

**DATED** \_\_\_\_\_ **2020**

**(1) FENCHURCH LEGAL LTD**

**- and -**

**(2) PERSON, PERSON AND PERSON**

**TRADING AS BORROWER NAME**

---

**£[amount] LOAN FACILITY AGREEMENT (as  
amended)**

---

**THIS DOCUMENT CONTAINS AN IMPORTANT DECLARATION REMOVING PROTECTIONS FROM THE BORROWERS UNDER THE FINANCIAL SERVICES AND MARKETS ACT 2000 AND THE CONSUMER CREDIT ACT 1974. YOU SHOULD READ THAT DECLARATION CAREFULLY AND IF YOU ARE IN ANY DOUBT YOU SHOULD TAKE INDEPENDENT LEGAL ADVICE ON THE EFFECT OF THE DECLARATION.**



7 PILGRIM STREET • LONDON • EC4V 6LB  
TELEPHONE +44(0)20 7450 4500 • FAX +44(0)20 7450 4545 • [faegredrinker.com](http://faegredrinker.com)

## CONTENTS

| Clause                                       | Page                                |
|--|-------------------------------------|
| 1. Definitions and interpretation .....      | 1                                   |
| 2. The Facility .....                        | 11                                  |
| 3. Purpose .....                             | 11                                  |
| 4. Grant of security .....                   | 11                                  |
| 5. Conditions of Utilisation.....            | 12                                  |
| 6. Utilisation .....                         | 12                                  |
| 7. Repayment .....                           | 13                                  |
| 8. Prepayment and cancellation .....         | 13                                  |
| 9. Arrangement Fee and default interest..... | 15                                  |
| 10. Insurance premium .....                  | 15                                  |
| 11. Tax gross up.....                        | 16                                  |
| 12. Indemnities .....                        | 17                                  |
| 13. Mitigation by the Lender .....           | 18                                  |
| 14. Costs and expenses .....                 | 18                                  |
| 15. Representations.....                     | 19                                  |
| 16. Information undertakings.....            | 22                                  |
| 17. General undertakings .....               | 25                                  |
| 18. Events of Default .....                  | 28                                  |
| 19. Changes to the Lender .....              | 31                                  |
| 20. Conduct of business by the Lender.....   | 31                                  |
| 21. Payment mechanics .....                  | 32                                  |
| 22. Set-off .....                            | 33                                  |
| 23. Notices .....                            | 33                                  |
| 24. Calculations and certificates .....      | 35                                  |
| 25. Partial invalidity.....                  | 35                                  |
| 26. Remedies and waivers .....               | 35                                  |
| 27. Amendments and waivers.....              | 36                                  |
| 28. Further provisions .....                 | 36                                  |
| 29. Counterparts.....                        | 37                                  |
| 30. Governing law .....                      | 37                                  |
| 31. Enforcement.....                         | 37                                  |
| Schedule 1 Conditions Precedent .....        | 38                                  |
| Schedule 2 Utilisation Request.....          | <b>Error! Bookmark not defined.</b> |

**THIS AGREEMENT** is dated \_\_\_\_\_ 20\_\_\_\_\_

**BETWEEN**

- (1) Fenchurch Legal Ltd (company number 12547045) whose registered office is at 71-75 Shelton Street, Covent Garden, London WC2H 9JQ (the “**Lender**”); and
- (2) PERSON, PERSON and PERSON trading as BORROWER NAME (SRA ID XXXX) of ADDRESS (the “**Borrower**”).

**BACKGROUND**

- (A) The Lender has agreed to provide the Borrower with a loan facility of £10,000,000.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

- “**Advance**” means an advance of any part of the Commitment to the Borrower pursuant to a Utilisation Request.
- “**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.
- “**Arrangement Fee**” means a sum equal to thirty-three (33) per cent of any Advance.
- “**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration; and “**Authorisations**” shall be construed accordingly.
- “**Availability Period**” means the period from and including the date of this Agreement to and including the day which is 30 days before the Termination Date.
- “**Borrowed WIP**” that part of the Loan which is made by the Lender to the Borrower to fund WIP, that is to provide working capital to the Borrower against WIP;

|                             |  |
|-----------------------------|--|
| <b>“Business Day”</b>       | means a day (other than a Saturday or Sunday) on which banks are open for general business in London.  |
| <b>“Case Proceeds”</b>      | means any monetary relief sought or granted in respect of any litigation, arbitration, dispute resolution or similar proceedings comprising the Portfolio of Cases.  |
| <b>“Cash Balance”</b>       | means the amount of cash held by the Borrower from time to time.   |
| <b>“Commitment”</b>         | means £AMOUNT to the extent not cancelled, reduced or transferred by the Lender under this Agreement or such other sum as may be agreed between the Lender and the Borrower as being the Commitment after the date of this Agreement.  |
| <b>“CTA”</b>                | means the Corporation Tax Act 2009.  |
| <b>“Default”</b>            | means an Event of Default or any event or circumstance specified in Clause 18 ( <i>Events of Default</i> ) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default. |
| <b>“Drawdown”</b>           | means any drawdown in the amount of at least £10,000 made by the Borrower, pursuant to a Drawdown Agreement.   |
| <b>“Drawdown Agreement”</b> | means a notice substantially in the form set out in <b>Error! Reference source not found.</b> ( <i>Drawdown Agreement</i> ) confirming a Drawdown.   |
| <b>“Disbursement”</b>       | means the sums of money, e.g., court fees, counsel’s fees and witness expenses which are paid or payable by a 'receiving party' which cannot and do not include any element of profit for that party or for the solicitor acting for him, as defined in the Senior Courts Costs Office Guide 2018 (SCCOG).       |
| <b>“Event of Default”</b>   | means any event or circumstance specified as such in Clause 18 ( <i>Events of Default</i> ).   |

- “Facility”** means the loan facility made available under this Agreement as described in Clause 2 (*The Facility*).
- “Finance Document”** means this Agreement, any Utilisation Request and any other document designated as such by the Lender.
- “Financial 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 any 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.

**“Financial Year”**

means each statutory accounting period of the Borrower ending on its accounting reference date.

**“GAAP”**

means generally accepted accounting principles in the United Kingdom.

**“Holding Account”**

means an interest-bearing account:

- (a) held in the United Kingdom by the Borrower with high street clearing bank acceptable to the Lender;
- (b) identified by the Borrower and the Lender as a Holding Account;
- (c) which is subject to Security in favour of the Lender which Security is in form and substance satisfactory to the Lender; and
- (d) from which no withdrawals may be made by the Borrower except as contemplated by this Agreement,

(as the same may be re-designated, substituted or replaced from time to time).

**“Holding Company”**

means, in relation to a person, any other person in respect of which it is a Subsidiary.

**“Insurance Policy”**

means any ATE (after-the-event) insurance policy purchased by the Borrower to cover the adverse costs risk in relation to any litigation, arbitration, dispute resolution or similar proceedings including the Portfolio of Cases.

**“Insurance Proceeds”**

mean the proceeds of any insurance claim received by the Borrower under an Insurance Policy after deducting any reasonable expenses in relation to that claim which are properly incurred by the Borrower.

|                                  |  |
|----------------------------------|--|
| <b>“ITA”</b>                     | means the Income Tax Act 2007.   |
| <b>“Legal Reservations”</b>      | mean: <ul style="list-style-type: none"> <li>(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;</li> <li>(b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;</li> <li>(c) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases;</li> <li>(d) similar principles, rights and remedies under the laws of any Relevant Jurisdiction; and</li> <li>(e) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to the Lender as a condition precedent under this Agreement on or before the Utilisation Date.</li> </ul> |
| <b>“Limitation Acts”</b>         | mean the Limitation Act 1980, the Foreign Limitation Periods Act 1894, the Prescription and Limitation of Actions (Scotland) Act 1973 and the Limitation (Northern Ireland) Order 1989 and the Foreign Limitation Periods (Northern Ireland) Order 1985.   |
| <b>“Loan”</b>                    | means the loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.  |
| <b>“Material Adverse Effect”</b> | means in the reasonable opinion of the Lender a material adverse effect on: <ul style="list-style-type: none"> <li>(a) the business, operations, property, condition (financial or otherwise) or prospects of the</li> </ul>   |



Borrower; or

- (b) the ability of the Borrower to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents; or
- (d) the rights or remedies of the Lender under any of the Finance Documents.

**“Month”**

means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

The above rules will only apply to the last Month of any period.

**“Party”**

means a party to this Agreement.

**“Permitted Financial Indebtedness”**

means Financial Indebtedness which is:

- (a) Financial Indebtedness of the Borrower under the Finance Documents; or
- (b) Financial Indebtedness of the Borrower incurred prior to the date of this Agreement; or
- (c) any trade credit extended to the Borrower by its suppliers on normal commercial terms and in the

ordinary course of its trading activities.

|                                     |  |
|-------------------------------------|--|
| <b>“Portfolio of Cases”</b>         | means those litigation, arbitration, dispute resolution or similar proceedings in which the Borrower is acting (i.e. representing either a claimant or a defendant to the proceeding), and to which Disbursements shall or may be applied, as notified in writing to the Lender from time to time.                                     |
| <b>“Regulated Activities Order”</b> | means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.   |
| <b>“Relevant Agreement”</b>         | means any retainer or agreement entered into by the Borrower and its client under which the terms of the Borrower-client relationship are set out, including but not limited to the conduct of any litigation, arbitration, dispute resolution or similar proceedings, and the costs charged by the Borrower and the terms of payment. |
| <b>“Relevant Interbank Market”</b>  | means the London interbank market.   |
| <b>“Relevant Jurisdiction”</b>      | means, in relation to the Borrower:<br><br>(a) its jurisdiction of its incorporation;<br><br>(b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated; and<br><br>(c) any jurisdiction where it conducts its business.                                    |
| <b>“Repeating Representations”</b>  | means each of the representations set out in Clause 15.1 ( <i>Status</i> ) to Clause <b>Error! Reference source not found.</b> ( <i>Centre of main interests and establishments</i> ).   |
| <b>“Representative”</b>             | means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.  |
| <b>“Secured Party”</b>              | means the Lender.  |

|                               |  |
|-------------------------------|--|
| <b>“Security”</b>             | means a mortgage, charge, pledge, guarantee, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.  |
| <b>“Secured Assets”</b>       | means the Case Proceeds and the Insurance Proceeds.  |
| <b>“Secured Liabilities”</b>  | means all present and future obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with this Agreement, together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities. |
| <b>“Security Documents”</b>   | means: <ul style="list-style-type: none"> <li>(a) this Agreement and/or any other document evidencing or creating Security over any asset to secure any obligation of the Borrower to a Secured Party under the Finance Documents; or</li> <li>(b) any other document designated as such by the Lender.</li> </ul>   |
| <b>“SRA”</b>                  | means the Solicitors Regulation Authority.   |
| <b>“Tax”</b>                  | means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).   |
| <b>“Tax Deduction”</b>        | means a deduction or withholding for or on account of Tax from a payment under a Finance Document.   |
| <b>“Term”</b>                 | means the period commencing on the date of this Agreement and ending on the Termination Date.  |
| <b>“Termination Date”</b>     | means the date falling on the first anniversary of the date of this Agreement.   |
| <b>“Transaction Document”</b> | means:   |

- (a) a Finance Document; and
  - (b) any other document designated as such by the Lender and the Borrower.
- “Transaction Security”** means the Security created or evidenced or expressed to be created or evidenced under this Agreement.
- “Unpaid Sum”** means any sum due and payable but unpaid by the Borrower under the Finance Documents.
- “Utilisation”** means a utilisation of the Facility or any part thereof.
- “Utilisation Date”** means the date of a Utilisation, being the date on which a Drawdown is to be made.
- “VAT”** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.
- “WIP”** means work-in-progress in relation to the Portfolio of Cases calculated by multiplying the number of hours of time recorded by the relevant fee earner’s hourly rate, and, where relevant, Clause 17.6(c), and in any case without applying any discount for anticipated recovery or otherwise.
- “WIP Limit”** means a sum equal to £500 multiplied by the number of outstanding cases within the Portfolio of Cases.

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) the **“Lender”**, the **“Borrower”**, any **“Party”** or any **“Secured Party”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) **“assets”** includes present and future properties, revenues and rights of every description;
  - (iii) **“disposal”** includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and **“dispose”** will be construed accordingly;

- (iv) a “**Finance Document**” or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, replaced, extended or restated;
  - (v) “**guarantee**” means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (vi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - (viii) 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 of any regulatory, self-regulatory or other authority or organisation;
  - (ix) a provision of law is a reference to that provision as amended or re-enacted; and
  - (x) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
  - (d) An Event of Default is “**continuing**” if it has not been waived.

### 1.3 **Currency symbols and definitions**

“**£**”, “**GBP**” and “**sterling**” denote the lawful currency of the United Kingdom and “**EUR**” and “**euro**” denote the single currency of those member states of the European Union that have the euro as their lawful currency.

### 1.4 **Third Party Rights**

- (a) Unless expressly provided to the contrary in a Finance Document a person who is

not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.

- (b) Notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

## **2. THE FACILITY**

### **2.1 The Facility**

Subject to the terms of this Agreement, the Lender makes available to the Borrower a sterling loan facility in an amount not exceeding the Commitment.

## **3. PURPOSE**

### **3.1 Purpose**

The Borrower shall apply each Advance towards the payment of Disbursements and premia in relation to Insurance Policies, and the funding of WIP in respect of the Portfolio of Cases.

### **3.2 Monitoring**

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

## **4. GRANT OF SECURITY**

### **4.1 Fixed Charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender by way of a first fixed charge:

- (a) all present and future Case Proceeds;
- (b) all its rights in respect of any Insurance Policy, including all claims, Insurance Proceeds and all returns of premiums in connection with each Insurance Policy, to the extent not effectively assigned under Clause 4.2; and
- (c) all its rights in respect of each Relevant Agreement and all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under Clause 4.2.

### **4.2 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso

for reassignment on irrevocable discharge in full of the Secured Liabilities:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and
- (b) the benefit of each Relevant Agreement and the benefit of all other agreements, instruments and rights relating to the Secured Assets.

## **5. CONDITIONS OF UTILISATION**

### **5.1 Conditions precedent**

The Lender will only be obliged to make an Advance available in relation to a Utilisation if:

- (a) on or before the Utilisation Date for that Utilisation, the Lender has received all of the documents and other evidence listed in Schedule 1 (*Conditions Precedent*) in a form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied; and
- (b) on the date of the Drawdown Agreement and on the proposed Utilisation Date:
  - (i) no Default is continuing or might or would result from the proposed Advance; and
  - (ii) the Repeating Representations to be made by the Borrower are true in all material respects.

## **6. UTILISATION**

### **6.1 Delivery of the Drawdown Agreement**

The Borrower may request a Drawdown by delivery to the Lender of a duly completed Drawdown Agreement by not later than 5.00 p.m. two (2) Business Days before the proposed Utilisation Date (or such shorter time as agreed by the parties).

### **6.2 Completion of the Drawdown Agreement**

A Drawdown Agreement is irrevocable and will not be regarded as having been duly completed unless:

- (a) it specifies the purpose of the Drawdown;
- (b) the proposed Utilisation Date is a Business Day within the Availability Period; and
- (c) the currency and amount of the Utilisation comply with Clause 6.3 (*Currency and amount*).

### **6.3 Currency and amount**

- (a) The currency specified in the Drawdown Agreement must be sterling.
- (b) The Loan may be drawn in any one or more Drawdowns in accordance with the terms of this Agreement in an aggregate amount no greater than the Commitment.
- (c) No more than two (2) Drawdowns will be provided to the Borrower per week.

## **7. REPAYMENT**

### **7.1 Repayment of the Loan**

- (a) The Borrower shall repay the Loan in full on the Termination Date, subject to Clauses 7.1(b) to (d) below.
- (b) In the event that prior to the Termination Date, any case comprising the Portfolio of Cases is settled (whether out-of-court or by obtaining a judgment from the court), the Borrower shall repay the portion of the Loan (which for all purposes shall include the premium on any relevant Insurance Policy, WIP and Disbursements) attributed to the settled case within five (5) Business Days of the Borrower's receipt of the Case Proceeds.
- (c) In the event that prior to the Termination Date, Insurance Proceeds become payable in respect of any unsuccessful case comprising the Portfolio of Cases, the Borrower shall procure that the insurer under the relevant Insurance Policy shall pay the Insurance Proceeds directly to the Lender.
- (d) In the event that the insurer under the relevant Insurance Policy does not, for any reason, pay the Insurance Proceeds directly to the Lender pursuant to Clause 7.1(c), the Borrower shall pay the Insurance Proceeds to the Lender within five (5) Business Days of receipt.

## **8. PREPAYMENT AND CANCELLATION**

### **8.1 Illegality**

If, in any applicable jurisdiction, it becomes unlawful for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Loan or it becomes unlawful for any Affiliate of the Lender to do so:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Commitment will be immediately cancelled; and
- (c) the Borrower shall repay the Loan made to it on the date specified by the Lender



in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

## 8.2 **Mandatory prepayment - Change of Control**

- (a) If the LLP members or shareholders in each case at the date of this Agreement cease, between them, to control the Borrower or legally own 50 per cent of the issued share capital of the Borrower, if the Lender so determines the Lender shall, by not less than 10 days' notice to the Borrower, cancel the Commitment and declare the outstanding Loan, together with the accrued Interest, and all other amounts accrued or payable under the Finance Documents, immediately due and payable, whereupon the Commitment will be cancelled and all such outstanding amounts will become immediately due and payable.
- (b) The Borrower shall promptly notify the Lender if:
  - (i) there is a change of control, or
  - (ii) the Borrower becomes aware of circumstances that may result in a change of control.
- (c) For the purpose of paragraphs (a) and (b) above, "**control**" means 50 per cent of the voting rights that might be cast at a meeting of the Borrower.

## 8.3 **Holding Account**

- (a) At the request of the Lender, the Borrower shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee) to open a Holding Account.
- (b) At the request of the Lender, the Borrower shall ensure that all Case Proceeds and all Insurance Proceeds are paid into a Holding Account within five (5) Business Days of receipt by the Borrower.
- (c) The Borrower will apply any amounts credited to the Holding Account to repay the Facility in accordance with the terms of this Agreement.
- (d) The Borrower shall ensure that any Case Proceeds and Insurance Proceeds not paid into a Holding Account in accordance with Clause 8.3(b) are held, pending such payment, by the Borrower as trustee of the same for the benefit of the Lender.

## 8.4 **Voluntary prepayment of the Loan**

The Borrower may repay the whole or part of the Loan at any time.

## **8.5 Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 8 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) The Borrower shall not repay or prepay the Loan or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.
- (c) No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.

## **9. ARRANGEMENT FEE AND DEFAULT INTEREST**

### **9.1 Payment of Arrangement Fee**

- (a) The Arrangement Fee shall be payable on any Advance made to the Borrower pursuant to a Drawdown Agreement.
- (b) The Lender shall be entitled to retain from any part of the Loan to be made to the Borrower, the Lender's estimate of the Arrangement Fee payable on that part of the Loan.
- (c) For the avoidance of doubt, the Borrower shall not be entitled to a repayment of the Arrangement Fee or any portion of it under any circumstances.

### **9.2 Default interest**

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate of 4 (four) per cent per annum.
- (b) Any interest accruing under this Clause 9.2 shall be immediately payable by the Borrower on demand by the Lender.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the Unpaid Sum at the end of each Month but will remain immediately due and payable.

## **10. INSURANCE PREMIUM**

### **10.1 Payment of insurance premium**

- (a) The Lender shall be entitled to retain from any part of the Loan to be made to the Borrower, the sum of any insurance premium payable in respect of an Insurance

Policy, where cover under that Insurance Policy is contingent upon the insurance premium or part of the insurance premium being paid prior to inception of that policy.

- (b) Any sum retained by the Lender pursuant to Clause 10.1(a) above shall be paid by the Lender directly to the insurer providing the Insurance Policy.

## **11. TAX GROSS UP**

### **11.1 Tax gross-up**

- (a) The Borrower shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from it shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, it will make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lender evidence reasonably satisfactory to the Lender that either the Tax Deduction has been made or any appropriate payment paid to the relevant taxing authority (as applicable).

### **11.2 VAT**

- (a) All amounts expressed to be payable under a Finance Document by the Borrower to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, if VAT is or becomes chargeable on any supply made by the Lender to any Party under a Finance Document and the Lender is required to account to the relevant tax authority for the VAT, the Borrower must pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and the Lender must promptly provide an appropriate VAT invoice to the Borrower).

- (b) Where a Finance Document requires the Borrower to reimburse or indemnify the Lender for any cost or expense, the Borrower shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (c) Any reference in this Clause 11.2 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “representative member” to have the same meaning as in the Value Added Tax Act 1994).
- (d) In relation to any supply made by the Lender to the Borrower under a Finance Document, if reasonably requested by the Lender, the Borrower must promptly provide the Lender with details of the Borrower’s VAT registration and such other information as is reasonably requested in connection with the Lender’s VAT reporting requirements in relation to such supply.

## **12. INDEMNITIES**

### **12.1 Indemnities**

- (a) The Borrower shall, within three (3) Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by the Lender as a result of:
  - (i) the occurrence of any Event of Default;
  - (ii) a failure by the Borrower to pay any amount due under a Finance Document on its due date;
  - (iii) funding, or making arrangements to fund, the Loan requested by the Borrower in a Drawdown Agreement but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone);
  - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower;
  - (v) the exercise of any of the rights, powers, discretions and remedies vested in the Lender by the Finance Documents or by law; or
  - (vi) the performance of the terms of the Finance Documents (otherwise than as a result of its gross negligence or wilful misconduct).
- (b) The Borrower will promptly indemnify the Lender against any cost, loss or liability incurred by the Lender (acting reasonably) as a result of:

- (i) investigating any event which it reasonably believes is an Event of Default; or
- (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

### **13. MITIGATION BY THE LENDER**

#### **13.1 Mitigation**

- (a) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, either of Clause 8.1 (*Illegality*) or Clause 10 (*Tax gross up*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate.
- (b) Clause 13.1(a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

#### **13.2 Limitation of liability**

- (a) The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 13.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under Clause 13.1 (*Mitigation*) if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.

### **14. COSTS AND EXPENSES**

#### **14.1 Transaction expenses**

All costs and expenses (including legal fees) reasonably incurred by the Lender in connection with the establishment of the Lender or the perfection of any Finance Documents after the date of this Agreement shall be deducted and paid out of the proceeds of the first Drawdown.

#### **14.2 Amendment costs**

If the Borrower requests an amendment, waiver or consent, the Borrower shall, within three (3) Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

### 14.3 **Enforcement and preservation costs**

The Borrower shall, within three (3) Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against the Lender as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

## 15. **REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause 15 to the Lender on the date of this Agreement.

### 15.1 **Status**

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

### 15.2 **Binding obligations**

- (a) The obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.
- (b) This Agreement creates (or once entered into, will create) valid, legally binding and enforceable Security for the obligations expressed to be secured by it in favour of the Lender.

### 15.3 **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

### 15.4 **Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary

action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

#### 15.5 Authorisations

- (a) The Borrower is authorised by the SRA and has not received any notice from the SRA of its intention to revoke or suspend the Borrower's authorisation.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Borrower have been obtained or effected and are in full force and effect.
- (c) The Borrower has obtained all required or desirable Authorisations to enable it to enter into, exercise its rights and comply with its obligations in the Transaction Documents.

#### 15.6 Governing law and enforcement

- (a) The choice of English law as the governing law of this Agreement will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in England in relation to this Agreement will be recognised and enforced in its Relevant Jurisdictions.

#### 15.7 Insolvency

No:

- (a) action, legal proceeding or other procedure or step described in Clause 18.5(a) (*Insolvency proceedings*); and
- (b) creditors' process described in Clause 18.6 (*Creditors' process*),

has been taken or, to the knowledge of the Borrower, threatened in relation to the Borrower, and none of the circumstances described in Clause 18.4 (*Insolvency*) applies to the Borrower nor has the Borrower any reason to believe that it is otherwise insolvent nor that it will become unable to pay its respective debts as they fall due in the following 12 months.

#### 15.8 Taxation

- (a) It is not materially overdue (taking into account any extension or grace period) in the filing of any Tax returns and it is not overdue in the payment of any amount in

respect of Tax.

- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes.
- (c) It is resident for Tax purposes only in the jurisdiction of its incorporation.

#### 15.9 **No default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Loan or the entry into, or the performance of, or any transaction contemplated by, any Transaction Document.
- (b) 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 of any of the foregoing, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

#### 15.10 **Information**

- (a) All information supplied by it or on its behalf to the Lender in connection with the Transaction Documents was true and accurate in all material respects as at the date it was provided or as at any date at which it was stated to be given.
- (b) It has not omitted to supply any information which, if disclosed, would make the information referred to in Clause 15.10(a) above untrue or misleading in any material respect.
- (c) As at the Utilisation Date, nothing has occurred since the date of the information referred to in Clause 15.10(a) above which, if disclosed, would make that information untrue or misleading in any material respect.

#### 15.11 **Financial statements**

- (a) Its most recent financial statements delivered pursuant to Clause 16.1 (*Financial statements*):
  - (i) have been prepared in accordance with GAAP consistently applied; and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition and operations during the relevant Financial Year and was approved by the Borrower's directors in compliance with such applicable legislation as required under the Relevant Jurisdiction.
- (b) Since the date of the most recent financial statements delivered pursuant to Clause 16.1 (*Financial statements*) there has been no material adverse change in its



business, assets or financial condition.

#### 15.12 **Pari passu ranking**

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

#### 15.13 **No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it.

#### 15.14 **No breach of laws**

- (a) It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against the Borrower which have or are reasonably likely to have a Material Adverse Effect.

#### 15.15 **Centre of main interests and establishments**

For the purposes of regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in England and Wales and it has no “establishment” (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

#### 15.16 **Repetition**

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Drawdown Agreement, on the Utilisation Date and the first day of each Month.

### 16. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 16 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

#### 16.1 **Financial statements**

The Borrower shall supply to the Lender promptly upon a written request by the Lender:

- (a) unaudited management accounts of the Borrower containing a profit and loss account, balance sheet, cashflow statement and such other financial information as the Lender may reasonably require from time to time;
- (b) a copy of the statutory financial statements of the Borrower for its preceding statutory accounting period;
- (c) a forecast on the profit and loss, balance sheet and cash flow for the following 12 months (“**Monthly Forecast**”);
- (d) a forecast of the profit and loss, balance sheet and cash flow for the following three years;
- (e) a statement of the amount of the Cash Balance, together with bank statements in support of such Cash Balance; and
- (f) a statement of WIP, including cumulative time entries broken down by fee earner, hourly rate and amount of time recorded in relation to each case within the Portfolio of Cases.

## 16.2 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 16.1 (*Financial statements*) shall be certified by a director of the Borrower as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition as at the date as at which those financial statements were drawn up.
- (b) The Borrower shall procure that each set of financial statements delivered pursuant to Clause 16.1 (a) to (b) (*Financial statements*) is prepared using GAAP.

## 16.3 Information: miscellaneous

The Borrower shall supply to the Lender:

- (a) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower, which might, if adversely determined, have a Material Adverse Effect;
- (b) promptly upon written request, the key aspects of any litigation, arbitration, dispute resolution or similar proceeding comprising the Portfolio of Cases, including (inter alia) the merits of the underlying claim, the comparative size of the claim and the counterclaim, its reasonable prospect of success and any further information as the Lender may reasonably request, including an estimate of the WIP to be recorded in relation to any matter;
- (c) promptly, and in no more than two (2) Business Days from the event, notice in writing of a determination or final outcome obtained in respect of any case

comprising the Portfolio of Cases, including:

- (i) details of any settlement (whether out-of-court or by obtaining a judgment from the court);
  - (ii) the Case Proceeds (where applicable);
  - (iii) the Insurance Proceeds (where applicable);
  - (iv) a copy of the judgment or result (where available);
  - (v) a statement of the WIP expended in respect of any such case broken down by fee earner, hourly rate and amount of time recorded; and
  - (vi) any such further information regarding the result as the Lender may reasonably request or as the Borrower reasonably considers the Lender ought to be aware of;
- (d) promptly upon creation, details regarding Security created over all or any of the present or future assets of the Borrower;
  - (e) promptly upon request, details of any further Financial Indebtedness incurred which is not Permitted Financial Indebtedness and which is not Financial Indebtedness incurred under the Finance Documents; and
  - (f) promptly upon reasonable request by the Lender, any further information regarding the financial condition, business and operations of the Borrower.

#### 16.4 **Notification of default**

- (a) The Borrower shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly upon a written request by the Lender, the Borrower shall supply to the Lender a certificate signed by a director of the Borrower certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### 16.5 **“Know your customer” checks**

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement; or
- (b) any change in the status of the Borrower after the date of this Agreement; or
- (c) a proposed assignment or transfer by the Lender of any of its rights and obligations under this Agreement to a party that is not the Lender (“**Prospective**

**Lender**”) prior to such assignment or transfer,

obliges the Lender or the Prospective Lender 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 upon the request of the Lender or the Prospective Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested in order for the Lender or any Prospective Lender to comply with all “know your customer” or requirements under applicable laws and regulations.

## **17. GENERAL UNDERTAKINGS**

The undertakings in this Clause 17 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents.

### **17.1 Authorisations**

The Borrower shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to:

- (i) enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Transaction Document; or
- (ii) own its assets and carry on its business as it is being conducted.

### **17.2 Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject.

### **17.3 Pari passu ranking**

The Borrower shall ensure that at all times any unsecured and unsubordinated claims of the Lender under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by law.

#### 17.4 **Arm's length basis**

The Borrower shall not enter into any transaction with any person other than at arm's length and for full market value.

#### 17.5 **Access**

The Borrower shall, where the Lender reasonably suspects that a Default is continuing or may occur, permit the Lender and/or its accountants or other professional advisers and contractors free access at all reasonable times and on reasonable notice at the risk of the Borrower to the books, accounts and records of the Borrower.

#### 17.6 **WIP**

- (a) The Borrower shall ensure that all relevant persons record their time on each case within the Portfolio of Cases in a timely manner, so as to enable an accurate assessment of WIP to be made on an ongoing basis.
- (b) The Borrower shall not allow Borrowed WIP to exceed the WIP Limit.
- (c) No WIP shall be invoiced until final determination (by way of judgment or settlement between the relevant parties) of each relevant case within the Portfolio of Cases and to the extent that any WIP is invoiced prior to such final determination it shall be treated as WIP in determining (a) the amount of WIP and Borrowed WIP and (b) whether Borrowed WIP exceeds the WIP Limit.

#### 17.7 **Further assurance**

- (a) The Borrower shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)):
  - (i) to perfect the Security created or intended to be created under or evidenced by this Agreement or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to the Finance Documents or by law; and/or
  - (ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security under this Agreement.

#### 17.8 **Consumer credit**

The Borrower will comply at all times with the requirements of the Regulated Activities

Order in funding any Disbursements on behalf of its clients.

#### 17.9 **Taxes**

- (a) The Borrower shall pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment, unless (and only to the extent that):
  - (i) payment of those Taxes is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them; and
  - (iii) failure to pay those Taxes is not in the opinion of the Lender reasonably likely to have a Material Adverse Effect.
- (b) The Borrower must ensure that its residence for Tax purposes is in the jurisdiction of its incorporation.

#### 17.10 **Insurance**

- (a) The Borrower shall have in place a valid Insurance Policy in respect of all litigation, arbitration, dispute resolution or similar proceedings comprising the Portfolio of Cases.
- (b) Any such Insurance Policy must be with an insurance company or underwriters, on risk, and on such terms as are reasonably acceptable to the Lender.
- (c) The Borrower shall, if requested by the Lender, produce to the Lender each Insurance Policy, certificate or cover note relating to the insurance required by Clause 17.10(a).
- (d) The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed upon each Insurance Policy maintained by it or any person on its behalf in accordance with Clause 17.10 but without the Lender having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.
- (e) The Borrower shall ensure that each Insurance Policy contains:
  - (i) a loss payee clause under which the Lender is named as first loss payee (other than in respect of any claim under any public liability and third-party liability insurances);
  - (ii) terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;

- (iii) a waiver of each insurer's rights of subrogation against the Borrower and the Lender other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of any insurance policy; and
  - (iv) terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.
- (f) The Borrower shall:
- (i) promptly pay all premiums in respect of each Insurance Policy maintained by it in accordance with Clause 17.10 and do all other things necessary to keep that policy in full force and effect; and
  - (ii) (if the Lender so requires) produce to, or deposit with, the Lender the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with Clause 17.10.
- (g) The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with this Clause 17.10.
- (h) All Insurance Proceeds payable under any Insurance Policy maintained by it in accordance with this Clause 17.10 at any time shall at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

## **18. EVENTS OF DEFAULT**

Each of the events or circumstances set out in Clause 18 is an Event of Default (save for Clause 18.13 (*Acceleration*)).

### **18.1 Non-payment**

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a disrupting event; and
- (b) payment is made within three Business Days of its due date.

## 18.2 **Other obligations**

- (a) The Borrower does not comply with any provision of the Finance Documents.
- (b) No Event of Default under Clause 18.2(a) will occur if the failure to comply is capable of remedy and is remedied within 5 Business Days of the earlier of (i) the Lender giving notice to the Borrower or (ii) the Borrower becoming aware of the failure to comply.

## 18.3 **Misrepresentation**

Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

## 18.4 **Insolvency**

- (a) The Borrower is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Borrower.

## 18.5 **Insolvency proceedings**

Any action, legal proceedings or other procedure or step is taken and is not discharged, stayed or dismissed within 15 days in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, bankruptcy or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
- (b) a composition, compromise, assignment or arrangement with any creditor of the Borrower;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, trustee in bankruptcy, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
- (d) enforcement of any Security over any assets of the Borrower,

or any analogous procedure or step is taken in relation to the Borrower in any jurisdiction.



## 18.6 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower and is not discharged within ten days.

## 18.7 **Cessation of business**

The Borrower ceases, or threatens to cease, to carry on business except as a result of any disposal allowed under this Agreement.

## 18.8 **Loss of licence**

- (a) The revocation or suspension of the Borrower's authorisation by the SRA or the receipt of notice from the SRA of its intention to revoke or suspend the Borrower's authorisation.
- (b) The cessation for any reason of any consent, authorisation, licence and/or exemption which the Borrower is required by law to have to carry on its business, or the taking by any governmental, regulatory or other authority of any action in relation to the Borrower which could, in the Lender's reasonable opinion, have a Material Adverse Effect.

## 18.9 **Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents or any Transaction Security ceases to be effective or becomes unlawful.
- (b) Any obligation or obligations of the Borrower under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lender under the Finance Documents.

## 18.10 **Repudiation and rescission of agreements**

The Borrower (or any other relevant party other than the Lender) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

## 18.11 **Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against the Borrower or its assets which (in each case) are reasonably likely to be adversely determined and if so determined has or is reasonably likely to have in the opinion of the Lender a Material Adverse Effect.

### 18.12 **Material adverse change**

Any event or circumstance occurs which, in the opinion of the Lender, has or is reasonably likely to have a Material Adverse Effect.

### 18.13 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Lender may, by notice to the Borrower:

- (a) cancel the outstanding Commitment whereupon it shall immediately be cancelled;
- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Loan be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

## 19. **CHANGES TO THE LENDER**

### 19.1 **Assignments and transfers by the Lender**

Subject to this Clause 19, the Lender may:

- (a) assign any of its rights, including under any Drawdown Agreement; or
- (b) transfer by novation any of its rights and obligations,

to any other person (the “**New Lender**”) following which the New Lender shall become a party as a “Lender”. The New Lender may be an agent for a club or syndicate of lenders.

### 19.2 **Security over Lender’s rights**

In addition to the other rights provided to the Lender under this Clause 19, the Lender may without consulting with or obtaining consent from the Borrower, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of the Lender.

### 19.3 **Assignments and transfer by the Borrower**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

## 20. **CONDUCT OF BUSINESS BY THE LENDER**

No provision of this Agreement will:

- (a) interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige the Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## **21. PAYMENT MECHANICS**

### **21.1 Payments to the Lender**

- (a) When the Borrower is required to make a payment under a Finance Document, the Borrower shall make payment to the Lender (unless a contrary indication appears in a Finance Document) on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account as the Lender specifies.

### **21.2 Distributions to the Borrower**

The Lender may (with the consent of the Borrower or in accordance with Clause 22 (*Set-off*)) apply any amount received by it from the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents.

### **21.3 Partial payments**

If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in such order as the Lender may determine.

### **21.4 No set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without set-off or counterclaim.

### **21.5 Business Days**

Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

## 21.6 **Currency of account**

- (a) Subject to Clause 21.6(b) and (c), sterling is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

## 22. **SET-OFF**

The Lender may set off any obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by the Lender) against any obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## 23. **NOTICES**

### 23.1 **Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by email or letter.

### 23.2 **Addresses**

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is in the case of the Borrower and the Lender, that identified with its name below or any substitute address or email address or department or officer as the Party may notify to the other Party by not less than five Business Days' notice.

The Borrower at:

Address: BORROWER NAME, ADDRESS

FAO: PERSON, PERSON and PERSON

Email: XXXXX

The Lender at:

Address: Fenchurch Legal Ltd, 71-75 Shelton Street, Covent Garden, London WC2H 9JQ

FAO: Louisa Klouda

Email: [louisa@fenchurch-legal.com](mailto:louisa@fenchurch-legal.com)

### 23.3 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of email, when received in accordance with Clause 23.4 (*Electronic Communications*); or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after posting;

and, if a particular department or officer is specified as part of its address details provided under Clause 23.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer notified to the Borrower as provided for under Clause 23.2 (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to the Borrower.
- (d) Any communication or document which becomes effective, in accordance with Clause 23.3(a) to (c) above, after 5:00 p.m. on a Business Day in the place of receipt shall be deemed only to become effective on the following Business Day.

### 23.4 **Electronic communications**

- (a) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by the Borrower to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (b) Any electronic communication which becomes effective, in accordance with Clause 23.4(a), after 5:00 p.m. on a Business Day in the place of receipt shall be deemed only to become effective on the following Business Day.

### 23.5 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 24. **CALCULATIONS AND CERTIFICATES**

### 24.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

### 24.2 **Certificates and Determinations**

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### 24.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

## 25. **PARTIAL INVALIDITY**

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

## 26. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under the Finance Documents shall operate as a waiver of any such right or

remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## **27. AMENDMENTS AND WAIVERS**

### **27.1 Required consents**

Any term of the Finance Documents may be amended or waived only with the written consent of the Lender and the Borrower (such consent not to be unreasonably withheld or delayed).

## **28. FURTHER PROVISIONS**

### **28.1 Independent security**

The security constituted by this Agreement shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Secured Assets shall merge in the security created by this deed.

### **28.2 Continuing security**

The security constituted by this Agreement shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

### **28.3 Discharge conditional**

28.4 Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- (b) the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

## 28.5 **Certificates**

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower under this Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

## 29. **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

## 30. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## 31. **ENFORCEMENT**

### 31.1 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle a Dispute and accordingly no Party will argue to the contrary.
- (c) This Clause 31.1 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.



**SCHEDULE 1**  
**CONDITIONS PRECEDENT**

**1. THE BORROWER**

- (a) A copy of the constitutional documents of the Borrower.
- (b) A Drawdown Agreement for each Drawdown.
- (c) A copy of the resolutions duly passed by the board of directors of the Borrower:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
  - (ii) confirming that entry into the relevant Finance Documents is in the commercial interest of the Borrower (stating the reasons for such conclusion);
  - (iii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (iv) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including any Drawdown Agreement) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (d) A copy of a resolution signed by all the members of the issued shares in the Borrower approving the Finance Documents.
- (e) A specimen of the signature of each person authorised by the resolution referred to in paragraph c(iii) above.
- (f) A certificate of the Borrower (signed by a director) confirming that borrowing the Commitment would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
- (g) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

**2. FINANCE DOCUMENTS**

The Finance Documents executed by the Borrower and the Lender.

### 3. **OTHER DOCUMENTS AND EVIDENCE**

- (a) A statement of information by the Borrower outlining the key aspects of those litigation, arbitration, dispute resolution or similar proceedings comprising the Portfolio of Cases, including (inter alia), the merits of the underlying claim, the comparative size of the claim and the counterclaim, its reasonable prospect of success and any further information as the Lender may reasonably request or the Borrower reasonably considers the Lender ought to be aware of.
- (b) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

**SCHEDULE 2  
DRAWDOWN AGREEMENT**

*[The remainder of this page is intentionally left blank.]*

**[see new form of Utilisation Request/Drawdown Agreement**

## **DRAWDOWN AGREEMENT**

**Between the Borrower and the Lender (as detailed below)**

|  |   |
|--|---|
| Borrower:  | NAME  |
| Lender:  | Fenchurch Legal Ltd   |
| Dated:   |   |
| Proposed Utilisation Date:                                       | (or, if that is not a Business Day, the next Business Day)            |
| Amount of Advance (including Arrangement Fee):                   |   |
| Term:  | 12 months, unless extended in accordance with the Facility Agreement. |
| Details of the account to which the proceeds should be credited: |   |
| Arrangement Fee:   | [ • ] per cent. of the sums Advanced.                                 |
| Portfolio of Cases:  | As per the attached Schedule  |
| Signed for the Borrower:   | (duly authorised)   |
| Signed for Fenchurch Legal Ltd:                                  | (duly authorised)   |

This agreement, which is made supplemental to the facilities agreement between the Lender and the Borrower dated 21<sup>st</sup> May 2020 (“**Facility Agreement**”) sets out the specific terms of the drawdown to which it relates under and in accordance with the terms of the Facility Agreement. The Borrower confirms that no breach of the Facility Agreement has occurred prior to the date hereof or will arise as a result of the drawdown (“**Drawdown**”) detailed in this agreement.

In this agreement terms defined in the Facility Agreement will bear the same meanings. In the event of any conflict between this agreement and the Facility Agreement, the terms of the Facility Agreement will prevail save as regards the specific assignment of the Portfolio of Cases detailed in the Schedule hereto.

In accordance with the terms of clause 4 of the Facility Agreement, the Borrower hereby unconditionally and irrevocably assigns all its right, title and interest in the Cases detailed in the Schedule and any Proceeds arising therefrom (including any Insurance Proceeds relative to the Portfolio of Cases) absolutely to the Lender.

Sums Drawn under this agreement shall be subject to payment of the Arrangement Fee and shall otherwise in default bear Interest at the rates, and be payable in each case, at the times and in accordance with, the Facility Agreement (the Arrangement Fee of 33% of the Advance is payable on Drawing, and is agreed to be retained by the Lender from the sums Advanced).

To avoid doubt, the benefit of (comprising the rights and receivables under) this Drawdown Agreement may be assigned to any third party in accordance with the Facility Agreement.

**SCHEDULE OF CASES AND LOANS**

| LOAN ID | AMOUNT | SOLICITOR<br>REFERENCE | BORROWER | MATURITY<br>DATE | DRAWDOWN<br>ID |
|---------|--------|------------------------|----------|------------------|----------------|
|---------|--------|------------------------|----------|------------------|----------------|

**SIGNATURES**

**THE BORROWER**

**Declaration for exemption relating to businesses (articles 60C and 60O of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)**

We are entering this Agreement wholly or predominantly for the purposes of a business carried on by us or intended to be carried on by us.

We understand that we will not have the benefit of the protection and remedies that would be available to us under the Financial Services and Markets Act 2000 or under the Consumer Credit Act 1974 if this agreement were a regulated agreement under those Acts.

We understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the Lender and the Borrower is unfair to the Borrower.

We are aware that, if we are in any doubts as to the consequences of the agreement not being regulated by the Financial Services and Markets Act 2000 or the Consumer Credit Act 1974, then we should seek independent legal advice.

Signed by

.....  
**PERSON**

.....  
**PERSON**

.....  
**PERSON**



in each case as a partner of and for and on  
behalf of BORROWER

**THE LENDER**

Signed by **Fenchurch Legal Ltd**  
acting by **Louisa Klouda**,  
a director.

.....  
Director