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**DENBIGHSHIRE COUNTY COUNCIL**

**DENBIGHSHIRE LEISURE LIMITED**

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**Members' agreement relating to**

**DENBIGHSHIRE LEISURE LIMITED**

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**HUGH | JAMES**

Understanding law, understanding you

This agreement is dated

2019

## Parties

- (1) **DENBIGHSHIRE COUNTY COUNCIL** whose principal office is at .....(the **Council**); and
- (2) **DENBIGHSHIRE LEISURE LIMITED** a company incorporated and registered in England and Wales with registered number [ ] whose registered office is at [ ](the **Company**).

## Introduction

- (A) The Company was incorporated under the Companies Act 2006 on [ ] 2019 as a private company limited by guarantee. At the date of this Agreement the Council is the only member.
- (B) This Agreement sets out the terms upon which the Council will participate in the Company as its member.

## Agreed terms

### 1. INTERPRETATION AND DEFINITIONS

#### 1.1 In this Agreement:

<b>Annual Accounts Date</b>	the accounting reference date of the Company from time to time;
<b>Board of Directors</b>	the board of directors of the Company;
<b>Board Meeting</b>	a meeting of the Board of Directors;
<b>Business</b>	the business of the Company described in clause 2 and the Business Plan and such other business as the Member may agree from time to time in writing should be carried on by the Company;
<b>Business Plan</b>	the business plan adopted in accordance with clause 2 and clause 6 and applicable from time to time;
<b>Business Day</b>	a day other than a Saturday or Sunday or public holiday in England and Wales;
<b>Director</b>	any director for the time being of the Company, including where applicable any alternate director;

<b>Environmental Information Regulations</b>	means the Environmental Information Regulations 2004;
<b>FOIA Information</b>	the Freedom of Information Act 2000; has the meaning given to it under section 84 of the FOIA;
<b>Member</b>	any member of the Company, being the Council at the date of this Agreement;
<b>Membership</b>	the act of being a member of the Company;
<b>Member Committee</b>	a group which will be constituted and operate in accordance with clause 5;
<b>Member Committee Meeting</b>	a meeting of the members of the Member Committee;
<b>Security Interest</b>	any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, guarantee, indemnity, debenture, declaration of trust, right of set off or combination of accounts or any other type of preferential arrangement (including without limitation, a title transfer and retention of title) or any encumbrance or security interest whatsoever, howsoever arising and whether monetary or not;
<b>Subsidiary Undertaking</b>	a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of

state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.

1.6 In this Agreement all obligations and liabilities on the part of the Member are (unless expressly stated otherwise) several and shall be construed accordingly.

1.7 Any reference to a document **in the agreed form** shall be a reference to that document in the form agreed and initialled by or on behalf of each of the Member for the purpose of identification and attached to this Agreement.

## 2. **THE BUSINESS OF THE COMPANY**

2.1 The parties acknowledge and agree that unless and until they agree otherwise, the business of the Company shall be the provision of [ ] in accordance with the Business Plan. The Company shall:

2.1.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit, on sound commercial profit-making principles; and

2.1.2 transact all its business on arm's length terms.

2.2 The first Business Plan of the Company is in agreed form and will be approved by the Board of Directors as soon as reasonably practicable following execution of this Agreement. The Company shall circulate a revised version of the then current Business Plan to the Member Committee by the end of **[December]** in each year and invite the Member Committee to provide comments on the proposed Business Plan. Following the receipt of such comments, the Board of Directors shall (in accordance with this Agreement) consider and, if appropriate, update and revise the proposed Business Plan and forward it to the Member for consent in accordance with clause 6 no later than the end of January. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received consent in accordance with clause 6.

2.3 Each Business Plan shall be substantially in the format of the first Business Plan and shall be for a [ ] year period.

2.4 Notwithstanding any other provision of this clause 2 following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated and revised Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan of the Company. For any

period when a proposed Business Plan presented under clause 2.2 has not been approved in accordance with clause 6 and adopted by the Directors in accordance with this Agreement, the relevant existing Business Plan shall continue to be the Business Plan of the Company.

- 2.5 The principal place of business of the Company and the principal place for management of the Company shall be within the boundaries of Denbighshire, unless otherwise agreed in writing by the Council.

### 3. **CONDUCT OF THE COMPANY'S AFFAIRS**

- 3.1 With the exception of those matters requiring consent pursuant to clause 6, the day-to-day management of the Company shall be vested in the Directors. Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out to those matters requiring consent pursuant to clause 6 and to any other express provisions of this Agreement.
- 3.2 The Company shall not carry out any activity which would render the Council being a Member unlawful.
- 3.3 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 3.4 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries at any time with any officers and employees designated in writing by the Council for this purpose. All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries shall be open to the inspection of any officers and employees designated in writing by the Council for this purpose, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Council properly informed about the business and affairs of the Company or to protect its interests as a Member.
- 3.5 The Company agrees with the Council that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the **Company** and will generally keep the Council informed of the progress of **the Company's** business and affairs and in particular will procure that the Council is given such information and such access to the officers, employees and premises of the

**Company** as it may reasonably require for the purposes of enabling it to monitor its investment in the **Company** and to comply with its obligations under the [Prudential Code for Local Authorities.]

3.6 The Company shall not breach nor cause the Council to be in breach of the relevant provisions of the [Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing Act 1989 or the Local Government Public Involvement in Health Act 2007 or its obligations under the Public Contracts Regulations 2015 or any European Directive on public procurement.]

3.7 The Company shall:

3.7.1 identify the participation of the Council on all its official business stationery;  
and

3.7.2 not engage in any party political publicity.

3.8 The Company agrees that it shall adopt such of the Council's employment terms, conditions, policies and procedures, including those in relation to any employees employed by the Company, as are notified to the Company by the Council from time to time.

#### 4. **THE BOARD OF DIRECTORS**

4.1 The Board of Directors shall consist of not less than [4] Directors.

4.2 Board Meetings shall be held no less than [ ] times in every year and at not more than three monthly intervals. All Board Meetings shall be held at [ ].

4.3 Unless otherwise agreed by all the Directors, not less than 10 Business Days' notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting. If any matter is not identified in reasonable detail the Board of Directors shall not decide on it unless all Directors agree in writing

#### 5. **MEMBER COMMITTEE**

5.1 The Member Committee shall not have powers to make decisions on behalf of the Council or the Company. The purpose of the Member Committee shall be to:

- 5.1.1 recommend, where relevant, the appointment of the Chairman of the Board and approve best practice policies in relation to such an appointment;
    - 5.1.2 receive and review and comment on or recommend any amendments to the Business Plan;
    - 5.1.3 review the financial performance of the Company; and
    - 5.1.4 make recommendations to the Council on how it should exercise the functions flowing from its Membership.
  - 5.2 A Member Committee Meeting shall be held no less than every [quarter].
  - 5.3 The Member Committee may call an extraordinary committee and [the Chairman and Managing Director] will be required to attend provided they are given not less than 10 Business Days' notice in writing.
  - 5.4 The Board of Directors shall send a report at least [twice] a year to each member of the Member Committee. The report shall provide all information reasonably required for the Member Committee to conduct an effective review of the following items:
    - 5.4.1 the services provided by the Company, with quality performance matched against contractually agreed service levels;
    - 5.4.2 progress against the Business Plan and financial projections;
    - 5.4.3 management accounts and key financial metrics;
    - 5.4.4 the review of future service developments and opportunities; and
    - 5.4.5 information and assessment of any additional ad-hoc requests.
- For the avoidance of doubt, the list of items in this clause 5.4 is not exhaustive and ad hoc meetings of the Member Committee can be called at other times by notice in writing from at least two members of the Member Committee.
- 5.5 Unless otherwise agreed by a member of the Member Committee appointed by the Council before a Member Committee Meeting not less than 10 Business Days' notice shall be given to each of the members of the Member Committee and to the directors of the Company which shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.

- 5.6 The Company will supply members of the Member Committee with the agendas and support papers provided to the Board of Directors and shall do so at the same time, as far as possible, as the relevant board receives those agendas and papers (except for minutes, which need only be supplied after signature). In addition, the Company will supply the members of the Member Committee with all information and data reasonably requested by the Member Committee to enable it to reach an informed judgment on any matter within its purview.
- 5.7 The Company shall ensure that at least one representative shall attend each meeting of the Member Committee who shall be a Director and qualified to address the issues on the agenda for the meeting.

## 6. **RESERVED MATTERS**

- 6.1 Each of the parties shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement no **Company** Member shall, except with the prior consent of the Council, take any action or pass any resolution in respect of:
- 6.1.1 altering in any respect its articles of association or the rights attaching to the Membership;
  - 6.1.2 permitting the registration of any person as a Member of the Company;
  - 6.1.3 declaring or paying any dividend;
  - 6.1.4 re-registering the Company as a public limited company, or as any entity other than a company limited by guarantee;
  - 6.1.5 forming any Subsidiary Undertaking or acquiring shares in any other company or participating in a joint venture (incorporated or not);
  - 6.1.6 amalgamating or merging with any other company or business undertaking;  
or
  - 6.1.7 passing any resolution for its winding up or presenting any petition for its administration, unless it has become insolvent;



- 6.1.8 changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business;
- 6.1.9 engaging in any business other than as contemplated by the Business Plan or defraying any monies other than in good faith for the purposes of or in connection with the carrying on of such business;
- 6.1.10 appointing or removing any Director;
- 6.1.11 the grant of any power of attorney or the appointment of any agent, or the entry into any other agreement which devolves or transfers management control of the Company from the Board of Directors;
- 6.1.12 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any Director;
- 6.1.13 the entry into any service contract, terms of appointment or other agreement with a Director;
- 6.1.14 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any key employee of, or consultant to, the Company at a rate in excess of **[£50,000]** per annum or increasing the remuneration of any such person to a rate in excess of **1%** per annum;
- 6.1.15 paying or agreeing to pay any cessation payments with employees
- 6.1.16 establishing or amending any profit-sharing, bonus or other incentive scheme of any nature for directors or employees;
- 6.1.17 making any bonus payment to any director or key employee;
- 6.1.18 instituting, settling or compromising any material legal proceedings instituted or threatened against it or submitting any dispute to arbitration or alternative dispute resolution;
- 6.1.19 borrowing any monies (other than normal trade credit);
- 6.1.20 changing its name or its registered office;
- 6.1.21 replacing or modifying the Business Plan;
- 6.1.22 creating or granting any Security Interest over the whole or any part of its business, undertaking or assets or agreeing to do so;

6.1.23 entering into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms;

6.1.24 making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee or indemnity; or

6.1.25 entering into an agreement to do any of the foregoing.

## 7. **PRODUCTION OF ACCOUNTS AND REPORTS**

7.1 The Company shall instruct its accountants to prepare a balance sheet of the Company, as at the Annual Accounts Date each year and a consolidated profit and loss account of the Company, for the 12 month financial period ending on the Annual Accounts Date each year to be presented to the Member within **3** calendar months after the end of the period to which such accounts relate. The Company shall appoint an independent auditor to audit the balance sheet and profit and loss account for the Company.

7.2 The Company will provide to the Member full details of any actual or prospective material change in the Business or the financial position or affairs of the Company, as soon as such details are available.

7.3 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.

## 8. **ANTI-CORRUPTION**

8.1 In this clause:

**Adequate Procedures** means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

**Associated Person** means in relation to a party to this Agreement, any person (including an officer, employee, agent or Subsidiary Undertaking) who performs services for or on behalf of that party;

**Corrupt Activity** means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act;

8.2 Each party declares and undertakes to the other parties that:

8.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;

8.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;

8.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;

8.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) Bribery Act;

8.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 8.2 and will provide any information reasonably requested by the other party in support of such compliance; and

8.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 8.

## 9. **NO FETTER**

Nothing in this Agreement shall operate to bind the Company or any Council to the extent that it constitutes an unlawful fetter on any statutory power of the Company or the Council.

## 10. **DURATION AND TERMINATION**

10.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Council, provided that this Agreement shall cease to have effect as regards any Member who ceases to hold any Membership in the Company, except for any provisions which are expressed to continue in force thereafter.

10.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

## 11. **CONFIDENTIALITY**

11.1 This clause applies to:

11.1.1 all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;

11.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;

including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).

11.2 In this clause, in relation to a particular item of Confidential Information:

11.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and

11.2.2 the **Receiving Party** means the other party.

11.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:

11.3.1 keep the Confidential Information confidential;

11.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 11; and

- 11.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.
- 11.4 Notwithstanding clause 11.3, the Receiving Party may disclose Confidential Information as follows:
  - 11.4.1 to its professional advisers (each, a Recipient) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
  - 11.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 11.5 This clause 11 shall not apply to any Confidential Information which:
  - 11.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
  - 11.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or
  - 11.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.
- 11.6 The Company acknowledges that the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 11.7 and 11.10.
- 11.7 If a Council receives a Request for Information in relation to Information that the Company is holding and which the Council does not hold itself, the Council shall refer to the Company such Request for Information as soon as practicable and in any event within five Business Days of receiving a Request for Information, and the Company shall:

- 11.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 10 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and
  - 11.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 11.8 Following notification under clause 11.7, and up until such time as the Company has provided the Council with all the Information specified in clause 11.7, the Company may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:
  - 11.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
  - 11.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.
- 11.9 The Company acknowledges that (notwithstanding the provisions of clause 11.1) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Company:
  - 11.9.1 in certain circumstances without consulting with the Company; or
  - 11.9.2 following consultation with the Company and having taken its views into account.
- 11.10 The Company shall transfer to the relevant Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.

- 11.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 11.9.

## 12. **GENERAL**

- 12.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.
- 12.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 12.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.
- 12.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.
- 12.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 12.6 A waiver of a breach of any of the terms of this agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.
- 12.7 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
- 12.8 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:
- 12.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - 12.8.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

12.9 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.

12.10 Each of the parties acknowledges and agrees that:

12.10.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;

12.10.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;

12.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.

12.11 No person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

### 13. **ASSIGNMENT**

13.1 This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party save where the Council's function are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

### 14. **NO PARTNERSHIP OR AGENCY**

14.1 Nothing in this Agreement is intended to or shall operate to create a partnership, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited



to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **15. NOTICES**

15.1 Any notice or other communication given under this Agreement:

15.1.1 shall be in writing;

15.1.2 shall be signed by or on behalf of the party giving it;

15.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post or by fax at the address or fax number set out in clause 15.2 of the party due to receive it and marked for the attention of the person named in clause 15.2 (or at such other address in the United Kingdom or fax number or marked for the attention of such other person as last notified in writing to the other parties;

15.1.4 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery;

(b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and

(c) in the case of fax, at the time of completion of transmission.

15.2 The addresses of the parties for the purposes of clause 15.1 are as set out at the beginning of this Agreement and the notice details and fax numbers are as follows:

15.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause 15.2 and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in clause 15.2.

15.4 In this clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

15.5 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

16. **COUNTERPARTS**

16.1 This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

17. **APPLICABLE LAW**

17.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English and Welsh law.

17.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This Agreement has been executed on the date stated at the beginning of this Agreement.

Execution page