

CYNERGY BUSINESS FINANCE LIMITED

STANDARD CONDITIONS FOR ASSET BASED LENDING

SPECIMEN

1. DEFINITIONS AND INTERPRETATION

1.1 The following words and phrases have the meanings given below:

Accounting Records

all books, ledgers and records of any kind and in any medium relating to your business or financial position and to all purchases and sales made by you;

Additional Services Charges

the list of our charges for additional services not specifically included in the Facility Terms as advised to you and as amended by us from time to time;

Advance Payment

a payment up to the Advance Payment Percentage on account of the Purchase Price of an Approved Debt before the Collection Date;

Advance Payment Percentage

the percentage to be applied to the Notified Value for working out the Advance Payment, as stated in the Facility Terms;

Agreement

the Agreement made by the Facility Terms once signed by you and us and incorporating these Conditions;

Applicable Interest Rate

the rate specified in the Facility Terms as the interest rate applicable to any Loan Advance or Cashflow Loan, as the case may be;

Approved

in relation to any Debt, being Approved for an Advance Payment and not becoming Disapproved later;

Approved Currency

sterling and any other currency specified in the Facility Terms and/or such other currencies as we may Notify to you in writing from time to time;

Approved Territory

the UK and, if the Receivables Finance Facility includes Export Debts, the additional territories specified in the Facility Terms provided that we may, by written notice to you add or remove any territory, region or continent from this definition;

Arrangement Fee

the amount set out in the Facility Terms;

Asset Valuation

in relation to your assets forming part of the Eligible Collateral, a valuation of those assets in such form and prepared on such basis and by such person as we shall at any time require;

Associate

any person within the meaning of "Associate" in section 435 Insolvency Act 1986 and, in your case, any of your directors or other officers or the spouse or civil partner of any such person, director or officer;

Audit Fee

a charge for the audits which we undertake as specified in the Facility Terms;

Availability

the amount from time to time available for drawing by you;

Availability Statement

a statement of Availability issued by us;

BACS

Bankers Automated Clearing System;

Bank of England Base Rate

the official interest rate set by the Bank of England's Monetary Policy Committee from time to time. The Bank of England Base Rate is variable and in the event of a material change to the basis or manner of its calculation or direction or any recommendation from the Bank of England and/or the Financial Conduct Authority that the Bank of England Base Rate is no longer an appropriate representative rate, or any recommendation from the Bank of England and/or the Financial Conduct Authority to cease using the Bank of England Base Rate altogether, we shall be permitted to calculate the Base Rate by utilising such alternative rate as may be utilised by comparable lenders within the commercial banking market within England and Wales.

In the event that we, acting reasonably, deem it necessary to adopt such alternative rate as referred to above, the parties agree to promptly take all such action and execute all such documents as may reasonably be required for the purpose of implementing such alternative rate;

Base Rate

has the meaning set out in the Facility Terms;

Borrowing Base Certificate

the certificate which you must provide to us, in a form set out in the Appendix to these Conditions or as otherwise specified by us, identifying changes in the status, location and valuation of your relevant Eligible Collateral and any outstanding liability to your Preferential Creditors;

Cashflow Facility

the cashflow loan facility, if any, made or to be made available under this Agreement;

Cashflow Loan

the principal amount of the loan drawn down under the Cashflow Facility as from time to time reduced by repayment or prepayment;

CHAPS

Clearing Houses Automated Payments System;

Charged Properties

those freehold properties owned by you over which we have taken an Encumbrance;

Client Account

an account recording all the transactions between you and us;

Collateral

all property and assets, whether real or personal, tangible or intangible, in which you may, at any time have any right, title, or interest;

Collection Date

in respect of any Debts paid in cash or by credit transfer, on the Working Day after the date of the advice to us of the receipt of funds into our bank account; and in respect of any Debts paid by cheque or other instrument, four Working Days after the date of the advice to us of the receipt of the funds into our bank account, subject in each case to clearance of such funds;

Commencement Date

the date this Agreement begins as stated in the Facility Terms;

Conditions

these Standard Conditions for Asset Based Lending v1;

Confidential Information

all information (whether in oral, written or electronic form) belonging or relating to us, our business or activities which is not in the public domain (or which is in the public domain through a breach of confidence on your part) which:

- a) we have marked as confidential or proprietary;
- b) we have advised you is of a confidential nature; or
- c) due to its character or nature, a reasonable person in like circumstances would treat as confidential.

Confidential Information shall include, but not be limited to, all access telephone numbers, user identification numbers, passwords, test keys, access codes and security procedures relating to the Link;

Contract of Sale

a contract in any form, including a purchase order, between you and a Debtor for the sale or hire of Goods or the provision of services or work done;

Credit Limit

a limit set by us in our absolute discretion for working out the amount of Debts owing by any Debtor to you at any time considered by us as Approved;

Debt

the amount (or part of the amount where appropriate) of any indebtedness or obligation, present, future or contingent (including any tax or duty payable) owing to you by a Debtor under a Contract of Sale, whether or not an invoice has been raised, excluding all Excluded Debts;

Debtor

a person who incurs or may incur any indebtedness under a Contract of Sale;

Debtor Days

the result of us calculating the following as at the end of each month:

using the Notified Value of Debts assigned less Dilutions ("Net Assignments") for current and previous months. The average days outstanding is calculated as the period required to exhaust the current sales ledger closing balance by subtraction of Net Assignment values;

Debtor Days Limit

means the number of days set out in the Facility Terms;

Default Rate

in respect of any amounts outstanding under or in respect of any Loan Facility, the rate of four per cent above the Applicable Interest Rate and, in respect of any amounts outstanding under or in respect of any other Facility or otherwise, six per cent above Base Rate;

Delivered

in relation to Goods:

- a) their removal from your control and from your premises, carriers and agents; and
- b) their physical delivery in an Approved Territory to the Debtor or to its order; and
- c) the assumption of risk therein by the Debtor; and
- d) complete performance of the Contract of Sale,

and in relation to services, their complete performance and "Deliver" and "Delivery" shall be construed accordingly;

Dilution Percentage

in any rolling three-month period, the aggregate value of all Dilutions expressed as a percentage of the aggregate Notified Value of all Debts Notified to us during that period;

Dilutions

the aggregate value of all credit notes, debit notes, write offs or other adjustments applicable to Debts, the effect of which is to reduce the value of such Debts;

Disapproved

in relation to any Debt, not Approved for an Advance Payment or becoming Disapproved later;

Disclosure

the notice telling each Debtor a Debt and its Related Rights have been bought by us and can only be discharged if paid to us;

Discount Charge

a charge for the provision of Advance Payments by us taken off the Purchase Price we pay to you as stated in the Facility Terms;

Dispute

with respect to any Debt or Contract of Sale giving rise thereto: (i) any claim or demand with regard to price, terms, quantity, performance, quality or Delivery of Goods or services; (ii) any other defence, set-off, retention, abatement, counter-claim or contra account raised or alleged by a Debtor or its representatives; and (iii) any other dispute by a Debtor concerning its liability to pay such Debt or pay such Debt by its due date;

Eligible Collateral

such of your undertaking, property and assets as we may from time to time advise as being taken into consideration by us for the purposes of this Agreement;

Eligible Premises

has the meaning set out in the Facility Terms;

Encumbrance

any mortgage, charge, standard security, pledge, lien, assignment or assignation by way of security, hypothecation, security interest, title retention, flawed asset agreement, preferential right, right of set-off, trust arrangement or other arrangement for the purpose of and having a similar effect to the granting of security whether by law or agreement or other security interest of any kind;

Excluded Debt

any debt where the Debtor is a Sanctioned Entity;

Expenses

any charges and expenses incurred by us, in any way, in entering into or enforcing the terms of this Agreement or any Financing Document taken in respect of Your Liabilities, or any release waiver or priority given to us, or preparing written assignments of Debts and Related Rights, or in attempting to collect (including bank or other charges in our dealing with cheques and other instruments of payment returned unpaid), compromise or enforce payment of any Debts or realise any Related Rights, and following any breach of any undertaking or warranty by you under this Agreement;

Export Debt

a Debt whose invoice is addressed to a Debtor outside the UK and/or in respect of which payment is to originate from outside the UK;

Export Debt Concentration Percentage

the percentage shown in the Facility Terms as a percentage of the balance of all Outstanding Export Debts to the balance of all Outstanding Debts;

Facility Terms

the part of this Agreement so described which has been signed by you and us;

Final Drawdown Date

the date specified as such in this Agreement as the date by which the Cashflow Loan or all Loan Advances under any Loan Facilities must be drawn down or, if earlier, the date this Agreement terminates;

Financing Documents

the following documents:

- a) this Agreement;
- b) any debenture between us and an Obligor;
- c) any assignment by way of security between us and an Obligor;
- d) any agreement or instrument evidencing or creating an Encumbrance, guarantee or other assurance against loss entered into by you or a Surety in our favour;
- e) any deed or agreement governing or regulating the priority of Encumbrances or regulating claims against any person liable to us;
- f) any agreement, instrument, notice or certificate delivered or entered into in

connection with any, of the above; or

- g) any other document or deed which we may designate as a Financing Document from time to time;

Force Majeure

an act of God, natural disaster, any exchange control, governmental or other official regulations or requirements, the outbreak of war, any terrorist act, revolution, civil insurrection, strike, lockout, industrial action or failure of postal, banking or communication services and any circumstances outside our, your or a Debtor's reasonable control;

Foreign Currency

any currency other than sterling that is freely transferable and freely convertible into sterling as may be specifically agreed by us in writing;

Funds In Use

at any time, the total of all Advance Payments and other amounts debited by us to you under the Receivables Finance Facility after taking away all amounts received by us from Debts, Related Rights or you;

Goods

any merchandise or materials, or where the context admits, any work or services which are the subject of a Contract of Sale;

Group

in relation to any company, that company and its Subsidiaries, its holding company (as defined in section 1159 Companies Act 2006) and the Subsidiaries of that holding company (and "**Group Company**" shall be construed accordingly);

High Involvement Default Limit

the percentage set by us of the total of all Outstanding Approved Debts which the total of Outstanding Approved Debts of one Debtor should not exceed as stated in the Facility Terms;

High Involvement Exception Limit

the percentage set by us of the total of all Outstanding Approved Debts which the total of Outstanding Approved Debts of a specified Debtor (as agreed between us and you and including the High Involvement Default Limit) should not exceed as stated in the Facility Terms;

Increased Costs

means:

- (a) a reduction in the rate of return from any Facility provided to you;
- (b) any additional interest or increased cost; or
- (c) a reduction of any amount due and payable under any Financing Documents,

which is incurred or suffered by us or any of our Associates to the extent that it is attributable to us funding or performing our obligations under any Financing Documents;

Initial Period

the initial period from the Commencement Date this Agreement must run before

the Notice Period may be activated as stated in the Facility Terms (or as may be extended from time to time by agreement between you and us in writing);

Insolvency Action

the service of a statutory demand, or presentation or application or other process for a petition for winding up, bankruptcy, administration, dissolution or a moratorium or the taking of any step by any person to place in administration, or a proposal for a voluntary arrangement or the calling of a meeting of creditors or the appointment of a receiver to any part of a person's assets or undertaking, with a view to formal insolvency under the Insolvency Act 1986, or a person being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or a creditor or encumbrancer attaches or takes possession of, or an execution, sequestration or other such process is levied or enforced on, the whole or any part of the person's assets;

Inventory

all of your raw materials, work in progress and finished goods which in each case are unsold, undamaged, legally and beneficially owned by you with full title guarantee and not subject to any Encumbrance, in a current marketable condition and readily saleable at prices no less than the lower of cost or market value, fully insured by you against loss and damage and located at properties owned or leased by you in the UK; but excluding raw materials, work in progress or finished goods:

- a) in transit to your premises; or
- b) which have been sold to Debtors or constructively Delivered to Debtors; or
- c) which are subject to any rights in favour of creditors or are the subject of a reservation of title in favour of any third party; or
- d) which are on consignment or subject to any conditional delivery to you; or
- e) which have been returned by any Debtor and are not stored at Eligible Premises;

Link

the facility we provide to you including any relevant software for the transmission of data electronically between you and us;

Loan Advance

a Revolving Inventory Loan Advance or a Term Loan Advance;

Loan Advance Limit

each of the revolving and term loan advance limits set out in the Facility Terms against Inventory, Plant and Machinery or Property;

Loan Advance Percentage

each of the loan advance percentages set out in the Facility Terms against Inventory, Plant and Machinery or Property;

Loan Cancellation Date

the earlier of the date on which this Agreement is terminated for any reason or:

- a) the availability of Loan Advances is terminated by you giving us not less than the Notice Period; or
- b) we give to you notice of not less than the Notice Period;

Loan Facilities

the Cashflow Facility, the Revolving Inventory Loan Facility, the Plant and Machinery Term Loan Facility and the Property Term Loan Facility and "**Loan Facility**" means any one of them;

Management Fee

a weekly fee as set out in our Additional Services Charges which may be charged in our sole discretion for the period of time that you are in breach of this Agreement;

Minimum Base Rate

the rate specified as such in the Facility Terms;

Minimum Service Charge

the minimum service charge (if any) specified in the Facility Terms;

Monitoring Fee

the fee payable by you to us in relation to our monitoring your compliance with the Revolving Inventory Loan Facility;

Nominated Account

the bank account(s) nominated and operated by us into which you must pay or procure that Debtors pay Remittances (which may also be referred from time to time to as trust accounts)

Nominated Account Charges

the nominated account charges (if any) specified in the Facility Terms;

Non-Notifiable Debt

any Debt which:

- a) is owing by an Associate; or
- b) is owing by any Debtor that supplies goods to or performs services for you; or
- c) is either the subject of, or known by you likely to become the subject of, legal proceedings or otherwise uncollectable at any time; or
- d) we tell you about, and which you do not need to Notify until after a Termination Event or we ask you to do so;

Notice Period

the minimum period of any notice to end this Agreement after the expiry of the Initial Period as stated in the Facility Terms;

Notification

the communication to us from you, whether by the transmission of data through the Link or otherwise, telling us about Outstanding Debts and Related Rights and "Notify" and "Notified" in relation to a Debt mean respectively "include" and "included" in a Notification;

Notified Value

the amount of a Debt based on the information you supply to us on Notification (including any tax or duty) before taking off any allowance or settlement discount available to the Debtor;

Obligor

you, any Surety and any person(s) who have entered into any agreement or instrument evidencing or creating an Encumbrance or other assurance against loss in respect of your obligations to us;

Outstanding

in relation to any Debt, owned by, or held in trust for, us and unpaid;

Overall Funding Limit

the limit for the total of all Facilities to be made available by us as stated in the Facility Terms or as subsequently varied;

Payment Terms

your standard terms for the payment of any Debt as stated in the Facility Terms;

Planning Acts

- (a) the Town and Country Planning Act 1990;
- (b) the Planning (Listed Buildings and Conservation Areas) Act 1990;
- (c) the Planning (Hazardous Substances) Act 1990;
- (d) the Planning (Consequential Provisions) Act 1990;
- (e) the Planning and Compensation Act 1991;
- (f) the Planning and Compulsory Purchase Act 2004;
- (g) where a Charged Property is situated in Scotland, the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997, the National Parks (Scotland) Act 2000 and the Planning, etc. (Scotland) Act 2006;
- (h) any regulations made pursuant to any of the foregoing; and
- (i) any other legislation of a similar nature.

Plant and Machinery

all plant, machinery and other equipment and other tangible personal property (except Inventory) owned by you at any time wherever located and all spare parts, replacements, modifications and additions for or to the same and any manuals, logbooks or registration documents relating thereto;

Plant and Machinery Term Loan Facility

the plant and machinery term loan facility, if any, made or to be made available under this Agreement;

Preferential Creditors

all those persons specified by statute or regulation as having preferential debts and any other person which, in our reasonable opinion, may be entitled to receive payment out of floating charge realisations in priority to us;

Pre-Condition

any Pre-Condition which must be satisfied prior to the Commencement Date as

stated in the Facility Terms;

Prepayment Date

the date on which any Loan Facility is prepaid early;

Prepayment Amount

the amount stated in the Facility Terms payable upon prepayment of a Loan Facility;

Property

all freehold and leasehold properties and other real property both present and future owned by any person, including all buildings and other structures from time to time erected thereon and all fixtures (trade or otherwise) from time to time thereon or therein;

Property Term Loan Facility

the property term loan facility, if any, made or to be made available under this Agreement;

Purchase Price

the price payable by us for a Debt and its Related Rights;

Receivables Finance Facility

the facility for the sale and purchase of your Debts;

Receivables Finance Facility Limit

the limit for the total of Advance Payments to be made by us for Outstanding Debts as stated in the Facility Terms or as subsequently varied by us;

Recourse

our right to ask you to repurchase any Outstanding Debt at a price the same as its Notified Value;

Recourse Period

the period stated in the Facility Terms starting from the invoice date of any Debt;

Refactoring Charge

the charge stated in the Facility Terms applicable when the Recourse Period is exceeded in relation to a Debt (and which may also be referred to as an extended service charge from time to time);

Related Rights

in relation to any Debt:

- a) all your rights under the Contract of Sale;
- b) the right to possession of all ledgers, computer data, records or documents on or by which any Debt is recorded or evidenced;
- c) the benefit of any guarantee, indemnity, insurance or security given to you;
- d) any cheque or negotiable instrument available to you;
- e) any statutory or contractual interest; and
- f) any Returned Goods;

Remittances

cash, cheques, bills of exchange, negotiable and non-negotiable instruments, letters of credit, electronic payments, BACS, CHAPS and any other remittance or instrument of payment in whatever form received by us, you or your agents towards discharge of a Debt;

Renewal Fee

the fee payable by you to us on each anniversary of the Commencement Date;

Repurchase Price

the price payable by you to us when we Recourse any Debt calculated at the Notified Value of such Debt;

Required Insurances

has the meaning set out in the Facility Terms;

Reserve

a minimum credit balance in your favour retained on the Client Account to cover any of Your Liabilities as considered necessary by us in our absolute discretion from time to time and notified to you on the Link, including but not limited to amounts in relation to Dilutions and amounts taking into account our estimate of the value of the relevant Eligible Collateral in relation to the Revolving Inventory Loan Facility and the Plant and Machinery Term Loan Facility after the likely costs of realisation of such Eligible Collateral and amounts taking into account our estimate of the Preferential Creditors including, for the avoidance of doubt, the prescribed part of your net property that would be made available for the satisfaction of your unsecured debts pursuant to S176A of the insolvency Act 1986;

Returned Goods

any Goods relating to or purporting to comply with a Contract of Sale which any Debtor shall for any reason reject or return or attempt to reject or return to you or us, or which you or we recover from a Debtor;

Returns Due Date

ten (10) days after each month end or as otherwise stated in the Facility Terms;

Revolving Inventory Loan Advance

a loan advance made or to be made under the Revolving Inventory Loan Facility;

Revolving Inventory Loan Facility

the revolving inventory loan facility, if any, to be made available under this Agreement;

Sanctioned Entity

any person who is domiciled in a Sanctioned Territory or has been designated as a sanctions target or who is owned or controlled by or acting on behalf of a Sanctioned Entity;

Sanctioned Territory

any country which is subject to a financial sanctions regime or has been designated as a sanctions target by the European Union, the UK or the United States of America;

Schedule

a Schedule to these Conditions;

Scottish Debt

any Debt arising under a Contract of Sale with a Debtor based in Scotland or which is otherwise subject to Scots law;

Service Charge

a charge for the service we provide based on the Notified Value of each Debt, as stated in the Facility Terms or, in the case of Debts in existence at the Commencement Date, as may otherwise be stated by us;

Supply Contract

a contract between you and a supplier for the supply of goods or materials to you for resale;

Surety

any person who gives to us a guarantee or indemnity covering any of Your Liabilities;

Term Loan Advance

the principal amount of each advance made under any Term Loan Facility as from time to time reduced by repayment or prepayment, and "**Term Loan Advances**" means all of them;

Term Loan Facility

any term loan facility relating to Plant and Machinery or Property to be made available under this Agreement;

Termination Event

any of the events after which we can end this Agreement immediately, as stated in Condition 10;

UK

the United Kingdom of Great Britain, Northern Ireland, and the Channel Islands and the Isle of Man;

VAT

value added tax;

Working Day

any day upon which both we and banks in England are open for the conduct of normal business;

Your Business

the nature of Your Business as stated in the Facility Terms; and

Your Liabilities

all warranties and undertakings given by you in this Agreement and all your monetary and other obligations incurred at any time to us whether actual or contingent or prospective and whether arising under this Agreement or otherwise (including monies owing by you to us as a Debtor of any of our other clients) and whether arising in or by contract, tort, restitution or assignment.

1.2 In this Agreement:

- a) the use of "we", "us", "our" means Cynergy Business Finance Limited (a company registered in England and Wales with the number 13322121 and its successors and assigns and "you", "your" means the other party to this Agreement to whom we provide our services in whatever trading name or

style used by them;

- b) where the context allows the singular includes the plural and the other way around and any gender includes all;
- c) references to a Condition or paragraph are to sections of these Conditions or a Schedule respectively and the headings to them are for convenience only and do not affect their meanings;
- d) references to any Act include any amendment, replacement or re-enactment of it and any instruments orders or other subordinate legislation made under it;
- e) general words introduced by the word "other" are not limited by reference to any words before them; and
- f) references to "person" include any legal entity.

2. DURATION

- 2.1 This Agreement will begin on the Commencement Date and run for the Initial Period.
- 2.2 After the Initial Period it will continue until after either you or we give to the other written notice to end it of not less than the Notice Period set out in the Facility Terms and during any Notice Period you will continue to carry out all your obligations under this Agreement.
- 2.3 If we or you receive notice from the other under Condition 2.2 we may make a Reserve to cover Your Liabilities.
- 2.4 We may end this Agreement immediately by written notice to you at any time after a Termination Event happens.

3. PAYMENTS

- 3.1 The Purchase Price of any Debt and its Related Rights will be the same as the Notified Value of the relevant Debt after taking away any settlement discount or other allowance given to or due to the Debtor and the Discount Charge.
- 3.2 We will credit the Purchase Price to the Client Account when we purchase an existing Debt and otherwise as soon as you Notify a Debt and before taking away any amounts mentioned above. We will debit such amounts later once known.
- 3.3 Availability Statements shall be accessible via the Link and shall specify (inter alia) your Availability (if any) as at the date of such Availability Statement and the Discount Charge falling due and payable.
- 3.4 If an Availability Statement shall specify a positive Availability, you may (but shall not be obliged to) draw down all or part of such amount by way of an Advance Payment and any amount so drawn shall be debited to your Client Account and reflected in the next following Availability Statement.
- 3.5 The Advance Payment Percentage of any Debt (or any part thereof as we may determine in our absolute discretion) that is the subject of a Dispute will be shown in the next following Availability Statement as a retention and shall reduce the Availability by a corresponding amount.

- 3.6 We will be able to hold back any Advance Payment if:
- a) we need further time to verify any Debt;
 - b) the Funds In Use would go over the Receivables Finance Facility Limit or the Overall Funding Limit;
 - c) the credit balance on the Client Account would be less than the Reserve; or
 - d) any Insolvency Action is continuing against you.
- 3.7 Subject to any restrictions within this Agreement, the balance of the Purchase Price (after taking away any Advance Payment) of any Debt will be added to your Availability upon its Collection Date.
- 3.8 All payments to you will be in sterling (unless we agree otherwise in writing) and paid either to you or on your behalf as provided for in this Agreement. Payments to you will normally be made directly by Faster Payment or CHAPS into your bank account notified to us (or If you ask us to pay you by any other method of express payment then we may do so), subject to payment of the Payment Fee for each payment as specified in the Facility Terms, or as set out in our Additional Services Charges from time to time. We may, if you ask, pay to another bank account unless we have agreed otherwise with your bankers. There will be a charge for this as set out in our Additional Services Charges.
- 3.9 For the purpose of calculating Discount or Availability, we shall credit the value of any Remittance to the Client Account on the Collection Date.

4. ACCOUNTS

- 4.1 We will set up a Client Account in your name to which all transactions between us will be posted.
- 4.2 Any amount debited to the Client Account under the Receivables Finance Facility (except in respect of Dilutions or Recourse) will be treated as an Advance Payment and the Discount Charge will be worked out on the amount of the Funds In Use at the end of each day.
- 4.3 Each Advance Payment will be debited on the date it is made by us. Any payment from you will be credited when we receive cleared funds.
- 4.4 We may at any time set off any amount owing to us in respect of Your Liabilities or owing by you to any Associate of ours against any amount we may owe you under this Agreement. If we cannot work out the exact amount you owe us we will make a reasonable estimate and adjust later.
- 4.5 You agree not to set off any amount due to us against any amount we or any Associate of ours may owe you at any time.
- 4.6 We may at any time set up a Reserve.
- 4.7 We will make available to you a statement of the Client Account including a Funds In Use statement, an analysis of all Outstanding Debts at the relevant time and all payments made to you and sums due from you in respect of Loan Facilities which will appear on the Link to be viewed and downloaded. Such statements and analysis

will be treated as correct and binding apart from any obvious errors you tell us about promptly.

- 4.8 You agree, apart from any obvious errors, that you will be bound by any document signed by any of our directors as to the position on the Client Account or the amount of any of Your Liabilities at any time for any purpose.
- 4.9 We may combine any accounts in your name at any time and all accounts will be treated as combined after a Termination Event.

5. CHARGES

- 5.1 You will pay to us (or we may set off at any time):

- a) the Arrangement Fee on the Commencement Date;
- b) a Service Charge, worked out by using the percentage of the Notified Value of any Debt as stated in the Facility Terms, on Notification, and subject to any Minimum Service Charge;
- c) a Refactoring Charge after the Recourse Period is exceeded in relation to any Debt, worked out by using the percentage of the Notified Value of any such Debt as stated in the Facility Terms, applied on the first working day of each month such Debt remains unpaid after the Recourse Period;
- d) a Discount Charge, worked out by applying the relevant percentage as stated in the Facility Terms to the Funds In Use at the end of each day, which shall accrue and be charged daily and shown monthly on the Availability Statement;
- e) any Expenses, as soon as we tell you about them;
- f) the Audit Fee as stated in the Facility Terms;
- g) the amount set out in our Additional Services Charges if we agree to alter this Agreement or provide you with any services not covered by it, when we ask you;
- h) in relation to any Loan Facilities, all other fees and charges set out in the Facility Terms, when we ask you;
- i) a Management Fee for any period of time that you are in breach of this Agreement.
- j) the Renewal Fee on each anniversary of the Commencement Date;
- k) the Nominated Account Charges (if any) on the last Working Day of each month; and
- l) the Monitoring Fee as stated in the Facility Terms.

- 5.2 If this Agreement ends earlier than it should under Condition 2.2 because (i) we agree (which we do not have to) when you ask us to end it before the end of the Initial Period or after then with notice less than the Notice Period, or (ii) a Termination Event happens, you will pay to us, for lost income for the time from either event until the date when this Agreement could have been ended under Condition 2.2 the greater of either (A) or (B) below:-

- (A) for each month (or part) of such time:-
 - a) for the Receivables Finance Facility:
 - (i) the higher of (i) the monthly average of Service Charges paid in the previous 6 months (or proportionate part if less than 6 months) and (ii) the Minimum Monthly Service Charge in that period; and
 - (ii) the Discount Charge applied to the average Funds in Use balance during the immediately preceding 6 month period (or proportionate part if less than 6 months);
 - b) for any Revolving Inventory Loan Facility, the Applicable Interest Rate set out in the Facility Terms applied to the average Revolving Inventory Loan Facility balance during the immediately preceding 6 month period (or proportionate part if less than 6 months), together with the Monitoring Fee;
 - c) for any Plant and Machinery Term Loan Facility or Property Term Loan Facility, the amount of interest payable for the remaining term of such Loan Facility at the Applicable Interest Rate set out in the Facility Terms for such facility less a discount of 1%;
 - d) for any Cashflow Loan Facility, the Applicable Interest Rate set out in the Facility Terms applied to the average Cashflow Loan Facility balance during the immediately preceding 6 month period (or proportionate part if less than 6 months).
 - (B)
 - a) if this Agreement ends prior to the first anniversary of the Commencement Date, a fee equal to three per cent of the Overall Funding Limit at that time;
 - b) if this Agreement ends after the first anniversary of the Commencement Date but prior to the second anniversary of the Commencement Date, a fee equal to two per cent of the Overall Funding Limit at that time; and
 - c) if this Agreement ends after the second anniversary of the Commencement Date but prior to the expiry of the Notice Period following the end of the Initial Period, a fee equal to one per cent of the Overall Funding Limit at that time.
- 5.3 You will also pay to us when we ask the amount of:
- a) any Advance Payment made if a Debt becomes Disapproved;
 - b) any debit balance on the Client Account; and
 - c) any Funds In Use over the Receivables Finance Facility Limit.
- 5.4 If this Agreement is ended the Discount Charge and the relevant Applicable Interest Rate will continue until all Your Liabilities are cleared.
- 5.5 All our charges are quoted in this Agreement exclusive of VAT and no charges will be refunded.
- 5.6 If any amount payable by you under this Agreement is not paid on its due date,

you shall pay interest on such amount for the period from its due date until the date of actual payment (whether before or after judgment) at the Default Rate, such interest to accrue from day to day, compounded monthly.

6. YOUR REPRESENTATIONS AND WARRANTIES

You represent and warrant to us as follows (and these representations and warranties shall survive the execution of the Financing Documents and will be repeated daily until all Your Liabilities under the Financing Documents have been repaid to us in full):

- 6.1 that the execution of each Financing Document has been duly authorised and that it does not breach any provision of your memorandum or articles of association (or, as applicable, partnership agreement) or of any other agreement entered into prior to the date of any such Financing Document or the laws of any jurisdiction applying to you;
- 6.2 that all action, conditions and things required by all applicable laws and regulations have been taken, fulfilled or done in order to:
 - a) enable you lawfully to enter into, exercise your rights under and perform and comply with your obligations under the Financing Documents;
 - b) ensure that those obligations are valid, legally binding and enforceable in accordance with their respective terms;
 - c) make the Financing Documents admissible in evidence in England, Wales and Scotland and, if different, your jurisdiction of incorporation;
- 6.3 that you have not become subject to Insolvency Action, nor have you taken any action nor have any other steps been taken or legal proceedings started or (to the best of your belief) threatened against you for your winding up, dissolution or reorganisation (other than for a bona fide solvent scheme of reconstruction or amalgamation previously approved in writing by us) or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of you or of any of your assets;
- 6.4 that (except for Encumbrances agreed to by us and for assets which are leased, details of which have been notified to us) you are the owner, with full title guarantee, free from all Encumbrances of all of your assets;
- 6.5 that all information delivered by you or on your behalf to us in connection with any of the Financing Documents including, without limitation, any environmental reports, Property valuations, due diligence reports, projections and/or accounts regarding your business and operations was, at the date of its delivery, (i) true and correct in all material respects and not misleading and (ii) that nothing has occurred or been omitted from the information and that no information has been given or withheld that results in any factual information being untrue or misleading in any material respect;
- 6.6 prior to entering into the Financing Documents you have disclosed to us every fact or matter known to you or which you should have known might reasonably influence us in our decision whether or not to enter into the Financing Documents on their terms or accept any person as an Obligor; and
- 6.7 that no loans have been made to you by any of your directors or shareholders and no personal guarantees have been given by your directors other than disclosed to us in writing.

7. YOUR UNDERTAKINGS

Whilst any Financing Document is in force and thereafter until you have discharged all Your Liabilities you undertake:

- 7.1 not to sell or dispose of any Collateral, save for Inventory sold in the ordinary course of trading on an arm's length commercial basis;
- 7.2 not to create or permit to be created or arise any Encumbrance (except a lien arising by operation of law in the ordinary course of trading and securing obligations not more than 60 days overdue) on or over any of your assets or undertaking nor (save as otherwise agreed in writing by us) to make any loans, grant any credit (save in the ordinary course of business) or give any guarantee or otherwise assume any liability, whether actual or contingent in respect of any obligation of any other person;
- 7.3 to tell us immediately upon you becoming aware of:
 - a) the occurrence of any Termination Event;
 - b) any holder of an Encumbrance enforcing (or threatening to enforce) its Encumbrance over any part of your assets or undertaking;
 - c) any floating charge given by you being crystallised or becoming converted into a fixed charge;
 - d) any material change in the nature of Your Business from that carried on as at the Commencement Date;
 - e) anything which might reasonably influence our decision at any time to continue with any Financing Document on its terms; or
 - f) any litigation, arbitration or administrative proceedings in which you are involved or any threat of any litigation, arbitration or administrative proceedings which in any such case may in our reasonable opinion have a material adverse effect on you or any of your Associates;
- 7.4 to keep us fully advised of the identity of, and of any change in the directors, partners or ownership of your company, firm or business and of all your Associates;
- 7.5 to create such Encumbrances in our favour as we may require over your undertaking and assets for your performance of the Financing Documents;
- 7.6 to sign any additional documents and do anything we may need to exercise or perfect our rights under or pursuant to the Financing Documents;
- 7.7 to carry out established or, if any, our published procedures for the day to day efficient working of the Financing Documents;
- 7.8 to take all such reasonable steps as we may reasonably require for the protection of our interests under or arising out of the Financing Documents and in mitigating any loss we may suffer;
- 7.9 to obtain, comply with the terms of, and maintain in full force and effect all authorisations, approvals, licences and consents required in or by all applicable laws and regulations to enable you to lawfully carry on your business and enter into

and perform your obligations under the Financing Documents and to ensure the legality, validity, enforceability or admissibility in evidence of the Financing Documents in England, Wales and Scotland or, if different, your jurisdiction of incorporation;

- 7.10 at all times to ensure that all Preferential Creditors are duly and punctually paid unless you have (subject to our prior written consent) entered into other arrangements with such Preferential Creditors regarding those payments and to provide evidence of such payments to us on a monthly basis;
- 7.11 not to change or permit the change of your or any member of your Group's financial year without our prior written consent;
- 7.12 not to make any alteration to the nature of Your Business or operations as would constitute a substantial alteration to the general nature of Your Business or operations taken as a whole as carried on as at the Commencement Date;
- 7.13 not to cancel or vary any instructions given to your bankers under this Agreement;
- 7.14 to maintain in force, pay all premiums and fully comply with all requirements of the Required Insurances and where we request, keyman assurance and deal with any claims in relation to any such matters in accordance with any instructions we give to you;
- 7.15 to comply in all respects with all laws, regulations (including without limitation all laws and regulations concerning the protection or prevention of harm to the environment or human health and safety) to which you may be subject, if failure to so comply would in our reasonable opinion have a material adverse effect on you, any Obligor, or any Eligible Collateral;
- 7.16 to provide all and any assistance with the verification of Debts in such manner as we may require;
- 7.17 not to disclose any Confidential Information;
- 7.18 to forward to us immediately details of any loans which are to be made to you by any of your directors or shareholders together with copies of all loan agreements, and any security given by you relating to such loans and copies of any personal guarantees given by your directors;
- 7.19 to comply with the requirements of the EU General Data Protection Regulation 2016/679 as applicable in the UK, the Data Protection Act 2018 and all other applicable data protection law; and
- 7.20 not to deal with any Sanctioned Entity.

8. INFORMATION, AUTHORITY AND CONFIDENTIALITY

- 8.1 You agree to give us access to and allow us to take copies (at your cost) of any records or documents in support of any Debt or Eligible Collateral as we may ask you and to take possession of any records or documents included in the Related Rights of any Outstanding Debt.
- 8.2 You will keep us up to date with your financial position by giving us copies of any of your Accounting Records as we ask for promptly after any such request and will allow us to inspect any of such Accounting Records or documents in support of your financial and trading position.

8.3 You authorise us to enter any of your premises at any time during a Working Day to undertake any of the above.

8.4 You authorise us to disclose any information we have about you to:

- a) your bankers;
- b) your accountants or auditors; or
- c) any person to whom we may wish to transfer this Agreement.

8.5 You warrant that you have authorised your bankers, accountants and auditors to give us any information relating to your affairs we ask for.

9. DATA INTERCHANGE

9.1 In order to speed up and simplify the passing of information and data between you and us we have set up the Link to enable data to be transmitted electronically.

9.2 We grant you a non-transferable licence to use the Link in accordance with these Conditions. We may alter the scope of this licence via the Link at any time without telling you beforehand.

9.3 The copyright and all other rights in the Link will at all times belong to us or our licensors, as appropriate, and you agree not to copy or interfere with any software or other items included without asking us first.

9.4 You will be responsible for all necessary equipment, software and communication links needed by you to gain proper access to and usage of the Link.

9.5 Until we tell you otherwise, you will Notify to us via the Link each Debt and its Related Rights and access all information posted by us on your Client Account. If you do not Notify us electronically and we have to manually post invoices to your Client Account there will be a charge for this as set out in our Additional Services Charges.

9.6 When you input or otherwise facilitate the transmission of details of Debts to us electronically you agree and accept that the Notification will be treated as containing the following notice to us:

"Under the terms of the Agreement between us we Notify you of each of the Debts specified in this Notification. We confirm that all the representations, warranties and undertakings contained in the Agreement relating to the Debts have been complied with and in particular that the Goods have been Delivered or the services have been performed."

9.7 We have taken all steps to ensure your data will be both secure and available to you alone and, in order to maintain that position, you agree to:

- a) use the Link only for the purposes of this Agreement;
- b) follow all procedures we require and make known to you;
- c) keep secret and confidential any user identifications, passwords or other security safeguards;

- d) ensure that only persons authorised by you have access to the Link;
 - e) maintain securely and confidentially all data transmitted and received; and
 - f) inform us immediately if you suspect any misuse or breach of security in relation to the Link.
- 9.8 You will ensure that all communications to us via the Link are correct and complete and only sent by authorised persons. We may rely upon the authenticity of any communication even if the sender is not authorised by you.
- 9.9 We will maintain a record of all data and information passing between you and us and retain this securely for a period of 12 months after the end of this Agreement. The record will be conclusive evidence of the data contained apart from any obvious errors or corrupted data.
- 9.10 We may, without liability to you or telling you, at any time suspend your access to the Link after which no further data will be sent or enquiries made by you until we have agreed to continue with the Facility.
- 9.11 We will not be liable to you for any failure or delay in performing any of our obligations under this Condition in respect of the Link for any reason whatsoever including but not limited to any which is caused directly or indirectly by:
- a) any downtime, unavailability, failure or malfunction of computer hardware, equipment or software, or of any telephone line or other communication system, services, connection or equipment;
 - b) the alteration, suspension or withdrawal of the Link;
 - c) any error or discrepancy in any data sent or received by us; or
 - d) abnormal operating conditions or any unforeseeable event.
- 9.12 You will indemnify us against all liabilities, damages and Expenses arising out of the transmission by you or receipt by us of or our relying or acting on incorrect or inaccurate information or our not receiving any electronic communication from you.
- 9.13 We may at any time, without any liability to you, by telling you or writing to you revoke the licence to use the Link and you agree to return any user guide, software or other items of ours held by you in relation to the Link promptly when we ask.

10. TERMINATION EVENTS

- 10.1 At any time after the happening of any of the following events we will be able to end this Agreement immediately by writing to you:
- a) any Insolvency Action against you;
 - b) any part of your income or assets is seized or subject to a freezing order under any execution or legal process or the making or threat of a third party debt order or other attachment on any amount owing to you;
 - c) if you, any director, member or partner of you is convicted of any crime resulting in a custodial sentence, is subject to any order preventing acting as a director or is subject to any censure from a professional governing

body;

- d) any of the above happens to any Surety or he dies or ends his guarantee or indemnity;
- e) any person who has given us a waiver, release or priority relating to any security interest over any of your assets withdraws it;
- f) you cease to carry on business;
- g) any change in Your Business or in your ownership, control or constitution which we consider material;
- h) any judgment against you remaining unsatisfied for 7 days;
- i) any breach or ending of any covenant or undertaking given by any person we relied upon when we entered into or continued with this Agreement;
- j) your failure to deliver a Notification for a period of 20 days;
- k) any loan or financial facility becomes due for earlier repayment due to your default;
- l) any breach of any term of this Agreement or other agreement or Financing Document made between us and you or breach of any representation, warranty or undertaking given by you in this Agreement or failing to meet any of Your Liabilities which we consider in our sole discretion, material; or
- m) any adverse change in your financial position or performance which we in our sole discretion, consider may result in the recovery of Your Liabilities being at risk.

10.2 After any Termination Event, whether we choose to end this Agreement or not, we can:

- a) hold back any payments due to you;
- b) increase the Discount Charge by 2.5%;
- c) Recourse all Outstanding Debts;
- d) reduce the Advance Payment Percentage and/ or the Receivables Finance Facility Limit;
- e) ask for repayment by you of all Advance Payments made;
- e) ask you to pay Your Liabilities;
- f) appoint accountants or other experts at your cost to inspect your financial position and verify all Outstanding Debts;
- g) undertake such additional audits as we consider appropriate at your cost; and
- h) make a further charge of 10% of the Notified Value of any Outstanding Debt (or any Debt becoming Outstanding later).

- 10.3 Any Non-Notifiable Debt which is Outstanding after any Termination Event must be Notified to us as soon as possible and all payments received must be paid to us and held in trust until we receive them.

11. STATUS

- 11.1 If you are more than one person you agree that:
- a) references to "you" or "your" in this Agreement include references to any one or more of you or to events relating to any one or more of you;
 - b) all assurances, undertakings, warranties, appointments, authorities and acknowledgments given and made by you in this Agreement will be treated as having been given and made by each of you;
 - c) all Your Liabilities will be joint and several and we may release or compromise with any of you without affecting our rights against the others; and
 - d) we may (but do not have to) treat any notice to or demand on any of you as notice to or demand on you all and any notice to us by any of you as notice by you all.
- 11.2 This Agreement and all its terms will remain in full force and effect in spite of any change in your constitution.

12. FOREIGN CURRENCY

Where any Facility includes payment or receipts in a currency other than sterling:

- 12.1 we shall have the right to convert any of your obligations to us in an Approved Currency into sterling and may then demand payment from you or debit such obligation or exercise set-off in sterling. We shall use the rate of exchange notified to us by our bankers for the date that we make such demand, debit or set-off;
- 12.2 where we have to add together the balances on two or more accounts recording transactions between you and us and such accounts are in different currencies, we will use the prevailing spot rate as published by such UK clearing bank as we shall determine; and
- 12.3 we may, at any time, remove any currency from the definition of Approved Currency by written notice to you.
- 12.4 you agree to indemnify us against any loss we sustain as a result of currency fluctuations in relation to sums received from Debtors.

13. TRANSFER

- 13.1 You will not assign or charge any of your rights or benefits or transfer any of your obligations under this Agreement. We may assign all our rights and benefits under this Agreement to any other person and the terms of this Agreement will then apply to them.
- 13.2 You also agree that we may novate this Agreement to anyone who is in the business of providing the Facility and you agree to sign such further documents as we may need to do this.

14. VARIATION

- 14.1 We shall be entitled to vary the terms of this Agreement by giving you notice via the Link or in accordance with Condition 19.1.
- 14.2 Except as already stated, any variation of this Agreement can only be made by a document signed by or on behalf of you and us. You will pay to us any variation fee (including legal fees) which we agree with you at the time of any required variation.

15. INCREASED COSTS

You shall, within three Working Days of a demand by us, pay to us the amount of any Increased Costs incurred by us or any of our Associates as a result of a regulatory change made after the date of this Agreement, and if it is or becomes contrary to any law or regulation for us to make available any Facility under this Agreement, we may at any time notify you in writing that all Debts (including any previously classified Approved Debts) shall become Disapproved Debts and require you to pay to us the aggregate Repurchase Price in relation to all and any Outstanding Debts (together with accrued Discount and Service Fees) together with the balance of Your Liabilities, and any outstanding Interest and all other sums (howsoever arising), then or thereafter owed to us under the Financing Documents.

16. DATA PROTECTION NOTICE

Our processing of personal information is explained in our Data Protection Notice to Clients and Sureties which can be read at:-

<https://www.cynergybank.co.uk/privacy-policy/>

17. WAIVER

None of our rights under this Agreement will be lost or affected in any way if we choose to allow further time to you or anyone else or do not exercise any right or enforce any remedy available to us. Any apparent waiver by us of any breach of any obligation by you will not mean that you can do so again.

18. DISCLAIMER

We shall not be liable to you for any kind of loss or damage, consequential or otherwise, that is caused in any way by us unless such loss or damage arises directly from any fraudulent act of us or any of our officers. If we are unable to perform our services as a result of any failure of any computer or communication system we shall have no liability to you.

19. NOTICES

- 19.1 Any written notice from us to you may be given by handing, as appropriate, to you, any partner, any member of a limited liability partnership or any of your officers, or delivering or posting to your registered office or your address in this Agreement or any other business or residential address known to us, or by sending by email to any address you tell us about. The notice will be effective when handed, delivered or transmitted and, if sent by post, the day after it was posted.
- 19.2 Any notice that must be given by you to us must be in writing and sent by post to us at our registered office and will be effective when we receive it.

20. GENERAL

- 20.1 If any act or event would be required to be performed or be due to take place according to this Agreement on or within a period ending on a day which is not a Working Day the act or event will be deemed to be performed or to take place on or by the next Working Day.
- 20.2 We may rely upon any act done or any letter or document signed or any communication sent to us by facsimile or email or electronically transmitted to us by you by any person purporting to act or sign or send on your behalf despite any defect in or the absence of any authority of such person or any errors contained in it and you agree to indemnify us against all loss and damage we may suffer as a result of our reliance upon such.
- 20.3 If we ask at any time you will sign such documents and do such things as are necessary to give full effect to any Financing Document.
- 20.4 Save as specifically stated in this Agreement the ending of it will not affect the rights and obligations of either you or us in relation to Debts or Loan Facilities in existence on the date it is ended and such rights and obligations will remain in full force and effect until duly discharged.
- 20.5 No term of this Agreement is to be enforceable by any person who is not a party to it and we and you may, subject to its terms, terminate or vary it without the consent of any other person.

21 LAW AND JURISDICTION

This Agreement shall be governed by and construed according to English law and you accept the jurisdiction of the English courts without prejudice to our right to bring proceedings in the courts of any country in which you carry on business.

SCHEDULE 1 RECEIVABLES FINANCE TERMS

1. SALE AND PURCHASE OF DEBTS

- 1.1 You hereby agree to sell to us with full title guarantee and we agree to purchase all Debts in existence on the Commencement Date together with their Related Rights.
- 1.2 By this Agreement you sell to us with full title guarantee and we purchase from you all Debts together with their Related Rights which are created after the Commencement Date until this Agreement has been terminated.
- 1.3 All Debts and their Related Rights will belong to us absolutely and without any further formality on the Commencement Date for existing Debts and as soon as they are created for those arising after the Commencement Date.

2. OWNERSHIP AND TRUST

- 2.1 At any time we ask you will at your expense let us have a formal written assignment of any Debt purchased by us. Any instruments or securities included in the Related Rights should be handed over to us, signed if necessary, at the same time.
- 2.2 You will hold on trust for us and separately from your own property any Debt and Related Rights purchased by us which fails to belong to us completely for whatever reason.
- 2.3 Any Returned Goods in your possession will be held by you on trust for us and must be kept separate from your own property. You will mark them clearly with our name, keep them securely and deal with them as we ask.
- 2.4 You declare a trust in our favour for any Scottish Debt, Related Rights and Returned Goods and agree that you are constituted trustee for us as beneficiary. You will hold any Scottish Debt, Related Rights and Returned Goods as the property of the trust in trust for us save where, or until, we have a complete and unencumbered title to, or we receive full payment of, that Scottish Debt and, in relation to the Related Rights or Returned Goods until the relevant Debt has been paid.

3. NOTIFICATION

- 3.1 On the Commencement Date and as soon as any Debt is created after then you will Notify us of every Debt not previously Notified.
- 3.2 You agree to provide us with such evidence of the Debt as we ask for and we may make further enquiries to verify any Debt.
- 3.3 If in relation to any Debt you are unable to give to us every representation, warranty and undertaking required by this Agreement then you will Notify that Debt separately and set out in that Notification the reason why.
- 3.4 You will not need to Notify any Non-Notifiable Debt until after a Termination Event or earlier if we ask. We will, until you have to Notify to us the Non-Notifiable Debts, allow you to collect and retain payment from the Debtor in settlement of our obligation to pay the Purchase Price. For this reason the Purchase Price of Non-Notifiable Debts will be the amount received from the Debtor.

4. CREDIT LIMITS

- 4.1 We will, when you ask, set a Credit Limit for each Debtor in our absolute discretion and may increase or decrease it at any time. We do not have to give any reason for our decision.
- 4.2 You will make sure the full and correct name and address of each Debtor is supplied to us together with any other information we need.
- 4.3 Any Credit Limit set by us shall be solely for our own purposes to be used under this Agreement and you agree that we are not acting as a credit reference agency and are not obliged to you in any way other than as specifically stated in this Agreement.
- 4.4 You agree not to disclose to the Debtor or any person the amount or absence of any Credit Limit.
- 4.5 We may at any time cancel or reduce a Credit Limit by simply telling you verbally or by email with immediate effect.

5. APPROVAL AND DISAPPROVAL

- 5.1 Any Outstanding Debt (other than a Debt Notified separately under paragraph 3.3), will be an Approved Debt at any time if it is then:
 - a) not the subject of any breach of any representation, warranty or undertaking given by you to us; and
 - b) within the Credit Limit set for the Debtor when added to all other Outstanding Debts for that Debtor (Debts fall within a Credit Limit in the order of invoice date).
- 5.2 Any Outstanding Debt will be a Disapproved Debt at any time if it is then:
 - a) outside the terms of paragraph 5.1;
 - b) when added to all other Outstanding Approved Debts of the Debtor, over the High Involvement Default Limit or the High Involvement Exception Limit (as the case may be) for all Outstanding Approved Debts of all Debtors;
 - c) Outstanding beyond the Recourse Period; or
 - d) at our absolute discretion, classified by us as Disapproved.
- 5.3 You agree not to disclose to the Debtor or any person the status of any Debt as Approved or Disapproved and agree to indemnify us against all claims arising from any breach of this paragraph.

6. DISCLOSED FACILITIES AND COLLECTION

This paragraph applies if you have a disclosed Facility as specified in the Facility Terms.

- 6.1 You must give Disclosure to each Debtor owing an Outstanding Debt. This will be done by sending a notice to the Debtor on the Commencement Date for existing Debts and by endorsement or printing of the notice on each invoice for every Debt created later.

- 6.2 We may require you to give Disclosure at any time and in any way we think fit.
- 6.3 We alone will be able to collect or enforce payment of any Outstanding Debt or realise any Related Rights in any way we think fit, including the issue or compromise of any legal proceedings whether in your name or ours.
- 6.4 You will not try to collect any Outstanding Debt or interfere in any other way with it unless we ask you to help us. If we do that you will assist us fully in any way we ask, at your cost, including supplying documents and giving evidence.
- 6.5 You will help us protect any Related Rights in any way we ask.
- 6.6 If you receive any payment relating to an Outstanding Debt or its Related Rights you will immediately send it to us without banking or dealing with it in some other way. You will hold the payment in trust for us until we receive it and make any necessary endorsement in our favour on any instrument.
- 6.7 You will instruct your bankers to pay directly to us any payment of a Debt or its Related Rights sent to your account and give our bankers a suitable indemnity to cover their collection of any cheques in your name which cannot be transferred.
- 6.8 If despite your representations and warranties a Debtor raises a Dispute you must tell us about it immediately and try to sort it out quickly in any way we ask. If you cannot sort it out we may, but will not have to, try to do so, at your cost. We may settle in any way, in your name, and you agree to be bound by anything we do regardless of any cost to you including any reduction in the Purchase Price.
- 6.9 On the Commencement Date you will give us a copy of every credit note issued for any Outstanding Debt.
- 6.10 After the Commencement Date you will agree not to issue any credit note exceeding £1,000 or such other amount as we may notify you for any Outstanding Debt without asking us first.
- 6.11 If the Debtor raises a Dispute you will give us all details and evidence we ask for and send to us a copy of the intended credit note.
- 6.12 We will debit the amount of any credit note to the Client Account or may ask you for a payment up to the amount of such credit note.
- 6.13 You irrevocably authorise us to pay any credit balance due to a Debtor out of any money we owe to you regardless how it arose.

7. UNDISCLOSED FACILITIES AND COLLECTION AGENCY

This paragraph applies if you have an undisclosed Facility as specified in the Facility Terms

- 7.1 Until we tell you otherwise in relation to any Debt or Debtor, you will deal with the collection of all Outstanding Debts and in paragraph 8.1(q) the word Disclosure is replaced by "our rights".
- 7.2 You agree to act as our confidential agent, at your expense, but in such a way as we ask, to:
- (a) manage and administer all the accounts of Debtors in relation to Debts;

- (b) collect in and enforce payment of all Debts that remain Outstanding;
 - (c) send out such statements and reminders as we think fit to your Debtors;
 - (d) deal with and handle all Related Rights for our benefit;
 - (e) instruct your Debtors to make all credit transfers to our nominated bank account which we will set up in your name; and
 - (f) bank into our nominated bank account all Remittances relating to Debts or Related Rights.
- 7.3 You will not hold yourself out as our agent in any other way or for any other reason unless we agree in writing beforehand.
- 7.4 You will act promptly and efficiently in carrying out your duties as our agent and in particular you will maintain accurately and retain securely for us all material and any other data or documents included in the Related Rights.
- 7.5 You will before each Returns Due Date deliver to us, in our agreed format, an aged analysis of your purchase ledger together with the following:
- (a) the sales ledger detailing all Debts Outstanding on the final day of the previous month (or any other day we tell you) with the invoice date of each Debt;
 - (b) the relevant control account for the previous month reconciling the final balance with the sales ledger balance; and
 - (c) copies of all statements sent or to be sent to your Debtors showing details of each Outstanding Debt by invoice and credit note and the full name and address of each Debtor;
- save that we may at our discretion decide not to require the preceding 3 categories of material until we so notify you in writing.
- 7.6 Until we have received all the material referred to in paragraph 7.5 and we are satisfied with it, we may withhold any Advance Payment or other payment due to you as we think fit.
- 7.7 Whilst you continue to act as our agent you will ensure that:
- (a) all Remittances received by you on account of the payment of Debts will immediately be paid directly into our nominated bank account or any other bank account that we specify in writing to you (and where received by cheque sent to us if we otherwise request);
 - (b) any payments made directly to your bank account by Debtors will be transferred immediately to our bank account and you agree to give an irrevocable letter of instruction, on our terms, to your bankers to ensure such transfer;
 - (c) if we ask, you will send to us each day copies of all Remittance advices, cheques, transfer authorities and paying-in slips duly stamped by the relevant branch covering all payments received in relation to Debts;
 - (d) all bank charges are for your account; and

- (e) every bank at which you hold an account will send to us each week a copy of your relevant statements within 7 days of the date of such statements.
- 7.8 At any time after the occurrence of a Termination Event we may cancel your agency relating to any Debt and/or any Debtor. If we ask you will give Disclosure to each relevant Debtor and confirm that each Debt must be paid directly to us. We may give such Disclosure on your behalf, at your expense.
- 7.9 After cancellation of your agency paragraphs 6.1 to 6.13 and 8.1(m) shall apply, in paragraph 8.1(q) the word Disclosure shall be re-instated in place of "our rights" and we may increase the Service Charge by 10% to reflect the additional work to be carried out by us.

8. DEBT SPECIFIC ASSURANCES, WARRANTIES AND UNDERTAKINGS

- 8.1 In relation to any Outstanding Debt (save as far as paragraph 3.3 applies to it) by including it in a Notification you warrant or undertake that:
 - a) the Goods have been Delivered or the services have been completely performed in accordance with the Contract of Sale;
 - b) it arises from a Contract of Sale subject to English or Scots law, made by you in your business as principal not agent and on your Payment Terms and is payable without retention, set-off, deduction or counterclaim in an Approved Currency;
 - c) you have done all that you needed to do under the Contract of Sale and the Debtor will accept liability to pay the Notified Value;
 - d) neither the Debtor nor any other person has a right to stop its transfer to us or any other right which would reduce payment of the Notified Value to us (other than any settlement discount in your Payment Terms);
 - e) you have no obligations to the Debtor other than under any Contract of Sale and have no arrangement with the Debtor for rebates, set-off or retrospective discounts or anything else where the Notified Value may be less;
 - f) no other person has any right or interest, by way of Encumbrance or otherwise, in it;
 - g) the Debtor has an established business address in an Approved Territory, is not your Associate and entered the Contract of Sale in good faith;
 - h) it has not been Notified before;
 - i) an invoice has been raised by you evidencing such Debt and has been sent to the relevant Debtor and all details in the invoice and Notification are true and complete;
 - j) as far as you are aware there is no Insolvency Action against you or the Debtor;
 - k) the Debt is an undisputed and enforceable payment obligation of the relevant Debtor and it will be paid by the end of the Recourse Period and if it is not you will accept liability for payment of it as principal Debtor without

our having to make a claim on the Debtor;

- l) you will not in any way try to cancel or change the Contract of Sale giving rise to it or the Payment Terms without our prior written consent;
- m) you will not try to collect or otherwise interfere in the payment of it unless we ask you to help us;
- n) you will tell us immediately about any Dispute or Insolvency Action against the Debtor;
- o) you will keep safe accurate and insured against loss any documents or data included in the Related Rights referring to it and give them to us when we ask you for them;
- p) it is not a Non-Notifiable Debt or an Excluded Debt;
- q) you will not act in any way contrary to the terms of Disclosure whilst it is Outstanding;
- r) it will not exceed the Credit Limit for the relevant Debtor when aggregated with other Debts due from that Debtor; and
- s) the correct details of the Debtor and purchase order number appear on documents evidencing the Debt (where applicable).

8.2 You further undertake that

- a) you will, on our written request, not send any credit note to any Debtor identified by us;
- b) you will comply with any request of ours intended to preserve our interest in Debts and/or mitigate any liabilities owed to us, including signing any additional documents;
- c) you will not pay to us any Debt from your own monies (except to pay to us a Remittance which has been paid direct to you by a Debtor) or through an Associate of you or an Obligor (unless the Debt is due by the Associate) without our prior written consent.

9 FURTHER OBLIGATIONS

You further undertake to:

- (A) maintain your own sales ledgers;
- (B) provide details of our nominated bank account to all Debtors paying by BACS, CHAPS or any other form of electronic transfer;
- (C) obtain proofs of delivery and make these available to us on request;
- (D) ensure that invoices are raised in accordance with the terms of the relevant Contract of Sale;
- (E) ensure that Debtors pay all Remittances to us or directly to the relevant Nominated Account.

- (F) retain copies of cheques and Remittance advices received from Debtors when paying Debts and make these available to us on request; and
- (G) retain all supporting paperwork for each Debt (with a copy of the relevant invoice attached) for inspection by us at audit,

10. RECOURSE

10.1 We will be able to Recourse any Outstanding Debt at any time after:

- a) any separate Notification as stated in paragraph 3.3;
- b) a Termination Event;
- c) its Recourse Period; or
- d) such Debt becoming Disapproved or the subject of a Dispute or the relevant Debtor being subject to Insolvency Action,

in each case by writing to you or debiting the Repurchase Price to the Client Account.

10.2 We will still own any Outstanding Debt which we Recourse until we have received the full Repurchase Price and reassigned the relevant Debt to you.

10.3 If we receive any payment of a Debt after the ownership has been transferred back to you we will credit it to the Client Account or pay it directly to you. (less any bank transfer fees incurred by us).

SCHEDULE 2 ELIGIBLE COLLATERAL TERMS

1 INTRODUCTION AND CONDITIONS PRECEDENT

1.1 This Schedule sets out additional terms and conditions relating to any Loan Facilities which we may have agreed to make available under this Agreement.

1.2 In addition to any Pre-Conditions set out in the Facility Terms or these Conditions, before making any Loan Facility available, we will require the following to our satisfaction:

(a) **All Loan Facilities**

- (i) A composite guarantee and debenture executed by each Obligor as we may specify in the Facility Terms incorporating fixed and floating charges over all its assets and guaranteeing the obligations of each other Obligor.
- (ii) A priority agreement with any permitted chargeholder which provides us with unlimited priority on each Obligor's assets, and those of any Associate, unless otherwise agreed.
- (iii) Copies of your insurance policies in relation to any of your assets forming part of the Eligible Collateral showing satisfactory cover, together with evidence showing that the proceeds payable under the policies have been assigned to us, that notice of such assignment has been given to the insurers and that we have been named as first loss payee under each such policy.
- (iv) Duly executed landlord and/or mortgagee waivers and consents from the landlords and/or mortgagees of your leased or owned locations where Collateral is held.

(b) **Revolving Inventory Loan Facility**

- (i) Copies of any Supply Contracts that we may specify that have been entered into by you, the terms to be acceptable to us.
- (ii) An Asset Valuation in form and substance acceptable to us of any Inventory forming part of the Eligible Collateral.

(c) **Plant and Machinery Term Loan Facility**

- (i) An Asset Valuation, in a form and substance acceptable to us, of any Plant and Machinery forming part of the Eligible Collateral.

(d) **Property Term Loan Facility**

- (i) In form and substance approved by us in writing, certificates of title and such other documents from solicitors approved by us in respect of any Property that we may specify.
- (ii) Environmental reports from consultants approved by us in relation to any Property that we may specify, together with any further reports required by us relating to any Property.

- (iii) Copies of all existing environmental reviews and audits and all other information relating to actual or potential environmental claims relating to any Property.
- (iv) An Asset Valuation in form and substance acceptable to us of any Property forming part of the Eligible Collateral.

2. CASHFLOW FACILITY

If this Agreement specifies that we will make available to you a Cashflow Facility for your working capital requirements, it will be subject to the following terms, in addition to those set out in the Facility Terms, these Conditions and the subsequent provisions of this Schedule:

- 2.1 **Amount:** you must draw down the whole of the Cashflow Loan to be made available under the Cashflow Facility in one drawing only by the Final Drawdown Date; and
- 2.2 **Fees and Expenses:** you will pay the fees and expenses relating to the Cashflow Facility in the amounts and frequency set out in the Facility Terms, such fees to be debited to the Client Account.

3. OTHER LOAN FACILITIES

If this Agreement specifies that we will make available to you one or more Loan Facilities (other than a Cashflow Facility), then subject to the Overall Funding Limit we will make available to you such Loan Facilities in respect of your Eligible Collateral up to a principal amount which may not at any time exceed (i) the applicable Loan Advance Limit or (ii) an amount equal to the applicable Loan Advance Percentage of the value of your relevant Eligible Collateral from time to time (as evidenced by the most recently delivered Asset Valuation) less, in each such case, such of the Eligible Collateral or its proceeds of sale as we may from time to time reasonably determine might be unavailable to us upon enforcement of any of the Financing Documents and such other Reserves as we may determine in relation to the Eligible Collateral.

4. TERM AND DRAWDOWN

- 4.1. All Loan Advances shall be made in sterling and shall be available for drawdown at any time prior to the Final Drawdown Date upon receipt by us of your written request which must be received by 10.30 am on the Working Day on which the Loan Advance is to be made.
- 4.2. The term of any Loan Facility, (other than a Cashflow Facility) subject to any rights of termination we may have whether by virtue of law or the terms of any agreement entered into with you (including, without limitation, following any Termination Event) and subject to either of us giving notice of termination, shall be the period specified in the Facility Terms.
- 4.3. For the avoidance of doubt all Loan Facilities (including the Cashflow Facility) shall be coterminous with the Receivables Finance Facility.

5. INTEREST, FEES AND EXPENSES

- 5.1. Interest will be charged and applied on the Cashflow Loan and on each Loan Advance daily at the Applicable Interest Rate and shall subject to the relevant Repayment Terms, be due and payable on the last Working Day of each calendar month. You agree that such Interest will be debited to the Client Account.

- 5.2. If you fail to pay any sum payable by you in respect of any Loan Facility on its due date you shall pay interest (before and after judgment) on the balance for the time being outstanding under it at the Default Rate for such Loan Facility.

6. REPAYMENT AND PREPAYMENT

- 6.1. The continuing availability of Loan Advances and the Cashflow Loan shall terminate on the Loan Cancellation Date or, if earlier, if the Receivables Finance Facility is repaid, or on the occurrence of a Termination Event, and all Loan Advances then outstanding and the Cashflow Loan shall be repaid in full immediately or at any time thereafter as specified by us.
- 6.2. You shall make scheduled repayments of Term Loan Advances (other than in relation to the Property Loan Facility which is interest only for the Repayment Term subject to a final repayment of the principal amount and interest) and of the Cashflow Loan in accordance with the Repayment Terms set out in the Facility Terms. All repayments will be debited to the Client Account.
- 6.3. In relation to all Loan Facilities (other than the Revolving Inventory Loan Facility), the monthly repayments shall be made on the dates set out in the relevant Repayment Terms.
- 6.4. Subject to the terms of this Agreement you may:
- (a) repay and reborrow any Revolving Inventory Loan Advance;
 - (b) prepay (but not reborrow), subject to payment of the Prepayment Amount specified in the Facility Terms, the whole or any part of any Term Loan Advance made against Plant and Machinery or Property which reduces that Term Loan Advance below the relevant Loan Advance Limit at that time; and
 - (c) prepay (but not reborrow), subject to payment of the Prepayment Amount specified in the Facility Terms, the whole or any part of the Cashflow Facility which reduces the balance of the Cashflow Loan below the Cashflow Loan amount outstanding at that time.
- 6.5. If at any time the restrictions detailed in this Agreement whether in relation to the relevant Loan Advance Limit or otherwise are breached you shall immediately repay to us such amount as is necessary to ensure that those restrictions are complied with, and until that repayment, neither the Cashflow Loan nor any further Loan Advances shall be made.
- 6.6. We shall be entitled to apply Advance Payments and other Availability against any amount loaned to you in excess of a Loan Advance Limit.
- 6.7. If at any time it becomes unlawful for us to advance, maintain or fund the whole or any part of the Cashflow Loan or any Loan Advance or any sum outstanding under any Financing Document we may at any time by written notice to you require you to repay the whole or any part of the Cashflow Loan or such Loan Advance and/or such outstanding amounts immediately.

7. SPECIAL CONDITIONS RELATING TO LOAN FACILITIES

It is a requirement for the making of Loan Advances in respect of Eligible Collateral that the following is done or is provided to us to our satisfaction:

- 7.1. adequate insurance cover continues to be maintained over all of your assets, on terms satisfactory to us, and all premiums are paid and all other terms of each insurance policy are complied with;
- 7.2. in the case of Revolving Inventory Loan Advances, details of your Preferential Creditors and an Asset Valuation of any Inventory forming part of the Eligible Collateral are delivered to us no more than 30 days prior to the making of such Loan Advance;
- 7.3. duly completed Borrowing Base Certificates which are accurate and not misleading are delivered to us by the Returns Due Date in respect of Inventory and on each anniversary of the Commencement Date in respect of Plant and Machinery (or, in each case following a Termination Event, at such frequency and at such times as we may specify);
- 7.4. an Asset Valuation (at your cost) of any Plant and Machinery, Property or Inventory forming part of the Eligible Collateral is delivered to us within 30 days of each anniversary of the Commencement Date (or, following a Termination Event, at such frequency and at such times as we may specify);
- 7.5. any landlord and/or mortgagee waivers and consents obtained from the landlords and/or mortgagees of your leased or owned locations where Collateral is held must remain in full force and effect;
- 7.6. no sale of any Property or any item of Plant and Machinery is made without our prior written consent; in relation to any proposed sale of Property or any item of Plant and Machinery which forms part of the Eligible Collateral, such consent will only be given if, immediately upon such sale, you repay to us outstanding Term Loan Advances in an amount equal to such amount as we may determine will be sufficient to compensate us for any reduction in the value of the Eligible Collateral resulting from such sale; and
- 7.7. Any Plant and Machinery charged to us as security for the Plant and Machinery Term Loan Facility is badged with details of our interest as mortgagee.

8. PAYMENTS FROM ACCOUNTS

We shall be entitled (and are hereby authorised by you) to debit all payments due under any Loan Facility to the Client Account or any other account(s) of yours with us.

9. FINANCIAL INFORMATION AND AUDITS

- 9.1 We shall, as we consider necessary, conduct audit visits to any premises where your Accounting Records are maintained or where any of your Collateral is kept.
- 9.2 Following a Termination Event, you will provide all such information as is required in this Agreement at such frequency or on such other basis as we may then require and will be responsible for the costs of such audits as we require.

10. COVENANTS

You undertake that, in addition to any requirements set out or referred to in this Agreement, you shall:

- 10.1. ensure that details of your Preferential Creditors are delivered to us within 30 days of the end of each month (or, following a Termination Event, at such frequency and at such times as we may specify);
- 10.2. keep your Inventory and Plant and Machinery in a good state of repair and condition at Eligible Premises. You shall permit us and any person authorised by us, at all reasonable times, to inspect your Inventory and Plant and Machinery and, where any such Inventory and/or Plant and Machinery is located at third party premises and we indicate to you that we require landlord or warehouse access waivers in respect of any such premises, you shall procure that we are promptly provided with such waivers in a form satisfactory to us;
- 10.3. store any Inventory sold by you but not yet Delivered to a purchaser separately from other Inventory and shall clearly label such Inventory as the property of the purchaser;
- 10.4. ensure that true and proper entries of all dealings and transactions relating to Inventory, Plant and Machinery and Property are promptly and correctly recorded in your Accounting Records;
- 10.5. keep any Property in a good and substantial state of repair, and procure that no structural alterations or additions are made to any Property nor fixed plant, fixtures, equipment or services removed, except in the ordinary course of trading and you shall permit us and any person authorised by us, at all reasonable times, to inspect your Property; and
- 10.6. ensure that no Plant and Machinery will be or become, subject to a lease or lease agreement.

11 FURTHER OBLIGATIONS IN RELATION TO CHARGED PROPERTIES

11.1 You warrant as follows:-

- (a) You have a good and marketable title to, and are the sole legal and beneficial owner of, the relevant Charged Properties.
- (b) Each of the leases and headleases referred to in any title report is in full force and effect and no party is in breach of its obligations under it.
- (c) The title reports are true in all material respects.
- (d) Except as disclosed in the title reports:
 - (i) there is no breach of the Planning Acts or any other law or regulation which does or may adversely affect the value or marketability of any of the Charged Properties;
 - (ii) there is no covenant, agreement, stipulation, reservation, condition, interest, right or other matter adversely affecting any of the Charged Properties;
 - (iii) (save in relation to any Charged Property in Scotland) there is no unregistered interest which overrides (A) first registration or (B) registered dispositions affecting any Charged Property and there is no person in adverse possession of any Charged Property ;

- (iv) no person has a right to terminate or curtail the use of a facility necessary for the enjoyment and use of any Charged Property;
 - (v) no Obligor is aware of any adverse claim in respect of the ownership of, or any interest in, any of the Charged Properties nor has any acknowledgement of such a claim been given to any person in respect of any of the Charged Properties;
 - (vi) the Charged Properties are free from any tenancies or licences except as permitted by this Agreement or as otherwise permitted in writing by us;
 - (vii) the Charged Properties are in good and substantial repair; and
 - (viii) no dangerous substance has been used, disposed of, generated, stored, dumped, released, deposited, buried or emitted at, on, from or under the Charged Properties or any premises on any of them.
- (e) (save in relation to any Charged Property in Scotland) the Charged Properties are not :
- (i) registered; or
 - (ii) subject to any pending application for registration,
- as a freehold estate in commonhold land under Part 1 of the Commonhold and Leasehold Reform Act 2002.

11.2 You undertake to us as follows:

- (a) Neither you nor any other person shall demolish any buildings or erections on any Charged Property without our prior written consent.
- (b) Neither you nor any other person shall make any structural alteration to any Charged Property which materially and adversely affects the value of that Charged Property without our prior written consent.
- (c) Neither you nor any other person shall remove any fixtures from any Charged Property without our prior written consent.
- (d) You shall:
 - (i) keep or cause to be kept all buildings and erections from time to time upon any of the Charged Properties and all fittings, plant and machinery on any of the Charged Properties in good and substantial repair; and
 - (ii) when necessary replace, or procure the replacement of, the same with items of similar quality and value.
- (e) You shall ensure that all covenants, stipulations and conditions now or at any time:
 - (i) affecting any Charged Property or its use or enjoyment (so far as the same subsist and are capable of being enforced) shall be observed and performed; and

- (ii) benefiting any Charged Property shall be diligently enforced and such obligations shall not be waived, varied or released, or any agreement made to do the same.
- (f) You shall:
 - (i) pay or procure to be paid all rates, rents, outgoings and other sums payable out of or in respect of any Charged Property; and
 - (ii) indemnify us on demand against all existing and future rents, taxes, duties, fees, renewal fees, charges, assessments, impositions and outgoings whatsoever, whether imposed by deed or by statute or otherwise and whether in the nature of capital or revenue and even though of a wholly novel character which now or at any time during the continuance of the Agreement are payable in respect of any Charged Property or any part of it.
- (g) You shall not:
 - (i) change the present use of any Charged Property; or
 - (ii) carry out any development of or on any Charged Property within the meaning of the Planning Acts,
- (h) You shall not make an application and shall ensure that no application is made for, and there is no implementation of, any planning permission under the Planning Acts.
- (i) You shall procure that we are notified of any application for, or implementation of:
 - (i) any planning permission under the Planning Acts; or
 - (ii) any change to the present use of any Charged Property or any use of any Charged Property for which planning permission is required of which you become aware.
- (j) You shall comply with any conditions attached to any planning permissions (and any agreement or undertaking under section 106 of the Town and Country Planning Act 1990 (or Section 75 of the Town and Country Planning (Scotland) Act 1997 in relation to any Charged Property in Scotland) or section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or sections 38 or 278 of the Highways Act 1980 the Local Government (Planning and Development) Acts 1963 (insofar as the same remain in force) and the Planning and Development Acts 2000 to 2011, the Building Control Acts 1990 to 2007 or any other similar Act or Acts) relating to or affecting any of the Charged Properties.
- (k) You shall ensure that no negotiations are entered into with any competent authorities with regard to the compulsory acquisition of any Charged Property.
- (l) You shall not agree to do any of the following:
 - (i) grant any lease, tenancy, licence or right to occupy over any Charged Property;

- (ii) effect any forfeiture or irritancy of, or terminate, any Lease;
- (iii) part with or share possession or occupation of any Charged Property;
- (iv) grant any other rights over any Charged Property;
- (v) consent to any surrender, assignment or assignation of any tenant's interest under any lease, agreement to grant any lease, contractual licence or right to occupy any Charged Property;
- (vi) without prejudice to the generality of the foregoing, in relation to any lease to which that Obligor is party:
 - (A) vary or waive the terms of any lease;
 - (B) agree to any review of rent save where the review is finalised or settled by the application of a formula referable to inflation;
 - (C) consent to any tenant under any lease entering into any sublease, licence or concession arrangement; or
 - (D) commence any forfeiture or irritancy proceedings in respect of any lease;
- (vii) without prejudice to the generality of the foregoing, in relation to each headlease to which you are party:
 - (A) surrender any headlease;
 - (B) without our prior written consent:
 - (1) waive, release or vary any obligation under, or the terms of; or
 - (2) exercise any option or power to break, determine or extend,in each case, any such headlease;
 - (C) do or permit anything under any such headlease whereby the same may be forfeited; or
 - (D) agree any change to the rent payable under such headlease.
- (m) You shall, in relation to each lease, require lessors to:
 - (i) observe and perform the covenants and obligations on the part of the lessor and use its reasonable endeavours to enforce the performance and observance of the obligations on the part of any lessee;
 - (ii) duly and efficiently implement any provision for the review or escalation of any rent thereby reserved;

- (iii) (save in relation to any Charged Property in Scotland) serve on any former tenant any notice under section 17(2) of the Landlord and Tenant (Covenants) Act 1995 or on any guarantor of any such former tenant a notice under section 17(3) of that Act promptly and in any event within the timescales contained in that Act;
 - (iv) promptly notify the property agent of any notice given by any tenant to determine any lease.
- (n) You shall ensure that in relation to any headlease, the tenant shall:
 - (i) perform and observe all covenants, stipulations and obligations on the lessee and diligently enforce performance of the lessor's covenants;
 - (ii) not agree to any change in the rent payable under any such headlease unless we have given our prior written consent;
 - (iii) promptly notify us of any matter or event under or by reason of which such headlease has or may become subject to determination or to the exercise by the lessor of any right of re-entry or forfeiture (or irritancy) and, if required by us, diligently pursue applications for relief from forfeiture (or irritancy) of any headlease; and
 - (iv) procure the consent of the lessor under the headlease to the creation of security in our favour.
- (o) You shall not alter the VAT status of any Charged Property nor permit the same to alter through any act or omission.

12 CONSEQUENCES OF A TERMINATION EVENT

Upon or at any time after a Termination Event or if the Receivables Finance Facility is to be repaid by you, in addition to all our other rights under any of the Financing Documents, we may declare by written notice to you:

- 12.1 any one or more of the Loan Advances and/or the Cashflow Loan to be due and payable on demand or on any date as we may specify in that notice, whereupon each of them shall become so due and payable on demand or on that date (as the case may be) together with, at our discretion, all Your Liabilities; and
- 12.2 that our obligations under any one or more of the Financing Documents shall immediately be cancelled, whereupon they shall be so cancelled.

APPENDIX

FORM OF BORROWING BASE CERTIFICATES

INVENTORY BORROWING BASE CERTIFICATE					Total	Raw Materials	WIP	Finished Goods
CLIENT NAME:								
DATE:								
NOLV%					80%			
Number of PT Employees					0			
Number of FT Employees					0			
		Book Cost Inventory			0			
	LESS	Ineligible Inventory	Packaging		0			
			Consumables		0			
			Consignment		0			
			Location		0			
			Other		0			
		Total Ineligible			0	0	0	0
		Eligible Inventory			0	0	0	0
	LESS	Reserves and Provisions	ROT		0			
			Slow Moving		0			
			Lien		0			
		Total Reserves			0	0	0	0
		Net Eligible Inventory			0	0	0	0
	ADD	Gross Margin Uplift %				0.00%	0.00%	0.00%
		Uplift Value			0	0	0	0
		Gross Orderly Liquidation Value (GOLV)			0	0	0	0
	LESS	Appraisal Reducer %				0.00%	0.00%	0.00%
		Reducer Value			0	0	0	0
	LESS	Cost Of Sale	Rent		0			
			Utilities		0			
			Staff		0			
			Insurance		0			
			Security		0			
			x		0			
			x		0			
			x		0			
			x		0			
			x		0			
		Total Costs			0	0	0	0
		Net Orderly Liquidation Value			0	0	0	0
	LESS	Preferential Creditors (HMRC)			0			
		Misc			0			
	LESS	Enterprise Act Provisions						
		Employees (£1,000 per FTE)			0			
		Employees (£250 per PTE)			0			
		Prescribed Part (50% of 1st £10k)			5,000			
		Prescribed Part (20% NOLV max £800k)			0			
		Net Inventory Cover			-5,000			
		Prepayment Availability						
The undersigned represents and warrants that the information supplied in this Borrowing Base Certificate is true and correct and that the calculation adheres to the terms of the agreement between (client name) and Cynergy Business Finance Ltd dated DD/MM/YY. The undersigned also confirms that no Termination Event has occurred or is occurring (except as previously disclosed in writing to Cynergy Business Finance Ltd)								
Name								
Position								
Signed								
Date								

**Plant and machinery Borrowing Base
Certificate**

Client Name:

Date from to

Opening Bal of P&M

Additions for period

Disposals in period

Closing Bal of P&M

Trial Balance Variance

Additions

Asset				Value

Disposals

Asset				Value			

The undersigned represents and warrants that the information supplied in this Borrowing Base Certificate is true and correct and that the calculation adheres to the terms of the agreement between XXXXXXXX and Cynergy Business Finance Ltd dated DD/MM/YY.

Name:

Position:

Signed:

Date: