performance, fulfilment, carrying out and/or discharge of any of the covenants, terms, conditions or provisions in this Deed or is in breach of any warranty or representation in this Deed;

an Insolvency has occurred in relation to the Licensee;

if the Licensee without the prior consent in writing of the EPA ceases or threatens to cease to carry on its business or any material part thereof in the normal course or changes the nature of mode of conduct of its trading in any material respect; or

if this Deed or other security for any of the Secured Obligations fails or ceases in any respect to have full force and effect or to be continuing or is terminated or is disputed or becomes in jeopardy invalid or unenforceable.

# RIGHTS ON ENFORCEMENT

Any right, power or liberty which may be exercised, or any determination which may be made, by the EPA and/or any Receiver under the Conveyancing Act (as varied or extended by this Deed) and/or this Deed may be exercised or made in its absolute and unfettered discretion and it shall not be under any obligation to give reasons for same.

Without prejudice to the generality of Clause 9.1, the exercise by the EPA and/or any Receiver of any right, power or liberty conferred on it by virtue of the provisions of Chapter 3 of Part 10 of the Conveyancing Act shall be exercisable by it without the restrictions on its exercise imposed by Section 96(1)(c) of the Conveyancing Act.

The EPA reserves the right to consolidate mortgages without restriction. The restrictions on the right of consolidating mortgages contained in Section 92 of the Conveyancing Act shall not apply to this Deed.

The Licensee shall not take any action under section 94 of the Conveyancing Act in respect of the Secured Assets, this Deed or any of the Licensee’s Obligations covenanted to be paid, discharged, performed or observed under this Deed.

The EPA and/or any Receiver may take possession of the Secured Assets and the restrictions on taking possession contained in Section 97 or Section 98 of the Conveyancing Act shall not apply to this Deed. The rights and powers of the EPA and/or any Receiver under this Clause 9.5 are without prejudice to and in addition to any right of possession (express or implied) to which it is at any time otherwise entitled (whether by virtue of this Deed, operation of law, contract or otherwise).

Section 99(1) of the Conveyancing Act shall not apply to this Deed and any obligations imposed on mortgagees in possession or receivers by virtue of the application of section 99(1) shall not apply to the EPA and/or any Receiver. The EPA and/or any Receiver shall not be obliged to take any steps to sell or dispose of the Secured Assets after taking possession of the Secured Assets and the EPA and/or any Receiver shall have absolute discretion as to the time of exercise of the power of sale and all other powers conferred on them by the Conveyancing Act or otherwise.

The EPA and/or any Receiver may exercise the power of sale contained in Section 100(1) of the Conveyancing Act without any of the restrictions contained in the Conveyancing Act and, in particular, the restrictions contained in Section 100 of the Conveyancing Act shall not apply to this Deed.

The notification requirement contained in section 103(2) of the Conveyancing Act shall not apply to this Deed.

The EPA and/or any Receiver shall not be liable to account as mortgagee in possession in respect of the Secured Assets nor shall it be liable for any loss upon realisation or for any neglect or default to present any interest coupon or any bond or stock drawn for repayment or for any failure to pay any call or instalment or to accept any offer or to notify the Licensee of any such matter or for any loss of any nature whatsoever in connection with the Secured Assets.

Any right, power or liberty which is conferred by this Deed (either expressly of impliedly) upon any Receiver may be exercised after this Security has become enforceable by the EPA in relation to the Secured Assets without first appointing a Receiver or notwithstanding the appointment of a Receiver and the vice versa shall apply in relation to any Receiver.

# RECEIVERS

At any time after the Security has become enforceable or if requested by any Licensee, the EPA may, without notice to the Licensee, in writing under the EPA’s common seal or under the hand of any officer or manager or any other nominated person of the EPA, appoint any person to be a Receiver of the Secured Assets and may, except as otherwise required by statute, remove any such Receiver and appoint another in his place or appoint another person to act jointly with any such Receiver (each such person being (a) entitled to act individually as well as jointly and (b) for all purposes deemed to be the agent of the Licensee).

Any Receiver shall have the power, either in its own name or in the name of the Licensee, to do all such acts and things as he may consider necessary or desirable for the realisation of the Secured Assets or incidental or conducive to any of the matters, powers or authorities conferred on a receiver and to exercise and do, in relation to the Secured Assets or any part thereof, all such powers, authorities and things as he would be capable of exercising if he were the absolute beneficial owner of the same.

In addition to having the powers conferred by this Deed, any Receiver shall have, in relation to the part of the Secured Assets, all the powers conferred by the Conveyancing Act (without the restrictions contained in the Conveyancing Act) and, in addition, power on behalf and at the cost of the Licensee (notwithstanding the bankruptcy, liquidation, insolvency or other similar process in relation to the Licensee) to do or omit to do anything which the Licensee could do or omit to do in relation to the Secured Assets.

The restrictions contained in Section 108(1) shall not apply to this Deed.

Section 108(7) of the Conveyancing Act shall not apply to the commission and/or remuneration of a Receiver appointed pursuant to this Deed. A Receiver shall be entitled to remuneration at a rate to be fixed by agreement between him and the EPA (or, failing such agreement, to be fixed by the EPA).

# PROTECTION OF PURCHASERS

Nothing in this Deed shall affect the provisions of the Conveyancing Act for the protection of purchasers and all of the protections to purchasers contained in sections 104, 105, 106 and 108(5) of the Conveyancing Act shall apply to any person purchasing from or dealing with the EPA or any Receiver appointed pursuant to this Deed.

# APPLICATION OF FUNDS

All money received by the EPA and/or the Receiver shall be applied in or towards satisfaction of the Licensee’s Obligations in such order (as to principal, interest or otherwise) as the EPA and/or the Receiver shall, in his absolute discretion, determine and the surplus (if any) shall be paid to the Licensee or such other person as may be entitled thereto.

Without prejudice to rights of appropriation of the EPA and/or any Receiver pursuant to Clause 12.1, all monies arising from the exercise of the powers of enforcement of the Security shall be applied, after the discharge of all sums, obligations and liabilities having priority thereto, in the following order of priority:

in satisfaction of or provision for all costs, charges and expenses incurred and payments made by **the EPA** or any Receiver under or in connection with this Deed and of all remuneration due under this Deed;

in or towards payment, discharge, performance and/or observations of the Licensee’s Obligations;

in payment of the surplus (if any) to the Licensee or other person entitled thereto.

This Clause is subject to the payment of any claims having priority over this Security.

The provisions of Clause 12.1 and Clause 12.2 shall take effect as and by way of variation to the provisions of sections 106(3), 107 and 109 of the Conveyancing Act which provisions as so varied and extended shall be deemed incorporated into this Deed as if they related to a receiver of the Secured Assets and not merely a receiver of the income thereof.

# POWER OF ATTORNEY

The Licensee hereby irrevocably and by way of security appoints the EPA and separately any Receiver severally to be its attorney in its name and on its behalf and as its act and deed or otherwise to:

execute, complete and perfect in favour of the EPA or its nominees or of any purchaser any documents which the EPA may require for perfecting its title to or for vesting the Secured Assets in the EPA or its nominees or in any purchaser; and

execute, complete and perfect all documents and do all such acts and things as may be required for the full exercise of all or any of the powers conferred on the EPA and/or any Receiver under this Deed or which may be deemed expedient by the EPA and/or any Receiver on or in connection with any sale, lease, disposition, realisation or getting in by the EPA and/or any Receiver of the Secured Assets or any part thereof or in connection with any other exercise of any power under this Deed.

The Licensee hereby covenants with the EPA and separately with any Receiver that on request they will ratify and confirm all security agreements, documents, acts and things and all transactions entered into by the EPA and/or any Receiver or by the Licensee at the instance of the EPA and/or any Receiver in the exercise or purported exercise of its or his powers.

Each of the EPA and/or any Receiver shall have full power to delegate the power conferred on it or him by this Clause 13 (Power of Attorney) but no such delegation shall preclude the subsequent exercise of such power by the EPA or the Receiver itself or himself or preclude the EPA and/or the Receiver from making a subsequent delegation thereof to some other person; any such delegation may be revoked by the EPA and/or the Receiver at any time.

# NOTICES

A demand, notice and other communications to any party to this Deed required or permitted under this Deed, or any proceedings relating to this Deed, shall be in writing and will be sufficiently served:

if delivered by hand; or

if sent by fax; or

if sent by prepaid registered post; or

if sent by email,

to the address specified below in this Clause 14.1 or to any other address as is from time to time notified to the other party in accordance with the provisions of this Clause 14:

|  |  |
| --- | --- |
| **The EPA:** |  |
| Address: | The Environmental Protection Agency  PO Box 3000  Johnstown Castle Estate  County Wexford |
| Attention: | The Board Secretary |
| Fax No:  Electronically: | +353 53 9160699  [Via the EPA portal (EDEN)] |

|  |  |
| --- | --- |
| **The Licensee:** |  |
| Address: | [ ] |
| Attention: | [ ] |
| Fax No: | [ ] |
| Email address: | [ ] |

Any notice or communication shall be deemed to have been served:

if delivered by hand, on delivery;

if sent by fax, when the sender's facsimile machine issues confirmation that the relevant pages have been transmitted to the recipient's facsimile machine;

if sent by pre-paid registered post, on the second Business Day after the date of posting;

if sent by email, on receipt by the sender of proof of delivery, and

### if sent through the EPA portal, on receipt by the Licensee of confirmation from the EPA’s portal of proof of delivery,

provided that, if in accordance with the above provisions, any notice or communication is delivered by hand or received by facsimile or email outside working hours on any day, that notice or communication shall be deemed to have been served at the start of working hours on the next Business Day.

Each person giving a notice or making a communication under this Deed by facsimile or email may promptly confirm the notice or communication by post to the person to whom the notice or communication was addressed but the absence of any confirmation shall not affect the validity of the notice or communication or the time upon which it is deemed to have been served.

# CONTINUING SECURITY

This Security shall be a continuing Security Interest in favour of the EPA for all of the Secured Obligations, from time to time, and shall not be considered as satisfied or discharged by any intermediate payment or satisfaction of any part of the Licensee’s Obligations.

This Security shall be in addition to and independent of and shall not prejudice, or be prejudiced by, any other security, right, remedy or lien which the EPA may now, or at any time hereafter, have or hold for all or any of the Licensee’s Obligations.

# PAYMENTS

All sums payable by the Licensee under this Deed shall be paid, discharged, performed or observed without any set-off, counterclaim, withholding or deduction whatsoever, unless required by law.

If the Licensee is required by law to make any withholding or deduction from any amount payable then it shall ensure that such deduction or withholding will not exceed the minimum legal liability and it will, simultaneously with making the relevant payment under this Deed, pay to the EPA such additional amount as will result in the receipt by the EPA of the full amount which the EPA would have otherwise received had no withholding or deduction been required to be made.

The Licensee will promptly supply the EPA with evidence satisfactory to the EPA that the Licensee has accounted to the relevant authority for the sum so withheld or deducted.

# ACCOUNTS

If the EPA shall at any time receive notice of any subsequent Security Interest or other interest (in the nature of a Security Interest) affecting the Secured Assets, the EPA may open a new account or accounts for the Licensee in the EPA’s books. If the EPA does not do so, then (unless the EPA gives express written notice to the contrary to the Licensee) as from the time of receipt of such notice by the EPA, all payments made by the Licensee to the EPA shall in the absence of any express appropriation by the Licensee to the contrary be treated as having been credited to a new account of the Licensee and not as having been applied in reduction of the Licensee’s Obligations at the time when the EPA received the notice.

All monies received, recovered or realised by the EPA under this Deed (including the proceeds of any conversion of currency) may in the discretion of the EPA be credited to any suspense or impersonal account and may be held in such account for so long as the EPA shall think fit with interest accruing thereon at such rate, if any, as the EPA may deem fit) pending its application from time to time (as the EPA shall be entitled to do in its discretion) in or towards the discharge of any of the Licensee’s Obligations.

In case the EPA shall have more than one account for the Licensee in the EPA’s books, the EPA may at any time after the Licensee’s Obligations have become payable or the EPA shall have received notice of any subsequent charge or other interest affecting all or any part of the Secured Assets, and without prior notice in that behalf, forthwith transfer all or any part of any balance standing to the credit of any such account to any other such account which may be in debit.

# INDULGENCE

The EPA may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons (whether or not party to this Deed and whether or not such person or persons are jointly and/or severally liable with the Licensee) in respect of the Licensee’s Obligations and/or this Deed, so that the Licensee’s Obligations and/or the Security shall not be prejudiced by such time or indulgence or arrangement, variation or release and the EPA shall not be prejudiced in exercising any right or remedy in respect of the Licensee’s Obligations and/or under this Deed which it may now or in the future have from or against the Licensee or any other person.

# MISCELLANEOUS PROVISIONS

Any interest payable under the terms of this Deed shall be payable before and after any judgment.

The Licensee hereby authorises the EPA to apply moneys received, recovered or realised by the EPA under this Deed in or towards payment of the purchase price of any currency required in the discharge of any of the Licensee’s Obligations which fall to be discharged in a different currency from that of the funds out of which the EPA desires to discharge the same (whether or not such purchase price includes a premium over any official or any other rate of exchange) and in or towards payment of any costs, charges and expenses incurred by the EPA in connection with the acquisition by the EPA of such currency.

A certificate in writing of any duly authorised officer or employee of the EPA stating (a) the current rate of interest applicable to the Licensee’s Obligations and/or (b) the amount of the Licensee’s Obligations at any particular time due and payable by the Licensee shall be binding on the Licensee and as respects the Licensee conclusive (save in the case of manifest error), without the necessity of proof of the signature of such person, or that he holds the office described in such certificate.

All costs, charges and expenses (on a full indemnity basis) properly incurred, suffered or paid by the EPA in connection with this Deed, or any other Security Interest held by or offered to the EPA for the Licensee’s Obligations, or in connection with the enforcement of this Deed or any such Security Interest, shall be charged on the Secured Assets and shall be treated as monies due from the Licensee to the EPA on current account and shall bear interest and be secured accordingly provided that the Security shall be in addition to and without prejudice to each and every other remedy, lien or security which the EPA may, or but for the said charges would, have for the Licensee’s Obligations.

If the Licensee shall fail to perform any of its obligations under this Deed the EPA may by itself or by its agents perform any of the said obligations capable of being performed by it or by such agents and if any such obligation requires the payment or expenditure of money, the EPA may make such payment or expenditure with its own funds or with money borrowed by or advanced to it for such purpose but shall be under no obligation so to do; all sums so expended or advanced shall be added to the Licensee’s Obligations and shall bear interest and shall be accordingly repayable to the EPA on demand.

The Security shall remain valid and binding for all purposes notwithstanding any change by amalgamation consolidation or otherwise which may be made in the constitution of the entity by which the business of the EPA may from time to time be carried on and shall be available to the company carrying on that business for the time being.

The Security shall not be discharged nor shall the liability of the Licensee be affected by reason of any failure or irregularity defect or informality in any security given in respect of the Licensee’s Obligations nor by any legal limitation, disability, incapacity or want of any borrowing powers or want of authority of any director, manager, official or other person appearing to be acting for the Licensee in any matter in respect of the Licensee’s Obligations.

No delay, omission or forbearance by a the EPA in exercising any right, power, privilege or remedy under this Deed shall operate to impair, or be construed as a waiver of, such right, power, privilege or remedy. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any further exercise thereof or other right, power, privilege or remedy.

The Security shall be deemed to be effective whether or not the Licensee’s Obligations or any part thereof shall have been advanced before or upon or after the date of this Deed.

This Deed shall endure to the benefit of and be binding upon the respective parties to this Deed and their respective successors and permitted assigns.

If any date specified in this Deed falls on a day which is not a Business Day any sum of money required to be paid, or any act or thing required to be discharged, performed or observed under this Deed, upon that date shall be deemed to have been duly paid and discharged, performed or observed, if paid, discharged, performed or observed upon the first Business Day next following thereon but this Clause 19.11 shall not be construed so as to deprive the EPA of interest due under this Deed up to the date of actual payment, discharge, performance or observance.

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired thereby.

No modification of any provision of this Deed shall be binding unless the same shall be evidenced in writing duly executed under seal.

The non-execution or invalid execution of this Deed by any one or more of those who have agreed to join in this Deed will not affect the liability of those who have joined in and executed this Deed.

This Deed may be executed in any number of counterparts and by the different parties to this Deed on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

## No amendment to this Deed will be valid or binding unless set forth in writing and duly executed by all of the Parties hereto. No waiver of any breach of any provision of this Deed will be effective or binding upon the EPA unless made in writing and signed by the EPA purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived. A waiver of any breach of any provision of this Deed is not a waiver of a breach of any other agreement, licence, lease, planning permission or any other document or law.

## The Licensee is not entitled to novate, assign, transfer or otherwise dispose of this Deed, or any of its rights or obligations under it (including by way of merger), to any extent without the prior written consent of the EPA.

## The Licensee acknowledges that this Deed does not give rise to any legitimate expectation on its or the Licensee’s part that the EPA will determine any future Licence review in a particular manner.

# ENTIRE AGREEMENT

This Deed [and the Funding and Drawdown Agreement][[6]](#footnote-6) represent[s] the entire of the understanding of the Parties concerning the Account and the matters provided for in this Deed.

The Licensee confirms that it has not relied on, and has no remedies in respect of, any representations, warranties, conditions and terms except those expressly set out in this Deed. Nothing in this Clause 20 excludes any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

This Deed is separate and independent to the Licences and any other Interim Financial Provision Instruments or charges between the Licensee and the EPA. Where it is necessary under this Deed to determine whether the Licensee has an obligation under any of the Licences or the Plan, that matter will be determined in accordance with the terms of the Licence or Plan independent of this Deed.

This Clause 20 and this Deed does not in any way limit or affect the Licence, any charge on the Account, Interim Financial Provision Instrument or any bond, charge, parent company guarantee or other financial provision between any one or more of the EPA and the Licensee.

Nothing in this Deed shall be construed as negating the Parties’ statutory obligations or requirements under any enactments or regulations.

# LAW AND JURISDICTION

## This Deed, and all disputes (including non-contractual disputes) and matters arising out of or in connection with it (including as to its formation, existence, interpretation and validity), shall be governed by and construed in accordance with the laws of Ireland.

## For the benefit of the EPA, the Licensee submits to the exclusive jurisdiction of the Courts of Ireland in relation to any suit, action, claim or proceedings to be brought by the Licensee arising out of or in connection with this Deed (including as to its formation, existence, interpretation and validity and any non-contractual disputes).

## Nothing in this Clause 21 limits the right of the EPA to take any suit, action, claim or proceeding arising out of or in connection with this Deed (the “Proceedings”) against the Licensee in any other court of competent jurisdiction and the Licensee irrevocably submits to any other jurisdiction in which it has assets and hereby waives any objection to any claim that any Proceedings have been brought in any inconvenient forum. The taking of any Proceedings in one or more jurisdictions does not preclude the EPA from taking Proceedings in any other jurisdiction, whether concurrently or not.

**IN WITNESS** of which the parties have executed this Deed on the date shown at the beginning of this Deed.

1. Secured Account[s]

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Bank Name and Address of Branch** | **Account Name** | **Account Number** | **Sort Code** | **IBAN** | **SWIFT / BIC** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

1. (Option a)[[7]](#footnote-7)  
     
   NOTICE

To: [insert account bank details]

Dated: [ ]

**RE: Notice of Assignment – Secured Account[s]**

Dear Sirs,

1. We refer to the charge and assignment dated [ ] (the “**Deed**”) made between (1) us and (2) [ ] (the “**EPA**”). Terms and expressions used and not defined in this notice letter shall have the same meanings ascribed to those terms in the Deed.

2. We hereby give notice that pursuant to the Deed, we have charged and assigned absolutely to the EPA, on the terms set out in the Deed, all of our present and future, benefit, right, title and interest in and to:

(i) the bank account[s] opened in the name of the Licensee the details of which are specified in the Schedule to this notice (or such other account or accounts as may be substituted for or replace or supersede such account[s] from time to time or any additional or substitute account hereafter opened in addition to or in substitution for such account[s] and any sub-accounts of such account[s]) (the “**Secured Account[s]**”); and

(ii) all moneys for the time being and from time to time standing to the credit of the Secured Account[s] together with all entitlements to interest and the debt[s] represented thereby and all other rights and benefits accruing in connection therewith (the “**Deposit[s]**” and together with the Secured Account[s], the “Secured Assets”);

3. From the date of this notice, the terms of this notice shall apply to the Secured Assets, in accordance with the requirements of the EPA under the terms of the Deed.

4. We advise you that, under the terms of the Deed, we are not entitled to withdraw any monies from the Secured Account[s] without first having obtained the prior written consent of the EPA.

5. We irrevocably authorise and instruct you, with immediate effect, and from time to time:

(i) unless the EPA so authorises you in writing, not to permit withdrawals from the Secured Account[s];

(ii) to hold all monies (whether representing principal or interest) from time to time standing to the credit of the Secured Account[s] to the order of the EPA;

(iii) to pay or release all or any part of the monies (whether representing principal or interest) standing to the credit of the Secured Account[s] in accordance with the written instructions of the EPA;

(iv) to disclose to the EPA such information relating to the Secured Assets as the EPA may request you to disclose to it; and

(v) to comply with the terms of any written notice or instructions in any way relating to or purporting to relate to the Secured Assets, the monies (whether representing principal or interest) standing to the credit of the Secured Account[s] or the debt[s] represented thereby which you may receive from the EPA.

6. We agree that you are not bound to enquire whether the right of the EPA to withdraw any monies from the Secured Account[s] has arisen or be concerned with (1) the propriety or regularity of the exercise of that right or (2) notice to the contrary or (3) to be responsible for the application of any monies received by the EPA.

7. The provisions of this notice may only be revoked or amended with the prior written consent of the EPA.

8. Please confirm by completing the enclosed copy of this notice and returning it to the EPA (with a copy to us) that:

(i) you agree to act in accordance with the provisions of this notice;

(ii) you have not, at the date this notice is returned to the EPA, received notice of any assignment or charge of or claim to the Secured Assets or the grant of any security or other interest over the Secured Assets in favour of any third party and you will notify the EPA promptly if you should do so in the future; and

(iii) you do not at the date of this notice, and will not in the future, exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Secured Account[s].

9. This notice (and any acknowledgement) is governed by Irish law and is subject to the jurisdiction of the Irish courts.

Yours faithfully,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for and on behalf of

[insert Licensee details]

**NOTICE SCHEDULE**

**Secured Account[s]**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Bank Name and Address of Branch** | **Account Name** | **Account Number** | **Sort Code** | **IBAN** | **SWIFT / BIC** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

**Notice Acknowledgment**

To: [insert EPA details]

Copy to: [insert Licensee details]

Dated:

Dear Sirs,

We acknowledge receipt of the above notice. We confirm and agree:

(a) that the matters referred to in it do not conflict with the terms which apply to Secured Assets; and

(b) the matters set out in paragraphs 8(i) to 8(iii) in the above notice.

We are aware that you are relying on this letter in connection with your rights under the above-mentioned charge and assignment.

This letter is governed by Irish law and is subject to the jurisdiction of the Irish courts.

Yours faithfully

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for and on behalf of

[insert account bank details]

1. (Option B)[[8]](#footnote-8)

**NOTICE**

To: [insert account bank details]

Dated: [ ]

**RE: Notice of Assignment – Secured Account[s]**

Dear Sirs,

1. We refer to the charge and assignment dated [ ] (the “**Deed**”) made between (1) us and (2) [ ] (the “**EPA**”). Terms and expressions used and not defined in this notice letter shall have the same meanings ascribed to those terms in the Deed.

2. We hereby give notice that pursuant to the Deed, we have charged and assigned absolutely to the EPA, on the terms set out in the Deed, all of our present and future, benefit, right, title and interest in and to:

(i) the bank account[s] opened in the name of the Licensee the details of which are specified in the Schedule to this notice (or such other account or accounts as may be substituted for or replace or supersede such account[s] from time to time or any additional or substitute account hereafter opened in addition to or in substitution for such account[s] and any sub-accounts of such account[s]) (the “**Secured Account[s]**”); and

(ii) all moneys for the time being and from time to time standing to the credit of the Secured Account[s] together with all entitlements to interest and the debt[s] represented thereby and all other rights and benefits accruing in connection therewith (the “**Deposit[s]**” and together with the Secured Account[s], the “Secured Assets”);

3. From the date of this notice, the terms of this notice shall apply to the Secured Assets, in accordance with the requirements of the EPA under the terms of the Deed.

4. We advise you that, under the terms of the Deed, we are not entitled to withdraw any monies from the Secured Account[s] without first having obtained the prior written consent of the EPA.

5. We irrevocably authorise and instruct you, with immediate effect, and from time to time:

(i) unless the EPA so authorises you in writing, not to permit withdrawals from the Secured Account[s];

(ii) to hold all monies (whether representing principal or interest) from time to time standing to the credit of the Secured Account[s] to the order of the EPA;

(iii) to pay or release all or any part of the monies (whether representing principal or interest) standing to the credit of the Secured Account[s] without further recourse or a signature or other authority from us upon the receipt from the EPA of a Certificate of Withdrawal (in the form set out in Schedule 2 to this Notice);

(iv) to disclose to the EPA such information relating to the Secured Assets as the EPA may request you to disclose to it; and

(v) to comply with the terms of a Certificate of Withdrawal in any way relating to or purporting to relate to the Secured Assets, the monies (whether representing principal or interest) standing to the credit of the Secured Account[s] or the debt[s] represented thereby which you may receive from the EPA.

6. We agree that you are not bound to enquire whether the right of the EPA to withdraw any monies from the Secured Account[s] has arisen or be concerned with (1) the propriety or regularity of the exercise of that right or (2) notice to the contrary or (3) to be responsible for the application of any monies received by the EPA.

7. The provisions of this notice may only be revoked or amended with the prior written consent of the EPA.

8. Please confirm by completing the enclosed copy of this notice and returning it to the EPA (with a copy to us) that:

(i) you agree to act in accordance with the provisions of this notice;

(ii) you have not, at the date this notice is returned to the EPA, received notice of any assignment or charge of or claim to the Secured Assets or the grant of any security or other interest over the Secured Assets in favour of any third party and you will notify the EPA promptly if you should do so in the future; and

(iii) you do not at the date of this notice, and will not in the future, exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Secured Account[s].

9. This notice (and any acknowledgement) is governed by Irish law and is subject to the jurisdiction of the Irish courts.

Yours faithfully,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for and on behalf of

[insert Licensee details]

**NOTICE SCHEDULE 1**

**Secured Account[s]**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Bank Name and Address of Branch** | **Account Name** | **Account Number** | **Sort Code** | **IBAN** | **SWIFT / BIC** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

**NOTICE SCHEDULE 2**

**CERTIFICATE OF WITHDRAWAL**

To: Account Bank:

cc. [**Licensee**]

RE: Funding and Drawdown Agreement dated [ ] 2016 between (1) [**insert**] (the “**Licensee**”) and (2) Environmental Protection Agency (the “**EPA**”) (the “**Agreement**”).

Mandate for the Account entered into by the Licensee and containing a sample signature of the authorised signatory of the Licensee and sample signatures for each of the three authorised signatories of the EPA (“**Account Mandate**”).

Account name: [insert]

IBAN: [insert]

BIC: [insert]

(the “**Account**”).

We refer to the Agreement and to the Account Mandate.

1. In accordance with the Agreement we hereby certify that we are entitled to make a withdrawal without further recourse or a signature or other authority from the Licensee.
2. Based on the above and in accordance with the Agreement, the authorisation of the Licensee for withdrawals from the Account is not required, notwithstanding the contents of the Account Mandate, until further notice from the EPA to you.
3. Accordingly we hereby request withdrawal from the Account of an amount of €[ ].
4. Please transfer the amount of €[ ] to [Bank], [account number [ ]], [sort code].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of

The Environmental Protection Agency

**Notice Acknowledgment**

To: [insert EPA details]

Copy to: [insert Licensee details]

Dated:

Dear Sirs,

We acknowledge receipt of the above notice. We confirm and agree:

(a) that the matters referred to in it do not conflict with the terms which apply to Secured Assets; and

(b) the matters set out in paragraphs 8(i) to 8(iii) in the above notice.

We are aware that you are relying on this letter in connection with your rights under the above-mentioned charge and assignment.

This letter is governed by Irish law and is subject to the jurisdiction of the Irish courts.

Yours faithfully

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for and on behalf of

[insert account bank details]

# EXECUTION PAGE

**THE LICENSEE**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **PRESENT** when the Common Seal of  **[insert],** a company incorporated  In Ireland under registration number [**insert**]  was affixed hereto and this deed  was delivered: Seal  |  |  |  | | --- | --- | --- | |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director / Secretary |  | |  | |  | |  |  |
|  |

**THE EPA**

**PRESENT** when the Seal of the

**ENVIRONMENTAL**

**PROTECTION AGENCY**

was affixed hereto and this deed

was delivered:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised signatory

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised signatory

1. DRAFTING NOTE: Use this clause where the charge and assignment is in addition to a funding and drawdown agreement and delete the definitions in [ ]. [↑](#footnote-ref-1)
2. DRAFTING NOTE: This document will need to be amended as appropriate if there are more than one Deposit and Secured Account. [↑](#footnote-ref-2)
3. DRAFTING NOTE: Delete if not applicable. [↑](#footnote-ref-3)
4. DRAFTING NOTE: Edit depending on whether the Licensee is the Chargor or not. In practice the Chargor will be the Licensee in the majority of cases. [↑](#footnote-ref-4)
5. DRAFTING NOTE: Use this clause where the charge and assignment is in addition to a funding and drawdown agreement. [↑](#footnote-ref-5)
6. DRAFTING NOTE: Delete if a funding and drawdown agreement is not being entered into. [↑](#footnote-ref-6)
7. DRAFTING NOTE: Use where the Charge and Assignment is being provided as a stand-alone document. [↑](#footnote-ref-7)
8. DRAFTING NOTE: Use where the Charge and Assignment is being provided with a Funding and Drawdown Agreement. [↑](#footnote-ref-8)