

**DATED**

**X xxxxx xxxx**

**FACILITY AGREEMENT: LOAN FROM A SHAREHOLDER**

**MEDWAY COMMERCIAL GROUP LTD**

**BORROWER**

**MEDWAY COUNCIL**

**LENDER**

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### SCHEDULE

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**THIS AGREEMENT** is dated

**PARTIES**

- (1) **MEDWAY COMMERCIAL GROUP LTD** of Innovation Centre, Maidstone Road, Chatham Kent ME5 9FD (**Borrower**).
- (2) **MEDWAY COUNCIL** of Gun Wharf Dock Road Chatham Kent ME4 4TR (**Lender**).

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this agreement.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Drawdown Date:** the date on which a Loan is to be made in accordance with clause 5.

**Event of Default:** any event or circumstance specified as such in clause 9.

**Facility:** the term loan facility made available under this agreement by the Lender to the Borrower.

**Final Repayment Date:** x xxxx xxxx

**Indebtedness:** any obligation to pay or repay money, present or future, and whether actual or contingent, sole or joint and any guarantee or indemnity of any of those obligations.

**Loan:** the principal amount of a loan made or to be made by the Lender to the Borrower under this agreement or (as the context requires) the principal amount outstanding for the time being of that loan.

**Potential Event of Default:** any event or circumstance specified in clause 9 that would, on the giving of notice, expiry of any grace period or making of any determination under this agreement, or satisfaction of any other condition (or any combination thereof), become an Event of Default.

**Repayment Date:** each of the dates specified in clause 5 for repaying a portion of each Loan.

**Repayment Instalment:** each scheduled instalment for the repayment of the Loans under clause 5

**security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Sterling and £:** the lawful currency of the UK.

**Warranties:** the representations and warranties contained in clause 7.

## 1.2 Interpretation

In this agreement:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this agreement;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) references to a party shall include that party's successors, permitted assigns and permitted transferees and this agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to a time of day is to London time;
- (i) a reference to **writing** or **written** includes fax and email;
- (j) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (k) reference to **this agreement** (or any provision of it) or to any other agreement or document referred to in this agreement is a reference to this agreement, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this agreement) from time to time;
- (l) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;

- (m) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (n) a reference to a document **in agreed form** is to that document in the form agreed by the Lender and the Borrower and initialled by or on their behalf for identification;
- (o) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- (p) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (q) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (r) a reference to a **certified copy** of a document means a copy certified to be a true, complete and up-to-date copy of the original document, in writing and signed by a director or the secretary of the party delivering the document;
- (s) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (t) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it;
- (u) a reference to a **disposal** of any asset, undertaking or business includes a sale, lease, licence, transfer, loan or other disposal by a person of that asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions); and
- (v) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

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

## 2. THE FACILITY

The Lender grants to the Borrower an unsecured Sterling term loan facility on the terms, and subject to the conditions, of this agreement.

## 3. PURPOSE

3.1 The Borrower shall use all money borrowed under this agreement for the purpose of providing the Borrower and its wholly owned subsidiary companies with a working

capital. For the avoidance of doubt the Borrower shall not use any of the money borrowed under this agreement for purposes connected with any economic activity that would breach the rules on unlawful state aid.

#### 4. CONDITIONS

4.1 The Lender will charge a X% interest rate on the Loan.

#### 5. REPAYMENT

Subject to the provisions of this agreement, the Borrower shall repay the Loan in full by repaying the Repayment Instalment set out below opposite each Repayment Date on that Repayment Date. The last Repayment Instalment will be repaid on the Final Repayment Date and will be the balance of the outstanding Loans.

<b>Loans</b>	<b>Drawdown Date</b>	<b>Repayment Dates</b>	<b>Repayment Instalments</b>
£x,xxxx	1 November 2020	31 <sup>st</sup> October 2021 and 31 <sup>st</sup> October in each of the following x years	£x,xxx
		Final Instalment	
		31 <sup>st</sup> October xxxx	£x,xxx

#### 6. PAYMENTS

6.1 All payments made by the parties under this agreement shall be in Sterling and in immediately available cleared funds to the other party's account or such other account as the relevant party may notify to the other party.

6.2 If any payment becomes due on a day that is not a Business Day, the due date of such payment will be the immediately preceding Business Day.

#### 7. REPRESENTATIONS AND WARRANTIES

The Borrower makes the representations and warranties set out in this clause 7 to the Lender on the date of this agreement.

- 7.1 No Event of Default or Potential Event of Default has occurred or is continuing, or is reasonably likely to result from making the Loan or the entry into, the performance of, or any transaction contemplated by this agreement.
- 7.2 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on it or to which any of its assets is subject which has or is reasonably likely to have a material adverse effect on its business, assets or condition or ability to perform its obligations under this agreement.
- 7.3 The Borrower has disclosed to the Lender before the date of this agreement all information relating to it and the transaction that is material to be known by a lender (in the context of a loan for a similar amount and on terms similar to the Facility) and the information is accurate and complete in all material respects.
- 7.4 Each set of financial statements delivered to the Lender by the Borrower was prepared in accordance with consistently applied accounting principles, standards and practices generally accepted in its jurisdiction of incorporation, and presents a true and fair view of the Borrower's financial condition and operations during the relevant accounting period and were approved by the Borrower's directors in compliance with section 393 of the Companies Act 2006.
- 7.5 No litigation, arbitration or administrative proceedings are taking place, pending or, to the Borrower's knowledge, threatened against it, or any of its directors or any of its assets which, in any case, might have a material adverse effect on its business, assets or condition or ability to perform its obligations under this agreement. Each of the representations and warranties in this clause 7 other than is deemed to be repeated by the Borrower on:
- (a) each Drawdown Date;
  - (b) each date immediately succeeding the date on which interest is paid under this agreement in accordance with this agreement.

by reference to the facts and circumstances existing on each such date.

## **8. COVENANTS**

The Borrower covenants with the Lender that, as from the date of this agreement until all its liabilities under this agreement have been discharged.

- 8.1 The Borrower shall deliver to the Lender certified copies of all audited reports and accounts as soon as they are available and in any event within 180 days of the end of

its financial year, together with all other information that the Lender may reasonably require concerning the Borrower or its business.

- 8.2 The Borrower shall promptly, after becoming aware of them, notify the Lender of any litigation, arbitration or administrative proceedings or claim of the kind described in clause 7.5.
- 8.3 The Borrower shall promptly obtain all consents or authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation to enable it to perform its obligations under this agreement.
- 8.4 The Borrower shall procure that any of its unsecured and unsubordinated obligations and liabilities under this agreement rank, and shall rank, at least pari passu in right and priority of payments with all its other unsecured and unsubordinated obligations and liabilities, present or future, actual or contingent, except those obligations and liabilities mandatorily preferred by law of general application to companies.
- 8.5 The Borrower shall notify the Lender of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.
- 8.6 The Borrower shall carry on and conduct its business in a proper and efficient manner and will not make any substantial change to the general nature or scope of its business as carried on at the date of this agreement without the prior consent of the Lender.
- 8.7 The Borrower shall not:
  - (a) create, or permit to subsist, any security on or over any of its assets;
  - (b) sell, transfer or otherwise dispose of any of its assets on terms whereby such assets are or may be leased to or re-acquired or acquired by it;
  - (c) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (d) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (e) enter into any other preferential arrangement having a similar effect,

Without the Lender's consent

- 8.8 The Borrower shall not sell, assign, lease, transfer or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, its assets other than:
  - (a) trading stock in the ordinary course of business; and



- (b) assets exchanged for other assets comparable or superior as to type, value and quality.

**9. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this clause 9 (other than clause 9.15) is an Event of Default.

- 9.1 The Borrower fails to pay any sum due under this agreement when due.
- 9.2 The Borrower fails (other than by failing to pay) to comply with any provision of this agreement and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 Business Days of the earlier of:
  - (a) the Lender notifying the Borrower of the default and the remedy required; and
  - (b) the Borrower becoming aware of the default.
- 9.3 Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, this agreement is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made, repeated or deemed made.
- 9.4 The Borrower stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due.
- 9.5 The value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities).
- 9.6 A moratorium is declared in respect of any Indebtedness of the Borrower.
- 9.7 The Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties).
- 9.8 Any action, proceedings, procedure or step is taken for:
  - (a) the suspension of payments, a moratorium of any Indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
  - (b) the composition, compromise, assignment or arrangement with any creditor; or

- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets.
- 9.9 Any event occurs in relation to the Borrower similar to those in clause 9.4 to clause 9.8 (inclusive) under the laws of any applicable jurisdiction.
- 9.10 A distress, attachment, execution, expropriation, sequestration or another analogous legal process is levied, enforced or sued out on, or against, the Borrower's assets having an aggregate value of £xxxx (or its equivalent in other currencies) and is not discharged or stayed within 30 days.
- 9.11 Any provision of this agreement is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.
- 9.12 The Borrower repudiates or shows an intention to repudiate this agreement.
- 9.13 The Borrower ceases, or threatens to cease, to carry on all or a substantial part of its business.
- 9.14 Any event occurs (or circumstances exist) which, in the reasonable opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this agreement.
- 9.15 At any time after an Event of Default has occurred which is continuing, the Lender may, by notice to the Borrower:
  - (a) cancel all outstanding obligations of the Lender under this agreement whereupon they shall immediately be cancelled;
  - (b) declare that the Loan(s) (and all accrued interest and all other amounts accrued or outstanding under this agreement) are immediately due and payable, whereupon they shall become immediately due and payable; and/or
  - (c) declare that the Loan(s) be payable on demand, whereupon they shall immediately become payable on demand by the Lender.

## **10. SET-OFF**

- 10.1 The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement or any other agreement between the parties.

- 10.2 The Lender is not obliged to exercise any of its rights under clause 10.1, but if the rights are exercised, the Lender shall promptly notify the Borrower of the set-off that has been made.

## **11. CALCULATIONS AND CERTIFICATES**

- 11.1 Any interest under this agreement shall accrue on a day-to-day basis, calculated according to the number of actual days elapsed and a year of 365 days.
- 11.2 If the Lender issues any certificate, determination or notification of a rate or any amount payable under this agreement, it shall be conclusive evidence (in the absence of manifest error) of the matter to which it relates and shall contain reasonable details of the basis of the determination.

## **12. AMENDMENTS, WAIVERS, CONSENTS AND REMEDIES**

- 12.1 No amendment of this agreement shall be effective unless it is in writing and signed by, or on behalf of, each party to it (or its authorised representative).
- 12.2 A waiver of any right or remedy under this agreement or by law, or any consent given under this agreement, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 12.3 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this agreement. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this agreement by the Lender shall be effective unless it is in writing.
- 12.4 The rights and remedies provided under this agreement are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **13. SEVERANCE**

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

**14. ASSIGNMENT**

Neither party may assign any of its rights or transfer any of its rights and obligations under this agreement without the written consent of the other.

**15. NOTICES**

15.1 Any notice or other communication given to a party under or in connection with, this agreement shall be:

- (a) in writing;
- (b) delivered by hand by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:
  - (i) the Borrower at:
    - Innovation Centre
    - Maidstone Road
    - Chatham
    - Kent
    - ME5 9FD
    - Attention: Head of Finance
  - (ii) the Lender at:
    - Gun Wharf
    - Dock Road
    - Chatham
    - Kent
    - ME4 4TR
    - Attention: Chief Finance Officer

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

15.2 Any notice or other communication given by either party shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by fax, when received in legible form.

A notice or other communication given as described in clause 15.2(a) or clause 15.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

**16. COUNTERPARTS**

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

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

**17. THIRD PARTY RIGHTS**

17.1 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**18. GOVERNING LAW AND JURISDICTION**

18.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

18.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

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

Signed on behalf of MEDWAY COUNCIL

.....

Authorised Signatory

Name: .....

Position: .....

Signed on behalf of MEDWAY COMMERCIAL GROUP LTD

.....

Director

Name: .....

.....

Director

Name: .....