

**DATED:**

|  |  |
| --- | --- |
| (1)  (2) | [CompanyName]  A1T1 LTD |
|  | £ [FacilityAmount] |
|  | FACILITY AGREEMENT |

[[https://adsum.works](https://adsum.works/)](http://www.vatbridge.com/) Tavistock House South (D), Tavistock Square, London, UK, WC1H 9LG

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**THIS AGREEMENT** IS DATED [ ]

and is made between:

1. **[CompanyName]** (registered in England and Wales with company number [Company Reg No.]**)** having its registered office at [Registered Office] (the "**Borrower**"); and
2. **A1T1 LTD** (registered in England and Wales with company number 12591710) having its registered office at Tavistock Square South (D), Tavistock Square, London, United Kingdom, WC1H 9LG (the "**Lender**").

**IT IS AGREED** as follows:

**SECTION 1**

**INTERPRETATION**

1. **KEY TERMS, DEFINITIONS AND INTERPRETATION**

**Facility Key Terms**

|  |  |
| --- | --- |
| **Lender** | A1T1 Ltd (Adsum’s Lending vehicle) |
| **Borrower** | [CompanyName] |
| **Guarantor(s)** | [Guarantors] |
| **Facility Amount** | £[FacilityAmount] |
| **Interest Fee** | £[InterestFee] |
| **Arrangement Fee** | £[ArrangementFee] |
| **Net Loan Amount** | £[NetLoanAmount] |
| **Daily Interest Rate** | [RateOfInterest] % per day |
| **Daily Default Interest rate** | [DefaultInterest] % per day |
| **Repayment Date** | The earlier of:   1. the first Business Day following receipt by the Borrower of the VAT refund in connection with the acquisition; 2. the date falling [LoanTerm] days after the Utilisation Date; and 3. upon default or ATE |
| **Minimum Interest Period** | [MinimumInterestDays] days |
| **Costs and Expenses** | All costs and expenses of the Lender, including legal fees, to be paid by the Borrower |
| **Nominated Bank Account for VAT Repayment** | Sort Code [SortCode]  Account Number [AccountNumber] |

* 1. In this Agreement unless the context otherwise requires:

**“Arrangement Fee”** means the fee described in Clause 6.1.2;

**"Availability Period"** means 5 Business Days from and including the date of this Agreement or such longer period as the Lender shall agree in writing.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

**"Control"** means in relation to the Borrower, the power of a person or persons to secure that the affairs of the Borrower are conducted in accordance with the wishes of that person:

1. by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body; or
2. by virtue of any powers conferred by the articles of association, or any other document, regulating that or any other body.

**"Debenture"** means a debenture over the assets of the Borrower incorporating the Legal Charge granted or to be granted by the Borrower in favour of the Lender in the agreed form.

**"Default"** means an Event of Default or any event or circumstance specified in Clause 13 which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**"Disposal"** means a sale, lease, licence, transfer or other disposal of all or any part of any Property (whether by a voluntary or involuntary single transaction or series of transactions).

**"Event of Default"** means any of the events or circumstances described in Clause 12.

**“Expiration Date”** means the day falling 90 days after the Utilisation Date;

**"Facility"** means the term loan VAT facility made available under this Agreement as described in Clause 2.

**"Final Repayment Date"** means the earlier of:

1. the third Business Day following receipt by the Borrower of the refund of VAT in connection with the acquisition of the Property;
2. the Expiration Date; and
3. the date on which all amounts due and outstanding from the Borrower to the Senior Lender under the Senior Lender Facility become due and payable.

**"Finance Document"** means this Agreement, any Security Document, any Guarantee, the Priority Deed, any documentation pursuant to which ancillary or other loan facilities are made available to the Borrower from time to time and any other document designated as such in writing by the Lender and the Borrower from time to time.

**“Interest Fee”** means the fee described in Clause 6.1.1;

**"Guarantee"** means each guarantee granted or to be granted by a Guarantor in favour of the Lender in the agreed form.

**"Guarantor"** means each of:

1. [Guarantors] of [GuarantorsAddress]
2. [Guarantor2] of [Guarantor2Address]

**“HMRC”** means Her Majesty’s Revenue and Customs.

**"Legal Charge"** a legal charge over the Property included in the Debenture.

**"Loan"** means the loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan including any compounded interest added to the principal amount of that loan.

**"Market Value"** has the meaning given to it in the then current Statements of Asset Valuation Practice and Guidance Notes issued by the Royal Institution of Chartered Surveyors from time to time.

**"Material Adverse Effect"** means a material adverse effect on:

1. the business, condition (financial or otherwise), operations, property, assets or prospects of the Borrower;
2. the ability of the Borrower to perform its obligations under any Finance Document to which it is a party; or
3. the existence, validity, enforceability, effectiveness or ranking of any Security granted or purported to be granted pursuant to any Finance Document or the validity or enforceability in any other respect of any Finance Document or of any right, interest or remedy of the Lender under any Finance Document.

**"Party"** means a party to this Agreement.

**"Permitted Indebtedness"** means all liabilities which are or may become payable or owing by the Borrower to the Senior Lender under the Senior Lender Facility as permitted under the Priority Deed.

**"Permitted Security"** means any security dated on or around the date of this Agreement and granted in favour of the Senior Lender pursuant to the Senior Lender Facility.

**"Priority Deed"** means the intercreditor deed, priority deed, deed of postponement or analogous document acceptable to the Lender under which the Security created under the Security Documents and the Permitted Security is prioritized .

**"Property"** means the freehold property at [PropertyAddressAndTitle].

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Security Documents"** means the documents referred to in Clause 13 and any other documents entered into by the Borrower or a Transaction Obligor from time to time creating or evidencing any Security or guarantee in favour of the Lender.

**“Senior Lender” [SeniorLender]** (a company registered in England and Wales with company number [SeniorLendCompNumber]), whose registered office is at [SeniorLendOffice]

[acting in its capacity as security trustee for itself and certain lending syndicate members].

**"Senior Lender Facility"** means the loan facility made available by a Senior Lender to the Borrower dated on or about the date of this Agreement.

**"Transaction Obligor"** means the Borrower and/or each Guarantor.

**"Unpaid Sum"** means any sum due and payable but unpaid by the Borrower under the Finance Documents.

**"Utilisation Date"** means the date on which the Facility is drawn down.

**"Valuation"** means a valuation report addressed to the Lender, containing in particular a valuation of the Property on the basis of the Market Value and any other valuations of the Property carried on by the Lender in accordance with this Agreement.

"**VAT**" means:

1. any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
2. any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere;

"**VAT Accountant**" means [VATAgentName], [VATAgentAddress] or such alternate as the Lender may agree.

"**VAT Accountant Appointment** " means the engagement letter between the VAT Accountant and the Borrower in the agreed form.

* 1. Unless a contrary intention appears, any reference in this Agreement to:
     1. the "**Lender**", or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
     2. "**assets**" includes present and future properties, revenues and rights of every description;
     3. a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
     4. "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
     5. a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having a separate legal personality);
     6. a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
     7. a provision of law is a reference to that provision as amended or re- enacted;
     8. a time of day is a reference to London time; and
     9. a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Borrower and the Lender or, if not so agreed, is in the form specified by the Lender.
  2. Headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement.
  3. Unless a contrary intention appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document shall be deemed to have the same meaning in that Finance Document or notice as in this Agreement.
  4. Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
  5. Unless a contrary intention appears, a Default or an Event of Default is "**continuing**" if it has not been waived.
  6. A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

**SECTION 2**

**THE FACILITY**

* 1. Subject to the terms of this Agreement, the Lender makes available to the Borrower a sterling term loan facility in an aggregate principal amount equal to

£ [NetLoanAmount] (to the extent not cancelled, reduced or transferred by the Lender under this Agreement).

1. **PURPOSE**
   1. The Borrower shall apply all amounts borrowed by it under the Facility solely to:
      1. meet any VAT liability properly due and payable to HMRC in connection with the Borrower’s acquisition of the Property; and
      2. pay the Interest Fee and the Arrangement Fee.
   2. The Lender is not obliged to monitor or verify how any amount advanced under this agreement is used.
2. **CONDITIONS PRECEDENT**

General

* 1. The Lender shall be under no obligation to make any Loan available until it has received the following and is (entirely at its discretion) satisfied with the same:

**Corporate Authorisations**

* + 1. a copy of the constitutional documents of the Borrower;
    2. a copy of a resolution of the board of directors of the Borrower approving the terms of, and the transactions contemplated by, the Finance Documents to which the Borrower is a party and authorising a specified person or persons to sign the Finance Documents and any other documents required under this Agreement on behalf of the Borrower;

**Finance Documents**

* + 1. a duly signed original of each Finance Document;
    2. evidence that each Guarantor has received independent legal advice in relation to the Guarantees;

**Property**

* + 1. a clear Land Charges Registry search against the Borrower or the results of the Land Registry Searches in favour of the Lender on the appropriate forms against all of the registered titles comprising the Borrower's interests in the Property and giving not less than 20 Business Days' priority beyond the date of the Debenture executed by the Borrower and showing no adverse entries;
    2. an effective discharge of all mortgages, charges and liens affecting the Borrower's interests in the Property (other than the Permitted Security);
    3. a satisfactory Valuation of the Property dated within 90 days of the date of this Agreement;
    4. written confirmation from the Borrower’s accountant and/ or legal advisors of the purchase price of the Property including the purchase invoice;
    5. a copy of the completion statement in relation to the Property prepared by the Borrower’s solicitors;
    6. a report on title to the Property prepared by the Borrower's solicitors and addressed to the Lender;
    7. appropriate Land Registry application forms duly completed accompanied by all necessary Land Registry fees;
    8. an undertaking from the Borrower's solicitors in relation to registration of the Legal Charge and the forms RX1 and CH2 at the Land Registry;

**VAT**

* + 1. a copy of the Borrower's VAT registration certificate;
    2. evidence that the Borrower has duly elected to waive exemption from VAT in relation to the Property and that HMRC has received and acknowledged that election;
    3. the VAT Accountant Appointment duly executed by the VAT Accountant and the Borrower;
    4. evidence that a bank account acceptable to the Lender has been nominated as the collecting account for VAT;
    5. government gateway log-ins for all administrator users of the Borrower to be provided to the Lender including all authorisation codes;

* + 1. written confirmation from the Borrower’s accountant and legal advisors that the Borrower is entitled to a VAT refund in respect of the Property;
    2. confirmation that the Borrower’s registered office address has been amended to the Lender’s registered address at HMRC and Companies House (including contact phone number);

**Other**

* + 1. a copy of each document relating to the Permitted Indebtedness, the Permitted Security and any other security or guarantee granted by a Transaction Obligor in favour of the Senior Lender;
    2. such information and documentation as the Lender may require in order to comply with its "know your customer" procedures;
    3. a winding-up check at the High Court in London and a search at the relevant Companies Registry in respect of the Borrower dated no earlier than any proposed Facility drawdown date revealing no adverse entries;
    4. a clear bankruptcy search in respect of each individual Guarantor;
    5. a statement of assets and liabilities of each Guarantor prepared and certified by each Guarantor’s accountant together with copies of any existing guarantees entered into by a Guarantor in favour of any third party;
    6. a funds flow statement setting out the funding and application of funds in relation to the acquisition of the Property and payment of fees, costs and expenses in connection with the same;
    7. certified copies of all bank statements of the Borrower including for the date on which this Agreement is entered into; and
    8. a copy of any authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, any Finance Document or for the validity and enforceability of any Finance Document.
  1. The Lender shall furthermore not be obliged to make any Loan available unless the following conditions are satisfied on the date on which the Facility (or part thereof) is drawn:
     1. no Default is continuing or might result from the proposed drawdown of the Loan; and
     2. the representations and warranties in Clause 10 are true with respect to the facts and circumstances then existing.

**SECTION 3**

**DRAWING OF THE LOAN AND COSTS OF DRAWDOWN**

1. **Drawing Of The Loans**
   1. Subject to Clause 4 and to Clause 5.2 below, the Borrower shall be entitled to draw down the Facility in one tranche by providing a signed utilization request to the Lender at least two Business Days’ prior to the proposed drawdown date substantially in the form set out at Schedule 1 (*Utilisation Request*).
   2. The Lender shall deduct from the Facility requested by the Borrower in accordance with Clause 5.1:
      1. the Interest Fee;
      2. the Arrangement Fee; and
      3. the Lender’s costs and expenses in accordance with Clause 9.
   3. After making the deductions set out at clause 5.2 above the net amount of the Facility to be drawn by the borrower shall be £ [NetLoanAmount].
   4. Any request to draw down a Loan is irrevocable and will not be regarded as having been duly completed unless:
      1. the proposed drawdown date is a Business Day within the relevant Availability Period; and
      2. the proposed currency is sterling.
2. **Fees And Interests**
   1. The Borrower shall pay to the Lender:
      1. an interest fee of £[InterestFeeLoanTerm] (the “**Interest Fee**”) being [LoanTerm] days of interest charged on the aggregate principal amount at a rate of [RateOfInterest] %; and
      2. a facility fee of £[FacilityFee] (the “**Facility Fee**”), in each case, on the date which is the earlier of:
      3. the Utilisation Date; and
      4. the date which is 2 Business Days after this Agreement is signed on behalf of the Borrower.
   2. At any time after a Default has occurred which has not been waived the Lender shall be entitled to charge interest at an additional rate of [DefaultInterest]% daily on the aggregate amount of the Loans, any outstanding and unpaid interest and any other amounts owed by the Borrower to the Lender under a Finance Document (which, for

the avoidance of doubt, shall be payable in addition to any other interest payable by the Borrower in accordance with this Clause 6) up to the earlier of:

* + 1. the date on which the Lender has (entirely at its discretion) waived that Event of Default; or
    2. the date on which all amounts outstanding under the Finance Documents have been paid in full,

and interest shall be payable at the rate both before and after demand, court decree or judgment.

**SECTION 5**

**REPAYMENT**

1. **REPAYMENT** 
   1. The Borrower shall repay the Loans together with all interest thereon in full on the Final Repayment Date.
   2. In the event that the Loan is repaid in full prior to the Expiration Date, the Lender shall pay to the Borrower an amount equal to [RateOfInterest]% of the amount of the Loan multiplied by the number of days remaining until the Expiration Date (provided always that where the number of days remaining until the Expiration date is greater than [InterestFeeLoanTerm] days, it will be deemed to be [MinimumInterestDays] days)
   3. In the event of any repayment of the Loan or part thereof being made other than as stated in Clause 7.1 (including any repayment following the occurrence of an Event of Default) the Borrower shall indemnify the Lender against any funding or other cost, loss liability or expense which the Lender shall certify as properly sustained or incurred by it as a consequence of the repayment or prepayment.
   4. No amount of the Facility repaid or prepaid may be redrawn under this Agreement.

**SECTION 6**

**ADDITIONAL PAYMENT OBLIGATIONS**

1. **INDEMNITIES**
   1. The Borrower shall, within 3 Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by the Lender as a result of:
      1. the occurrence of any Event of Default, including a failure by the Borrower to pay any amount due under a Finance Document on its due date;
      2. funding, or making arrangements to fund a Loan requested by the Borrower but not made by reason of the operation of any one or more of the provisions of this Agreement;
      3. if any amount due from the Borrower under any Finance Documents (an "**Amount**"), or any order, judgment or award given or made in relation to an Amount, has to be converted from the currency (the "**First Currency**") in which that Amount is payable into another currency (the "**Second Currency**") to:
         1. make or file a claim or proof against the Borrower; or
         2. or enforce an order, judgment or award in relation to any litigation or arbitration proceedings,

the cost, loss or liability arising as a result of that conversion, including any discrepancy between (i) the rate of exchange used to convert that Amount from the First Currency to the Second Currency and (ii) the rate or rates of exchange available to that person at the time of its receipt of that Amount;

* + 1. the Lender investigating any event which it reasonably believes is an Event of Default; or
    2. the Lender acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

1. **COSTS AND EXPENSES**
   1. The Borrower shall within 3 Business Days of demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of the Finance Documents and any other documents referred to in this Agreement and any other Finance Documents executed after the date of this Agreement, or any amendment, restatement or other variation thereto.
   2. The Borrower shall, within 3 Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, any Finance Document (including but not limited to the expense of taking any step to enforce any of the rights or to communicate with the Borrower after any breach of any Finance Document). For the avoidance of doubt, such costs and expenses shall include any internal management and administrative costs incurred by the Lender.

**SECTION 7**

**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

REPRESENTATIONS AND WARRANTIES

* 1. The Borrower represents and warrants that:

**Status**

* + 1. it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has power to own its property and assets and carry on its business as presently conducted;

**Powers and Authority**

* + 1. it has power to execute, deliver and perform its obligations under each Finance Document to which it is a party;
    2. all necessary corporate or other action has been taken by it to authorise the execution, delivery and performance of any Finance Document to which it is a party, and no limitation on its powers or the powers of its directors or members (as appropriate) shall be exceeded as a result of the entry into such Finance Document;

**Legal Validity**

* + 1. the obligations expressed to be assumed by it in each Finance Document to which it is a party constitute legal, valid, binding and enforceable obligations;

**Governing Law**

* + 1. the choice of English law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation;
    2. any judgment obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation;

**Non-Conflict**

* + 1. the entry into and performance of the terms and conditions of the Finance Documents do not and shall not contravene or conflict with the memorandum and articles of association of the Borrower, any law, statute, regulation or other instrument binding on the Borrower or any of its assets, or any agreement or document to which it is a party or is binding on the Borrower or any of its assets;

# Authorisations and Compliance

* + 1. it holds and is in compliance with all:
       1. necessary certificates, licences, permits, consents or other authorisations required for conducting their business;
       2. applicable laws and regulations or other legal requirements; and
       3. required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in the Finance Documents.

# Breach of Other Agreements

* + 1. it will not (nor with the giving of notice, lapse of time or satisfaction of any other condition would be) in breach of or in default under any agreement or document to which it is party or by which it or any part of its assets may be bound which could in the reasonable opinion of the Lender have a Material Adverse Effect;

# Pari Passu Ranking

* + 1. its payment obligations under the Finance Documents rank at least pari passu with the claims of all its unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally;

# Litigation

* + 1. no litigation, arbitration or administrative proceeding (including without limitation any action under any environmental law or regulation) is taking place, pending or to the knowledge of its officers threatened against the Borrower or any part of its undertaking, assets or revenues which could in the reasonable opinion of the Lender have a Material Adverse Effect;

# Encumbrances

* + 1. no Security, charges or other encumbrances in the nature of a security interest exist on the assets of the Borrower other than the Security created under the Security Documents and the Permitted Security;

# No Default

* + 1. no Event of Default is continuing or might reasonably be expected to result from the making of any drawdown;
    2. no other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on the Borrower or to which its assets are subject which in the reasonable opinion of the Lender has or is likely to have a Material Adverse Effect; and

# Shares

* + 1. its entire issued share capital is legally and beneficially owned and controlled by the shareholder(s) shown in the Borrower’s register of members as at the Utilisation Date; and
    2. all shares in the capital of the Borrower are fully paid and are not subject to any option to purchase or similar rights;

# Title to Property

* + 1. it is the legal and beneficial owner of and has good and marketable title to the Property;
    2. no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of the Property;
    3. there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter whatsoever adversely affecting the Property;
    4. nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or a registered disposition, over the Property;
    5. it has not received any notice of any adverse claim by any person in respect of the ownership of the Property or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of the Property; and
    6. the Property is held by the Borrower free from any lease or licence (other than those entered into in accordance with this Agreement).

# VAT

* + 1. it is not a member of a VAT group; and
    2. it has taken such steps as are required to ensure that HMRC pays any VAT refund in connection with the Borrower’s acquisition of the Property to the bank account nominated by the VAT Accountant.

# Repetition

* 1. The representations and warranties contained in Clause 10.1 shall survive the signing of this Agreement and shall be deemed repeated on the date on which the Loan is drawn.

# UNDERTAKINGS

* 1. The undertakings in this Clause 11 shall remain in force for so long as any amount is outstanding under the Finance Documents or until the Loans have been repaid in full.

# Use of Loan

* 1. The Borrower shall use the Loans for the purpose specified in Clause 3.

# Other Information

* 1. The Borrower shall promptly on request by the Lender provide such additional information and/or documentation as the Lender may reasonably request in connection with this Agreement.

# Notification of Default

* 1. The Borrower shall notify the Lender of any Default immediately upon becoming aware of its occurrence (and any steps, if any, being taken to remedy it).

# Negative Pledge

* 1. The Borrower shall not create nor permit to subsist any Security on the whole or any part of its present or future assets other than a lien arising by the operation of law in the ordinary course of business, under the Finance Documents or the Permitted Security.

# Other Obligations

* 1. The Borrower shall not enter into any obligations or incur or permit to subsist any financial indebtedness (whether by way of borrowing from another source (including the Senior Lender), leasing commitments, factoring of debts, granting of guarantees or by any other means) other than under the Finance Documents or the Permitted Indebtedness.
  2. The Borrower shall not amend the terms of the Permitted Indebtedness or Senior Lender Facility without the prior written consent of the Lender.

# Guarantees

* 1. The Borrower shall not grant or permit to subsist any guarantee in respect of the obligation of any person (other than any guarantee in favour of the Lender).

# Pari Passu Ranking

* 1. The Borrower shall and procures that each Transaction Obligor shall ensure that at all times its obligations under the Finance Documents to which it is a party rank at least pari passu with the claims of all its unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

# Material Change in Business

* 1. The Borrower shall not make or threaten to make any material change in the nature of its business as presently conducted.

# Disposal of Assets

* 1. The Borrower shall not sell, transfer, lease (or where a lease is already in existence, consent to the lease being assigned) or otherwise dispose of all or any part of its assets except with the prior written consent of the Lender provided that disposals of assets which are not expressed to be subject to any fixed charge given to the Lender and which are made in the ordinary course of business of the Borrower shall be permitted.

# Insurances

* 1. The Borrower shall ensure that it effects and maintains in a form and amount (for each claim) and with an insurance company or underwriters acceptable to the Lender the following insurances:
     1. insurance of the Property including fixtures;
     2. insurance against third party liability including property owners liability; and
     3. such other insurance as the Lender (acting reasonably) considers a prudent company carrying on the same or substantially similar business as the Borrower would effect,

in each case on a comprehensive and full reinstatement basis, including accidental damage, site clearance, professional fees, subsidence, value added tax, acts of terrorism.

* 1. The Borrower shall promptly pay all premia and do all other things necessary to keep all of the policies of insurance in which it has an interest in full force and effect.
  2. The Borrower shall not do or omit to do anything to render any such insurance void or voidable.

# Authorisations

* 1. The Borrower shall procure and comply with and retain all relevant licences, permissions, permits, consents or other authorisations required or held and comply with any applicable laws, regulations or other legal requirements; and

# Illegality

* 1. The Borrower shall on receiving notice from the Lender repay the Loans either forthwith or on a future date specified by the Lender together with interest accrued to the date of repayment and all other amounts payable under this Agreement by the Borrower if any change in or the introduction of any law, regulation, treaty, official directive or rule of any regulatory authority or organisation having jurisdiction or any change in the interpretation or application thereof should render it unlawful or a breach thereof for the Lender to make available, fund or maintain the Loans or to give effect to its obligations and exercise its rights contemplated by this Agreement.

# Merger

* 1. The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction other than with the Lender's prior written consent.

# Distributions

* 1. The Borrower shall not, without the prior written consent of the Lender, declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital).

# VAT

* 1. The Borrower shall promptly pay to HMRC all VAT and related interest and penalties payable by it in respect of the Property.
  2. The Borrower will not become a member of any VAT group.
  3. The Borrower will, for so long as any amounts are outstanding under the Finance Documents, engage and employ the VAT Accountant as its VAT agent and will notify HMRC of that appointment. The Borrower will irrevocably instruct the VAT Accountant to pay any VAT repayment received from HMRC to the Lender (as and to such account as it directs) promptly on receipt. The Borrower will not terminate the appointment of the VAT Accountant, nor appoint another VAT agent.
  4. The Borrower undertakes:
     1. to ensure that all VAT recovered is paid to the bank account designated by the Lender or, if it is received by the Borrower or any other person (including the VAT Accountant), that it is held on trust for the Lender by the Borrower or that other person and promptly upon receipt thereof paid to the Lender;
     2. to comply at all times with the VAT Accountant Appointment and not terminate nor in any way seek to amend, vary or supplement it without the prior written consent of the Lender; and
     3. to use its best endeavours to recover the VAT payment incurred on the acquisition of the Property from HMRC as promptly as possible and to update the Lender promptly on request as to the progress of the recovery of VAT.

**Shares**

* 1. The Borrower undertakes that it will not issue or allot any shares other than the with the prior written consent of the Lender.

**Filings**

* 1. The Borrower undertakes that it shall not make any filings at Companies House without the prior written consent of the Lender.

**Litigation**

* 1. The Borrower undertakes that it shall supply to the Lender promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings with HMRC which are current, threatened or pending (including copies of all correspondence).
  2. The Borrower undertakes that it shall take or procure to be taken all reasonable steps available to it and all such steps requested by the Lender (including the institution of litigation) to recover any VAT paid to HMRC.
  3. The Borrower undertakes that prior to taking any steps in relation to any litigation with HMRC it shall consult with the Lender and shall comply with any directions provided by the Lender.

# EVENTS OF DEFAULT

* 1. Each of the following events or circumstances set out in this Clause 12.1 is an Event of Default.

# Non Payment

* + 1. The Borrower fails to pay on the due date any amount payable under any Finance Document.

# Misrepresentation

* + 1. Any representation or warranty made or repeated by a Transaction Obligor in any Finance Document is or proves to have been incorrect in any material respect when made or repeated.

# Breach of Other Obligations

* + 1. Subject to Clause 12.1.4 and other than that referred to in Clause 12.1.1 (*Non Payment*), a Transaction Obligor fails to comply with any provision of the Finance Documents to which it is a party and, where capable of remedy, such failure is not remedied to the reasonable satisfaction of the Lender within 5 Business Days of the earlier of:
       1. the Lender giving notice to a Transaction Obligor to remedy the same; and
       2. a Transaction Obligor becoming aware of the default.

# Unlawfulness

* + 1. It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.

# Repudiation

* + 1. A Transaction Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

# Finance Documents

* + 1. Any part of a Finance Document ceases to be legal or effective (or a Transaction Obligor so alleges) or any consent required to enable a Transaction Obligor to perform its obligations under a Finance Document ceases to have effect.

# Material Litigation

* + 1. Any litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against the Borrower.

# Cross Default

* + 1. A Transaction Obligor defaults in the performance of any other agreement for borrowed monies (including the Senior Lender Facility) so as to accelerate or render capable of acceleration the due date of repayment thereunder or such borrowed monies are not repaid in full on the due date or repayment of any such borrowed monies is due on demand and is not paid in full forthwith on such demand being made.

# Insolvency and Analogous Proceedings

* + 1. A Transaction Obligor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or a Transaction Obligor otherwise becomes insolvent or suspends making payments to all or any class of its creditors or announces an intention to do so.
    2. Any distress, diligence, execution, attachment or other legal process affects the whole or a material part of the assets of the Borrower and is not discharged within 21 days.
    3. A receiver or similar officer is appointed of the whole or any part of the assets of the Borrower or the Borrower requests any person to appoint such a receiver or similar officer or any other steps are taken to enforce any charge or other Security over any of the property of the Borrower or any analogous event takes place under another jurisdiction.
    4. Any order is made or any resolution is passed or a petition is presented or application is made or other steps are taken in any jurisdiction for:
       1. the winding up, dissolution or liquidation of the Borrower other than for the purpose of a reconstruction or amalgamation the terms of which have previously been approved by the Lender in writing; or
       2. the making of an administration order or there is given to the Lender or any other person a notice (whether formal or informal) of intention to appoint an administrator or any such appointment is made in relation to the Borrower.
    5. An individual Transaction Obligor is declared bankrupt or announces any intention (whether formal or informal) to declare himself bankrupt or make any settlement or arrangement with his creditors.

# Control

* + 1. Control of the Borrower passes without the consent of the Lender to any person, firm or company acting either individually or in concert or the Borrower ceases to be legally and beneficially wholly owned by the shareholder(s) shown in the Borrower’s register of members as at the Utilisation Date.

# Material Adverse Change

* + 1. Any event or circumstance occurs which in the opinion of the Lender has or is reasonably likely to have a Material Adverse Effect.

# VAT

* + 1. The Borrower fails to procure that any VAT refunded by HMRC in respect of the acquisition of the Property is paid to the Lender (whether directly or by the Borrower or by any other person, including the VAT Accountant).
    2. The Borrower takes or fails to take any action that would cause or prevent the repayment of VAT, or reduce the amount of VAT that is repayable, in respect of the acquisition of the Property.
    3. The Borrower terminates the appointment of the VAT Accountant or appoints another VAT agent, or takes steps or instructs the VAT Accountant in any way to stop disclosing any information requested by the Lender in relation to the VAT repayment to the Lender.

**Destruction of Property**

* + 1. All or any part of the Property is destroyed or is subject to a compulsory purchase order.

# Acceleration

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

* + 1. cancel the Facility, whereupon it shall immediately be cancelled;
    2. declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
    3. declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
    4. enforce or exercise any of its rights, powers or discretions under any Security Document.

1. **BORROWER FILINGS**
   1. The Borrower hereby acknowledges that, as a condition precedent to drawdown, it shall supply to the Lender its HMRC Government Gateway login details (the “**Login Details**”) and that the Lender shall be entitled to:

# be provided with the administrator user names and passwords in relation to these accounts;

# further provide the Login Details to the VAT Agent;

# at its sole discretion change any passwords or other Login Details, without notifying the Borrower of the updated details; and

# make any filings as the Lender or the VAT Agent may consider to be necessary or desirable;

# PROVIDED THAT the Lender will only be entitled to take the actions referred to in sub-clause 13.1.4 at times when any sums are outstanding to the Lender under this Agreement and in order to amend the Borrower’s registered bank details, to change the Borrower’s contact details and address for correspondence with HMRC, or in the event that the Borrower cancels the appointment of the VAT Agent. In addition, the Lender is permitted to make any filings which are requested by, or agreed with, the Borrower.

* 1. The Lender further confirms that it will not instruct the VAT Agent to make any filings other than in accordance with clause 13.1 above.
  2. The Borrower undertakes that until all amounts outstanding under the Finance Documents have been repaid in full, it shall not attempt to change the Login Details, and shall not use its HMRC Government Gateway account, nor attempt to make any other changes or filings of any kind whatsoever in respect of HMRC without the prior written consent of the Lender.

* 1. The Lender agrees that it shall notify the Borrower of any filings which is intends to make, or has made, under this clause 13

**SECTION 8**

**SECURITY**

1. **SECURITY**
   1. The obligations of the Borrower to the Lender under this Agreement shall be secured by all existing Security held by the Lender for the liabilities of the Borrower as follows:
      1. The Legal Charge;
      2. the Debenture; and
      3. each Guarantee.
   2. For the avoidance of doubt the Borrower acknowledges that all Security held and to be held by the Lender shall unless the Security Document expressly states otherwise secure all the liabilities of the Borrower to the Lender of whatsoever nature.

**SECTION 9**

MISCELLANEOUS

1. **CHANGES TO THE LENDER AND CONFIDENTIALITY**
   1. The Lender may at any time assign, transfer or novate either in law or in equity all or any of its rights, benefits and/or obligations in respect of the Finance Documents to any person.
   2. The Borrower undertakes to execute all documents the Lender may reasonably require to give effect to Clause 15.1, to the extent applicable.
   3. The Lender may, in accordance with Clause 15.1, disclose to any person any information relating to or about the Borrower and the Finance Documents as the Lender shall consider appropriate, including the size and term of the Facility and the name of the Borrower.
   4. The Borrower may not assign any of its rights or transfer any of its obligations under the Finance Documents.
   5. Subject to Clause 14.5, the Parties to this Agreement will at all times keep confidential the information acquired in consequence of the Finance Documents, except for information which they may be entitled or bound to disclose under compulsion of law or where requested by regulatory agencies or to their professional advisers where reasonably necessary for the performance of their professional services.
2. **PAYMENT MECHANICS**
   1. If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
      1. **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Lender under the Finance Documents;
      2. **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
      3. **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
      4. **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

provided that the Lender may vary this order at its discretion. Sub-Clauses 16.1.1 to

16.1.4 above will override any appropriation made by the Borrower.

* 1. All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
  2. Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
  3. During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

# Set-Off

* 1. The Lender may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to that Borrower.
  2. All payments to be made by the Borrower under this Agreement shall be made without any deduction or withholding (whether in respect of set-off, counterclaim, duties, taxes, charges or otherwise) unless the Borrower is required by law to make any such deduction or withholding in which case the Borrower will pay to the Lender such additional sums to the extent necessary to ensure that the Lender receives on the due date a sum equal to the sum which it would have received had there been no such deduction or withholding.

**Accounts**

* 1. The Borrower shall be required to make such arrangements as the Lender may require, including, without limitation, the maintenance of payment instructions

acceptable to the Lender, in respect of payments of capital and interest required under this Agreement.

1. **NOTICES**
   1. Every notice, request, demand, or other communication under this Agreement shall be in writing addressed to the addresses specified above or such address as may at the relevant time have been notified pursuant to this clause to the party giving the notice and may be delivered personally or sent by pre-paid first-class letter.
   2. Any notice or other communication given by the Lender shall be deemed to have been received:
      1. if given by hand, on the day of actual delivery; and
      2. if posted, on the second Business Day following the day on which it was dispatched by pre-paid first-class post,

provided that a notice given as described in Clause 17.2.1. or Clause 17.2.2. on a day which is not a Business Day (or after normal business hours in the place of receipt) shall be deemed to have been received on the next Business Day.

* 1. Any notice or other communication given to the Lender shall be deemed to have been given only on actual receipt by the Lender.

1. **CALCULATIONS AND CERTIFICATES**
   1. In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are prima facie evidence of the matters to which they relate.
   2. Any certificate or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
   3. Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.
2. **MISCELLANEOUS**
   1. No delay or omission on the part of the Lender in exercising any of its rights powers or privileges under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right power or privilege preclude any other or further exercise thereof or the exercise of any other right power or privilege.
   2. In addition to any other rights to which it may be entitled, including rights under any Security, the Lender may retain, set off or appropriate any credit balances in name of the Borrower (whether current or not yet due) against the Borrower's obligations to the Lender under this Agreement. The Lender may exercise any of these rights without prior notice both before and after demand and in so doing may convert to sterling at the prevailing market rate of exchange any balance which is in a currency other than sterling.
   3. If at any time any one or more of the provisions of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.
   4. This Agreement supersedes all prior agreements, arrangements or correspondence between the Lender and the Borrower in relation to the Loans.
   5. Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.
   6. It is agreed that to the extent there is any conflict between the terms of this Agreement and any other Finance Document the terms of this Agreement shall prevail.
3. **GOVERNING LAW**
   1. This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
4. **ENFORCEMENT**
   1. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
   2. The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly the Borrower will not argue to the contrary.
   3. This Clause 21 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in a number of jurisdictions.

This Agreement has been entered into on the date stated at the beginning of this Agreement

**Schedule 1**

**Utilisation Request**

From: [CompanyName]

To: A1T1 Ltd, Entrance D, Tavistock House South, Tavistock Square, London WC1H 9LG

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2020

Dear Sirs

**[Borrower] – Facility Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2020**

1. We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Proposed Drawdown Date: [ ]

Facility Amount: £ [FacilityAmount]

1. We confirm that each condition specified in Clause 4 (*Conditions Precedent)* of the Facility Agreement is satisfied on the date of this Utilisation Request.
2. This Loan is to be made in whole for the purpose of meeting any VAT liability properly due and payable to HMRC in connection with [PropertyAddressAndTitle] and to pay the Interest Fee and the Arrangement Fee.
3. We confirm that you may disburse the Loan through lawyers and deduct from the Loan (although the Loan Amount shall remain the same) the arrangement fee of

£ [ArrangementFee] and the interest fee of £ [InterestFee].

1. The net amount of the Loan shall therefore be £ [NetLoanAmount];
2. The net proceeds of the Loan (after deductions stated above) should be credited to:

Address: [ ]

Account Number:  [ ]

Account Name:  [ ]

Sort Code:   [ ]

Swift Code:   [ ]

IBAN:   [ ]

1. This Drawdown Request is irrevocable.

Yours faithfully

Signed: .................................................................

**[CompanyName]**

For and on behalf of **[CompanyName]** acting by a director

..........................................................

Director

For and on behalf of

# A1T1 LTD

acting by a director

..........................................................

Director