

**DATED** 31 May 2017 **2017**

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**SILVERSTONE HERITAGE LIMITED**  
**as Borrower**

**SOUTH NORTHAMPTONSHIRE COUNCIL, AYLESBURY VALE DISTRICT COUNCIL,  
BUCKINGHAMSHIRE COUNTY COUNCIL, BUCKINGHAMSHIRE THAMES VALLEY LOCAL  
ENTERPRISE PARTNERSHIP AND SOUTH EAST MIDLANDS LOCAL ENTERPRISE  
PARTNERSHIP**  
**as Original Lenders**

**SOUTH NORTHAMPTONSHIRE COUNCIL**  
**as Agent and Security Agent**

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**£8,000,000 LOAN AGREEMENT**

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THIS LOAN AGREEMENT IS MADE THE

DAY OF

2017

**BETWEEN:**

- (1) **SILVERSTONE HERITAGE LIMITED** a private company limited by guarantee registered in England and Wales with number 08740498, and registered with the charity commission with number 1166279, whose registered office is at Silverstone Circuit, Silverstone, Towcester, Northamptonshire, NN12 8TN (the "**Borrower**"); and
- (2) **SOUTH NORTHAMPTONSHIRE COUNCIL** of the Forum, Moat Lane, Towcester, Northants NN12 6AD, **AYLESBURY VALE DISTRICT COUNCIL** of the Gateway, Gatehouse Road, Aylesbury HP19 8FF, **BUCKINGHAMSHIRE COUNTY COUNCIL** of County Hall, Walton Street, Aylesbury HP20 1UA, **BUCKINGHAMSHIRE THAMES VALLEY LOCAL ENTERPRISE PARTNERSHIP** c/o Buckinghamshire County Council, County Hall, Walton Street, Aylesbury HP20 1UA and **SOUTH EAST MIDLANDS LOCAL ENTERPRISE PARTNERSHIP LIMITED** a private company limited by guarantee registered in England and Wales with number 07652124 whose registered office is Unit 39 University Way, Cranfield, Bedford, England, MK43 0BT (the "**Original Lenders**" and each an "**Original Lender**").
- (3) **SOUTH NORTHAMPTONSHIRE COUNCIL** as Agent and as Security Agent for an on behalf of the Lenders (the "**Agent**" and the "**Security Agent**" respectively).

**AGREED TERMS**

**1 DEFINITIONS AND INTERPRETATION**

**1.1** In this Agreement:

**"Accounts"** the annual audited accounts of the Borrower together with the Board report accompanying it and the Auditors' report on such Accounts.

**"Anniversary"** an anniversary of the date of this Agreement.

**"Auditors"** the firm of auditors appointed by the Borrower as its statutory auditors from time to time.

**"Authorised Signatory"** any of the persons specified in the list of Authorised Signatories delivered to the Agent pursuant to paragraph 4 of Schedule 1 (*Conditions Precedent*) or as may be subsequently notified to the Agent by the Borrower from time to time.

**"Available Commitment"** In relation to a Lender, that Lender's Commitment in respect of the Facility less:

- (a) the principal amount of its participation in any outstanding Loans; and
- (b) when making such calculation in relation to any proposed Loan advance (but not as regards the calculation of any Commitment Fee) the principal amount of the Lender's participation in the Loan due to be made.

**"Available Facility"** the undrawn balance of the Facility comprising the aggregate of each Lender's Available Commitments.

**"Availability Period"** the Facility will be available for drawing in accordance with the Drawdown Schedule, that will enable the Borrower to make staged drawdowns when funding is required, subject to satisfaction of relevant milestones.

**"Board"** the Borrower's board of management (howsoever styled).

**"Business Day"** a day (other than a Saturday, a Sunday or a public holiday in the United Kingdom) on which the Lender is open for business.

**"Business Plan"** the Borrower's business plan for the delivery of the Project; initially in the form delivered to the Agent pursuant to clause 4.1 (initial conditions precedent), and thereafter as delivered from time to time to the Agent pursuant to clause 14.2.1.3; in each case in form and substance satisfactory to the Majority Lenders, acting reasonably.

**"Commitment"** means:

- (a) in relation to an Original Lender, the amount set out opposite its name in Schedule 1 plus the amount of any other Commitment transferred to it under this Agreement; and
  - (b) in the case of any other Lender, the amount of any Commitment transferred to it under this Agreement;
- in either case to the extent not cancelled, reduced or transferred under this Agreement.

**"Compliance Certificate"** a certificate substantially in the form set out in Schedule 5 (Form of Compliance Certificate) signed by the chief executive or head of finance (howsoever named) on behalf of the Borrower.

**"Constitutive Documents"** means, at the relevant time in relation to the Borrower, its then current Articles of Association which have been registered at Companies House.

**"Default Rate"** a rate of interest determined by the Agent from time to time to be two per cent per annum above the rate of interest which would have been payable under Clause 8 (*Interest*).

**"Drawdown Date"** means a Business Day upon which any Loan is, or is to be, made.

**"Event of Default"** an event specified in Clause 17 (*Default*).

**"Facility"** the £8,000,000 term loan facility made available to the Borrower by the Lenders pursuant to this Agreement.

**"Final Repayment Date"** the tenth Anniversary.

**"Finance Document"** each of:

- (a) this Agreement;
- (b) the Security Documents; and
- (c) any other document designated in writing as such by the Agent (acting on instructions of the Lenders) and the Borrower.

**"Finance Party"** the Agent, the Security Agent and each Lender.

**"Financial Indebtedness"** any indebtedness of the Borrower (whether incurred as principal or surety) in respect of:

- (a) moneys borrowed (whether on or off balance sheet) and debit balances at any financial institution;
- (b) any debenture, bond, note, loan stock or other security;
- (c) any acceptance or documentary credit;
- (d) receivables sold or discounted otherwise than on a non-recourse basis;
- (e) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession by the party liable where the advance or deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset;
- (f) any lease, hire purchase or conditional sale agreement (whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or financing the acquisition of the asset leased, hired or bought;
- (g) for the purposes of Clause 17.9 (*Cross Default*) only, the net payment obligations under any currency swap, interest rate swap or interest cap or collar arrangements or any other hedging transaction;
- (h) amounts raised under any other transaction having the commercial effect of a borrowing or raising of money; or
- (i) any guarantee, indemnity or similar assurance against financial loss in respect of Financial Indebtedness of any person falling within paragraphs (a) to (h) (both inclusive) above.

**"Financial Year"** the Borrower's financial year, ending on the 31 December each year.

**"Fixed Charge"** the fixed charge over the Site to be granted by the Borrower to the Security Agent (on behalf of the Lenders) in accordance with clause 4.3 (*Condition*

*Subsequent*).

**"Floating Charge"** the floating charge over all the Borrower's assets and undertaking wheresoever situate, present and future to be granted by the Borrower to the Security Agent (on behalf of the Lenders) in accordance with clause 4.3 (Condition Subsequent).

**"Group"** the Borrower and the Parent.

**"HLF"** means the Heritage Lottery Fund.

**"HLF Agreement"** the Heritage Lottery Funding Agreement made or to be made between the Borrower and HLF and containing the terms on which HLF Fund will make a grant to the Borrower for the Project.

**"Intercreditor Agreement"** the intercreditor agreement to be made between HLF, the Security Agent (on behalf of the Lenders) and the Borrower regulating the charges granted by the Borrower to HLF and the Security Agent as security for the HLF Agreement and this agreement.

**"Interest Payment Date"** in respect of each Loan, the last day of each Interest Period which last day is either on or after the fourth Anniversary.

**"Interest Period"** each quarterly period determined in accordance with Clause 8.4 (*Interest Periods*).

**"Loan"** each loan advance drawn by the Borrower under this Agreement or the principal amount outstanding of that loan advance.

**"Lender"** means:

- (a) the Original Lenders;
- (b) any other person which has become a Lender in accordance with clause 24 (Changes to the Parties); and;
- (c) any successor or permitted transferee or assignee to any of the above,

which in each case has not ceased to be a Party as a Lender in accordance with the terms of this Agreement and for this purpose a Lender will cease to be a Lender if no amount is or may be owed to or by it under this Agreement and its Commitments have been cancelled or reduced to zero and **"Lenders"** shall mean all the Lenders at the relevant time.

**"Majority Lenders"** means:

- (a) a Lender or Lenders whose participations in the Loans and whose undrawn Commitments are in aggregate more than 66 and 2/3 per cent of the Loans then outstanding and the undrawn Total Commitments; or
- (b) if there are no Loans outstanding, a Lender or Lenders whose Commitments

- are in aggregate more than 66 and 2/3 per cent of the Total Commitments; or
- (c) if there are no Loans outstanding and the Total Commitments have been reduced to zero, a Lender or Lenders whose Commitments aggregated more than 66 and 2/3 per cent of the Total Commitments immediately before the Total Commitments were reduced to zero.

**"Material Adverse Effect"** in the opinion of the Agent a material adverse effect on:

- (a) the business, assets or financial condition of the Borrower;
- (b) the ability of the Borrower to perform its obligations under the Finance Documents; and
- (c) the validity or enforceability of the Finance Documents or the rights or remedies of the Lender under the Finance Documents.

**"Parent"** means Silverstone Circuits Limited registered with company number 00882843 and whose registered office is Silverstone Circuit, Towcester, Northamptonshire, Great Britain, NN12 8TN, the parent company of the Borrower.

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

**"Potential Event of Default"** an event which with the giving of notice, passage of time, determination of materiality or the fulfilment of any other applicable condition (or any combination of the foregoing) would constitute an Event of Default.

**"Project"** means the construction of the "Silverstone Heritage Experience" at the Silverstone race circuit.

**"Qualifying Lender"** means a person which is:

- (a) a bank for the purpose of Section 879 of the Income Tax Act 2007; or
- (b) a building society as defined for the purpose of Section 880 of the Income Tax Act 2007; or
- (c) a bank or financial institution which is resident (as such term is defined in the appropriate double taxation treaty) in a country with which the United Kingdom has a double taxation treaty giving residents of that country exemption from taxation on interest and which does not carry on a business in the United Kingdom through a permanent establishment with which the indebtedness under this Agreement is connected and which has obtained consent from the inspector of Foreign Dividends for the Borrower to pay interest falling due under this Agreement without deduction of United Kingdom withholding tax; or
- (d) a company resident in the United Kingdom for United Kingdom tax purposes; or

- (e) a partnership each member of which is: (i) a company so resident in the United Kingdom; or (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of the Corporation Tax Act 2009) the whole of any share of any interest payable in respect of its participation in any Loan that falls to it by reason of Part 17 of the Corporation Tax Act 2009,

and if any enactment referred to above is amended or repealed the Lender shall have power after consultation with the Borrower to amend this definition in such manner as it may determine will ensure that the amended definition achieves, to the extent possible, the same purposes as the current definition (which amendment shall be binding on the Borrower and the Lender).

**"Repayment Schedule"** the schedule setting out the dates and amounts of each repayment of the Facility set out in Schedule 7 hereto.

**"Request"** a request made by the Borrower for a Loan substantially in the form set out in Schedule 3 (*Form of Request*).

**"Reservations"** means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court;
- (b) the limitation on enforcement by laws relating to bankruptcy, insolvency, liquidation, re-organisation, court schemes, moratoria, administration and other laws affecting the rights of creditors generally;
- (c) the time barring of claims under the Limitation Acts;
- (d) the possibility that an undertaking to assume liability for or to indemnify against non-payment of UK stamp duty may be void;
- (e) defences of set off or counterclaim; and
- (f) similar principles, rights and defences under the laws of any foreign jurisdiction in which relevant obligations may have to be performed.

**"Security Documents"** means:

- (a) the Fixed Charge;
- (b) the Floating Charge;
- (c) the Intercreditor Agreement; and
- (d) any other document designated in writing as such by the Agent (acting on instructions of the Lenders) and the Borrower.

**"Security Interest"** means any mortgage, pledge, lien, charge (including, for the avoidance of doubt, a floating charge), security assignment, hypothecation, or other security interest or encumbrance of any kind or any other agreement or arrangement having the effect of conferring security or any other type of preferential arrangement (including, without limitation, title transfer and retention of title) having a similar effect.

**"Site"** the land and buildings contained in a lease by the British Racing Drivers' Club Limited to the Borrower forming part of Land Registry title number: HN15787.

**"Subsidiary"** has the meaning given to that term by section 1159 of the Companies Act 2006 (and also includes a subsidiary undertaking as defined in section 1162 of the Companies Act 2006).

**"State Aid Regulations"** means the rules set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union, secondary legislation such as frameworks, guidelines and block exemptions produced by the European Commission derived from Articles 107 to 109, case law of the European Courts and decisions of the European Commission regarding the application of Articles 107 to 109.

**"Taxes"** or **"taxes"** all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature, together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and **"Taxation"** or **"taxation"** and **"Tax"** or **"tax"** shall be construed accordingly.

**"Term"** in relation to the Loan, the period for which the Loan is borrowed.

- 1.2 the **"Borrower"** or the **"Lender"** shall be construed so as to include its and any subsequent successors, transferees and assigns in accordance with their respective interests;
- 1.3 **"assets"** includes properties, revenues and rights of every description;
- 1.4 an **"authorisation"** includes an authorisation, consent, approval, resolution, licence, exemption, filing and registration;
- 1.5 **"continuing"** in relation to an Event of Default, shall be construed as a reference to an Event of Default which is continuing and has not been remedied or waived in accordance with the terms hereof and, in relation to a Potential Event of Default one which is continuing and has not been remedied within the relevant grace period or waived in accordance with the terms hereof;
- 1.6 **"insolvency laws"** includes any liquidation, insolvency, bankruptcy, composition, reorganisation or other similar laws;
- 1.7 a **"month"** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month except that:

- (a) if there is no numerically corresponding day in the month in the next calendar month, that period shall end on the last day in that calendar month; and
  - (b) if any such period commences on the last Business Day of a calendar month, such period shall end on the last Business Day in the calendar month on which it is to end;
- 1.8 a **"person"** shall be construed as a reference to any persons, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- 1.9 a **"quarter"** means a three month period.
- 1.10 a **"receiver"** includes any receiver, trustee, administrator or other similar official;
- 1.11 a **"regulation"** includes any regulation, rule, official directive, code of practice, request or guideline (whether or not having the force of law but if not having the force of law, being of a kind that it is customary for the relevant person to comply with) of any governmental body, agency, department or regulatory, self-regulatory or other similar authority or organisation;
- 1.12 **"sterling"** or **"£"** denotes the lawful currency of the United Kingdom; and
- 1.13 **"VAT"** shall be construed as a reference to value added tax and any similar tax which may be imposed in addition thereto or in place thereof from time to time;
- 1.14 a Clause or a Schedule is a reference to a Clause of or a Schedule to this Agreement;
- 1.15 a law is a reference to that law as re-enacted, amended or replaced;
- 1.16 a person includes its successors and permitted assigns; and
- 1.17 a Finance Document or another document is a reference to that Finance Document or other document as amended, novated or supplemented from time to time.
- 1.18 Unless otherwise defined in any Security Document or if the context otherwise requires, a term defined in this Agreement or any other Finance Document has the same meaning in such Security Document or in any notice given under or in connection with such Security Document, as if all references in the defined terms to the Agreement or other Finance Document were a reference to such Security Document or such notice.
- 1.19 The index to and the headings in this Agreement are for convenience only and are to be ignored in construing this Agreement.
- 1.20 Save where the context otherwise requires, any word in this Agreement importing the singular shall include the plural and vice versa.

### 1.21 **Construction**

Clauses 1.1 to 1.20 (*Interpretation*) of this Agreement will apply as if incorporated in each Finance Document, or in any notice given under or in connection with any Finance Document, as if all references in such Clause to the “**Agreement**” were a reference to such Finance Document or such notice.

### 1.22 **Application of Provisions in Agreement**

Clauses 14.8 (*Negative Pledge*), 14.9 (*Disposals of Assets*), 23 (*Amendments and Waivers*) and 29 (*Notices*) of this Agreement are deemed to form part of each Finance Document as if expressly incorporated into it and as if all references in such Clauses to the “**Agreement**” were a reference to such Finance Document.

### 1.23 **Third Party Rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 2 **THE FACILITY**

- 2.1 Subject to the terms of this Agreement, the Lenders agree to make a term loan facility available to the Borrower in an aggregate principal amount not exceeding £8,000,000.
- 2.2 The obligations of each Finance Party under the Finance Documents are several. Failure of a Finance Party to carry out those obligations does not relieve or affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents. The rights of each Finance Party are separate independent and divided rights and any debt arising under the Finance Documents to a Finance Party from the Borrower shall be a separate and independent debt. A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under them.

## 3 **PURPOSE**

- 3.1 The Borrower shall use the Facility to fund the Project in accordance with its Business Plan or as agreed with the Agent (acting on the instructions of the Majority Lenders). In addition, the Borrower will use the Facility as match funding for their Heritage Lottery Fund Bid. All Loans made hereunder will be restricted to those cultural purposes and activities defined in Articles 53(4) and (5) of the Treaty for the Functioning of the European Union 2007 relating to the Project.
- 3.2 Without affecting the obligations of the Borrower in any way, no Finance Party is bound to monitor or verify the application of any Loan.

**CONDITIONS PRECEDENT AND SUBSEQUENT****4.1 Initial Conditions Precedent**

The obligations of each Finance Party to the Borrower under this Agreement are subject to the condition precedent that the Agent has notified the Borrower and the Original Lenders that it has received all of the documents set out in Schedule 2 no later than the date of this Agreement in each case in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Original Lenders promptly upon being so satisfied.

**4.2 General Conditions Precedent**

The obligations of the Lenders to make the Loan or their respective participations therein are subject to the conditions precedent that, at the time the Request is made and at the time of making the Loan:

- 4.2.1 no Event of Default or Potential Event of Default has occurred which is continuing or would result from the making of the Loan;
- 4.2.2 the matters represented by the Borrower set out in Clause 13 (*Representations and Warranties*) are correct on, and as of such times, as if made at each such time and would be so correct immediately after the making of the Loan; and
- 4.2.3 the Loan is being drawn in accordance with the schedule of drawdowns set out in Schedule 6 and is in accordance with Clause 3 (*Purpose*).

**4.3 Condition Subsequent**

The Borrower shall use all reasonable endeavours to deliver the following documents to the Security Agent (as security agent for and on behalf of the Lenders) each in form and substance satisfactory to the Security Agent (acting reasonably) within three months of the completion of this agreement:

- 4.3.1 the Fixed Charge duly executed by the Borrower;
- 4.3.2 the Floating Charge duly executed by the Borrower;
- 4.3.3 the Intercreditor Agreement duly executed by each other party thereto;
- 4.3.4 a certificate of title in respect of the Site from the Borrower's solicitors addressed to the Security Agent and the Lenders;
- 4.3.5 all necessary consents to the Fixed Charge and the Floating Charge;
- 4.3.6 a revised board resolution authorising the Borrower's entry into the Security Documents; and
- 4.3.7 any other documents required by the Security Agent (acting on behalf of the Majority Lenders) in connection with the Security Documents.

Failure to satisfy this condition subsequent shall be an Event of Default.

## **5      DRAWDOWN**

### **5.1      Making of Request**

The Borrower may request a Loan to be made to it if the Agent receives by not later than 10.00 a.m. five Business Days before the proposed Drawdown Date a duly completed Request.

### **5.2      Completion of Request**

The Request once made is irrevocable and will not be regarded as having been duly completed unless:

- 5.2.1      the stated purpose of the Loan falls within Clause 3 (*Purpose*);
- 5.2.2      the Loan amount requested is in accordance with the schedule for drawings as detailed in Schedule 6;
- 5.2.3      the Loan requested is a minimum of £500,000 and integrals of £500,000, and for any amount not exceeding the total Available Facility at the time.
- 5.2.4      the proposed Drawdown Date is a Business Day;
- 5.2.5      it is signed by an Authorised Signatory; and
- 5.2.6      the payment instructions specify the account of the Borrower with a bank in the United Kingdom into which the Loan requested is to be paid and otherwise comply with the provisions of Clause 9.2 (*Currency and Funds*).

### **5.3      Restriction on number of Loans**

The Borrower may not borrow more than ten Loans under this Agreement.

### **5.4      Making of the Loan**

- 5.4.1      The Agent shall promptly notify each Lender of the details of each Request.
- 5.4.2      Subject to the terms of this Agreement, each Lender shall make its participation in the Loan available for the Borrower on the Drawdown Date either directly to the Agent or in such other manner agreed between that Lender and the Agent.
- 5.4.3      The amount of each Lender's participation in a Loan will be in the same proportion as the Lender's Commitment bears to the Facility. No Lender shall be obliged at any time to lend more than its Commitment.

**REPAYMENT**

- 6.1 The Borrower shall repay the Facility in annual instalments beginning on the fourth anniversary of the date this Loan Agreement is entered into as shown in the Repayment Schedule. If the full amount of the Facility has not been borrowed or the Borrower has made prepayments, then the Agent shall recalculate the amounts to be repaid on each remaining Anniversary and inform the Borrower and shall notify the other Finance Parties.
- 6.2 Repayment shall be made to the Agent in sterling to such account at such office or bank in the UK as the Agent may notify to the Borrower or the Lender concerned for this purpose by not less than 5 Business Days' prior written notice.
- 6.3 For the avoidance of doubt the Borrower shall repay the Facility in full on or before the Final Repayment Date.
- 6.4 All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**PREPAYMENT****7.1 Voluntary right of prepayment**

- 7.1.1 The Borrower may, by giving not less than five Business Days' prior notice to the Agent, prepay all or part of a Loan provided that it can demonstrate to the Agent's satisfaction (acting reasonably) that the Borrower will still have sufficient funds to complete the Project. Any prepayment shall be a minimum of £500,000 and multiples of £250,000 thereafter (or such other amounts agreed in writing between the Agent and the Borrower). Following prepayment, the Agent shall notify the Borrower in writing of the revised amounts of interest payable in respect of that Loan.
- 7.1.2 If the Borrower is or will be required to pay to the Lender any amount under Clause 10 (*Taxes*) or Clause 11 (*Increased Costs*) then, without prejudice to Clause 12.2 (*Mitigation*) and the obligations of the Borrower under Clause 10 (*Taxes*) or Clause 11 (*Increased Costs*), the Borrower may within thirty days following a claim for payment by the Lender thereunder, serve a notice of prepayment on the Lender. On the date falling two days after the date of service of the notice on the Lender, the Borrower shall prepay the Loan together with any amount demanded by the Lender under Clause 219 (*Indemnities*).

**7.2 Mandatory prepayment and cancellation**

7.2.1 If it becomes illegal (for whatever reason) for a Lender to continue to participate in:

7.2.1.1 the Loan Agreement; and/or

7.2.1.2 making the Facilities available to the Borrower,

then that Lender may cancel its part of the Facilities and the Borrower must be prepay them in full.

### **7.3 Miscellaneous Provisions**

7.3.1 Every notice by the Borrower of prepayment under this Agreement is irrevocable.

7.3.2 Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid together with any amount demanded by the Lender under Clause 19 (*Indemnities*).

7.3.3 Prepayment may only be made in accordance with the express terms of this Agreement.

7.3.4 Any part of the Loan which is prepaid under this Agreement cannot be redrawn.

7.3.5 Any commitments which have been cancelled shall not be capable of reinstatement.

## **8 INTEREST**

### **8.1 Interest Calculation**

The rate of interest on each Loan will be 5% per annum.

### **8.2 Rolled up interest and due dates**

Until the fourth Anniversary, accrued interest on each Loan will be rolled up and added to the Loan principal. On and from the fourth Anniversary accrued interest on each Loan is payable by the Borrower to the Agent (on behalf of the Lenders) in arrears on each Interest Payment Date and on the Final Repayment Date.

### **8.3 Default Interest**

8.3.1 If the Borrower fails to pay any amount payable by it under a Finance Document, it shall, on demand by the Agent, pay interest on the overdue amount from the due date up to the date of actual payment, both before and after judgment, at the Default Rate.

8.3.2 The Default Rate is determined on each Business Day.

8.3.3 If the Agent determines for the purpose of this Clause 8.3 (*Default Interest*) that the Interest Basis cannot be determined at the relevant

time, the Default Rate will be determined by the Agent as the percentage that reflects the rate that the Lenders require to fully compensate themselves for the circumstances giving rise to the use of the Default Rate.

8.3.4 Default interest will be compounded at such intervals as the Agent shall determine.

#### **8.4 Interest Periods**

The Commencement Date applicable to the Loan shall be the day that it is made. The first Interest Period applicable to a Loan shall commence on the Commencement Date and shall be a period of three months and each subsequent Interest Period in respect of that Loan shall be the same period as the first Interest Period except that the last Interest Period will expire on the Final Repayment Date.

### **9 PAYMENTS**

#### **9.1 Place of payment**

All payments by the Borrower under a Finance Document shall be made in sterling to the Agent to such account at such office in the United Kingdom as it may notify to the Borrower concerned for this purpose by not less than five Business Days' prior notice.

#### **9.2 Currency and Funds**

Payments under a Finance Document to a Lender or the Agent shall be made in sterling for value on the due date in such funds as the Lender or the Agent may specify as being customary at the time for the settlement of sterling transactions in London for same day value.

#### **9.3 Distribution**

9.3.1 Each payment received by the Agent under this Agreement for another Party shall, subject to clause 8.1.2, be made available by the Agent to that Party as soon as practicable after receipt by payment to its account with such office or bank in the UK as it may notify to the Agent for this purpose by not less than 5 Business Days' prior notice.

9.3.2 The Agent may (with the consent of the Borrower or in accordance with clause 26) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

9.3.3 Where a sum is to be paid to the Agent under this Agreement for another Party, the Agent is not obliged to pay that sum to that Party until it has established that it has actually received that sum. The Agent may,

however, assume that the sum has been paid to it in accordance with this Agreement, and, in reliance on that assumption, make available to that Party a corresponding amount. If, however, the sum is not made available, that Party shall forthwith on demand by the Agent refund any corresponding sum made available by the Agent to that Party together with interest on the sum from the date of payment to the date of receipt, calculated at a rate determined by the Agent to reflect its cost of funds.

9.3.4 The Borrower shall not be concerned with the duties of the Agent under this clause 8. Actual payment in full by the Borrower to the Agent in accordance with this Agreement shall be a complete discharge to the Borrower of the relevant payment obligation.

**9.4 Set off and counterclaim**

All payments made by the Borrower under this Agreement shall be made without set off, counterclaim or other deduction, save as required by law.

**9.5 Non Business Days**

9.5.1 If a payment under this Agreement, is due on a day which is not a Business Day, then the due date for that payment shall instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

9.5.2 During any extension of the due date for payment of any principal under this Agreement interest is payable on that principal at the rate payable on the original due date.

**10 TAXES**

**10.1 Gross-up**

All payments by the Borrower under the Finance Documents shall be made free and clear of and without deduction or withholding whatsoever for or on account of any taxes, except to the extent that the Borrower is required by law to make payment subject to the deduction or withholding of any taxes. If any tax or amount in respect of tax is required to be deducted from any amounts payable or paid by the Borrower under the Finance Documents, the Borrower shall pay such additional amounts as may be necessary to ensure that after the making of the deduction or withholding which is required the Lender receives and retains (free from any liability in respect of such deduction or withholding) a net amount equal to the full amount which it would have received and retained had payment not been required to be made subject to tax.

## 10.2 Tax Indemnity

Without prejudice to the provisions of Clause 10.1 (*Gross-up*) if a Lender is required to make any payment on account of tax (not being a tax imposed on and calculated by reference to the net income, profits or gains paid to and received by it) or otherwise makes a payment in respect of tax on or in relation to any sum received or receivable hereunder (including any sum received or receivable under this Clause 10 (*Taxes*)) or any liability in respect of any such payment is asserted, imposed, levied or assessed against the Lender, the Borrower shall, upon demand of the Lender, promptly indemnify the Lender against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith **PROVIDED THAT** this Clause 10.2 (*Tax Indemnity*) shall not apply to the extent that an additional payment has been made under Clause 10.1 (*Gross-up*) in respect of a deduction or withholding for or on account of tax.

## 10.3 Tax Receipts

All tax or amounts in respect of tax required by law to be deducted or withheld by the Borrower from any amounts paid or payable by it under the Finance Documents shall be paid by the Borrower when due (or within any applicable grace period) to the appropriate tax or other authority and the Borrower shall, within thirty days of the payment being made, deliver to the Agent evidence satisfactory to the Agent (including all relevant tax receipts) that the payment has been duly remitted to the appropriate tax or other authority.

## 10.4 Tax Payments

If the Borrower pays any additional amount under this Clause or Clause 19 (*Indemnities*) (a "**Tax Payment**") for the benefit of a Lender and the Lender, in its sole opinion acting in good faith, determines that it has received or been granted (and has received full use and benefit from) a refund of tax, or credit against tax by reason of that Tax Payment (a "**Tax Credit**") and the Lender is able to identify the Tax Credit as being attributable to the Tax Payment, then the Lender shall, to the extent it can do so without prejudice to the Tax Credit, reimburse promptly to the Borrower such amount as the Lender shall determine in its absolute discretion to be the proportion of the Tax Credit as will leave the Lender (after that reimbursement) in no better or worse position than it would have been if the Tax Payment had not been required. Nothing in this Clause shall interfere with the right of the Lender to arrange its tax affairs in whatever manner it thinks fit and, without prejudice to the foregoing, the Lender shall not be under an obligation to claim a Tax Credit or to claim a Tax Credit in priority to any other claims, relief, credit or deduction available to it. The Lender shall not be obliged to disclose any information regarding its tax affairs or computations to the Borrower.

## 11 INCREASED COSTS

### 11.1 Indemnification

11.1.1 Subject to Clause 11.2 (*Exceptions*), the Borrower shall within three business days of a demand by the Agent pay to the Agent such amount as the Agent certifies in the demand to be an increased cost (specifying in reasonable detail the basis of the calculation of such demand) and will indemnify the Lender and Agent in respect of such an increased cost incurred by it as a result of:

11.1.1.1 any change, introduction of or change in interpretation of any applicable law or regulation after the date of this Agreement; or

11.1.1.2 any change in compliance after the date of this Agreement by the Lender with any applicable law or regulation;

including in each case, without limitation, any applicable law or regulation relating to taxation or reserve asset, special deposit, cash ratio, liquidity or capital adequacy requirement or any other form of banking, building society or monetary control.

11.1.2 In this Agreement “**increased cost**” means:

11.1.2.1 an additional cost incurred by a Lender as a result of it having entered into, or performing, maintaining or funding its obligations under this Agreement; or

11.1.2.2 that portion of an additional cost incurred by a Lender in making, funding or maintaining all or any advances comprised in a class of advances formed by or including the Loan made or to be made under this Agreement as is attributable to it making, funding or maintaining the Loan; or

11.1.2.3 a reduction in any amount payable to a Lender or in the effective return to a Lender under this Agreement or to the Lender on its capital as is fairly attributable to this Agreement and the Loan transactions contemplated by this Agreement; or

11.1.2.4 the foregone amount of any payment made or interest or other return on or calculated by reference to any amount received or receivable by a Lender from the Borrower in respect of the Loan.

- 11.1.3 When calculating an increased cost, the relevant Lender may allocate or spread costs, liabilities and losses to or across its liabilities or assets, or any class of liabilities or assets, and on such basis, as it considers appropriate.

## 11.2 Exceptions

Clause 11.1 (*Indemnification*) does not apply to:

- 11.2.1 any increased cost compensated for by the operation of Clause 10 (*Taxes*);
- 11.2.2 any change in the rate of Tax on the overall net income, profits or gains of the Lender; or
- 11.2.3 any increased cost resulting from a breach by a Lender of any law or regulation.

## 12 ILLEGALITY AND MITIGATION

### 12.1 Illegality

12.1.1 If it becomes unlawful after the date of this Agreement in any relevant jurisdiction for a Lender to give effect to any of its obligations or to fund or maintain its participation in the Loan, then such Lender may notify the Borrower, through the Agent, accordingly, whereupon:

- 12.1.1.1 the Borrower shall forthwith (or within any permitted period) prepay that Lender's participation in all the Loans; and
- 12.1.1.2 that Lender's undrawn Commitments shall forthwith be cancelled.

### 12.2 Mitigation

If circumstances arise in respect of any Lender which would, or would upon the giving of notice, result in:

- 12.2.1 any additional amounts becoming payable under Clause 10.1 (*Gross up*) or Clause 10.2 (*Tax Indemnity*); or
- 12.2.2 any amount becoming payable under Clause 11 (*Increased Costs*); or
- 12.2.3 any prepayment or cancellation under Clause 12.1 (*Illegality*);

then, without in any way limiting, reducing or otherwise qualifying the Borrower's obligations under this Agreement and without prejudice to the terms of Clause 10.1 (*Gross up*), Clause 10.2 (*Tax Indemnity*), Clause 11 (*Increased Costs*) and Clause 12.1 (*Illegality*), the Lender shall, in consultation with the Borrower and the Agent, take such reasonable steps as in its opinion may be open to it to remove such

circumstances or mitigate the consequences to the Borrower thereof, including (without limitation) the transfer of its rights and obligations under this Agreement to another Lender unless in any such case to do so might (in the sole opinion of the Lender (acting reasonably)) be prejudicial to such Lender.

## **13 REPRESENTATIONS AND WARRANTIES**

### **13.1 Representations and Warranties**

The Borrower makes the representations and warranties set out in this Clause 13 (*Representations and Warranties*) to each Finance Party at the times set out in Clause 13.17 (*Times for making representations and warranties*).

### **13.2 Status**

13.2.1 It is a private limited company registered as such at Companies House and it is duly established and validly existing under the laws of England; and

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

### **13.3 Powers and authority**

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of the Finance Documents and the exercise of its rights and performance of its obligations under the transactions contemplated by the Finance Documents.

### **13.4 Legal validity**

Each Finance Document to which it is a party constitutes or, when executed, will constitute subject to the Reservations, the Borrower's legal, valid and binding obligation and will be admissible in evidence in England.

### **13.5 Non conflict**

The entry into and performance by it of, and the exercise of its rights and performance of its obligations under the transactions contemplated by, the Finance Documents do not and will not conflict or contravene:

13.5.1 in any material respect with any law or regulation or official or judicial order;

13.5.2 with the Constitutive Documents; or

13.5.3 in any material respect with any document which is binding upon the Borrower or any asset of the Borrower.

**13.6 No default**

13.6.1 No Event of Default or Potential Event of Default is continuing or would result from the making of any Loan; and

13.6.2 no other event is outstanding which constitutes (or with the giving of notice, lapse of time, determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing, would constitute) a default under any document which is binding on the Borrower or any asset of the Borrower and which could reasonably be expected to have a Material Adverse Effect.

**13.7 Authorisations**

All authorisations required in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Finance Documents have been obtained or effected (as appropriate) and are in full force and effect.

**13.8 Accounts**

The Accounts most recently delivered to the Agent:

13.8.1 have been prepared in accordance with all relevant statutory requirements; and

13.8.2 fairly represent the financial position of the Borrower as at the date to which they were drawn up.

**13.9 No Material Adverse Change**

There has been no material adverse change in the business, assets or financial condition of the Borrower since the date of the publication of its most recent audited accounts.

**13.10 Litigation**

No litigation, arbitration or administrative proceedings are current or, to its knowledge pending or threatened against it, which might reasonably be expected if adversely determined to have a Material Adverse Effect.

**13.11 Breach of law**

It is not in any material breach of any applicable laws, including State Aid Regulations.

**13.12 Governing law and enforcement**

13.12.1 The choice of English law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.

13.12.2 Any judgement obtained in England and Wales in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

**13.13 Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

**13.14 Pari passu ranking**

Its payment obligations under the Finance Documents rank at least pari passu with all its other present and future unsecured obligations and unsubordinated creditors, except for obligations which are mandatorily preferred by law applying to it or to private companies limited by guarantee generally.

**13.15 Information**

13.15.1 The written information provided to the Finance Parties (or any of them) by or on behalf of the Borrower in connection with this Agreement, in the case of that provided by the Borrower, was true in all material respects as at the date it was provided and, in the case of that provided on behalf of the Borrower, was true in all material respects to the best of the Borrower's knowledge having made all reasonable enquiries as at the date on which it was provided and all projections and statements of belief and opinion contained in that written information were made in good faith and all such beliefs and opinions were honestly held.

13.15.2 Save as disclosed to the Agent nothing has occurred since the date that written information was provided which renders the information contained in it untrue or misleading in any material respect.

**13.16 Miscellaneous**

13.16.1 It is not necessary:

13.16.1.1 that any Finance Document to which it is a party be filed, recorded or enrolled with any court or other authority in England; or

13.16.1.2 that any stamp duty, stamp duty land tax, registration or similar tax be paid on or in relation to any Finance Document to which it is a party.

13.16.2 Otherwise than with the prior written consent of the Lender or Agent, it has not taken any corporate action nor have any steps been taken or legal proceedings been started or threatened against it which have come to its notice for its winding up, dissolution or insolvent reorganisation or

for the appointment of a receiver, administrator, trustee or similar officer of it or of any of its assets or revenues.

**13.17 Times for making representations and warranties**

The representations and warranties set out in this Clause 13 (*Representations and Warranties*) are made by the Borrower on the date of this Agreement and save for the representation at Clause 13.13 (*Deduction of Tax*) are deemed to be repeated by the Borrower on the date of each Request, at the time of making any Loan and on each Interest Payment Date with reference to the facts and circumstances then existing.

**14 GENERAL UNDERTAKINGS**

**14.1 Duration**

The undertakings in this Clause 14 (*General Undertakings*) and 15 (*Financial Covenants*) remain in force from the date of this Agreement for so long as any amount is or may be outstanding under this Agreement or there is any Available Facility undrawn.

**14.2 Financial Information**

**14.2.1** The Borrower shall supply the following documents to the Agent:

**14.2.1.1** The Accounts for the Financial Year as soon as the same are available (and in any event within 180 days of the Borrower's Financial Year end), certified by an Authorised Signatory as giving a true and fair view of its financial condition as at the end of the period to which they relate and of the results of its operations for such period;

**14.2.1.2** quarterly management accounts including, if requested by the Agent, a cash flow forecast; in form and content satisfactory to the Agent (on behalf of the Lenders) are to be provided within 60 days of the end of each period;

**14.2.1.3** as soon as the same is available (and in any event within ninety days of the end of each Financial Year), an updated version of its Business Plan provided that the updated version shall not become the Business Plan (for the purposes of this agreement) until it has been approved by the Majority Lenders, acting reasonably. Until such agreement is obtained, the previously approved version of the Business Plan shall continue to be the Business Plan for the purposes of this agreement; and

- 14.2.1.4 quarterly reports on the Project including a commentary showing progress against the plan and the key milestones and trigger dates.

#### 14.3 Information Covenants

The Borrower shall supply to the Agent (in sufficient copies for all the Finance Parties if the Agent requests it):

- 14.3.1 With the Accounts produced in accordance with clause 14.2.1.1, a certificate, signed by an Authorised Signatory confirming that the Borrower's use of the Facility is in compliance with Clause 3 (*Purpose*) of this Agreement;
- 14.3.2 all documents despatched by it to its members or to its creditors generally (or any class of them) on or about the same time as they are despatched, but only, in the case of notices or other documents despatched to its members if they are relevant to the monitoring by the Lender of the performance by the Borrower of or its ability to perform its obligations under the Finance Documents;
- 14.3.3 promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending, and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;
- 14.3.4 promptly, all information received from the Registrar of Companies or any other regulatory or self-regulatory authority or organisation relating to the status of the Borrower or the conduct of its business and any other information from any of the foregoing but only if they are relevant to the monitoring by the Agent of the performance by the Borrower of, or its ability to perform its obligations under the Finance Documents;
- 14.3.5 immediately upon becoming aware of them, details of any material adverse variations in its overall financial position and/or cashflows;
- 14.3.6 promptly, such other information about its financial condition, business, operations, assets or the Parent as the Agent may reasonably request; and
- 14.3.7 Such information on the availability and use of the Heritage Lottery funding as the Agent may require;
- 14.3.8 Information in respect of any pension schemes of which the Borrower is a member; and
- 14.3.9 Any other information regarding the financial condition, business and

operations of the Borrower as the Agent may reasonably request, save that it shall not be obliged to provide any such other information where disclosure thereof requires the consent of a non-related third party and after using all reasonable endeavours to obtain such consent it is unable to do so.

**14.4 Notification of Default**

The Borrower shall notify the Agent of any Event of Default or Potential Event of Default (and the steps, if any, being taken to remedy it) promptly upon it becoming aware of its occurrence.

**14.5 Compliance Certificates**

The Borrower shall supply to the Agent together with the Accounts specified in Clause 14.2.1.1 of Clause 14.2 (*Financial Information*) and promptly at any other time, if the Agent so requests, a Compliance Certificate.

**14.6 Authorisations**

The Borrower shall promptly obtain, maintain and comply with the terms of and supply a certified copy to the Lender of, any authorisation required under any law or regulation to enable it to perform its obligations under, or for the validity or enforceability of, any Finance Document.

**14.7 Pari passu ranking**

The Borrower shall procure that its obligations under the Finance Documents do and will rank at least *pari passu* with all its other present and future unsecured obligations, except for obligations which are mandatorily preferred by law applying to it.

**14.8 Negative pledge**

14.8.1 The Borrower shall not create or permit to subsist any Security Interest or any floating charge over the whole or a substantial part of its assets and undertaking save as permitted by Clause 14.8.2.

14.8.2 Clause 14.8.1 of this Clause 14.8 (*Negative pledge*) does not apply to:

14.8.2.1 any lien arising by operation of law in the ordinary course of business and securing amounts not more than thirty days overdue;

14.8.2.2 Security Interests created under or pursuant to the Finance Documents (if any);

14.8.2.3 Security Interests arising out of title retention provisions in arrangements for the purchase of goods in the ordinary course of business;

14.8.2.4 any Security Interest created with the prior written consent of the Lender; or

14.8.2.5 Security Interests comprising a 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.

#### **14.9 Disposal of Assets**

The Borrower shall not either in a single transaction or in a series of transactions, whether related or not, sell, transfer, grant, lease or accept a surrender of or otherwise dispose of any of its assets and/ or revenues save in the normal course of the Borrower's business.

#### **14.10 Mergers and Subsidiaries**

14.10.1 Except with the prior written consent of the Agent (acting on the instructions of the Majority Lenders), the Borrower shall not enter into any amalgamation, merger, transfer of engagements or consolidation;

14.10.2 Except with the prior written consent of the Agent (acting on the instructions of the Majority Lenders), the Borrower shall not demerge from the Parent or become a Subsidiary of any other person other than the Parent.

14.10.3 Except with the prior written consent of the Agent (acting on the instructions of the Majority Lenders which will not be unreasonably withheld or delayed), the Borrower shall not acquire or form any Subsidiary.

#### **14.11 Loans**

The Borrower shall not, without the prior written consent of the Agent (acting on the instructions of the Majority Lenders), make any loan, grant any credit, guarantee or invest in capital by way of any equity subscription to, or in, any person other than in relation to the Project and in accordance with its Business Plan relating thereto.

#### **14.12 Maintenance of Status**

The Borrower shall:

14.12.1 do all such things as are necessary to maintain its registration as a private company limited by guarantee registered under the Companies Act 2006;

14.12.2 do all such things as are necessary to maintain its charitable status;

14.12.3 not amend its Constitutive Documents without the prior written consent of the Agent;

14.12.4 carry on its business in accordance with the objects specified in its Constitutive Documents.

**14.13 Heritage Lottery Funding**

The Borrower will comply in all material respects with the terms of its Heritage Lottery Funding.

**14.14 Compliance with laws**

The Borrower shall comply in all material respects with all laws and mandatory regulations, including State Aid Regulations to which it may be subject.

**15 FINANCIAL COVENANT**

The Borrower shall ensure that at all times it has the funds available to meet all its commitments and shall confirm this in each quarterly report and in each compliance certificate.

**16 ACCOUNTING POLICIES**

16.1 The Borrower shall prepare all information to be given to the Agent for the purposes of Clause 14.2.1.1 of Clause 14.2 (*Financial Information*) in accordance with all relevant statutory requirements and shall ensure that all information given to the Agent for the purposes of Clause 14.2 (*Financial Information*) fairly represents its financial condition. All other information shall be in a form acceptable to the Agent (acting reasonably).

16.2 Except with the consent of the Agent (such consent not to be unreasonably withheld or delayed), the Borrower shall not alter its Financial Year end.

16.3 If, at any time after the date of this Agreement any change in the basis upon which the financial information of the Borrower is prepared is proposed or made, then the Borrower shall promptly notify the Lender of such proposed change.

**17 DEFAULT**

**17.1 Events of Default**

Each of the events set out in Clauses 17.2 (*Non payment*) to 17.16 (*Auditor's qualification of accounts*) inclusive, is an Event of Default (whether or not caused by any reason whatsoever outside the control of the Borrower or any other person) whilst it is continuing **PROVIDED THAT** if the Event of Default occurs in relation to the Parent, this will not constitute an Event of Default unless in the Lender's opinion

(acting reasonably) it has or could reasonably be expected to have a Material Adverse Effect.

**17.2 Non-payment**

The Borrower fails to pay any sum due under the Finance Documents on the due date for payment unless such failure to pay any amount due hereunder is due solely to technical or administrative delays in the transmission of funds and such amount is paid within two Business Days.

**17.3 Breach of key obligations**

The Borrower fails to perform or observe any provision of Clause 4.3 (*Condition Subsequent*), Clause 14.8 (*Negative Pledge*), Clause 14.9 (*Disposals*) or 14.1.1-3 (*Change of status*).

**17.4 Breach of other obligation**

The Borrower fails to perform or observe any obligation, condition or provision binding on it under the Finance Documents (other than those referred to in Clause 17.2 (*Non payment*) and Clause 17.3 (*Breach of key obligations*) and, except where such failure is not, in the opinion of the Lender, capable of remedy (when no such notice shall be required) such failure continues for ten Business Days after the earlier of the date:

- (a) notice of such failure requiring the Borrower to remedy the same has been given by the Agent to the Borrower; or
- (b) the Borrower becoming aware of such failure.

**17.5 Misrepresentation**

A representation, warranty or statement made or repeated by the Borrower in, or in connection with, any Finance Document or in any document delivered by or on behalf of the Borrower under or in connection with any Finance Document, is incorrect in any material respect.

**17.6 Unenforceability of Finance Documents**

It is or becomes unlawful for the Borrower to perform any of its obligations under any Finance Document or any Finance Document (or charge therein) ceases to be legal, binding and enforceable against the Borrower or is terminated (unless terminated with the approval of the Lender) or is frustrated or declared void or unenforceable by any court of competent jurisdiction or is claimed to be void or unenforceable by the Borrower.

**17.7 Insolvency**

- 17.7.1 The Borrower or the Parent is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by

reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness; or

- 17.7.2 a moratorium is declared in respect of any indebtedness of the Borrower or the Parent.

## **17.8 Insolvency Proceedings**

- 17.8.1 Proceedings are initiated against the Borrower or the Parent under any applicable insolvency laws (other than proceedings to wind up the Borrower or Parent which are frivolous or vexatious and are being contested by the Borrower or Parent in good faith with appropriate means) or an application is made for the appointment of a receiver or a receiver is appointed, in relation to the Borrower or the Parent or in relation to the whole or any substantial part of the undertaking or assets of the Borrower or the Parent; or
- 17.8.2 an encumbrancer takes possession of the whole or any substantial part of the undertaking or assets of the Borrower or Parent; or
- 17.8.3 a distress or execution or other process is levied or enforced upon or sued out against the whole or any substantial part of the undertaking or assets of the Borrower or the Parent, and is not discharged within three Business Days; or
- 17.8.4 the Borrower or Parent initiates or consents to judicial proceedings relating to itself under any applicable insolvency laws or seeks the appointment of a receiver; or
- 17.8.5 the Borrower or Parent makes a conveyance or assignment for the benefit of, or enters into any composition or other arrangement with, its creditors generally (other than any agreement entered into with the consent of the Lender);

## **17.9 Creditor's process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower or Parent having an aggregate value of at least £250,000 and is not discharged within 14 days.

## **17.10 Cross Default**

Any Financial Indebtedness of the Borrower and/or Parent in an aggregate amount of £250,000 or more is not paid when due (or within any applicable grace period set forth in the original terms relating to that Financial Indebtedness) or becomes repayable, or capable of being declared repayable, prior to its stated maturity as a

result of a breach or default by the Borrower and/or Parent in relation to such Financial Indebtedness or default is made by the Borrower or Parent in making any payment due under any guarantee or indemnity given by it in relation to any Financial Indebtedness of any person.

**17.11 Default under the HLF Agreement**

The Borrower commits an event of default (howsoever described) under the HLF Agreement triggering a demand for repayment of the Heritage Lottery Funding grant.

**17.12 Breach of Statute**

The Borrower breaches any statute or regulation binding on it in any respect which in the opinion of the Lender could reasonably be expected to have a Material Adverse Effect.

**17.13 Material Adverse Change**

Any event or circumstance occurs which, in the opinion of the Lender, has or could reasonably be expected to have a Material Adverse Effect.

**17.14 Cessation of Business**

The Borrower ceases or threatens to cease to carry on all or a substantial part of its business or operations.

**17.15 Repudiation**

The Borrower repudiates any Finance Document or does or causes to be done any act or thing evidencing an intention to repudiate any Finance Document.

**17.16 Auditors Qualification of Accounts**

The Auditors make a material qualification to the Accounts.

**17.17 Consequences of an Event of Default**

17.17.1 On and at any time after the occurrence of any other Event of Default which is continuing the Agent may, and if so directed by the Majority Lenders, by notice to the Borrower:

17.17.1.1 cancel the Available Facility; and/or

17.16.1.2 demand that all Loans made together with accrued interest and all other amounts accrued under this Agreement be immediately due and payable, whereupon they shall become immediately due and payable; and/or

17.17.1.3 demand that all Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent (acting on the instructions of the Majority Lenders).

17.17.2 Any notice given under this clause 17.16 shall be copied to each Lender.

## 18 EXPENSES

### 18.1 Initial and special costs

The Borrower shall pay the Agent the amount of all costs and expenses (including legal fees and VAT relating thereto) properly and reasonably incurred by any of them in connection with:

18.1.1 the negotiation, preparation, printing and execution of:

18.1.1.1 the Finance Documents and any other documents referred to in any Finance Document; and

18.1.1.2 any other Finance Document executed after the date of this Agreement;

18.1.2 any amendment, waiver, consent or suspension of rights (or any proposal for any of the foregoing) requested by or on behalf of the Borrower (or arising out of or consequential upon any such request) and relating to a Finance Document or a document referred to in any Finance Document;

18.1.3 any other matter, not of an ordinary administrative nature, arising out of, or in connection with, a Finance Document.

### 18.2 Enforcement costs

The Borrower shall, forthwith on demand, pay to the Agent the amount of all costs and expenses (including legal fees and VAT relating thereto):

18.2.1 properly incurred by it in connection with the enforcement of or the preservation of any rights under, any Finance Document; and

18.2.2 in investigating any Event of Default which has occurred or any Potential Event of Default.

## 19 FEES

19.1 The Borrower shall pay to the Agent an agent's management fee of £7,500, payable annually on and from the first anniversary of the date of this Agreement.

19.2 The Borrower shall pay an arrangement fee of £80,000 (being 1% of the Facility) to the Agent on the date of this Agreement who shall distribute it amongst the Lenders in accordance with the proportions of their Commitment to the Facility.

## 20 STAMP DUTIES

The Borrower shall pay and, forthwith on demand, indemnify each Finance Party against any liability it incurs in respect of, any stamp duty, stamp duty land tax, registration and similar tax

which is or becomes payable in connection with the entry into, performance or enforcement of any Finance Document.

## **21 INDEMNITIES**

21.1 The Borrower shall, forthwith on demand, indemnify each Finance Party against any loss or liability (including any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document and any amount repaid or prepaid on the Loan, but excluding, for the avoidance of doubt, future loss of profit or margin) which the Lender incurs as a consequence of:

21.1.1 the occurrence of any Event of Default;

21.1.2 any payment of principal, interest or an overdue amount not being received on the due date therefore;

21.1.3 the Loan being prepaid otherwise than in accordance with the terms of this Agreement; and/or

21.1.4 (other than by reason of the negligence or default by the Lender) the Loan not being made after the Borrower has delivered the Request.

## **22 EVIDENCE AND CALCULATIONS**

### **22.1 Accounts**

Accounts maintained by the Lender in connection with this Agreement are prima facie evidence of the matters to which they relate.

### **22.2 Certificates and determinations**

Any certification or determination by the Lender of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates. Each certificate shall be in writing and shall set out in reasonable detail the basis of the computation of the rate or amounts specified therein.

### **22.3 Calculations**

Interest accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

## **23 AMENDMENTS AND WAIVERS**

### **23.1 Procedure**

Any term of the Finance Documents may be amended or waived with the agreement of the Borrower and the Lender.

## **23.2 Waivers and Remedies Cumulative**

23.2.1 The rights of the Lender under the Finance Documents:

23.2.1.1 may be exercised as often as necessary;

23.2.1.2 are cumulative and not exclusive of its rights under the general law; and

23.2.1.3 may be waived only in writing and specifically.

23.2.2 Delay in exercising or the non-exercise of any such right is not a waiver of that right.

## **24 AGENT AND SECURITY AGENT**

### **24.1 Appointment**

24.1.1 Each Lender irrevocably appoints the Agent to act as its agent under and in connection with the Finance Documents and the Security Agent to act as its security agent under and in connection with the Security Documents.

24.1.2 Each Lender irrevocably authorises the Agent and, separately, the Security Agent to assume the responsibilities and to perform the duties and obligations and to exercise the rights powers and discretions that are specifically delegated to them under or in connection with the Finance Documents together with any other incidental rights, powers and discretions;

24.1.3 Unless otherwise expressly provided or otherwise agreed by all the Lenders, the Agent and the Security Agent shall perform such duties and exercise all such rights, powers and discretions in accordance with the instructions of the Majority Lenders.

### **24.2 Instructions**

24.2.1 Each of the Agent and the Security Agent shall:

24.2.1.1 unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent or Security Agent in accordance with any instructions given to it by:

(a) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and (b) in all other cases, the Majority Lenders; and

24.2.1.2 not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with clause 24.2.1.

- 24.2.2 The Agent and/or the Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent and/or the Security Agent may refrain from acting unless and until it receives those instructions or that clarification that it has requested.
- 24.2.3 Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent or the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all the Finance Parties.
- 24.2.4 The Agent and/or the Security Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- 24.2.5 In the absence of instructions, the Agent and/or the Security Agent may act (or refrain from acting) as it considers to be in the best interest of the Parties.
- 24.2.6 Neither the Agent, nor the Security Agent is authorised to act on behalf of a Finance Party (without first obtaining that Party's consent) in any legal or arbitration proceedings relating to any Finance Document.

**24.3 Duties of the Agent and the Security Agent**

- 24.3.1 The duties of the Agent and the Security Agent under the Finance Documents are solely mechanical and administrative in nature.
- 24.3.2 The Agent and/or the Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to it in such capacity for that Party by any other Party.
- 24.3.3 Except where a Finance Document specifically provides otherwise, the Agent and/or the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

24.3.4 If the Agent and/or the Security Agent receives notice from a party referring to this Agreement, describing an Event of Default or Potential Event of Default and stating that the circumstance described is an Event of Default or Potential Event of Default, it shall promptly notify the Finance Parties.

24.3.5 If the Agent and/or the Security Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Party (other than the Agent) under this Agreement, it shall promptly notify the other Finance Parties.

24.3.6 The Agent and the Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

**24.4 No fiduciary duties**

24.4.1 Nothing in any Finance Document constitutes the Agent as a trustee or fiduciary of any other person.

24.4.2 The Agent shall not be bound to account to any Party any sum or the profit element of any sum received by it for its own account.

**24.5 Rights and discretions of the Agent and the Security Agent**

24.5.1 The Agent and/or the Security Agent may:

24.5.1.1 rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

24.5.2 assume that:

24.5.2.1 any instructions received by it from the Majority Lenders, are duly given in accordance with the terms of the Finance Documents; and

24.5.2.2 unless it has received notice of revocation, that those instructions have not been revoked; and

24.5.3 rely on a certificate from any person:

24.5.3.1 as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

24.5.3.2 to the effect that such person approves of any particular dealing, transaction, step, action or thing,

- 24.5.3.3 as sufficient evidence that this is the case and, in the case of paragraph 24.5.3.1 above, may assume the truth and accuracy of that certificate.
- 24.5.4 The Agent and/or the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties that:
  - 24.5.4.1 no Event of Default or Potential Event of Default has occurred (unless it has actual knowledge thereof arising); and
  - 24.5.4.2 any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised.
- 24.5.5 The Agent and/or the Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- 24.5.6 The Agent and/or the Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- 24.5.7 The Agent and/or the Security Agent may act in relation to the Finance Documents through its officers, employees and agents, and the Agent and/or the Security Agent shall not:
  - 24.5.7.1 be liable for any error of judgment made by any such person; or
  - 24.5.7.2 be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,
  - 24.5.7.3 unless such error or such loss was directly caused by the gross negligence or wilful misconduct of the Agent.
- 24.5.8 Unless a Finance Document expressly provides otherwise, the Agent and/or the Security Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- 24.5.9 Notwithstanding any other provision of any Finance Document to the contrary, the Agent and/or the Security Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a

breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

- 24.5.10 Notwithstanding any provision of any Finance Document to the contrary, the Agent and/or the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

## **24.6 Responsibility for documentation**

- 24.6.1 The Agent and/or the Security Agent is not responsible or liable for:

- 24.6.1.1 the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Borrower or any other person in, or in connection with, any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- 24.6.1.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- 24.6.1.3 any determination as to whether any information provided or to be provided to any Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

## **24.7 No duty to monitor**

- 24.7.1 The Agent and/or the Security Agent shall not be bound to enquire:

- 24.7.1.1 whether or not any Event of Default or Potential Event of Default has occurred;
- 24.7.1.2 as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- 24.7.1.3 whether any other event specified in any Finance

Document has occurred.

**24.8 Exclusion of liability**

24.8.1 Without limiting clause 24.8.2 below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent and/or the Security Agent), neither the Agent nor the Security Agent will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

24.8.1.1 any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document unless directly caused by its gross negligence or wilful misconduct;

24.8.1.2 exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document; or

24.8.1.3 without prejudice to the generality of clauses 24.8.1.1 and 24.8.1.2 above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of: (a) any act, event or circumstance not reasonably within its control; or (b) the general risks of investment in, or the holding of assets in, any jurisdiction, (c) including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

24.8.2 No Party (other than the Agent and/or the Security Agent) may take any proceedings against any officer, employee or agent of the Agent or the Security Agent respectively in respect of any claim it might have against the Agent and/or the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance

Document and any officer, employee or agent of the Agent and/or the Security Agent may rely on this clause subject to clause 31 (*Contracts (Rights of Third Parties) Act 1999*) and the provisions of the Third Parties Act (as defined therein).

24.8.3 Neither the Agent nor the Security Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent and/or the Security Agent if the Agent or the Security Agent (as the case may be) has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent and/or the Security Agent for that purpose.

24.8.4 Nothing in this Agreement shall oblige the Agent and/or the Security Agent to carry out:

24.8.4.1 Any "know your customer" or other checks in relation to any person;

24.8.4.2 any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender; or

24.8.4.3 on behalf of any Finance Party and each Finance Party confirms to the Agent and the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent and/or the Security Agent.

24.8.5 Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Agent and/or the Security Agent, any liability of the Agent and/or the Security Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent and/or the Security Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent and/or the Security Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent and/or the Security Agent has been

advised of the possibility of such loss or damages.

**24.9 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of all the Loans and undrawn Commitments on the date of demand or, if there are no Loans outstanding on the date of demand, its share of the Total Commitments on the date of demand or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent and/or the Security Agent, within 3 Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent and/or the Security Agent (otherwise than by reason of the Agent's and/or the Security Agent's gross negligence or wilful misconduct) in acting as Agent or Security Agent under the Finance Documents (unless the Agent or Security Agent has been reimbursed by the Borrower pursuant to a Finance Document).

**24.10 Resignation/Removal of the Agent and/or the Security Agent**

24.10.1 Notwithstanding its irrevocable appointment:

24.10.1.1 the Agent or the Security Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Lenders may appoint a successor Agent or the Security Agent in consultation with the Borrower; and

24.10.1.2 the Lenders may remove the Agent or the Security Agent by giving at least 30 days' prior written notice to the Lenders and the Borrower and such removal shall take effect only when a successor Agent or Security Agent is appointed by the Lenders in consultation with the Borrower.

24.10.2 If the appointment of a successor Agent or Security Agent is to be made by the Lenders but they have not, within 20 days after notice of resignation or, as the case may be, removal, appointed a successor Agent or Security Agent which accepts the appointment, the Agent or the Security Agent may appoint a successor Agent or Security Agent following consultation with the Borrower provided that the Agent or Security Agent shall be under no obligation to obtain the approval of the Borrower to the appointment by the Agent or Security Agent of a successor Agent or Security Agent.

24.10.3 Any successor Agent or Security Agent shall be either a Lender or a reputable and experienced bank, Building Society or other financial institution operating from an office in the UK.

- 24.10.4 The resignation or removal of the Agent or Security Agent and the appointment of any successor Agent or Security Agent will both become effective only upon the successor Agent or Security Agent notifying all the Parties that it accepts its appointment.
- 24.10.5 The retiring or departing Agent or Security Agent shall, at its own cost, make available to the successor Agent or Security Agent such documents and records and provide such assistance as the successor Agent or Security Agent may reasonably request for the purposes of performing its functions as the Agent under the Finance Documents.
- 24.10.6 Upon its resignation or, as the case may be, removal becoming effective, this clause 24 shall continue to benefit the retiring or departing Agent or Security Agent in respect of any action taken or not taken by it under, or in connection with, the Finance Documents, while it was the Agent or Security Agent, and, subject to clause 24.10.5 it shall have no further obligations under any Finance Document.
- 24.10.7 Any successor Agent or Security Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor Agent or Security Agent had been an original Party.

**24.11 Confidentiality**

- 24.11.1 If the Agent or Security Agent is a Lender then, in acting as agent or security agent for relevant Parties, the Agent or Security Agent shall be regarded as acting in a separate capacity from its status as Lender and shall be treated as a separate entity from itself in its capacity as Lender.
- 24.11.2 If the Agent or Security Agent is a Lender then information received by it in its capacity as Lender may be treated as confidential to it in that capacity and the Agent (in its capacity as Agent) or Security Agent (in its capacity as Security Agent) shall not be deemed to have notice of it.
- 24.11.3 Notwithstanding any other provision of any Finance Document to the contrary, the Agent and/or Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

**24.12 Credit appraisal by Parties**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Party confirms to the Agent and to the Security Agent that it has been, and will continue to be, solely responsible

for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- 24.12.1 the financial condition, status and nature of each member of the Group;
- 24.12.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- 24.12.3 whether the Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- 24.12.4 the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

#### **24.13 Relationship with the other Finance Parties**

The Agent or Security Agent may treat the person shown as Lender in its records as a Lender, entitled to receive payments under this Agreement unless it has received written notice to the contrary from another Party hereto.

#### **24.14 Security Documents**

- 24.14.1 The Security Agent may accept without investigation, requisition or objection such title as any person may have to the assets which are subject to the Security Documents and shall not:
  - 24.14.2 be bound or concerned to examine or enquire into the title of any person;
  - 24.14.3 be liable for any defect or failure in the title of any person, whether such defect or failure was known to the Security Agent or might have been discovered upon examination or enquiry and whether capable of remedy or not; and
  - 24.14.4 be liable for any failure on this part to give notice of the Security Documents to any third party or otherwise perfect or register the security created by the Security Documents.
- 24.14.5 The Security Agent shall hold the benefit of the Security Documents in its

favour as agent and trustee for the Finance Parties.

- 24.14.6 Upon the appointment of any successor Security Agent, the resigning Security Agent shall execute and deliver such documents and do such other acts and things as may be necessary to vest in the successor Security Agent all the rights, title and interests vested in the resigning Security Agent under the relevant Security Documents.
- 24.14.7 The Security Agent in its capacity as trustee or otherwise in respect of the Security Documents is not under any obligations to hold any title deed, Finance Document or any other document in connection with the property charged by any Finance Document or any other such security in its own possession or to take any steps to protect or preserve the same. The Security Agent may permit the Borrower's solicitors to retain all such title deeds, Finance Documents and other documents in its possession. The Security Agent will use all reasonable care to ensure that safe custody of all such title deeds, Finance Documents and other documents which are in its possession.
- 24.14.8 Save as otherwise provided in the Finance Documents, all monies which under the trusts therein contained are received by the Security Agent in its capacity as trustee or otherwise may be invested in the name of or under the control of the Security Agent in any investment for the time being authorised by English law for the investment by trustees of trust money or in any other investments which may be selected by the Security Agent. Additionally, the same may be placed on deposit in the name of or under the control of the Security Agent at such bank or institution (including the Security Agent or one of its Affiliates) and upon such terms as the Security Agent may think fit.
- 24.14.9 Each Finance Party confirms that it does not wish to be registered in accordance with the Land Registration Rules 1925 (or any provision which replaces or amends the same) or the Land Registration Acts 1925 – 2002 (or any provision which replaces or amends the same) as the joint proprietor of any mortgage or charge created pursuant to any Security Document and accordingly authorises the Security Agent to hold such mortgage or charge in its sole name as agent and trustee for, among others, the Facility Agent, the Finance Parties and itself and requests the Land Registry to register the Security Agent as the sole proprietor of any such mortgage or charge.

**24.15 Agent's and/or Security Agent's management time**

Any amount payable to the Agent or Security Agent under clause 24.9 (*Lenders*

*Indemnity to Agent and/or Security Agent*), clause 18 (*Expenses*) and clause 21 (*Indemnities*) shall include the cost of utilising the Agent's or Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent or Security Agent may notify to the Borrower and is in addition to any fee paid or payable to the Agent or Security Agent under clause 20 (*Fees*) (if any) or otherwise under the Finance Documents.

**24.16 Deduction from amounts payable by the Agent or the Security Agent**

If any Party owes an amount to the Agent or Security Agent under the Finance Documents the Agent or Security Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent or Security Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents, that Party shall be regarded as having received any amount so deducted.

**25 CHANGES TO THE PARTIES**

**25.1 Transfers by the Borrower**

The Borrower may not assign, transfer, novate or dispose of any of, or any interest in, its rights and/or obligations under the Finance Documents.

**25.2 Transfers by the Lenders**

25.2.1 A Lender (the "**Existing Lender**") may effect a transfer of any of its rights and/or obligations under the Finance Documents to a new lender (a "**New Lender**").

25.2.2 The Borrower will not be obliged to pay any additional amount under Clause 10 (*Taxes*) or Clause 11 (*Increased Costs*) to any New Lender who is not a Qualifying Lender if, at the time of the transfer, it would not have been liable to pay that amount in the absence of the transfer.

25.2.3 A transfer of obligations will be effective only once they are novated in accordance with Clause 25.3 (*Procedure for Novations*) or by assignment in accordance with Clause 25.4 (*Procedure for Assignments*)

25.2.4 Nothing in this Agreement restricts the ability of a Lender to sub-contract an obligation if the Lender remains liable to the Borrower under this Agreement for that obligation.

25.2.5 An Existing Lender will not be responsible to a New Lender for:

25.2.5.1 The execution, genuineness, validity, enforceability or sufficiency of any Finance Document or any other document;

25.2.5.2 The collectability of amounts payable under any Finance Document; or

25.2.5.3 The accuracy of any statements (whether written or oral) made in connection with any Finance Document.

25.2.6 Each New Lender confirms to the other Finance Parties that it:

25.2.6.1 has made its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

25.2.6.2 will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities while any amount is or may be outstanding under this Agreement or any amount of the Available Facility is available for drawing.

25.2.7 Nothing in any Finance Document obliges an Existing Lender to:

25.2.7.1 accept a re-transfer from a New Lender of any of the rights and/or obligations assigned, transferred or novated in accordance with this Clause 24 (*Changes to the parties*); or

25.2.7.2 support any losses incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

25.2.8 On each occasion an Existing Lender assigns or transfers any of its rights and/or obligations under this Agreement, the New Lender shall, on the date the assignment or transfer takes effect, pay to the Agent for its own account a fee of £5,000 or such higher amount as the Agent may reasonably require.

### 25.3 Procedure for transfers by way of novation

25.3.1 A novation is effected once the Borrower, Existing Lender and the New Lender complete a novation certificate which shall be based on the form set out in Schedule 4 (*Form of Novation Certificate*) (a “**Novation Certificate**”).

25.3.2 On the date set out in the Novation Certificate for the novation to come into effect:

- 25.3.2.1 The Existing Lender will be released from its obligations under the Finance Documents (the “**discharged obligations**”);
- 25.3.2.2 The New Lender and the Borrower will assume obligations to each other in accordance with the Finance Documents, as varied and novated by the Novation Certificate; and
- 25.3.2.3 The rights of the Existing Lender against the Borrower and vice versa will be cancelled.

#### 25.4 Procedure for assignment

- 25.4.1 An assignment may be effected in accordance with this clause when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender.
- 25.4.2 Each Party (other than the Existing Lender and the New Lender) authorises the Agent to execute any duly completed Assignment Agreement on its behalf. The Agent shall, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- 25.4.3 The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary 'know your customer' or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- 25.4.4 To the extent that they are expressed to be the subject of the assignment in the Assignment Agreement:
  - 25.4.4.1 the Existing Lender will assign absolutely to the New Lender its rights;
  - 25.4.4.2 the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release; and
  - 25.4.4.3 the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations,

25.4.4.4 all on the date of execution of the Assignment Agreement by the Agent or, if later, the date specified in the Assignment Agreement.

**25.5 Copy of Assignment Agreement or Novation Certificate to the Borrower**

The Agent shall, as soon as reasonably practicable after it has executed an Assignment Agreement or a Novation Certificate, send to the Borrower a copy of that Assignment Agreement or Novation Certificate.

**26 SET-OFF**

A Finance Party may set off any matured obligation of the Borrower under any Finance Document (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower. The Finance Party shall notify the Agent promptly of the exercise of such right of set-off and the Agent will then promptly notify the Borrower.

**27 SEVERABILITY**

If a provision of any Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

27.1 the validity or enforceability in that jurisdiction of any other provision of the Finance Documents; or

27.2 the validity or enforceability in other jurisdictions of that or any other provision of the Finance Documents.

**28 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**29 NOTICES**

**29.1 Giving of notices**

Subject to Clause 29.3 (*Electronic communication*), all notices or other communications under or in connection with this Agreement shall be given in writing. Any such notice will be deemed to be given when delivered (delivery shall be deemed to be immediate if by hand or two days after posting if sent by first class post).

However, a notice given in accordance with the above but received on a non Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day in that place.

**29.2 Addresses for notices**

- 29.2.1 The address and email address for each Party for all notices under, or in connection with, this Agreement, are as set out below and may be changed by not less than five Business Days' notice to the other.
- 29.2.2 The address and email address of the Agent is:  
  
South Northamptonshire Council, the Forum, Moat Lane, Towcester,  
Northamptonshire NN12 6AD  
  
Email: paul.sutton@cherwellandsouthnorthants.gov.uk  
  
Attention: Paul Sutton, Chief Finance Officer
- 29.2.3 The address and email address of Aylesbury Vale District Council is:  
  
The Gateway, Gatehouse Road, Aylesbury, Buckinghamshire HP19 8FF  
  
Email: asmall@aylesburyvaledc.gov.uk  
  
Attention: Andrew Small, Director
- 29.2.4 The address and email address of Buckingham County Council is:  
  
County Hall, Walton Street, Aylesbury, Buckinghamshire HP20 1UA  
  
Email: rambrose@buckscc.gov.uk  
  
Attention: Richard Ambrose, Director of Assurance and Chief Finance Officer
- 29.2.5 The address and email address of Buckingham Thames Valley Local Enterprise Partnership is:  
  
C/o Buckingham County Council, County Hall, Walton Street, Aylesbury,  
Buckinghamshire HP20 1UA  
  
Email: richard.harrington@btvlep.co.uk  
  
Attention: Richard Harrington, Chief Executive
- 29.2.6 The address and email address of South East Midlands Local Enterprise Partnership is:  
  
Cranfield Innovation Centre, University Way, Cranfield, Bedfordshire  
MK43 0BT  
  
Email: stephen.catchpole@semlep.com  
  
Attention: Stephen Catchpole, Chief Executive
- 29.2.7 The address and email address of the Borrower is:  
  
Silverstone Circuit, Silverstone, Towcester, Northamptonshire, NN12 8TN  
  
Email: sally.reynolds@silverstone.co.uk

Attention: Sally Reynolds, Chief Executive Officer

**29.3 Electronic communication**

29.3.1 Any communication to be made between any two Parties under or in connection with a Finance Document may be made by electronic mail or other electronic means if the two Parties:

29.3.1.1 agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

29.3.1.2 notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

29.3.1.3 notify each other of any change to their address or any other such information supplied by them.

29.3.2 Any electronic communication will be effective only when actually received and it is in readable form.

**30 GOVERNING LAW**

This Agreement, and all non-contractual obligations arising from or connected with it, shall be governed by, and shall be construed in accordance with the law of England and Wales. Any proceedings arising out of or in connection with it must be brought in a court of competent jurisdiction in England and Wales.

**31 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

31.1 Unless expressly provided to the contrary in a finance document, a person who is not a party has no right under the contracts (rights of third parties) act 1999 (the "third parties act") to enforce or to enjoy the benefit of any term of this agreement.

31.2 Notwithstanding any term of any finance document, the consent of any person who is not a party is not required to rescind or vary this agreement at any time.



**SCHEDULE 1**  
**The Original Lenders**

| <b>ORIGINAL LENDER</b>                                     | <b>COMMITTMENT</b> |
|--|--------------------|
| South Northamptonshire Council                             | £3,000,000         |
| Aylesbury Vale District Council                            | £2,000,000         |
| Buckinghamshire County Council                             | £1,000,000         |
| Buckinghamshire Thames Valley Local Enterprise Partnership | £1,000,000         |
| South East Midlands Local Enterprise Partnership           | £1,000,000         |

**SCHEDULE 2**  
**Conditions Precedent Documents**

**The Borrower**

- 1 A copy of the Borrower's Articles of Association.
- 2 A copy of the Borrower's acknowledgement of registration as a company limited by guarantee.
- 3 A copy of a resolution of the Board
  - 3.1 approving the terms of, and the transactions contemplated by, the Finance Documents and resolving that it executes the same;
  - 3.2 authorising a specified person or persons to execute each Finance Document on its behalf, whether as a deed or as an agreement under hand; and
  - 3.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under, or in connection with, the Finance Documents to which it is a party.
- 4 A list of the Authorised Signatories of the Borrower together with a specimen of the signature of each Authorised Signatory who has been duly authorised by the Borrower to sign/execute the Finance Documents, Requests and/or any certificate or documentation relating thereto.
- 5 A certificate signed by an Authorised Signatory confirming that the borrowing of the Facility in full would not cause any borrowing limit binding on it to be exceeded.
- 6 A certificate signed by an Authorised Signatory certifying that each copy document specified in this Schedule 1 is correct, complete, up-to-date and in full force and effect as at a date no earlier than the date of this Agreement.
- 7 Evidence of payment of all fees, costs and expenses due from the Borrower.
- 8 A copy of the Borrower's Business Plans.
- 9 A copy of the latest Accounts.
- 10 Evidence that the Heritage Lottery Fund has agreed to make a matching loan to the Borrower.

**Agreements**

- 11 The Loan Agreement duly executed and completed.

**Miscellaneous**

- 12 A copy of any other authorisation or other document, opinion or assurance which the Lender considers to be necessary in connection with the entry into and performance of, and the transactions contemplated by, any Finance Document or for the validity and enforceability of any Finance Document.

**SCHEDULE 3**  
**Form of Request**

To: South Northamptonshire Council as Agent

From: Silverstone Heritage Limited as Borrower

Date: 31 May 2017

**£8,000,000 Loan Agreement dated 31 May 2017**

- 1 We refer to the Loan Agreement. Terms defined in the Loan Agreement shall have the same meanings in this notice.
- 2 We wish to borrow a Loan as follows:
  - 2.1 Commencement Date: 31 May 2017
  - 2.2 Amount: £750,000
  - 2.3 Payment Instructions: Lloyds Bank, 130 Watling Street, Towcester, NN12 6BT  
Account No: 13792968, Sort-Code: 30-18-83
- 3 We confirm that each condition specified in Clause 4 (*Conditions Precedent*) and required to be satisfied on the date of this Request is so satisfied, and we know of no reason why any condition specified in Clause 4 (*Conditions Precedent*) to be satisfied on or before the Commencement Date will not be so satisfied.

By:



Authorised Signatory

for and on behalf of

Silverstone Heritage Limited

**SCHEDULE 4**  
**Form of Novation Certificate**

**£8,000,000 Loan Agreement dated [                      ]**

We refer to Clause 25.3 (*Procedure for novations*):

- 1        [                      ] (the “**Existing Lender**”) wishes to novate the Loan Agreement and the other Finance Documents to [                      ] (the “**New Lender**”) on the terms set out hereunder.
- 2        The Borrower has agreed to the novation.
- 3        The Borrower and the New Lender have agreed that the Loan Agreement shall be amended and varied as follows:  
  
          *[INSERT AGREED VARIATIONS]*
- 4        The Existing Lender, the New Lender and the Borrower agree that the novation shall take effect on and from *[DATE]*.
- 5        This Novation Certificate is governed by English Law.

[The Borrower]

By:

Date:

[The Existing Lender]

By:

Date:

[The New Lender]

By:

Date:

**SCHEDULE 5**

**Form of Compliance Certificate**

To: South Northamptonshire Council as Agent for and on behalf of the Lenders

From: Silverstone Heritage Limited

Dear Sirs

**£8,000,000 Loan Agreement dated**

**2017 (the Agreement)**

We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning in this Compliance Certificate.

To the best of our knowledge and belief, after making due and careful enquiry, no Event of Default or Potential Event of Default is outstanding.

We confirm that we have the funds available to meet all of our commitments under the Project.

Dated: (Insert date) **26/5/2017**

Signed: 

Name: **Sally Reynolds**

Title: **CEO**

For and on behalf of Silverstone Heritage Limited

**SCHEDULE 6**  
**Drawdown Schedule**

| <b>Date</b>     | <b>Milestone</b> | <b>Total amount that may be drawn</b> |
|-----------------|------------------|---------------------------------------|
| 31 March 2017   |                  | £750,000                              |
| 31 July 2017    |                  | £1,500,000                            |
| 31 October 2017 |                  | £3,000,000                            |
| 31 January 2018 |                  | £4,000,000                            |
| 31 April 2018   |                  | £5,250,000                            |
| 31 July 2018    |                  | £6,250,000                            |
| 31 October 2018 |                  | £7,500,000                            |
| 31 January 2019 |                  | £8,000,000                            |
|                 |                  |                                       |
|                 |                  |                                       |
|                 |                  |                                       |

**SCHEDULE 7**  
**REPAYMENT SCHEDULE**

| <b>Anniversary</b> | <b>Amount to be repaid</b>  |
|--------------------|---|
| 2021               | £1,142,857 plus the interest rolled up and capitalised pursuant to clause 8.2 |
| 2022               | £1,142,857  |
| 2023               | £1,142,857  |
| 2024               | £1,142,857  |
| 2025               | £1,142,857  |
| 2026               | £1,142,857  |
| 2027               | £1,142,857  |



**SIGNATORIES TO THE LOAN AGREEMENT**

**The Borrower**

**SILVERSTONE HERITAGE LIMITED**

By:



**The Agent**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**The Lenders**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**AYLESBURY VALE DISTRICT COUNCIL,**

By:

**BUCKINGHAMSHIRE COUNTY COUNCIL,**

By:

**BUCKINGHAMSHIRE THAMES VALLEY LOCAL ENTERPRISE PARTNERSHIP**

By:

**SOUTH EAST MIDLANDS LOCAL ENTERPRISE PARTNERSHIP**

By:

## **SIGNATORIES TO THE LOAN AGREEMENT**

### **The Borrower**

**SILVERSTONE HERITAGE LIMITED**

By:

### **The Agent**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By: 

Paul Sutton, Chief Finance Officer, South Northamptonshire Council

### **The Lenders**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By: 

Paul Sutton, Chief Finance Officer

**AYLESBURY VALE DISTRICT COUNCIL,**

By:

**BUCKINGHAMSHIRE COUNTY COUNCIL,**

By:

**BUCKINGHAMSHIRE THAMES VALLEY LOCAL ENTERPRISE PARTNERSHIP**

By:

**SOUTH EAST MIDLANDS LOCAL ENTERPRISE PARTNERSHIP**

By:

**SIGNATORIES TO THE LOAN AGREEMENT**

**The Borrower**

**SILVERSTONE HERITAGE LIMITED**

By:

**The Agent**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**The Lenders**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**AYLESBURY VALE DISTRICT COUNCIL,**

By:

  
ANDREW SMALL - DIRECTOR  
**BUCKINGHAMSHIRE COUNTY COUNCIL,**

By:

**BUCKINGHAMSHIRE THAMES VALLEY LOCAL ENTERPRISE PARTNERSHIP**

By:

**SOUTH EAST MIDLANDS LOCAL ENTERPRISE PARTNERSHIP**

By:

**SIGNATORIES TO THE LOAN AGREEMENT**

**The Borrower**

**SILVERSTONE HERITAGE LIMITED**

By:

**The Agent**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**The Lenders**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**AYLESBURY VALE DISTRICT COUNCIL,**

By:

**BUCKINGHAMSHIRE COUNTY COUNCIL,**

By:  Richard Ambrose, Director of Assurance.

**BUCKINGHAMSHIRE THAMES VALLEY LOCAL ENTERPRISE PARTNERSHIP**

By:

**SOUTH EAST MIDLANDS LOCAL ENTERPRISE PARTNERSHIP**

By:

**SIGNATORIES TO THE LOAN AGREEMENT**

**The Borrower**

**SILVERSTONE HERITAGE LIMITED**

By:

**The Agent**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**The Lenders**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**AYLESBURY VALE DISTRICT COUNCIL,**

By:

**BUCKINGHAMSHIRE COUNTY COUNCIL,**

By:

**BUCKINGHAMSHIRE THAMES VALLEY LOCAL ENTERPRISE PARTNERSHIP**

By: Richard Harrington



**SOUTH EAST MIDLANDS LOCAL ENTERPRISE PARTNERSHIP**

By:

**SIGNATORIES TO THE LOAN AGREEMENT**

**The Borrower**

**SILVERSTONE HERITAGE LIMITED**

By:

**The Agent**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**The Lenders**

**SOUTH NORTHAMPTONSHIRE COUNCIL,**

By:

**AYLESBURY VALE DISTRICT COUNCIL,**

By:

**BUCKINGHAMSHIRE COUNTY COUNCIL,**

By:

**BUCKINGHAMSHIRE THAMES VALLEY LOCAL ENTERPRISE PARTNERSHIP**

By:

**SOUTH EAST MIDLANDS LOCAL ENTERPRISE PARTNERSHIP**

By:



Stephen Catchpole, Chief Executive Officer