



**Registration of a Charge**

Company Name: **WATERFORD DISTILLERY GROUP LIMITED**

Company Number: **09102027**



Received for filing in Electronic Format on the: **25/01/2023**

XBVZ88F5

**Details of Charge**

Date of creation: **25/01/2023**

Charge code: **0910 2027 0003**

Persons entitled: **HSBC INVOICE FINANCE (UK) LIMITED**

Brief description: **NONE.**

**Contains fixed charge(s).**

**Contains negative pledge.**

**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

**Authentication of Instrument**

Certification statement: **WE CERTIFY THAT, SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006, THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE PART OF THE CHARGING INSTRUMENT SIGNED BY OR ON BEHALF OF THE CHARGOR, AND A CORRECT COPY OF THE SIGNATURE PAGE TO EACH OTHER PART OF SUCH CHARGING INSTRUMENT.**

Certified by: **DENTONS UK AND MIDDLE EAST LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 9102027

Charge code: 0910 2027 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 25th January 2023 and created by WATERFORD DISTILLERY GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 25th January 2023 .

Given at Companies House, Cardiff on 27th January 2023

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**



JILB/PAOB/078712.00002/87481835.1

## Share Charge

**Dated 25 January 2023**

Dentons Ireland  
20 Kildare Street  
Dublin 2  
Ireland

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# Share Charge

**Dated 25 January 2023**

## Between

- (1) **WATERFORD DISTILLERY GROUP LIMITED**, a private company incorporated in England and Wales with registered number 09102027 and having its registered office at 2 Babmaes Street, London, SW1Y 6HD (the **Chargor**); and
- (2) **HSBC INVOICE FINANCE (UK) LIMITED** registered in England and Wales with the number 00759657 (**HIF**).

## Recitals

- A. HIF has agreed to make certain asset based lending facilities available to the Company (as defined below) on the terms of the Facility Agreement (as defined below).
- B. It is a condition to the Facility Agreement that the Chargor enters into this Deed.

## This deed witnesses

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Deed, the following terms shall, unless the context otherwise requires, have the following meanings:

**Act** means the Land and Conveyancing Law Reform Act 2009;

**Business Day** means any day on which banks are generally open for business in London and Dublin excluding Saturdays and Sundays;

**Charged Securities** means:

- (a) the shares specified in Schedule 2 (*Charged Securities*); and
- (b) all other shares in the capital of the Company which the Chargor may now or hereafter hold or beneficially own;

**Company** means Spirit of Waterford Distillery Limited, a company incorporated in Ireland with registered number 548210 and having its registered office at 6<sup>th</sup> Floor, South Bank House, Barrow Street, Dublin 4, Dublin, Ireland;

**Delegate** means any person appointed by HIF or any Receiver appointed pursuant to the provisions of Clause 10 (*Delegation*);

**Disposal** means:

- (a) any sale, transfer, mortgage, assignment, grant of an option over, charge, pledge, loan or other disposal of Secured Assets, or an agreement to do any of the foregoing; and/or

- (b) entering into any transaction (including a derivative transaction) having an economic effect similar to any of the types of disposal described in sub-paragraph (a) above,

and **Dispose** shall be construed accordingly.

**Dispute** means any suit, action, proceedings and/or any dispute or difference which may arise out of or in connection with or which may relate in any way to any of the Finance Documents (including but not limited to any suit, action, proceedings, dispute or difference relating to the formation, interpretation or performance of any of the Finance Documents or any dispute arising out of any non-contractual obligations of any nature (including those to which Regulation (EC) No. 864/2007 applies) arising between the parties or any of them;

**Examiner** means an examiner appointed under Section 509 of the Companies Act 2014;

**Facility Agreement** means the asset based lending agreement relating to asset based lending facilities dated on or about the date of this Deed between HIF, the Chargor in its capacity as parent and original guarantor and the Company in its capacity as original receivables company and original inventory company;

**Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;

and, in each case, any replacement, redesignation or reinstatement of any such account whether by current account or deposit account or otherwise and **Other Account** shall be construed accordingly.

**Receiver** means any receiver and/or manager appointed by HIF (whether pursuant to this Deed or otherwise) in respect of the Chargor or over all or any part of the Secured Assets (and the expression **Receiver** will, where the context so admits, include the plural and any substituted receiver or receiver and manager);

**Related Rights** means, in relation to the Charged Securities:

- (a) all dividends, distributions, interest and other income paid or payable on the relevant Charged Securities or any asset referred to in (b) below;
- (b) all rights, monies, benefits or property accruing or offered at any time in relation to the Charged Securities whether by way of conversion, redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
- (c) all rights relating to any Charged Securities which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, lender or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person); and
- (d) all other rights attaching or relating to any Charged Securities and all cash or other securities or investments in the future deriving from the Charged Securities or such rights;

**Secured Obligations** means all monies, obligations and liabilities (including, without limitation, in respect of principal, interest, discount, commission, fees and expenses), actual or contingent, whether owed jointly or severally, whether as principal or as surety or in any other capacity whatsoever, in any currency, in any manner whatsoever which now are or at any time hereafter may be or become due, owing or incurred by the Chargor to HIF on any account or in any other manner whatsoever or howsoever and any reference to **Secured Obligation** means a reference to any of them;

**Security** means the security constituted or intended to be constituted by this Deed;

**Secured Assets** means all of the assets of the Chargor which are the subject of any Security and **Secured Asset** means any secured asset;

**Security Interest** means any mortgage, charge (fixed or floating), pledge, lien, assignment, hypothecation, retention of title, flawed asset agreement, preferential right, trust arrangement or any security interest whatsoever or any other agreement or arrangement having the effect of conferring security, a priority of payment or a disposition contrary to the provisions of this Deed, howsoever created or arising;

**Security Period** means the period starting on the date of this Deed and ending on:

- (a) the date on which HIF is satisfied that all of the Secured Obligations have been unconditionally and irrevocably paid and discharged in full; or
- (b) if earlier, the date on which all of the Security shall have been unconditionally and irrevocably released and discharged and HIF is under no further commitment, obligation or liability (actual or contingent) to the Chargor;

**Taxes** means all forms of taxation, duties, imposts and levies whether of Ireland or elsewhere, including (but without limitation) income tax, corporation tax, corporation profits tax, advance corporation tax, capital gains tax, capital acquisitions tax, residential property

tax, wealth tax, value added tax, dividend withholding tax, deposit interest retention tax, customs and other import and export duties, excise duties, stamp duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto whether payable in Ireland or elsewhere, and any interest, surcharge, penalty or fine in connection therewith, and the word **taxation** shall be construed accordingly; and

**Termination Event** has the meaning given to that term in the Facility Agreement.

## 1.2 Construction

- 1.2.1 Unless the context otherwise requires or this Deed provides otherwise, a term which is defined in the Facility Agreement shall have the same meaning (or be subject to the same construction) in this Deed. If there is any conflict or inconsistency between the terms of this Deed and the Facility Agreement then the terms of the Facility Agreement shall prevail.
- 1.2.2 Unless otherwise provided, any reference to a section, clause, sub-clause, paragraph or schedule is a reference to a section, clause, sub-clause, paragraph or schedule (as the case may be) of this Deed.
- 1.2.3 A document is in the agreed form if it is in the form of a draft agreed between or on behalf of the parties hereto on or before the date hereof.
- 1.2.4 Unless the context otherwise requires, any reference in this Deed to:
- (a) a word or phrase the definition of which is contained or referred to in Section 2 of the Companies Act 2014 shall have the meaning thereby given to it;
  - (b) any provision of law is a reference to that provision as amended, substituted, extended or re-enacted and includes any subordinate legislation;
  - (c) the singular includes the plural and vice versa and any gender includes the other gender;
  - (d) a **person** includes that person's successors, personal representatives, permitted assignees and/or transferees, substitutes, executors, administrators, successors in title (as the case may be) whether direct or indirect or any person with whom they may from time to time merge or amalgamate;
  - (e) a **person** includes any person, firm, partnership, company, corporation, association, trust, investment fund, government, state or agency (whether or not having a separate legal personality) or two or more of the foregoing but references to individuals are deemed to be references to natural persons only;
  - (f) this **Deed** and any **Finance Document** or any other agreement or instrument is a reference to this Deed, such other Finance Document or such other agreement or instrument as amended, restated, extended, varied, novated, substituted, replaced or supplemented in any manner from time to time, however fundamentally and which may include without limitation, an increase in facilities provided under a Finance Document, an increase in the Secured Obligations and/or any rescheduling of Indebtedness;
  - (g) any phrase introduced by the terms **including** or **includes** or **in particular** or any similar expression is to be construed as illustrative without limitation;



- (h) costs, charges or expenses include any value added tax or similar tax charged or chargeable in respect of such cost, charges or expenses;
- (i) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (j) **assets** includes present and future properties, revenues and rights of every description;
- (k) an **authorisation** means an authorisation, consent, approval, licence, resolution, filing or registration; and
- (l) a **Party** or the **Parties** is a reference to a party or the parties to this Deed.

### 1.3 Effect as a deed

This Deed shall take effect as a deed even though HIF may only execute it under hand or may not execute it at all.

## 2 Payment

### 2.1 Covenant to pay

The Chargor hereby, as primary obligor and not merely as surety, covenants with HIF that it will pay and discharge the Secured Obligations when they are due or if no time for payment is specified for payment and discharge for the Secured Obligations, promptly on demand by HIF. No demand made by HIF hereunder shall prejudice or restrict the right of HIF to make further or other demands.

### 2.2 Payment free of deduction

All payments to be made under this Deed by the Chargor shall be made free and clear of and without deduction for or on account of any set-off or counterclaim or any present or future Taxes, levies, imposts, charges, deductions or withholdings of any nature whatsoever. If the Chargor shall be compelled by law to make any deduction or withholding from any payment to HIF, the amount of the payment due from the Chargor shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, HIF receives and retains (free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

### 2.3 Calculation

Any certificate or determination by HIF of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## 3 Creation of Security

### 3.1 Fixed charges

As continuing security for the payment and discharge of the Secured Obligations, the Chargor as beneficial owner, in favour of HIF, hereby charges by way of first fixed charge all its

Charged Securities, including those held for it by any nominee, together with all Related Rights;

### **3.2 Perfection of security and deliverables**

#### **3.2.1 Charged Securities**

The Chargor hereby covenants and undertakes to deliver to HIF on the date of this Deed, or if later, on the date of acquisition by the Chargor of any Charged Securities:

- (a) an undated stock transfer form (executed in blank by or on behalf of the Chargor) in respect of such Charged Securities in the form set out in Part 1 (*Share transfer form*) of Schedule 3;
- (b) all share certificates, warrants and other documents of title representing such Charged Securities (including in the case of any Charged Securities which are not in the sole name of the Chargor, a declaration of trust in respect of the interest of the Chargor in such Charged Securities executed by each nominee);
- (c) a certified copy of the up to date register of members of the Company;
- (d) executed but undated letters of resignation and release, and executed and dated letters of authority from each of the directors, alternate directors and secretary of the Company in the forms set out in Part 2 (*Letter of resignation*) and Part 3 (*Letter of authority*) of Schedule 3; and
- (e) a duly passed shareholders resolution to amend the constitution of the Company to ensure that during the Security Period, the directors of the Company shall not have the power to refuse to register a transfer of the Charged Securities in the Company to HIF or its nominee in accordance with this Deed.

### **4 Representations and warranties**

#### **4.1 General**

The Chargor represents and warrants to HIF that:

- 4.1.1 it is duly incorporated, organised and validly subsisting under the laws of its place of incorporation and is a separate legal entity capable of suing and being sued;
- 4.1.2 it has the necessary power, capacity and authority to enter into and perform its obligations under this Deed and to create the security hereby expressed to be created and has taken all necessary corporate and other action required to authorise the execution and delivery of this Deed, the creation of the security hereby expressed to be created or evidenced and its performance in accordance with its terms;
- 4.1.3 neither the execution of this Deed nor the creation of the security hereby expressed to be created or evidenced nor the performance of its obligations hereunder contravenes any of the provisions of its constitution (or equivalent constitutional documents) or any agreement or document to which it is a party or which is binding upon it or its assets or any law or regulation to which it is subject;
- 4.1.4 the obligations under this Deed are legally and validly binding on it and are enforceable in accordance with the terms of this Deed;

- 4.1.5 it holds or will, within any applicable time limit, obtain and keep in full force and effect and comply with all approvals authorisations, consents, licences, registrations and exemptions necessary for the creation or validity of the security hereby expressed to be created or evidenced and for it to perform its obligations hereunder;
- 4.1.6 it is and will at all times during the Security Period be the sole lawful and beneficial owner of its Secured Assets;
- 4.1.7 on the date of execution of this Deed and on each date hereafter until released by HIF, this Secured Assets are free from any mortgage, charge or any other Security Interest (save for those created pursuant to this Deed) and constitutes a first priority Security Interest over the Secured Assets enforceable against the Chargor; and
- 4.1.8 its centre of main interests (as that term is used in Article 3(1) of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (the **Regulation**) is situated in Ireland and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

## 4.2 Charged Securities

The Chargor represents and warrants to HIF that:

- 4.2.1 the Charged Securities are duly authorised, validly issued and fully paid and constitute the entire issued share capital of the relevant company;
- 4.2.2 it is the sole legal and beneficial owner of the Charged Securities and all Related Rights, free from any lien, charge, equity or encumbrance (save for any Charged Securities that are specified in Schedule 2 (*Charged Securities*), as being held by a nominee on its behalf) and that the Charged Securities listed in Schedule 2 (*Charged Securities*), constitute the entire share capital owned by the Chargor in the Company as at the date of this Deed;
- 4.2.3 the constitution documents of the Company do not and could not restrict or inhibit any transfer of the Charged Securities on creation or enforcement of the Security and the directors of the relevant company cannot refuse to register any transfer of the Charged Securities to HIF or any nominee of HIF;
- 4.2.4 there are no agreements in place which provide for the issue or allotment of, or grant to any person the right to call for the issue or allotment of, any share of loan capital of the Company (including any option or right of pre-emption or conversion); and
- 4.2.5 no calls have been made in respect of the Charged Securities and remain unpaid and no calls can be made in respect of such Charged Securities in the future.

## 4.3 Repetition

- 4.3.1 The representations and warranties set out in this Clause 4 (*Representations and warranties*) shall be given on the date of this Deed and shall be deemed to be made on the date of each Utilisation Request, on each Utilisation Date and on the date of each Accordion Notice.
- 4.3.2 When a representation and warranty is deemed to be repeated, it is deemed to be made by reference to the facts and circumstances existing at the time of repetition.

## **5 Undertakings and Covenants**

### **5.1 Negative Pledge**

The Chargor will not and will not agree to do any of the following without the prior written consent of HIF:

- 5.1.1 create or permit to subsist any Security over any Security Asset (save a lien arising by operation of law in the ordinary course of trading provided any such lien is discharged within 60 days after it arises unless being contested in good faith and by appropriate proceedings);
- 5.1.2 sell, transfer, lease, licence, lend or otherwise dispose of, by any means and at any time, of all or any part of its interest in the Secured Assets, except the Chargor may in the ordinary course of its business and for the purpose of carrying on the same, sell, lease or otherwise dispose of, at market value, any of its Secured Assets not subject to or expressed to be subject to a fixed security under this Deed but only until such time as the floating charge thereon has been converted or crystallised into a fixed charge;
- 5.1.3 The foregoing provisions of this Clause 5.1 (*Negative pledge*) shall not be construed as limiting any powers exercisable by any Receiver appointed by HIF under or pursuant to this Deed.

### **5.2 Charged Securities**

- 5.2.1 The Chargor covenants and undertakes to HIF that, until the Security is discharged, there shall be:
  - (a) no increase or reduction in the authorised or issued share capital of the Company;
  - (b) no variation of the rights attaching to or conferred by the Charged Securities or any part of it;
  - (c) no exercise, renunciation or assignment by the Chargor of any right to subscribe for any shares or securities;
  - (d) no redemption, reconstruction, amalgamation, sale or other Disposal of the Charged Securities (including the exchange, conversion or reissue of any shares or securities as a consequence thereof); and
  - (e) no alteration to the constitutional documents of the Company,
 in each case, without the prior consent in writing of HIF;
- 5.2.2 The Chargor hereby covenants and undertakes to HIF that, until the Security is discharged, if any Charged Securities are in, or are converted into, uncertificated form, the Chargor shall promptly notify HIF and:
  - (a) act on any instructions given HIF and give such directions as HIF may require in order to protect and preserve HIF's Security; and
  - (b) transfer those Charged Securities to an escrow account in respect of which it has named as escrow agent HIF or any nominee or agent of HIF notified to the Chargor or any other person approved in writing by HIF;

5.2.3 The Chargor hereby covenants and undertakes to HIF that, until the Security is discharged, it shall provide HIF, as soon as practicable upon receipt, with copies of all notices and information received by it from any other party in relation to the Charged Securities; and

5.2.4 The Chargor hereby covenants and undertakes to HIF that, until the Security is discharged, it will pay all calls or other payments which may become due in respect of any of its Charged Securities and if it fails to do so HIF may elect to make such payments on behalf of the Chargor. Any sums so paid by HIF shall be repayable by the Chargor to HIF on demand together with interest at the Default Rate from the date of such payment by HIF and pending such repayment shall form part of the Secured Obligations.

**5.2.5 *Dividends and voting rights pre-enforcement***

Prior to the occurrence of a Default, the Chargor shall be entitled to:

- (a) receive and retain all dividends, distributions, interest and other monies derived from the Charged Securities; and
- (b) exercise any voting rights and other rights and powers attached to the Charged Securities, subject to Clause 5.2.2 above, and provided that such exercise is not (in the opinion of HIF) inconsistent with, or prejudicial to, the interests of HIF under this Deed or which would result in HIF incurring any cost, expense or liability.

**5.2.6 *Dividends and voting rights post-enforcement***

Upon or at any time after the occurrence of a Default, HIF may, at its discretion, (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):

- (a) transfer the Charged Securities into the name of HIF or such nominee(s) of HIF as it shall require;
- (b) exercise (or refrain from exercising) all voting and other rights and powers attaching to the Charged Securities in such manner as HIF deems appropriate;
- (c) apply all dividends, interest and other monies derived from the Charged Securities as though they were proceeds of sale under this Deed;
- (d) complete the Director's letter of resignation as set out in Part 2 of Schedule 3; and
- (e) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Securities including the right, in relation to any company whose shares or other securities are included in the Charged Securities, to concur or participate in:
  - (i) the reconstruction, amalgamation, sale or other disposal of such company of any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
  - (ii) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
  - (iii) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,

in each case, in the manner and on the terms HIF thinks fit, and the proceeds of any such action shall form part of the Charged Securities;

- 5.2.7 At any time after the occurrence of a Default, the Chargor shall, if requested by HIF, instruct any clearance system to transfer any Charged Securities held by it for or on behalf of the Chargor to an account of HIF or its nominee with that clearance system or otherwise as HIF may direct;
- 5.2.8 The Chargor shall pay when due all calls, instalments or other payments and shall discharge all other obligations, which may become due in respect of any of the Charged Securities; and
- 5.2.9 Neither HIF nor any Receiver shall be required to perform or fulfil any obligation of the Chargor in respect of the Charged Securities or to make any payment, or to make any enquiry as to the nature or sufficiency of any payment received by it or the Chargor, or to present or file any claim or take any other action to collect or enforce the payment of any amount to which it may have been or to which it may be entitled under this Deed at any time.

## **6 Enforcement**

### **6.1 Right to enforce**

This Deed may be enforced against the Chargor without HIF first having recourse to any other right, remedy, guarantee or Security Interest held by or available to it, irrespective of any law or any provision of this Deed to the contrary.

### **6.2 When Security becomes enforceable**

- 6.2.1 The Security created by the Chargor under this Deed shall become enforceable on the occurrence of a Termination Event.
- 6.2.2 At any time after the Security has become enforceable HIF may in its absolute discretion enforce all or any part of the Security in any manner it sees fit and HIF shall cease to be under any further commitment for the Chargor.
- 6.2.3 Without prejudice to the generality of Clause 6.2.2, at any time after the Security has become enforceable HIF may:
  - (a) redeem any prior Security Interest against any Secured Asset; and/or
  - (b) procure the transfer of that Security Interest to itself; and/or
  - (c) settle and pass the accounts of the prior mortgagee, Lender or encumbrancer. Any accounts so settled and passed shall be conclusive and binding on the Chargor.
- 6.2.4 All principal moneys, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the Chargor to HIF.

### **6.3 Possession**

- 6.3.1 At any time after the Security has become enforceable and without the need to obtain consent of the Chargor or an order for possession under sections 97 (*Taking possession*) of the Act, HIF may without further notice or demand enter into or take possession of the Secured Assets.

6.3.2 Section 99 (*Mortgagee in possession*) of the Act shall not apply to this Deed and neither HIF nor any Receiver shall be obliged to take any steps to sell or lease the Secured Assets (or any part thereof) after going into possession.

6.3.3 After HIF, in accordance with the provisions of this Deed, enters into possession of the Secured Assets, HIF will have the power to:

- (a) charge or agree to charge any or part of the Secured Assets of which HIF is in possession for such period upon such terms with or without a premium or fine in all respects as HIF may from time to time think fit; and
- (b) perform or cause to be performed all acts and things requisite or desirable according to the law of the country in which the Secured Assets or any part thereof of which HIF is in possession is situate for the purpose of giving effect to the exercise of any of the said powers, authorities and discretions.

6.3.4 The rights of HIF under this clause 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, statute, contract or otherwise).

#### **6.4 Power of sale and other powers**

6.4.1 At any time after the Security has become enforceable the power of sale and all other powers conferred on mortgagees and / or receivers whether by the Act (including, without limitation, the power of sale and incidental powers conferred by Section 100 (*Power of sale*) and Section 102 (*Incidental powers*) of the Act) or otherwise shall be exercisable immediately without the need:

- (a) to give notice or make demand for payment or advertisement or other formality;
- (b) to comply with Section 96(1)(c) of the Act;
- (c) to obtain the consent of the Chargor or an order for possession under Sections 97 (*Taking possession*) of the Act;
- (d) for the occurrence of any of the events specified in paragraphs (a) to (c) of Section 100(1) of the Act or paragraphs (a) to (c) of Section 108(1) of the Act;
- (e) to give notice as specified in the final proviso to Section 100(1) of the Act;
- (f) to obtain the consent of the Chargor or a court order authorising the exercise of the power of sale under Sections 100(2) or (3) of the Act; or
- (g) to give any notice to the Chargor under Section 103(2) of the Act.

#### **6.5 Protection of third parties**

6.5.1 No person (including a purchaser) dealing with HIF or a Receiver or its or his agents will be concerned to enquire:

- (a) whether the Secured Obligations have become payable;
- (b) whether due notice has been given to any person;

- (c) whether any power which HIF or a Receiver is purporting to exercise has become exercisable or has been properly exercised;
- (d) whether any of the Secured Obligations remain outstanding under the Finance Documents (or any of them);
- (e) whether the Receiver is authorised to act; or
- (f) how any money paid to HIF or a Receiver is to be applied,

and all protections to purchasers contained in Sections 105 (*Protection of purchasers*), 106 (*Mortgagee's receipts*) and 108(5) of the Act shall apply to all persons (including a purchaser) dealing with HIF or any Receiver in like manner as if the statutory powers of sale and appointing a receiver had not been varied or extended by this Deed.

- 6.5.2 The receipt of HIF or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve the purchaser of any obligation to see to the application of any moneys paid to it or at the direction of HIF or any Receiver.

## **6.6 No liability**

- 6.6.1 Neither HIF nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.
- 6.6.2 Neither HIF nor any Receiver will be liable for any loss of any kind (including without limitation, any loss arising from changes in exchange rates or diminution in the value of any of the Secured Assets) which may be occasioned by the realisation of the security hereby constituted or the exercise or purported exercise of, or any delay or neglect to exercise, any power, authority, right or discretion under this Deed.

## **6.7 General**

- 6.7.1 Section 94 (*Court order for sale*) of the Act shall not apply to this Deed.
- 6.7.2 If HIF enforces the Security at a time when no Secured Obligations are due but at a time when Secured Obligations may or will become so due, HIF (or any Receiver) may pay the proceeds of any recoveries effected by it into a suspense or impersonal account in accordance with Clause 11.4 (*Suspense account*).
- 6.7.3 All or any of the powers, authorities and discretions which are conferred by this Deed (either expressly or implied) upon a Receiver may be exercised after this Deed becomes enforceable by HIF in relation to all or any part of the Secured Assets both before and after the appointment of any Receiver of all or any part of the Secured Assets.
- 6.7.4 HIF and each Receiver is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, but so that the power of sale and other powers conferred by the Act shall be varied and extended by this Deed.
- 6.7.5 HIF and any Receiver shall have absolute discretion as to the time of exercise of the power of sale and the power of leasing and all other powers conferred on them by the Act or otherwise.



## **7 Appointment and powers of Receivers**

### **7.1 Method of appointment and removal**

7.1.1 At any time after the Chargor so requests or the Security has become enforceable HIF may:

- (a) without the need for the occurrence of any of the events specified in paragraphs (a) to (c) of Section 108(1) of the Act, appoint by an instrument in writing (whether executed under hand or as a deed) any person or persons to be a Receiver of the Secured Assets or any part or parts thereof; and
- (b) from time to time by an instrument in writing (whether executed under hand or as a deed) remove any Receiver so appointed and may so appoint another or others in his / their place.

7.1.2 The above powers of appointment of a Receiver shall be in addition to and not to the prejudice of all statutory and other powers of HIF under the Act or otherwise. Such powers as varied or extended by this Deed shall be and remain exercisable by HIF in respect of any part of the Secured Assets notwithstanding the appointment of a Receiver over them or over any of the Secured Assets.

### **7.2 Powers of Receiver**

Every Receiver shall have and be entitled to exercise:

- (a) all powers conferred by the Act (except where expressly disappplied in this Deed)
- (b) all powers conferred by Section 437 of the Companies Act 2014; and
- (c) without limiting any powers referred to above, each of the additional powers, rights and obligations set out in Schedule 1 (*Powers of a Receiver*).

7.2.2 Section 108(4) of the Act shall not apply to this Deed.

### **7.3 Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

### **7.4 Receiver as agent**

7.4.1 A Receiver is deemed for all purposes to be the agent of the Chargor to which he is appointed and accordingly is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act.

7.4.2 The Chargor shall be responsible for the remuneration, contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by any Receiver appointed over it.

7.4.3 HIF shall not incur any liability (either to the Chargor or to any other person) by reason of HIF making his appointed as Receiver or for any other reason.

## **7.5 Receiver's remuneration**

- 7.5.1 HIF may fix the remuneration of any Receiver appointed by it without being limited to the rate of commission prescribed under Section 108(7) of the Act.
- 7.5.2 The Chargor shall pay the remuneration of any Receiver and all costs, charges or expenses of the Receiver.
- 7.5.3 HIF shall not be liable for the payment of any remuneration to the Receiver or of any costs, charges or expenses of the Receiver.

## **8 Application of proceeds**

- 8.1 Notwithstanding Section 107 (*Application of proceeds of sale*) and Section 109 (*Application of money received*) of the Act, any monies received by HIF or the by any Receiver shall, after the Security has become enforceable but subject to the payment of any claims having priority to this Security be applied for the following purposes and, unless otherwise determined by HIF, in the following order (but without prejudice to the right of HIF to recover any shortfall):
  - 8.1.1 in or towards payment of all costs, charges and expenses of and incidental to the appointment of any Receiver and the exercise of all or any of the above powers and of all outgoings properly paid by the Receiver;
  - 8.1.2 in payment of remuneration due to any Receiver under or in connection with this Deed or the Secured Assets;
  - 8.1.3 in or towards discharge of the Secured Obligations; and
  - 8.1.4 any surplus shall be paid to the Chargor or other person entitled thereto.

## **9 Power of Attorney**

### **9.1 Power of attorney**

- 9.1.1 The Chargor hereby irrevocably and by way of security appoints HIF 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:
  - (a) execute, complete and perfect in favour of HIF or its nominees or of any purchaser any documents which HIF may require for perfecting its title to or for vesting the Secured Assets in the Secured Party or its nominees or in any purchaser; and
  - (b) execute, complete and perfect all documents and do all such acts and things to carry out any obligation imposed on the Chargor by or pursuant to this Deed (including under 13 (*Further assurances*)) or as may be required for the full exercise of all or any of the powers hereby conferred or which may be deemed expedient by HIF or any Receiver on or in connection with any sale, lease, disposition, realisation or getting in by HIF or any Receiver of the Secured Assets of any part thereof or in connection with any other exercise of any power hereunder.
- 9.1.2 The Chargor hereby covenants with HIF and separately with any Receiver that on request it will ratify and confirm all security agreements, documents, acts and things and all transactions entered into by HIF (or its delegate) or any Receiver (or its delegate) or by the Chargor at the instance of HIF or any Receiver in the exercise or purported exercise of its or his powers.

## **9.2 Delegation by attorney**

- 9.2.1 Without prejudice to the generality of Clause 10 (*Delegation*), each of HIF and any Receiver shall have full power to delegate the power conferred on it or him by Clause 9.1 (*Power of attorney*) but no such delegation shall preclude the subsequent exercise of such power by HIF or the Receiver itself or himself or preclude HIF or the Receiver from making a subsequent delegation thereof to some other person.
- 9.2.2 Any such delegation may be revoked by HIF or the Receiver at any time.
- 9.2.3 The power of attorney in clause 9.1.1 shall only be exercisable in circumstances where an Event of Default has occurred or where the Chargor fails to comply with its obligations under this Deed within five Business Days of being notified of such required obligation.

## **10 Delegation**

- 10.1.1 HIF and any Receiver may delegate by power of attorney or in any other manner to any person or persons all or any of the powers, authorities and discretions, which are exercisable by them under this Deed.
- 10.1.2 Any such delegation may be made upon such terms (including power to sub-delegate) and subject to such regulations as HIF or such Receiver may think fit.
- 10.1.3 Neither HIF nor any Receiver will be liable or responsible to the Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

## **11 Preservation of Security**

### **11.1 Continuing security**

- 11.1.1 The Security is a continuing security and will extend to the ultimate balance of the Secured Obligations until released or discharged by HIF in accordance with the terms of this Deed.
- 11.1.2 The Security will not be considered satisfied or discharged by any intermediate payment or discharge of all or any part of the Secured Obligations.
- 11.1.3 If upon final payment and satisfaction of the Secured Obligations there shall exist any right on the part of the Chargor or any other person to draw funds or otherwise which, if exercised, would or might cause the Chargor to become actually or contingently liable to HIF, whether as principal debtor or as surety for another person, then HIF will be entitled to retain the Security and all rights, remedies and powers conferred by this Deed and the Secured Assets for so long as shall or might be necessary to secure the discharge of such actual or contingent liability.

### **11.2 Additional Security**

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee, indemnity or Security Interest which HIF (or any trustee on its behalf) may at any time hold for any of the Secured Obligations.

**11.3 New accounts**

If HIF receives, or is deemed to be affected by notice (actual or constructive) of any subsequent Security Interest or other interest over or affecting all or any of the Secured Assets it may open a new account or accounts in the name of the Chargor and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice, and as from that time all payments made by or on behalf of the Chargor to HIF:

- (a) shall be credited or be treated as having been credited to the new account of the Chargor; and
- (b) shall not operate to reduce the Secured Obligations.

**11.4 Suspense account**

All monies received, recovered or realised by HIF under this Deed (including the proceeds of any conversion of currency) may, at the discretion of HIF, be credited to any interest-bearing suspense account for so long as HIF may determine (with interest accruing thereon) without HIF having any obligation to apply the same or any part thereof in or towards the discharge of any of the Secured Obligations.

**12 Consolidation of Accounts and Set-Off****12.1 Consolidation**

The Chargor agrees that that HIF may at any time without notice and notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of the Chargor's existing accounts wheresoever located (including accounts in the name of the Chargor jointly with others) whether such accounts are current, deposit, loan or of any other nature whatsoever, whether they are subject to notice or not and in any currency.

**12.2 Set-off**

HIF may set-off any matured obligation due from the Chargor against any matured obligation owed by HIF to the Chargor, regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, HIF may convert either obligation at a market rate of exchange in its usual course of business for the purpose of set-off.

**12.3 Right of set-off additional**

The rights of HIF under this Clause 12 are without prejudice and in addition to any right of set-off, combination or consolidation of accounts, lien or other right to which it is or they are at any time otherwise entitled (whether by operation of law, contract or otherwise) in any jurisdiction.

**13 Further assurance****13.1 Further action**

The Chargor shall, at its own expense, take whatever action as may be required by HIF to:

- (a) perfect or protect the Security intended to be created by this Deed; and

- (b) to facilitate the realisation of the Secured Assets or the exercise of any right, power or discretion exercisable by HIF or any such Receiver in respect of the Secured Assets,

including, without limitation, the execution, acknowledgement or delivery of any agreement, transfer, mortgage, charge, assignment, notice or form, or the making of a registration, in each case as HIF may direct.

## **14 Costs and Expenses**

### **14.1 Costs and expenses**

The Chargor shall promptly on demand pay on a full indemnity basis all expenses and costs (including legal and out of pocket expenses and any value added tax on such expenses and costs) incurred from time to time by HIF or any Receiver in connection with:

- 14.1.1 the preparation, negotiation, execution and delivery of this Deed and any documents referred to in this Deed;
- 14.1.2 any stamping and registration of this Deed;
- 14.1.3 any discharge or release of this Deed;
- 14.1.4 any amendment of this Deed; and
- 14.1.5 the preservation or exercise (or attempted preservation or exercise) of any rights or powers under or in connection with and the enforcement (or attempted enforcement) of this Deed.

### **14.2 Costs and expenses form part of Secured Obligations**

All monies payable under this Clause 14 constitute part of the Secured Obligations and shall bear interest at the Default Rate (from the date that they are incurred until actual payment as well after judgment or demand as before by HIF) and shall be payable on demand.

### **14.3 Indemnity**

The Chargor shall promptly indemnify HIF and every Receiver and Delegate against any cost, loss or expenses (including legal fees) and liabilities (including VAT thereon) incurred by any of them as a result of:

- (a) the taking, holding, protection or enforcement of this Deed and the Security; and/or
- (b) anything done in the exercise of any of the rights, powers, discretions and remedies vested in HIF and each Receiver and Delegate by this Deed or by law.

## **15 Currency**

### **15.1 Currency conversion**

All monies received or held by HIF or any Receiver under this Deed may be converted from their existing currency into such other currency as HIF or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that the other currency at the then prevailing spot rate of exchange (as conclusively determined by HIF) for purchasing the currency to be acquired with the existing currency.

## **15.2 Currency indemnity**

No payment from HIF (whether under any judgment or court order or otherwise) will discharge the obligation or liability of the Chargor in respect of which it was made unless and until HIF receives payment in full in the currency in which such obligation or liability was incurred, and to the extent that the amount of any such payment, on actual conversion into such currency, falls short of such obligation or liability expressed in that currency, the Chargor shall indemnify and hold harmless HIF from and against any loss it suffers or incurs as a result of any such shortfall.

## **16 Miscellaneous**

### **16.1 Amendments**

Any provision of this Deed may be amended, supplemented, varied, modified, released or discharged only if HIF and the Chargor so agree in writing.

### **16.2 Unfettered discretion**

Save as otherwise stated in this Deed, any liability or power which may be exercise or any determination which may be made under this Deed by HIF may be exercise or made in its absolute unfettered discretion and it shall not be obliged to give reasons therefor.

### **16.3 Severability**

All the terms and provisions of this Deed are distinct and severable, and if any term or provision is held unenforceable, illegal or void in whole or in part (or any of the Security intended to be created by or pursuant to this Deed is ineffective) by any court, regulatory authority or other competent authority it shall to that extent be deemed not to form part of this Deed, and the enforceability, legality and validity of the remainder of this Deed will not be affected.

## **17 Rights and Remedies**

### **17.1 Waiver and forbearance**

17.1.1 No failure or delay by HIF or any Receiver to exercise any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of any other right or remedy. A wavier or consent by HIF under this Deed will be effective only if given in writing and then only in the instance and for the purpose of which it is given.

17.1.2 The rights of HIF or any Receiver under this Deed will not be prejudiced or restricted by any indulgence or forbearance extended to the Chargor or other parties including release of any person or persons (whether or not a party hereto and whether or not such person or persons are jointly and/or severally liable with the Chargor) in respect of the Secured Obligations or of any other security without prejudice either to the Security or to the liability of the Chargor for the Secured Obligations.

### **17.2 Cumulative**

The rights and remedies of HIF and any Receiver under his Deed are cumulative and not exclusive or any rights or remedies provided by law.

**17.3 Company intent**

The Chargor expressly confirms that it intends that the Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available or owing under or in connection with any of the Finance Documents for, but not limited to, the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any increase in any interest rate; any other variation or extension for the purposes of which any such facility or amount might be available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

**18 Assignment**

- 18.1 The Chargor may not assign or transfer all or any of their rights, benefits or obligations under this Deed.
- 18.2 HIF may assign or transfer all or any part of its rights under this Deed to any person and the Chargor hereby consents to any such assignment. HIF will be entitled to impart any information concerning the Chargor to any assignee or successor in title.
- 18.3 This Deed shall be binding upon and inure to the benefit of the Chargor and its successors and permitted assigns and references in this Deed to any of them shall be construed accordingly.

**19 Release of Security****19.1 Covenant to Release**

Save as otherwise provided in this Deed, upon the expiry of the Security Period, HIF shall, at the request and cost of the Chargor, take whatever action is necessary to release or re-assign and discharge the security created or evidenced by this Deed.

**19.2 Reinstatement**

Where any discharge in respect of the Secured Obligations is made, in whole or in part or any arrangement is made on faith of any payment, security, assurance or otherwise, which is avoided or must be restored on insolvency, liquidation or otherwise, the liability of the Chargor under this Deed shall continue as if the discharge or arrangement had not occurred.

**19.3 Retention of Security**

Without prejudice to the foregoing, the Secured Agent shall not be obliged to release the Secured Assets from the security constituted by this Deed until the expiry of the period of one month plus any statutory period within which any payment or discharge of the Secured Obligations can be avoided or invalidated under any provision or rule of law after the Secured Obligations have been paid and discharged in full. If at any time during such period a petition is presented to a competent court or a resolution is passed for the winding-up or court protection of the Chargor or of any party which has made or given the relevant payment or other act or thing HIF may constitute to retain this Deed and not release the Secured Assets from the security constituted by this Deed for and during such further period as HIF in its absolute discretion shall determine.

## **20 Notices**

The terms and provisions of Clause 33 of the Facility Agreement shall apply to this Deed as of such terms and provisions were set out in full herein mutatis mutandis.

## **21 Counterparts**

This Deed may be executed in counterparts and each such counterpart taken together shall be deemed to constitute one and the same instrument.

## **22 Law and jurisdiction**

### **22.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it, together with all Disputes, shall be governed by and construed in accordance with the laws of Ireland.

### **22.2 Jurisdiction**

22.2.1 It is irrevocably agreed for the exclusive benefit of HIF that the courts of Ireland are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed) and that accordingly any suit, action or proceeding arising out of or in connection with this Deed (referred to in this clause as "**Proceedings**") may be brought in such courts.

22.2.2 Nothing in this clause shall limit the right of HIF to take Proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.

**IN WITNESS** whereof this Deed has been duly executed as a deed by the parties to it on the date first written above.



## **Schedule 1– Powers of a Receiver**

### **1 Possession**

To take immediate possession of, get in and collect the property in respect of which the Receiver is appointed and to make such demands and take such proceedings as may seem expedient for that purpose, and to take possession of the property over which the Receiver is appointed with like rights.

### **2 Realisation**

To sell, realise or otherwise dispose of the Secured Assets and to make substitutions of, or improvements to, the Chargor's plant and machinery as the Receiver thinks fit.

### **3 Manage**

To carry on, manage, develop, reconstruct, amalgamate, diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying any business of the Chargor in any manner the Receiver thinks fit.

### **4 Appoint Advisors**

To appoint and discharge managers, officers, agents, professional advisers, consultants, servants, workmen, employees and others for the purposes specified in this schedule and upon such terms as to remuneration or otherwise as the Receiver thinks fit and to remove any person so appointed to any such position by the Chargor.

### **5 Borrow Money/Lend Money**

To raise and borrow money or incur any other liability, either unsecured or on the security of any Security Asset or otherwise and generally on any terms and for whatever purpose the Receiver thinks fit and to lend money or advance credit to any customer of the Chargor.

### **6 Sell**

To grant rights, options or easements over, dispose of, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms the Receiver thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period he or she thinks fit. Fixtures, plant and machinery may be severed and sold separately from the property containing them without the consent of the Chargor.

### **7 Lease**

To let, hire, lease, licence or grant any interest in any Security Asset for any term and at any rent (with or without premium) the Receiver thinks fit and to vary the terms, surrender or accept a surrender of any lease or tenancy of any Security Asset on any terms which the Receiver thinks fit (including the payment of money to a lessee or tenant on a surrender) and to exercise on behalf of the Chargor, and without the consent of or notice to the Chargor, all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Secured Assets.

**8 Share Calls**

Where the Chargor is a company, to require the Chargor, or the directors of the Chargor, to make calls conditionally or unconditionally upon the shareholders of the Chargor in respect of any of its uncalled capital and enforce payment of any call so made by action (in the name of the Chargor or the Receiver as the Receiver may think fit) or otherwise.

**9 Receivables**

To sell or assign all or any of the Receivables in respect of which the Receiver is appointed in such manner, and generally on such terms and conditions, as the Receiver thinks fit.

**10 Voting Rights**

To exercise in respect of any Security Asset all voting or other powers or rights in such manner as the Receiver thinks fit.

**11 Land Registry**

To exercise on behalf of the Chargor and in the name of the Chargor all powers and rights of the Chargor relevant to effecting and necessary to effect the registration in the Irish Land Registry of any fixed or specific charge created on any registered land, of the crystallisation of any floating charge or his or her appointment as Receiver.

**12 Compromise**

To settle, adjust, refer to arbitration, allow time for payment, compromise and arrange any claim, contract, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

**13 Legal Actions**

To bring, prosecute, enforce, defend and abandon any action, suit or proceedings both in the Receiver's own name and in the name of the Chargor in relation to any Security Asset, which the Receiver thinks fit.

**14 Receipts**

To give a valid receipt for any money and execute any assurance or thing that may be necessary or desirable for realising any Security Asset.

**15 Company Reorganisation**

Where the Chargor is a company, to form a subsidiary of the Chargor, arrange for any such subsidiary to trade or cease to trade as the Receiver sees fit, in his or her capacity as shareholder and transfer to that subsidiary any Security Asset and sell or otherwise dispose of any such subsidiary.

**16 Delegation**

To delegate the Receiver's powers.

**17 Material Contracts**

To enter into, abandon, perform, repudiate, rescind, vary or cancel any material contracts as the Receiver thinks fit.

**18 Insurances**

To effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurances required to be maintained under any Finance Document entered into by the Chargor.

**19 Taxes**

To make any election for value-added tax purposes that the Receiver thinks fit and to run the tax affairs of the Chargor in any manner that the Receiver thinks fit.

**20 Intellectual Property**

To take all steps necessary to effect any registration, renewal, application or notification that the Receiver thinks fit to maintain in force or protect any Intellectual Property.

**21 Settle Accounts**

To redeem any prior Security Interest and to settle and pass the accounts to which that Security Interest relates. Any accounts so settled and passed are conclusive and binding on the Chargor, and any money so paid shall be taken to be an expense properly incurred by him or her.

**22 Protect and Manage**

To effect any repair or insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset and to arrange for or provide any service proper for the efficient use or management of the Secured Assets.

**23 Planning/Building**

To apply for and maintain any planning permission, building regulation approval or any other authorisation and to commence and complete any building operation, and to complete any building operation already begun.

**24 Use the Chargor's Name**

To use the name of the Chargor when exercising any of the rights, powers or discretions conferred on the Receiver.

**25 Company Seal**

Where the Chargor is a company, to use the Chargor's seal.

**26 Insolvency**

To rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the Chargor and to receive dividends, and to accede to the trust deeds for the creditors of any such person.

**27 Payments**

To make any payment which is necessary or incidental to the performance of his or her functions.

**28 Other Rights**

- 28.1 To do all other acts and things which he or she may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver.
- 28.2 To exercise in relation to a Security Asset all the rights, powers and authorities that he or she could exercise if he or she were the absolute beneficial owner of the Security Asset.
- 28.3 To do all acts and to execute in the name and on behalf of the Chargor any deed, receipt or other document.
- 28.4 To draw, accept, make or endorse any bill of exchange or promissory note in the name of and on behalf of the Chargor.

## Schedule 2 - Charged Securities

Security Provider	Charged Company	Registered Number	Description of Securities	Number of Securities
Waterford Distillery Group Limited	Spirit of Waterford Distillery Limited	548210	18,000,000 ordinary shares of €1.00 each	18,000,000 units of €1.00 each

## **Schedule 3 – Deliverables**

**SHARE/STOCK TRANSFER FORM****Part 1– Share transfer form**

(Above this line for Registrars only)		
Consideration money €	Certificate lodged with the Registrar  (For completion by the Registrar/Stock Exchange)	
Name of undertaking		
Description of Security		
Number or amount of Shares, Stock or other security and, in figures column only, number and denomination of units, if any	Words	Figures  Units of
Name(s) of registered holder(s) should be given in full: the address should be given where there is only one holder. If the transfer is not made by the registered holder(s) insert also the name(s) and capacity (e.g., Executor(s) of the person(s) making the transfer	In the name(s) of	
I/We hereby transfer the above security out of the name(s) aforesaid to the person(s) named below <i>or to the several named in Parts 2 of Brokers Transfer Forms relating to the above security: (Delete words in italics except for stock exchange transactions)</i> Signature(s) of transferor(s)  1. _____  2. _____  3. _____  4. _____  Bodies corporate should execute under their common seal		Stamp of selling Broker(s) or, for transactions which are not stock exchange transactions, of Agent(s), if any, acting for the transferor(s)          Date:
Full name(s) and full postal address(es) (including County or, if applicable, Postal District number) of the person(s) to whom the security is transferred. Please state title, if any, or whether Mr., Mrs., Miss., or Ms. Please complete in type writing or in Block Capitals.		
I/We request that such entries be made in the register as are necessary to give effect to the transfer.		
Stamp of Buying Broker(s) (if any)	Stamp or name and address of person lodging this form (if other than the Buying Broker(s))	

(Endorsement for use only in Stock Exchange Transactions)  
The security represented by the transfer overleaf has been sold as follows:

_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock
_____ Shares/Stock	_____ Shares/Stock

Balance (if any) due to Selling Broker(s) \_\_\_\_\_

Amount of Certificate(s)

Brokers Transfer Forms for above amounts certified

Stamp of Certifying Stock Exchange Stamp of Selling Broker(s).

FORM OF CERTIFICATE REQUIRED WHERE TRANSFER IS NOT LIABLE TO AD VALOREM STAMP DUTY

I / We hereby certify that the transaction in respect of which this transfer is made falls within the following description:-

(a) Vesting the property in trustees on the appointment of a new Trustee of a pre-existing Trust, or on the retirement of a Trustee.

(b)\* A transfer, where no beneficial interest in the property passes, (i) to a mere nominee of the Transferor, (ii) from a mere nominee of the Transferee,

(iii) from one nominee to another nominee of the same beneficial owner.

(c)\* A transfer by way of security for a loan; or re-transfer to the original Transferor on repayment of a loan.

(d) A transfer to a residuary legatee of Shares, etc., which forms part of the residue divisible under a Will.

(e) A transfer to a beneficiary under a Will of a *specific legacy* of Shares, etc.

(f) A transfer of Shares, etc., being the property of a person dying intestate, to the person or persons entitled thereto.

(g) A transfer to a beneficiary under a settlement on distribution of the trust funds, of Shares, etc., forming the share, or part of the share of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.

(h) A transfer on the occasion of a marriage to trustees of shares, etc., to be held on the terms of a settlement made in consideration of marriage.

(i) A transfer by the liquidator of a Company of Shares, etc., forming part of the assets of the Company, to which the Transferee is entitled in satisfaction or part satisfaction of his rights as a Shareholder of the Company.

Here set out concisely the facts explaining the transaction in cases falling within (b) and (c) or in any case which does not clearly fall within any one of the clauses (a) to (g). Adjudication in any case may be required.

Date:

Transferors: Transferors:

\_\_\_\_\_

\_\_\_\_\_

Signature:

Description:

\*NOTE - The above Certificate must be signed in the case of (b) and (c), either by (1) all the transferors and transferees, or (2) a member of a Stock Exchange or a Solicitor acting for one or other of the parties, or (3) an accredited representative of a bank. Where the Bank or its official nominee is a party to the transfer, the Certificate may be to the effect that "the transfer is accepted from Section 74 of the Finance (1909-10) Act, 1910". The above Certificate in other cases should be signed by a Solicitor or other person (e.g., a Bank acting as Trustee or Executor) having a full knowledge of the facts.



## Part 2– Letter of resignation

Date: \*\*

The Board of Directors

\*\*

(the **Company**)

Dear Sirs

### RESIGNATION OF DIRECTOR

I hereby resign as director of the Company and confirm that I have no claims against the Company for loss of office, arrears of pay or otherwise howsoever.

This resignation is to be effective as at the date specified above. You are hereby authorised to complete this letter by dating the same at any time after you are notified by \*\* that an Enforcement Event has occurred.

### SIGNED AND DELIVERED

as a **DEED** by  
[INSERT DIRECTORS NAME]  
in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Witness' Name

\_\_\_\_\_  
Witness' Address

\_\_\_\_\_  
Witness' Occupation

### Part 3– Letter of authority

To: \*\* (together with its successors and permitted assigns, HIF)

Date: \*\*

\*\*

Dear Sirs

I hereby unconditionally and irrevocably authorise you to date the letter of resignation delivered by me to you under the [insert description of charging document] dated \*\* between HIF and \*\* in respect of shares held in the capital of \*\* (the **Security Document**) as and when you become entitled to date such letter under the terms of the Security Document.

**SIGNED AND DELIVERED**

as a **DEED** by

[INSERT DIRECTORS NAME]

in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Witness' Name

\_\_\_\_\_  
Witness' Address

\_\_\_\_\_  
Witness' Occupation

CHARGOR:

Executed and delivered as a deed, by )  
**WATERFORD DISTILLERY GROUP** )  
**LIMITED** by a director in the presence of a )  
witness: )

Signature \_\_\_\_\_ John Auld Mactaggart  
Name (block capitals) \_\_\_\_\_ Sir John Auld Mactaggart

Witness signature \_\_\_\_\_ Alexandra Byatt

Witness name \_\_\_\_\_  
(block capitals) Mrs Alexandra Byatt

Witness address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HIF:

Executed and delivered as a deed, by **HSBC** )  
**INVOICE FINANCE (UK) LIMITED** by a )  
duly authorised attorney in the presence of a )  
witness: )  
)

Signature \_\_\_\_\_

Name (block capitals) \_\_\_\_\_

Witness signature \_\_\_\_\_

Witness name  
(block capitals) \_\_\_\_\_

Witness address  
\_\_\_\_\_  
\_\_\_\_\_



JILB/PAOB/078712.00002/87481835.1

Share Charge

**Dated 25 January 2023**

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# Share Charge

Dated 25 January 2023

Between

- (1) **WATERFORD DISTILLERY GROUP LIMITED**, a private company incorporated in England and Wales with registered number 09102027 and having its registered office at 2 Babmaes Street, London, SW1Y 6HD (the **Chargor**); and
- (2) **HSBC INVOICE FINANCE (UK) LIMITED** registered in England and Wales with the number 00759657 (HIF).

## Recitals

- A. HIF has agreed to make certain asset based lending facilities available to the Company (as defined below) on the terms of the Facility Agreement (as defined below).
- B. It is a condition to the Facility Agreement that the Chargor enters into this Deed.

This deed witnesses

## 1 Definitions and interpretation

### 1.1 Definitions

In this Deed, the following terms shall, unless the context otherwise requires, have the following meanings:

**Act** means the Land and Conveyancing Law Reform Act 2009;

**Business Day** means any day on which banks are generally open for business in London and Dublin excluding Saturdays and Sundays;

**Charged Securities** means:

- (a) the shares specified in Schedule 2 (*Charged Securities*); and
- (b) all other shares in the capital of the Company which the Chargor may now or hereafter hold or beneficially own;

**Company** means Spirit of Waterford Distillery Limited, a company incorporated in Ireland with registered number 548210 and having its registered office at 6<sup>th</sup> Floor, South Bank House, Barrow Street, Dublin 4, Dublin, Ireland;

**Delegate** means any person appointed by HIF or any Receiver appointed pursuant to the provisions of Clause 10 (*Delegation*);

**Disposal** means:

- (a) any sale, transfer, mortgage, assignment, grant of an option over, charge, pledge, loan or other disposal of Secured Assets, or an agreement to do any of the foregoing; and/or

- (b) entering into any transaction (including a derivative transaction) having an economic effect similar to any of the types of disposal described in sub-paragraph (a) above;

and **Dispose** shall be construed accordingly.

**Dispute** means any suit, action, proceedings and/or any dispute or difference which may arise out of or in connection with or which may relate in any way to any of the Finance Documents (including but not limited to any suit, action, proceedings, dispute or difference relating to the formation, interpretation or performance of any of the Finance Documents or any dispute arising out of any non-contractual obligations of any nature (including those to which Regulation (EC) No. 864/2007 applies) arising between the parties or any of them;

**Examiner** means an examiner appointed under Section 509 of the Companies Act 2014;

**Facility Agreement** means the asset based lending agreement relating to asset based lending facilities dated on or about the date of this Deed between HIF, the Chargor in its capacity as parent and original guarantor and the Company in its capacity as original receivables company and original inventory company;

**Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;

and, in each case, any replacement, redesignation or reinstatement of any such account whether by current account or deposit account or otherwise and **Other Account** shall be construed accordingly.



**Receiver** means any receiver and/or manager appointed by HIF (whether pursuant to this Deed or otherwise) in respect of the Chargor or over all or any part of the Secured Assets (and the expression **Receiver** will, where the context so admits, include the plural and any substituted receiver or receiver and manager);

**Related Rights** means, in relation to the Charged Securities:

- (a) all dividends, distributions, interest and other income paid or payable on the relevant Charged Securities or any asset referred to in (b) below;
- (b) all rights, monies, benefits or property accruing or offered at any time in relation to the Charged Securities whether by way of conversion, redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
- (c) all rights relating to any Charged Securities which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, lender or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person); and
- (d) all other rights attaching or relating to any Charged Securities and all cash or other securities or investments in the future deriving from the Charged Securities or such rights;

**Secured Obligations** means all monies, obligations and liabilities (including, without limitation, in respect of principal, interest, discount, commission, fees and expenses), actual or contingent, whether owed jointly or severally, whether as principal or as surety or in any other capacity whatsoever, in any currency, in any manner whatsoever which now are or at any time hereafter may be or become due, owing or incurred by the Chargor to HIF on any account or in any other manner whatsoever or howsoever and any reference to **Secured Obligation** means a reference to any of them;

**Security** means the security constituted or intended to be constituted by this Deed;

**Secured Assets** means all of the assets of the Chargor which are the subject of any Security and **Secured Asset** means any secured asset;

**Security Interest** means any mortgage, charge (fixed or floating), pledge, lien, assignment, hypothecation, retention of title, flawed asset agreement, preferential right, trust arrangement or any security interest whatsoever or any other agreement or arrangement having the effect of conferring security, a priority of payment or a disposition contrary to the provisions of this Deed, howsoever created or arising;

**Security Period** means the period starting on the date of this Deed and ending on:

- (a) the date on which HIF is satisfied that all of the Secured Obligations have been unconditionally and irrevocably paid and discharged in full; or
- (b) if earlier, the date on which all of the Security shall have been unconditionally and irrevocably released and discharged and HIF is under no further commitment, obligation or liability (actual or contingent) to the Chargor;

**Taxes** means all forms of taxation, duties, imposts and levies whether of Ireland or elsewhere, including (but without limitation) income tax, corporation tax, corporation profits tax, advance corporation tax, capital gains tax, capital acquisitions tax, residential property

tax, wealth tax, value added tax, dividend withholding tax, deposit interest retention tax, customs and other import and export duties, excise duties, stamp duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto whether payable in Ireland or elsewhere, and any interest, surcharge, penalty or fine in connection therewith, and the word **taxation** shall be construed accordingly; and

**Termination Event** has the meaning given to that term in the Facility Agreement.

## 1.2 Construction

- 1.2.1 Unless the context otherwise requires or this Deed provides otherwise, a term which is defined in the Facility Agreement shall have the same meaning (or be subject to the same construction) in this Deed. If there is any conflict or inconsistency between the terms of this Deed and the Facility Agreement then the terms of the Facility Agreement shall prevail.
- 1.2.2 Unless otherwise provided, any reference to a section, clause, sub-clause, paragraph or schedule is a reference to a section, clause, sub-clause, paragraph or schedule (as the case may be) of this Deed.
- 1.2.3 A document is in the agreed form if it is in the form of a draft agreed between or on behalf of the parties hereto on or before the date hereof.
- 1.2.4 Unless the context otherwise requires, any reference in this Deed to:
- (a) a word or phrase the definition of which is contained or referred to in Section 2 of the Companies Act 2014 shall have the meaning thereby given to it;
  - (b) any provision of law is a reference to that provision as amended, substituted, extended or re-enacted and includes any subordinate legislation;
  - (c) the singular includes the plural and vice versa and any gender includes the other gender;
  - (d) a **person** includes that person's successors, personal representatives, permitted assignees and/or transferees, substitutes, executors, administrators, successors in title (as the case may be) whether direct or indirect or any person with whom they may from time to time merge or amalgamate;
  - (e) a **person** includes any person, firm, partnership, company, corporation, association, trust, investment fund, government, state or agency (whether or not having a separate legal personality) or two or more of the foregoing but references to individuals are deemed to be references to natural persons only;
  - (f) this **Deed** and any **Finance Document** or any other agreement or instrument is a reference to this Deed, such other Finance Document or such other agreement or instrument as amended, restated, extended, varied, novated, substituted, replaced or supplemented in any manner from time to time, however fundamentally and which may include without limitation, an increase in facilities provided under a Finance Document, an increase in the Secured Obligations and/or any rescheduling of Indebtedness;
  - (g) any phrase introduced by the terms **including** or **includes** or **in particular** or any similar expression is to be construed as illustrative without limitation;

- (h) costs, charges or expenses include any value added tax or similar tax charged or chargeable in respect of such cost, charges or expenses;
- (i) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (j) **assets** includes present and future properties, revenues and rights of every description;
- (k) an **authorisation** means an authorisation, consent, approval, licence, resolution, filing or registration; and
- (l) a **Party** or the **Parties** is a reference to a party or the parties to this Deed.

### **1.3 Effect as a deed**

This Deed shall take effect as a deed even though HIF may only execute it under hand or may not execute it at all.

## **2 Payment**

### **2.1 Covenant to pay**

The Chargor hereby, as primary obligor and not merely as surety, covenants with HIF that it will pay and discharge the Secured Obligations when they are due or if no time for payment is specified for payment and discharge for the Secured Obligations, promptly on demand by HIF. No demand made by HIF hereunder shall prejudice or restrict the right of HIF to make further or other demands.

### **2.2 Payment free of deduction**

All payments to be made under this Deed by the Chargor shall be made free and clear of and without deduction for or on account of any set-off or counterclaim or any present or future Taxes, levies, imposts, charges, deductions or withholdings of any nature whatsoever. If the Chargor shall be compelled by law to make any deduction or withholding from any payment to HIF, the amount of the payment due from the Chargor shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, HIF receives and retains (free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

### **2.3 Calculation**

Any certificate or determination by HIF of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **3 Creation of Security**

### **3.1 Fixed charges**

As continuing security for the payment and discharge of the Secured Obligations, the Chargor as beneficial owner, in favour of HIF, hereby charges by way of first fixed charge all its

Charged Securities, including those held for it by any nominee, together with all Related Rights;

### **3.2 Perfection of security and deliverables**

#### **3.2.1 Charged Securities**

The Chargor hereby covenants and undertakes to deliver to HIF on the date of this Deed, or if later, on the date of acquisition by the Chargor of any Charged Securities:

- (a) an undated stock transfer form (executed in blank by or on behalf of the Chargor) in respect of such Charged Securities in the form set out in Part 1 (*Share transfer form*) of Schedule 3;
- (b) all share certificates, warrants and other documents of title representing such Charged Securities (including in the case of any Charged Securities which are not in the sole name of the Chargor, a declaration of trust in respect of the interest of the Chargor in such Charged Securities executed by each nominee);
- (c) a certified copy of the up to date register of members of the Company;
- (d) executed but undated letters of resignation and release, and executed and dated letters of authority from each of the directors, alternate directors and secretary of the Company in the forms set out in Part 2 (*Letter of resignation*) and Part 3 (*Letter of authority*) of Schedule 3; and
- (e) a duly passed shareholders resolution to amend the constitution of the Company to ensure that during the Security Period, the directors of the Company shall not have the power to refuse to register a transfer of the Charged Securities in the Company to HIF or its nominee in accordance with this Deed.

## **4 Representations and warranties**

### **4.1 General**

The Chargor represents and warrants to HIF that:

- 4.1.1 it is duly incorporated, organised and validly subsisting under the laws of its place of incorporation and is a separate legal entity capable of suing and being sued;
- 4.1.2 it has the necessary power, capacity and authority to enter into and perform its obligations under this Deed and to create the security hereby expressed to be created and has taken all necessary corporate and other action required to authorise the execution and delivery of this Deed, the creation of the security hereby expressed to be created or evidenced and its performance in accordance with its terms;
- 4.1.3 neither the execution of this Deed nor the creation of the security hereby expressed to be created or evidenced nor the performance of its obligations hereunder contravenes any of the provisions of its constitution (or equivalent constitutional documents) or any agreement or document to which it is a party or which is binding upon it or its assets or any law or regulation to which it is subject;
- 4.1.4 the obligations under this Deed are legally and validly binding on it and are enforceable in accordance with the terms of this Deed;

- 4.1.5 it holds or will, within any applicable time limit, obtain and keep in full force and effect and comply with all approvals, authorisations, consents, licences, registrations and exemptions necessary for the creation or validity of the security hereby expressed to be created or evidenced and for it to perform its obligations hereunder;
- 4.1.6 it is and will at all times during the Security Period be the sole lawful and beneficial owner of its Secured Assets;
- 4.1.7 on the date of execution of this Deed and on each date hereafter until released by HIF, this Secured Assets are free from any mortgage, charge or any other Security Interest (save for those created pursuant to this Deed) and constitutes a first priority Security Interest over the Secured Assets enforceable against the Chargor; and
- 4.1.8 its centre of main interests (as that term is used in Article 3(1) of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (the **Regulation**) is situated in Ireland and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

## 4.2 Charged Securities

The Chargor represents and warrants to HIF that:

- 4.2.1 the Charged Securities are duly authorised, validly issued and fully paid and constitute the entire issued share capital of the relevant company;
- 4.2.2 it is the sole legal and beneficial owner of the Charged Securities and all Related Rights, free from any lien, charge, equity or encumbrance (save for any Charged Securities that are specified in Schedule 2 (*Charged Securities*), as being held by a nominee on its behalf) and that the Charged Securities listed in Schedule 2 (*Charged Securities*), constitute the entire share capital owned by the Chargor in the Company as at the date of this Deed;
- 4.2.3 the constitution documents of the Company do not and could not restrict or inhibit any transfer of the Charged Securities on creation or enforcement of the Security and the directors of the relevant company cannot refuse to register any transfer of the Charged Securities to HIF or any nominee of HIF;
- 4.2.4 there are no agreements in place which provide for the issue or allotment of, or grant to any person the right to call for the issue or allotment of, any share of loan capital of the Company (including any option or right of pre-emption or conversion); and
- 4.2.5 no calls have been made in respect of the Charged Securities and remain unpaid and no calls can be made in respect of such Charged Securities in the future.

## 4.3 Repetition

- 4.3.1 The representations and warranties set out in this Clause 4 (*Representations and warranties*) shall be given on the date of this Deed and shall be deemed to be made on the date of each Utilisation Request, on each Utilisation Date and on the date of each Accordion Notice.
- 4.3.2 When a representation and warranty is deemed to be repeated, it is deemed to be made by reference to the facts and circumstances existing at the time of repetition.

## **5 Undertakings and Covenants**

### **5.1 Negative Pledge**

The Chargor will not and will not agree to do any of the following without the prior written consent of HIF:

- 5.1.1 create or permit to subsist any Security over any Security Asset (save a lien arising by operation of law in the ordinary course of trading provided any such lien is discharged within 60 days after it arises unless being contested in good faith and by appropriate proceedings);
- 5.1.2 sell, transfer, lease, licence, lend or otherwise dispose of, by any means and at any time, of all or any part of its interest in the Secured Assets, except the Chargor may in the ordinary course of its business and for the purpose of carrying on the same, sell, lease or otherwise dispose of, at market value, any of its Secured Assets not subject to or expressed to be subject to a fixed security under this Deed but only until such time as the floating charge thereon has been converted or crystallised into a fixed charge;
- 5.1.3 The foregoing provisions of this Clause 5.1 (*Negative pledge*) shall not be construed as limiting any powers exercisable by any Receiver appointed by HIF under or pursuant to this Deed.

### **5.2 Charged Securities**

- 5.2.1 The Chargor covenants and undertakes to HIF that, until the Security is discharged, there shall be:

- (a) no increase or reduction in the authorised or issued share capital of the Company;
- (b) no variation of the rights attaching to or conferred by the Charged Securities or any part of it;
- (c) no exercise, renunciation or assignment by the Chargor of any right to subscribe for any shares or securities;
- (d) no redemption, reconstruction, amalgamation, sale or other Disposal of the Charged Securities (including the exchange, conversion or reissue of any shares or securities as a consequence thereof); and
- (e) no alteration to the constitutional documents of the Company,

in each case, without the prior consent in writing of HIF;

- 5.2.2 The Chargor hereby covenants and undertakes to HIF that, until the Security is discharged, if any Charged Securities are in, or are converted into, uncertificated form, the Chargor shall promptly notify HIF and:

- (a) act on any instructions given HIF and give such directions as HIF may require in order to protect and preserve HIF's Security; and
- (b) transfer those Charged Securities to an escrow account in respect of which it has named as escrow agent HIF or any nominee or agent of HIF notified to the Chargor or any other person approved in writing by HIF;

5.2.3 The Chargor hereby covenants and undertakes to HIF that, until the Security is discharged, it shall provide HIF, as soon as practicable upon receipt, with copies of all notices and information received by it from any other party in relation to the Charged Securities; and

5.2.4 The Chargor hereby covenants and undertakes to HIF that, until the Security is discharged, it will pay all calls or other payments which may become due in respect of any of its Charged Securities and if it fails to do so HIF may elect to make such payments on behalf of the Chargor. Any sums so paid by HIF shall be repayable by the Chargor to HIF on demand together with interest at the Default Rate from the date of such payment by HIF and pending such repayment shall form part of the Secured Obligations.

5.2.5 ***Dividends and voting rights pre-enforcement***

Prior to the occurrence of a Default, the Chargor shall be entitled to:

- (a) receive and retain all dividends, distributions, interest and other monies derived from the Charged Securities; and
- (b) exercise any voting rights and other rights and powers attached to the Charged Securities, subject to Clause 5.2.2 above, and provided that such exercise is not (in the opinion of HIF) inconsistent with, or prejudicial to, the interests of HIF under this Deed or which would result in HIF incurring any cost, expense or liability.

5.2.6 ***Dividends and voting rights post-enforcement***

Upon or at any time after the occurrence of a Default, HIF may, at its discretion, (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):

- (a) transfer the Charged Securities into the name of HIF or such nominee(s) of HIF as it shall require;
- (b) exercise (or refrain from exercising) all voting and other rights and powers attaching to the Charged Securities in such manner as HIF deems appropriate;
- (c) apply all dividends, interest and other monies derived from the Charged Securities as though they were proceeds of sale under this Deed;
- (d) complete the Director's letter of resignation as set out in Part 2 of Schedule 3; and
- (e) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Securities including the right, in relation to any company whose shares or other securities are included in the Charged Securities, to concur or participate in:
  - (i) the reconstruction, amalgamation, sale or other disposal of such company of any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
  - (ii) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
  - (iii) the exercise, renunciation or assignment of any right to subscribe for any shares or securities.

in each case, in the manner and on the terms HIF thinks fit, and the proceeds of any such action shall form part of the Charged Securities;

- 5.2.7 At any time after the occurrence of a Default, the Chargor shall, if requested by HIF, instruct any clearance system to transfer any Charged Securities held by it for or on behalf of the Chargor to an account of HIF or its nominee with that clearance system or otherwise as HIF may direct;
- 5.2.8 The Chargor shall pay when due all calls, instalments or other payments and shall discharge all other obligations, which may become due in respect of any of the Charged Securities; and
- 5.2.9 Neither HIF nor any Receiver shall be required to perform or fulfil any obligation of the Chargor in respect of the Charged Securities or to make any payment, or to make any enquiry as to the nature or sufficiency of any payment received by it or the Chargor, or to present or file any claim or take any other action to collect or enforce the payment of any amount to which it may have been or to which it may be entitled under this Deed at any time.

## **6 Enforcement**

### **6.1 Right to enforce**

This Deed may be enforced against the Chargor without HIF first having recourse to any other right, remedy, guarantee or Security Interest held by or available to it, irrespective of any law or any provision of this Deed to the contrary.

### **6.2 When Security becomes enforceable**

- 6.2.1 The Security created by the Chargor under this Deed shall become enforceable on the occurrence of a Termination Event.
- 6.2.2 At any time after the Security has become enforceable HIF may in its absolute discretion enforce all or any part of the Security in any manner it sees fit and HIF shall cease to be under any further commitment for the Chargor.
- 6.2.3 Without prejudice to the generality of Clause 6.2.2, at any time after the Security has become enforceable HIF may:
  - (a) redeem any prior Security Interest against any Secured Asset; and/or
  - (b) procure the transfer of that Security Interest to itself; and/or
  - (c) settle and pass the accounts of the prior mortgagee, Lender or encumbrancer. Any accounts so settled and passed shall be conclusive and binding on the Chargor.
- 6.2.4 All principal moneys, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the Chargor to HIF.

### **6.3 Possession**

- 6.3.1 At any time after the Security has become enforceable and without the need to obtain consent of the Chargor or an order for possession under sections 97 (*Taking possession*) of the Act, HIF may without further notice or demand enter into or take possession of the Secured Assets.



- 6.3.2 Section 99 (*Mortgagee in possession*) of the Act shall not apply to this Deed and neither HIF nor any Receiver shall be obliged to take any steps to sell or lease the Secured Assets (or any part thereof) after going into possession.
- 6.3.3 After HIF, in accordance with the provisions of this Deed, enters into possession of the Secured Assets, HIF will have the power to:
- (a) charge or agree to charge any or part of the Secured Assets of which HIF is in possession for such period upon such terms with or without a premium or fine in all respects as HIF may from time to time think fit; and
  - (b) perform or cause to be performed all acts and things requisite or desirable according to the law of the country in which the Secured Assets or any part thereof of which HIF is in possession is situate for the purpose of giving effect to the exercise of any of the said powers, authorities and discretions.
- 6.3.4 The rights of HIF under this clause 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, statute, contract or otherwise).

#### **6.4 Power of sale and other powers**

- 6.4.1 At any time after the Security has become enforceable the power of sale and all other powers conferred on mortgagees and / or receivers whether by the Act (including, without limitation, the power of sale and incidental powers conferred by Section 100 (*Power of sale*) and Section 102 (*Incidental powers*) of the Act) or otherwise shall be exercisable immediately without the need:
- (a) to give notice or make demand for payment or advertisement or other formality;
  - (b) to comply with Section 96(1)(c) of the Act;
  - (c) to obtain the consent of the Chargor or an order for possession under Sections 97 (*Taking possession*) of the Act;
  - (d) for the occurrence of any of the events specified in paragraphs (a) to (c) of Section 100(1) of the Act or paragraphs (a) to (c) of Section 108(1) of the Act;
  - (e) to give notice as specified in the final proviso to Section 100(1) of the Act;
  - (f) to obtain the consent of the Chargor or a court order authorising the exercise of the power of sale under Sections 100(2) or (3) of the Act; or
  - (g) to give any notice to the Chargor under Section 103(2) of the Act.

#### **6.5 Protection of third parties**

- 6.5.1 No person (including a purchaser) dealing with HIF or a Receiver or its or his agents will be concerned to enquire:
- (a) whether the Secured Obligations have become payable;
  - (b) whether due notice has been given to any person;

- (c) whether any power which HIF or a Receiver is purporting to exercise has become exercisable or has been properly exercised;
- (d) whether any of the Secured Obligations remain outstanding under the Finance Documents (or any of them);
- (e) whether the Receiver is authorised to act; or
- (f) how any money paid to HIF or a Receiver is to be applied,

and all protections to purchasers contained in Sections 105 (*Protection of purchasers*), 106 (*Mortgagee's receipts*) and 108(5) of the Act shall apply to all persons (including a purchaser) dealing with HIF or any Receiver in like manner as if the statutory powers of sale and appointing a receiver had not been varied or extended by this Deed.

- 6.5.2 The receipt of HIF or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve the purchaser of any obligation to see to the application of any moneys paid to it or at the direction of HIF or any Receiver.

## **6.6 No liability**

- 6.6.1 Neither HIF nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.
- 6.6.2 Neither HIF nor any Receiver will be liable for any loss of any kind (including without limitation, any loss arising from changes in exchange rates or diminution in the value of any of the Secured Assets) which may be occasioned by the realisation of the security hereby constituted or the exercise or purported exercise of, or any delay or neglect to exercise, any power, authority, right or discretion under this Deed.

## **6.7 General**

- 6.7.1 Section 94 (*Court order for sale*) of the Act shall not apply to this Deed.
- 6.7.2 If HIF enforces the Security at a time when no Secured Obligations are due but at a time when Secured Obligations may or will become so due, HIF (or any Receiver) may pay the proceeds of any recoveries effected by it into a suspense or impersonal account in accordance with Clause 11.4 (*Suspense account*).
- 6.7.3 All or any of the powers, authorities and discretions which are conferred by this Deed (either expressly or implied) upon a Receiver may be exercised after this Deed becomes enforceable by HIF in relation to all or any part of the Secured Assets both before and after the appointment of any Receiver of all or any part of the Secured Assets.
- 6.7.4 HIF and each Receiver is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, but so that the power of sale and other powers conferred by the Act shall be varied and extended by this Deed.
- 6.7.5 HIF and any Receiver shall have absolute discretion as to the time of exercise of the power of sale and the power of leasing and all other powers conferred on them by the Act or otherwise.

## **7 Appointment and powers of Receivers**

### **7.1 Method of appointment and removal**

7.1.1 At any time after the Chargor so requests or the Security has become enforceable HIF may:

- (a) without the need for the occurrence of any of the events specified in paragraphs (a) to (c) of Section 108(1) of the Act, appoint by an instrument in writing (whether executed under hand or as a deed) any person or persons to be a Receiver of the Secured Assets or any part or parts thereof; and
- (b) from time to time by an instrument in writing (whether executed under hand or as a deed) remove any Receiver so appointed and may so appoint another or others in his / their place.

7.1.2 The above powers of appointment of a Receiver shall be in addition to and not to the prejudice of all statutory and other powers of HIF under the Act or otherwise. Such powers as varied or extended by this Deed shall be and remain exercisable by HIF in respect of any part of the Secured Assets notwithstanding the appointment of a Receiver over them or over any of the Secured Assets.

### **7.2 Powers of Receiver**

Every Receiver shall have and be entitled to exercise:

- (a) all powers conferred by the Act (except where expressly disappplied in this Deed);
- (b) all powers conferred by Section 437 of the Companies Act 2014; and
- (c) without limiting any powers referred to above, each of the additional powers, rights and obligations set out in Schedule 1 (*Powers of a Receiver*).

7.2.2 Section 108(4) of the Act shall not apply to this Deed.

### **7.3 Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

### **7.4 Receiver as agent**

7.4.1 A Receiver is deemed for all purposes to be the agent of the Chargor to which he is appointed and accordingly is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act.

7.4.2 The Chargor shall be responsible for the remuneration, contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by any Receiver appointed over it.

7.4.3 HIF shall not incur any liability (either to the Chargor or to any other person) by reason of HIF making his appointed as Receiver or for any other reason.

## **7.5 Receiver's remuneration**

- 7.5.1 HIF may fix the remuneration of any Receiver appointed by it without being limited to the rate of commission prescribed under Section 108(7) of the Act.
- 7.5.2 The Chargor shall pay the remuneration of any Receiver and all costs, charges or expenses of the Receiver.
- 7.5.3 HIF shall not be liable for the payment of any remuneration to the Receiver or of any costs, charges or expenses of the Receiver.

## **8 Application of proceeds**

- 8.1 Notwithstanding Section 107 (*Application of proceeds of sale*) and Section 109 (*Application of money received*) of the Act, any monies received by HIF or the by any Receiver shall, after the Security has become enforceable but subject to the payment of any claims having priority to this Security be applied for the following purposes and, unless otherwise determined by HIF, in the following order (but without prejudice to the right of HIF to recover any shortfall):
  - 8.1.1 in or towards payment of all costs, charges and expenses of and incidental to the appointment of any Receiver and the exercise of all or any of the above powers and of all outgoings properly paid by the Receiver;
  - 8.1.2 in payment of remuneration due to any Receiver under or in connection with this Deed or the Secured Assets;
  - 8.1.3 in or towards discharge of the Secured Obligations; and
  - 8.1.4 any surplus shall be paid to the Chargor or other person entitled thereto.

## **9 Power of Attorney**

### **9.1 Power of attorney**

- 9.1.1 The Chargor hereby irrevocably and by way of security appoints HIF 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:
  - (a) execute, complete and perfect in favour of HIF or its nominees or of any purchaser any documents which HIF may require for perfecting its title to or for vesting the Secured Assets in the Secured Party or its nominees or in any purchaser; and
  - (b) execute, complete and perfect all documents and do all such acts and things to carry out any obligation imposed on the Chargor by or pursuant to this Deed (including under 13 (*Further assurances*)) or as may be required for the full exercise of all or any of the powers hereby conferred or which may be deemed expedient by HIF or any Receiver on or in connection with any sale, lease, disposition, realisation or getting in by HIF or any Receiver of the Secured Assets of any part thereof or in connection with any other exercise of any power hereunder.
- 9.1.2 The Chargor hereby covenants with HIF and separately with any Receiver that on request it will ratify and confirm all security agreements, documents, acts and things and all transactions entered into by HIF (or its delegate) or any Receiver (or its delegate) or by the Chargor at the instance of HIF or any Receiver in the exercise or purported exercise of its or his powers.

## **9.2 Delegation by attorney**

9.2.1 Without prejudice to the generality of Clause 10 (*Delegation*), each of HIF and any Receiver shall have full power to delegate the power conferred on it or him by Clause 9.1 (*Power of attorney*) but no such delegation shall preclude the subsequent exercise of such power by HIF or the Receiver itself or himself or preclude HIF or the Receiver from making a subsequent delegation thereof to some other person.

9.2.2 Any such delegation may be revoked by HIF or the Receiver at any time.

9.2.3 The power of attorney in clause 9.1.1 shall only be exercisable in circumstances where an Event of Default has occurred or where the Chargor fails to comply with its obligations under this Deed within five Business Days of being notified of such required obligation.

## **10 Delegation**

10.1.1 HIF and any Receiver may delegate by power of attorney or in any other manner to any person or persons all or any of the powers, authorities and discretions, which are exercisable by them under this Deed.

10.1.2 Any such delegation may be made upon such terms (including power to sub-delegate) and subject to such regulations as HIF or such Receiver may think fit.

10.1.3 Neither HIF nor any Receiver will be liable or responsible to the Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

## **11 Preservation of Security**

### **11.1 Continuing security**

11.1.1 The Security is a continuing security and will extend to the ultimate balance of the Secured Obligations until released or discharged by HIF in accordance with the terms of this Deed.

11.1.2 The Security will not be considered satisfied or discharged by any intermediate payment or discharge of all or any part of the Secured Obligations.

11.1.3 If upon final payment and satisfaction of the Secured Obligations there shall exist any right on the part of the Chargor or any other person to draw funds or otherwise which, if exercised, would or might cause the Chargor to become actually or contingently liable to HIF, whether as principal debtor or as surety for another person, then HIF will be entitled to retain the Security and all rights, remedies and powers conferred by this Deed and the Secured Assets for so long as shall or might be necessary to secure the discharge of such actual or contingent liability.

### **11.2 Additional Security**

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee, indemnity or Security Interest which HIF (or any trustee on its behalf) may at any time hold for any of the Secured Obligations.

### **11.3 New accounts**

If HIF receives, or is deemed to be affected by notice (actual or constructive) of any subsequent Security Interest or other interest over or affecting all or any of the Secured Assets it may open a new account or accounts in the name of the Chargor and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice, and as from that time all payments made by or on behalf of the Chargor to HIF:

- (a) shall be credited or be treated as having been credited to the new account of the Chargor; and
- (b) shall not operate to reduce the Secured Obligations.

### **11.4 Suspense account**

All monies received, recovered or realised by HIF under this Deed (including the proceeds of any conversion of currency) may, at the discretion of HIF, be credited to any interest-bearing suspense account for so long as HIF may determine (with interest accruing thereon) without HIF having any obligation to apply the same or any part thereof in or towards the discharge of any of the Secured Obligations.

## **12 Consolidation of Accounts and Set-Off**

### **12.1 Consolidation**

The Chargor agrees that that HIF may at any time without notice and notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of the Chargor's existing accounts wheresoever located (including accounts in the name of the Chargor jointly with others) whether such accounts are current, deposit, loan or of any other nature whatsoever, whether they are subject to notice or not and in any currency.

### **12.2 Set-off**

HIF may set-off any matured obligation due from the Chargor against any matured obligation owed by HIF to the Chargor, regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, HIF may convert either obligation at a market rate of exchange in its usual course of business for the purpose of set-off.

### **12.3 Right of set-off additional**

The rights of HIF under this Clause 12 are without prejudice and in addition to any right of set-off, combination or consolidation of accounts, lien or other right to which it is or they are at any time otherwise entitled (whether by operation of law, contract or otherwise) in any jurisdiction.

## **13 Further assurance**

### **13.1 Further action**

The Chargor shall, at its own expense, take whatever action as may be required by HIF to:

- (a) perfect or protect the Security intended to be created by this Deed; and

- (b) to facilitate the realisation of the Secured Assets or the exercise of any right, power or discretion exercisable by HIF or any such Receiver in respect of the Secured Assets,

including, without limitation, the execution, acknowledgement or delivery of any agreement, transfer, mortgage, charge, assignment, notice or form, or the making of a registration, in each case as HIF may direct.

## **14 Costs and Expenses**

### **14.1 Costs and expenses**

The Chargor shall promptly on demand pay on a full indemnity basis all expenses and costs (including legal and out of pocket expenses and any value added tax on such expenses and costs) incurred from time to time by HIF or any Receiver in connection with:

- 14.1.1 the preparation, negotiation, execution and delivery of this Deed and any documents referred to in this Deed;
- 14.1.2 any stamping and registration of this Deed;
- 14.1.3 any discharge or release of this Deed;
- 14.1.4 any amendment of this Deed; and
- 14.1.5 the preservation or exercise (or attempted preservation or exercise) of any rights or powers under or in connection with and the enforcement (or attempted enforcement) of this Deed.

### **14.2 Costs and expenses form part of Secured Obligations**

All monies payable under this Clause 14 constitute part of the Secured Obligations and shall bear interest at the Default Rate (from the date that they are incurred until actual payment as well after judgment or demand as before by HIF) and shall be payable on demand.

### **14.3 Indemnity**

The Chargor shall promptly indemnify HIF and every Receiver and Delegate against any cost, loss or expenses (including legal fees) and liabilities (including VAT thereon) incurred by any of them as a result of:

- (a) the taking, holding, protection or enforcement of this Deed and the Security; and/or
- (b) anything done in the exercise of any of the rights, powers, discretions and remedies vested in HIF and each Receiver and Delegate by this Deed or by law.

## **15 Currency**

### **15.1 Currency conversion**

All monies received or held by HIF or any Receiver under this Deed may be converted from their existing currency into such other currency as HIF or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that the other currency at the then prevailing spot rate of exchange (as conclusively determined by HIF) for purchasing the currency to be acquired with the existing currency.

## **15.2 Currency indemnity**

No payment from HIF (whether under any judgment or court order or otherwise) will discharge the obligation or liability of the Chargor in respect of which it was made unless and until HIF receives payment in full in the currency in which such obligation or liability was incurred, and to the extent that the amount of any such payment, on actual conversion into such currency, falls short of such obligation or liability expressed in that currency, the Chargor shall indemnify and hold harmless HIF from and against any loss it suffers or incurs as a result of any such shortfall.

## **16 Miscellaneous**

### **16.1 Amendments**

Any provision of this Deed may be amended, supplemented, varied, modified, released or discharged only if HIF and the Chargor so agree in writing.

### **16.2 Unfettered discretion**

Save as otherwise stated in this Deed, any liability or power which may be exercise or any determination which may be made under this Deed by HIF may be exercise or made in its absolute unfettered discretion and it shall not be obliged to give reasons therefor.

### **16.3 Severability**

All the terms and provisions of this Deed are distinct and severable, and if any term or provision is held unenforceable, illegal or void in whole or in part (or any of the Security intended to be created by or pursuant to this Deed is ineffective) by any court, regulatory authority or other competent authority it shall to that extent be deemed not to form part of this Deed, and the enforceability, legality and validity of the remainder of this Deed will not be affected.

## **17 Rights and Remedies**

### **17.1 Waiver and forbearance**

17.1.1 No failure or delay by HIF or any Receiver to exercise any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of any other right or remedy. A waiver or consent by HIF under this Deed will be effective only if given in writing and then only in the instance and for the purpose of which it is given.

17.1.2 The rights of HIF or any Receiver under this Deed will not be prejudiced or restricted by any indulgence or forbearance extended to the Chargor or other parties including release of any person or persons (whether or not a party hereto and whether or not such person or persons are jointly and/or severally liable with the Chargor) in respect of the Secured Obligations or of any other security without prejudice either to the Security or to the liability of the Chargor for the Secured Obligations.

### **17.2 Cumulative**

The rights and remedies of HIF and any Receiver under his Deed are cumulative and not exclusive or any rights or remedies provided by law.



### **17.3 Company intent**

The Chargor expressly confirms that it intends that the Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available or owing under or in connection with any of the Finance Documents for, but not limited to, the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any increase in any interest rate; any other variation or extension for the purposes of which any such facility or amount might be available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

## **18 Assignment**

- 18.1 The Chargor may not assign or transfer all or any of their rights, benefits or obligations under this Deed.
- 18.2 HIF may assign or transfer all or any part of its rights under this Deed to any person and the Chargor hereby consents to any such assignment. HIF will be entitled to impart any information concerning the Chargor to any assignee or successor in title.
- 18.3 This Deed shall be binding upon and inure to the benefit of the Chargor and its successors and permitted assigns and references in this Deed to any of them shall be construed accordingly.

## **19 Release of Security**

### **19.1 Covenant to Release**

Save as otherwise provided in this Deed, upon the expiry of the Security Period, HIF shall, at the request and cost of the Chargor, take whatever action is necessary to release or re-assign and discharge the security created or evidenced by this Deed.

### **19.2 Reinstatement**

Where any discharge in respect of the Secured Obligations is made, in whole or in part or any arrangement is made on faith of any payment, security, assurance or otherwise, which is avoided or must be restored on insolvency, liquidation or otherwise, the liability of the Chargor under this Deed shall continue as if the discharge or arrangement had not occurred.

### **19.3 Retention of Security**

Without prejudice to the foregoing, the Secured Agent shall not be obliged to release the Secured Assets from the security constituted by this Deed until the expiry of the period of one month plus any statutory period within which any payment or discharge of the Secured Obligations can be avoided or invalidated under any provision or rule of law after the Secured Obligations have been paid and discharged in full. If at any time during such period a petition is presented to a competent court or a resolution is passed for the winding-up or court protection of the Chargor or of any party which has made or given the relevant payment or other act or thing HIF may constitute to retain this Deed and not release the Secured Assets from the security constituted by this Deed for and during such further period as HIF in its absolute discretion shall determine.

## **20 Notices**

The terms and provisions of Clause 33 of the Facility Agreement shall apply to this Deed as of such terms and provisions were set out in full herein mutatis mutandis.

## **21 Counterparts**

This Deed may be executed in counterparts and each such counterpart taken together shall be deemed to constitute one and the same instrument.

## **22 Law and jurisdiction**

### **22.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it, together with all Disputes, shall be governed by and construed in accordance with the laws of Ireland.

### **22.2 Jurisdiction**

22.2.1 It is irrevocably agreed for the exclusive benefit of HIF that the courts of Ireland are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed) and that accordingly any suit, action or proceeding arising out of or in connection with this Deed (referred to in this clause as "Proceedings") may be brought in such courts.

22.2.2 Nothing in this clause shall limit the right of HIF to take Proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.

**IN WITNESS** whereof this Deed has been duly executed as a deed by the parties to it on the date first written above.

## **Schedule 1– Powers of a Receiver**

### **1 Possession**

To take immediate possession of, get in and collect the property in respect of which the Receiver is appointed and to make such demands and take such proceedings as may seem expedient for that purpose, and to take possession of the property over which the Receiver is appointed with like rights.

### **2 Realisation**

To sell, realise or otherwise dispose of the Secured Assets and to make substitutions of, or improvements to, the Chargor's plant and machinery as the Receiver thinks fit.

### **3 Manage**

To carry on, manage, develop, reconstruct, amalgamate, diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying any business of the Chargor in any manner the Receiver thinks fit.

### **4 Appoint Advisors**

To appoint and discharge managers, officers, agents, professional advisers, consultants, servants, workmen, employees and others for the purposes specified in this schedule and upon such terms as to remuneration or otherwise as the Receiver thinks fit and to remove any person so appointed to any such position by the Chargor.

### **5 Borrow Money/Lend Money**

To raise and borrow money or incur any other liability, either unsecured or on the security of any Security Asset or otherwise and generally on any terms and for whatever purpose the Receiver thinks fit and to lend money or advance credit to any customer of the Chargor.

### **6 Sell**

To grant rights, options or easements over, dispose of, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms the Receiver thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period he or she thinks fit. Fixtures, plant and machinery may be severed and sold separately from the property containing them without the consent of the Chargor.

### **7 Lease**

To let, hire, lease, licence or grant any interest in any Security Asset for any term and at any rent (with or without premium) the Receiver thinks fit and to vary the terms, surrender or accept a surrender of any lease or tenancy of any Security Asset on any terms which the Receiver thinks fit (including the payment of money to a lessee or tenant on a surrender) and to exercise on behalf of the Chargor, and without the consent of or notice to the Chargor, all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Secured Assets.

**8 Share Calls**

Where the Chargor is a company, to require the Chargor, or the directors of the Chargor, to make calls conditionally or unconditionally upon the shareholders of the Chargor in respect of any of its uncalled capital and enforce payment of any call so made by action (in the name of the Chargor or the Receiver as the Receiver may think fit) or otherwise.

**9 Receivables**

To sell or assign all or any of the Receivables in respect of which the Receiver is appointed in such manner, and generally on such terms and conditions, as the Receiver thinks fit.

**10 Voting Rights**

To exercise in respect of any Security Asset all voting or other powers or rights in such manner as the Receiver thinks fit.

**11 Land Registry**

To exercise on behalf of the Chargor and in the name of the Chargor all powers and rights of the Chargor relevant to effecting and necessary to effect the registration in the Irish Land Registry of any fixed or specific charge created on any registered land, of the crystallisation of any floating charge or his or her appointment as Receiver.

**12 Compromise**

To settle, adjust, refer to arbitration, allow time for payment, compromise and arrange any claim, contract, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

**13 Legal Actions**

To bring, prosecute, enforce, defend and abandon any action, suit or proceedings both in the Receiver's own name and in the name of the Chargor in relation to any Security Asset, which the Receiver thinks fit.

**14 Receipts**

To give a valid receipt for any money and execute any assurance or thing that may be necessary or desirable for realising any Security Asset.

**15 Company Reorganisation**

Where the Chargor is a company, to form a subsidiary of the Chargor, arrange for any such subsidiary to trade or cease to trade as the Receiver sees fit, in his or her capacity as shareholder and transfer to that subsidiary any Security Asset and sell or otherwise dispose of any such subsidiary.

**16 Delegation**

To delegate the Receiver's powers.

**17 Material Contracts**

To enter into, abandon, perform, repudiate, rescind, vary or cancel any material contracts as the Receiver thinks fit.

**18 Insurances**

To effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurances required to be maintained under any Finance Document entered into by the Chargor.

**19 Taxes**

To make any election for value-added tax purposes that the Receiver thinks fit and to run the tax affairs of the Chargor in any manner that the Receiver thinks fit.

**20 Intellectual Property**

To take all steps necessary to effect any registration, renewal, application or notification that the Receiver thinks fit to maintain in force or protect any Intellectual Property.

**21 Settle Accounts**

To redeem any prior Security Interest and to settle and pass the accounts to which that Security Interest relates. Any accounts so settled and passed are conclusive and binding on the Chargor, and any money so paid shall be taken to be an expense properly incurred by him or her.

**22 Protect and Manage**

To effect any repair or insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset and to arrange for or provide any service proper for the efficient use or management of the Secured Assets.

**23 Planning/Building**

To apply for and maintain any planning permission, building regulation approval or any other authorisation and to commence and complete any building operation, and to complete any building operation already begun.

**24 Use the Chargor's Name**

To use the name of the Chargor when exercising any of the rights, powers or discretions conferred on the Receiver.

**25 Company Seal**

Where the Chargor is a company, to use the Chargor's seal.

**26 Insolvency**

To rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the Chargor and to receive dividends, and to accede to the trust deeds for the creditors of any such person.

**27 Payments**

To make any payment which is necessary or incidental to the performance of his or her functions.

**28 Other Rights**

- 28.1 To do all other acts and things which he or she may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver.
- 28.2 To exercise in relation to a Security Asset all the rights, powers and authorities that he or she could exercise if he or she were the absolute beneficial owner of the Security Asset.
- 28.3 To do all acts and to execute in the name and on behalf of the Chargor any deed, receipt or other document.
- 28.4 To draw, accept, make or endorse any bill of exchange or promissory note in the name of and on behalf of the Chargor.

## Schedule 2 - Charged Securities

Security Provider	Charged Company	Registered Number	Description of Securities	Number of Securities
Waterford Distillery Group Limited	Spirit of Waterford Distillery Limited	548210	18,000,000 ordinary shares of €1.00 each	18,000,000 units of €1.00 each

### **Schedule 3 – Deliverables**



SHARE/STOCK TRANSFER FORM

Part 1– Share transfer form

(Above this line for Registrars only)		
Consideration money. €		Certificate lodged with the Registrar  (For completion by the Registrar/Stock Exchange)
Name of undertaking		
Description of Security		
Number or amount of Shares, Stock or other security and, in figures column only, number and denomination of units, if any	Words	Figures  Units of
Name(s) of registered holder(s) should be given in full: the address should be given where there is only one holder. If the transfer is not made by the registered holder(s) insert also the name(s) and capacity (e.g., Executor(s) of the person(s) making the transfer	In the name(s) of	
I/We hereby transfer the above security out of the name(s) aforesaid to the person(s) named below or to the several named in Parts 2 of <i>Brokers' Transfer Forms relating to the above security</i> . (Delete words in italics except for stock exchange transactions). Signature(s) of transferor(s)  1. _____ 2. _____ 3. _____ 4. _____  Bodies corporate should execute under their common seal		Stamp of selling Broker(s) or, for transactions which are not stock exchange transactions, of Agent(s), if any, acting for the transferor(s)         Date:
Full name(s) and full postal address(es) (including County or, if applicable, Postal District number) of the person(s) to whom the security is transferred. Please state title, if any, or whether Mr., Mrs., Miss., or Ms. Please complete in type writing or in Block Capitals.		
I/We request that such entries be made in the register as are necessary to give effect to the transfer.		
Stamp of Buying Broker(s) (if any)	Stamp or name and address of person lodging this form (if other than the Buying Broker(s)).	

(Endorsement for use only in Stock Exchange Transactions)

The security represented by the transfer overleaf has been sold as follows:

_____	Shares/Stock	_____	Shares/Stock
_____	Shares/Stock	_____	Shares/Stock
_____	Shares/Stock	_____	Shares/Stock
_____	Shares/Stock	_____	Shares/Stock
_____	Shares/Stock	_____	Shares/Stock
_____	Shares/Stock	_____	Shares/Stock
_____	Shares/Stock	_____	Shares/Stock
_____	Shares/Stock	_____	Shares/Stock
_____	Shares/Stock	_____	Shares/Stock
_____	Shares/Stock	_____	Shares/Stock

Balance (if any) due to Selling Broker(s) \_\_\_\_\_

Amount of Certificate(s) \_\_\_\_\_

Brokers Transfer Forms for above amounts certified \_\_\_\_\_

Stamp of Certifying Stock Exchange \_\_\_\_\_

Stamp of Selling Broker(s) \_\_\_\_\_

#### FORM OF CERTIFICATE REQUIRED WHERE TRANSFER IS NOT LIABLE TO AD VALOREM STAMP DUTY

I / We hereby certify that the transaction in respect of which this transfer is made falls within the following description:-

- (a) Vesting the property in trustees on the appointment of a new Trustee of a pre-existing Trust, or on the retirement of a Trustee.
- (b)\* A transfer, where no beneficial interest in the property passes, (i) to a mere nominee of the Transferor, (ii) from a mere nominee of the Transferee,
  - (iii) from one nominee to another nominee of the same beneficial owner.
- (c)\* A transfer by way of security for a loan; or re-transfer to the original Transferor on repayment of a loan.
- (d) A transfer to a residuary legatee of Shares, etc., which forms part of the residue divisible under a Will.
- (e) A transfer to a beneficiary under a Will of a *specific legacy* of Shares, etc.
- (f) A transfer of Shares, etc., being the property of a person dying intestate, to the person or persons entitled thereto.
- (g) A transfer to a beneficiary under a settlement on distribution of the trust funds, of Shares, etc., forming the share, or part of the share of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.
- (h) A transfer on the occasion of a marriage to trustees of shares, etc., to be held on the terms of a settlement made in consideration of marriage.
- (i) A transfer by the liquidator of a Company of Shares, etc., forming part of the assets of the Company, to which the Transferee is entitled in satisfaction or part satisfaction of his rights as a Shareholder of the Company.

Here set out concisely the facts explaining the transaction in cases falling within (b) and (c) or in any case which does not clearly fall within any one of the clauses (a) to (g). Adjudication in any case may be required:

Date: \_\_\_\_\_

Transferors: \_\_\_\_\_

Transferees: \_\_\_\_\_

Signature: \_\_\_\_\_

Description: \_\_\_\_\_

\*NOTE - The above Certificate must be signed in the case of (b) and (c), either by (1) all the transferors and transferees, or (2) a member of a Stock Exchange or a Solicitor acting for one or other of the parties, or (3) an accredited representative of a bank. Where the Bank or its official nominee is a party to the transfer, the Certificate may be to the effect that "the transfer is accepted from Section 74 of the Finance (1909-10) Act, 1910". The above Certificate in other cases should be signed by a Solicitor or other person (e.g., a Bank acting as Trustee or Executor) having a full knowledge of the facts.

## Part 2– Letter of resignation

Date: \*\*

The Board of Directors

\*\*

(the Company)

Dear Sirs

### RESIGNATION OF DIRECTOR

I hereby resign as director of the Company and confirm that I have no claims against the Company for loss of office, arrears of pay or otherwise howsoever.

This resignation is to be effective as at the date specified above. You are hereby authorised to complete this letter by dating the same at any time after you are notified by \*\* that an Enforcement Event has occurred.

### SIGNED AND DELIVERED

as a DEED by

[INSERT DIRECTORS NAME]

in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Witness' Name

\_\_\_\_\_  
Witness' Address

\_\_\_\_\_  
Witness' Occupation

### Part 3– Letter of authority

To: \*\* (together with its successors and permitted assigns, HIF)

Date: \*\*

\*\*

Dear Sirs

I hereby unconditionally and irrevocably authorise you to date the letter of resignation delivered by me to you under the [insert description of charging document] dated \*\* between HIF and \*\* in respect of shares held in the capital of \*\* (the **Security Document**) as and when you become entitled to date such letter under the terms of the Security Document.

#### SIGNED AND DELIVERED

as a DEED by  
[INSERT DIRECTORS NAME]  
in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Witness' Name

\_\_\_\_\_  
Witness' Address

\_\_\_\_\_  
Witness' Occupation

**CHARGOR:**

Executed and delivered as a deed, by )  
**WATERFORD DISTILLERY GROUP** )  
**LIMITED** by a director in the presence of a )  
witness: )

Signature .....

Name (block capitals) .....

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....

.....

HIF:

Executed and delivered as a deed, by HSBC )  
INVOICE FINANCE (UK) LIMITED by a )  
duly authorised attorney in the presence of a )  
witness: )

Signature

Steven James  
Fennell

Name (block capitals)

Steven James Fennell

Witness signature

Natasha Webb

Witness name  
(block capitals)

NATASHA WEBB

Witness address

HSBC Invoice Finance (UK) Ltd  
Cannon House  
Chatsworth Road  
Worthing  
BN11 1NA