LOAN AND SECURITY AGREEMENT

This Loan and Security Agreement (this “Loan Agreement”) sets the terms of a loan to Borrower from Lender. Borrower agrees to repay this loan, with interest, as set out in this Loan Agreement [and to grant to Lender a security interest in Borrower’s assets to secure its repayment obligation under this Loan Agreement]. Borrower and Lender agree with each other as follows:

|  |  |
| --- | --- |
| Borrower | [Borrower’s NAME], a [Massachusetts/Delaware] [limited liability company][limited partnership][corporation] |
| Borrower Contact Information | Lender will send all notices to Borrower using the contact information below:  Name:  Address (primary place of business):  Telephone:  Email: |
| Lender | [Lender’s Legal Name] |
| Lender Contact Information | Borrower will send all notices to Lender using the contact information below:  Name:  Address:  Telephone:  Email: |
| Loan Amount | $[\_\_] (the “Loan”) |
| Interest Rate | [\_\_]% per year. [The interest rate may be modified as described in the Social Impact Covenants attached as Schedule III.] |
| Payments | Borrower is required to pay $[ ] (the “Monthly Payment”) on the first Business Day of each calendar month (each, a “Payment Date”). A “Business Day” is any day on which banks in Massachusetts are open for business.  The first Monthly Payment is due on [MONTH] [DAY], [YEAR]. Each Monthly Payment will be applied to principal and interest as described on the amortization schedule in Schedule I.  Borrower may prepay the Loan by paying an amount in excess of the Monthly Payment on any Payment Date together with an email to Lender that Borrower is prepaying the Loan with that excess amount. If Borrower prepays the Loan, Lender will send Borrower an updated Schedule I.  Borrower may not reduce the amount of any payment required under this Loan Agreement by taxes or other costs payable by Borrower.  To facilitate payments, Lender will request an Electronic Funds Transfer Authorization from Borrower. Borrower will make all payments to Lender under this Loan Agreement based on the Payment Instructions provided by Lender. |
| Late Payments | If Borrower notifies Lender before any Payment Date that it is not able to make the next Monthly Payment, Lender agrees to work with Borrower in arranging a new payment plan and will suspend future Monthly Payments for as long as Borrower and Lender are working together on a new payment plan. Lender may restore the Monthly Payment requirement if Borrower fails to communicate with Lender on the new payment plan for a period of 10 days or more.  [If Borrower fails to make a Monthly Payment when due without notifying Lender in advance, Lender may charge Borrower a late fee of [Fifty Dollars ($50)] each month until the overdue Monthly Payment is made (the “Late Charge”).] |
| Maturity Date | Borrower must repay the full outstanding amount of the Loan and any accrued and unpaid interest on or before [DATE] |
| Closing Date | The Loan will be provided to Borrower in a single amount on [DATE]. Lender will fund the Loan to Borrower’s account based on the Payment Instructions provided by Borrower on or before the Closing Date. |
| Borrower Representations | Borrower agrees that the information below is accurate as of the Closing Date.   1. Borrower is a [STATE] [limited liability company, duly organized,][corporation] validly existing and in good standing under the laws of [STATE]. Borrower has provided Lender with true copies of its organizational documents and recent good standing certificates.  Borrower has authorized the execution, delivery and performance of this Loan Agreement and has provided Lender with true copies of any authorizing resolutions. This Loan Agreement does not conflict with (a) any law, statute, rule or regulation or any judgment, order, writ, injunction, license or permit that applies to Borrower, (b) any organizational document of Borrower, or (c) any other agreement to which Borrower is party. Borrower does not need to obtain any governmental approval or consent or make any filing in connection with this Loan Agreement.The financial statements of Borrower provided to Lender were prepared in accordance with generally accepted accounting principles in the United States and fairly and accurately represent its financial condition.  Borrower has informed Lender of any material change in the financial condition of Borrower since the date of the most recent financial statements provided to the Lender. The information provided in the Perfection Certificate is true and complete.There are no lawsuits, investigations or similar actions pending or threatened against Borrower that relate to this Loan Agreement or that could materially harm Borrower’s business.Borrower has filed all required tax returns, reports and declarations and paid all taxes owed.Borrower has informed Lender of any other loans or lines of credit with any other lender and is not in default under any of them.Borrower is in compliance with all laws that apply to it. |
| Affirmative Covenants | Borrower will provide Lender with (a) quarterly unaudited financial statements by no later than 60 days after the end of each calendar or fiscal quarter, (b) annual unaudited financial statements, together with an annual budget, by no later than 90 days after the end of each calendar or fiscal year and (c) notice within three Business Days if any Event of Default occurs.Borrower agrees to meet with Lender onsite at its business on days and times that work for both Borrower and Lender as agreed in advance.[Borrower will use the proceeds of the Loan for (i) first, \_\_\_\_\_\_\_\_\_\_\_\_ and (ii) then, to fund working capital and ordinary course operating expenses.]Borrower will maintain, at its own expense:  (a) “all risk” insurance on customary terms against loss or damage to its assets and properties, including any motor vehicles; and (b) commercial general liability insurance having customary terms. All property policies will name Lender as a lender loss payee and will provide that the insurer will try to give Lender at least 30 days’ notice before canceling, amending, or declining to renew its policy. Proceeds payable under any property policy will, at Lender’s option, be payable to Lender to repay the payment obligations of Borrower under this Loan Agreement.Borrower will (a) maintain its organizational existence and good standing in [STATE], (b) comply with all laws that apply to it, and (c) pay all taxes owed by it when due.[Borrower agrees to limit revenue from the following screened sectors to [5]% or less of total revenue as measured on an annual basis: Firearms, Tobacco, Fossil Fuels, Prisons, and the Department of Defense.] |
| Negative Covenants | Borrower agrees not to take any of the actions described below without first getting Lender’s written approval. Lender agrees to be reasonable in deciding whether to permit that action. Borrower will not sell or transfer any of its assets or properties having a value of over $[25,000] outside the ordinary course of its business.Borrower will not borrow money after the Closing Date in a total amount exceeding $[ ].Borrower will not allow any lien on its assets or properties other than Lender’s lien.Borrower will not make any cash distributions or payments to any of its owners other than normal salary in excess of $[ \_], and the annual salary and bonus for any owner may not exceed $[ ]. Borrower will not (a) liquidate, dissolve, or merge with or consolidate with any other entity, (b) change its organizational documents, or (c) change its legal name, the state in which it is organized or its primary business address.[Borrower will not enter into any agreement or other arrangement involving payments exceeding $[ ] with any (a) owner of Borrower, (b) spouse or ex-spouse of any owner of Borrower, or (c) child, step-child, parent, step-parent, grandparent, step-grandparent, uncle, aunt, niece, nephew, brother, sister, step-brother, step-sister or first cousin or any spouse or ex-spouse of any of them.] |
| Closing Requirements | Lender will provide the Loan to Borrower on the Closing Date after (a) Lender has received a copy of this Loan Agreement signed by Borrower, and (b) all of the items listed on the Schedule II have been completed. |
| [Security] | To secure Borrower’s payment obligations under this Loan Agreement, Borrower grants to Lender a security interest in the Collateral. “Collateral” means all or substantially all of Borrower’s assets and personal property, whether now owned or hereafter acquired, together with all proceeds, products, replacements, accessions, and profits thereof, including, Accounts, Equipment, Inventory, Fixtures, Contract Rights, Cash, General Intangibles, Goods and Grants Receivable and Purchase Orders [and Intellectual Property][[1]](#footnote-1):    All of the capitalized terms in the definition of Collateral have the meanings set forth in Article 9 of the Uniform Commercial Code of the Commonwealth of Massachusetts (the “UCC”).    Borrower agrees that Lender may file or record any documents to perfect, continue, amend or terminate Lender’s security interest in the Collateral and ratifies all previous filings or recordings made by Lender noting its security interest in the Collateral. Borrower authorizes Lender to file a financing statement that describes the Collateral as “all assets”.  Borrower agrees to cooperate with Lender to protect Lender's security interest in the Collateral. Borrower agrees to sign and deliver all documents and instruments and take other actions that Lender reasonably requests to allow Lender to acquire, perfect, continue or amend its security interest in the Collateral. |
| Events of Default | The happening of any event listed below will be an “Event of Default” under this Loan Agreement. Borrower does not make any payment when it is due under this Loan Agreement without notifying Lender in advance and the payment remains overdue for a period of [\_\_] days or longer without Borrower working with Lender to agree on a new payment plan.Borrower files a bankruptcy petition, makes a general assignment for the benefit of creditors, or applies for the appointment of a receiver or similar official for Borrower or its assets, or any such petition or application is filed or any such case or other proceeding is commenced against Borrower (a “Bankruptcy Event”).Any representation or warranty made by Borrower in this Loan Agreement was materially incorrect when made, or Borrower materially breaches any covenant or agreement in this Loan Agreement and does not fix that breach within 30 days.Borrower does not pay any amount owed to any other lender when it is due or is in default under any other loan, in each case, where the total loan amount owed by Borrower exceeds $[ ].A final judgment in excess of $[100,000] (net of any amount which the insurer under any insurance policy owned by Borrower has agreed to pay) is entered or filed against Borrower and has not been paid, discharged or vacated within 30 days after the final judgment is entered or filed.This Loan Agreement or any document or instrument signed by Borrower in connection with the Loan is no longer enforceable, or Borrower challenges the enforceability of this Loan Agreement or any of those other documents or instruments.The owner(s) of Borrower on the Closing Date no longer own a majority of the equity of Borrower or control the operation of Borrower or sell or transfer any material assets of Borrower. |
| Event of Default Remedies | If a Bankruptcy Event happens, the full amount of the Loan and all of Borrower’s other payment obligations under this Loan Agreement will automatically become due and payable without Lender having to take any action.  If any other Event of Default happens, Borrower and Lender agree to cooperate to change this Loan Agreement to include new terms that work for both Borrower and Lender. If Borrower and Lender are unable to agree on new terms within [\_\_] days [or if Lender would be materially hurt by any delay in exercising its remedies], Lender will have the option to take any or all of the following actions:   1. Declare all or any portion of the Loan, any accrued interest, any Late Charges or other amounts owed to Lender under this Loan Agreement to be due and payable immediately, and/or 2. Exercise any of Lender’s rights, powers and remedies at law or in equity in addition to any other rights or remedies available to Lender under this Loan Agreement, the UCC and any other rights Lender has as a secured creditor.   Lender will be able to decide which of these actions to take, and if Lender decides to take only some but not all of these actions, delays in taking any action or takes no action, this does not mean that Lender waives or loses the right to take any of these actions in the future. Any previous decision not to take any actions or to delay in exercising any right does not mean that Lender cannot take any of these actions or exercise its rights in the future. If Lender decides to sell any Collateral, Borrower agrees that [\_\_] days prior notice is reasonable and sufficient notice.  Borrower agrees to reimburse Lender for any expenses that Lender reasonably incurs in taking any of these actions after an Event of Default.  Lender will apply any amount it collects from the Collateral to pay the Loan and any other amounts owed by Borrower under this Loan Agreement.  After all of the payment obligations of Borrower under this Loan Agreement have been paid in full in cash, Lender will pay any excess to any junior secured party if Lender determines that this is required by the UCC or other applicable law, and will then return any excess to Borrower. |
| Indemnification | Borrower agrees to indemnify Lender and its affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, attorneys, advisors and representatives of Lender and its affiliates (each an “Indemnified Party”) against any claims, actions and suits filed by any person or entity (each a “Claim”), and against any liabilities, losses, damages and expenses (each a “Loss”) relating to this Loan Agreement, except for any Claim or Loss relating to Lender’s bad faith, gross negligence or willful misconduct.  Lender and the Indemnified Parties will have the right to select one outside counsel in connection with any Claim, and Borrower agrees to pay promptly the reasonable and documented fees and expenses of that counsel. This indemnification section will survive the repayment of the Loan (and so will cover any Claim or Loss after the Loan has been repaid). |
| Power of Attorney | Borrower irrevocably appoints Lender and any of its officers or agents as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Lender’s own name, **solely if an Event of Default happens and while it is continuing**, to execute, deliver and record any endorsements, assignments or other instruments of conveyance or transfer in connection with selling any Collateral. This power of attorney is a power coupled with an interest and is irrevocable. The powers conferred on Lender under this power of attorney are solely to protect its interests in the Collateral and shall not impose any duty on it to exercise any such powers. Lender shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to Borrower for any act or failure to act, except for Lender’s own gross negligence or willful misconduct. |
| Governing Law and Jurisdiction | THIS LOAN AGREEMENT IS A CONTRACT UNDER THE LAW OF THE COMMONWEALTH OF MASSACHUSETTS AND SHALL FOR ALL PURPOSES BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF SUCH COMMONWEALTH (EXCLUDING THE LAWS APPLICABLE TO CONFLICTS OR CHOICE OF LAW). EACH OF BORROWER AND LENDER AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS LOAN AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON BORROWER BY MAIL. EACH OF BORROWER AND LENDER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT. |
| Waiver of Jury Trial | EACH OF BORROWER AND LENDER WAIVE THEIR RIGHT TO A JURY TRIAL FOR ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS LOAN AGREEMENT. EXCEPT TO THE EXTENT EXPRESSLY PROHIBITED BY LAW, EACH OF BORROWER AND LENDER WAIVE ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. |
| Amendments | Lender and Borrower may agree to modify the terms of this Loan Agreement at any time through a written agreement signed by both Borrower and Lender. |
| Successors and Assignments | This Loan Agreement is binding upon the successors and assigns of Borrower and Lender.  Lender may assign all or a portion of its rights under this Loan Agreement.  Borrower may not assign or transfer any of its rights or obligations under this Loan Agreement without the prior written consent of Lender. |
| Patriot Act | Lender notifies Borrower that pursuant to the requirements of the Patriot Act, Lender may be required to obtain, verify and record information that identifies Borrower. This information may include Borrower’s name, address, tax information number and other information that will allow Lender to identify Borrower in accordance with the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001 (the “Patriot Act”). This notice is given in accordance with the requirements of the Patriot Act and is effective for Lender. |
| Miscellaneous | This Loan Agreement and any amendment to this Loan Agreement may be signed in several counterparts and by each party on a separate counterpart, each of which when so signed and delivered shall be an original, and all of which together will constitute one instrument. Delivery of a signed counterpart of a signature page of this Loan Agreement by pdf or other electronic transmission is as effective as delivery of a manually signed counterpart of this Loan Agreement.  If any clause or provision of this Loan Agreement is held invalid or unenforceable in whole or in part in any jurisdiction, then that invalidity or unenforceability shall not affect the validity and enforceability of that clause or provision in any other jurisdiction, or the validity and enforceability of any other clause or provision of this Loan Agreement in any jurisdiction.  This Loan Agreement and any other documents executed in connection with the Loan express the entire understanding of Borrower and Lender with respect to the transactions contemplated by this Loan Agreement. |
| Schedules | The terms and provisions of the Schedules attached to this Loan Agreement shall be incorporated by reference and are considered part of this Loan Agreement. |

IN WITNESS WHEREOF, Borrower and Lender have duly executed this Loan Agreement as of the date first set forth above.

**BORROWER:**

By:

         Name:

         Title:

**LENDER:**

By:

         Name:

         Title:

LIST OF SCHEDULES

|  |  |
| --- | --- |
| SCHEDULE I: | Monthly Payment Schedule |
| SCHEDULE II | Form of Closing Checklist |
| SCHEDULE III: | Social Impact Covenants |

SCHEDULE I – MONTHLY PAYMENT SCHEDULE

*Lender to generate and attach an amortization schedule showing each payment due.*

Schedule II

Document aGENDA/ CLOSING CHECKLIST

LOAN AGREEMENT

by and between

[ ], Borrower

and

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], Lender

DATED: [ ]

***Loan Amount:*** $

***Interest:***  %

***Term:*** year(s)

|  |  |  |
| --- | --- | --- |
| **Item** | **Responsible Party** | **Status / Notes** |
| LOAN DOCUMENTS |  |  |
| Loan Agreement | Lender |  |
| Amortization Schedule |  |  |
| Closing Agenda |  |  |
| [Social Impact Covenants][if applicable] |  |  |
| Guaranty [if applicable] | Lender |  |
| Pledge Agreement [if applicable] | Lender |  |
| Subordination Agreement [if applicable] | Lender; Borrower to obtain third party signature |  |
| Intercreditor Agreement [if applicable]  (if existing secured lender or co-lender, pari passu or otherwise) | Lender; Borrower to obtain third party signature |  |
| Payment Instructions and Disbursement Letter [if applicable]  (if partial funding, third party payment, refinancing, for example) | Lender |  |
| Electronic Funds Transfer Authorization | Lender;  Borrower to complete |  |
| SECURITY DOCUMENTS |  |  |
| UCC-1 Financing Statement- generally “all assets”  (**to be recorded- [MA]**) | Lender |  |
| Intellectual Property (IP) Security Agreement [if applicable]  (if trademark, patent, copyright collateral, for example) | Lender |  |
| Mortgage [if applicable]  (if real estate collateral) | Lender |  |
| Title insurance policy [if applicable]  (if real estate collateral/ mortgage] | Borrower |  |
| Registry of Motor Vehicle certificate/ title [if applicable]  (if motor vehicle collateral) | Borrower |  |
| ORGANIZATIONAL AND AUTHORITY DOCUMENTS |  |  |
| Borrowing Resolutions  (consent of Board or member/ manager) | Lender; Borrower to obtain signature |  |
| Secretary’s / Officer’s Certificate:  (with attached corporate documents, resolutions, and good standing certificate) | Lender; Borrower to obtain signature |  |
| Articles of Incorporation or LLC Certificate | Borrower |  |
| By-laws or LLC Operating Agreement | Borrower |  |
| Good Standing Certificate | Lender or Borrower |  |
| MISCELLANEOUS |  |  |
| Perfection Certificate | Lender |  |
| UCC/ Lien Searches; USPTO Search | Lender |  |
| Copy of real estate lease [if applicable] | Borrower | NOTES: Needed for landlord waiver |
| Copies of loan documents from existing lenders [if applicable] | Borrower | NOTES: See Subordination/ Intercreditor Agreement or third party consent |
| Copies of loan documents from co-lender with second loan closing at same time [if applicable] | Lender; Borrower |  |
| Copy of purchase and sale agreement / asset purchase agreement [if applicable] | Borrower |  |
| Copies of material contracts and other documents [if applicable] | Borrower |  |
| License / permits [if applicable] | Borrower |  |
| Payoff letter [if applicable] | Borrower |  |
| Evidence of Insurance | Borrower |  |
| (a) Evidence of Property Insurance (ACORD 27 or 28) naming Lender as Lender’s Loss Payee with endorsement |  |  |
| (b) Certificate of Liability Insurance (ACORD 25-S; including Excess/Umbrella Liability) |  |  |
| Delivery to Lender of “financial statements” [as applicable] | Borrower |  |
| Payments by Borrower at Closing for reimbursement of costs and expenses [as applicable] | Borrower |  |
| POST CLOSING ITEMS |  |  |
| Post-filing UCC search |  |  |
| [Other post closing matters, if any ] |  |  |

[Schedule III: Social Impact Covenants]**[[2]](#footnote-2)**

**IMPACT COVENANTS**

Borrower agrees with Lender to use its reasonable best efforts to comply with the terms in this Schedule III (the “Impact Covenants”) and to notify Lender if it is not able to comply with any of the Impact Covenants. Borrower also understands that Lender may take the actions described under “Rights and Remedies” below if Borrower is unable to company with the Impact Covenants.

* 1. Living Wages. Beginning on [\_\_\_\_\_\_\_\_\_\_\_\_\_], Borrower shall pay each employee, determined on an hourly basis and without considering the value of equity compensation or other benefits, at the time of hire and for the duration of employment, whether full time or part time, a Fair Wage in the Commonwealth of Massachusetts as determined by Lender on an annual basis in accordance with the standards set forth in the MIT Fair Wage Calculator located at http://livingwage.mit.edu/ (a “Fair Wage”).
  2. Compensation Ratio. Beginning on [\_\_\_\_\_\_\_\_\_\_],Borrower shall maintain a ratio between the total compensation, including the value of any equity compensation, bonuses, or share of profits, paid to the highest paid employee, measured on an annual basis, and the total compensation paid lowest paid employee, measured on an annual basis, that does not exceed [\_\_:\_\_] (the “Compensation Ratio”). Borrower shall calculate the Compensation Ratio annually based on an average of the compensations paid for the prior [\_\_\_\_\_].
  3. Equity Compensation. Within [\_\_\_\_\_] from the date of the Note, Borrower shall establish an employee equity compensation plan, whether in the form of stock options, restricted stock, or an alternative form of equity compensation, for those employees who Borrower reasonably determines to be eligible for such a program and Borrower shall work with Lender to establish the terms and provisions of such plan.
  4. Profit Sharing. Beginning on [\_\_\_\_\_\_\_\_\_\_\_\_], for each year in which Borrower’s revenues exceed its expenses, determined on an annual basis, Borrower’s full-time employees shall be eligible to receive additional compensation in the form of profit sharing with a target of at least [\_\_\_\_\_\_\_\_] of profits shared among the full-time employees.
  5. Employment Practices. The Borrower shall implement hiring and employment practices, policies and procedures designed to hire and retain [persons of color, women and gender non-conforming individuals] including, but not limited to, advertising open positions through historically diverse organizations, groups, and events and including messaging in all job postings that the Borrower is committed to diversity and inclusion.
  6. Candidate Pools. For any new intern, part-time or full-time hire from outside the organization interviewed by the Borrower, if at least [\_\_] out of every [\_\_] candidates identifies as [Black, Indigenous, or a Person of color; as women or gender non-conforming] (the “Interview Target”), then the interest rate may be decreased in accordance with Section 2.2. If the Interview Target is not achieved, then the interest rate may be increased in accordance with Section 2.2.
  7. Equitable Procurement Practices. Within [\_\_\_\_\_\_] from the date of the Note, Borrower shall implement and maintain a policy (“Procurement Policy”) for selecting suppliers and vendors (the “Suppliers”) that (i) source their products from [Massachusetts, Connecticut, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont (the “Northeast”)] and (ii) hire and are managed or owned by women and individuals of color. The Procurement Policy shall include considering the location of the Supplier’s principal place of business, the locations from which the Supplier sources its own products, and the percentage of individuals employed by and who are owners of the Supplier that are women and/or individuals of color. At least [\_\_\_\_\_\_\_\_\_] of Borrower’s annual expenses for supplies and materials shall be paid to Suppliers that comply with the Procurement Policy.

**Reporting; Access; Incentives**

2.1 Impact Reports. Borrower shall deliver to Lender a written report (the “Impact Report”), in a form reasonably satisfactory to Lender, signed by an authorized individual of Borrower, every twelve (12) months (the “Reporting Period”) or as reasonably requested by Lender, beginning on the date of the Loan Agreement and continuing until the entire balance of the Note has been paid in full. The Impact Reports shall include:

* + 1. if Borrower is in compliance with each of the Impact Covenants, a description of such compliance, including, to the extent compliance is measured numerically, the applicable percentages and amounts evidencing such compliance; and
    2. if Borrower is not in compliance with any Impact Covenant, but reasonably believes that it will obtain complete compliance within the next applicable Reporting Period, an explanation of such non-compliance, including the steps previously taken and planned to be taken and, to the extent compliance is measured numerically, the applicable percentages and amounts obtained to date.

2.2 Interest Rate Incentives. If the Impact Report for any Reporting Period reveals that Borrower is in compliance with each of the Impact Covenants set forth herein, Lender shall reduce the interest rate of the Loan by [one half percent (0.5%)]. If the Impact Report for any Reporting Period reveals that Borrower is not in compliance with any Impact Covenant, Lender may increase the interest rate of the Loan by [one half percent (0.5%)].

2.3 Audit and Access. Lender may, at any time prior to or after receiving an Impact Report, request a meeting with the managers, owners, and employees of Borrower, upon providing reasonable notice and during a reasonable time and place, to discuss compliance with the Impact Covenants and Borrower shall provide access to such managers, owners, and employees for such meeting. Lender may audit Borrower’s policies, procedures, records, and documents that relate to the performance this of the Impact Covenants to ensure compliance with Article I upon at least ten (10) Business Days’ notice and Borrower shall promptly respond to the Lender’s requests for information related thereto.

**Notice AND CURE; Rights and remedies**

3.1 Failure Notice. In the event that Borrower determines that it is unable to or otherwise does not comply with any of the Impact Covenants, and compliance cannot or will not be obtained within an applicable Reporting Period (a “Failure”), Borrower shall notify Lender in writing (the “Failure Notice”) within one (1) week of the Failure or its determination that a Failure will occur. The Failure Notice shall set forth: (i) the Impact Covenant(s), identified by Section reference herein, that Borrower has failed to comply with, (ii) an explanation of the cause of the Failure, (iii) the steps taken by Borrower to comply with the Impact Covenant(s) and remedy the Failure, and (iv) a statement that Borrower has used best efforts to comply with the Impact Covenant(s).

3.2 Rights and Remedies. To the extent permitted by applicable law, upon receipt of a Failure Notice or otherwise determining that Borrower breached an Impact Covenant, Lender may, in its sole discretion:

* + 1. waive or forebear the Failure, in whole or in part, for any period of time and subject to any conditions or limitations that Lender may determine;
    2. meet with the owners, managers, and employees of Borrower and work with Borrower to establish and implement a remediation plan;
    3. request additional records, documents, and other materials, and Borrower shall promptly provide all requested records, documents and other materials, as soon as practicable;
    4. [declare Borrower in breach and exercise all rights and remedies under the Note or Loan Agreement;]
    5. [consider the Failure an Event of Default and consider the Loan in default;]
    6. [increase the applicable interest rate by up to [one half percent (0.5%)] as set forth in Section 2.2;]
    7. [accelerate the Maturity Date of the Loan, such that the principal amount and interest accrued shall become due and payable]; or
    8. any combination of the rights and remedies set forth in the preceding Subclauses [(a) through (g)].

Annex I: Collateral Riders

Grant Receivable and Purchase Order

Intellectual Property

**Grant Receivable and Purchase Order**

Reference is made to the Loan and Security Agreement, dated as of [ ], 20 (the “**Loan Agreement**”) between [\_\_\_\_\_\_\_\_\_\_\_\_], a [state] limited liability company (the “**Borrower**”), and [\_\_\_\_\_\_\_\_\_\_\_\_], a [state] corporation (the “**Lender**”).

Borrower acknowledges that Collateral also includes [Grant Receivable] [Purchase Order] owned by Borrower.

Borrower agrees, upon request of Lender, to take any and all other actions as Lender may determine to be necessary or useful for the attachment, perfection and first priority of Lender's security interest [in any Purchase Order and assignment of same to Lender] [with respect to any Grant Receivable and assignment of the same to Lender]. Borrower agrees to cooperate with Lender in obtaining control or possession of the Collateral.

Lender (or Lender’s agent) may, upon the occurrence of an Event of Default, without notice to Borrower: (i) at any time endorse by writing or stamping Borrower’s name on any checks, notes, deposits, drafts or other instruments of payment on account of, relating to, or representing the proceeds of [the Grant Receivable] [a Purchase Order] which come into the possession of Lender or are under Lender’s control and deposit the same for application to all sums due from Borrower to Lender hereunder, and (ii) at any time, in Borrower’s or Lender’s name, demand payment of, enforce payment of, exercise all of Borrower’s rights and remedies with respect to, settle, adjust, compromise, initiate and prosecute legal proceedings with respect to, and otherwise take all actions with respect to the [Grant Receivable] [Purchase Order] which are, in Lender’s discretion, necessary or desirable in order to fulfill Borrower’s Obligations under the Loan Documents; [and (iii) at any time endorse by writing or stamping Borrower’s name on any bill of lading or other document of title relating to a Purchase Order].

Capitalized terms used herein and not otherwise defined below shall have the meanings set forth in the Loan Agreement.

“**Grant Receivable**” means any grant proposal submitted, requested, or applied for by or on behalf of Borrower that is approved by the grant provider, and all grant support or commitment that Borrower now or at any time hereafter receives or becomes entitled to receive, including, but not limited to, any grant funding from [ ].

“**Purchase Order**” shall mean all purchase orders issued by Borrower’s customers, including certain purchase orders with [ ], [as described or listed below or in Schedule 1 attached hereto].

[BORROWER]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

Name:

Title:

**Intellectual Property**

Reference is made to the Loan and Security Agreement, dated as of [ ], 20 (the “**Loan Agreement**”) between [\_\_\_\_\_\_\_\_\_\_\_\_], a [state] limited liability company (“**Borrower**”), and [\_\_\_\_\_\_\_\_\_\_\_\_], a [state] corporation (“**Lender**”).

Borrower acknowledges that Collateral shall also include Intellectual Property of Borrower, and Borrower agrees to execute a separate IP Security Agreement in a form reasonably satisfactory to Lender (the “**IP Security Agreement**”).

Borrower agrees to promptly notify Lender of any filings with the United States Patent and Trademark Office and/or the United States Copyright Office.

Borrower further agrees that if it fails to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the payment obligations of Borrower under the Loan Agreement, Lender shall have the right to foreclose and sell the IP Collateral under the terms of the Loan Agreement and the IP Security Agreement.

In connection with the power of attorney under the Loan Agreement, Lender is authorized to take actions regarding the filing and prosecuting of registration and transfer applications with the appropriate federal, state or local agencies or authorities with respect to any Intellectual Property.

Capitalized terms used herein and not otherwise defined below shall have the meanings set forth in the Loan Agreement.

“**Copyrights**” shall mean (i) all copyrights arising under the laws of the United States, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith and rights corresponding thereto throughout the world, including all registrations, recordings and applications in the United States Copyright Office, and (ii) the right to, and to obtain, all extensions and renewals thereof.

“**Domain Names**” shall mean all Internet domain names and associated uniform resource locator addresses.

“**Intellectual Property**” shall mean (i) the collective reference to all rights, priorities and privileges relating to intellectual property arising under United States laws, including the Copyrights, the Copyright licenses, the Patents, the Patent licenses, the Trademarks, the Trademark licenses, the trade secrets, trade secret licenses and Domain Names, (ii)  all proceeds, income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including damages or payments for past, present or future infringements for any of the foregoing, and (iii) the right to sue for past, present and future infringements of any of the foregoing.

“**IP Collateral**” shall have the meaning as may be set forth in the IP Security Agreement.

“**Patents**” shall mean (i) all letters of patent of the United States, all reissues and extensions thereof and all goodwill associated therewith, (ii) all applications for letters of patent of the United States and all divisions, continuations and continuations‑in‑part thereof, all improvements thereof, and (iii) all rights to, and to obtain, any reissues or extensions of the foregoing.

“**Trademarks**” shall mean all right, title and interest in and to (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, designs, logos, trade dress, slogans and other source or business identifiers or any other indicia of origin, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith (but excluding any abandoned applications), in the United States Patent and Trademark Office or in any similar office or agency of the United States or any State thereof and all common-law rights related thereto, (ii) the right to, and to obtain, all renewals thereof, (iii) the goodwill of the business symbolized by the foregoing and (iv) other source or business identifiers, designs and general intangibles of a like nature.

[BORROWER]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

Name:

Title:

1. Note to Form: add Annex I if Intellectual Property is included in Collateral. [↑](#footnote-ref-1)
2. Note to Draft: These Impact Covenants are meant to serve as a template to be used for future investments and have not been drafted for any specific investment. [↑](#footnote-ref-2)