

AGENDA

INVESTMENT BOARD

MONDAY, 11 JULY 2022

11.00 AM

**COUNCIL CHAMBER, FENLAND HALL,
COUNTY ROAD**

Committee Officer: Linda Albon
Tel: 01354 622229
e-mail: memberservices@fenland.gov.uk

Whilst this meeting is being held in public, we encourage members of the public to view the meeting via our YouTube channel: <https://youtu.be/Rn5JrRmuJKc>

- 1 Apologies
- 2 Previous Minutes (Pages 3 - 6)

To approve and sign the public minutes of the meeting held 3 December 2021.
- 3 Appointment of Vice Chairman for the Municipal Year
- 4 To report additional items for consideration which the Chairman deems urgent by virtue of the special circumstances to be now specified.
- 5 Members to declare any interests under the Local Code of Conduct in respect of any item to be discussed at the meeting.
- 6 Fenland Future Ltd Financing (Pages 7 - 62)

To review and agree the facility loan agreement.
- 7 Fenland Future Ltd Deed of Indemnity (Pages 63 - 72)

To review and agree the Deed of Indemnity.

8 Fenland Future Ltd Service Level Agreement (Pages 73 - 96)

To review and agree the Service Level Agreement covering FDC services provided to FFL.

9 Items which the Chairman has under item 4 deemed urgent.

10 Fenland Future Ltd Business Plan (Pages 97 - 114)

To review and approve the Business Plan for 2022/25.

The Appendix Cover Report and Appendices 1 to 4 comprise exempt information - to exclude the public (including the press) from a meeting of a committee it is necessary for the following proposition to be moved and adopted: "that the public be excluded from the meeting for Items which involve the likely disclosure of exempt information as defined in the paragraphs 3 of Part I of Schedule 12A of the Local Government Act 1972 (as amended) as indicated."

CONFIDENTIAL - ITEMS COMPRISING EXEMPT INFORMATION

To exclude the public (including the press) from a meeting of a committee it is necessary for the following proposition to be moved and adopted: "that the public be excluded from the meeting for Items which involve the likely disclosure of exempt information as defined in the paragraphs 3 of Part I of Schedule 12A of the Local Government Act 1972 (as amended) as indicated."

11 Scheme update reports including Land transfers - Confidential (Pages 115 - 170)

To provide an update on the current schemes in progress and to agree the next steps.

12 An update on current opportunities - Confidential

To update the Investment Board on the position with current live opportunities.
(Verbal report)

13 Previous Minutes - Confidential (Pages 171 - 176)

To approve and sign the confidential minutes of the meeting held 3 December 2021.

Friday, 1 July 2022

Members: Councillor C Boden (Chairman), Councillor I Benney and Councillor S Tierney

INVESTMENT BOARD



FRIDAY, 3 DECEMBER 2021 - 11.00 AM

PRESENT: Councillor C Boden (Chairman), Councillor I Benney (Vice-Chairman) and Councillor S Tierney

OFFICERS IN ATTENDANCE: Adam Broadway (Instinctively Green Ltd), Peter Catchpole (Corporate Director and Chief Finance Officer), Anna Goodall (Head of Transformation, Customer Services & Democracy), Dan Horn (Head of Housing and Community Support), Simon Machen (Interim Corporate Director), Paul Medd (Chief Executive), Carol Pilson (Corporate Director and Monitoring Officer), Mark Saunders (Chief Accountant) and Linda Albon (Member Services & Governance Officer)

IB12/21 PREVIOUS MINUTES

The public minutes of the meeting held 16 September 2021 were agreed and signed.

IB13/21 TO REPORT ADDITIONAL ITEMS FOR CONSIDERATION WHICH THE CHAIRMAN DEEMS URGENT BY VIRTUE OF THE SPECIAL CIRCUMSTANCES TO BE NOW SPECIFIED.

The Chairman advised there is one item of urgent exempt business which will be considered at Agenda Item 9.

IB14/21 NENE WATERFRONT PROJECT UPDATE (CONFIDENTIAL)

Members considered the Nene Waterfront update presented by Dan Horn on behalf of Fenland Future Limited.

The Investment Board AGREED to note the current progress and the indicative timetable within the report.

(Members resolved to exclude the public from the meeting for this item of business on the grounds that it involved the disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

IB15/21 WENNY ROAD UPDATE REPORT (CONFIDENTIAL)

Members considered the Wenny Road update presented by Dan Horn on behalf of Fenland Future Limited.

The Investment Board AGREED to note the current progress and the indicative timetable within the report.

(Members resolved to exclude the public from the meeting for this item of business on the grounds that it involved the disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

IB16/21 PROPOSED MARCH PROPERTY PURCHASE (CONFIDENTIAL)

Members considered the Proposed March Property Purchase report presented by Simon Machen.

The Investment Board AGREED to delegate to the Section 151 Officer in consultation with the Leader to:

- **Conclude the legal purchase by the Council of a March property at the price agreed at the Board.**
- **The purchase is subject to satisfactory due diligence that has commenced recognising the urgency of the seller's house move chain.**

(Members resolved to exclude the public from the meeting for this item of business on the grounds that it involved the disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

IB17/21 COMMERCIAL INVESTMENT STRATEGY FINANCE REPORT (CONFIDENTIAL)

Members considered the Commercial Investment Strategy Finance Report presented by Peter Catchpole.

The Investment Board AGREED to:

- **Note the financial update on the progress of the Commercial and Investment Strategy; and**
- **Approve the expenditure incurred by Fenland District Council on behalf of Fenland Future Ltd since its adoption in January 2020; and**
- **Give a steer on the funding agreement between FDC and FFL to be discussed at the next FFL Board meeting.**

(Members resolved to exclude the public from the meeting for this item of business on the grounds that it involved the disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

IB18/21 OPPORTUNITY IN WHITTLESEY (CONFIDENTIAL)

Councillor Boden thanked Councillor Mason for agreeing to the discussion of this urgent Opportunity in Whittlesey report stating that we must have the flexibility to move when opportunities arise.

Peter Catchpole presented the report.

The Investment Board AGREED to delegate to Members of the Investment Board and the Section 151 Officer to decide whether, subject to necessary due diligence, to make a bid on the opportunity subject to the financial parameters decided at the meeting.

(Members resolved to exclude the public from the meeting for this item of business on the grounds that it involved the disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

IB19/21 PREVIOUS MINUTES (CONFIDENTIAL)

The confidential minutes of the meeting held 16 September 2021 were agreed and signed.

(Members resolved to exclude the public from the meeting for this item of business on the grounds that it involved the disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

12.29 pm

Chairman

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|------------------------|--|--|
| Agenda Item No: | 6 |  |
| Committee: | Investment Board | |
| Date: | 11th July 2022 | |
| Report Title: | Financing/Loan Agreement for Fenland Future Ltd | |

Cover sheet:

1 Purpose / Summary

1.1 To provide the Board with a draft loan agreement to agree the financial arrangements between Fenland District Council and Fenland Future Limited.

2 Key Issues

2.1 Due to the nature of Fenland Future Ltd (FFL) being a start up Company and therefore with no trading history the interest rate on the loan is being set at 6% above base rate.

2.2 This rate has been market tested with commercial finance institutions and is acceptable in the current market conditions.

2.3 There are no subsidy control issues.

2.4 Consideration should be given to the impact of rising interest rates upon the delivery of the FFL Business Plan and FFL's ability to fund the interest payments.

2.5 The variable nature of the loan interest rate will ensure that market conditions are reflected at all times thus avoiding subsidy control issues in the future. However, as noted in 2.4 above if interest rates rise continually this will impact upon the viability of the FFL Business Plan.

2.6 The loan agreement was agreed by the Board of Fenland Future Ltd at their Board meeting on 27th May 2022.

3 Recommendations

3.1 The Investment Board is asked to:

3.1.1 approve the loan agreement as set out at Schedule 1; and

3.1.2 delegate authority to the Section 151 Officer and/or his nominated delegate(s) to authorise drawdown requests in consultation with the Chairman of the Investment Board or, if they are not available, one of the other members of the Investment Board, in accordance with process outlined in Section 5 of the Loan agreement itself.

| | |
|----------------|-----|
| Wards Affected | All |
|----------------|-----|

| | | |
|----------------------|------|--|
| Forward Reference | Plan | N/A |
| Portfolio Holder(s) | | Cllr C. Boden Cllr I Benney Cllr S Tierney |
| Report Originator(s) | | Peter Catchpole, Corporate Director and CFO Amy Brown, Head of Governance and Legal |
| Contact Officer(s) | | Peter Catchpole, Corporate Director and CFO Amy Brown, Head of Governance and Legal |
| Background Papers | | Loan Agreement at Schedule 1 FFL Business Plan |

Report:

1 BACKGROUND AND INTENDED OUTCOMES

- 1.1 FFL was incorporated in June 2020 following agreement by Full Council in January 2020 of the Commercial and Investment Strategy.
- 1.2 At the same meeting of Full Council it was noted the intention to utilise up to £25m to deliver the objectives of the strategy.
- 1.3 An initial Business Plan was prepared in-line with the articles of association by 31st January 2021 and has been subject to continued development resulting in the revised Business Plan as presented at todays meeting.
- 1.4 Since adoption two FDC owned sites have been identified for FFL to focus on and bring forward proposals for development.
- 1.5 Consultant teams have been procured in-line with FDC procurement rules and a series of technical reports have been commissioned to support outline planning applications for these sites.
- 1.6 Endorsing the loan agreement allows FFL to deliver the Business Plan.

2 REASONS FOR RECOMMENDATIONS

- 2.1 Endorsing the FFL Loan agreement will enable FFL to progress and meet its business plan objectives.
- 2.2 The Business Plan sets out the priority projects, financing needed and an agreed set of project parameters.

3 CONSULTATION

- 3.1 The Loan Agreement has been agreed by the FFL Board following legal input from their advisors. FDC advisors drafted the Loan Agreement.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 To deliver this strategy it was always the intention for the Council to provide the initial start up funding.

5 IMPLICATIONS

5.1 Legal Implications

- 5.1.1 Paragraph 3.2.3(c) of Part 3, Table 3 of Fenland District Council's Constitution delegates authority to the Investment Board to determine the amount and any terms of any loans required for the delivery of proposals approved in accordance with Parts 2 and 3 of the Corporate Investment Strategy.

5.2 Financial Implications

- 5.2.1 The financial implications have been fully included in the Council's budget including the Service Level Recharges and Loan Interest repayments. There is of course a risk to the Council in that should FFL fail to deliver its Business Plan then the Council's budget could be negatively impacted by between £0-£300k in 2022-23.

5.3 Equality Implications

- 5.3.1 N/A

5.4 [Any Other Relevant Implications]

- 5.4.1 As outlined in the Business Plan, two priority projects are identified as FFL's focus for the next year.
- 5.4.2 Both schemes are being prepared for outline planning applications to be submitted, as previously approved, by FFL on land owned by FDC.
- 5.4.3 Project budgets form a key part of the revised Business Plan and all consultants have been or will be appointed within the FFL approved Procurement Rules.
- 5.4.4 Subject to the Scheme Update Report tabled at this meeting, a recommendation to progress the process of legal transfer of the priority sites is being proposed.
- 5.4.5 To enable FFL to deliver all of above an approved funding arrangement is vital.

6 SCHEDULES

- 6.1 Schedule 1 - Draft Loan Agreement

FENLAND DISTRICT COUNCIL

and

FENLAND FUTURE LIMITED

Facility Agreement

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THIS AGREEMENT is dated

2022

BETWEEN

- (1) FENLAND DISTRICT COUNCIL of Fenland Hall, County Road, March, Cambridgeshire, United Kingdom, PE15 8NQ (the **Lender**); and
- (2) FENLAND FUTURE LIMITED incorporated and registered in England and Wales with company number 12659496 whose registered office is at FENLAND DISTRICT COUNCIL of Fenland Hall, County Road, March, Cambridgeshire, United Kingdom, PE15 8NQ (the **Borrower**).

BACKGROUND

- (A) The Lender has agreed to provide the Borrower with a total term loan facility of £25,000,000.00 from the Lender's investment strategy reserve to be used exclusively for the purpose of implementing the Borrower's Business Plan and subject to the Lender's internal approvals processes.
- (B) The Borrower intends to request a first drawdown from the loan facility in the sum of £10,001.00 to be used by the Borrower in respect of its initial funding requirements as set out in the Borrower's Business Plan. This sum comprises £1 for share capital and up to a further £10,000.00 in respect of set up and operational costs.

IT IS HEREBY AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this Agreement.

Affiliate in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company.

Availability Period five years from the date of this Agreement or as extended in accordance with clause 2.2.

Borrowed Money any Indebtedness for or in respect of:
(a) borrowing or raising money, including any premium

- and any capitalised interest on that money;
- (b) any bond, note, loan stock, debenture, commercial paper or similar instrument;
 - (c) any acceptance credit facility or dematerialised equivalent or bill-discounting, note purchase or documentary credit facilities;
 - (d) monies raised by selling, assigning or discounting receivables or other financial assets on terms that recourse may be had to the Borrower in the event of non-payment of such receivables or financial assets when due;
 - (e) any deferred payments for assets or services acquired, other than trade credit that is given in the ordinary course of trade and which does not involve any deferred payment of any amount for more than 60 days;
 - (f) any rental or hire charges under any Finance Leases (whether for land, machinery, equipment or otherwise);
 - (g) any counter-indemnity obligation in respect of any guarantee, bond, standby letter of credit or other instrument issued by a third party in connection with the Borrower's performance of a contract;
 - (h) any other transaction that has the commercial effect of borrowing (including any forward sale or purchase agreement and any liabilities which are not shown as borrowed money on the Borrower's balance sheet because they are contingent, conditional or otherwise);
 - (i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in

any rate or price (and when calculating the value of any derivative transaction, only the marked to market value shall be taken into account); and

- (j) any guarantee, counter-indemnity or other assurance against financial loss that the Borrower has given for any Indebtedness of the type referred to in paragraphs (a) to (i) of this definition incurred by any person.

When calculating Borrowed Money, no liability shall be taken into account more than once.

Business Day

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

Business Plan

The business plan produced or amended by the Borrower at least annually and accepted by the Lender's Investment Board in accordance with the Lender's constitutional governance processes.

Cashflow

in respect of any relevant period, PBIT for that period, adjusted as follows:

- (a) adding back depreciation charged on fixed assets;
- (b) adding back any other non-cash charges and deducting any other non-cash income to the extent that these are already taken into account in PBIT;
- (c) deducting any profit, or adding back any loss, from the disposal of fixed assets, to the extent that this is already taken into account in PBIT;
- (d) adding any increase, or deducting any decrease in Current Liabilities;
- (e) adding any decrease, or deducting any increase in Current Assets;
- (f) adding the proceeds of the disposal of any fixed assets;

- (g) adding any Tax rebate payments received;
 - (h) deducting Tax paid or due and payable;
 - (i) deducting all capital expenditure amounts paid, excluding those amounts funded under Finance Leases;
 - (j) deducting any amount spent on buying share capital in any third party;
 - (k) deducting all amounts paid towards any loans made to any third party;
 - (l) deducting any exceptional or extraordinary expenditure and adding any exceptional or extraordinary receipts; and
 - (m) adding the proceeds of any subscription for shares or other subordinated loan capital in the capital of, or issued by, the Borrower to the extent that such proceeds are received in cash by the Borrower in the relevant period,
- but without double counting in any case.

Change of Control a situation where:
any person, or group of connected persons not having control (as defined in sections 450 and 451 of the Corporation Tax Act 2010) of the Borrower on the date of this Agreement acquires control of the Borrower.

Commitment the principal amount of the Facility set out in *clause 2*, to the extent not cancelled or reduced under this Agreement.

Compliance Certificate a certificate substantially in the form set out in *Schedule 3*.

Confidential Information all information relating to the Borrower, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as Lender, which is received by the

Lender from the Borrower (or any of the Borrower's advisers) in whatever form, but excluding any information:

- (a) that is or becomes public information other than as a direct or indirect result of any breach by the Lender of *clause 20*;
- (b) is identified in writing by the Borrower (or any of the Borrower's advisers) at the time of delivery as non-confidential; or
- (c) is known to the Lender before it is disclosed to the Lender by the Borrower (or any of the Borrower's advisers) or is lawfully obtained by the Lender from another source, in either case, through no breach of confidentiality of which the Lender is or becomes aware.

Confidentiality Undertaking a confidentiality undertaking in the form agreed by the Borrower and the Lender.

Current Assets the total value, at any time, of the assets that are treated as current assets under GAAP.

Current Liabilities the total value, at any time, of the liabilities that are treated as current liabilities under GAAP.

Debenture the debenture in the agreed form executed, or required by the Lender to be executed at any time during the Availability Period , by the Borrower.

Disruption Event either or both of:

- (a) an event (not caused by, and outside the control of, either party) that materially disrupts the systems for payment or communication or the financial markets needed, in each case, to enable either payment to be made or transactions to be carried out under the Finance Documents; or
- (b) any other event (not caused by, and outside the

control of, the party whose operations are disrupted), that results in disruption (of a technical or systems-related nature) to the treasury or payments operations of a party and which prevents either or both parties from (i) performing its payment obligations under the Finance Documents, or (ii) communicating with the other party as required by the terms of the Finance Documents.

| | |
|--------------------------|---|
| Drawdown Date | the date on which a Loan is made, or is to be made. |
| Drawdown Request | a drawdown request, substantially in the form set out in <i>Schedule 2</i> . |
| Event of Default | any event or circumstance listed in <i>clause 18.1</i> to <i>clause 18.12</i> . |
| Exceptional Items | any exceptional, one-off, non-recurring or extraordinary items. |
| Facility | the term loan facility made available under this Agreement. |
| Finance Document | this Agreement, any Drawdown Request, the Debenture and any other document designated as such by the Lender and the Borrower. |
| Finance Lease | any lease, hire agreement, credit-sale agreement, hire-purchase agreement, conditional sale agreement or instalment sale and purchase agreement relating to land, machinery, equipment or any other asset which should be treated as, or in the same way as, a finance or capital lease under GAAP. |
| GAAP | generally accepted accounting principles in the United Kingdom including IFRS. |
| IFRS | international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements. |

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| Increased Costs | any: <ul style="list-style-type: none"> (a) reduction in the rate of return from the Facility or on the Lender's (or its Affiliates') overall capital; (b) additional or increased cost; or (c) reduction of any amount due and payable under any Finance Document, which is incurred or suffered by the Lender or any of its Affiliates that is attributable to the Lender having entered into the Commitment or funding or performing its obligations under any Finance Document. |
| Indebtedness | any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint and any guarantee or indemnity of any of those obligations. |
| Interest on Borrowed Money | for any relevant period, the combined total of all: <ul style="list-style-type: none"> (a) interest; (b) amounts in the nature of interest; (c) commitment, commission, guarantee fees, other fees and discounts other than those expressly stated to be arrangement fees charged under <i>clause 10.1</i> during that period; (d) interest elements of payments in respect of Finance Leases incurred, paid or accrued in respect of Borrowed Money during that period. |
| Interest Payment Date(s) | the last day of each month during the Interest Period. |
| Interest Period | for any Loan, the period determined in accordance with <i>clause 6</i> and, for any Unpaid Amount, the period determined in accordance with <i>clause 7.1</i> . |
| ITA 2007 | the Income Tax Act 2007. |
| Loan | a loan made or to be made by the Lender to the Borrower under this Agreement or the principal amount outstanding |

for the time being of that loan.

Material Adverse Effect any event or circumstance which, in the reasonable opinion of the Lender:

- (a) is likely to materially and adversely affect the Borrower's ability to perform or otherwise comply with all or any of its obligations under the Finance Documents;
- (b) is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
- (c) is likely to result in any Finance Document not being legal, valid and binding on, and enforceable in accordance with its terms against, the Borrower and, in the case of the Debenture, not providing to the Lender security over the assets expressed to be subject to a security interest under the Debenture.

Original Financial Statements the latest available audited financial statements and Cashflow projections of the Borrower delivered under paragraph 3 of Schedule 1.

PBIT for any relevant period, the operating profit of the Borrower before taxation:

- (a) before taking into account any Exceptional Items;
- (b) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether or not paid, payable or capitalised in respect of that relevant period;
- (c) not including any accrued interest owing to the Borrower; and
- (d) excluding any gain (or loss) from the revaluation of any assets (other than on the sale or other disposal

of trading stock and work-in-progress) for that period, calculated on a consolidated basis under applicable accounting principles (except as required to reflect the express inclusion or exclusion of items as specified in this definition), and] determined from the financial statements for that period, adjusted by:

- (e) adding back any amount attributable to the depreciation of fixed assets (excluding any additional depreciation arising from the write-up of the book value of assets);
- (f) adding back any amount attributable to amortising goodwill or any other intangible assets;
- (g) excluding provisions (other than provisions for stock and trade debtors) made before the date of this Agreement which have been subsequently written back; and
- (h) before taking into account earnings or losses of the Borrower attributable to minority interests.

Permitted Security any Security arising under:

- (a) the Debenture;
- (b) any liens arising by operation of law and in the ordinary course of the Borrower's business and not as a result of any default or omission by the Borrower;
- (c) any normal title retention arrangements included in a supplier's standard conditions of supply of goods acquired by the Borrower in the ordinary course of trade;
- (d) any netting or set-off arrangement entered into by the Borrower in the ordinary course of its banking arrangements for the purpose of netting debit and

credit balances; and

(e) Security created or outstanding with the Lender's prior written consent.

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|-----------------------------------|--|
| Potential Event of Default | any event or circumstance specified in <i>clause 18.1 to clause 18.12</i> which would, on the giving of notice, expiry of any grace period, making of any determination under the Finance Documents or satisfaction of any other condition (or any combination thereof), become an Event of Default. |
| Repayment Date | the date agreed by the parties in advance of a Drawdown Request for the repayment of a Loan or as extended in accordance with clause 6.2.2 or reduced in accordance with clause 6.2.4. |
| 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 United Kingdom. |
| Tax | any tax, levy, impost, duty or other charge, fee, deduction or withholding of a similar nature (including any penalty or interest payable in connection with the failure to pay, or delay in paying, any of these). |
| Tax Credit | a credit against, relief or remission for, or repayment of, any Tax. |
| Tax Deduction | a deduction or withholding for, or on account of, Tax from a payment under a Finance Document. |
| Tax Payment | either the increase in a payment the Borrower makes to the Lender under <i>clause 11.1</i> or a payment under <i>clause 11.2</i> . |
| Total Interest | for any relevant period, Interest on Borrowed Money payable by the Borrower, less all interest accrued, due to |

or received by the Borrower during that period.

Unpaid Amount any sum or amount which is not paid on its due date by the Borrower under this Agreement or any other Finance Document.

VAT value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 Interpretation

In this Agreement:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.2.2 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);
- 1.2.3 a reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;
- 1.2.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.6 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Agreement shall be binding on,

- and ensure to the benefit of, the parties to this Agreement and their respective successors, permitted assigns and permitted transferees;
- 1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.8 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.9 a reference to a time of day is to London time;
- 1.2.10 a reference to **writing** or **written** includes email;
- 1.2.11 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.12 a reference to a Finance Document (or any provision of it) or to any other agreement or document referred to in any Finance Document is a reference to that Finance Document, 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;
- 1.2.13 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;
- 1.2.14 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;
- 1.2.15 a reference to **directly** or **indirectly** means (without limitation) either alone or jointly with any other person, whether on his own account or in partnership with another (or others) as the holder of any interest in or as officer, employee or agent of or consultant to any other person;
- 1.2.16 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;

- 1.2.17 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.18 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.19 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisisation, registration and resolution;
- 1.2.20 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;
- 1.2.21 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been waived;
- 1.2.22 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it;
- 1.2.23 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);
- 1.2.24 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; and
- 1.2.25 any accounting terms that are not specifically defined in this Agreement shall be construed in accordance with GAAP.

1.3 Schedules

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. AVAILABILITY PERIOD AND FACILITY

2.1 During the Availability Period the Lender shall review the operation and use of the Agreement every 6 months and report to the Lender's Investment Board.

2.2 The term of the Availability Period may be extended by the Lender by such period or periods as the Lender may determine up to a maximum of 5 years.

2.3

The Lender grants to the Borrower a secured Sterling term loan facility of a total principal amount not exceeding £25,000,000.00 on the terms, and subject to the conditions, of this Agreement.

3. PURPOSE

3.1 Purpose

The Borrower shall use all monies borrowed by it under this Agreement exclusively for the purpose of implementing the Business Plan.

3.2 Monitoring

The Lender is not obliged to monitor or verify how any amount borrowed under this Agreement is used.

4. CONDITIONS PRECEDENT

4.1 Initial conditions precedent

The Borrower may not deliver a Drawdown Request unless the Lender has received all the documents and evidence specified in Schedule 1 in a form and substance satisfactory to the Lender.

4.2 Further conditions precedent

The Lender's obligation to make a Loan is subject to the further conditions precedent that, on both the date of the Drawdown Request and the Drawdown Date:

4.2.1 the representations and warranties are true and correct and will be true and correct immediately after the Lender has made the proposed Loan;
and

4.2.2 no Event of Default or Potential Event of Default is continuing or might result from the proposed Loan.

4.3 Waiver

The conditions specified in this clause 4 are inserted solely for the Lender's benefit. The Lender may waive them, in whole or in part and with or without conditions, without prejudicing the Lender's right to require subsequent fulfilment of such conditions.

5. DRAWDOWN

5.1 Number of Loans

The Borrower may utilise the Facility during the Availability Period in one or more Loans.

5.2 Delivery of a Drawdown Request

The Borrower may request a Loan by delivering a completed Drawdown Request to the Lender by not later than 10.00 a.m. on the Business Day before the proposed Drawdown Date (or such shorter time as agreed by the parties).

5.3 Completion of a Drawdown Request

A Drawdown Request:

5.3.1 may only specify a single Loan;

5.3.2 shall only be regarded as having been completed if:

5.3.2.1 the requested Drawdown Date is a Business Day before the end of the Availability Period;

and

5.3.2.2 the proposed Interest Period complies with *clause 6*; and

5.3.2.3

once it has been delivered, is irrevocable.

5.4 Drawdown Timescales

The Borrower shall in respect of the Drawdown Request for a Loan made in clause 5.2 provide such evidence as the Lender may reasonably require to satisfy itself that the Loan should be made.

5.5 Cancellation of unused Facility

If any amount of the Facility is not drawn during the Availability Period, that undrawn amount shall be cancelled automatically at the end of the Availability Period.

6. INTEREST

6.1 Calculation and Payment of interest

- 6.1.1 Subject to clause 6.2 the rate of interest on a Loan for the Interest Period is 6% above the Bank of England base rate from time to time.
- 6.1.2 On any second and subsequent Drawdown Request the rate of interest on a Loan shall be agreed by the parties in advance in accordance with prevailing economic conditions.
- 6.1.3 The Borrower shall pay accrued interest on a Loan on the Interest Payment Dates for the Interest Period applicable to that Loan.

6.2 Length of Interest Period

- 6.2.1 Subject to the provisions of this clause 6.2 the length of an Interest Period shall be from the Drawdown Date of a Loan to a date agreed by the parties in advance.
- 6.2.2 Not less than 6 months before the end of an Interest Period, the Borrower may request that the Lender extend the Repayment Date. Such request should be made in writing and the Lender shall respond in writing within 28 days of receipt of such request. If the Lender approves the request, then the relevant Interest Period shall also be extended to the later Repayment Date and subject to this clause 6.2.2 and clause 6.2.3 the terms of this Agreement shall remain in full force and effect.
- 6.2.3 If the Lender approves the Borrower's request in accordance with clause 6.2.2 then the rate of interest on the Loan for the Interest Period from the date of such approval shall be the percentage rate per annum which shall be determined by the Lender and notified to the Borrower within 28 days of receipt of the Borrower's request.
- 6.2.4 The Borrower may request an earlier Repayment Date and such earlier Repayment Date shall be the end of a financial year. Such request should be made in writing and the Lender shall respond in writing within 28 days of receipt of such request. If the Lender approves the request, then the relevant Interest Period shall also be brought forward to the earlier

Repayment Date and subject to this clause 6.2.4 and clause 6.2.5 the terms of this Agreement shall remain in full force and effect.

6.2.5 If the Lender approves the Borrower's request in accordance with clause 6.2.4 then the rate of interest on the Loan for the Interest Period from the date of such approval shall be unchanged.

6.3 Commencement date of Interest Period

The Interest Period for a Loan shall start on the Drawdown Date of a Loan.

6.4 Non-Business Days

If the Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall, instead, end on:

6.4.1 the next Business Day in that calendar month, if there is one; or

6.4.2 the preceding Business Day, if there is not.

6.5 Not in use

6.6 Not in use

6.7 Confidentiality of costs of funds

The Borrower agrees to keep any rate notified to it by the Lender under clause 6.1 confidential and not disclose it to anyone without the consent of the Lender other than:

6.7.1 to an Affiliate (and any of its or its Affiliate's officers, directors, employees, professional advisers and auditors), if the person to whom the information is given is informed that it:

6.7.1.1 is confidential; and

6.7.1.2 may be price-sensitive,

except that the Borrower does not need to inform the recipient of clauses 6.7.1.1 and 6.7.1.2 above if the recipient is subject to professional obligations to maintain the confidentiality of the information;

6.7.2 to any governmental, banking, taxation or regulatory authority or similar body, or any other person to the extent that it is required to do so by any applicable law, regulation, court order or the rules of any relevant stock exchange, if the person to whom the information is given is informed that it:

6.7.2.1 is confidential; and

6.7.2.2 may be price-sensitive,

except that the Borrower does not need to inform the recipient of 6.7.2.1 and 6.7.2.2 above if it considers that it is not practicable to do so in the circumstances; and

6.7.3 to any person to whom the information is required to be disclosed in connection with, and for the purpose of, any litigation, arbitration, administrative or other investigations, proceedings or disputes, if the person to whom the information is given is informed that it:

6.7.3.1 is confidential; and

6.7.3.2 may be price-sensitive,

except that the Borrower does not need to inform the recipient of 6.7.3.1 and 6.7.3.2 above if it considers that it is not practicable to do so in the circumstances.

7. DEFAULT INTEREST

7.1 Default interest

7.1.1 If the Borrower does not pay any amount it is obliged to pay under the Finance Documents when it is due, the Borrower shall pay interest on that Unpaid Amount from time to time outstanding for the period beginning on its due date and ending on the date the Lender receives it, both before and after judgment.

7.1.2 The rate of interest applicable to the Unpaid Amount shall be the rate per annum which is 2% higher than the rate of interest under clause 6.1.

7.2 Not in use

7.3 Default interest payable on demand

Interest accrued under this *clause 7* shall be immediately payable by the Borrower on demand by the Lender and if the Borrower does not pay that interest when due, it shall be added to the Unpaid Amount and compounded at the end of the Interest Period applicable to that Unpaid Amount but will remain immediately due and payable.

8. REPAYMENT, PREPAYMENT AND CANCELLATION

8.1 Repayment of Loans

The Borrower shall repay a Loan in full on the Repayment Date.

8.2 Voluntary prepayment

8.2.1 The Borrower may make additional repayments at any time and the Lender may (at its discretion) waive any or all outstanding interest or penalties due as a result of any early repayments.

8.3 Not in use

8.4 Not in use

8.5 Illegality

8.5.1 The Lender may require the Borrower to prepay a Loan, if:

8.5.1.1 any law or regulation is introduced or changed, or there is any change in the way any court or regulatory authority interprets or applies any law or regulation which;

8.5.1.2 complying with any direction, request or requirement (whether or not having the force of law) of any monetary agency, central bank, or governmental or regulatory authority; or

8.5.1.3 any judgment, order or direction of any court, tribunal or authority binding on the Lender,

makes it unlawful for the Lender to make any Loan, or allow any Loan to remain outstanding or fund or maintain the Commitment, or allow the Commitment to remain outstanding.

8.5.2 To require prepayment under clause 8.5.1, the Lender shall give notice to the Borrower demanding prepayment and giving the date for that prepayment. The date for prepayment shall be:

8.5.2.1 the next Interest Payment Date for the Loan to be prepaid; or

8.5.2.2 if earlier, the date the Lender certifies to be the last date for payment under any law, regulation, direction, request, requirement, judgment or order specified in clause 8.5.1.

8.5.3 The Borrower shall prepay the Loan as set out in the notice, together with accrued interest on the Loan and all other sums payable under the Finance Documents.

8.5.4 The Lender's obligations to make Loans shall terminate on it giving notice under clause 8.5.2, and its Commitment shall be automatically cancelled on that date.

8.6 Change of Control

8.6.1 The Borrower shall promptly notify the Lender if:

8.6.1.1 there is a Change of Control, or

8.6.1.2 the Borrower becomes aware of circumstances that may result in a Change of Control.

8.6.2 If the Borrower notifies the Lender under clause 8.6.1, the Lender may, by not less than 90 days' notice to the Borrower, cancel the Commitment and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment will be cancelled and the Loan and amounts will become immediately due and payable.

9. PAYMENTS

9.1 Currency of account

9.1.1 Subject to satisfaction of all the applicable conditions in *clause 4*, the Lender shall pay a Loan to the Borrower in Sterling in immediately available cleared funds on the relevant Drawdown Date to, or for the account of, the Borrower as specified in the Drawdown Request.

9.1.2 Subject to clause 9.1.3, the currency of account shall be Sterling and all payments that the Borrower makes under this Agreement shall be made:

9.1.2.1 in full, without any deduction (except as allowed by clause 11.1), set-off or counterclaim; and

9.1.2.2 in immediately available cleared funds on the due date to an account which the Lender may specify to the Borrower for the purpose.

9.1.3 The Borrower shall pay costs, expenses, Taxes and the like (and any interest payable on those amounts) in the currency in which they are incurred.

9.2 Not in use

9.3 Business Days

Any payment under any Finance Document which is due to be made on a day which is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one), or the immediately preceding Business Day (if there is not). Any interest or other amount accruing on a daily basis shall be calculated accordingly.

9.4 Disruption to payment systems

If either the Lender determines, or the Borrower notifies the Lender, that a Disruption Event has occurred:

9.4.1 the Lender shall consult and agree with the Borrower the changes (if any) needed to the operation or administration of the Facility as the Lender, in its absolute discretion, deems necessary in the circumstances;

9.4.2 the Lender shall not be obliged to consult the Borrower about any such changes if in its opinion it is not practical to do so in the circumstances; and

9.4.3 any change made or agreed under this clause 9.4 shall (whether or not an event is finally determined to be a Disruption Event) be binding on the parties as an amendment of the Finance Documents notwithstanding the provisions of clause 23.

9.5 Partial payments

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 in settlement of the obligations of the Borrower in the order determined by the Lender in its absolute discretion. The provisions of this *clause 9.5* shall override any appropriation made by the Borrower.

10. FEES, CHARGES AND EXPENSES

10.1 Not in use

10.2 Not in use

10.3 Enforcement and preservation costs

The Borrower shall, on demand, pay to the Lender the amount of all costs and expenses (including legal, printing and out-of-pocket expenses) incurred by the Lender in connection with enforcing, preserving any rights under, or monitoring the provisions of, any Finance Document.

11. TAXES

11.1 Tax gross-up

11.1.1 The Borrower shall make all its payments under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.

11.1.2 Promptly on becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction), the Borrower shall notify the Lender. Similarly, the Lender shall notify the Borrower if it becomes aware that a Tax Deduction must be made on a payment payable to the Lender.

11.1.3 If the Borrower is required to make a Tax Deduction by law from any payment due under any Finance Document, the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

11.1.4 The Borrower shall make any Tax Deduction under *clause 11.1*, and any payment required in connection with that Tax Deduction, within the time allowed and for the minimum amount required by law.

11.1.5 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lender evidence reasonably satisfactory to the Lender that either the Tax Deduction has been made or any appropriate payment paid to the relevant taxing authority (as applicable).

11.2 Tax indemnity

11.2.1 Within three Business Days of demand by the Lender, the Borrower shall pay the Lender an amount equal to the loss, liability or cost that the Lender determines that it has directly or indirectly suffered, or will directly or indirectly suffer, in relation to Tax in respect of amounts payable to it under a Finance Document.

11.2.2 *Clause 11.2.1* shall not apply to:

11.2.2.1 any Tax assessed on the Lender under the law of the jurisdiction in which the Lender is incorporated or resident for tax purposes if that Tax is imposed on, or calculated by reference to, the net income, profits or gains received or receivable (but not any sum deemed to be received or receivable) by the Lender; or

11.2.2.2 the extent that a loss, liability or cost is compensated for by an increased payment under *clause 11.1*, or would have been so compensated if *clause Error! Reference source not found.* had not applied.

11.2.3 If the Lender makes (or intends to make) a claim under *clause 11.2.1*, it shall promptly notify the Borrower of the event which has caused (or will cause) that claim.

11.3 Tax Credit

If the Borrower makes a Tax Payment and the Lender determines that:

11.3.1 a Tax Credit is attributable to an increased payment of which that Tax Payment is a part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

11.3.2 it has obtained and used that Tax Credit,

the Lender shall pay an amount to the Borrower that the Lender determines will leave the Lender (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

11.4 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify the Lender against any cost, loss or liability that the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

11.5 Value Added Tax

11.5.1 All amounts payable by the Borrower to the Lender under a Finance Document that (in whole or in part) constitute consideration for VAT purposes are deemed to be exclusive of VAT. Subject to *clause 11.5.2*, if VAT is chargeable on any supply made by the Lender to the Borrower under a Finance Document, the Borrower shall pay the Lender (in addition to, and at the same time as, paying the consideration) an amount equal to the amount of the VAT and the Lender shall promptly provide an appropriate VAT invoice to the Borrower.

11.5.2 Where a Finance Document requires the Borrower to reimburse the Lender for any costs or expenses, the Borrower shall, at the same time, reimburse and indemnify the Lender against all VAT incurred by the Lender in respect of those costs or expenses. The amount payable shall be the amount that the Lender reasonably determines is the amount that neither it, nor any other member of any group of which it is a member for VAT purposes, is entitled to recover from the relevant tax authority in respect of the VAT.

12. INCREASED COSTS

12.1 Increased costs

Subject to *clause 12.3*, within three Business Days of a demand by the Lender, the Borrower shall pay the Lender the amount of any Increased Costs incurred by the Lender as a result of:

12.1.1 the introduction of, or any change in (or in the interpretation, administration or application of), any law or regulation by any governmental or regulatory authority; or

12.1.2 compliance with any law or regulation made after the date of this Agreement.

12.2 Increased cost claims

12.2.1 If the Lender intends to make a claim under *clause 12.1*, it shall notify the Borrower of the event that will cause that claim.

12.2.2 As soon as practicable after a demand by the Borrower, the Lender shall provide a certificate confirming the amount of its Increased Costs.

12.3 Exceptions

Clause 12.1 does not apply to any Increased Cost that is:

12.3.1 due to a Tax Deduction required to be made by the Borrower by law; or

12.3.2 compensated for by *clause 11.2* or would have been so compensated if *clause 11.2.2* had not applied.

13. INDEMNITIES

13.1 Not in use

13.2 Other indemnities

The Borrower shall indemnify the Lender within three Business Days of demand against any cost, loss or liability incurred by the Lender as a result of:

13.2.1 the occurrence of any Event of Default or Potential Event of Default;

13.2.2 any prepayment of the Facility being made other than in accordance with a notice of prepayment given in accordance with the terms of this agreement;

13.2.3 a Loan not being made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender) or the Borrower purporting to revoke a Drawdown Request; or

13.2.4 the Lender receiving or recovering all or part of a Loan or Unpaid Amount other than on the last day of the Interest Period relating to that Loan or Unpaid Amount.

13.3 General indemnity provisions

13.3.1 The indemnity under *clause 13.2* shall include any interest that the Lender would have received (as determined by the Lender) if the due payment had been received on the last day of the relevant Interest Period, less:

13.3.1.1 the amount the Borrower has actually paid in respect of interest up to the date of actual payment;

13.3.1.2 the amount of interest that the Lender has received by placing the principal amount (and any interest on it) paid by the Borrower on deposit in the London Interbank Market, from the Business Day following receipt up to (and including) the last day of the relevant Interest Period.

13.3.2 Each indemnity in this Agreement:

13.3.2.1 is a separate and independent obligation from the other obligations in this Agreement;

13.3.2.2 gives rise to a separate and independent cause of action;

13.3.2.3 applies whether or not any indulgence is granted by the Lender; and

13.3.2.4 shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this Agreement, or any other judgment or order.

14. MITIGATION BY LENDER

14.1 Mitigation

If circumstances arise which would (or would on giving of notice), result in:

14.1.1 any additional amounts becoming payable under either or both of *clause 11.1* and *clause 11.2*; or

14.1.2 any amount becoming payable under *clause 12.1*; or

14.1.3 any prepayment under *clause 8.5*,

the Lender shall, in consultation with the Borrower, take such reasonable steps as may be open to it to mitigate or remove the relevant circumstance, including

(without limitation) transferring the Facility to another office, or transferring all its rights and obligations under this Agreement to another bank or financial institution.

14.2 Limitation of liability

14.2.1 The Lender does not have to take the steps set out in *clause 14.1* if it believes that taking them might have an adverse effect on its business, operations or financial condition, be contrary to its banking policies or disadvantage it in any other way.

14.2.2 Any action of the Lender under *clause 14.1* shall:

14.2.2.1 not limit the Borrower's obligations under the Finance Documents; and

14.2.2.2 be without prejudice to the terms of any of *clause 11.1* and *clause 11.2*, *clause 12.1* and *clause 8.5*.

14.2.3 The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under *clause 14.1*.

15. REPRESENTATIONS AND WARRANTIES

The Borrower makes the representations and warranties in *clause 15.1* to *clause 15.17* to the Lender on the date of this Agreement.

15.1 Due incorporation

The Borrower:

15.1.1 is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation; and

15.1.2 has the power to own its assets and carry on its business as it is being conducted.

15.2 Powers

15.2.1 The Borrower has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Finance Documents and the transactions contemplated by them.

15.2.2 No limit on its powers will be exceeded as a result of the borrowing or grant of security contemplated by the Finance Documents.

15.3 Non-contravention

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not contravene or conflict with:

- 15.3.1 the Borrower's constitutional documents;
- 15.3.2 any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- 15.3.3 any law or regulation or judicial or official order, applicable to it.

15.4 Authorisations

The Borrower has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in the Finance Documents. Any such authorisations are in full force and effect.

15.5 Binding obligations

Subject to any general principles of law limiting its obligations:

- 15.5.1 the Borrower's obligations under the Finance Documents are legal, valid, binding and enforceable; and
- 15.5.2 the Debenture creates (or, once entered into, will create):
 - 15.5.2.1 valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
 - 15.5.2.2 subject to registration under the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets expressed to be subject to security in it,

in favour of the Lender, having the priority and ranking expressed to be created by the Debenture and ranking ahead of all (if any) Security and rights of third parties except those preferred by law.

15.6 Not in use

15.7 Governing law and enforcement

The choice of English law as the governing law of each Finance Document will be recognised and enforced in its jurisdiction of incorporation and any judgment

obtained in England or Wales in relation to a Finance Document will be recognised and enforced in that jurisdiction.

15.8 Deduction of tax

No deduction for, or on account of, Tax is required from any payment that the Borrower may make under any Finance Document.

15.9 No default

15.9.1 No Event of Default and, on the date of this Agreement Potential Event of Default, is continuing or might reasonably be expected to result from the making of a Loan.

15.9.2 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 likely to have a Material Adverse Effect.

15.10 Information

The information, in written or electronic format, supplied by, or on behalf of, the Borrower to the Lender in connection with the Facility and the Finance Documents at the time it was supplied was to the best of the Borrower's knowledge:

15.10.1 complete, true and accurate in all material respects; and

15.10.2 not misleading in any material respect, nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Borrower to the Lender.

15.11 Financial statements

Each set of financial statements delivered to the Lender by the Borrower was prepared in accordance with GAAP consistently applied and gives a true and fair view of the Borrower's financial condition and operations during the relevant accounting period and was approved by the Borrower's directors in compliance with section 393 of the Companies Act 2006.

15.12 No material adverse change

There has been no material adverse change in the business, assets, financial condition, trading position or prospects of the Borrower since the date of this Agreement.

15.13 No litigation

No litigation, arbitration or administrative proceedings are taking place, pending or, to the Borrower's knowledge, threatened against it, any of its directors or any of its assets, which, if adversely determined, might reasonably be expected to have a Material Adverse Effect.

15.14 No breach of law

The Borrower has not breached any law or regulation which breach has or is likely to have a Material Adverse Effect.

15.15 Pari passu

The Borrower's payment obligations under the Finance Documents rank at least pari passu with all existing and future unsecured and unsubordinated obligations (including contingent obligations), except for those mandatorily preferred by law applying to companies generally.

15.16 Ownership of assets

The Borrower is the sole legal and beneficial owner of, and has good, valid and marketable title to, all its assets (and for the avoidance of doubt this shall include all equipment and vehicles owned by the Borrower during the Term of this Agreement) and no Security exists over its assets except for the Permitted Security.

15.17 Not in use

15.18 Repetition

The Borrower repeats the representations and warranties in this *clause 15* on:

the date of the Drawdown Request; and

15.18.1 the first day of the Interest Period,

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

16. GENERAL COVENANTS

The Borrower covenants with the Lender as set out in *clause 16.2* to *clause 16.19* and undertakes to comply with those covenants.

16.1 Continuing obligations

The covenants given by the Borrower shall remain in force from the date of this Agreement for so long as any amount remains outstanding under the Finance Documents or any Commitment is in force.

16.2 Negative pledge

16.2.1 The Borrower shall not:

16.2.1.1 create, or permit to subsist, any Security on or over any of its assets; or

16.2.1.2 sell, transfer or otherwise dispose of any of its assets on terms whereby such asset is or may be leased to or re-acquired or acquired by it; or

16.2.1.3 sell, transfer or otherwise dispose of any of its receivables on recourse terms; or

16.2.1.4 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

16.2.1.5 enter into any other preferential arrangement having a similar effect; or

16.2.1.6 fail to maintain and keep in good repair the assets in accordance with good industry practice and in accordance with any applicable manufacturer's or industry recommendations or guidance.

16.2.2 *Clause 16.2.1* shall not apply to any Security which is Permitted Security.

16.3 Disposals

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:

16.3.1 assets exchanged for other assets comparable or superior as to type, value and quality; and

16.3.2 assets whose market value is worth less than £1000.00 (or its equivalent in another currency or currencies) in any financial year

16.3.3 in accordance with its Business Plan.

16.4 Not in use

16.5 Notification of default

16.5.1 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.

16.5.2 The Borrower shall, promptly on request by the Lender, supply a certificate signed by two of its directors on its behalf certifying that no Event of Default is continuing (or, if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it).

16.6 Not in use

16.7 Ranking of obligations

The Borrower shall procure that any of its unsecured and unsubordinated obligations and liabilities under the Finance Documents rank, and will rank, at least pari passu in right and priority of payment with all its other unsecured and unsubordinated obligations and liabilities, present or future, actual or contingent, except for those obligations and liabilities mandatorily preferred by law of general application to companies.

16.8 Authorisations

The Borrower shall promptly obtain all consents and authorisations under any law or regulation (and do all that is needed to maintain them in full force and effect) to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability and admissibility in evidence of the Finance Documents in its jurisdiction of incorporation.

16.9 Compliance with law

The Borrower shall comply in all respects with all relevant laws to which it may be subject, if failure to do so would materially impair its ability to perform its obligations under the Finance Documents.

16.10 Merger

The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction.

16.11 Change of business

The Borrower shall not make any substantial change to the general nature or scope of its business as carried on at the date of this Agreement.

16.12 Financial statements

The Borrower shall supply to the Lender copies of:

16.12.1 as soon as they become available, but in any event within 90 days after the end of each of its financial years, its audited financial statements for that financial year; and

16.12.2 within 15 days after the end of each financial quarter year, management accounts for that financial quarter; and

16.12.3 monthly Cashflow projections.

16.13 Not used

16.14 Certification of financial statements

Each set of financial statements delivered to the Lender by the Borrower shall be certified by a director of the Borrower as giving a true and fair view of its financial condition as at the date at which those financial statements were drawn up.

16.15 Financial statements requirements

The Borrower shall ensure that the financial statements delivered to the Lender shall

16.15.1 be prepared using GAAP and, subject to *clause 16.16*, using accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements; and

16.15.2 present a true and fair view of the Borrower's assets, liabilities, financial position and profit or loss during the relevant accounting period; and

16.15.3 have been approved by the Borrower's directors in compliance with section 393 of the Companies Act 2006.

16.16 Change in accounting practices

16.16.1 In relation to any set of financial statements:

16.16.1.1 the Borrower shall notify the Lender if there has been a change in accounting principles, standards or practices or financial reference periods. The Borrower shall procure that its auditors

deliver to the Lender sufficient information, in form and substance as may be reasonably required by the Lender, to enable the Lender to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements; and

16.16.1.2 any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis on which the Original Financial Statements were prepared.

16.16.2 If the Borrower's financial statements are prepared at the date of this Agreement in accordance with GAAP, the Borrower may determine after the date of this Agreement that its financial statements should be prepared in accordance with IFRS but, prior to implementing that change it shall agree with the Lender, both parties acting in good faith, the amendments to be made to the provisions of this Agreement to reflect that change in accounting principles on the basis of advice received from the Borrower's auditors. To the extent practicable those amendments will be such as to ensure that the change to IFRS does not result in any material alteration in the commercial effect of the obligations in this Agreement.

16.17 Further information

The Borrower shall supply to the Lender:

16.17.1 all documents dispatched by the Borrower to its shareholders (or any class of them), or its creditors generally, at the same time as they are dispatched;

16.17.2 details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower or any of its directors as soon as it becomes aware of them, and which might, if adversely determined, have a Material Adverse Effect; and

16.17.3 promptly, any further information about the financial condition, business and operations of the Borrower that the Lender may reasonably request.

16.18 Not in use

16.19 Not in use

17. NOT IN USE

18. EVENTS OF DEFAULT

Each of the events or circumstances set out in *clause 18.1* to *clause 18.12* is an Event of Default.

18.1 Non-payment

The Borrower fails to pay any sum payable by it under any Finance Document when due, unless its failure to pay is caused solely by:

18.1.1 an administrative error or technical problem and payment is made within three Business Days of its due date; or

18.1.2 a Disruption Event and payment is made within three Business Days of its due date.

18.2 Non-compliance

The Borrower fails (other than a failure to pay or a failure referred to in *clause 18.4*) to comply with any provision of the Finance Documents or enter into the Debenture at the Lender's request and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of:

18.2.1 the Lender notifying the Borrower of the default and the remedy required; and

18.2.2 the Borrower becoming aware of the default.

18.3 Misrepresentation

Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, the Finance Documents is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made.

18.4 Not used

18.5 Cessation of business

The Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

18.6 Cross-default

18.6.1 Subject to *clause*

18.6.1.1 any Borrowed Money is not paid when due nor within any originally applicable grace period;

18.6.1.2 any Borrowed Money becomes due, or capable of being declared due and payable, prior to its stated maturity by reason of an event of default (howsoever described);

18.6.1.3 any commitment for any Borrowed Money is cancelled or suspended by a creditor of the Borrower by reason of an event of default (howsoever described); or

18.6.1.4 any creditor of the Borrower becomes entitled to declare any Borrowed Money due and payable prior to its stated maturity by reason of an event of default (howsoever described).

18.7 Insolvency

18.7.1 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.

18.7.2 The Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors (excluding the Lender) with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties).

18.7.3 A moratorium is declared in respect of any Indebtedness of the Borrower.

18.7.4 Any action, proceedings, procedure or step is taken in relation to:

18.7.4.1 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; or

18.7.4.2 a composition, compromise, assignment or arrangement with any creditor of the Borrower; or

18.7.4.3 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.

18.7.5 The value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities).

18.7.6 Any event occurs in relation to the Borrower that is analogous to those set out in *clause 18.7.1* to *clause 18.7.5* (inclusive) in any jurisdiction.

18.7.7 *Clause 18.7.4* shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised. The ending of any moratorium referred to in *clause 18.7.3* shall not remedy any Event of Default caused by that moratorium.

18.8 Creditors' process

A distress, attachment, execution, expropriation, sequestration or other analogous legal process is levied, enforced or sued out on, or against, the Borrower's assets and is not discharged or stayed within 21 days.

18.9 Enforcement of security

Any Security on or over the assets of the Borrower becomes enforceable.

18.10 Illegality

All or any part of any Finance Document becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.

18.11 Repudiation

The Borrower repudiates or evidences an intention to repudiate the Finance Documents or any of them.

18.12 Material adverse change

Any event occurs (or circumstances exist) which, in the opinion of the Lender, has or is likely to have a Material Adverse Effect.

18.13 Acceleration

On and at any time after the occurrence of an Event of Default, the Lender may:

18.13.1 by notice to the Borrower:

18.13.1.1 cancel the outstanding Commitment whereupon it shall immediately be cancelled; and/or

18.13.1.2 declare that the Loan, 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; and/or

18.13.1.3 declare that the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Lender; and/or

18.13.2 exercise any or all of its rights, remedies, powers or discretions under the Debenture.

19. ASSIGNMENT AND TRANSFER

19.1 Assignment and transfer by the Lender

The Lender may, subject to *clause 19.2.1* and *clause Error! Reference source not found.*:

19.1.1 assign any of its rights under the Finance Documents; or

19.1.2 transfer all of its rights or obligations by novation, to a bank or financial institution.

19.2 Conditions of assignment or transfer

19.2.1 If:

19.2.1.1 the Lender assigns any of its rights or transfers all of its rights or obligations under the Finance Documents; and

19.2.1.2 as a result of circumstances existing at the date of the assignment or transfer, the Borrower would be obliged to make a payment to any assignee or transferee under *clause 11.1, clause 11.2 or clause 12.1,*

then such assignee or transferee is only entitled to receive those payments to the same extent that the Lender would have been so entitled if the assignment or transfer had not occurred.

19.3 Lender's right to charge, assign or create security over rights

19.3.1 In addition to the other rights provided to the Lender under this *clause 19*, the Lender may at any time and without the Borrower's consent, charge, assign or otherwise create Security in or over all or any of its rights under any Finance Document to secure its obligations, including any charge, assignment or other Security to secure obligations to a federal reserve or central bank, except that no such charge, assignment or Security shall:

19.3.1.1 release the Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

19.3.1.2 require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the Lender under the Finance Documents.

19.4 Not in use

19.5 Assignment or transfer by the Borrower

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

20. CONFIDENTIAL INFORMATION

20.1 Confidentiality

The Lender agrees to keep all Confidential Information confidential and not disclose it to anyone other than in accordance with *clause 20.2*.

20.2 Disclosure of confidential information

The Lender may disclose:

20.2.1 to an Affiliate (and any of its or its Affiliate's officers, directors, employees, professional advisers and auditors), in addition to any publicly available information, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given is informed that it:

20.2.1.1 is confidential; and

- 20.2.1.2 may be price-sensitive,
except that the Lender does not need to inform the recipient of (i) and (ii) above, if the recipient is subject to professional obligations to maintain the confidentiality of the information;
- 20.2.2 to any actual or potential assignee or transferee of its rights or obligations under this Agreement (and any of their professional advisers), in addition to any publicly available information, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given has entered into a Confidentiality Undertaking, except that there shall be no requirement for a Confidentiality Undertaking if the recipient is subject to professional obligations to maintain the confidentiality of the information;
- 20.2.3 to any person with (or through) whom it enters into (or may enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, this Agreement and/or the Borrower (and any of their professional advisers), in addition to any publicly available information, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given has entered into a Confidentiality Undertaking, except that there shall be no requirement for a Confidentiality Undertaking if the recipient is subject to professional obligations to maintain the confidentiality of the information;
- 20.2.4 to any governmental, banking, taxation or regulatory authority or similar body, or any other person to the extent that it is required to do so by any applicable law, regulation, court order or the rules of any relevant stock exchange, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given is informed that it:
 - 20.2.4.1 is confidential; and
 - 20.2.4.2 may be price-sensitive,

except that the Lender does not need to inform the person of 20.2.4.1 and 20.2.4.2 above, if it considers it is not practicable to do so in the circumstances;

20.2.5 to any person to whom information is required to be disclosed in connection with, and for the purpose of, any litigation, arbitration, administrative or other investigations, proceedings or disputes, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given is informed that it:

20.2.5.1 is confidential; and

20.2.5.2 may be price-sensitive,

except that the Lender does not need to inform the person of 20.2.5.1 and 20.2.5.2 above, if it considers it is not practicable to do so in the circumstances;

20.3 Entire agreement

This *clause 20* constitutes the entire agreement between the parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement regarding Confidential Information.

20.4 Continuing obligations

The obligations in this *clause 20* are continuing and will remain binding on the Lender for a period of 12 months from the earlier of:

20.4.1 the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

20.4.2 the date on which the Lender ceases to be the Lender.

21. SET-OFF

21.1 Lender may set-off

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. If the liabilities to be set off are expressed in different

currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this *clause 21.1* shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

21.2 No obligation to set-off

The Lender is not obliged to exercise its rights under *clause 21.1*, but if the rights are exercised, the Lender shall promptly notify the Borrower of the set-off that has been made.

22. CALCULATIONS AND CERTIFICATES

22.1 Accounts

The Lender shall maintain accounts evidencing the amounts owed to it by the Borrower, in accordance with its usual practice. Entries in those accounts shall be prima facie evidence of the existence and amount of the Borrower's obligations as recorded in them.

22.2 Certificates and determinations

If the Lender issues any certificate, determination or notification of a rate or any amount payable under this Agreement, it shall be (in the absence of manifest error) conclusive evidence of the matter to which it relates.

22.3 Day count convention

Any interest, commission or fee shall accrue on a day-to-day basis, calculated according to the actual number of days elapsed and a year of 365 days.

23. AMENDMENTS, WAIVERS AND CONSENTS

23.1 Amendments

No amendment of any Finance Document shall be effective unless it is in writing and signed by, or on behalf of, each party to it (or its authorised representative).

23.2 Waivers and consents

23.2.1 A waiver of any right or remedy under any Finance Document or by law, or any consent given under any Finance Document, 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.

23.2.2 A failure or delay by a party to exercise any right or remedy provided under any Finance Document 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 any Finance Document. No single or partial exercise of any right or remedy provided under any Finance Document or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm any Finance Document by the Lender shall be effective unless it is in writing.

23.3 Rights and remedies

The rights and remedies provided under each Finance Document are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

24. SEVERANCE

24.1 Severance

If any provision (or part of a provision) of any Finance Document 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 the relevant Finance Document.

25. COUNTERPARTS

25.1 Counterparts

25.1.1 Each Finance Document 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.

25.1.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by or email (in PDF, JPEG or

other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

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

26. THIRD PARTY RIGHTS

26.1 Third party rights

26.1.1 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.

26.1.2 The rights of the parties to rescind or agree any amendment or waiver under this Agreement are not subject to the consent of any other person.

27. NOTICES

27.1 Delivery

Any notice or other communication given to a party under or in connection with any Finance Document shall be:

27.1.1 in writing;

27.1.2 delivered by hand by pre-paid first-class post or other next working day delivery service or sent by email; and

sent to that party's address above or to any other address as is notified in writing by one party to the other from time to time.

27.2 Receipt by Borrower

Any notice or other communication that the Lender gives to the Borrower under or in connection with any Finance Document shall be deemed to have been received:

27.2.1 if delivered by hand, at the time it is left at the relevant address;

27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

27.2.3 if sent by email, the next day.

A notice or other communication given as described in *clause 27.2.1* or *clause 0* 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.

27.3 Receipt by the Lender

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

27.4 Not in use

28. GOVERNING LAW AND JURISDICTION

28.1 Governing law

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

28.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) that arises out of or in connection with this Agreement or its subject matter or formation. 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.

SCHEDULE 1

Conditions precedent

1. CONDITIONS PRECEDENT

- 1.1 A copy of the constitutional documents of the Borrower.
- 1.2 A copy of the resolutions duly passed by the Borrower's board of directors:
 - 1.2.1 approving the entry into, terms of and transactions contemplated by the Finance Documents and resolving that it execute, deliver and perform the Finance Documents;
 - 1.2.2 authorising a specified person or persons to execute the Finance Documents on its behalf, to give all notices (including any Drawdown Request) and take all other action in connection with the Finance Documents; and
 - 1.2.3 confirming that entry into the relevant Finance Document is in the commercial interests of the Borrower (stating the reasons for such conclusion).
- 1.3 A sample of the signature of each person authorised by the resolutions referred to in paragraph 1.2 of this Schedule 1.
- 1.4 A certificate, signed by a director of the Borrower, confirming that borrowing or granting security in respect of the Commitment would not mean any borrowing, security or similar limit binding on the Borrower would be exceeded.
- 1.5 A certificate of a director of the Borrower, certifying that each copy document relating to it that it has provided is correct, complete and in full force and effect at a date no earlier than the date of this Agreement.

2. FINANCE DOCUMENTS

- 2.1 This Agreement, duly executed by the Borrower.
- 2.2 If required by the Lender, the Debenture, duly executed by the Borrower.
- 2.3 Each notice required to be sent under the Debenture substantially in the form set out in the Debenture.
- 2.4 An acknowledgement from each of the recipients to the notice referred to in paragraph 2.3 of this Schedule 1 substantially in the relevant form set out in the Debenture.

2.5 All other documents of title to be provided under the Debenture.

3. FINANCIAL INFORMATION

3.1 A copy of the Borrower's latest available audited financial statements and Cashflow projections.

3.2 A pro forma opening balance sheet of the Borrower at the Drawdown Date.

3.3 Copies of bank mandates for the Borrower's bank accounts.

3.4 The Business Plan.

4. OTHER DOCUMENTS AND EVIDENCE

4.1 A copy of any Authorisation, document, opinion or assurance which the Lender considers necessary or desirable in connection with the entry into, and performance of, the transactions contemplated by the Finance Documents, or for the Finance Documents to be valid and enforceable.

SCHEDULE 2

Form of Drawdown Request

To: The Lender

Attention: [NAME] Department

Date: [DATE]

[NAME OF BORROWER]

£[AMOUNT] Facility Agreement dated [DATE] between [PARTIES] (Facility Agreement)

We refer to the Facility Agreement. This is a Drawdown Request. Words and expressions defined in the Facility Agreement have the same meaning in this Drawdown Request unless given a different meaning in this Drawdown Request.

We give you notice that we wish to draw down the following Loan on [DATE]:

Amount: £[AMOUNT]

Drawdown Date: [DATE]

Interest Period: [INSERT DETAILS].

The Loan is to be made available by credit to [ACCOUNT DETAILS].

We confirm that, on today's date and the proposed Drawdown Date:

1. The representations and warranties are true and correct [in all material respects], and will be true and correct [in all material respects] immediately after the proposed Loan.
2. No Event of Default or Potential Event of Default is continuing or would result from the proposed Loan.

This Drawdown Request is irrevocable.

.....

For and on behalf of

[NAME OF BORROWER]

SCHEDULE 3

Form of Compliance Certificate

From: [NAME OF BORROWER]

[ADDRESS]

To: [NAME OF LENDER]

[ADDRESS]

Date: [DATE]

Dear Sirs

[NAME OF BORROWER]

£[AMOUNT] Facility Agreement dated [DATE] between [PARTIES] (Facility Agreement)

1. We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We certify that the financial statements of the Borrower as at [DATE] [enclosed with this Compliance Certificate] give a true and fair view of its financial condition as at that date.
3. We confirm that [no Event of Default is continuing **OR** the Borrower is in default pursuant to [NUMBER] of *clause 18* and has [EXPLAIN STEPS TAKEN TO REMEDY DEFAULT]].

Signed by [NAME OF DIRECTOR].....

For and on behalf of [NAME OF BORROWER] Director

[Signed by [NAME OF DIRECTOR]].....

[For and on behalf of [NAME OF BORROWER]][Director]

IN WITNESS WHEREOF the parties hereto have executed and delivered this document as a Deed the day and year first before written.

The **COMMON SEAL** of **FENLAND DISTRICT**)
COUNCIL hereunto affixed in the presence)
of:)


Authorised Signatory

SIGNED AND DELIVERED AS A DEED by)
FENLAND FUTURE LIMITED acting by a)
_____)

Director

Director/Company
Secretary

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| | | |
|------------------------|---|--|
| Agenda Item No: | 7 |  |
| Committee: | Investment Board | |
| Date: | 11th July 2022 | |
| Report Title: | Indemnity Agreement for Fenland Future Ltd | |

Cover sheet:

1 Purpose / Summary

- 1.1 For the Investment Board to consider the provision of an indemnity agreement to members and officers of FDC who are (or will be in the future) directors of Fenland Future Limited (FFL). The indemnity agreement provides arrangements for indemnifying those members and officers against claims made against them personally in their capacity as directors of FFL. [as per cabinet’s instructions at their meeting on 9th June 2020 and as recommended by the Investment Board].

2 Key Issues

- 2.1 The attached draft document has a strong correlation with existing cover.
- 2.2 FDC insurers believe that their wording in the policy extension already in place is “more simplified” and this is reproduced in the report for clarification purposes.
- 2.3 FFL Board noted this agreement at their Board meeting on 27th May 2022.

3 Recommendations

- 3.1 The Investment Board is asked to approve the form of indemnity agreement attached to this report.

| | |
|----------------------|--|
| Wards Affected | All |
| Forward Reference | Plan N/A |
| Portfolio Holder(s) | Cllr C. Boden Cllr I Benney Cllr S Tierney |
| Report Originator(s) | Peter Catchpole, Corporate Director and CFO Amy Brown, Head of Governance and Legal |
| Contact Officer(s) | Peter Catchpole, Corporate Director and CFO Amy Brown, Head of Governance and Legal |
| Background Papers | Indemnity Agreement as attached. |

Report:

1 BACKGROUND AND INTENDED OUTCOMES

- 1.1 FFL was incorporated in June 2020 following agreement by Full Council in January 2020 of the Commercial and Investment Strategy.
- 1.2 At the same meeting of Full Council it was noted the intention to utilise up to £25m to deliver the objectives of the strategy.
- 1.3 An initial Business Plan was prepared in-line with the articles of association by 31st January 2021 and has been subject to continued development resulting in the revised Business Plan as presented at todays meeting.
- 1.4 Since adoption two FDC owned sites have been identified for FFL to focus on and bring forward proposals for development.
- 1.5 Consultant teams have been procured in-line with FDC procurement rules and a series of technical reports have been commissioned to support outline planning applications for these sites.
- 1.6 Approving the indemnity agreement provides a level of protection to the FFL Directors in making their decisions, whilst recognising that it does not cover all circumstances e.g. deliberate wrongdoing or recklessness .

2 REASONS FOR RECOMMENDATIONS

- 2.1 Approving the FFL Indemnity agreement will ensure that members and officers are indemnified when they are performing duties on behalf of FDC, subject to certain exceptions, including those required by law.

3 CONSULTATION

- 3.1 The Indemnity Agreement has been agreed by the FFL Board following legal input from their advisors.
- 3.2 The indemnity agreement has been reviewed by the Council's insurers who believe that their wording in the policy extension already in place is "more simplified". It covers the FFL directors and the indemnity agreement requires, in any event, that the Council secures professional indemnity insurance cover.

Below is the wording from the Policy extension we currently have in place (italics)

Negligent Acts and Omissions - Indemnity to Other Persons

At Your request We will indemnify Financial Loss which Your director, member or Employee may become legally liable to pay together with Costs and Expenses in respect of any claim

against them directly arising from their actual or alleged negligent and accidental act or omission committed within the Territorial Limits in the normal execution of their duties as part of the provision of Services by the Business

Provided always that:

a) the claim is both first made against that director, member or Employee and notified to Us during the Period of Insurance;

b) You would have been entitled to indemnity under the 'Cover: Negligent Acts and Omissions' Clause of this Section had the claim been made against You, but this proviso will not apply to liability attaching to any Employee in their personal capacity which arises out of the performance by that Employee of a statutory function under the terms of a written agreement with You, under the terms of which You have agreed to provide the Employee with an indemnity

c) No indemnity will be provided to any person in respect of the consequences of their own fraud, dishonesty or criminal act

d) Any person claiming indemnity:

i. is not entitled to indemnity from any other source

ii. was at the time of the incident giving rise to the claim acting within the scope of their authority

iii. will be subject to the terms and conditions of this Policy in so far as they can apply
e) agrees to Us having the sole conduct and control of any claim and/or settlement.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Not to indemnify officers and members, which leaves them at risk of personally being responsible for awards of damages/compensation and payment of costs as a consequence of their carrying out their duties on behalf of FDC. While FDC does have insurance, as detailed above, there is no guarantee (as far as the FFL directors are concerned) that FDC will seek to call on the insurance policy or that the insurers will always make payment. It is in FDC's interests to ensure that potential FFL directors are not deterred from acting out of concern for their own personal liability.

5 IMPLICATIONS

5.1 Legal Implications

5.1.1 FDC Legal have drafted the agreement.

5.1.2 There are various specific powers to provide indemnities and insurance to local authority officers and directors. Section 101 of the Local Government Act 2000 gave the Secretary of State the power to make an Order to provide authorities with the ability to indemnify their members and officers in respect of personal liabilities incurred in connection with their service on behalf of their authority. The Order made is the Local Authorities (Indemnities for Members and Officers) Order 2004.

- 5.1.3 Article 5 provides that an indemnity may be provided in relation to any action, or failure to act, which is:
- (a) authorised by the authority or
 - (b) forms part of, or arises from, any powers conferred, or duties placed, upon a member or officer, as a consequence of any function being exercised by that member or officer
- (i) at the request of, or with the approval of the authority or
- (ii) for the purposes of the authority.
- 5.1.4 Article 5 also states that an indemnity may be given whether or not, when exercising the function in question, the member or officer does so in his capacity as a member or officer of the authority. An indemnity can therefore apply to powers or duties being exercised by members or officers when carrying out functions relating to outside bodies not connected with the Council, as long as the functions in question are being exercised at the request of, or with the approval of, the Council or for the purposes of the Council. This will apply to appointments as directors.
- 5.1.5 Article 4 of the Order provides that Council can take out insurance instead of giving an indemnity (and the Council is – in essence – doing this as well, order to mitigate its risk).
- 5.1.6 Article 6 of the Order prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing (but not the defence of) any action in defamation. An indemnity may, however, be provided in relation to the defence of criminal proceedings.
- 5.1.7 Article 7 of the Order says that an indemnity can be given in relation to actions which are beyond the powers of an authority, provided that the member or officer in question believes that the action, or failure to act, is within the powers of the authority.
- 5.1.8 Article 8 says that any potential indemnity given against the costs of defending any criminal proceedings must contain provisions for the re-payment of sums expended by the authority or the insurer if the member or officer has been convicted of a criminal offence and that conviction is not overturned following any appeal.
- 5.1.9 The indemnity agreement has been drafted to reflect the limitations set out in the Order. This means that the indemnity agreement will not cover third party claims in all circumstances. An indemnity is required to exclude specifically deliberate or reckless breaches of trust or any deliberate wrongdoing or recklessness or members or officers serving on outside bodies in their private capacities. It is usual to cover the costs in defending members and officers against criminal and civil proceedings arising from activities carried out on

behalf of the Council (and the indemnity agreement provides for this), but this is qualified so as only to apply where the member or officer has acted honestly and in good faith and not from his/her deliberate or reckless wrongdoing.

5.1.10 The Council is not required to provide an indemnity agreement of this nature but local authorities frequently do so in similar circumstances, for the reasons set out above.

5.2 Financial Implications

5.2.1 If a member or officer claims on the indemnity then there will be a financial implication. The financial implications have been fully included in the Council's budget and it is expected that claims will be uncommon. In addition (and as noted above) the Council is largely insured against such claims and so its risk have been appropriately mitigated.

5.3 Equality Implications

N/A

5.4 Any Other Relevant Implications

5.4.1 There are none.

6 SCHEDULES

6.1 Schedule 1 - Draft Indemnity agreement

Deed of Indemnity

relating to the appointment of [] as a director of Fenland Future Limited

This Deed is dated 2022

Parties

- (1) Fenland District Council of Fenland Hall, County Road, March, Cambridgeshire PE15 8NQ (the **Council**); and
- (2) [] of [] (the **Director**).

Background

- A The Council is the sole shareholder of Fenland Future Limited (the **Company**). The Council has established the Company as a trading vehicle.
- B On [date] the Council nominated the Director as a representative of the Council on the Board of Directors of the Company.
- C Under the Local Authorities (Indemnities for Members and Officers) Order 2004 the Council has the power to indemnify its members and officers and insure them where they carry on functions when acting as the Council's representatives at the Council's request.
- D The Council is exercising that power when entering into this Deed of Indemnity with the Director.

It is agreed as follows:

1 Definitions and Interpretation

1.1 In this Deed, unless the context otherwise requires, the following definitions apply:

Act means the Local Authorities (Indemnities for Members and Officers) Order 2004;

Relevant Liability means a liability falling within clause 2.1.

1.2 In this Deed (except where the context otherwise requires):

1.2.1 words in the singular include the plural and vice versa;

1.2.2 references to clauses are the clauses of this Deed;

1.2.3 the clause headings are included for ease of reference only and shall not affect the interpretation of this Deed; and

1.2.4 a reference to a statute or statutory provision includes a reference to such a statute or statutory provision as from time to time amended, re-enacted or replaced (whether before or after the date of this Deed).

2 Indemnity

2.1 Subject to the Act and the provisions of this Deed, the Council shall indemnify and keep indemnified the Director against all liabilities (other than the liability set out in clause 2.2) attaching to **him** in connection with any negligence, default, breach of duty or breach of trust by **him** as a result of **his** acts and/or omissions relating to **his** role as the Council's representative on the Board of Directors of the Company.

2.2 Clause 2.1 shall not apply to any liability directly or indirectly incurred by the Director as a result of any action by or failure to act by **him**:

2.2.1 which constitutes a criminal offence; or

2.2.2 is the result of failure to act in good faith, fraud, dishonesty, or other deliberate wrong-doing or recklessness on **his** part; or

2.2.3 in the case of proceedings under Part 3 of the Local Government Act 2000, and Part 1 of the Localism Act 2011, if the Director admits that **he** has failed to comply with the Code of Conduct, or if there is a finding in those proceedings that that the Director has failed to comply with the Code of Conduct, and that finding is not overturned following any appeal.

2.3 Notwithstanding clause 2.2, and subject to clause 2.4 and clause 3, the Council shall provide an indemnity in relation to the defence of any criminal proceedings brought against the Director and any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence provided that the Director believed that the action, or failure to act, in question was within the powers of the Company and it was reasonable for **him** to hold that belief at the time when **he** acted or failed to act.

2.4 Any indemnity payment by the Council to the Director is conditional upon:

2.4.1 the Director's compliance with clause 4; and

2.4.2 the Director promptly notifying the Council in writing to the [Monitoring Officer] that an indemnity payment is required, supported by the production of documentation which is, in the reasonable opinion of the Council, satisfactory evidence that the Relevant Liability has been incurred by the Director on the date that that the Director states it was incurred.

2.5 The obligation of the Council to indemnify the Director pursuant to clause 2.1 shall (subject to clauses 2.2, 2.4 and 4) remain in full force and effect in respect of any Relevant Liability arising from the acts or omissions of the Director at any time during **his** period of office as the Council's representative on the Board of Directors of the Company including, without limitation, any Relevant Liability arising from the Director's acts or omissions during such period but incurred after **he** ceases to hold the office set out above.

2.6 The Council shall not be required to indemnify the Director where it would be unlawful for the Council to do so.

3 Insurance

The Council shall secure in relation to this indemnity professional indemnity insurance cover for the Director which will include arranging for and paying for that insurance.

4 Conduct of Claims and Recovery

4.1 If the Director becomes aware of any circumstances which may lead to the Council being liable to make a payment or advance funds under this Deed, the Director shall:

4.1.1 as soon as practicable (but in any event within 3 days of becoming aware), give written notice to the Council's [Monitoring Officer] of such circumstances;

4.1.2 promptly keep the Council informed of any developments in relation to such circumstances and that the Council and/or their insurers have full conduct of any claims or potential claims;

4.1.3 promptly provide the Council with such information and copies of such documents as the Council may reasonably request;

4.1.4 consult the Company regarding the conduct of any claim arising in connection with such circumstances; and

4.1.5 make no admission of liability, agreement or compromise with any person in relation to any such circumstances without the prior written consent of the Council.

4.2 If the Council makes any payment under this Deed, the Council shall be subrogated to the extent of such payment to all of the Director's rights of recovery against third parties (including any claim under any applicable directors' and officers' insurance policy) in respect of the payment and the Director shall do everything that may be necessary to secure any rights including:

4.2.1 executing any documents necessary or desirable to enable the Company effectively to bring an action in the name of the Director, and

4.2.2 provide any assistance required by the Council as a witness.

4.3 If the Council makes any payment to or for the benefit of the Director under to this Deed and the Director subsequently recovers or becomes entitled to recover from a third party any amount which is referable to any part of the liability for which payment was made by the Council, the Director shall immediately repay or procure the repayment to the Council of such amount paid by the Council as does not exceed the amount recovered (or is entitled to be recovered) by the Director, less any reasonable costs and expenses incurred by the Director in making any such recovery which are not themselves recoverable from any third party.

4.4 The Director shall not be entitled to recover more than once pursuant to this Deed in respect of any matter giving rise to a Relevant Liability.

5 General

5.1 A party to this Deed may not (whether at law or in equity) assign, transfer, grant any security interest over, hold on trust or deal in any other manner with the benefit of

witness signature

name

address

occupation

| | | |
|------------------------|---|--|
| Agenda Item No: | 8 |  |
| Committee: | Investment Board | |
| Date: | 11th July 2022 | |
| Report Title: | Service Level Agreement (SLA) for Fenland Future Ltd | |

Cover sheet:

1 Purpose / Summary

- 1.1 To provide the Investment Board with a draft Service Level Agreement (SLA) covering support services recharges to formalise Fenland Future Ltd's working arrangements with Fenland District Council.

2 Key Issues

- 2.1 The draft document is attached for review and covers a range of support services provided by Fenland District Council.
- 2.2 It is initially written for a five year period with options to extend and an annual review to ensure suitability, value for money and best practise.
- 2.2 Additional services can be added where and when appropriate
- 2.3 FFL Board noted this agreement at their Board meeting on 27th May 2022.

3 Recommendations

- 3.1 The Investment Board is asked to approve the draft Service Level Agreement at Schedule 1 of this Report.

| | |
|------------------------|--|
| Wards Affected | All |
| Forward Plan Reference | N/A |
| Portfolio Holder(s) | Cllr C. Boden Cllr I Benney Cllr S Tierney |
| Report Originator(s) | Peter Catchpole, Corporate Director and CFO Amy Brown, Head of Governance and Legal |
| Contact Officer(s) | Peter Catchpole, Corporate Director and CFO Amy Brown, Head of Governance and Legal |
| Background Papers | Indemnity Agreement as attached. |

Report:

1 BACKGROUND AND INTENDED OUTCOMES

- 2.1 FFL was incorporated in June 2020 following agreement by Full Council in January 2020 of the Commercial and Investment Strategy.
- 2.2 At the same meeting of Full Council it was noted the intention to utilise up to £25m to deliver the objectives of the strategy.
- 2.3 An initial Business Plan was prepared in-line with the articles of association by 31st January 2021 and has been subject to continued development resulting in the revised Business Plan as presented at today's meeting.
- 2.4 Since adoption two FDC owned sites have been identified for FFL to focus on and bring forward proposals for development.
- 2.5 Consultant teams have been procured in-line with FFL procurement rules and a series of technical reports have been commissioned to support outline planning applications for these sites.
- 2.4 Approving the SLA endorses the working arrangements between FFL and the Council and enables them to deliver the Business Plan with resources in place. This also ensures that the Council is not subsidising FFL by providing free resource and that the charges made in exchange for their expertise can be used to ensure sufficient capacity exists within the Council. This maintains the Council's ability to ensure that each service area within the Council can deliver the objectives in the Council's own Business Plan.
- 2.5 Recharge rates are based on actual salaries including oncosts for staff and an indicative estimate for other provision such as IT etc. These costs will be reviewed annually to ensure fairness.

3 REASONS FOR RECOMMENDATIONS

- 3.1 Endorsing the FFL SLA will enable FFL to progress and meet its Business Plan objectives.
- 3.2 The Business Plan sets out the priority projects, financing needed and an agreed set of project parameters.
- 3.3 This agreement will allow the Council to fairly charge for services provided and will have a positive revenue impact on the Council's financial position.

4 CONSULTATION

- 4.1 The SLA has been agreed by the FFL Board following legal input from their advisors. FDC advisors drafted the SLA.

5 ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Employing staff directly into FFL is a future consideration.

6 IMPLICATIONS

6.1 Legal Implications

6.1.1 Paragraph 3.2.3 of Table 3, Part 3 of the Council's Constitution delegations authority to the Investment Board to:

- (c) determine the amount and terms of any investments, loans and assets required for the delivery of proposals approved in accordance with paragraphs Parts 2 and 3 of the Corporate Investment Strategy; and
- (i) oversee the relationships between the Council and the Council's companies and partnerships in accordance with the Council's objectives.

6.2 Financial Implications

6.2.1 The financial implications have been fully included in the Council's budget and are fully costed into FFL Business Plan. The impact on the Councils budget is a positive contribution of over £1m during the period of the MTFS.

6.3 Equality Implications

N/A

6.4 Any Other Relevant Implications

6.4.1 As outlined in the Business Plan, two priority projects are identified as FFL's focus for the next year.

6.4.2 Both schemes are being prepared for outline planning applications to be submitted, as previously approved, by FFL on land owned by FDC.

6.4.3 Project budgets form a key part of the revised Business Plan and all consultants have been or will be appointed within the FFL approved Procurement Rules.

6.4.4 Subject to the Scheme Update Report tabled at this meeting, a recommendation to progress the process of legal transfer of the priority sites is being proposed.

6.4.5 To enable FFL to confidently deliver all of above an approved SLA is necessary.

7 SCHEDULES

7.1 Schedule 1 - Draft Service Level Agreement.

DATED

2022

FENLAND DISTRICT COUNCIL

AND

FENLAND FUTURE LIMITED

SUPPORT SERVICES AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2022

BETWEEN:

- (1) **FENLAND DISTRICT COUNCIL** of Fenland Hall, County Road, March PE15 8NQ (the “**Council**”); and
 - (2) **FENLAND FUTURE LIMITED** company registration number 12659496 and registered office Fenland Hall, County Road, March PE15 8NQ (“**FFL**”)
- (together the “**Parties**” and each a “**Party**”).

WHEREAS:

- (A) FFL is a wholly owned commercial company established by the Council and incorporated on 10 June 2020.
- (B) The business objective of FFL is to develop and implement commercial property projects on behalf of the Council and on its own account.
- (C) To assist FFL in the delivery of those services, the Council has agreed to provide the Support Services to FFL in respect of certain administrative and technical functions more particularly set out in the Schedules.

NOW IT IS HEREBY AGREED as follows:-

1. DEFINITIONS

1.1 In this Agreement, including the recitals and the Schedules, the following words and expressions shall, unless the context requires otherwise, have the following meanings:

- “**Additional Support Services**” means such additional Support Services as the Parties may agree in accordance with the provisions of Clause 2.3;
- “**Breach**” means a breach of the terms and conditions of this Agreement;
- “**Business Day**” means any day except Saturday, Sunday and bank/public holidays;
- “**Controller**”, “**Processor**”, “**Processing**”, “**Data Subject**”, “**Personal Data**” shall each take the meaning given in the Data Protection Legislation.
- “**Data**” means any data, materials or other information which is disclosed by one Party to the other in relation to the Support Services pursuant to the terms of this Agreement;

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| "Data Protection Legislation" | shall mean all applicable data protection and privacy legislation in force from time to time in the United Kingdom (including the GDPR, the LED and the DPA 2018) and any relevant national implementing Laws and regulatory requirements, as amended from time to time, to which the Council and/or FFL are subject, relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and any related guidance or codes of practice issued by the relevant supervisory authorities.; |
| "Dispute Procedure" | The Parties shall refer disputes to their respective service directors in the first instance, and if the dispute is unresolved after 14 days thereafter, to their respective Chief Executives. If the dispute remains unresolved after a further 14 days, then either Party may terminate this Agreement in accordance with Clause 4.2. |
| "DPA 2018" | means the Data Protection Act 2018; |
| "Fees" | means the costs payable by FFL in respect of the Support Services; |
| "GDPR" | means the General Data Protection Regulation (Regulation (EU) 2016/679); |
| "Law" | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements; |
| "LED" | means the Law Enforcement Directive (Directive (EU) 2016/680); |
| "Support Services" or "Services" | means the support services to be provided by the Council to FFL as set out in the Schedules as amended from time to time in accordance with the terms of this Agreement; |
| "Support Services Specifications" | means the specifications for the Support Services as set out in the Schedules as amended from time to time in accordance with the terms of this |

Agreement;

“Term”

means a period commencing on 10 June 2020 and ending after a period of 5 years subject to any extension agreed or earlier termination in accordance with the terms of this Agreement.

1.2 In the event of any inconsistency or discrepancy between the terms of the main body of this Agreement and the terms of the Schedules the conflict or discrepancy should be resolved according to the following descending order of priority:-

1.2.1 Main body of this Agreement;

1.2.2 The Schedules.

1.3 Except where the context otherwise requires in this Agreement words denoting the singular include the plural and vice-versa, words denoting any gender include all genders and words denoting persons include firms and corporations and vice-versa.

1.4 Any reference in this Agreement to any Clause or Schedule shall mean a clause or schedule to this Agreement.

1.5 The Schedules form part of this Agreement and shall be interpreted and construed as though set out in the main body of this Agreement.

1.6 The clause headings herein are included for ease of reference only and do not form part of this Agreement.

2. SUPPORT SERVICES TO BE PROVIDED BY THE COUNCIL

2.1 The Support Services shall be provided in accordance with the Support Services Specifications set out in the Schedules.

2.2 Subject to Clause 4 and the terms of this Clause 2, the Support Services shall be provided for the Term and shall cease to be provided at the end of the Term unless the Parties agree to extend the Term in accordance with Clause 2.4.

2.3 FFL may request that the Council provide it with Additional Support Services by written request to the Council at least 1 month prior to the proposed commencement date of any such Additional Support Services and if the Council agrees to such request the Parties shall agree in writing a Support Services Specification for incorporation into this Agreement and which shall take effect on the same terms as this Agreement.

2.4 If the Parties agree to extend the Term such extension shall be in writing and shall take effect on the same terms as this Agreement.

2.5 The Council hereby agrees that if it plans to outsource any of the Support Services it will notify FFL as soon as reasonably possible and take into account any views FFL may express, however for the avoidance of doubt any such decision will be made at the Council's sole discretion.

3. PAYMENT OF FEES BY FFL AND VAT

3.1 In consideration for the provision of the Support Services by the Council, FFL shall, unless otherwise agreed in writing between the Parties, pay the Council the Fees

plus VAT per annum for the duration of the Term and during any agreed extended period.

3.2 The Fees shall be payable quarterly in arrears and shall normally be invoiced by the Council to FFL on the first Business Day of April, July, October and January FFL shall pay all such invoices in full within 30 days.

3.3 The Fees for the first three years of the Term are set out in the Schedules. Thereafter the Fees shall be reviewed annually in line with the Council's annual budget process each November or more frequently as may be set out in the Schedules.

3.4 Disputed sums may be referred by either Party for resolution by the Dispute Process.

4. TERMINATION

4.1 The provision of any or all of the Support Services may be terminated by the Council forthwith upon giving notice in writing to FFL if FFL ceases to carry on business or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.

4.2 Either Party may terminate this Agreement in whole or in part by giving to the other Party not less than 3 months written notice.

4.3 In the event of a Breach by a Party, the other Party may give written notice to the Party in Breach setting out in detail the nature and extent of the Breach, the Support Service or Services to which it relates and the actions and timescale required to remedy it.

4.4 If the Party in Breach:

4.5.1 fails to comply with the terms of the notice in clause 4.4; or

4.5.2 fails to agree with the other Party any action plan for the remedy of the Breach; or

4.5.3 fails to comply with the terms of any action plan in clause 4.4; or

4.5.4 commits a further material or persistent Breach of this Agreement;

then the Parties shall apply the Dispute Procedure, or in the absence of agreement to apply the Dispute Procedure the other Party may terminate this Agreement in respect of the relevant Support Service or Services forthwith but the Agreement shall continue in respect of any remaining Support Services.

4.5 Any termination of any of the Support Services (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

5. LIMITATIONS OF CLAIMS AND LIABILITIES

5.1 Neither Party shall be liable to the other for any indirect or consequential loss or damages of any nature whatsoever arising from negligence, breach of contract or otherwise.

5.2 Notwithstanding the provisions of Clause 5.1 neither Party excludes liability for death or personal injury to the extent that it is caused by the negligence of that Party, its employees or agents, for fraud or fraudulent misrepresentation or for a breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.

6. NOTICES

6.1 The Parties to this Agreement may only serve notice on the other Party by delivering it by hand to the other Party or sending it by first class recorded delivery post to the other Party at that Party's address set out above or such other address as the Parties may notify each other from time to time.

6.2 Every notice to the Council shall be made for the attention of the Monitoring Officer and every notice to FFL shall be made for the attention of the Chief Executive.

6.3 Every notice will be treated as served at the end of the day that it is delivered if it is delivered by hand, 2 Business Days after despatch if it is sent by first class recorded delivery post.

6.4 In proving that service has been effected it is sufficient to show that, in the case of delivery by hand that it has been signed for by the other Party, or its employee, agent or duly authorised representative, or in the case of delivery by post that the letter was properly addressed, pre-paid and posted.

7. FORCE MAJEURE

7.1 No failure or omission by either Party to carry out or observe any of the terms or conditions of this Agreement shall, except in relation to obligations to make payments hereunder and except as expressly provided to the contrary, give rise to any claim against the Party in question or be deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of that Party including, but not limited to, an act of God, national emergency, war, or any other cause beyond the reasonable control of the Parties renders performance of this Agreement impossible (a "**Force Majeure Event**").

7.2 Each Party agrees to notify the other as soon as reasonably practicable upon becoming aware of a Force Majeure Event and the Parties shall then work together in such a manner as is reasonable in the circumstances to deal with the Force Majeure Event and shall use all reasonable endeavours to mitigate any adverse effects on the provision of the Support Services and any losses arising from the Force Majeure Event and continue to perform their obligations under this Agreement notwithstanding the Force Majeure Event.

7.3 If a Party is unable to fulfil its obligations in a Force Majeure Event the obligations hereunder of such Party shall be suspended. The Party whose obligations have been suspended as aforesaid shall give notice of such suspension as soon as reasonably possible to the other Party stating the date and extent of such suspension and cause thereof. Any Party whose obligations have been suspended as aforesaid shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and shall so notify the other Party.

7.4 Each Party shall bear its own costs in rectifying a Force Majeure Event and neither Party shall be entitled to bring a claim for a breach of this Agreement or incur any liability to the other Party for any losses or damages arising from a Force Majeure Event.

7.5 Where a Force Majeure Event has a material effect on the provision of all or any significant part of the Support Services for more than 3 months then either Party shall be entitled to terminate this Agreement in relation to the part of the Support Services affected by giving not less than 3 months' prior written notice to the other.

8. WAIVER

8.1 No delay, omission or forbearance by either Party hereunder to exercise or enforce any right, power or remedy arising under or in connection with this Agreement shall operate as a waiver of that or any other right, power or remedy, and any single or partial exercise or enforcement thereof shall not preclude any other or further exercise or enforcement thereof or the exercise or enforcement of any right, power or other remedy.

8.2 A waiver of a breach of or default under any of the terms of this Agreement does not constitute a waiver of any other breach or default and shall not affect any other terms of this Agreement.

8.3 A waiver of a breach of or default under any of the terms of this Agreement will not prevent a Party from subsequently requiring compliance with the waived obligation in respect of that breach or continued default.

8.4 The rights, powers and remedies provided in this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any right, power or remedy provided by law or by any other agreement or document.

9. SEVERABILITY

9.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement.

10. ENTIRE AGREEMENT

10.1 This Agreement and all agreements entered, or to be entered into, pursuant to the terms of this Agreement or entered into between the Parties in writing and expressly referring to this Agreement, constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all previous discussions, agreements and understandings between the Parties and their agents (or any of them) and all previous representations and expressions of opinion by any Party (or its agent) to any other Party or its agent and each Party acknowledges that, in entering into this Agreement, it does not do so on the basis of, or in reliance upon, any representations, promises, undertakings, warranties or other statements (whether written or oral) in relation to the subject matter except as expressly provided in this Agreement and accordingly all conditions, warranties or other terms implied by statute or common law are, save as to fraud, hereby excluded to the fullest extent permitted by law.

11. ASSIGNMENT

11.1 Neither Party shall be permitted to assign this Agreement without the express written consent of the other Party.

12. CONFIDENTIALITY

12.1 Each Party undertakes to the other to keep secret and confidential all information (whether written, pictorial, in machine readable form or oral) and in whatever form received during the continuance of this Agreement or obtained as a result of entering into or performing this Agreement concerning the business or affairs of the other Party including without limitation:

12.1.1 the provisions of or (subject as provided in Clause 12) the subject matter of this Agreement;

12.1.2 information concerning the trade secrets, customers, suppliers or business associations of the other Party; and

12.1.3 information concerning the financial, operational, technical or commercial affairs of the other Party;

12.1.4 all of which shall be the "Confidential Information".

12.2 Each Party undertakes to the other not to use the Confidential Information of the other Party except for the purposes of this Agreement and shall not (without the prior written consent of the other Party) disclose the same to any person save to the extent necessary for the performance of this Agreement and except to the extent that such information:

12.2.1 is required to be disclosed by the law of any relevant jurisdiction;

12.2.2 is trivial or obvious;

12.2.3 is already in the public domain at the time of disclosure or thereafter shall fall into the public domain other than as a result of reach of this Clause 12;

12.2.4 is in the disclosing Party's possession (as evidenced by written records) otherwise than as a result of a breach of this Clause 12;

12.2.5 becomes known to the disclosing Party from a source other than another Party to this Agreement otherwise than as a result of a breach of this Clause 12; or

12.2.6 was disclosed after the express prior written approval of the Party to whom such information belongs

and in any event subject to the disclosing Party having notified the other Party to this Agreement in writing prior to making such disclosure.

12.3 FFL shall assist the Council in meeting any reasonable requests for information in relation to this Agreement which are made to the Council in connection with the Freedom of Information Act 2000 ("**FOIA**") or any statutory modification or re-enactment thereof or any related guidelines or codes of practice having regard to the statutory timescales and requirements and will furnish to the Council such information as the Council may reasonably require relating to such requests for information.

12.4 FFL acknowledges that in responding to requests for information described in Clause 12.3 the Council shall be entitled to provide information relating to this Agreement provided that the Council shall not, in responding to such requests for information, disclose any confidential information as defined by and which is exempted from disclosure under any provision of Part II of the FOIA.

12.5 Notwithstanding anything contained elsewhere in this Agreement, the provisions of this Clause 12 shall survive the termination or expiry of this Agreement.

13. DATA

13.1 Title in all Data disclosed by one Party to the other shall remain at all times vested in the disclosing Party and to the extent necessary for each Party to perform its obligations under this Agreement each Party shall licence Data to the other only for such period as it is performing its obligations under this Agreement. Subject to Clause 12 (Confidentiality), nothing in this Clause 13.1 shall prevent FFL from using any general learning, skills, experience or other residual knowledge retained in the unaided memory of any of their directors, employees, consultants or advisors who had access to the Data. The provisions of this Clause 13 shall survive the expiry or termination of this Agreement irrespective of the reason for termination.

13.2 FFL shall to the extent that it is entitled so to do:

13.2.1 make available to the Council without charge and at all reasonable times all Data which might reasonably be required by the Council for the purposes of exercising its rights or performing its obligations or any statutory duty; and

13.2.2 make available to the Council all such Data, materials and documents acquired or brought into existence by any third party as may reasonably be required for such purposes provided that if FFL incurs any additional cost in complying with this Clause 13.3, the Council and FFL shall meet to discuss, acting reasonably and in good faith, how such additional cost should be managed.

13.3 FFL and the Council shall each take reasonable precautions (having regard to the nature of their respective obligations under this Agreement) to preserve the integrity of Data and to prevent any corruption or loss of Data.

13.4 Each Party shall ensure that a back-up copy of Data is recorded on media from which Data can be re-loaded in the event of any corruption or loss of Data in accordance with a back-up schedule to be agreed between the Parties from time to time and recorded in writing.

13.5 In the event that Data is corrupted or lost as a direct result of any default by a Party then:

13.5.1 that Party shall at its own expense restore or procure the restoration of Data using the back-up copy referred to in Clause 13.4; and

13.5.2 if a Party fails to comply with Clause 13.6.1, the other Party may, without prejudice to the other rights and remedies available to that Party, restore or procure the restoration of Data using the back-up copy referred to in Clause 13.4, and shall be repaid by the non-complying Party for any reasonable losses, costs or expenses so incurred.

13A. DATA PROTECTION

- 13A.1 The Parties agree that they are each a Controller in relation to the Personal Data they Process pursuant to the Contract. 13A.2 Each Party shall comply with their obligations under the Data Protection Legislation in relation to Processing of Personal Data pursuant to this Agreement.
- 13A.2 Each Party agrees that they shall not do or omit to do anything which would cause the other Party to be in breach of its obligations under the Data Protection Legislation.
- 13A.3 The Party which deals directly with the Data Subject shall be responsible for obtaining any necessary consents for Processing and for providing the Data Subject with the information required by Articles 13 and 14 of the GDPR including the transfer of data between Parties and the purposes for which the Personal Data will be Processed.
- 13A.4 If either Party determines that it is to make a report or notification to the Information Commissioner's Office or any other person in relation to the Processing of Personal Data under this Agreement that Party shall inform the other Party, and provide all known details of the proposed report unless prohibited by law.
- 13A.5 If either Party receives any request from a Data Subject exercising or purporting to exercise their rights under the Data Protection Legislation, that Party shall notify the other Party of the request and provide the other Party with any information reasonably requested unless prohibited by law.
- 13A.6 The Parties shall provide each other with any cooperation or information reasonably required in relation to investigating or complying with requirements relating to the Data Protection Legislation.
- 13A.8 For the purposes of clause 13 and this clause 13A any reference to a Party shall include that Party's employees, sub-contractors, external advisors, consultants and directors and each Party shall be and shall remain fully liable for all acts or omissions of and shall indemnify and keep indemnified the other Party against all losses incurred by it in respect of any breach of this clause 13A by itself, its employees, sub-contractors, external advisors, consultants and directors.

14. RIGHTS OF THIRD PARTIES

- 14.1 No person who is not a Party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.

15. NO PARTNERSHIP OR AGENCY

- 15.1 Nothing in this Agreement and no action taken by the Parties under this Agreement shall create a partnership or establish a relationship of principal and agent or any other fiduciary relationship between the Parties.

16. AMENDMENTS

- 16.1 No amendments to this Agreement, including any additions to or reduction of the Support Services or variation of the Fees, shall be binding unless agreed to by the Parties and evidenced in writing and signed by the authorised representative of each Party.

17. GOVERNING LAW AND JURISDICTION

17.1 This Agreement is governed by and is to be construed in all respects in accordance with the Laws of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

THE SCHEDULES

| | |
|-------------------|--------------------------------|
| SCHEDULE 1 | FINANCE SERVICES |
| SCHEDULE 2 | HUMAN RESOURCES |
| SCHEDULE 3 | ADMINISTRATIVE SERVICES |
| SCHEDULE 4 | PROCUREMENT SERVICES |
| SCHEDULE 5 | ICT SERVICES |
| SCHEDULE 6 | COMMUNICATIONS SERVICES |
| SCHEDULE 7 | PROPERTY SERVICES |

SCHEDULE 1
FINANCE SERVICES

1. General financial services to be provided cover transactional and ledger work, FD and CFO support and other such services as deemed necessary in the day to day operational running of a Limited company.
2. Any request for Financial services by FFL shall be made directly to the Accountancy manager.

3. Fees in respect of the Finance Services are set out below:

| Annual Cost | 2020/21 | 2021/22 | 2022/23 |
|---------------------------------------|-----------|------------|------------|
| £10,000 | £5,000 | £10,000 | £10,000 |
| Director Level Services £16,496.80 | £8,248.40 | £16,496.80 | £16,496.80 |
| CFO Support £12,500 | £6,250 | £12,500 | £12,500 |

4. Fees will be invoiced by and payable to the Council on the terms shown in Section 3 of this agreement.

SCHEDULE 2

HUMAN RESOURCES

1. General HR services to be provided covering transactional HR and payroll work, Occupational health, Head of HR support, policies and other such services as deemed necessary in the day to day operational running of a Limited company.
2. Any request for HR services by FFL shall be made directly to the Head of HR.
3. Fees in respect of Human Resources are set out below:

| Annual Cost | 2020/21 | 2021/22 | 2022/23 |
|-------------|---------|---------|---------|
| £10,000 | £5,000 | £10,000 | £10,000 |

4. Fees will be invoiced by and payable to the Council on the terms shown in Section 3 of this agreement.

SCHEDULE 3

ADMINISTRATIVE SERVICES

A INFORMATION GOVERNANCE SERVICES

1. The Council will provide day to day operational support to FFL in relation to data protection and freedom of information services (together the "Information Governance Services"):

B COMPANY SECRETARIAL AND CORPORATE GOVERNANCE SERVICES

1. The Council will provide day to day operational support to FFL in relation to Company Secretarial and corporate governance
2. Any request for Admin services by FFL shall be made directly to the Head of Governance.
3. Fees in respect of the Administrative Services are set out below:

| Annual Cost | 2020/21 | 2021/22 | 2022/23 |
|--|-----------|------------|------------|
| £ | £ | £ | £ |
| Chairmanship services £17,621.40 | £8,810.70 | £17,621.40 | £17,621.40 |
| General | £5,000.00 | £10,000.00 | £10,000.00 |
| Company secretarial services £17,540.40 | £8,770.20 | £17,540.40 | £17,540.40 |

4. Fees will be invoiced by and payable to the Council on the terms shown in Section 3 of this agreement.

SCHEDULE 4

PROCUREMENT SERVICES

1. The Council will provide FFL with procurement services in accordance with its usual operational procedures (the "Procurement Services").
2. Any request for Procurement Services by FFL shall be made directly to the procurement manager.
3. Fees in respect of the Procurement Services are set out below:

| Annual Cost | 2020/21 | 2021/22 | 2022/23 |
|-------------|---------|---------|---------|
| £8,225 | | £8,225 | £8,225 |

4. Fees will be invoiced by and payable to the Council on the terms shown in Section 3 of this agreement.

SCHEDULE 5

ICT SERVICES

- 1. The Council will provide day to day operational support to FFL in relation to ICT provision.
- 2. Any request for ICT Services by FFL shall be made directly to the Head of ICT.
- 3. Fees in respect of the ICT Services are set out below:

| Annual Cost | 2020/21 | 2021/22 | 2022/23 |
|-------------|---------|---------|---------|
| £14,000 | £7,000 | £14,000 | £14,000 |

- 4. Fees will be invoiced by and payable to the Council on the terms shown in Section 3 of this agreement.

SCHEDULE 6

COMMUNICATIONS SERVICES

- 1. The Council will provide day to day operational support to FFL in relation to Communication services.
- 2. Any request for Comms Services by FFL shall be made directly to the Head of Comms.
- 3. Fees in respect of the Comms Services are set out below:

| Annual Cost | 2020/21 | 2021/22 | 2022/23 |
|-------------|-----------|------------|------------|
| £10,000.00 | £5,000.00 | £10,000.00 | £10,000.00 |

- 4. Fees will be invoiced by and payable to the Council on the terms shown in Section 3 of this agreement.

SCHEDULE 7

PROPERTY SERVICES

1. The Council will provide day to day operational support to FFL in relation to Property services.
2. Any request for Property services by FFL shall be made directly to the Head of Property.
3. Fees in respect of the property services are set out below:

| Annual Cost | 2020/21 | 2021/22 | 2022/23 |
|------------------------------------|---------|------------|------------|
| Director level services £30,400 | £15,200 | £10,133.33 | £10,133.33 |
| Consultancy services £100,000 | £5,000 | £42,997.50 | £100,000 |
| Head of Property support £7,600 | £3,800 | £7,600 | £7,600 |

4. Fees will be invoiced by and payable to the Council on the terms shown in Section 3 of this agreement.

IN WITNESS WHEREOF the Parties hereto have executed and delivered this document as a Deed the day and year first before written.

The **COMMON SEAL** of **FENLAND DISTRICT**)
COUNCIL hereunto affixed in the presence)
of:)

Authorised Signatory

SIGNED AND DELIVERED AS A DEED by)
FENLAND FUTURE LIMITED acting by a)
Director and its Secretary or two Directors:)

Director

Director/Company Secretary

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| | | |
|------------------------|---|--|
| Agenda Item No: | 10 |  |
| Committee: | Investment Board | |
| Date: | 11th July 2022 | |
| Report Title: | Fenland Future Ltd Business Plan | |

This item comprises EXEMPT INFORMATION at Appendices 1 to 4 which is not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act, 1972 (as amended).

1 Purpose / Summary

1.1 This paper seeks FDC Investment Board endorsement of the revised Fenland Future Ltd (FFL) Business Plan for the period April 2022 to March 2025.

2 Key Issues

2.1 FFL is the wholly owned subsidiary of FDC.

2.2 FFL has been set up to generate financial returns to FDC.

2.3 FFL has been operating since June 2020 and the articles of association set out the need to annually update the Business Plan setting out the direction and focus on the company.

2.4 A revised Business Plan has been approved and adopted by the FFL Board on 27 May 2022.

2.5 The Business Plan sets out new scheme parameters and hurdle rates for all new schemes to be considered against.

2.6 The financial parameters are updated based on the build out of the priority schemes.

2.7 Attached to this report in the FFL approved Business Plan, updated cashflow, revised profit and loss account plus the current project programme

3 Recommendations

3.1 Members are requested to note the report.

3.2 Endorse the adoption of the revised FFL Business Plan (April 22 to March 25)

3.3 Receive further reports on the progress of FFL projects against the approved Business Plan in accordance with the approved articles of association for FFL.

| | |
|----------------|-----------|
| Wards Affected | All wards |
|----------------|-----------|

| | |
|------------------------|---|
| Forward Plan Reference | KEY/16JUN22/01 – notice of the proposed decision will be provided to the Chairman of Overview and Scrutiny in accordance with Rule 15 of the Access to Information Procedure Rules. |
| Portfolio Holder(s) | Cllrs Boden, Benney, Tierney |
| Report Originator(s) | Adam Broadway |
| Contact Officer(s) | Dan Horn |
| Background Papers | Original FFL Business Plan. Supporting scheme information from consultant advisors including valuation reports. |

Report:

1 Reasons for Exemption

- 1.1 The Appendix Cover Sheet and all Appendices are **NOT FOR PUBLICATION** in accordance with paragraph 3 Schedule 12A of the Local Government Act 1972 in that it contains commercially sensitive information relating to financial and business affairs of Fenland District Council and 3rd party organisations. The public interest test has been applied to the information contained within this exempt report and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it.

2 BACKGROUND AND INTENDED OUTCOMES

- 2.1 FFL was incorporated in June 2020.
- 2.2 The initial Business Plan was prepared in-line with the articles of association by 31st January 2022.
- 2.3 Since adoption two FDC owned sites have been identified for FFL to focus on and bring forward proposals for development.
- 2.4 Consultant teams have been procured in-line with FDC procurement rules and a series of technical reports have been commissioned to support outline planning applications for these sites.
- 2.5 Endorsing the FFL Business Plan provides the business framework for FFL to move into a period of delivery and future profitability.

3 REASONS FOR RECOMMENDATIONS

3.1 Endorsing the FFL Business Plan will enable FFL to progress and meet its business purpose.

3.2 The Business Plan sets out the priority projects and an agreed set of project parameters.

4 CONSULTATION

4.1 The FFL Business Plan has been consulted with FFL Board and senior FDC officers

5 ALTERNATIVE OPTIONS CONSIDERED

5.1 FFL is required to produce a Business Plan and it is good governance it to do so. In the circumstances no other options are available.

6 IMPLICATIONS

6.1 Legal Implications

6.1.1 Paragraph 3.2(e) of Table 3 of the Council's Constitution provides delegated authority for the Investment Board to approve the business plans of the Council's companies and partnerships.

6.2 Financial Implications

6.2.1 The numbers included in the Business Plan that pertain directly to Fenland District Council are included within the Council's budgets and are primarily financing and support services recharges. The financial risk to the Council of the Business Plan for FFL not being achieved are in the range £0 to £400k for 2022-23.

6.3 Equality Implications

N/A.

6.4 Any Other Relevant Implications

6.4.1 As outlined in the Business Plan, two priority projects are identified as FFL's focus for the next year.

6.4.2 Both schemes are being prepared for outline planning applications to be submitted, as previously approved, by FFL on land owned by FDC.

6.4.3 Project budgets form a key part of the revised Business Plan and all consultants have been or will be appointed within the FFL approved Procurement Rules.

6.4.4 Subject to the Scheme Update Report tabled at this meeting, a recommendation to progress the process of legal transfer of the priority sites is being proposed.

6.4.5 For clarity this paper is not seeking to approve the land transfers at this point. Further papers will be presented seeking approval to transfer subject to the outcome of the legal and due diligence work requested.

7 DOCUMENTS AND APPENDICES

7.1 FFL Business Plan (April 22 to March 25)

7.2 FFL Business Plan Appendix Cover Sheet

7.3 Appendix 1 - Summary Cashflow

7.2 Appendix 2 - Profit and Loss Account

7.3 Appendix 3 - Scheme Thresholds (contained in FFL BP Appendix Cover Sheet)

7.4 Appendix 4 - Project Programme

UPDATED BUSINESS PLAN

Period of Plan is April 2022 to March 2025

Fenland Future Ltd

11 May 2022

1. Introduction

This is the paper sets out an updated Business Plan for Fenland Future Ltd (FFL) for the period April 2022 to March 2025. It builds on the adopted initial Business Plan of January 2021 and the Commercial and Investment Strategy adopted by Fenland District Council (FDC) in January 2020.

The purpose of this paper is to move FFL into the next stages of development so that it can commence operating as a profitable business at a future date. The paper sets out more detail regarding the operating requirements and finances needed. Further detail will be set out, once this paper is adopted, in a delivery plan.

2. Fenland Future Ltd

FFL is a wholly owned subsidiary of FDC. FFL was incorporated on 10 June 2020 (registration number 12659496) and is a private company limited by shares having a share capital of £1.00.

3. Purpose and Objectives

The Articles of Association of FFL were approved in 2020 and set out below are a set of principal objectives of the company. These are to:

- Maximise the return to the Council as shareholder from its asset portfolio and exploit opportunities for acquisitions, development and commercial return from assets.
- Create a delivery model that operates with a degree of commerciality in line with aspirations that mirror the Council's Business Plans and Commercial Investment Strategy.
- Hold, manage and operate private lettings directly or via procuring landlord services to the tenants of any rented housing.
- Act as a responsible and equitable landlord.
- Deliver capital appreciation.
- Generate income from commercial investments.
- Always seek to acquire assets at the most competitive price and obtain best consideration on sales.

The shareholder agreement will be updated and set out the shareholder expectations.

4. Governance

FFL has three Directors. These are currently:

- Chief Accountant of FDC (Mark Saunders)
- Head of Housing & Community Support of FDC (Dan Horn)
- There is one Director vacancy at present.

The Head of Governance and Customer Services (Anna Goodall) is the Company Secretary.

The Directors form the FFL Board which meets quarterly.

5. Activities

FFL's main activities remain as:

Residential Property. To use existing FDC owned land and where viable buy land for residential use and subject to planning approval and a procurement strategy build out the scheme for a commercial return. This is to be the primary function of FFL for this Business Plan period. Residential sites will comprise of:

- homes for sale
- private rented
- affordable rent
- shared ownership
- housing for extra care
- discounted market housing

For the period of this plan, FFL will focus on developing out two priority sites currently owned by FDC (see section 12 below).

Commercial Property. To source, purchase, or lease, operate and maintain a portfolio of commercial property where appropriate. This is considered a secondary function at present and for the period of this plan. Properties will include:

- Light industrial
- Office space

A more detailed business case for the investment in commercial property will be undertaken during 2022/23 supported by an independent assessment of the Fenland wide commercial market. This business case will be presented to the shareholder for approval.

The long-term management and maintenance issues relating to any new property secured/purchased, both commercial and residential, retained by FFL will need to be considered within a scheme delivery plan. The delivery plan (to be produced during the summer of 2022) will include the options and proposals as to how properties could be managed and maintained if this generates greater financial return.

Ad-hoc exceptional investment opportunities that may arise during the Business Plan period will be considered on a case-by-case period as long as they provide significant potential returns greater than the set-out parameters.

6. Area of Operation

FFL will operate during the next 3-years within the boundary of FDC. Commercial activities outside of the FDC geography will only be considered upon exceptional circumstances and subject to a detailed viability and issues paper being approved by FFL Board and the shareholder

7. Partnerships and Procurements

To deliver a successful business and deliver the expected financial returns, FFL will need to establish stronger local partnerships with suppliers, consultants, and contractors. The more detailed delivery plan will set out the opportunities for partnerships and with whom. The delivery plan will need to allow for flexibility and agility to ensure FFL makes best use of new opportunities as they arise.

It is expected that additional external suppliers will need to be procured to help provide appropriate information to enable informed investment decisions to be made.

The main partnership required during 2022, will be the sourcing and selection of a development partner who will work with FFL and build out one or potentially more of the identified residential sites. FFL will seek external advice and review options as to a development partner selection process. If approved the selection process will commence from summer 2022 using a priority site as the pilot project.

8. Financial Plan

Set out below is the high-level Profit and Loss Account based on the detailed projections included in the **exempt Appendices 1-4**.

| | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 |
|--|-----------------|-----------------|-----------------|------------------|------------------|
| | £ | £ | £ | £ | |
| TURNOVER | 0 | 0 | 100,000 | 16,007,000 | 11,500,000 |
| COST OF SALES | 0 | 0 | 0 | 12,507,079 | -9,747,058 |
| GROSS PROFIT | 0 | 0 | 100,000 | 3,499,921 | 1,752,942 |
| Gross profit margin | | | | 21.9% | 15.2% |
| ADMINISTRATION EXPENSES | -204,808 | -342,780 | -345,944 | -359,241 | -373,203 |
| OPERATING PROFIT/(LOSS) | -204,808 | -342,780 | -245,944 | 3,140,680 | 1,379,739 |
| FINANCE CHARGES | -9,627 | -137,411 | -558,491 | -917,585 | TBC |
| PROFIT/(LOSS) FOR THE YEAR BEFORE TAX | -214,435 | -480,191 | -804,435 | 2,223,095 | 1,379,739 |

Set out as **Appendix 1** is a 3-year financial plan to support this document. This is a headline projection and will be reviewed and updated at each quarterly FFL meeting.

Key to this updated Business Plan is the setting up of a delivery structure with an operating budget. In addition, a budget is required to enable FFL to buy land and pay for all initial scheme associated costs. These funds will be supported by the Loan Facility between FDC and FFL.

The budget and cashflow sets out the annual operating budget as well as scheme specific costs. The financial element of this plan assumes the delivery on the two priority projects with the majority of the profit anticipated to be realised from year 2024/5.

Based on the Business Plan strategy, it is noted that income to FFL is not likely to occur until the first homes on the first development site are completed. This is unlikely to occur before quarter two in 2024, until then FFL will be running at a deficit.

Attached as **Appendix 2** is an updated Profit and Loss Account for FFL for the Business Plan period. The predicted future interest rates reflect the Treasury Advisory Report as reported to FDC quarterly.

FDC will provide a guarantee of last resort to FFL.

9. Financial Parameters and Returns

FFL's main objective is to provide an annual financial return to FDC. This return will be made up of the following:

- The annual distribution and return to FDC from FFL will be agreed following receipt of accounts and agreed at the FFL AGM
- A return on the loan finance from FDC at an interest rate of 6% over base for the initial period and to be reviewed annually.
- A return for services provided by FDC under agreed Service Level Agreements.

To deliver a successful financial return, a set of Scheme specific thresholds has been updated and is set out in the **Appendix 3**. The purpose of these thresholds is to enable the FFL delivery team to focus on those projects which will maximise return. As the project programme develops these will be reviewed and updated annually.

10. Loan Arrangement

To enable FFL to set up and function, FDC and FFL have agreed a call off loan agreement. This agreement allows FFL to borrow finance to enable it to carry out its activities. The headline terms of this arrangement are:

- 6.0% over base interest rate
- Draw down of funds will be based on the agreed FFL cashflow and subject to the actual delivery programme of the agreed projects.
- Period of 2-years and annual review

The agreement will be reviewed annually.

11. Monitoring and Reporting

FFL Board will meet and receive scheme and project reports quarterly. The delivery plan will set out the Performance Indicators for the delivery programme and will include a Risk Map per scheme.

12. Current Project Pipeline

Attached as **Appendix 4** is the current list of projects which form the pipeline. This is reviewed quarterly. A schedule of project opportunities will be maintained and updated.

The delivery plan will set out the process as to how potential new schemes will be assessed.

Each scheme will have a detailed scheme business case prepared and presented to both FFL Board and FDC Investment Board for approval.

13. Delivery

To successfully deliver this and future FFL Business Plans a delivery team is required.

Within the operating budget it is assumed that FFL will:

- Recruit and appoint a full time Managing Director
- Recruit and appoint a project manager to support the MD (later in 2022/early 2023)
- Purchase the following services from FDC under a Service Level Agreement. These to include:
 - Office space
 - IT support
 - Finance advice and support
 - Procurement services
 - Legal advice and support on property transactions
 - FDC Staff and Director support
- Support from additional professional advisors will be required and individual cases for their services and appointment will be made to FFL Board for approval. Additional professional advice and service support is likely to include:
 - External legal advice on setting up a development partnership and special purpose vehicle
 - An employer's agent (EA) to provide cost and build contract advice and services and certify monthly contractual payments throughout the build contract/s.
 - Accountancy and Tax advice if required
 - The above services will be tendered under the FFL procurement rules and costs allocated to each scheme where appropriate.
- Recognise that additional expenditure will be required to investigate the viability and potentially bring forward the further secondary sites.

14. Key Actions (year one)

This revised Business Plan is focused on setting up FFL and moving it into a delivery stage of activities.

Subject to the adoption of the plan the following actions are required:

- External legal advice to complete the FFL governance and operational structure
 - Complete the loan agreements
 - Set up and complete an FFL Directors Indemnity Agreement
 - Complete service level agreements.
- External legal team to be appointed to act for FFL in the land transfer of the two priority sites from FDC to FFL based on existing use values before the Outline Planning Applications are submitted
- FFL to produce a Delivery Plan for each of the two priority sites.

- The Delivery Plan/s will set out the process to maximise returns while minimising costs and risk to both FFL and FDC.
- The Delivery Plan will include updated programmes including indicative dates for land transfers, outline planning application and approvals together with partner selection timescales.
- At this point, it is anticipated that the principal delivery mechanism to be pursued, is subject to legal and financial advice. An options paper will be produced by our external legal advisor which will inform the most efficient delivery route.

15. Conclusions

As set out, this updated Business Plan seeks to move FFL into a delivery phase of operation. It focusses on two residential sites which it will build out through the most efficient and profitable delivery mechanism.

Financially, FFL will be supported with finance from FDC which will be drawn down when required, accrued, and returned with interest upon the completion of each scheme.

In summary during 2022 (year one) FFL will seek to:

- Secure the land transfer of the two priority sites from FDC to FFL
- Secure outline planning permission on both priority sites
- Agreed the most efficient delivery mechanism for either priority site
- Complete the various legal agreements with FDC and FFL.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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