

Business Loan Agreement

[Borrower Name]
[Lender Name]

Drafted by Solicitors

Contents

Clause

| | | |
|-----|--|----|
| 1. | Definitions and Interpretation | 1 |
| 2. | The Facility | 4 |
| 3. | Purpose | 4 |
| 4. | Drawing | 4 |
| 5. | Conditions precedent | 4 |
| 6. | Interest | 5 |
| 7. | Costs | 5 |
| 8. | Repayment | 5 |
| 9. | Payments | 5 |
| 10. | Representations and warranties | 6 |
| 11. | Covenants | 8 |
| 12. | Events of Default | 10 |
| 13. | Set-off | 12 |
| 14. | Calculations, accounts and certificates | 12 |
| 15. | Remedies, waivers, amendments and consents | 12 |
| 16. | Severance | 13 |
| 17. | Assignment | 13 |
| 18. | Counterparts | 13 |
| 19. | Third party rights | 13 |
| 20. | Notices | 13 |
| 21. | Governing law and jurisdiction | 14 |

Schedule

| | | |
|----------|------------------------------------|----|
| Schedule | Conditions precedent | 15 |
| 1. | Constitutional Documents | 15 |
| 2. | Other documents and evidence | 15 |

THIS AGREEMENT is dated [DATE]

Parties

- (1) [BORROWER NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [ADDRESS] (**Borrower**).
- (2) [LENDER NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [ADDRESS] (**Lender**).

Background

The Lender has agreed to provide the Borrower with an unsecured term loan facility of £[AMOUNT].

Agreed terms

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Availability Period: the period from and including the date of this agreement to and including [DATE].

Borrowed Money: any indebtedness the Borrower owes as a result of:

- (a) borrowing or raising money (with or without security), including any premium and any capitalised interest on that money;
- (b) any bond, note, loan stock, debenture, commercial paper or similar instrument;
- (c) any acceptance credit facility or dematerialised equivalent, bill-discounting, note purchase or documentary credit facilities;
- (d) monies raised by selling, assigning or discounting receivables or other financial assets on terms that recourse may be had to the Borrower in the event of non-payment of such receivables or financial assets when due;
- (e) any deferred payments for assets or services acquired, other than trade credit that is given in the ordinary course of trading and which does not involve any deferred payment of any amount for more than 60 days;
- (f) any rental or hire charges under finance leases (whether for land, machinery, equipment or otherwise);
- (g) any counter-indemnity obligation in respect of any guarantees, bonds, indemnities, standby letters of credit or other instruments issued by a third party in connection with the Borrower's performance of contracts;
- (h) any other transaction that has the commercial effect of borrowing (including any forward sale or purchase agreement and any liabilities which are not shown as borrowed money on the Borrower's balance sheet because they are contingent, conditional or otherwise);
- (i) 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 mark to market value shall be taken into account);
and

- (j) any guarantee, counter-indemnity or other assurances against financial loss that the Borrower has given for any of the items referred to in paragraphs (a) to (i) of this definition incurred by any person.

When calculating Borrowed Money, no liability shall be taken into account more than once.

Business Day: a day (other than a Saturday or a Sunday) on which commercial banks are open for general business and deposits are dealt with on the London Interbank Market.

Event of Default: any event or circumstance listed in clause 12.

Facility: the term loan facility made available under this agreement.

Indebtedness: any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint.

Loan: the principal amount of the loan made or to be made by the Lender to the Borrower under this agreement or (as the context requires) the principal amount outstanding for the time being of that loan.

Potential Event of Default: any event or circumstance specified in clause 12 which would (with the expiry of a grace period, the giving of notice, the making of any determination under this agreement or any combination thereof) be an Event of Default.

Security: any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

Sterling and £: the lawful currency for the time being of the United Kingdom.

Total Facility Amount: the maximum principal amount of the Facility referred to in clause 2.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A reference to **this agreement** (or any provision of it) or any other document shall be construed as a reference to this agreement, that provision or that document as it is in force for the time being and as amended, varied or supplemented from time to time in accordance with its terms, or with the agreement of the relevant parties.
- 1.4 A reference to a **person** shall include a reference to an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 1.5 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.6 A reference to **writing** or **written** includes faxes but not e-mail.

- 1.7 A reference to a document **in the agreed form** is to that document in the form agreed by the parties and initialled by or on behalf of them for identification (including any alteration which may be so agreed).
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.10 References to a **certified copy** of a document mean a copy certified to be a true, complete and up-to-date copy of the original document, in writing and signed by a director or the secretary of the Borrower.
- 1.11 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly).
- 1.12 A reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisisation, registration or resolution.
- 1.13 A reference to the **Borrower** and the **Lender** shall include their respective successors, permitted transferees and permitted assigns.
- 1.14 A reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any government, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.15 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it.
- 1.16 A reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description.
- 1.17 A reference to a **disposal** of any asset, undertaking or business, includes a sale, lease, licence, transfer, loan or other disposal by that person of that asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).
- 1.18 A reference to a clause or Schedule is to a clause of, or Schedule to, this agreement unless the context requires otherwise.
- 1.19 A reference to **continuing** in relation to an Event of Default means an Event of Default which has not been remedied or waived.

2. The Facility

The Lender grants to the Borrower an unsecured Sterling term loan facility of a total principal amount not exceeding £[AMOUNT] on the terms, and subject to the conditions, of this agreement.

3. Purpose

3.1 The Borrower shall use all money borrowed under this agreement for [STATE PURPOSE].

3.2 The Lender is not obliged to monitor or verify how any amount advanced under this agreement is used.

4. Drawing

4.1 Subject to clause 5, the Borrower may utilise the Facility in a single amount on any Business Day during the Availability Period. To do this, the Borrower shall give the Lender at least [one] Business Day's prior notice of the date on which the Borrower wants to draw down the Loan specifying the amount of the proposed Loan, the Business Day on which it is to be made and the bank account to which payment is to be made. The amount of the Loan shall not exceed the Total Facility Amount.

4.2 Any notice given under clause 4.1 will be irrevocable.

4.3 Any amount of the Facility not drawn down during the Availability Period will automatically be cancelled.

5. Conditions precedent

5.1 This clause 5 is inserted solely for the benefit of the Lender.

5.2 The Borrower may not give notice to draw the Loan, and the Lender is not obliged to lend, until the Lender has confirmed to the Borrower that it has received all the documents and evidence specified in the Schedule, in the form and containing the information, that it requires.

5.3 Subject to clause 5.2, the Lender will only be obliged to make the Loan available if, on both the date of the notice to draw down the Loan and the proposed drawdown date of the Loan (specified in clause 4.1):

- (a) no Event of Default or Potential Event of Default is continuing or would result from the proposed Loan; and
- (b) the representations and warranties in clause 10 are true in all material respects.

6. Interest

- 6.1 The Borrower shall pay interest on the Loan at the rate of [four] per cent above the base rate of [Barclays Bank Plc], as varied from time to time.
- 6.2 Interest shall accrue daily and shall be payable [monthly, in arrears, on the last Business Day of each month].
- 6.3 If the Borrower fails to make any payment due under this agreement on the due date for payment, interest on the unpaid amount shall accrue daily, from the date of non-payment to the date of actual payment (both before and after judgment), at [one] per cent above the rate specified in clause 6.1.

7. Costs

- 7.1 The Borrower shall pay, [within [three] Business Days of **OR** on demand], all costs and expenses (together with any value added tax on them) that the Lender incurs in connection with the negotiation and preparation, amendment, extension, alteration, preservation and enforcement of the Loan and/or this agreement.
- 7.2 The Borrower shall pay any stamp, documentary and other similar duties and taxes to which this agreement may be subject, or give rise and shall indemnify the Lender against any losses or liabilities that it may incur as a result of any delay or omission by the Borrower in paying any such duties or taxes.

8. Repayment

[The Borrower shall repay the Loan and all accrued interest on [DATE].

OR

The Borrower shall repay the Loan in [three] equal instalments of £[AMOUNT] on [DAY] of [MONTH] in each of the years [YEAR], [YEAR] and [YEAR], together with all interest accrued and due up to the date of payment in each case.]

9. Payments

- 9.1 All payments made by the Borrower under this agreement shall be in Sterling and in immediately available cleared funds to the Lender at its account number [INSERT ACCOUNT NUMBER] with [BANK] of [ADDRESS] [SORT CODE] or any other account as the Lender may notify the Borrower.
- 9.2 If any payment becomes due on a day that is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day, or, if that Business Day

falls in the following calendar month, such due date shall be the immediately preceding Business Day.

- 9.3 All payments made by the Borrower under this agreement shall be made in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding, provided that, if the Borrower is required by law or regulation to make such deduction or withholding, it shall:
- (a) ensure that the deduction or withholding does not exceed the minimum amount legally required;
 - (b) pay to the relevant taxation or other authorities, as appropriate, the full amount of the deduction or withholding;
 - (c) furnish to the Lender, within the period for payment permitted by the relevant law, either:
 - (i) an official receipt of the relevant taxation authorities concerned on payments to them of amounts so deducted or withheld; or
 - (ii) if such receipts are not issued by the taxation authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and
 - (d) pay to the Lender such additional amount as is necessary to ensure that the net full amount received by the Lender after the required deduction or withholding is equal to the amount that the Lender would have received had no such deduction or withholding been made.

10. Representations and warranties

10.1 The Borrower represents and warrants on the date of this agreement:

10.2 It:

- (a) is a duly incorporated limited liability company validly existing under the laws of its jurisdiction of incorporation; and
- (b) has the power to own its assets and carry on its business as it is being conducted.

10.3 It has the power and authority to execute, deliver and perform its obligations under this agreement and the transactions contemplated by it. No limit on its powers will be exceeded as a result of the borrowing contemplated in this agreement.

10.4 The execution, delivery and performance of the obligations in, and transactions contemplated by, this agreement, do not and will not contravene or conflict with:

- (a) its constitutional documents;

- (b) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
 - (c) any law or regulation or judicial or official order, applicable to it.

- 10.5 It has taken all necessary action and obtained all required authorisations to enable it to execute, deliver and perform its obligations under this agreement and the transactions contemplated by it and to make it admissible in evidence in its jurisdiction of incorporation. All such authorisations are in full force and effect.

- 10.6 Its obligations under this agreement are legal, valid, binding and enforceable in accordance with its terms.

- 10.7 It is not necessary to file, record or enroll this agreement with any court or other authority or pay any stamp, registration or similar taxes in relation to this agreement or the transactions contemplated by this agreement.

- 10.8 No Event of Default or Potential Event of Default has occurred or is continuing or is reasonably likely to result from making the Loan or the entry into, the performance of, or any transaction contemplated by this agreement.

- 10.9 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on the Borrower or to which any of its assets is subject which has or is reasonably likely to have a material adverse effect.

- 10.10 No litigation, arbitration or administrative proceedings are taking place, pending or, to the Borrower's knowledge, threatened against it, any of its directors or any of its assets.

- 10.11 Its audited financial statements for the year ended [INSERT YEAR] have been prepared in accordance with consistently applied accounting principles, standards and practices generally accepted in the UK and present a true and fair view of its financial condition and operations during the relevant accounting period and were approved by the Borrower's directors in compliance with section 393 of the Companies Act 2006.

- 10.12 The information, in written or electronic format, supplied by, or on its behalf, to the Lender in connection with the Facility and this agreement was, at the time it was supplied or at the date it was stated to be given (as the case may be), to the best of its knowledge and belief [having made all due enquiry:
 - (a) if it was factual information, complete, true and accurate in all material respects;
 - (b) if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair and made on reasonable grounds; and

- (c) if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
- (d) not misleading in any material respect, nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Borrower to the Lender.

10.13 Each of the representations and warranties in this clause 10 [other than [SPECIFY ANY WHICH IT IS AGREED WILL BE EXCLUDED]] is deemed to be repeated by the Borrower:

- (a) on the date of the request to draw down the Loan;
- (b) on the date that the Loan is actually drawn down; and
- (c) on each date immediately succeeding the date on which interest is paid under this agreement in accordance with clause 6.2,

by reference to the facts and circumstances existing on each such date.

11. Covenants

11.1 The Borrower covenants with the Lender that, as from the date of this agreement until all its liabilities under this agreement have been discharged:

11.2 It will deliver to the Lender:

- (a) within [180] days after the end of each of its financial years, its audited accounts;
- (b) within [30] days after the end of each [month], its monthly management accounts;
- (c) promptly, all notices or other documents dispatched by the Borrower to its shareholders (or any class of them) or to its creditors generally; and
- (d) promptly such financial or other information as the Lender may, from time to time, request relating to the Borrower or its business.

11.3 It will promptly, after becoming aware of them, notify the Lender of any litigation, arbitration or administrative proceedings or claim of the kind described in clause 10.10.

11.4 It will promptly obtain all consents or authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation to enable it to perform its obligations under this agreement and to ensure the legality, validity, enforceability and admissibility in evidence of this agreement in its jurisdiction of incorporation.

11.5 It shall procure that any of its unsecured and unsubordinated obligations and liabilities under this agreement rank, and will rank, at least pari passu in right and priority of payments with all its other unsecured and unsubordinated obligations and liabilities, present or future, actual or contingent, except for those obligations and liabilities mandatorily preferred by law of general application to companies.

- 11.6 It will comply, in all respect, with all laws, if failure to do so has or is reasonably likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this agreement.
- 11.7 It shall promptly notify the Lender of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.
- 11.8 If the Lender is obliged for any reason to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall, promptly on the request of the Lender, supply (or procure the supply of) such documentation and other evidence as is reasonably requested in order for the Lender to be able to carry out, and be satisfied that it has complied with, all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in this agreement.
- 11.9 It will carry on and conduct its business in a proper and efficient manner and will not make any change to the general nature or scope of its business as carried on at the date of this agreement.
- 11.10 It shall not:
- (a) create, or permit to subsist, any Security on or over any of its assets;
 - (b) sell, transfer or otherwise dispose of any of its assets on terms whereby such assets are or may be leased to or re-acquired or acquired by it; or
 - (c) sell, transfer or otherwise dispose of any of its receivables on recourse terms; or
 - (d) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (e) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Borrowed Money or of financing the acquisition of an asset.

- 11.11 It shall not sell, assign, lease, transfer or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, its assets [other than:
- (a) trading stock in the ordinary course of its business;
 - (b) assets exchanged for other assets comparable or superior as to type, value and quality; and
 - (c) assets whose market value is worth less than [£ENTER AMOUNT] (or its equivalent in another currency or currencies) in any financial year].
- 11.12 It shall not incur or permit to subsist, any obligation for Borrowed Money.

12. Events of Default

- 12.1 Each of the events or circumstances set out in this clause 12 (other than this clause 12.1 and clause 12.17) is an Event of Default.
- 12.2 The Borrower fails to pay any sum payable under this agreement, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within [three] Business Days of its due date.
- 12.3 The Borrower fails (other than by failing to pay), to comply with any provision of this agreement (and if the Lender considers, acting reasonably, that the default is capable of remedy), such default is not remedied within [14] Business Days of the earlier of:
- (a) the Lender notifying the Borrower of the default and the remedy required;
 - (b) the Borrower becoming aware of the default.
- 12.4 Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, this agreement is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made, repeated or deemed made.
- 12.5 If:
- (a) any Borrowed Money is not paid when due or within any originally applicable grace period; or
 - (b) any Borrowed Money becomes due, or capable or being declared due and payable prior to its stated maturity by reason of an event of default howsoever described;
 - (c) any commitments for Borrowed Money is cancelled or suspended by a creditor of the Borrower by reason of an event of default howsoever described; or
 - (d) any creditor of the Borrower becomes entitled to declare any Borrowed Money due and payable prior to its stated maturity by reason of an event of default (howsoever described).
- 12.6 The Borrower stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due.
- 12.7 The value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities).
- 12.8 A moratorium is declared in respect of any Indebtedness of the Borrower.
- 12.9 Any action, proceedings, procedure or step is taken for:
- (a) the suspension of payments, a moratorium of any Indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower; or

- (b) the composition, compromise, assignment or arrangement with any creditor; or
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets.

- 12.10 The Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties).
- 12.11 Any event occurs in relation to the Borrower similar to those in clause 12.6 to clause 12.10 (inclusive) under the laws of any applicable jurisdiction.
- 12.12 A distress, attachment, execution, expropriation, sequestration or another analagous legal process is levied, enforced or sued out on, or against, the Borrower's assets [having an aggregate value of £[AMOUNT] (or its equivalent in other currencies) and is not discharged or stayed within [21 **OR** 30] days.]
- 12.13 Any provision of this agreement is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.
- 12.14 The Borrower repudiates or shows an intention to repudiate this agreement.
- 12.15 The Borrower ceases, or threatens to cease, to carry on all or a substantial part of its business.
- 12.16 Any event occurs (or circumstances exist) which, in the reasonable opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this agreement.
- 12.17 At any time after an Event of Default has occurred, the Lender may, by notice to the Borrower:
- (a) cancel all outstanding obligations of the Lender under this agreement whereupon they shall be immediately be cancelled; and/or
 - (b) declare that the Loan (and all accrued interest and all other amounts outstanding under this agreement) is immediately due and payable, whereupon they shall become immediately due and payable; and/or
 - (c) declare that the Loan be payable on demand, whereupon it shall become immediately payable on demand by the Lender.

13. Set-off

- 13.1 The Lender may apply any credit balance (whether or not then due) to which the Borrower is at any time beneficially entitled on any account with the Lender in (or towards) satisfaction of any sum then due and payable (but unpaid) by the Borrower to the Lender under this agreement. If such balances are in different currencies, the Lender may convert either balance at a market rate of exchange for the purpose of the set-off.
- 13.2 The Lender is not obliged to exercise any of its rights under clause 13.1, but if the rights are exercised, the Lender shall promptly notify the Borrower of the set-off that has been made.

14. Calculations, accounts and certificates

- 14.1 Any interest, commission or fee under this agreement shall accrue on a day-to-day basis, calculated according to the number of actual days elapsed and a year of 365 days.
- 14.2 The Lender shall maintain accounts evidencing the amounts owed to it by the Borrower, in accordance with its usual practice. Entries in those accounts shall be prima facie evidence of the existence and amount of the Borrower's obligations as recorded in them.
- 14.3 If the Lender issues any certificate, determination or notification of a rate or any amount payable under this agreement, it shall be (in the absence of manifest error) conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.

15. Remedies, waivers, amendments and consents

- 15.1 Any amendment to this agreement shall be in writing and signed by, or on behalf of, each party.
- 15.2 Any waiver of any right or remedy or any consent given under this agreement is only effective if it is in writing and signed by the waiving or consenting party. It shall apply only in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 15.3 No delay or failure to exercise any right or remedy under this agreement on the part of the Lender shall operate as a waiver of any such right or remedy.
- 15.4 No single or partial exercise of any right or remedy under this agreement by the Lender shall prevent any further or other exercise or the exercise of any other right or remedy under this agreement.
- 15.5 Rights and remedies under this agreement are cumulative and do not exclude any other rights or remedies provided by law or otherwise.

16. Severance

- 16.1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this agreement under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the parties.

17. Assignment

- 17.1 The Lender may assign any of its rights under this agreement or transfer all its rights or obligations by novation.
- 17.2 The Borrower may not assign any of its rights or transfer any of its rights or obligations under this agreement.

18. Counterparts

This agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.

19. Third party rights

A person who is not a party to this agreement cannot enforce, or enjoy the benefit of, any term of this agreement under the Contracts (Rights of Third Parties) Act 1999.

20. Notices

- 20.1 Each notice or other communication required to be given under, or in connection with, this agreement shall be:
- (a) in writing, delivered personally or sent by pre-paid first-class letter or fax; and
 - (b) sent:
 - (i) to the Borrower at:
[ADDRESS]

Fax: [NUMBER]

Attention: [NAME]
 - (ii) to the Lender at:
[ADDRESS]

Fax: [NUMBER]

Attention: [NAME]

or to any other addresses or fax numbers that are notified in writing by one party to the other from time to time.

- 20.2 Any notice or other communication given by the Lender shall be deemed to have been received:
- (a) if sent by fax, when received in legible form;
 - (b) if given by hand, at the time of actual delivery; and
 - (c) if posted, on the second Business Day following the day on which it was despatched by pre-paid first-class post.
- 20.3 A notice or other communication given as described in clause 20.2(a) or clause 20.2(b) on a day which is not a Business Day, or after normal business hours in the place of receipt, shall be deemed to have been received on the next Business Day.
- 20.4 Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

21. Governing law and jurisdiction

- 21.1 This agreement and any dispute or claim arising out of, or in connection with it, or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
- 21.2 The parties to this agreement irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Schedule Conditions precedent

1. Constitutional Documents

- 1.1 A copy of the Borrower's constitutional documents.

- 1.2 A copy of the resolutions duly passed by the Borrower's board of directors:
 - (a) approving the entry into, and terms of, and transactions contemplated by, this agreement;
 - (b) authorising a specified person to execute this agreement on its behalf, to give notices and take all other action in connection with this agreement;
 - (c) confirming no limit on the powers of the Borrower or its directors to borrow money would be exceeded by its entry into or performance of its obligations under this agreement; and
 - (d) confirming that entry into this agreement is in the commercial interests of the Borrower (stating the reasons for such conclusion).

- 1.3 A sample of the signature of each person authorised under paragraph 1.2(b) of this Schedule.

- 1.4 A certificate signed by a director of the Borrower confirming that borrowing the Loan would not mean any borrowing (or similar limit binding on the Borrower) would be exceeded.

- 1.5 A certificate signed by a director of the Borrower, confirming that each copy of a document relating to it that it has provided under this Schedule, is correct, complete and in full force and effect at a date no earlier than the date of this agreement.

2. Other documents and evidence

- 2.1 A duly executed copy of this agreement.

- 2.2 The Borrower's latest audited annual financial statements, including certified copies of the accountants' reports.

- 2.3 Provision of all information required by the Lender to enable it to comply with all "know your customer" or similar identification procedures under all applicable laws and regulations.

- 2.4 A certified copy of any other authorisation, document, opinion or assurance which the Lender considers necessary for entering into this agreement, providing the Loan or to make this agreement valid and enforceable.

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
BORROWER]

.....
Director

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
LENDER]

.....
Director