

LOAN AGREEMENT

between

[Lender full corporate name]

and

[Borrower full corporate name]

This Loan Agreement (the **Agreement**) is entered into on [Date],

BETWEEN:

1. [Lender full corporate name], a [insert entity type] incorporated under the laws of [jurisdiction], with its registered offices at [address] (**Lender**); and
2. [Borrower full corporate name], a [insert entity type] incorporated under the laws of [jurisdiction], with its registered offices at [address] (**Borrower**).

Both parties are collectively referred to as the **Parties** and individually also as a **Party**.

WHEREAS:

- (A) Borrower needs to finance its activities up to the Loan Amount (capitalised terms are defined in Article 1).
- (B) Lender is willing to lend the Loan Amount. The Parties wish to establish the terms and conditions of this Loan.

NOW THEREFORE, the Parties agree as follows:

1. INTERPRETATION

1.1 Definitions. In this Agreement:

Affiliates means means, in relation to a person, any company or other entity, whether or not a legal person, which directly or indirectly controls, is controlled by or is under joint control with that person. For this purpose, a person is deemed to **control** a company or entity if it (a) owns, directly or indirectly, more than 50 percent of the capital of the other company, or (b) in the absence of such ownership interest, substantially has the power to direct or cause the direction of the management and set the policies of such company or entity.

Business Day means a day (other than a Saturday, a Sunday or national holiday) on which banks are generally open for business in [Insert a state or country].

Change of Control means in relation to any person that is not a Subsidiary, its becoming a Subsidiary and in relation to any person that is a Subsidiary, any change in its Ultimate Holding Company or its becoming a Subsidiary of another company (as well), which other company is not itself a Subsidiary of such Ultimate Holding Company.

Confidential Information has the meaning ascribed to it in Section 11.1.

Disclosing Party has the meaning ascribed to it in Section 11.1.

Drawdown Date means [insert the day on which, or the mechanism according to which, the Borrower will receive the Loan Amount and interest will commence accruing].

[If Euribor is the reference for interest determination: **EURIBOR** means *Euro Interbank Offered Rate*, being the offered rate which appears on the relevant page on the *Reuters Screen* at or about 11:00 a.m. on the relevant Interest Determination Date for the offering of deposits in the currency of the Loan Amount for a period comparable to an Interest Period, not being the first Interest Period. If this page or its provider is replaced or discontinued, Lender shall select the appropriate successor page or provider. If

EURIBOR is negative, it shall be deemed to be zero (0) for the purpose of this Agreement.]

Event of Default means any event or circumstance specified in Article 9.

Interest Determination Date means two Business Days prior to the commencement of the relevant Interest Period.

Interest Payment Date has the meaning ascribed to it in Section 3.1.

Interest Period means the period from (and including) the date referred to in Section 2.3 to (but not including) the first Interest Payment Date and each period thereafter from (and including) an Interest Payment Date to (but not including) the subsequent Interest Payment Date.

[**If LIBOR is the reference for interest determination:** LIBOR means *London Interbank Offered Rate*, being the offered rate of the *British Bankers Association Interest Settlement Rate* for the relevant period at or about 11:00 a.m. on the relevant Interest Determination Date for the offering of deposits in the currency of the Loan Amount for a period comparable to an Interest Period, not being the first Interest Period. If this page or its provider is replaced or discontinued, Lender shall select the appropriate successor page or provider. If LIBOR is negative, it shall be deemed to be zero (0) for the purpose of this Agreement.]

Loan Amount means an amount of EUR [**Insert principal amount of the loan or credit**] in cash.

Loan means the principal amount at any time outstanding under the Agreement.

Margin means [**Insert the number to be added to the applicable Euribor or LIBOR base interest percentage, and which Margin reflects the risk of (no) repayment assumed by the Lender (and which might be a few hundred basis points):** [●] basis points per annum].

Receiving Party has the meaning ascribed to it in Section 11.1.

1.2 **Interpretation.** Except as otherwise defined, in this Agreement:

- (a) references to a communication **in writing** shall include e-mail and electronic messages accessible and printable by commonly used software applications;
- (b) references to Articles and Sections are references to articles and sections of this Agreement.

2. **LOAN [AND PURPOSE]**

2.1 **Principal.** Subject to the provisions of this Agreement, Borrower agrees to borrow from Lender and Lender shall lend to Borrower the Loan Amount.

2.2 [**Consider specifying the purpose for which the Loan Amount may be used:** **Purpose.** Borrower shall use the Loan Amount entirely and solely for the purpose of [[financing its / acquiring / developing / investing in / pre-financing] [**insert precise description of the loan purpose**]] and not (partly) for any other purpose. Lender is not obliged to monitor or verify how any part of the Loan Amount is used.

2.3 **Draw down.** Borrower may draw the Loan Amount in one installment on the Drawdown Date, provided that on the anticipated time of transfer by Lender to Borrower:

- (a) each warranty in Section 7.1 is in all respects correct and shall be correct in all respects immediately after Borrower has drawn under this Agreement; and
- (b) no Event of Default has occurred or is still continuing or would result from drawing under this Agreement,

as Lender may require from Borrower to confirm in a duly signed written statement. The conditions in this Section 2.3 are for the benefit of Lender only.

- 2.4 **Bank account.** The Loan Amount shall be transferred into the bank account of Borrower in accordance with Article 10. A delayed payment transfer that is not attributable to Lender, neither changes the starting date for calculating of interest nor any other date or time in this Agreement.

3. INTEREST

- 3.1 **Interest payment date.** The Loan shall bear interest from the Drawdown Date and such interest shall be payable [each month / each quarter] [in advance on last Business Day of the preceding [month / quarter] / in arrears on the last Business Days of the [month / quarter]] (each such date being an **Interest Payment Date**). The first Interest Payment Date shall be [Insert first interest payment date].
- 3.2 **Interest.** The interest shall be calculated by reference to each Interest Period at a rate per annum equal to EURIBOR in relation to the relevant Interest Period plus the Margin and shall be established by Lender for each Interest Period as per the Interest Determination Date.
- 3.3 **Year partitions.** If interest is to be calculated for a period of less than one year, it shall be calculated on the basis of a 360 days year and on the basis of the actual number of days elapsed.

4. [OPTIONAL (AND NOT USUALLY INCLUDED): HARDSHIP

[This clause is not in the main interest of Lender, and usually not included]

- 4.1 **General.** If, after the date of this Agreement, circumstances change or events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of this Agreement, thereby placing an excessive burden on one Party in the performance of its contractual obligations (*hardship*), that Party may request revision of this Agreement, provided that:
- (a) the circumstances and events could not reasonably have been taken into account by the affected Party at the time of entering into this Agreement;
 - (b) the circumstances and events are beyond the reasonable control of the affected Party; and
 - (c) the risk of the circumstances and events is not one which, according to this Agreement, the affected Party should be required to bear.
- 4.2 **Settlement.** If the Parties fail to reach agreement on the requested revision within [90 days], each Party may invoke the dispute resolution procedure in this Agreement. The adjudicated court or arbitral tribunal, as the case may be, shall have the power to make any revision to this Agreement as it deems just and equitable in the circumstances, or to terminate this Agreement as of a date and on terms to be established by it.

5. REPAYMENT AND PREPAYMENTS

5.1 **Repayment.** Subject to the terms of the Agreement, Borrower shall repay to Lender the Loan in one installment ultimately on or before [*Insert the date on which all (or the last instalment) of the outstanding Loan Amount will be repaid*].

5.2 **Prepayment.** Borrower may prepay the whole or part of the Loan. A prepayment shall:

- (a) be made on a Business Day only [*Optional*] and be permitted only if Borrower has notified such prepayment not less than [*20 Business Days*] in advance. Each such notice shall be in writing, be irrevocable and specify the date or dates on which the prepayment is to be made and the amount of the prepayment;]
- (b) always be subject to the order of settlement specified in Section 5.4; and
- (c) not cause a penalty or premium to become due by Borrower.

Any prepayment pursuant to this Section 5.2 shall reduce the Loan Amount accordingly.

5.3 **Set-off and tax deductions.** All payments made by Borrower under this Agreement shall be made in full without Borrower being entitled to any set-off or counterclaim and shall be made free of and without deduction or withholding for, or on account of, any present or future income or other taxes, duties, levies, deductions, withholdings, restrictions or conditions of any nature whatsoever, unless such deduction or withholding is required by law. In such case, Borrower shall forthwith pay to Lender, such additional amounts as shall result in the net receipt by Lender (free of any such deductions and withholdings) of the full amount which Lender would have received had no such deduction or withholding been required to be made. For that purpose, Borrower shall, as soon as Borrower is aware that any such deduction, withholding or payment is required (or of any change in any such requirement):

- (a) immediately notify Lender thereof;
- (b) pay when due all taxes required to be deducted or withheld by it from any amounts paid or payable under this Agreement; and
- (c) forward within 15 days of the payment being made, official receipts or other official documentation acceptable to Lender evidencing that the payment has been duly remitted to the tax authority.

5.4 **Payment nature and priority.** Any amounts paid by Borrower to Lender under this Agreement shall be deemed to be a settlement of the following items in the following order:

- (a) charges, costs, expenses;
- (b) default interest (if any);
- (c) interest; and
- (d) Loan principal,

or such other order as Lender determines. Except if Borrower unequivocally proves otherwise, the books and accounts of Lender shall be deemed to correctly reflect the outstanding Loan principal, and any accrued interest, default interest, and charges, costs and expenses.

5.5 **Set-off.** Lender shall at any time be entitled to set-off claims of Borrower against Lender in whatever currency and whether or not contingent in or towards satisfaction of any sum

whether or not contingent and whether or not due and payable to Lender under this Agreement. The rights of Lender under this Section 5.5 are in addition to other rights and remedies (including rights of set-off), which Lender may have.

- 5.6 **Non-Business Days.** If a payment under this Agreement is due on a day which is not a Business Day, the “*modified following adjusted*” convention shall be applied such that the due date for that payment shall instead be the next Business Day unless this day falls in the next calendar month, in which case the due date for payment of such sum shall be the immediately preceding Business Day. During any extension of the due date for payment of any principal amount under this Agreement, interest is payable on that principal amount at the rate payable on the original due date.
- 5.7 **Permitted repayments only.** Borrower shall not repay or prepay all or any part of the Loan, except at the times and in the manner expressly provided for in this Agreement.

6. DEFAULT INTEREST

- 6.1 **Default interest.** If Borrower fails to pay any sum (whether of Loan principal, interest or otherwise) due at any time under this Agreement on the due date for payment thereof, Borrower shall pay default interest on the whole amount which is overdue from the due date thereof up to and including the date of actual payment, at the rate which is [● percent] above the rate applicable to the overdue amount under Section 3.2 immediately before the due date, without prejudice to any other rights Lender may have under this Agreement or under any applicable law.
- 6.2 **Accrual and no notice.** Any default interest shall be compounded monthly and can be claimed without advance notice by Lender to Borrower.

7. WARRANTIES BY BORROWER

- 7.1 **Warranties.** Borrower warrants to Lender that:
- (a) it is a corporation duly organised and validly existing under the laws of [●] and owns its property and assets and has the power to carry on its activities in the ordinary course of business consistent with past practice;
 - (b) it has full corporate power and authority to enter into and perform, and has taken all necessary action to authorize the entering into effect of and the performance under this Agreement and the transactions contemplated by this Agreement;
 - (c) none of Borrower’s obligations in this Agreement is partly or entirely invalid or unenforceable in accordance with its terms or not agreed or not completed as a consequence of the form required (*lex causae*) or permitted (*lex loci actus*) for its validity, enforceability or being agreed or completed, such required or permitted form to be determined pursuant to the conflicts of law provisions of the law identified in Section 13.1;
 - (d) [**Optional (the loan to rank pari passu with Borrower’s other obligations)**]: except for those obligations mandatory preferred by law and furthermore except to the extent Lender is granted the higher priority to the proceeds of any security rights, Lender’s obligations under this Agreement rank and shall at all times rank at least *pari passu* in priority of payment and in all other respects with all its other unsecured and un-subordinated financial obligations;

- (e) no legal procedure has been started and no legal proceedings have been initiated or, to the best of its knowledge, threatened, for the dissolution, winding-up, liquidation, being declared bankruptcy or otherwise insolvent of, or for the appointment of a receiver, trustee or similar officer of, it or of any or all of its assets or revenues;
- (f) no Event of Default has occurred and is continuing or shall occur as a result of the making of the Loan;
- (g) Borrower is not in breach of or in default under any agreement to an extent or in a manner which has or which could have a material adverse effect on it or on its ability to perform its obligations under this Agreement;
- (h) no litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened, which might, if adversely judged, have a material adverse effect on the financial condition of Borrower or its ability to perform any of its obligations under this Agreement; and
- (i) its entering into, the performance by it under and the transactions contemplated by this Agreement do not and shall not conflict with:
 - (i) any law or regulation or judicial or official order to which it is subject;
 - (ii) its constitutional documents, including any bylaws; or
 - (iii) any agreement, resolution or document which is binding upon it or any of its assets.

7.2 **Warranty bring down.** Each of the warranties set out in Section 7.1 shall be deemed to be repeated on [(a) the date referred to in Section 2.3, and (b) the first day of each Interest Period], always updated in respect of the circumstances then subsisting.

8. COVENANTS

8.1 **General covenants.** From the date of this Agreement until all liabilities of Borrower to Lender under this Agreement have been discharged, Borrower shall:

- (a) as soon as they become available for internal approval, but in any event within 180 days after the end of each financial year, deliver to Lender copies of its annual (consolidated and separate) statements for the financial year then ended, together with a statement of an external auditor or the internal auditing department;
- (b) promptly notify Lender of any material change in its financial condition, including the occurrence of an event of default under a loan with any third party (whether as lender or borrower), or of any litigation, arbitral or administrative proceeding commenced against it which, if adversely judged, could have a material adverse effect on it or its ability to perform its obligations under this Agreement;
- (c) promptly notify Lender of the occurrence of an Event of Default and, upon the written request of Lender, confirm to Lender that no Event of Default has occurred (other than to the extent already notified to Lender);
- (d) [**Optional (if Borrower must actively prevent that the loan ranks pari passu with other obligations)**]: ascertain that its obligations under this Agreement shall at all times rank at least *pari passu* in priority of payment and in all other respects with all its other unsecured and un-subordinated financial obligations, except for obligations mandatory preferred by operation of law;

- (e) not create or permit to subsist any mortgage, pledge, lien, charge, encumbrance or other security right on any of its assets or revenues, or secure or guarantee any obligation of any third party, except with the prior written approval from Lender. In such case, Lender shall be entitled to require equal security rights;
- (f) procure that none of the Borrower or its Affiliates enters into any guarantee, indemnity or similar arrangement with respect to any financial obligation of Borrower or creates or permits to subsist any mortgage, pledge, lien, charge, encumbrance or other security right on any of such member's assets or revenues to secure such financial obligation;
- (g) [**Optional (to grant collateral security under this loan, if Borrower's financial situation worsens (or otherwise))**]: at first written request of Lender create, or procure the creation, of a first ranking pledge or mortgage, as the case may be on (any part of) its movable or immovable property or proprietary rights, the selection of the goods to be subject to such pledge or mortgage being at the discretion of Lender.

To the extent permissible under applicable law, Borrower hereby irrevocably authorises Lender to create, if necessary (such necessity being determined at the discretion of Lender), the pledges and mortgages on Borrower's behalf.

- (h) not advance or contract any loans of any nature (and regardless of its name) whether as a lender or as a borrower, without the prior written approval of Lender, unless the loan arises by operation of law or in the ordinary course of business (which ordinary course of business practice requires Lender's prior approval in writing).

8.2 [**Consider not including 'financial covenants' and otherwise do select (and specify) those which are required**]: **Financial covenants**. From the date of this Agreement until all liabilities of Borrower to Lender under this Agreement have been discharged, Borrower shall comply with the following financial covenants:

- (a) [**OPTIONAL**]: Current ratio: the ratio of its [**TBD, precise definition to be inserted for** Current Liabilities to its Current Assets] on the last day of each period below shall not exceed the ratio opposite that period:]

Period	Current ratio
[calendar year]	[nnn]

- (b) [**OPTIONAL**]: Solvency ratio: the ratio of its Indebtedness to the issued and outstanding share capital of Borrower on the last day of each period shall not exceed the ratio set out opposite that period:]

Period	Solvency ratio
[calendar year]	[nnn]

- (c) [**OPTIONAL**]: Interest coverage ratio: the ratio of its [**TBD, definitions to be inserted** EBIT to its Total Interest] during each period below shall not be less than the ratio for that period:]

Period	Interest coverage ratio
[calendar year]	[nnn]

- (d) [**OPTIONAL**: Cashflow to Debt ratio: the ratio of its [**TBD, definition to be inserted**: Cashflow to its Debt Ratio] during each period below shall not be less than the ratio for that period:]

Period	Cashflow to debt ratio
[calendar quarter]	[nnn]

- (e) [**OPTIONAL**: Minimum Net Worth: its [**TBD, definition to be inserted**: Minimum Net Worth] shall not, on the last day of each period below be less than the figure opposite that period:]

Period	Minimum Net Worth ratio
[calendar quarter]	[nnn]

8.3 **Applicable periods.** Any amounts and ratios in Section 8.2 shall be established and reported as follows:

- (a) the covenants of Section 8.2(e) and 8.2(a) shall be established and reported to Lender monthly, within five Business Days after the end of each calendar month; and
- (b) the covenants of Sections 8.2(b), 8.2(c) and 8.2(d) shall be established and reported to Lender quarterly, within ten Business Days after the end of each calendar quarter.

8.4 **Accounting principles.** The calculation of the amounts and ratios in Section 8.2 shall be made in accordance with the accounting principles and policies applied in the most recent audited accounts or unaudited management accounts to which they refer.

8.5 **Reference amounts.** All financial covenants shall be established by reference to the latest audited financial statements of Borrower or, if more recent, by reference to the latest unaudited management accounts of Borrower. If any covenant is established at the end of an accounting period by reference to unaudited management accounts, it shall be established (and reported) again by reference to the audited financial statements for the relevant period upon those financial statements becoming available to Borrower.

8.6 **Remedy and audit right.** If Borrower is in breach of or non-compliant with any financial covenant in Section 8.2, Lender shall be entitled, without prejudice to any other rights it may have, to conduct such audit and obtain such tax, legal or financial investigation as it deems appropriate at the cost of Borrower. Borrower shall provide all assistance required in connection with such audits and investigation.

8.7 **Disputes.** If any dispute arises as to a calculation pursuant to Section 8.2 or as to the interpretation of any of the components of the financial covenants, the decision of Lender shall, in the absence of manifest error, be conclusive and binding on Borrower.

9. EVENTS OF DEFAULT

[Consider to which extent a breach of a covenant creates an Event of Default – the threshold for defining an Event of Default may be less stringent in order to ‘allow’ for a window between breach of covenant and an Event of Default. However, the line is to be drawn on a case-by-case basis, depending on the context and the

business of the Borrower Upon the occurrence of any of the following events or circumstances, Lender may determine, at its discretion, that the Loan together with accrued interest, default interest and any other costs then outstanding immediately becomes due and payable (whether or not caused by any act or omission outside the control of Borrower or any other person):

- (a) any amount due to Lender under this Agreement is not paid on the due date for payment, in the manner specified in this Agreement, unless:
 - (i) Lender is satisfied that such non-payment is due solely to an administrative or technical error; and
 - (ii) such amount is paid in the manner specified in this Agreement within five Business Days after the due date for payment thereof; or
- (b) Borrower fails to perform duly or to comply strictly with any of its other obligations under this Agreement and, if such failure is capable of being remedied, such failure is not remedied within **[30 days]** after notice thereof has been given by Lender to Borrower; or
- (c) **[Optional (negative pledge clause)]**: a member of Borrower's Group grants or undertakes any guarantee, indemnity or similar arrangement in respect of any financial obligation of Borrower or creates or permits to subsist any mortgage, lien, pledge, charge or other security device upon any of such member's assets or revenues to secure such financial obligation; or
- (d) any representation, warranty or statement made or deemed to be made by Borrower in this Agreement (including in Section 7) or in any other document delivered by it pursuant thereto proves to have been incorrect or inaccurate when made; or
- (e) any indebtedness of Borrower exceeding in aggregate [EUR **insert the amount of any permitted ordinary course indebtedness**] or the equivalent in another currency (i) is not paid on the due date (as extended for any applicable notice requirement or grace period), or (ii) becomes due and payable, or becomes capable of being declared due and payable, prior to its agreed maturity, except in each case if such consequence is being contested in good faith by Borrower; or
- (f) Borrower is deemed for the purpose of any applicable law to be insolvent or to be unable to pay its debts as they fall due, or admits inability to pay its debts as they fall due, or Borrower suspends making payments on its debts or announces an intention to do so, or a suspension of payments is declared in respect of any indebtedness; or
- (g) any circumstances arise which, in the opinion of Lender, give reasonable grounds to believe that Borrower may not (or may be unable to) perform any of its obligations under this Agreement; or
- (h) (i) if proceedings are initiated against Borrower under any applicable liquidation, insolvency, composition, reorganisation or other similar laws, or (ii) a receiver, administrator or other similar official is appointed in relation to Borrower or in relation to the whole or a part of its assets, or (iii) an encumbrancer takes possession of the whole or a part of its assets, or (iv) an attachment (whether executory or pre-judgment), sequestration, distress or execution or other process is levied or enforced upon or summoned against the whole or a part of the assets of

Borrower and in each case under (iv) it is not discharged within 14 days, or (v) if Borrower initiates or consents to judicial proceedings relating to itself under any applicable liquidation, insolvency, composition, reorganisation or other similar laws, or (vi) makes a conveyance or assignment for the benefit of, or enters into any composition with, its creditors generally; or

- (i) Borrower ceases to carry on all or a substantial part of its business; or
- (j) Borrower entertains negotiations or prepares any proceedings or other step with a view to the readjustment, rescheduling or deferral of all or any material part of its indebtedness; or
- (k) any circumstances referred to in paragraphs (g), (i) and (m) occur in respect of a third person who has provided Lender, directly or indirectly, with any type of security for the Loan, or that person cancels or withdraws that type of security, or a third person that has provided or promised to provide Lender, directly or indirectly, with security for the Loan defaults in the performance of any obligations in respect of the security provided or promised; or
- (l) the law or its interpretation is changed or governmental action is taken, not being caused by Lender, which affects or may affect this Agreement, and Lender and Borrower have not, within a period of 20 Business Days after either Party has notified the other of such change or action, reached written agreement adjusting the relevant provisions on such basis that, in the reasonable opinion of Lender, the position of Lender is not adversely affected; or
- (m) this Agreement at any time after its execution for any reason ceases to be or is not in full force and effect and does no longer constitute legal, valid and binding obligations of Borrower, or Borrower so contests; or
- (n) there is in the reasonable opinion of Lender a significant change in the control over Borrower's business, whether as a consequence of a sale of substantial part of its assets or otherwise; or
- (o) Borrower is the subject of a Change of Control.

10. BANK ACCOUNTS

10.1 **Bank accounts.** Each payment under this Agreement shall be made by means of electronic wire transfer and, except if the receiving Party has instructed otherwise, each time in one single amount, as follows:

- (a) if to **Borrower**, into the bank account held with: **[insert bank name]**, [] under number IBAN [], with SWIFT address []; or
- (b) if to **Lender**, into the bank account held with: **[insert bank name]**, [] under number IBAN [], with SWIFT address [],

or into such other account as the Party may notify the other Party in writing at least two Business Days prior to a payment.

11. CONFIDENTIALITY

11.1 **Definition.** In this Article, **Confidential Information** shall mean any information of a non-public, confidential or proprietary nature, whether of commercial, financial or technical nature, customer, supplier, product or production-related or otherwise,

disclosed by a Party (the **Disclosing Party**) to the other Party (the **Receiving Party**). Such information may be disclosed in any form, provided that it is disclosed reasonably in connection with this Agreement.

- 11.2 **Limited use.** A Receiving Party shall not use Confidential Information for purposes other than in direct relation with this Agreement. The Receiving Party shall treat the Disclosing Party's Confidential Information with at least the same degree of care as it would use in respect of its own confidential information of similar importance, but in any event a reasonable level of care. In particular, the Receiving Party shall not disclose, publish, disseminate or make accessible the Disclosing Party's Confidential Information, in whole or in part, in any way or form, to third parties other than to its employees or employees of Affiliates who have a need-to-know in connection with the performance of the Receiving Party's obligations under this Agreement.
- 11.3 **Exemptions.** The restrictions and obligations in this Article 11 shall not apply to the Disclosing Party's Confidential Information, which:
- (a) is or has become generally available to the public other than as a result of a disclosure by the Receiving Party (or its representatives);
 - (b) was received by the Receiving Party from a third party and not indirectly from the Disclosing Party in violation of any obligation of secrecy or non-use;
 - (c) was in the possession of the Receiving Party prior to disclosure or is developed independent from such Confidential Information, as is shown by competent evidence;
- 11.4 **Court orders.** In case Confidential Information is required to be disclosed by the Receiving Party by virtue of a court order or statutory duty, the Receiving Party shall be allowed to do so, provided that it shall without delay inform the Disclosing Party in writing of receipt of such order or duty and enable the Disclosing Party reasonably to seek protection against such order or duty.
- 11.5 **Return or destroy.** Upon the first request of a Disclosing Party, the Receiving Party shall without delay (a) return all their copies, samples and extracts of, and all other physical media containing, the Disclosing Party's Confidential Information, and (b) delete or destroy (and have deleted or destroyed) all automated data containing the Disclosing Party's Confidential Information.

12. MISCELLANEOUS

- 12.1 **Further assurances.** The Parties shall cooperate with each other and execute to the other Party such forms and documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm the other Party's rights or obligations or as may be reasonably necessary or helpful to give effect to the provisions of this Agreement.
- 12.2 **Costs.** Borrower shall bear all the costs and expenses incurred by Lender in connection with the preparation, negotiation and entering into this Agreement.
- 12.3 **Notices.** Any correspondence or notifications in connection with this Agreement shall be addressed as follows:

If to **Lender**, to:

[Lender entity full name]

[_____]

[_____]

Attn: [_____]

If to **Borrower**, to:

[Borrower entity full name]

[_____]

[_____]

Attn: [_____]

or to such other address as a Party may notify the other Party in writing from time to time.

- 12.4 **Assignment.** Borrower shall not assign or transfer its rights or obligations under this Agreement in whole or in part without the prior written consent of Lender (which shall not be unreasonably withheld or delayed). Lender is entitled to assign or transfer its rights or obligations under this Agreement in whole or in part without the further consent of Borrower.
- 12.5 **Amendments.** No amendment of this Agreement shall be binding upon either Party, unless it is in writing and duly signed by both Parties.
- 12.6 **Entire agreement.** This Agreement constitutes the entire agreement between and understanding of the Parties with respect to the subject matter of this Agreement and supersedes any preceding agreement between the Parties on the subject matter of this Agreement only.
- 12.7 **Waivers.** A failure of a Party to enforce any of the provisions of this Agreement shall in no event be considered a waiver of such provision and a waiver of a provision by a Party shall not preclude that Party from later enforcing any other provision of this Agreement. No waiver by a Party of any breach or default by the other Party shall operate as a waiver of any succeeding breach or other default of the same or any other provision of this Agreement. No waiver shall have any effect unless it is specific and in writing.
- 12.8 **Severability.** If any provision in this Agreement is found to be invalid or unenforceable in any respect in any jurisdiction:
- (a) the validity or enforceability of such provision shall not in any way be affected in respect of any other jurisdiction and the validity and enforceability of the remaining provisions shall not be affected, unless this Agreement reasonably fails in its essential purpose; and
 - (b) the Parties shall substitute such provision by a valid and enforceable provision approximating to the greatest extent possible the essential purpose of the invalid or unenforceable provision.

13. APPLICABLE LAW AND DISPUTE RESOLUTION

- 13.1 **Applicable law.** This Agreement shall be governed by the laws of [Insert applicable law].
- 13.2 **Exclusive jurisdiction.** All disputes arising in connection with this Agreement, or further contracts resulting from this Agreement, shall be finally and exclusively settled by the courts of [Insert city and country of jurisdiction].

THUS, this Agreement was signed in two copies.

[Lender entity full name]

[Borrower entity full name]

By:

By: