

<b>Agenda Item No:</b>	<b>6</b>	
<b>Committee:</b>	<b>Investment Board</b>	
<b>Date:</b>	<b>11<sup>th</sup> July 2022</b>	
<b>Report Title:</b>	<b>Financing/Loan Agreement for Fenland Future Ltd</b>	

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 27<sup>th</sup> 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
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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

**Dated**

**2022**

**FENLAND DISTRICT COUNCIL**

and

**FENLAND FUTURE LIMITED**

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**Facility Agreement**

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## TABLE OF CONTENTS

1.	Definitions and interpretation .....	1
2.	The Facility .....	14
3.	Purpose .....	14
4.	Conditions precedent.....	14
5.	Drawdown.....	15
6.	Interest.....	16
7.	Default interest .....	18
8.	Repayment, prepayment and cancellation .....	19
9.	Payments.....	20
10.	Fees, charges and expenses.....	22
11.	Taxes .....	22
12.	Increased costs.....	24
13.	Indemnities .....	25
14.	Mitigation by Lender.....	26
15.	Representations and warranties.....	27
16.	General covenants .....	30
17.	Not in use.....	35
18.	Events of Default.....	35
19.	Assignment and transfer.....	38
20.	Confidential information.....	39
21.	Set-off.....	41
22.	Calculations and certificates .....	41
23.	Amendments, waivers and consents.....	42
24.	Severance.....	43
25.	Counterparts .....	43
26.	Third party rights .....	44
27.	Notices .....	44
28.	Governing law and jurisdiction .....	45
	SCHEDULE 1 Conditions precedent.....	46
	SCHEDULE 2 Form of Drawdown Request.....	48
	SCHEDULE 3 Form of Compliance Certificate .....	49

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.

<b>Confidentiality Undertaking</b>	a confidentiality undertaking in the form agreed by the Borrower and the Lender.
<b>Current Assets</b>	the total value, at any time, of the assets that are treated as current assets under GAAP.
<b>Current Liabilities</b>	the total value, at any time, of the liabilities that are treated as current liabilities under GAAP.
<b>Debenture</b>	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.
<b>Disruption Event</b>	either or both of: <ul style="list-style-type: none"><li>(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</li><li>(b) any other event (not caused by, and outside the</li></ul>

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.

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

<b>Increased Costs</b>	any:
	(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.
<b>Indebtedness</b>	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.
<b>Interest on</b>	for any relevant period, the combined total of all:
<b>Borrowed Money</b>	(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.
<b>Interest Payment Date(s)</b>	the last day of each month during the Interest Period.
<b>Interest Period</b>	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> .
<b>ITA 2007</b>	the Income Tax Act 2007.
<b>Loan</b>	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.

<b>Potential Event of Default</b>	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.
<b>Repayment Date</b>	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.
<b>Security</b>	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.
<b>Sterling and £</b>	the lawful currency of the United Kingdom.
<b>Tax</b>	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).
<b>Tax Credit</b>	a credit against, relief or remission for, or repayment of, any Tax.
<b>Tax Deduction</b>	a deduction or withholding for, or on account of, Tax from a payment under a Finance Document.
<b>Tax Payment</b>	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> .
<b>Total Interest</b>	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, notarisation, 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