

Loan Agreement

Date:

SOURCED

CONFIDENTIAL

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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the "**Borrower**") Based on assumption that you are lending to a limited company; and
- (2) All those persons listed at Schedule 1 and Jark Security Trustee Limited being the Security Trustee (as defined below) (together, the "**Lenders**").

BACKGROUND

The Lenders have agreed to provide the Borrower with a secured term loan of £[AMOUNT].

AGREED TERMS

1. Definitions and interpretation

1.1 Definitions

The following definitions apply in this agreement.

Borrowed Money:	any Indebtedness for or in respect of: <ol style="list-style-type: none">(a) borrowing or raising money, including any premium and any capitalised interest on that money; and(b) any debenture, mortgage, guarantee, or other assurance against financial loss that the Borrower has given for any Indebtedness of the type referred to in paragraph (a) of this definition incurred by any person.
Borrower's Terms and Conditions:	the terms and conditions applying to a Borrower from time to time in force and available upon request.
Business Day:	a day other than a Saturday, Sunday or a public holiday in England when banks in London are open for business.
Client Account:	means the Firm's client account.
Default Interest Period:	each period of days the Lenders select under clause 5.2 to calculate interest on Unpaid Amounts.
Disruption Event:	either or both of: <ol style="list-style-type: none">(c) an event (not caused by, and outside the control of, either party) that materially disrupts the systems for payment or communication, in each case, to enable either payment to be made or transactions to be carried out under the Finance Documents; or(d) any other event (not caused by, and outside the control of, the party whose operations are disrupted), that results in disruption (of a technical or systems-related nature) to the treasury or payments operations of a party and which prevents either or both parties from:<ol style="list-style-type: none">(i) performing its payment obligations under the Finance Documents; or(ii) communicating with the other party as required by the terms of the Finance Documents.
Drawdown Date:	as defined in clause 3.2.

Event of Default:	any event or circumstance listed in clause 12.1 to clause 12.11.
Finance Document:	this agreement, the Security, and any other document designated as such by the Lenders, the Firm, the Security Trustee and the Borrower.
Firm:	means Jark-1 Limited (registered in England and Wales with company number 10852300).
Indebtedness:	any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint and any guarantee or indemnity of any of those obligations.
Interest Payment Date:	the last day of an Interest Period.
Interest Period:	each period for which interest is calculated and payable on each Loan under clause 4.
Lenders:	means the persons listed at Schedule 1 or any one of them.
Lender's Terms and Conditions:	the terms and conditions applying to a Lender from time to time in force and displayed on the Website.
Loan:	the term loan made by the Lenders to the Borrower under this agreement or the principal amount outstanding for the time being of that loan.
Material Adverse Effect:	any event or circumstance which, in the opinion of the Lenders: <ul style="list-style-type: none"> (e) is likely to materially and adversely affect the Borrower's ability to perform or otherwise comply with all or any of its obligations under the Finance Documents; (f) is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or (g) is likely to result in any Finance Document not being legal, valid and binding on, and enforceable in accordance with its terms against, the Borrower and, in the case of the Security, not providing to the Lenders' security over the assets expressed to be subject to a security interest.
Permitted Security:	any security arising under: <ul style="list-style-type: none"> (h) the Security; and (i) any other security created or outstanding with the Security Trustee's prior written consent.
Potential Event of Default:	any event or circumstance specified in clause 12.1 to clause 12.11 which would, on the giving of notice, expiry of any grace period, making of any determination under the Finance Documents or satisfaction of any other condition (or any combination thereof), become an Event of Default.
Repayment Date:	Each of the dates specified in clause 6.1 for repaying the Loan by instalments.
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 and those security detailed at Schedule [2].

Security Trust Deed: means the security trust deed executed by the Security Trustee in favour of the Lenders, a copy of which is available on request from the Security Trustee or the Firm.

Security Trustee: Jark Security Trustee Limited (registered in England and Wales with company number 11709750).

Sterling and £: the lawful currency of the United Kingdom.

Unpaid Amount: any sum or amount which is not paid on its due date by the Borrower under this agreement or any other Finance Document.

Website: www.sourced.co

1.2 Interpretation

In this agreement:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this agreement;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to **writing** or **written** includes fax and e-mail;
- 1.2.8 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.9 a reference to a **Finance Document** (or any provision of it) or to any other agreement or document referred to in any Finance Document is a reference to the Finance Document, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this agreement) from time to time;
- 1.2.10 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.11 a reference to **directly** or **indirectly** means (without limitation) either alone or jointly with any other person, whether on his own account or in partnership with another (or others) as the holder of any interest in or as officer, employee or agent of or consultant to any other person;
- 1.2.12 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.13 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

- 1.2.14 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.15 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.16 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it; and
- 1.2.17 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 **Schedules**

The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

2. **The Loan**

The Lenders grant to the Borrower a secured Sterling term loan of a total principal amount of £[AMOUNT] on the terms, and subject to the conditions, of this agreement, the Lender's Terms and Conditions and the Borrower's Terms and Conditions.

3. **Drawdown**

- 3.1 The Lenders shall make available the Loan by transferring their respective amounts into such client account as advised by the Firm to the Lenders.
- 3.2 Upon receipt by the Firm of all (but not some only) of the amount of the Loan, and all duly executed Finance Documents the Borrower shall be entitled to drawdown on the Loan and this date shall be the Drawdown Date.
- 3.3 On the first Drawdown Date the Lenders and the Borrower shall be deemed to have entered into this Loan Agreement.

4. **Interest**

4.1 **Calculation of interest**

The interest rate on the Loan for each Interest Period is as set out at Schedule 3.

4.2 **Payment of interest**

The Borrower shall pay interest on each Loan in arrears on the Interest Payment Date for each Interest Period applicable to that Loan.

4.3 **Length of interest period**

The length of an Interest Period shall be [XXX] months.

4.4 **Commencement date of interest period**

The initial Interest Period for a Loan shall start on the Drawdown Date of that Loan. Each subsequent Interest Period for that Loan shall start on the last day of the previous Interest Period applicable to it.

4.5 **Non-business days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall, instead, end on:

- 4.5.1 the next Business Day in that calendar month, if there is one; or
- 4.5.2 the preceding Business Day, if there is not.

5. Default interest

5.1 Payment of default interest

If the Borrower does not pay any sum it is obliged to pay under the Finance Documents when it is due, the Borrower shall pay interest under this clause 5 on that Unpaid Amount from time to time outstanding for the period beginning on its due date and ending on the date the Lenders receive it, both before and after judgment.

5.2 Selection of default interest period

Interest under this clause 5 shall be calculated by reference to successive Default Interest Periods. The duration of a Default Interest Period shall be seven days or less, as selected by the Lenders on or before the beginning of each Default Interest Period.

5.3 Commencement date of default interest period

The first Default Interest Period shall begin on the due date for payment of the relevant Unpaid Amount and each succeeding Default Interest Period shall begin on the last day of the previous Default Interest Period.

5.4 Rate of interest

The rate of interest applicable to any Default Interest Period shall be the rate per annum which is 1% higher than the rate of interest which would have been applied under clause 4.1, had the Default Interest Period been an Interest Period.

5.5 Notification of amount payable

The Lenders shall, promptly after it has determined the interest rate for a Default Interest Period, notify the Borrower of that interest rate, the amount of interest payable and the date on which interest should be paid for that Default Interest Period.

5.6 Default interest payable on demand

Interest accrued under this clause 5 shall be immediately payable by the Borrower on demand by the Lenders, but:

5.6.1 if not previously demanded, shall be paid on the last day of each Default Interest Period; and

5.6.2 if the Borrower does not pay that interest when due, it shall be added to the Unpaid Amount and compounded at the end of each Default Interest Period but will remain immediately due and payable.

6. Repayment, prepayment and cancellation

6.1 Repayment of loans

The Borrower shall repay the aggregate Loans in full by repaying the amount set out at Schedule 3 opposite each Repayment Date on that Repayment Date.

6.2 Voluntary prepayment

6.2.1 The Borrower may prepay part or all of a Loan by notifying the Lenders five Business Days in advance. The Borrower may only do this if:

- (a) the notice specifies the Loan or Loans to be prepaid and the amount of the prepayment which, if it is less than the outstanding Loans, must be a whole multiple of £2,000;
- (b) the date of the prepayment is an Interest Payment Date for the Loan being prepaid; and
- (c) the prepayment does not result in an Event of Default or Potential Event of Default.

6.2.2 On prepayment of part or all of a Loan in accordance with clause 6.2.1, the Loan shall immediately be reduced by an amount equal to the amount of the Loan prepaid.

6.3 **Application of partial prepayments**

Any amount to be applied in prepayment of the Loan shall be applied to satisfy the obligations in clause 6.1 in inverse order of their maturity.

6.4 **Repayment, prepayment and cancellation general provisions**

6.4.1 Any prepayment notice that the Borrower gives under this agreement shall be irrevocable. A prepayment notice shall oblige the Borrower to prepay the relevant Loan as set out in that notice.

6.4.2 Any prepayment under this agreement shall be made together with accrued interest on the amount prepaid.

6.4.3 If the Borrower does not make a prepayment on the date for prepayment specified in this agreement, or gives a prepayment notice but fails to make the prepayment on the date specified in the prepayment notice, the default interest provisions of clause 6.3 shall apply to the unpaid prepayment amount.

6.4.4 No repayment or prepayment is permitted, except in accordance with the express terms of this agreement.

7. **Payments**

7.1 **Business days**

Any payment under any Finance Document which is due to be made on a day which is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one), or the immediately preceding Business Day (if there is not). Any interest or other amount accruing on a daily basis shall be calculated accordingly.

7.2 **Disruption to payment systems**

If either the Lenders determines, or the Borrower notifies the Lenders, that a Disruption Event has occurred:

7.2.1 the Lenders shall consult and agree with the Borrower the changes (if any) needed to the operation or administration of the Loan as the Lenders, in their absolute discretion, deems necessary in the circumstances;

7.2.2 the Lenders shall not be obliged to consult the Borrower about any such changes if in their opinion it is not practical to do so in the circumstances; and

7.2.3 any change made or agreed under this clause 7.2 shall (whether or not an event is finally determined to be a Disruption Event) be binding on the parties as an amendment of the Finance Documents notwithstanding the provisions of clause 0.

7.3 **Partial payments**

If the Lenders receive a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lenders shall apply that payment in settlement of the obligations of the Borrower in the order determined by the Lenders in their absolute discretion. The provisions of this clause 7.3 shall override any appropriation made by the Borrower.

8. **Fees, charges and expenses**

8.1 **Fees**

The Borrower shall pay to the Firm an arrangement and exit fee as set out at Schedule 3 which shall be paid on the Drawdown Date and deducted from such amount transferred to the Borrower.

8.2 **Transaction expenses**

- 8.2.1 The Borrower shall pay to the Firm the agreed amount of all costs and expenses reasonably incurred by the Firm in connection with the negotiation, preparation, execution and perfection of the Finance Documents and the other documents referred to in them.
- 8.2.2 The Borrower shall, promptly on demand, pay to the Lenders the amount of all costs and expenses (including legal, printing and out-of-pocket expenses) reasonably incurred by the Lenders in connection with any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) relating to a Finance Document or a document referred to in any of them.

8.3 **Enforcement and preservation costs**

The Borrower shall, on demand, pay to the Lenders the amount of all costs and expenses (including legal, printing and out-of-pocket expenses) incurred by the Security Trustee in connection with enforcing, preserving any rights under, or monitoring the provisions of, any Finance Document.

9. **Indemnities**

9.1 **Indemnity**

The Borrower shall indemnify the Lenders within three Business Days of demand against:

- 9.1.1 any funding or other properly incurred cost or expense; and
- 9.1.2 any other loss or liability directly sustained or incurred by it as a result of:
- (a) the occurrence of an Event of Default or Potential Event of Default;
 - (b) a Loan not being made by reason of the operation of any one or more of the provisions of this agreement or the Borrower purporting to revoke a Drawdown Request;
 - (c) any prepayment of the Loan being made other than in accordance with a notice of prepayment given in accordance with the terms of this agreement; or
 - (d) the Lenders receiving or recovering all or part of a Loan or Unpaid Amount other than on the last day of the Interest Period relating to that Loan or Unpaid Amount.

9.2 **Other indemnity provisions**

- 9.2.1 The indemnity under clause 9.1 shall include any interest that the Lenders would have received (as determined by the Lender) if the due payment had been received on the last day of the relevant Interest Period, less:
- (a) the amount the Borrower has actually paid in respect of interest up to the date of actual payment;
 - (b) the amount of interest that the Lenders have received by placing the principal amount (and any interest on it) paid by the Borrower on deposit in the London Interbank Market, from the Business Day following receipt up to (and including) the last day of the relevant Interest Period.
- 9.2.2 Each indemnity in this agreement:
- (a) is a separate and independent obligation from the other obligations in this agreement;
 - (b) gives rise to a separate and independent cause of action;
 - (c) applies whether or not any indulgence is granted by the Lenders; and
 - (d) shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this agreement, or any other judgment or order.

10. Representations and warranties

The Borrower makes the representations and warranties in clause 10.1 to clause 10.14 to the Lenders on the date of this agreement.

10.1 Due incorporation

The Borrower:

- 10.1.1 is duly incorporated and validly existing under the law of its jurisdiction of incorporation; and
- 10.1.2 has the power to own its assets and carry on its business as it is being conducted.

10.2 Powers

- 10.2.1 The Borrower has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Finance Documents and the transactions contemplated by them.
- 10.2.2 No limit on its powers will be exceeded as a result of the borrowing or grant of security contemplated by the Finance Documents.

10.3 Non-contravention

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

- 10.3.1 the Borrower's constitutional documents;
- 10.3.2 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
- 10.3.3 any law or regulation or judicial or official order, applicable to it.

10.4 Authorisations

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 Finance Documents and to make them admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.

10.5 Binding obligations

- 10.5.1 The Borrower's obligations under the Finance Documents are legal, valid, binding and enforceable; and
- 10.5.2 the Security creates (or, once entered into, will create):
 - (a) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
 - (b) subject to registration under the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets expressed to be subject to security in it in favour of the Security Trustee, having the priority and ranking expressed to be created by the Security and ranking ahead of all (if any) security and rights of third parties except those preferred by law.

10.6 Governing law and enforcement

The choice of English law as the governing law of each Finance Document will be recognised and enforced in its jurisdiction of incorporation and any judgment obtained in England or Wales in relation to a Finance Document will be recognised and enforced in that jurisdiction.

10.7 No default

- 10.7.1 No Event of Default and, on the date of this agreement Potential Event of Default, is continuing or might reasonably be expected to result from the making of a Loan.
- 10.7.2 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 it or to which any of its assets is subject which has or is likely to have a Material Adverse Effect.

10.8 Information

The information, in written or electronic format, supplied by, or on behalf of, the Borrower to the Lenders in connection with the Loan and the Finance Documents.

- 10.8.1 if it is at the date of this agreement factual information, complete, true and accurate in all material respects;
- 10.8.2 if it is a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration;
- 10.8.3 if it is an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
- 10.8.4 not misleading in any material respect, nor rendered misleading by a failure to disclose other information.

10.9 Financial statements

Each set of financial statements delivered to the Lenders by the Borrower, if requested, was prepared in accordance with consistently applied accounting principles, standards and practices generally accepted in England and Wales, unless expressly disclosed to the Firm in writing to the contrary before the date of this agreement, and fairly represents the Borrower's financial condition and operations during the relevant accounting period and was approved by the Borrower's directors in compliance with section 393 of the Companies Act 2006.

10.10 No material adverse change

There has been no material adverse change in the business, assets, financial condition, trading position or prospects of the Borrower.

10.11 No litigation

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.

10.12 No breach of law

The Borrower has not breached any law or regulation which breach has or is likely to have a Material Adverse Effect.

10.13 Ownership of assets

The Borrower is the sole legal and beneficial owner of, and has good, valid and marketable title to, all its assets and no Security exists over its assets except for the Permitted Security.

10.14 Repetition

The Borrower repeats the representations and warranties in this clause 10 (except for clause 10.7.1 so far as it relates to a Potential Event of Default) on the first day of each Interest Period by reference to the facts and circumstances existing on each such date.

11. General covenants

The Borrower covenants with the Lenders as set out in clauses 11.2 to 11.5 and undertakes to comply with those covenants.

11.1 Continuing obligations

The covenants given by the Borrower in this clause 11 shall remain in force from the date of this agreement for so long as any amount remains outstanding under the Finance Documents are in force.

11.2 Negative pledge

- 11.2.1 The Borrower shall not:

- (a) create, or permit to subsist, any Security on or over any of its assets without the written consent of the Lenders; or
- (b) sell, transfer or otherwise dispose of any of its assets on terms whereby such asset is or may be leased to or re-acquired or acquired by it; or
- (c) 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
- (d) 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.

11.2.2 Clause 11.2.1 shall not apply to any Security which is Permitted Security.

11.3 **Notification of default**

11.3.1 The Borrower shall notify the Firm 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.

11.3.2 The Borrower shall, promptly on request by the Firm, supply a certificate signed by its director(s) or senior officers on its behalf certifying that no Event of Default is continuing (or, if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it).

11.4 **Authorisations**

The Borrower shall promptly obtain all consents and 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 the Finance Documents and to ensure the legality, validity, enforceability and admissibility in evidence of the Finance Documents.

11.5 **Compliance with law**

The Borrower shall comply, in all respects, with all laws, if failure to do so has or is likely to have a Material Adverse Effect.

12. **Events of default**

Each of the events or circumstances set out in clause 12.1 to clause 12.11 is an Event of Default.

12.1 **Non-payment**

The Borrower fails to pay any sum payable by it under any Finance Document within 14 days of when due, unless its failure to pay is caused solely by:

- 12.1.1 an administrative error or technical problem and payment is made within three Business Days of its due date; or
- 12.1.2 a Disruption Event and payment is made within three Business Days of its due date.

12.2 **Non-compliance**

The Borrower fails to comply with any provision of the Finance Documents and (if the Lenders consider, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of:

- 12.2.1 the Lenders notifying the Borrower of the default and the remedy required; and
- 12.2.2 the Borrower becoming aware of the default.

12.3 **Misrepresentation**

Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, the Finance Documents is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made.

12.4 **Cessation of business**

The Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

12.5 **Cross-default**

12.5.1 Subject to clause 12.5.2:

- (a) any Borrowed Money is not paid when due nor within any originally applicable grace period;
- (b) any Borrowed Money becomes due, or capable of being declared due and payable, prior to its stated maturity by reason of an event of default (howsoever described);
- (c) any commitment for any 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).

12.5.2 An event or circumstance referred to in clause 12.5.1 shall not constitute an Event of Default if the aggregate amount of Borrowed Money or commitment for Borrowed Money affected is less than £5,000 (or its equivalent in other currencies).

12.6 **Insolvency**

12.6.1 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.

12.6.2 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).

12.6.3 A moratorium is declared in respect of any Indebtedness of the Borrower.

12.6.4 Any action, proceedings, procedure or step is taken in relation to:

- (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) a composition, compromise, assignment or arrangement with any creditor of the Borrower; 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.

12.6.5 The value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities).

12.6.6 Any event occurs in relation to the Borrower that is analogous to those set out in clause 12.6.1 to clause 12.6.5 (inclusive) in any jurisdiction.

12.6.7 Clause 12.6.1 to clause 12.6.6 (inclusive) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised. The ending of any moratorium referred to in clause 12.6.3 shall not remedy any Event of Default caused by that moratorium.

12.7 **Creditors' process**

A distress, attachment, execution, expropriation, sequestration or other analogous legal process is levied, enforced or sued out on, or against, the Borrower's assets and is not discharged or stayed within 21 days.

12.8 **Enforcement of security**

Any Security on or over the assets of the Borrower becomes enforceable.

- 12.9 **Illegality**
All or any part of any Finance Document becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.
- 12.10 **Repudiation**
The Borrower repudiates or evidences an intention to repudiate the Finance Documents or any of them.
- 12.11 **Material adverse change**
Any event occurs (or circumstances exist) which, in the opinion of the Lenders, has or is likely to have a Material Adverse Effect.
- 12.12 **Acceleration**
At any time after an Event of Default has occurred which is continuing, the Lenders may, by notice to the Borrower:
- 12.12.1 declare that the outstanding Loan, 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; and
- 12.12.2 declare the Security to be enforceable.
- 13. Enforcement of Security**
- 13.1 In the event that the Borrower defaults on its obligation to pay and the Loan is terminated in accordance with clause 7, the Borrower, each Lender and the Firm hereby consent to the novation of the debt and the debt recovery to the Security Trustee and each Lender hereby appoints the Security Trustee as its security agent and trustee for the purposes of taking such action and exercising such powers and discretion as are set out in this Loan Agreement, the Security Trust Deed and the relevant Security Documents.
- 13.2 By virtue of such appointment set out in clause 9.1, each Lender hereby authorises the Security Trustee (whether or not by or through employees or agents):
- 13.2.1 to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Security Trustee by this Loan Agreement, the Security Trust Deed and/or the relevant Security Documents, together with such powers and discretions as are reasonably incidental thereto; and
- 13.2.2 to take such action on its behalf as may from time to time be authorised under or in accordance with this Loan Agreement, the Security Trust Deed and/or the relevant Security Documents.
- 13.3 Each Lender accepts the benefit and is subject to the burden of the obligations on their Loan under this Loan Agreement and to the extent applicable the Security Trust Deed. If any Lender wishes to disclaim their obligations under clause 9.1 or the Security Trust Deed they may do so in writing at any time to the Firm, which shall also release the Security Trustee from any obligation to that Lender under this Loan Agreement, the Security Trust Deed and any Security Document.
- 14. Assignment and transfer**
- 14.1 **Assignment and transfer by the lender**
Each Lender, with the Firm's consent, may assign any of his rights under the Finance Documents.
- 14.2 **Assignment or 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.

15. Confidentiality

15.1 Confidential information

The Lenders agree to keep all information relating to the Borrower, the Finance Documents or the Loan of which they becomes aware in their capacity as Lenders from the Borrower (or any of the Borrower's advisers) confidential and not disclose it to anyone other than in accordance with clause 15.2. This obligation does not apply to information:

- 15.1.1 that is or becomes public information other than as a direct or indirect result of any breach by the Lenders of this clause 15;
- 15.1.2 is identified by the Borrower (or any of the Borrower's advisers) at the time of delivery as non-confidential; or
- 15.1.3 is known to the Lenders before it is disclosed to the Lenders by the Borrower (or any of the Borrower's advisers) or is lawfully obtained by the Lenders from another source, in either case, through no breach of confidentiality of which the Lenders are or become aware.

15.2 Disclosure of confidential information

The Lenders may disclose:

- 15.2.1 to any of their officers, directors, employees, professional advisers and auditors, in addition to any publicly available information, such information about the Finance Documents, the Borrower as the Lenders shall consider appropriate, if the person to whom the information is given is informed that it:
 - (a) is confidential; and
 - (b) may be price-sensitive,except that the Lenders do not need to inform the recipient of clause (a) and clause (b) above, if the recipient is subject to professional obligations to maintain the confidentiality of the information;
- 15.2.2 to any actual or potential assignee or transferee of its rights or obligations under this agreement (and any of their professional advisers), in addition to any publicly available information, such information about the Finance Documents, the Borrower as the Lenders shall consider appropriate, if the person to whom the information is given has entered into a Confidentiality Undertaking, except that there shall be no requirement for a Confidentiality Undertaking if the recipient is subject to professional obligations to maintain the confidentiality of the information;
- 15.2.3 to any person with (or through) whom it enters into (or may enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, this agreement and/or the Borrower (and any of their professional advisers), in addition to any publicly available information, such information about the Finance Documents, the Borrower as the Lenders shall consider appropriate, if the person to whom the information is given has entered into a Confidentiality Undertaking, except that there shall be no requirement for a Confidentiality Undertaking if the recipient is subject to professional obligations to maintain the confidentiality of the information;
- 15.2.4 to its professional advisers, any governmental, banking, taxation or regulatory authority or similar body, or any other person to the extent that it is required to do so by any applicable law, regulation, court order or the rules of any relevant stock exchange, any information about the Finance Documents and the Borrower; and
- 15.2.5 to any person to whom or for whose benefit the Lenders charge, assign or otherwise creates Security, any information about the Finance Documents, the Borrower as the Lenders shall consider appropriate if the person to whom the information is given is informed that it:
 - (a) is confidential; and
 - (b) may be price-sensitive,

except that the Lenders do not need to inform the person of (i) and (ii) above, if they consider it is not practicable to do so in the circumstances.

16. Amendments, waivers and consents

16.1 Amendments

No amendment of any Finance Document shall be effective unless it is in writing and signed by, or on behalf of, each party to it (or its authorised representative).

16.2 Waivers and consents

16.2.1 A waiver of any right or remedy under any Finance Document or by law, or any consent given under any Finance Document, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

16.2.2 A failure or delay by a party to exercise any right or remedy provided under any Finance Document or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm any Finance Document. No single or partial exercise of any right or remedy provided under any Finance Document or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm any Finance Document by the Lenders shall be effective unless it is in writing.

16.3 Rights and remedies

The rights and remedies provided under each Finance Document are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

17. Severance

If any provision (or part of a provision) of any Finance Document is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of the relevant Finance Document.

18. Counterparts

Each Finance Document may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

18.1 No counterpart shall be effective until each party has executed at least one counterpart.

19. Third party rights

Except as for the Security Trustee and the Firm, and otherwise expressly provided in this agreement, a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

20. Notices

20.1 Delivery

Any notice or other communication given to a party under or in connection with any Finance Document shall be:

20.1.1 in writing;

20.1.2 delivered by hand by pre-paid first-class post or other next working day delivery service; and

20.1.3 sent to:

(a) the Borrower at:

[ADDRESS]

Attention: [NAME]

(b) the Lenders at:

[ADDRESS]

Attention: the Security Trustee

or to any other address as is notified in writing by one party to the other from time to time.

20.2 **Receipt by borrower**

Any notice or other communication that the Lenders and/or the Security Trustee give to the Borrower under or in connection with any Finance Document shall be deemed to have been received:

20.2.1 if delivered by hand, at the time it is left at the relevant address; and

20.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 20.2.1 or clause 20.1.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

20.3 **Receipt by the Lender**

Any notice or other communication given to the Lenders shall be deemed to have been received only on actual receipt.

21. **Governing law and jurisdiction**

21.1 **Governing law**

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 **Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over 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). Nothing in this clause shall limit the right of the Lenders or the Security Trustee to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

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

Signed by **[NAME]**

.....

for and on behalf of **[BORROWER]**

Director

Signed by **[NAME]**

.....

for and on behalf of **JARK SECURITY TRUSTEE
LIMITED**

Director

as appointed agent for and on behalf of the
Lenders

Schedules:

1. List of Lenders
2. List of Security Documents – Debenture, PG etc.
3. Arrangement Fee, Exit Fee, Repayment Schedule, Interest Rate.