



Lease

between

Highlands and Islands Enterprise

and

Cairngorm Mountain Limited

Subjects: Visitor Attraction at Cairngorm

Ref: FRR/362904

FAS: 2889

Harper Macleod LLP The Ca'd'oro 45 Gordon Street Glasgow G1 3PE
Tel +44 (0)141 221 8888 Fax +44(0)141 226 4198 e-mail info@harpermacleod.co.uk
www.harpermacleod.co.uk DX GW86 LP 5, Glasgow 6

Glasgow Edinburgh Inverness

Lease

between

Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990 and having their Chief Office formerly at Bridge House, 20 Bridge Street, Inverness and thereafter at Cowan House, Highlander Way, Inverness Business & Retail Park, Inverness, Inverness-Shire IV2 7GF and now at Fraser House, Friars Lane, Inverness IV1 1BA (who and whose successors as heritable proprietors of the Premises (as hereinafter defined) are hereinafter referred to as the "**Landlord**")

and

Cairngorm Mountain Limited incorporated in Scotland with registered number SC043599 and having their registered office at Cairngorm Ski Area, Aviemore, Inverness-Shire PH22 1RB (who and whose permitted successors and assignees are in substitution therefor hereinafter referred to as the "**Tenant**")

The Landlord and the Tenant hereby agree as follows:-

In consideration of the rent and the obligations hereinafter contained the Landlord HEREBY LETS to the Tenant (but excluding assignees and sub-tenants in any form) the Premises together with the rights specified in Clause 8 but subject to the exceptions and reservations referred to in Clause 7 for the Lease Period and for the Permitted Use, and the Tenant accepts the Premises as being in all respects fit for the purpose for which the Premises are let and in good and substantial condition and repair (and without prejudice to the foregoing generality accepts all Buildings thereon wind and watertight and all Service Media and Uplift Infrastructure as in good working order) as at the Date of Entry.

1 Definitions

In this Lease the following words and expressions shall have the following meanings:-

"**Agreements**" means (together) the Funding Agreement and the Operating Agreement;

"**Base Rent**" has the meaning ascribed to it in Part 2 of the Schedule;

"**Buildings**" means any buildings in or on the Premises from time to time;

"**CDM Regulations**" means Construction (Design and Management) Regulations 2007;

"**Date of Entry**" means 11 June 2014 notwithstanding the date or dates of execution hereof;

"**Dilapidation Works**" means such remedial or dilapidation works to the Buildings as agreed between the Parties in writing on or before the Date of Entry with reference to this definition, subject to any amendments thereto as the Parties agree in writing after the Date of Entry with reference to this definition;

"**Enhancement Works**" means such enhancement works to the Uplift Infrastructure as

the Landlord may decide to undertake, being any such works as relate to (a) any items agreed between the Parties in writing with reference to this definition (b) new motors and inverter drives, haul ropes, safety panels, tower cabling and safety switches (c) gearbox servicing and/or refurbishment works (d) non-destructive testing and repair, if found necessary, of ski-tow steel towers (including checks on internal metal thickness, weld integrity and condition of access ladders/rungs) and ski-tow concrete bases (including holding-down bolts) (e) trench excavation and burial of new safety cables at an appropriate depth, and removal of redundant cabling and (f) any works or items envisaged by Part 11 of the Schedule, in each case subject to any amendments thereto as are agreed between the Parties in writing on or after the Date of Entry with reference to this definition;

“Environmental Damages and Liabilities” means all proper and reasonable costs, claims, damages, losses, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation, defence of and settling any claim including without limitation, all proper and reasonable legal fees, disbursements and consultants’ fees;

“Environmental Law” means any law relating to the environment or to emissions, discharges or release of Hazardous Materials into the environment or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials or the clean-up or other remediation thereof from time to time in force in the United Kingdom;

“Existing Agreements” means (First) Lease between Cairngorms Sports Development Ltd and Scottish Ski Club dated 22 April 1974 and subsequent dates as extended by Letter from Cairngorm Chairlift Company to Scottish Ski Club regarding extension of Lease dated 12 January 1997 (Second) Sub Lease by The Cairngorm Mountain Ltd in favour of The Uphill Ski Club of Great Britain dated 24 July and 10 August 2001 and recorded in the Division of the General Register of Sasines applicable to the County of Inverness on 6 December 2001 (Third) (a) Wayleave Agreement between The Highlands and Islands Development Board and The North of Scotland Hydro-Electric Board dated 28 August 1984 (b) Wayleave Agreement between Highlands and Islands Enterprise and Scottish and Southern Energy plc comprising offer by Scottish Southern and Energy plc to Highlands and Islands Enterprise dated 1 July 1999 and acceptance thereto dated 6 July 1999 (in which acceptance the date of the said offer was stated to be 23 June 1999) and (c) all agreements and rights in relation to electricity substations and meters (and related cables and equipment) in, on, under or through or serving the Premises (Fourth) Franchise Agreement between Cairngorm Mountain Limited and Cairngorm Snowsports dated 12 December 2007 as extended by (a) letter of extension relative thereto dated 18 May 2011 and 20 May 2011 and (b) undated letter from Cairngorm Mountain Limited to Cairngorm Snowsports signed by Cairngorm Snowsports (Fifth) agreement with Royal Botanic Gardens, Edinburgh EH3 5LP constituted by correspondence in or around 1991 allowing them to use an area of about 10 x 10 square metres at OS grid reference NJ 00079 06956 (Sixth) unwritten arrangement allowing rangers to use accommodation within the existing base station on the Premises (Seventh) any arrangement, whether formal or informal, written or unwritten, in relation to the camera obscura on the Premises including *inter alia* any such arrangement with the University of Dundee and (Eighth) any arrangements, whether formal or informal and whether written or unwritten with (a) Scottish Arts Council in relation to *inter alia* arts projects and/or the said camera obscura (b) Scottish Natural Heritage in relation to Lower Coire Cas Trail (c) Lottery Heritage Fund, in relation to Highland Birchwoods (d) the local authority and/or roads authority in relation to winter maintenance, de-icing and snow clearing services for public roads leading into

Coire Cas car park, the one way high level link road and road into the Coire na Ciste car park and (e) the timber clad fire water pumping station in or serving the Premises and any pipes, connectors and others ancillary thereto;

“Final Year” means, where the last day of the Lease Period does not fall on 31 March in the relevant year, the period from the immediately preceding 1 April until the last date of the Lease Period;

“First Year” means the period from the Date of Entry to 31 March 2015;

“Fixed Rent” means an annual amount of ONE HUNDRED AND TWENTY THOUSAND POUNDS STERLING (£120,000.00), exclusive of VAT, rates, insurance premiums and all other outgoings, and subject to review in accordance with the provisions of Clause 5;

“Fixtures and Fittings” means all of the Landlord’s and Tenant’s fixtures, fittings, furniture and equipment and any replacements or additions within the Premises, all as more particularly detailed in Part 7 of the Schedule, but specifically excluding the Uplift Infrastructure;

“Full Cost of Reinstatement” means (a) in the case of the insurance to be effected in terms of Clause 10.1, the costs (including the cost of shoring up, demolition and site clearance, Architects’, Surveyors’ and other professional fees and VAT where applicable) which in the Landlord’s reasonable opinion would be likely to be incurred in reinstating the Fixtures and Fittings, Service Media and Railway at the time when such reinstatement is likely to take place having regard to all relevant matters (including any increases in building costs expected or anticipated to take place at any time up to the date upon which the Fixtures and Fittings, Service Media and Railway shall be fully rebuilt or reinstated) and VAT upon all of the foregoing and (b) in the case of the insurance to be effected in terms of Clause 10.2.1 and 10.2.2, the costs (including the cost of shoring up, demolition and site clearance, Architects’, Surveyors’ and other professional fees and VAT where applicable) which in the Landlord’s reasonable opinion would be likely to be incurred in reinstating the Buildings (or Railway, as applicable) at the time when such reinstatement is likely to take place having regard to all relevant matters (including any increases in building costs expected or anticipated to take place at any time up to the date upon which the Buildings (or Railway, as applicable) shall be fully rebuilt or reinstated) and VAT upon all of the foregoing;

“Funding Agreement” means any agreement from time to time between the Tenant and any funder or lender, bank or building society, whether relating to a grant, loan, financial assistance or otherwise, including (but without prejudice to the generality of the foregoing) the loan agreement between Cairngorm Mountain Limited and Highlands and Islands Enterprise dated of even date with the date of execution of this Lease;

“HIE” means Highlands and Islands Enterprise and their statutory successors;

“Insured Risks” means risks in respect of loss or damage by fire, lightning, explosion, aircraft (other than hostile aircraft) and other aerial devices or articles dropped therefrom, storm or tempest, earthquake, civil commotion, malicious damage, subsidence or landslip, bursting or overflowing of water tanks and apparatus and pipes, flood, impact by vehicles, terrorism and such other risks as may from time to time reasonably be required by the Landlord;

“Insurers” means such reputable insurance office or underwriters as may be selected by the Landlord;

“Hazardous Materials” means (a) any substances or organisms which alone or in combination with others are capable of causing harm or damage to property, man, other organisms or substances, human health, or the Environment and (b) any waste material or discarded, unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value;

“Larger Property” means (a) the subjects described in and in feu farm disposed by Feu Disposition by The Secretary of State for Scotland in favour of The Highlands & Islands Development Board dated 18 June 1971 and recorded in the Division of the General Register of Sasines applicable to the County of Inverness on 29 September 1971 under exception of the subjects described in and disposed by Disposition by Highlands & Islands Enterprise in favour of The Secretary of State for Scotland dated 20 May 1999 and recorded in the said Division of the General Register of Sasines on 8 June 1999 and (b) the subjects described in and disposed by Disposition by The Highland Regional Council and The Secretary of State for Scotland in favour of Highlands & Islands Development Board dated 1 November 1989 and recorded in the said Division of the General Register of Sasines on 9 April 1990;

“Laws” means all legislation and laws applicable from time to time including European legislation, Acts of the UK and Scottish Parliaments, subordinate legislation and any notices or instruments made under any of the foregoing;

“Lease” means this lease and any schedule, annex or any document relative hereto or which is entered into pursuant to or in accordance with the terms hereof;

“Lease Period” means the period from the Date of Entry until 31 March 2039;

“Loss of Rent” means such a sum of money as the Landlord may estimate represents the loss of the rent (including any estimated Turnover Rent and Base Rent) payable under the Lease which the Landlord will suffer in the event of the total or partial destruction of the Premises, for a period of two years, and having regard to the likely period required for reinstatement in the event of both partial and total destruction and in an amount which takes into account potential increases in rent upon rent review;

“Minimum Amount” means, for any Year, an amount equal to A where:

$$A = (B \times C) + D$$

B = FIVE HUNDRED THOUSAND POUNDS (£500,000) STERLING

C = the number of days in that Year divided by 365

D = any Remaining Funds

“Minimum Spend” means, for each Year during the Lease Period, an amount equal to the Minimum Amount for that Year;

“New Day Lodge” means a day lodge to be constructed on the Premises by the Tenant in accordance with the provisions of Part 4 of the Schedule;

“Operating Agreement” means any agreement entered into from time to time between

the Tenant and any other party relating to the conduct and operation of the business operating from the Premises, including (but without prejudice to the generality of the foregoing) the operating agreement between Cairngorm Mountain Limited and Highlands and Islands Enterprise dated of even date with the date of execution of this Lease;

“Operating Conditions” means (a) the conditions set out in Part 3 of the Schedule subject to such variation or amendment as the Landlord may require from time to time (b) any other operating conditions agreed between the Parties from time to time with specific reference to this definition (c) any HIE policies and (d) the Landlord’s reasonable instructions or requests insofar as intimated to the Tenant by the Landlord from time to time;

“Parties” means the Landlord and the Tenant and the word “Party” shall be construed accordingly;

“Permitted Use” means use as a skiing and winter sports facility and for such other recreational facilities for the public as may be appropriate thereto (including using the Uplift Infrastructure for summer visitors), comprising an all year visitor attraction incorporating (a) a mountain railway, retail, catering and exhibition facilities, and (b) operation of snowsports activity for winter months only incorporating lifts, tows and equipment hire facilities and provision of ski patrol (c) provision of guided mountain walks and tours and guided mountain bike tours in summer months and (d) first aid facilities, or as otherwise agreed with the Landlords, and for the provision of all ancillary and supporting services and facilities including the operation of the funicular railway, tows and other means of access;

“Plan” means the plan forming Part 1 of the Schedule;

“Planning Acts” means the Planning etc (Scotland) Act 2006, Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997 and the Planning (Consequential Provisions) (Scotland) Act 1997, the Local Government and Planning (Scotland) Act 1982, the Planning and Compensation Act 1991, the Town and Country Planning (General Permitted Development) Order 1992, the National Parks (Scotland) Act 2000 (where applicable), the Building (Scotland) Act 2003 and any legislation of a similar nature, and all amendments thereto and any other Laws and any orders, regulations or codes of practice issued by any competent authority in relation thereto, and in each case both individually and collectively and any Laws of a similar nature;

“Premises” means the visitor attraction at Cairngorm being the area shown coloured blue on the Plan TOGETHER WITH all additions, alterations and improvements which may be carried out during the Lease Period and each and every part thereof and also without limitation (i) all apparatus, plant and machinery, and all landlord's fixtures and fittings from time to time in and about the same, including the Fixtures and Fittings and (ii) all service and conducting media (including any Service Media) so far as in, under or over the same and (iii) the Uplift Infrastructure therein and thereon and (iv) any car park and all roads, paths and tracks therein and thereon and (v) any buildings and structures therein and thereon, which premises form part and portion of the Larger Property;

“Prescribed Rate” means the rate of 4% per annum above the base lending rate of the Bank of Scotland plc or above such other base lending rate as the Landlord may

designate from time to time acting reasonably;

“Railway” means the whole funicular infrastructure, incorporating rails, power, tensioning, motors and auxiliary engine, ancillary, braking and all control systems, carriages, ropes, concrete columns and beams, all associated signal and cabling systems, all other moving parts of the same, and all ancillary spare parts and tools related thereto;

“Related Company” has the meaning ascribed to it in the Companies Act 2006;

“Remaining Funds” means an amount equal to E where:

$$E = F - G$$

F = the Minimum Spend for the immediately preceding Year

G = the monies actually spent by the Tenant in accordance with Clause 2.2 of Part 5 of the Schedule in the immediately preceding Year, where verified by relevant invoices and any other information reasonably requested by the Landlord;

“Rent Days” means 28th February, 28th May, 28th August and 28th November in each year and “Rent Day” shall construed as meaning any of the Rent Days;

“Requisite Consents” means all statutory and other consents, licences and others required by the Tenant to use the Premises for the Permitted Use and/or to undertake any Works from or to the Premises, including those concerning planning, building regulations and environmental health;

“Retained Property” means the Larger Property under exception of the Premises;

“Risk Assessment” means a written assessment of the risks likely to arise as a result of (a) the carrying out of any Works by the Tenant in accordance with the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999 and any other relevant Laws including CDM Regulations, including details of how any such risks will be mitigated by the Tenant or their contractors, agents, employees or others taking access to the Premises in connection with the Works in question or (b) operating or managing a business for the Permitted Use, such assessments to be reviewed as often as may be required and in any event on not less than on an annual basis;

“Schedule” means the schedule in 11 parts annexed and signed as relative hereto;

“Section 50 Agreement” means Minute of Agreement between The Highland Council, Scottish Natural Heritage, Highlands and Islands Enterprise, Cairngorm Chairlift Company Ltd and The Governor and Company of the Bank of Scotland dated 17, 25 and 26 March 1997 and recorded in the Division of the General Register of Sasines applicable to the County of Inverness on 27 March 1997 (Fiche 156.1) (including any amendments or variations thereto);

“Service Media” means all service or conducting media, including without limitation all watercourses, water and soil pipes, water tanks, drains, sewers, gutters, downpipes, gas pipes, fuel pipes, oil pipes, electricity cables, television and telephone cables, ducts, flues, wires, conduits, distribution equipment, meters, dry rising fire hydrants, mains, wastewater treatment systems and all other plant, equipment and apparatus for the

provision or supply of services serving the Premises or any part of it, including any serving (but not serving exclusively) the Premises and where applicable serving in common any property adjoining, neighbouring or opposite the Premises but excluding the Uplift Infrastructure;

“Standby Generator (Bottom)” means such generator as the Landlord may provide in accordance with Clause 11.4;

“Turnover Period” has the meaning ascribed to it by Part 2 of the Schedule;

“Turnover Rent” means has the meaning ascribed to it in Part 2 of the Schedule;

“Uplift Infrastructure” means (a) the Standby Generator (Bottom) from and after the date that the same is brought onto the Premises and (b) the items in, on, under or through the Premises more particularly set out in Part 8 of the Schedule and all dynamic or moving parts of the uplift infrastructure at the Premises, and including for the avoidance of doubt the Railway (and in each case including all additions, extensions, modifications, replacements or renewals thereof from time to time);

“VAT” means Value Added Tax (or any similar tax substituted therefor) at the rate applicable from time to time on any payment due under this Lease;

“Working Day” means any day on which clearing banks in Edinburgh, Glasgow and London are open for normal business but without prejudice to the foregoing excludes a Saturday, Sunday or any public or local holiday in Edinburgh, Glasgow or London;

“Works” means all work carried out by the Tenant to the Premises, including repair works; and

“Year” means (a) the First Year (b) the period from 1 April 2015 to 31 March 2016 (inclusive), and thereafter each period of one year and (c) the Final Year.

2 Interpretation

In this Lease:-

- 2.1 words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine and the neuter and vice versa;
- 2.2 where there are two or more persons included in the expression the “Tenant” obligations contained in the Lease which are expressed to be made by the Tenant shall be binding jointly and severally on them whomsoever without the necessity of discussing them in their order;
- 2.3 words importing persons include corporations and *vice versa*;
- 2.4 where the Tenant is a firm or partnership the obligations of the Tenant under the Lease shall be binding jointly and severally on all persons who are or become partners of the firm at any time during the Lease Period and their respective executors and representatives whomsoever as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order and such obligations shall subsist and remain in full force and effect notwithstanding the dissolution of the firm or partnership or any change which may take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any

individual partner or by a change in the firm name;

- 2.5 references to the Tenant shall, where the context admits, include their employees and the Tenant's agents and contractors and their employees and all other parties for whom the Tenant is responsible in law;
- 2.6 references to the Landlord shall, where the context admits, include their employees and the Landlord's agents and contractors and their employees and all other parties for whom the Landlord is responsible in law;
- 2.7 the words "include", "includes", and "including" shall be construed as if they were followed by the words "without limitation";
- 2.8 references to legislation or any provision of any legislation are to be construed as references to that legislation or provision as it may be amended or re-enacted or replaced from time to time and shall also include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom;
- 2.9 any obligation on the Tenant not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done by any employee, servant, agent, invitee or licensee of that party or any other party for whom that party may be responsible in law;
- 2.10 any obligation on, or right granted or reserved to, the Landlord may be fulfilled or exercised by the Landlord and/or agents in place of or in addition to the Landlord; and
- 2.11 the clause and paragraph headings shall be ignored for the purpose of the construction of this Lease.

3 Duration and Entry

- 3.1 Notwithstanding the date or dates hereof, the Lease shall endure for the Lease Period unless terminated early as hereinafter provided.

4 Rent and Other Monetary Considerations

- 4.1 The Tenant shall pay the Fixed Rent (subject to variation as hereinafter provided for in Clause 5 of this Lease) to the Landlord without any demand being made by way of equal instalments in advance on the Rent Days, clear of all deductions, retentions or counterclaims whatsoever and excluding any right of set off, the first of such payments for the period from the Date of Entry until the day preceding the Rent Day following the Date of Entry inclusive to be made on or before the Date of Entry, the next on the Rent Day following the Date of Entry for the quarter following and so forth quarterly, termly and proportionally thereafter.
- 4.2 The Tenant shall, in addition, pay to the Landlord clear of all deductions, retentions or counterclaims whatsoever and excluding any right of set off:
- 4.2.1 The Turnover Rent in accordance with the provisions of Part 2 of the Schedule; and
- 4.2.2 The Base Rent in accordance with the provisions of Part 2 of the Schedule.

- 4.3 The Tenant shall pay to the authorities to whom they are due all rates, taxes, assessments, impositions and outgoings relating to the Premises or the use or occupation thereof, including any of a novel nature, but excluding any tax payable by the Landlord in relation to a disposal or deemed disposal of the Landlord's interest in the Premises (including any Capital Gains Tax or similar).
- 4.4 The Tenant shall pay all charges for gas, electricity, water, telecommunications, and any other services used or consumed on the Premises during the Lease Period and shall keep the Landlord fully and effectually indemnified from and against the non-payment of all such charges and any discontinuance of supply resulting therefrom.

5 Rent Review

5.1 Interpretation

In this Clause 5:

“Base Figure” means, for the purpose of the rent review to take place on 11 June 2015, the Index for May 2014 and, for each succeeding Date of Review, the Index for the month immediately preceding the month and year in which the immediately preceding Date of Review fell;

“Date of Review” means each anniversary of the Date of Entry;

“Index” means the “All Items” figure of the General Index of Retail Prices published by the Office for National Statistics or if such index ceases to be published at all or in a form that does not enable the Fixed Rent to be calculated in accordance with Clause 5 then the Parties shall seek to agree the use of an alternative comparable Index and if they fail to agree the matter shall be determined in accordance with the provisions of Clause 18;

“Revised Rent” means the Fixed Rent calculated in accordance with the following formula:-

$$RR = P + (P \times (B-A))$$

(A)

Where:

RR = the reviewed rent;

P = the annual Fixed Rent payable immediately prior to the Date of Review;

A = the Base Figure; and

B = the figure appearing in the Index for the month immediately preceding the Date of Review;

5.2 Review

5.2.1 The Fixed Rent will be reviewed on each Date of Review in accordance with this Clause 5.

5.2.2 With effect from the Date of Review, the yearly Fixed Rent payable hereunder shall be reviewed to such an amount as shall be the greater of (a) the yearly Fixed Rent hereunder payable by the Tenant to the Landlord immediately before the Date of Review and (b) the Revised Rent.

5.3 Upwards only

In no event shall the Fixed Rent payable by the Tenant after each Date of Review be less than the Fixed Rent payable by the Tenant immediately before such Date of Review.

5.4 Payment after Date of Review

If the Revised Rent has not been agreed or determined by the Date of Review then in respect of the period (herein called "the said interval") beginning with the Date of Review and ending on the rent payment date immediately following the date upon which the amount of the revised rent is agreed or determined as aforesaid (herein called "the relevant date") the Tenant shall continue to pay to the Landlord the Fixed Rent payable hereunder at the yearly rate payable immediately before the Date of Review; Provided that on the relevant date there shall be due as a debt payable by the Tenant to the Landlord (without any requirement for any demand therefor by the Landlord) as arrears of rent an amount equal to the difference between the Revised Rent and the Fixed Rent actually paid during the said interval and apportioned on a daily basis in respect of the said interval together with interest at the Prescribed Rate calculated on the basis that the component parts of such sum due accrued and fell due for payment at quarterly intervals on the rent payment dates from the relevant Date of Review until paid.

5.5 Statutory Restriction

If at the Date of Review the Landlord shall be obliged legally or otherwise to comply with any statute or other enactment dealing with the control of rent and which shall restrict or modify the Landlord's right to revise the rent in accordance with the terms of this Clause 5 or which shall restrict the right of the Landlord to demand or accept payment of the full amount of the rent for the time being payable then the Landlord shall on each occasion that any such enactment is removed, relaxed or modified, be entitled on giving not less than three months' notice in writing to the Tenant expiring after the date of each such removal, relaxation or modification to introduce an intermediate review date (herein called the "intermediate review date") which shall be the date of expiration of such notice and the rent payable hereunder from an intermediate review date to the next succeeding Date of Review or intermediate review date (whichever shall first occur) shall be determined in like manner as the rent payable from each Date of Review as hereinbefore provided.

5.6 Memorandum

If the Landlord requests the same, as soon as the amount of Fixed Rent payable hereunder after the date of review has been agreed or ascertained in accordance with the terms hereof (and if required by the Landlord so to do) the Landlord and the Tenant will at the expense of the Tenant forthwith execute a separate memorandum specifying the yearly amount of the said revised rent and the stamp duty land tax (if any) payable in respect thereof and the cost thereof including the cost of registration thereof and of obtaining three extracts (two for the Landlord) shall be borne and paid by the Tenant.

6 Permitted Use

- 6.1 The Tenant shall be entitled to use the Premises for the purpose of the Permitted Use and for no other purpose or purposes whatsoever.
- 6.2 The Tenant acknowledges that the Landlord does not give or make any representation or warranty that the Permitted Use provided for in this Lease is or will be or will remain a permitted use within the provisions of the Planning Acts or the title deeds of the Premises and that notwithstanding that any such use may not be a permitted use within such provisions the Tenant shall remain bound and liable to the Landlord under this Lease without any compensation, recompense or relief of any kind whatsoever.
- 6.3 The Tenant must do all things necessary to maximise the Gross Turnover received at all times.
- 6.4 The Tenant must comply in all respects with the Agreements.
- 6.5 The Tenant shall ensure that the Buildings are lock fast and secure at all times outwith the hours during which the same are open and trading.

7 Reservations

- 7.1 Throughout the Lease Period the following rights are reserved to the Landlord and those expressly authorised by the Landlord, with or without workmen, agents, any person(s) authorised by the Landlord, tools, equipment and machinery:-
- 7.1.1 the right to take pedestrian and vehicular access and egress through the Premises at all times for the purpose of access and egress to and from the Retained Property and for all other purposes in connection with the use or occupation of the Retained Property;
- 7.1.2 the right to run ranger services at or from the Premises and in relation thereto, to continue to occupy (and to permit rangers to occupy) those parts of the Premises so occupied as at the Date of Entry, or such other parts of the Premises as may be agreed between the Parties from time to time;
- 7.1.3 the right to enter the Premises to check that the Tenant is complying with their obligations under this Lease;
- 7.1.4 the right to enter the Premises to inspect the repair and maintenance of the Premises;
- 7.1.5 the right to enter the Premises to make good any matter which the Landlord may have specified in a prior written notice to the Tenant that the Landlord requires the Tenant to have made good and with such notice the Tenant has failed to comply;
- 7.1.6 the right to enter the Premises and make good any matter in the event of an emergency (in which case, no notice to the Tenant is necessary);
- 7.1.7 the right to enter the Premises to undertake any written or photographic schedule of condition and/or schedule of dilapidations;
- 7.1.8 the right to enter the Premises and the right to locate, update, maintain and

access any information displays within the Premises;

- 7.1.9 the right to enter the Premises and erect, update, maintain and access any re-letting or “for sale” signs within the Premises;
 - 7.1.10 the right to erect or to consent to any person erecting a new building or to alter any building for the time being on the Premises or on the Retained Property or any land adjoining, neighbouring or opposite to the Premises without any claim being competent to the Tenant (notwithstanding that such alteration or erection may diminish the access of light and air enjoyed by the Premises) and the right to deal with the Premises or the Retained Property or any land adjoining, neighbouring or opposite the same as the Landlord may think fit;
 - 7.1.11 the right to carry out the Enhancement Works and to take entry through the Premises in relation thereto;
 - 7.1.12 the right to carry out the Dilapidation Works and to take entry through the Premises in relation thereto;
 - 7.1.13 the right, at all reasonable times on giving reasonable notice (except in emergency) to the Tenant, to enter and remain upon the Premises with all necessary tools, appliances and materials for the purposes of repairing, altering or rebuilding the Premises or the Retained Property or any land adjoining, neighbouring or opposite the same and to cleanse, empty and repair any of the Service Media belonging to the same;
 - 7.1.14 the right to retain the Service Media in the Premises and to the Landlord and to any other owners or occupiers of the Retained Property or any land adjoining, neighbouring or opposite the Premises or Retained Property, the right of passage and running of water and soil, gas and electricity or other services or supplies from and to the same through such of the Service Media which now are or may hereafter be in, on or under the Premises and the right to enter upon the Premises for the purpose of inspecting, repairing, renewing, relaying, cleansing, maintaining and connecting up to any such existing or future Service Media;
 - 7.1.15 the right to close the Premises at any time without advance notice for maintenance reasons or for health and safety reasons and in any emergencies without compensation being payable to the Tenant for any loss of income or other loss attributable to the closure; and
 - 7.1.16 all rights necessary (including rights of access, temporary closure and blockage of any parts of the Premises, breaking the surface of the land and carrying out of any works or operations) to comply with its obligations under the Lease including those set out in Part 5 of the Schedule.
- 7.2 Throughout the Lease Period there is reserved to the Landlord and to any other owners or occupiers of the Retained Property and any land adjoining, neighbouring or opposite the Premises or Retained Property all necessary and all existing rights, servitudes and privileges for the full use and enjoyment of all parts of the Premises or any such other land.

8 Tenant's Rights

8.1 During the Lease Period the Tenant shall have the following rights:-

- 8.1.1 vacant possession of the Premises subject to the reserved rights referred to in Clause 7;
- 8.1.2 a non-exclusive right to use such of the Service Media within the Premises as are necessary for the due and proper enjoyment of the Premises;
- 8.1.3 subject to the Tenant obtaining all necessary consents, permits and licenses, to play suitable and appropriate background music in the Premises, but not to a level which in the opinion of the Landlord is inappropriate as to which the Landlord shall be the sole judge;

8.2 The Tenant shall exercise the rights so as to cause as little interference as is reasonably practicable to any owners or occupiers of the Retained Property or any land adjoining, neighbouring or opposite the Premises or the Retained Property.

9 Tenant's Obligations

Without prejudice to any other provision of this Lease which may impose any obligation or obligations on the Tenant, the Tenant further binds and obliges itself throughout the Lease Period at the Tenant's sole expense:-

- 9.1 without prejudice to any other right, remedy or power contained in this Lease or otherwise available to the Landlord, if any rent shall not be paid on the due date or any other sum of money (excluding rent) payable under this Lease shall have become due by the Tenant but remain unpaid for fourteen days (time being of the essence for the purposes of this provision), to pay on demand to the Landlord interest on all such sums (including rent) at the Prescribed Rate from the date when the same became due as aforesaid until the date of payment (as well after as before any decree or judgment);
- 9.2 to pay to the Landlord as additional rent such amount of VAT at the rate for the time being in force as shall be legally payable in respect of the rent and all other monies undertaken to be paid to the Landlord by the Tenant under the Lease;
- 9.3 Repairs and decoration
 - 9.3.1 to comply in all respects with the provisions of Part 5 of the Schedule;
 - 9.3.2 not to leave materials or items lying around in, on or in the vicinity of the Premises in such a way which could cause injury to humans or animals;
 - 9.3.3 not to carry out external work of repair or external repainting to any Buildings without the Landlord's prior written consent;
 - 9.3.4 at all times to keep the interior of the Buildings decorated to the reasonable satisfaction of the Landlord;
 - 9.3.5 to carry out all repairs and works and to comply with the whole obligations of the Tenant required to be done by prior written notice given by the Landlord and to accept that if such notice is not complied with within one month or such other longer period as the Landlord (acting reasonably) shall specify in the said

written notice the Landlord may make good any item referred to in such notice themselves and in such circumstances the Tenant shall repay to the Landlord on demand the whole cost together with all professional fees and other relevant expenses properly incurred by the Landlord in so doing;

9.3.6 in relation to any contractors or sub-contractors employed by the Tenant (or their contractors) to carry out any works to the Premises, to ensure that only those contractors or sub-contractors who are suitably qualified and insured are so employed and that they carry out all such works with due skill and attention; and

9.3.7 to clean the interior and exterior windows (including any sky lights and glass panels in doors), of the Buildings at least every four weeks or more frequently if requisite, or if reasonably required by the Landlord;

9.4 Development Obligations

9.4.1 to comply in all respects with its obligations under Part 4 of the Schedule;

9.5 Not to make any other alterations

9.5.1 not to make any structural alterations or additions to the Premises or any external alterations or additions to the Buildings without the prior written consent of the Landlord.

9.5.2 not to make any internal non structural alterations or internal additions to the Buildings except with the previous consent in writing of the Landlord and in accordance with drawings and specifications previously submitted to and approved in writing by the Landlord.

9.6 Statutory Compliance and safety

9.6.1 to ensure full compliance with all Laws relating to:-

9.6.1.1 the Premises and the occupation and use of the Premises;

9.6.1.2 without prejudice to the foregoing generality, the carrying on of the business at the Premises;

9.6.1.3 the use of all Service Media and equipment at or serving the Premises; and

9.6.1.4 any Works carried out at the Premises;

including without prejudice to the foregoing generality the CDM Regulations, all Health and Safety Laws including the Health and Safety at Work etc Act 1974 and the Workplace (Health, Safety and Welfare) Regulations 1992, all fire safety Laws including the Fire (Scotland) Regulations 2006, the Food Safety Act 1990, the Control of Pollution Act 1974, the Environmental Protection Act 1990, the Disability Discrimination Act 1995, the Environment Act 1995 and the Planning Acts;

9.6.2 to complete all works required under any Laws to be carried out at the Premises, regardless of whether such works under such Laws require to be

carried out by the owner or the occupier, and to notify the Landlord of any notices received in relation to such works as soon as practicably possible;

- 9.6.3 not to do, or omit to do or refrain from doing, any act or thing whereby the Landlord may become liable to pay any penalty imposed or to bear the whole or any part of any expenses incurred under any Laws;
- 9.6.4 to pay the proportion applicable to the Premises (which proportion if not stipulated in the title deeds or determined in the relevant Laws or under any other law shall be assessed by the Landlord acting reasonably) of the costs of any such works so required to be carried out on any building or subjects of which the Premises form part;
- 9.6.5 to comply with all fire safety Laws and in particular to carry out fire risk assessments, tests and drills and not to obstruct the access to or the means of working of any fire fighting and extinguishing apparatus and appliances;
- 9.6.6 to obtain (no later than the Date of Entry) and to keep in place throughout the Lease Period any Requisite Consents; and
- 9.6.7 to provide the Landlord at any time upon demand with copies of the Tenant's Health and Safety policy, the Health and Safety File which the Tenant is obliged under the Lease to keep up to date, all Risk Assessments carried out by the Tenant, any Fire Risk Assessments, the fire log book, and fire drill records, and to deliver the principals of the same (under exception of the Tenant's Health and Safety policy) at the termination of the Lease, howsoever determined;
- 9.6.8 to use all reasonable endeavours to ensure that the Uplift Infrastructure and any other equipment being used by members of the public are in all respects safe for use by members of the public at all times and to suspend public access to any Uplift Infrastructure as soon as any defect becomes known to the Tenant and to repair or rectify such defect immediately;
- 9.6.9 to use all reasonable endeavours to ensure that no articles are dropped from or by any person using the Uplift Infrastructure at any time and to indemnify the Landlord in respect of any such articles so dropped;
- 9.6.10 if reasonably necessary to close off any area within the Premises in which an accident has occurred or where a defect in repair or condition renders it likely that an accident could occur, and to make the same safe again immediately; and
- 9.6.11 to address all safety concerns to the reasonable satisfaction of the Landlord and any other relevant party or authority, and to co-operate fully with the same in respect of all accident or health and safety investigations.

9.7 Operating Conditions

to comply with and observe at all times the Operating Conditions;

9.8 Signs and Advertisements

save as may be required by any legislation or for safety of members of the public (which the Tenant will be obliged to put and keep in place and clearly visible to members of the public using the Premises), not to affix or display any signs, placards, advertisements or other promotional material on the Premises without the Landlord's prior written consent, which consent will not be unreasonably withheld or delayed in the case of an application for approval of the installation or replacement of the Tenant's fascia sign;

9.9 Displays and Brands

to obtain the prior written approval from HIE before using the HIE brand on any displays, publications or other promotional material or internet websites;

9.10 Environmental

To be liable for and to indemnify and keep indemnified the Landlord in respect of all Environmental Damage and Liabilities arising out of claims by any third party action taken by any competent authority or the cost necessarily incurred to secure compliance with Environmental Law, in all cases in respect of:

9.10.1 Hazardous Materials being brought onto or being disposed of in or on the Premises or any part of the Retained Property; and

9.10.2 Hazardous Materials referred to in Clause 9.10.1 migrating from the Premises or the Retained Property or any part of any neighbouring land;

save insofar as Hazardous Materials were deposited on the Premises by the Landlord before the Date of Entry.

9.11 To observe title conditions

9.11.1 To observe and perform the agreements, obligations, burdens, conditions and others in so far as they affect the Premises contained or referred to in the title deeds of the Premises;

9.11.2 Not to prejudice any existing title conditions, wayleaves or other rights affecting the Property and not to cause the breach of any of the same, nor to permit any new wayleave, servitude, privilege or encroachment to be made or acquired into against or upon the Premises, and in case any of the same shall be asserted or made or attempted to be made, to give immediate notice to the Landlord and at the request of the Landlord but cost of the Landlord (with the Tenant making such contribution as may be reasonable in the circumstances) to adopt such means as may be reasonably required for preventing such encroachment or acquisition of any such wayleave, servitude or privilege;

9.11.3 To observe and perform all obligations on the "Applicant" (as defined in the Section 50 Agreement) under the Section 50 Agreement and not to cause any breach thereunder, save in relation to any obligations therein relating to removal of the Uplift Infrastructure to the extent that the Landlord has obligations under Part 5 of the Schedule hereto (in which case, the provisions of Part 5 of the Schedule shall prevail); and

9.11.4 Not to enter into any agreements with any planning authority (including *inter alia* any Section 75 Agreements) without the Landlord's prior written approval

of the same, which approval shall not be unreasonably withheld where:

9.11.4.1 As between the Landlord and the Tenant, the Tenant will be fully responsible for compliance with the relevant agreement;

9.11.4.2 The relevant agreement does not impose any obligations on the Landlord;

9.11.4.3 The Tenant is responsible for all planning gain (if any) under the relevant agreement; and

9.11.4.4 The Tenant indemnifies the Landlord fully against all costs, expenses, liabilities and claims under the relevant agreement

all in terms acceptable to the Landlord acting reasonably.

9.12 Indemnity

Save to the extent that the same was directly caused by the Landlord's breach of this Lease, to indemnify and keep indemnified the Landlord against:-

9.12.1 all actions, proceedings, claims, demands, losses, reasonable and proper costs, expenses, damages and liabilities at the instance of any third party (including any government body or agency) in respect of (i) any death of or injury to any person or (ii) damage to any property arising out of the exercise or purported exercise of any of the rights of the Tenant under this Lease, or the occupation or use of the Premises, or any breach by the Tenant of the terms of this Lease;

9.12.2 any liability due to any requirement of Health and Safety Laws by reason of or arising out of the actions or omissions of the Tenant; and

9.12.3 any breach by the Tenant of the terms of this Lease.

9.13 Prohibitions

9.13.1 not to do or permit on the Premises any act or omission whereby any insurance policy effected by the Tenant or the Landlord relating to the Premises or the Retained Property, is likely to be or become void or voidable;

9.13.2 not to place or permit to be placed in or upon any of the floors of the Premises such a weight of material (whether of stock or otherwise) as shall by reason of the weight in any way damage or injure the floors or endanger the structural suitability of the Premises, or any building or structure within or near to which the Premises are located or any part of them;

9.13.3 not to overload the electrical circuits or any Service Media within or serving the Premises;

9.13.4 not to bring into the Premises or to place or store in or about the Premises any article or thing which is or may become dangerous, highly inflammable, radioactive or explosive;

9.13.5 not to permit any vehicles belonging to the Tenant or any person calling at the Premises to obstruct any path, track or road on the Premises;

- 9.13.6 not to permit any of the Tenant's refuse bins in the Premises to cause any obstruction of the Premises or any traffic using the same;
- 9.13.7 not to do or permit to be done upon or in connection with the Premises anything which is an annoyance or nuisance or cause damage to the Landlord or to the Retained Property or to any neighbouring or adjoining owner or occupier.

9.14 **Miscellaneous**

- 9.14.1 to take all reasonable precautions to prevent an outbreak of fire, disease or illness as a result of the Tenant's use and occupation of the Premises (including the carrying on of the business thereon) or their exercise of any of the rights of the Tenant under this Lease;
- 9.14.2 to institute and coordinate a reporting procedure for accidents involving members of the public which take place in the Premises and to inform the Landlord of any such accidents within 24 hours of the occurrence of the same;
- 9.14.3 to make good as soon as reasonably practicable and to the full satisfaction of the Landlord all damage to the Premises caused by the exercise or purported exercise of any of the rights of the Tenant under this Lease or any breach by the Tenant of the terms of this Lease and to accept that if such damage is not made good within one month of the damage occurring, or such longer or shorter period as the Landlord may consider to be appropriate in the circumstances, the Landlord may carry out the work itself and in such circumstances the Tenant binds itself to repay the Landlord on demand the cost properly incurred by the Landlord in doing so; and
- 9.14.4 not to pass into any Service Media in or serving the Premises any noxious or deleterious effluent or other substance (including without prejudice to the foregoing generality bleach or other commercial cleaning products) which might cause any obstruction in or damage to the said Service Media and in the event of any such obstruction or damage forthwith to make good all such damage to the reasonable satisfaction of the Landlord.

10 Insurance

- 10.1 The Tenant shall keep the Fixtures and Fittings and the Service Media constantly insured with the Insurers throughout the Lease Period against loss or damage by or in consequence of the Insured Risks for the Full Cost of Reinstatement, the insurance policy therefor to be the name of the Tenant and the Landlord (and such other names as the Landlord may require).
- 10.2 Subject to compliance by the Tenant with Clause 10.4, the Landlord shall (unless and to the extent that (a) any such insurance is vitiated by any act, neglect, default or omission of the Tenant or any party for whom the Tenant is legally responsible or (b) the Tenant is responsible for insurance in terms of Clause 7 of Part 4 of the Schedule):
 - 10.2.1 keep the Buildings insured with the Insurers throughout the Lease Period against loss or damage by or in consequence of the Insured Risks for the Full Cost of Reinstatement; and

- 10.2.2 keep the Railway insured with the Insurers throughout the Lease Period against loss or damage by or in consequence of the Insured Risks for the Full Cost of Reinstatement; and
- 10.2.3 maintain Loss of Rent insurance with the Insurers throughout the Lease Period
- in each case subject to such excesses, exclusions and limitations as the Insurers may require with the Tenant being responsible for all such excesses so far as relating to insurance of the Buildings, and the Landlord being responsible for all such excesses so far as relating to insurance of the Railway (save to the extent that the same are caused by any act or default of the Tenant or those for whom the Tenant is responsible, in which case the Tenant will be liable for such excesses), and will if reasonably required produce to the Tenant a certificate from the Insurers stating for the sums insured by the relevant policy or policies and to what date the premiums have been paid, provided always that if the Landlord shall be unable by reason of the unavailability of insurance to effect such insurance in whole or in part, the Landlord shall notify the Tenant of the same, stating the extent of such inability whereupon the obligations on the part of the Landlord to insure shall cease to that extent.
- 10.3 Throughout the Lease Period, and (in the case of the insurances mentioned in Clauses 10.3.1 and 10.3.2) for a period of five years after termination of this Lease, the Tenant shall maintain with the Insurers insurance policies for the following insurance:-
- 10.3.1 public liability insurance for a sum of not less than TWENTY MILLION POUNDS STERLING (£20,000,000) in respect of any one occurrence against third party liabilities;
- 10.3.2 employers' liability insurance for a sum not less than TWENTY MILLION POUNDS STERLING (£20,000,000); and
- 10.3.3 insurance covering the Tenant's stock and the Landlord's interpretation material (if any) within the Buildings.
- 10.4 The Tenant shall immediately on demand reimburse the Landlord in respect of all premiums and other monies necessary to keep the relevant policy or policies of insurance referred to in Clause 10.2 in force throughout the Lease Period.
- 10.5 The Tenant shall undertake to pay all premiums and other monies necessary to keep each of the insurance policies mentioned in Clause 10.1 and 10.3 in force and when reasonably required by the Landlord to exhibit to the Landlord such evidence as the Landlord may require to satisfy itself that the Tenant has complied with this Clause 10.
- 10.6 All insurance cover will be maintained to the extent that such cover is available in the market to persons engaged in the same or a similar activity to the Tenant's use of the Premises (declaring that, in determining whether such insurance is available, the claims record of the Tenant shall be ignored). In the event that cover is not so available for the policies mentioned in Clauses 10.1 and 10.3 then the Tenant shall notify this to the Landlord in writing forthwith and provide such evidence to the Landlord as the Landlord may require.
- 10.7 If at any time throughout the period of the Lease or in the period of five years after termination of the Lease the Landlord can demonstrate that it is normal or reasonable for public liability insurance or employers' liability insurance to be maintained for a sum

greater than the sums referred to in Clause 10.3 above in relation to similar premises and use as the Premises and the Permitted Use, the Tenant must within thirty days after notice from the Landlord increase their insurance to the amount specified in such notice (such sum to be based on the then industry norm).

- 10.8 For the avoidance of doubt any liability of the Tenant will not be limited by the amount of the public liability insurance or employers' liability insurance.
- 10.9 The Tenant shall not knowingly do or permit or suffer or omit to be done anything which may render the above aforementioned policies of insurance void or voidable.

11 Landlord's Obligations

- 11.1 The Landlord grants warrandice but excepting therefrom (a) any change in the extent of the Premises or Larger Property that may be occasioned by any change in the course of any burn or any water feature forming or which may form the boundary of the Premises or the Larger Property and (b) all presently existing rights of way and access and third party rights, public or private, howsoever constituted over and across the Premises or the Larger Property including but without prejudice to the foregoing generality any rights in respect of any overhead power lines and apparatus associated therewith, and (c) without prejudice to the foregoing generality, all rights and obligations set out in or created by the Existing Agreements.
- 11.2 For the avoidance of doubt nothing herein contained shall confer upon the Tenant any servitude right or privilege whatever over or against the Retained Property or any other adjoining or neighbouring property.
- 11.3 The Landlord undertakes to grant to the Tenant peaceful possession of the Premises throughout the duration of this Lease, subject to the reservations made under this Lease.
- 11.4 Whereas there is an existing standby generator at the base (bottom) station on the Premises serving the Railway, the Landlord undertakes to procure that the same be removed and replaced with another permanent standby generator of appropriate capacity for its role (which capacity is estimated to be of approximately 40KVA). Such replacement shall be installed at the base (bottom) station on the Premises in a similar position to the existing generator, and that within 6 months of the Date of Entry (subject to any events of Force Majeure (as defined in Part 4 of the Schedule, but for the purpose of this Clause 11.4 with reference to the Landlord in that definition in substitution of the Tenant). For this purpose the Landlord reserves the right to the Landlord and those authorised by them to take full and free access and egress by pedestrians and vehicles (including forklifts and heavy vehicles) through the Premises, to park and remain thereon for the duration of such removal and replacement works, and to carry out such works, all for the purpose of complying with this Clause 11.4. The ownership of such new generator shall remain with the Landlord and the Tenant shall ensure that the same remain in the Premises at the end of the Lease, without removing or damaging the same.
- 11.5 For the avoidance of doubt the Landlord will not be obliged to insure the Premises (other than the Buildings and Railway in accordance with Clause 10).
- 11.6 The Landlord shall comply with its obligations in Part 5 of the Schedule.

12 Alienation, Subletting And Assignment

- 12.1 Subject to Clause 12.2, the Tenant is prohibited from assigning this Lease or sub-letting or otherwise parting with the possession of or creating any charge over the whole or any part of the Premises whatsoever.
- 12.2 The Tenant may sub-let the whole or part of the Premises only with the prior written consent of the Landlord (in the Landlord's absolute discretion).

13 Rei Interitus Excepted

- 13.1 The Tenant shall be obliged to notify to the Landlord any destruction or damage of the Premises which renders the Premises substantially damaged or destroyed so as to render the Premises substantially unfit for occupation and use in accordance with the terms and provisions of this Lease, such notification to be given to the Landlord forthwith on such destruction or damage (the date of such notification being made being the "**Damage Notification Date**").
- 13.2 In the event of the Premises (or any part thereof) being so substantially damaged or destroyed so as to render the same substantially unfit for occupation and use in accordance with the terms and provisions of this Lease, then:
- 13.2.1 it shall be in the option of the Landlord to terminate this Lease on giving to the Tenant written notice to that effect. In the event that no such notice is served within 30 days of the Damage Notification Date), this Lease shall not terminate but shall continue in full force and effect; and
- 13.2.2 whether or not the Landlord terminates the Lease in accordance with Clause 13.2.1, the Tenant shall immediately on demand pay to the Landlord an amount equal to any insurance monies which are irrecoverable under any insurance policy to be effected under the Lease due to any act, default or neglect of the Tenant or those for whom they are responsible; and
- 13.2.3 all monies paid by the Insurers to the Landlord in respect of Loss of Rent by virtue of any policy of insurance effected hereunder shall be deemed to be in satisfaction *pro tanto* of the whole or such part as the Landlord may specify of any rent payable by the Tenant hereunder (but that relating to no more rent than would be payable under the relevant two year period) provided that the Tenant, forthwith at the request of the Landlord, gives to the Insurers such authority or instruction as the Insurers may require to give effect to the provision of this Clause 13.2.3;
- 13.2.4 the provisions of Clause 13.3 shall apply, subject to Part 5 of the Schedule.
- 13.3 In the event of damage or destruction as aforesaid in Clause 13.2, then (unless and until the Lease is terminated in accordance with Clause 13.2):
- 13.3.1 the Tenant shall:
- 13.3.1.1 submit its plans and specifications (with all supporting documentation) for reinstatement of the Premises to the Landlord for the Landlord's written approval (the decision thereon not to be unreasonably withheld or delayed);

- 13.3.1.2 submit drafts of its proposed application for planning permission (and any other necessary consents) in relation to such reinstatement to the Landlord for prior written approval, before submitting the same to the relevant authority, and not submit any amendments thereto without the Landlord's prior written approval, and keep the Landlord informed throughout the process of obtaining such permissions and consents;
- 13.3.1.3 use its reasonable endeavours to obtain planning permission and all other necessary consents for the relevant reinstatement works as soon as reasonably practicable and all to the Landlord's reasonable satisfaction;
- 13.3.1.4 on obtaining any necessary permissions and consents, forthwith provide copies of the same to the Landlord;
- 13.3.1.5 provide the Landlord with all details relating to the Tenant's proposed timescale for carrying out and completing the relevant reinstatement works, and keep the Landlord informed as to any delays or changes thereto;

and in exchange, the Landlord shall forward any monies received under the insurance policy referred to in Clause 10.2.1 to the Tenant for use in reinstating the Buildings (if so destroyed or damaged) in accordance with this Clause 13.3, payment of such monies to the Tenant to be phased according to the phases of development of the relevant reinstatement works and taking into account any written agreement between the Parties in relation thereto, but that EXCEPT TO THE EXTENT THAT such damage or destruction has been caused by the Tenant or those for whom they are responsible unless the Tenant reimburses the Landlord in respect of such shortfall (declaring for the avoidance of doubt that the Landlord may retain any monies received in respect of any insurance under Clauses 10.2.2 and/or 10.2.3);

13.3.2 subject to Clause 13.3.3, as soon as reasonably practicable the Tenant shall, subject to all requisite statutory or other consents being obtained (which the Tenant shall be obliged to use all reasonable endeavours to obtain as soon as reasonably practicable after such damage or destruction), apply:

13.3.2.1 all monies received by either Party under the policies of insurance referred to in Clause 10.1; and/or

13.3.2.2 the Tenant's own monies (to the extent that any insurance monies are insufficient or withheld due to the Tenant's act or omission or those for whom they are responsible); and/or

13.3.2.3 the Tenant's own monies for any normal excess payable under the relevant policy or policies (save in relation to any such excess for any insurance policy for the Railway under Clause 10.2.2, which shall remain the responsibility of the Landlord); and/or

13.3.2.4 all monies received from the Landlord in terms of Clause 13.3.1

in reinstating the Premises or such part of the Premises as shall have been

so destroyed or damaged to provide premises (including *inter alia* Buildings but excluding the Uplift Infrastructure) substantially equivalent to that which existed prior to such damage or destruction with such variations thereto as may be necessary or in the Landlord's opinion desirable having regard to all Laws then in force and any planning approval necessary and building standards then prevailing to the intent that the Premises as reconstructed shall conform to the practice then current for similar Premises and shall afford the Tenant a substantially comparable useable area and substantially comparable equipment and Buildings to that comprised in the Premises as at the date of damage or destruction;

13.3.3 notwithstanding Clause 13.3.2, if and to the extent that such damage or destruction is of the Uplift Infrastructure the following provisions shall apply:

13.3.3.1 the Landlord's obligations under Clause 3 of Part 5 of the Schedule shall apply;

13.3.3.2 if the damage or destruction was by an Insured Risk and the relevant insurance policy covered the replacement of the Exceptional Items (Tenant) and Minor Replacements (as both defined in Part 5 of the Schedule) to the Railway, the Landlord shall also be responsible for carrying out such replacements thereto as are required to reinstate the same to provide such infrastructure as is substantially equivalent to that which existed immediately prior to such damage or destruction with such variations thereto as may be necessary or in the Landlord's opinion desirable having regard to all Laws then in force and any planning approval necessary and building standards then prevailing to the intent that the such parts of the Railway as so reconstructed shall conform to such practice as may then be current for similar infrastructure and shall afford the Tenant substantially comparable parts of the Railway to those comprised in the Railway as at the date of damage or destruction; and

13.3.3.3 to the extent that the Landlord is unable to recover insurance monies due to an act or omission by the Tenant or those for whom they are responsible, the Landlord may recover the costs of the foregoing from the Tenant;

13.3.4 the Parties shall use their reasonable endeavours to successfully recover insurance monies and to maximise the successful recovery of insurance monies;

13.3.5 if the Premises (or the relevant part) are destroyed or damaged by any of the Insured Risks so as to be unfit for substantial occupation and use in accordance with the Lease, and any competent authority lawfully refuses permission or otherwise lawfully prevents the rebuilding, restoration, repair or reinstatement as aforesaid of the Premises (or the relevant part), the monies received in respect of such insurance (so far as unapplied as aforesaid) shall immediately be paid to the Landlord and, in this event, either Party shall be entitled to terminate the Lease at any time on or after the date on which all the insurance monies due are paid over to the Landlord under the provisions of this Clause without prejudice to any right of action or remedy of either Party in respect of

any previous breach of any of the undertakings by either Party contained in the Lease; and

- 13.3.6 in the event that the Premises (or the relevant part) are not rendered fully fit for substantial occupation and use in accordance with the terms and provisions of this Lease within five years of the date of the damage occurring, then either Party may terminate this Lease on giving to the other Party written notice to that effect, declaring that the Landlord shall be under no obligation to rebuild, repair, renew and reinstate the Premises or any part thereof, and provided always that the Tenant shall only be so entitled to terminate the Lease if all insurance monies have been paid to the Landlord.
- 13.4 The Tenant shall not be entitled to claim any compensation from the Landlord in respect of any improvements made to the Premises during this Lease, any fittings, fixtures, equipment or stock belonging to the Tenant or for any loss of trade or business, the Tenant being obliged to arrange its own insurances in respect of such risks.
- 13.5 This Clause 13 is, in relation to the Development Works (as defined in Part 4 of the Schedule), subject to Clause 7 of Part 4 of the Schedule. In the event of a conflict between those two clauses, the latter shall prevail.

14 Provisos

- 14.1 In so far as the Data Protection Act 1998 applies to any personal data, held by or on behalf of the Landlord, relating to the Tenant or any party deriving right from it which data is hereinafter called "**Relevant Data**" the following shall apply:
- 14.1.1 The Landlord shall be entitled to use all Relevant Data for the purposes of the business of the Landlord and HIE including, without limitation, for the collection of rents and other due sums, for financial review and analysis, for the management of the Premises, for charging and disposing of or otherwise dealing with the Landlord's interest therein and for the purpose of extending and improving the services offered by the Landlord and/or HIE;
- 14.1.2 In the course of so using the Relevant Data the Landlord shall be entitled to disclose or transmit the same anywhere in the European Economic Area to its employees, agents, service providers, advisers, contractors, banks or other funders and purchasers (prospective or otherwise), guarantor of the Tenant (prospective or otherwise) and to such others as may be required by law or in connection with legal proceedings;
- 14.1.3 The Tenant consents to use the Relevant Data and to the disclosure or transmission of the same as provided for in Clauses 14.1.1 and 14.1.2 above.
- 14.2 The Parties acknowledge that the Landlord is or may be subject to the requirements of the Freedom of Information (Scotland) Act 2002 (the "2002 Act") and the Environmental Information (Scotland) Regulations 2004 (the "Regulations") and all statutory amendments thereof or provisions made pursuant thereto and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation/regulations and the Tenant shall, subject to the terms of Clause 14.3 below, assist and co-operate with the Landlord to enable the Landlord to comply with its information disclosure requirements insofar as relating to this Lease.

- 14.3 The Landlord shall be responsible for determining in its absolute discretion and notwithstanding any other provision of this Lease whether any Information (having the meaning ascribed thereto under Section 73 of the 2002 Act) is exempt from disclosure in accordance with the provisions of the 2002 Act or the Regulations. The Tenant acknowledges that the Landlord may be obliged under the 2002 Act and the Regulations to disclose Information in certain circumstances (a) without consulting with the Tenant or (b) following consultation with the Tenant and having taken its views into account provided always that where sub clause (b) applies the Landlord shall take reasonable steps where appropriate to give the Tenant advance notice, or failing that, to draw the disclosure to the Tenant's attention as soon as reasonably practicable after any such disclosure. For the avoidance of doubt the Landlord shall be entitled to disclose details of sales and visitor numbers in relation to the Premises to any tourist body that the Landlord deems appropriate.
- 14.4 The Landlord shall at no time become liable to the Tenant for any loss, damage or expense sustained by the Tenant by or through any defect, decay, inadequacy, want of repair or decoration or otherwise in the Premises or any part thereof or in or arising from the choking, bursting, stoppage or failure of the Service Media or for any loss, damage or expense caused to the Tenant through any act or omission of any owners or occupiers of land adjoining, neighbouring or opposite the Premises.
- 14.5 No demand for or acceptance of Fixed Rent, Turnover Rent, Base Rent or any other monies by the Landlord or its agent with knowledge of a breach of any of the obligations on the part of the Tenant shall be or be deemed to be a waiver wholly or partially of any such breach but any such breach shall be deemed to be a continuing breach and the Tenant shall not be entitled to set up any such demand for or acceptance of Fixed Rent, Turnover Rent or Base Rent or other monies by the Landlord or its agent as a defence in any action for irritancy or otherwise.
- 14.6 No demand for or acceptance of Fixed Rent by the Landlord or its agent (whether before or after a Date of Review) at a rate other than that to which the Landlord may be entitled following a review of Fixed Rent in terms of the Lease shall be deemed to be a waiver of the right of the Landlord to require a review of the Fixed Rent under this Lease nor shall it personally bar the Landlord from requiring such a review in terms hereof.

15 Termination

- 15.1 At the termination of this Lease (howsoever determined) the Tenant shall immediately vacate the Premises and shall remove all materials, moveable equipment, fittings, fixtures and other items belonging to the Tenant, but shall leave the Buildings, Uplift Infrastructure, the Service Media, the Fixtures and Fittings and all other landlord's fixtures and fittings (save as otherwise agreed with the Landlord, in the Landlord's discretion). Any items belonging to the Tenant left in the Premises after the date of termination shall, without compensation being paid therefor, become the property of the Landlord who may dispose of such items as they wish and the Tenant will pay to the Landlord a sum equal to the proper and reasonable costs of removal and disposal on demand.
- 15.2 At the termination of this Lease (howsoever determined) the Tenant shall leave the Premises in such good and substantial repair and condition to no less a standard than that specified in Clause 1.13 of Part 5 of the Schedule and in all other respects consistent with the standards required in terms of this Lease. In the event of the Premises not being left in such repair and condition, the Landlord will be entitled to serve a notice

("the works notice") within three months of the date of termination requiring the Tenant to carry out works to put the Premises into such state of repair and condition. The Tenant shall have one month from the date of the works notice to complete the works specified therein to the Landlord's reasonable satisfaction. In such event, the Tenant shall pay to the Landlord a sum equivalent to the sum of one month's rent (being one month's Fixed Rent, and an amount equivalent to the Base Rent for the same calendar month in the immediately preceding Year, and an amount equivalent to the Turnover Rent for the same calendar month in the immediately preceding Year) on demand. In the event that the Tenant refuses or delays completion of the works to the Landlord's satisfaction, the Landlord shall be entitled to carry out the works and the Tenant shall be bound to pay to the Landlord, on demand, the proper cost of such works.

- 15.3 On the expiry or earlier termination of this Lease the Tenant shall if requested by the Landlord take all steps required to transfer any premises licence or other licence for the carrying on of the business at the Premises and/or the sale of alcohol into the name of the Landlord or its nominee.
- 15.4 No compensation shall be payable by the Landlord to the Tenant in respect of loss of goodwill as a result of termination of the Lease or for any other reason.

16 Notices

- 16.1 Any notices to be served by any Party under this Lease on any other Party pursuant to the provisions of this Lease shall be in writing and sent by first class recorded delivery post, or fax. Any notice sent by first class recorded delivery post shall be deemed to have been duly served at the expiry of forty eight hours after the time of posting (excluding weekends and public statutory holidays). Any notice sent by fax shall be deemed to have been made on the day of transmission if transmitted before 4 p.m. on a Working Day but otherwise on the next following Working Day.
- 16.2 In the case of the Landlord at the time of sending such notice being Highlands and Islands Enterprise, such notices shall be sent or delivered to Highlands and Islands Enterprise (for the attention of the Head of Property and Infrastructure) at its chief office as narrated in this Lease or such other address as may be intimated by the Landlord. Notices should be addressed to any person as may from time to time be nominated by the Landlord with reference to this provision. In the case of the Landlord at the time of sending such notice not being Highlands and Islands Enterprise, if the Landlord is an incorporated body any notice shall be sufficiently served if sent by recorded delivery post to its registered office and if the Landlord is an individual shall be sufficiently served if sent by recorded delivery post to that individual's last known address in Great Britain or Northern Ireland.
- 16.3 In the case of the Tenant such notices shall be sufficiently served if sent or delivered to its registered office (if an incorporated body) or usual or last known place of business in Great Britain or Northern Ireland (if an individual).

17 Irritancy

- 17.1 In the event that:-
- 17.1.1 any instalment of Fixed Rent, Turnover Rent, Base Rent or any other ascertained and identified sum due from the Tenant to the Landlord under this Lease or any part or parts thereof shall remain unpaid for 60 days after the sum

became due (whether or not the sum has been demanded); or

- 17.1.2 the Tenant (being a corporation) shall go into liquidation (whether compulsory or voluntary), or have a receiver or administrator appointed to the whole or any part of the property of the Tenant; or
- 17.1.3 the Tenant becomes insolvent or has a curator or judicial factor appointed; or
- 17.1.4 any Funding Agreement is terminated; or
- 17.1.5 any Operating Agreement is terminated

then, subject to the provisions of Sections 4, 5 and 6 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, it shall be in the power of the Landlord to bring this Lease to an end at the expiry of one month's notice to the Tenant to that effect ("**an irritancy notice**") but without prejudice to any right of action or remedy by the Landlord to recover all arrears of Fixed Rent, Turnover Rent, Base Rent or other sums due by the Tenant to the Landlord in terms of this Lease or in respect of any antecedent breach by the Tenant of their obligations hereunder and to enforce all obligations of the Tenant hereunder enforceable after termination of this Lease.

- 17.2 In the event that the Tenant fails to perform or observe any obligation undertaken by Tenant in this Lease (including any obligation in the Operating Conditions), then it shall be in the power of the Landlord to bring this Lease to an end immediately upon serving an irritancy notice on the Tenant, but without prejudice to any right of action or remedy by the Landlord in terms of this Lease or in respect of any antecedent breach by the Tenant of their obligations hereunder and to enforce all obligations of the Tenant hereunder enforceable after termination of this Lease.
- 17.3 In the case of a breach of the terms of this Lease by the Tenant (not falling within Clause 17.1) which is capable of being remedied, the Landlord shall not be entitled to serve an irritancy notice unless and until the Landlord shall first have given written notice ("**a notice to remedy**") to the Tenant requiring the breach to be remedied and intimating their intention to terminate this Lease in the event of the said breach not being remedied within such period as may be stated in the notice to remedy (being such reasonable period of time having regard to the nature of the breach as the Landlord shall determine but which in the case of non-payment of rent or other sum shall be a period of twenty one days) and the Tenant shall have failed to remedy the breach in such period.

18 Settlement Of Disputes

- 18.1 If any dispute or difference of any kind should arise out of any of the provisions of this Lease and both Parties cannot reach an agreement, the Parties will attempt in good faith to resolve such dispute or claim promptly within twenty one days through negotiations between the representatives of the Parties who have authority to settle this dispute.
- 18.2 If the matter is not resolved through negotiation, the Parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the Parties by the Centre for Effective Dispute Resolution (CEDR).
- 18.3 Unless extended by agreement of the Parties if the matter has not been resolved by an ADR procedure within three months of the initiation of such procedure, or if either Party

will not participate in an ADR procedure, the dispute or difference shall be referred for determination to a suitably qualified arbitrator to be agreed upon by the Parties, or in default of agreement, to be appointed at the request of either party by the Chairman, for the time being, of the Royal Institution of Chartered Surveyors in Scotland and such reference shall be deemed to be a submission to arbitration within and subject to the Arbitration (Scotland) Act 2010.

19 Expenses

19.1 The Tenant shall pay:-

19.1.1 all costs, charges, expenses, disbursements and fees, including the Landlord's solicitor's reasonable and other proper and reasonable professional fees and proper internal management costs, together with outlays and any VAT on any of the foregoing, in connection with:-

19.1.1.1 any breach by the Tenant of any of the Tenant's obligations under this Lease and the remedying (or attempting to remedy) the same;

19.1.1.2 the making of any applications for any consent or approval (whether or not consent or approval is refused or the application withdrawn) and if consent or approval is given, in connection with or incidental to the preparation of any document recording such consent or approval

19.1.1.3 any negotiations entered into at the request of the Tenant (whether or not the negotiations result in a concluded agreement);

19.1.1.4 the preparation and service of all notices and schedules relating to wants of repair or dilapidations or requiring the Tenant to remedy any breach of the terms of this Lease whether the same be served during or after the expiry or sooner determination of the Lease Period;

19.1.2 the stamp duty land tax (if any) exigible in respect of this Lease;

19.1.3 the cost of registering this Lease in the Land Register of Scotland and in the Books of Council and Session and obtaining two Extracts thereof (one for the Landlord, one for the Tenant); and

19.1.4 the cost of registering any Minutes of Variation and/or Rent Review Memoranda to this Lease in the Books of Council and Session and obtaining two Extracts thereof (one for the Landlord, one for the Tenant) and of registering the same in the Land Register of Scotland if appropriate.

20 Governing Law and Jurisdiction

The Lease shall be construed in accordance with the law of Scotland and the Parties insofar as not subject to the jurisdiction of the Scottish Courts prorogate the jurisdiction of the Scottish Courts.

21 Consent To Registration

The Parties consent to registration of the Lease for preservation and execution: IN WITNESS WHEREOF these presents typewritten on this and the preceding 28 pages together with the Schedule are executed as follows:

EXECUTED for and on behalf of HIGHLANDS AND ISLANDS ENTERPRISE

at *INVERNESS*

on the *11TH* day of *JUNE* 2014

[Redacted Signature]

Authorised Signatory

Full Name

Before this witness:

[Redacted Witness Signature]

Witness

[Redacted Witness Name]

Full Name

[Redacted Witness Address]

Address of Witness

EXECUTED for and on behalf of CAIRNGORM MOUNTAIN LIMITED

at *INVERNESS*

on the *11TH* day of *JUNE* 2014

[Redacted Signature]

Director

[Redacted Name]

Full Name

Before this witness:

[Redacted Witness Signature]

Witness

[Redacted Witness Name]

Full Name

[Redacted Witness Address]

Address of Witness

This is the Schedule referred to in the foregoing Lease between Highlands and Islands Enterprise and Cairngorm Mountain Limited relative to Lease of visitor attraction, Cairngorm

**Schedule
Part 1
Plan**

Schedule Part 2

Turnover Rent and Base Rent

The Landlord and the Tenant having agreed that in addition to the Fixed Rent, the Tenant shall pay to the Landlord an amount by way of Turnover Rent and a further amount by way of Base Rent (as both terms are defined in this Part of the Schedule), the Landlord and the Tenant agree as follows: -

1 Definitions

In this Part of the Schedule, the following definitions apply:-

- 1.1 “**Account Date**” means 31 March in each Year;
- 1.2 “**Accounts Records**” means all books and other documents or records (including computer tapes, discs and other storage systems, cash register receipts and tapes, bank statements and any tax returns which relate to VAT or any similar or substituted tax) which are or ought in the reasonable opinion of the Landlord to be kept by the Tenant for ascertaining and verifying the Gross Turnover or which are or may in the reasonable opinion of the Landlord be relevant for such purpose;
- 1.3 “**Base Rent**” means, for each Base Rent Period, an amount equal to BR where:
- BR = GT x 0.01
- GT = an amount equal to the Gross Turnover for the relevant Base Rent Period;
- 1.4 “**Base Rent Commencement Date**” means 1 April 2019;
- 1.5 “**Base Rent Period**” means each Year from and after the Base Rent Commencement Date;
- 1.6 “**Date of Entry**” has the meaning given to it in the Lease;
- 1.7 “**Expiry Date**” means the date of termination of the Lease, howsoever determined;
- 1.8 “**First Base Rent Period**” means the period from the Base Rent Commencement Date to the next Account Date;
- 1.9 “**Gross Turnover**” means the aggregate of all sums of money or other consideration received or receivable for all goods sold, leased, hired or otherwise disposed of and for all services sold, ordered or performed and from all business of any nature whatever conducted at, in, from or upon the Premises or any part of the Premises by the Tenant, including all amounts received or receivable from:
- 1.9.1 orders which originated or are received or accepted at or from the Premises notwithstanding that:
- 1.9.1.1 delivery or performance is made at or from any place other than the Premises; and/ or

- 1.9.1.2 payment is made to a person other than the Tenant;
- 1.9.2 orders solicited off the Premises by persons operating from or reporting to the Premises;
- 1.9.3 sales made or services provided by means of mechanical or vending devices at the Premises except to the extent that such devices are provided solely for the use of the Tenant's employees and not for customers;
- 1.9.4 mail, telephone, internet or similar orders received or fulfilled at or from the Premises;
- 1.9.5 sales and services which the Tenant in the normal and customary course of the Tenant's operations would or should credit or attribute to the Tenant's business on the Premises;
- 1.9.6 all delivery, postal and insurance charges relating to any transaction at or from the Premises;

The following qualifications also apply to the definition of Gross Turnover:

- 1.9.7 Every sale on credit terms or on an instalment basis shall be deemed to be a sale for the full cash price at the date when the same is made irrespective of the time or times at which the Tenant receives payment;
- 1.9.8 Every hiring of goods to a customer with an option to purchase shall be deemed to be a sale of the goods for the full cash price at the date when the hiring is made (irrespective of the time or times at which the Tenant receives payment) and there shall be excluded from the Gross Turnover any hiring charges in respect of such hiring;
- 1.9.9 Any deposit by a customer shall be included in the Gross Turnover at the time of receipt but shall be deducted from the Gross Turnover if and when repaid and the balance in respect of any purchase shall be included on completion of the sale;
- 1.9.10 No deduction shall be made for:-
 - 1.9.10.1 bad or doubtful debts; or
 - 1.9.10.2 (in the case of transactions paid by credit card) discounts or commissions payable by the Tenant to the provider of the credit;

The following amounts shall not be included in the Gross Turnover or if included shall be deducted:-

- 1.9.11 VAT, purchase tax and any similar sales or excise tax imposed directly on the Tenant in respect of the supply of goods or services but only to the extent that such tax is actually paid or accounted for by the Tenant to the taxing authority;
- 1.9.12 discounts customarily allowed to employees of the Tenant in respect of goods or services supplied to them by the Tenant;
- 1.9.13 the amount reasonably and properly allowed on goods traded in by customers

in the ordinary course of business;

- 1.9.14 the amount of any cash refund or credit given to a customer when goods are returned provided that such cash refund or credit does not exceed the sale price of the goods included in the Gross Turnover;
- 1.9.15 the sales price of goods returned by customers for exchange provided that:-
- 1.9.15.1 such sale price has been included in the Gross Turnover; and
- 1.9.15.2 the sale price of the goods given in exchange is included in the Gross Turnover;
- 1.9.16 credit allowances and refunds made in respect of defective or unsatisfactory goods or services provided that such allowances or refunds shall not exceed the sale price of the goods or the charge for the services included in the Gross Turnover;
- 1.9.17 the value of goods transferred whether by way of exchange or otherwise from the Premises to other premises of the Tenant provided that such transfer is not made for the purpose of consummating a sale which has been made at, in or from the Premises nor deprives the Landlord of the benefit of a sale which would otherwise have been made at, in or from the Premises;
- 1.9.18 the value of goods returned to shippers, wholesalers or manufacturers; and
- 1.9.19 interest charges and credit account service charges;
- 1.10 **“Turnover Certificate”** means the certificate to be provided under Clause 2 of this Part of the Schedule;
- 1.11 **“Turnover Period”** means each Year;
- 1.12 **“Turnover Rent”** means, for each Turnover Period, the greater of (a) zero and (b) a sum equal to TR where:
- TR = GT x TM
- GT = (i) where the Gross Turnover for the relevant period is less than the Turnover Threshold, zero and (ii) where the Gross Turnover for the relevant period is equal to or more than the Turnover Threshold, an amount equal to the Gross Turnover for the relevant period minus a sum equivalent to the Turnover Threshold
- TM = (i) for the first 15 Years, 0.05 and (ii) thereafter, 0.08;
- 1.13 **“Turnover Rent Commencement Date”** means the Date of Entry;
- 1.14 **“Turnover Specialist”** means an independent Chartered Accountant who:
- 1.14.1 has at least 10 years experience in practice in the United Kingdom;
- 1.14.2 has recent and substantial experience in the audit of turnover of businesses in so far as reasonably practicable of a character and quality similar to that carried on from the Premises;

- 1.14.3 is a partner in a leading firm of Chartered Accountants;
- 1.14.4 has recent and substantial auditing knowledge; and
- 1.14.5 is appointed failing agreement by the President (or senior office holder) for the time being of the Institute of Chartered Accountants of Scotland (as constituted or reconstituted, formed or re-formed from time to time) on the application of either the Landlord or the Tenant; and

1.15 “Turnover Threshold” means an amount equal to TT where:

TT = FM x PR

FM = FOUR MILLION POUNDS (£4,000,000) STERLING

PR = DP divided by 365

DP = the number of calendar days in the relevant Turnover Period;

2 Certification of Turnover

- 2.1 Within 45 days after the end of each Turnover Period (time being of the essence) the Tenant must deliver to the Landlord a Turnover Certificate signed by a professionally qualified independent external accountant appointed by the Tenant certifying the amount of the Gross Turnover during the relevant Turnover Period.
- 2.2 The Tenant undertakes to the Landlord that each Turnover Certificate will state accurately the amount of the Gross Turnover for the relevant Turnover Period.

3 Payment of Turnover Rent

- 3.1 On receipt of a Turnover Certificate (but subject always to the provisions of Clauses 5.1 and 5.2 of this Part of the Schedule) the Landlord will calculate the Turnover Rent for the relevant Turnover Period and confirm the same to the Tenant.
- 3.2 The Tenant must pay the Turnover Rent to the Landlord annually in arrears, as soon as reasonably practicable after the relevant Turnover Certificate is issued in terms of Clause 2.1 of this Part of the Schedule, and in any event no later than the first 30 September falling after the end of the relevant Turnover Period (or the Expiry Date, if sooner). No Turnover Rent will be due and payable in respect of the period prior to the Turnover Rent Commencement Date.
- 3.3 Without prejudice to Clause 5 of this Part of the Schedule, if the Tenant does not timeously deliver a Turnover Certificate, interest at the Prescribed Rate on the balance due by the Tenant will accrue from the date occurring 45 days after the end of the relevant Turnover Period and not the date occurring 14 days after service of such demand.

4 Payment of Base Rent

- 4.1 On receipt of a Turnover Certificate (but subject always to the provisions of Clauses 6.1 and 6.2 of this Part of the Schedule) the Landlord will calculate the Base Rent for the relevant Base Rent Period and confirm the same to the Tenant.

- 4.2 The Tenant must pay the Base Rent to the Landlord annually in arrears from and after the Base Rent Commencement Date, as soon as reasonably practicable after the relevant Turnover Certificate is issued in terms of Clause 2.1 of this Part of the Schedule, and in any event no later than the first 30 September falling after the end of the relevant Base Rent Period (or the Expiry Date, if sooner).
- 4.3 For the avoidance of doubt, no Base Rent will be due and payable in respect of the period prior to the Base Rent Commencement Date.
- 4.4 Without prejudice to Clause 5 of this Part of the Schedule, if the Tenant does not timeously deliver a Turnover Certificate, interest at the Prescribed Rate on the balance due by the Tenant will accrue from the date occurring 45 days after the end of the relevant Base Rent Period and not the date occurring 14 days after service of such demand.

5 Consequences of Late Certification – Turnover Rent

- 5.1 If the Tenant does not deliver the Turnover Certificate on time in respect of the first Turnover Period the Tenant must pay to the Landlord the sum of TWO THOUSAND AND FORTY FOUR POUNDS AND EIGHT PENCE (£2244.08) STERLING within 14 days after written demand. Said payment will be treated as a payment to account of the Turnover Rent for that Turnover Period.
- 5.2 The provisions of Clause 5.1 of this Part of the Schedule will continue to apply to each subsequent Turnover Period for which the Tenant does not deliver the Turnover Certificate on time until the first occasion on which the Tenant first delivers the Turnover Certificate on time.
- 5.3 If in respect of any subsequent Turnover Period the Tenant does not deliver the Turnover Certificate on time, the Tenant must pay to the Landlord within 45 days after the end of the relevant Turnover Period on account of the Turnover Rent in respect of the Turnover Period which should have been covered by the Turnover Certificate an amount equal to 100% of the full Turnover Rent payable in respect of the last preceding full Turnover Period for which a Turnover Certificate had been delivered.
- 5.4 If the amount of the Turnover Rent payable for any Turnover Period differs from the cumulative amount of the Turnover Rent actually paid on account to the Landlord by the Tenant for the same Turnover Period the matter shall forthwith (and any sums shall be due no later than fourteen days after the date of delivery to the Landlord of the Turnover Certificate) be settled by a single payment by the Tenant to the Landlord or by the Landlord to the Tenant (as the case may be) comprising the difference between the last two mentioned amounts.

6 Consequences of Late Certification – Base Rent

- 6.1 If the Tenant does not deliver the Turnover Certificate on time in respect of the first Base Rent Period the Tenant must pay to the Landlord the higher of:
- 6.1.1 The sum of FORTY FOUR THOUSAND, FOUR HUNDRED AND EIGHTY EIGHT POUNDS AND SIXTEEN PENCE (£44,488.16) STERLING; and
- 6.1.2 A sum representing 1% of the Gross Turnover for the last Turnover Period for which a Turnover Certificate was provided in accordance with this Part of the

Schedule;

and that within 14 days after written demand, such payment to be treated as a payment to account of the Base Rent for that Base Rent Period.

- 6.2 The provisions of Clause 6.1 of this Part of the Schedule will continue to apply to each subsequent Base Rent Period for which the Tenant does not deliver the Turnover Certificate on time until the first occasion on which the Tenant first delivers the Turnover Certificate on time.
- 6.3 If in respect of any subsequent Base Rent Period the Tenant does not deliver the Turnover Certificate on time, the Tenant must pay to the Landlord within 45 days after the end of the relevant Base Rent Period on account of the Base Rent in respect of the Base Rent Period which should have been covered by the Turnover Certificate an amount equal to 100% of the full Base Rent payable in respect of the last preceding full Base Rent Period for which a Turnover Certificate had been delivered.
- 6.4 If the amount of the Base Rent payable for any Base Rent Period differs from the cumulative amount of the Base Rent actually paid on account to the Landlord by the Tenant for the same Base Rent Period the matter shall forthwith (and any sums shall be due no later than fourteen days after the date of delivery to the Landlord of the Turnover Certificate) be settled by a single payment by the Tenant to the Landlord or by the Landlord to the Tenant (as the case may be) comprising the difference between the last two mentioned amounts.

7 Inspection of Accounts etc

- 7.1 The Tenant must maintain the Accounts Records fully and accurately.
- 7.2 The Accounts Records for the current and the two immediately preceding Turnover Periods must be kept safely on the Premises or in such other place reasonably accessible for inspection as the Landlord approves (such approval not to be unreasonably withheld).
- 7.3 The Tenant must make the Accounts Records referred to in Clause 7.2 of this Part of the Schedule available for inspection at all reasonable times by the Landlord or their duly authorised representative.
- 7.4 The Landlord may at its own discretion require an audit of the Accounts Records relating to the then current Turnover Period (or Base Rent Period) or any preceding Turnover Period (or Base Rent Period) to be made by a professionally qualified accountant appointed by the Landlord.
- 7.5 If it is established by such audit that the Gross Turnover for any Turnover Period (or Base Rent Period) has been understated by more than 5% then the proper and reasonable cost of the audit shall be borne by the Tenant and paid by the Tenant within 28 days of written demand.
- 7.6 The Landlord will not disclose the Gross Turnover or any other information obtained from inspection or audit of the Account Records except to such extent as may be necessary:
- 7.6.1 in order to comply with any lawful requirement of any interested authority; and

7.6.2 for the proper conduct of the Landlord's business.

7.7 If it appears from any such inspection or audit or from any other circumstance that the Turnover Rent calculated in accordance with Clause 3.1 of this Part of the Schedule for the relevant Turnover Period is less than the Turnover Rent that should have been assessed for such Turnover Period, then the Tenant shall pay to the Landlord within 28 days of written demand any difference between the Turnover Rent actually paid for such Turnover Period and the Turnover Rent due to be paid for such Turnover Period.

7.8 If it appears from any such inspection or audit or from any other circumstance that the Base Rent calculated in accordance with Clause 4.1 of this Part of the Schedule for the relevant Base Rent Period is less than the Base Rent that should have been assessed for such Base Rent Period, then the Tenant shall pay to the Landlord within 28 days of written demand any difference between the Base Rent actually paid for such Base Rent Period and the Base Rent due to be paid for such Base Rent Period.

8 Disputes

If any dispute arises between the parties as to the amount of the Gross Turnover and/or the Turnover Rent and/or the Base Rent, the Gross Turnover and/or the Turnover Rent and/or the Base Rent shall be determined by the Turnover Specialist who shall act as an arbitrator and not as an expert.

9 Interest on Payments in Arrear

The provisions of Clause 9.1 of the Lease will apply if the Tenant fails to pay on time any sums (including interest) due under this Part of the Schedule.

10 Effect on Rent Review Provisions in Lease

The whole provisions of this Part of the Schedule shall be disregarded for the purposes of Clause 5 of the Lease and any and all calculations made under that Clause.

**Schedule
Part 3
Operating Conditions**

Service Levels

| No. | Requirement | Service Level |
|-----|--|---|
| 1a | General Maximisation of the number of skier days per annum during the Ski Season | Minimum 75,000 skier days per annum in the Ski Season 1 November 2014 to 30 April 2015 and minimum 80,000 skier days per annum in each subsequent Ski Season |
| 1b | Increase in appeal of the Premises to visitors and increase in the total number of visitors per annum to the Premises | Minimum 205,000 visitors per annum in the year from 1 November 2014 to 31 October 2015 and minimum 210,000 visitors per annum in each subsequent year |
| 1c | Operation of consistent, effective, comprehensive and uncomplicated booking system in respect of all ticketing facilities at Premises at the Premises; it must be possible to make bookings in respect of all such ticketing facilities online, by telephone and in person | (i) Internet booking service to be available as a minimum 20 hours per day 365 days per annum from 1 November 2015 (ii) Maximum waiting time of 20 minutes at each of the ticketing facilities in the Premises in respect of bookings made in person |
| 1d | Reporting of all major incidents to persons and property | All major accidents or incidents including fatalities and severe injuries within the Ski Area; and problems relating to safety and security, including vandalism, must be notified within 24 hours to the Authority |

- 1e Reporting of all major incidents involving major plant failure, closure for reasons other than adverse weather or any other issue likely to concern the Authority and/ or visitors must be notified within 24 hours to the Authority
- 1f Major plant failure, closure for reasons other than adverse weather or any other issue likely to concern the Authority and/ or visitors must be notified within 24 hours to the Authority
 - (i) Website to include at least daily updates as regards the weather and other conditions at the Premises
 - (ii) Website to be operational as a minimum 20 hours per day 365 days per annum
- 1g During Ski Season, the Day Lodge Premises to be open from 8 am to 4 pm and the Ptarmigan Premises to be open from 9am to 4pm.
 - During Summer Season, the Day Lodge Premises to be open from 9 am to 5 pm and the Ptarmigan to be open from 10am to 4pm and on days when there is sufficient daylight, the Ptarmigan restaurant to be open from 10 am to 8 pm.
- 2 Funicular Maximisation of the number of funicular customers per annum
 - (i) Minimum of 130,000 funicular customers per annum subject to a minimum of 90,000 funicular customers during the Summer Season.
 - (ii) During days when the Premises is open for business, minimum opening hours of from 10 am to 4 pm in the Summer Season and from 9 am to 4 pm in the Ski Season

For the avoidance of doubt, in these Service Levels any reference to "days when the Premises are open for business" assumes that the Premises will be open for business on every day in any year other than Christmas Day and days on which the Premises cannot open for business in terms of clause 23 of this Agreement.

3 Maintenance Operation and maintenance of the funicular, ski tows, , buildings, fixtures, fittings, plant and equipment in or on the Premises in accordance with the manufacturers' recommendations, the Health & Safety Plan and operating requirements and procedures

(i) No breaches of health and safety law

(ii) Compliance at all times with the Environmental Management Plan

(iii) Compliance at all times with the Health & Safety Plan

(iv) Health & Safety Plan, and any changes to it, to be approved in advance by the Authority; the Authority must be given 5 working days to review the Health & Safety Plan and any proposed changes to it

(v) Neither the funicular nor ski-tows will be open for conveyance of the public whilst any repair or maintenance item deemed critical by the requirements of the Regulatory Bodies or the manufacturers of the equipment is outstanding except as required to facilitate the emergency evacuation of any part of the Premises

Any required repair will take place within 10 days or such other period as agreed with the Authority

(vi) Building defects causing Premises not to be wind & watertight or prejudicial to public or employee safety must be remedied within 10 days or such other period as agreed with the Authority having regard to the nature of the defect

(vii) Any required maintenance will take place within times recommended by the relevant manufacturer or a report by a chartered surveyor and in any event within 30 days or such other period as agreed with the Authority

(viii) With the aim of minimising downtime on the funicular railway, the Supplier will compile a list of 'critical spares' which will be either purchased and stored within the Premises or held in stock at the manufacturer's premises on short delivery. The list will be replenished as necessary and kept under regular review.

(ix) Drainage systems shall at all times ensure the effective removal of wastewater, surface water and liquid waste in accordance with relevant legislation, discharge consent and good practice

4a Catering Provision and maintenance of catering facilities and services which are aligned with other skier and non-skier customer services and designed to maximise their commercial potential

(i) During days when the Premises are open for business, catering facilities and services must be provided: (i) at the Day Lodge between 8 am and 4 pm each day during the Ski Season and between 9 am and 5 pm each day during the Summer Season; and (ii) at the Ptarmigan between 9 am and 4 pm during the Ski Season and between 10 am and 4 pm each day during the Summer Season, other than during refurbishment periods in relation to the Ptarmigan agreed with the Authority On days when there is daylight until 8 pm, the facilities and services in the restaurant at the Ptarmigan are to be provided until 8 pm (provided that there is access to the Ptarmigan via the funicular railway)

(ii) No breaches of health & safety law / food hygiene regulations

(iii) No breaches of licensing law or of any related licences, consents, permits and authorities

(iv) Where possible and appropriate, the Supplier shall engage with fair trade suppliers to ensure that ethically-sourced food and beverages constitute at least 20% of all food and beverages available in the Premises

(v) Where possible and appropriate, the Supplier shall ensure that it sources 20% of all food and beverages available in the Premises from suppliers located within the Authority's area of operation

- 5 Retail Provision and maintenance of retail facilities and related services which are aligned with other skier and non-skier customer services and designed to maximise their commercial potential
- During days when the Premises are open for business, retail facilities and related services must be provided at: (i) the Day Lodge between 8 am and 4 pm each day during the Ski Season and between 9 am and 5 pm each day during the Summer Season; and (ii) the Parmigan between 9 am and 4 pm each day during the Ski Season and between 10 am and 4 pm each day during the Summer Season
- 6a Equipment Hire Provision and maintenance of equipment hire facilities and services which are aligned with other skier and non-skier customer services and designed to maximise their commercial potential
- (i) During days when the Premises are open for business, equipment hire facilities and services must be provided between 8 am and 4 pm each day on which the Premises are open for business during the Ski Season.
- (ii) At least 90% of total equipment shall be available to hire at all times

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| 7b | Encourage greater use of a voluntary, nominal fee for car park usage. | £15,000 per annum to be generated through car parking donations |
| 7c | Provision of a free-to-customers shuttle service between the Day Lodge and the Coire na Ciste overflow car park | Shuttle buses to operate to meet reasonably anticipated demand on days when the main car park is full with no customer having to wait more than 15 minutes for a bus. |
| 8a | Public Toilets Provision and maintenance of public toilet facilities which are aligned with other skier and non-skier customer services | (i) The current number of public toilets plus portable toilet facilities at the Coire na Ciste car park on days it is operating as an overflow are the minimum level of future provision (ii) Day Lodge - minimum opening hours between 8am and 5pm during the Ski Season and 8am and 5pm during the Summer Season (iii) Ptarmigan – minimum opening hours of between 9 am and 5 pm in the Ski Season and between 10 am and 5 pm in the Summer Season. |
| 9a | Ranger Service Operation of a Ranger Service at Cairngorm Mountain covering the whole of the Authority's estate on terms to be agreed with the Authority | The services currently provided by the current Ranger Service are the minimum level for future provision |
| 9b | Employment of Rangers | Minimum of 1 Head Ranger and 2 Seasonal Rangers to be employed for at least as many days and hours per annum as they are currently employed |

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| 10 | Ski Patrol | Provision of a ski patrol service (all with BASP qualifications) to serve the ski season at Cairngorm Mountain. | A ski patrol appropriate to the prevailing conditions is required but this should be no less in scope or quality than current operation |
| 11 | Visitor Management Plan | Compliance with the terms of the current Visitor Management Plan. If significant changes are proposed by the Supplier, it shall first consult with and seek approval from the Authority prior to entering into discussions with Scottish Natural Heritage, the Highland Council and Cairngorms National Park Authority | Compliance with the terms of the Visitor Management Plan |
| 12a | Annual Operating Plan | Preparation of an annual Operating Plan for the forthcoming year to be approved by the Authority which is consistent with the relevant requirements of the VMP | Plan to be submitted to the Authority by 31 March each year |
| 12b | | Adherence to the annual Operating Plan mentioned above | No instances of departure from the annual Operating Plan without prior written notification to the Authority |
| 13a | Annual Operating Review | Preparation and submission to the Authority of an annual retrospective Operating Review | Review to be submitted to the Authority by 31 May each year |
| 13b | | Compliance within such period as is determined by the Authority with such remedial steps as are required by the Authority further to its review of the annual retrospective Operating Review referred to above | No instances of departure from the remedial steps required without the prior written consent of the Authority |
| 14 | Piste grooming | Keeping in service a fleet of piste grooming machines, no less in size and | Maintenance of the ability to adequately groom all recognised pistes by 10 am each day when the |

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| machines | scope than that operating at the end of the 2013/14 ski season | Premises are open for business Establishment of a fleet replacement plan and maintenance regime to ensure that an adequate fleet of reliable machines is available throughout the Ski Season. |
| 15 Snowsports school | Operation of a snowsports school during the Ski Season commencing on 1 November 2015 providing a range of lessons and packages available to beginners as well as lessons for experienced snowsports visitors. The main focus of the school will be beginners from 5 years upwards. Instructors are to have the appropriate level of BASI (or equal) ski instructors' qualifications. | Minimum opening times of 9 am to 4 pm in the Ski Season |
| 16a Customer Service | Introduction of, and compliance with, a customer care policy, a customer complaints procedure and a customer satisfaction policy | Customer care, complaints and customer satisfaction policies to be developed in line with Scottish Public Service Ombudsman guidance, including timescales for dealing with complaints at both frontline and investigation stage. Any changes to be approved in advance by the Authority; and the Authority must be given 20 days to review the customer care, complaints and customer satisfaction policies and any proposed changes thereto. Policies to be reviewed each year. Supplier to undertake an annual customer satisfaction survey in accordance with terms of customer satisfaction policy and report annually to the Authority in relation to the results of such survey |

16b

Implementation of customer care and complaints handling process

Complaints received to be dealt with promptly in line with customer care and complaints policy.
Transparent records to be retained to capture the complaints received and how these have been dealt with including timescales and actions. Improvement actions to be identified with timescales agreed for implementation where reasonably practicable.

16c

Provision of key signage and visitor information / documentation in both English and Gaelic languages

All key signage and visitor information / documentation to be available in both English and Gaelic languages, with Gaelic language versions of signage and visitor information / documentation to be consistent with terms of the Authority's Gaelic Plan and to be made available within [12 months] of the Commencement Date

Schedule
Part 4
Development Obligations

1 Definitions

In this Part 4 of the Schedule:

“Appointment” means the agreement and/or contract of engagement whereby each of the Professional Advisers is appointed or engaged as such by the Tenant in connection with the Development Works;

“Approved Application” means a planning application for the Development Works as approved by the Landlord in terms of Clause 3.1 of this Part of the Schedule;

“Approval Date” means the date on which the Landlord confirms in writing to the Tenant that it approves the Proposed Application in accordance with this Part of the Schedule;

“Approved Drawings” means the plans, sections, drawings and specifications approved by the Landlord in terms of Clause 3.1 of this Part 4 of the Schedule, and in each case shall include any additions, alterations, modifications or variations to the same as are approved or permitted by the Landlord pursuant to Clause 6 of this Part 4 of the Schedule;

“Arbitrator” means an arbitrator being an independent surveyor who is at the date of appointment a member of the Royal Institute of Chartered Surveyors in Scotland with relevant experience in assessing similar properties and businesses as the Premises and the business envisaged by the Lease;

"Architect" means such reputable firm or company as may be employed by the Tenant as architect from time to time in connection with the Development Works;

"Building Contract" means the contract or contracts entered or to be entered into between the Tenant and the Contractor, with all attendant and subsidiary documents, for the purpose of carrying out the Development Works;

"Collateral Warranty" means a collateral warranty agreement in a form that a prudent commercial developer of normal commercially acceptable terms for a development of the size and nature of that anticipated by the Development Works would expect to receive;

“Completion Certificate” means a completion certificate issued by the relevant authority for the Development Works;

“Completion Longstop Date” means the earlier of (a) the third anniversary of the date on which the Development Works are commenced and (b) the eighth anniversary of the Date of Entry;

“Consents” means (a) building warrants and all other valid statutory consents, permissions, approvals, licenses, certificates, orders and permits as are required to enable the Development Works to be commenced and completed, including (i) any such as may be required from any local or other competent authority or statutory undertaker

or any fire officer to enable the construction and completion of the Development Works and (ii) without prejudice to the foregoing generality, the Planning Permission and (b) any consents required in terms of any leases, licences or title to the Premises or Retained Property (including any title conditions affecting the same);

"Contractor" means such reputable contractor or contractors as may be appointed by the Tenant from time to time as contractor under the Building Contract;

"Designers" means the design team for the Development Works including for the avoidance of doubt, any project manager, Architect, structural and civil engineer, mechanical and electrical engineer, quantity surveyor, CDM co-ordinator, planning adviser, environmental adviser, acoustician and so on;

"Development Site" means that part of the Premises comprising the existing day lodge as at the Date of Entry, subject to any amendments thereto as may be agreed in writing between the Parties from time to time;

"Development Works" means the construction of a New Day Lodge on the Development Site;

"Force Majeure" means exceptionally adverse weather conditions, civil commotion, strike or lock out affecting any of the trades directly and necessarily engaged in the execution of the Works, the exercise of any statutory power which directly affects the execution of the Works, or any delay beyond the reasonable control of the Tenant under declaration that the Tenant shall be deemed to be in control of its funders and all arrangements relative to the Tenant's finances and/or funding of the Development Works;

"Landlord's Approvals" means the Landlord's approval to the (a) Proposed Application (b) Contractors (c) Appointments (d) Building Contract (e) Programme (g) Method Statement and (h) Approved Drawings;

"Project Monitor" means such reputable and suitably qualified person or firm as the Landlord shall from time to time employ in their place for the purpose of the whole or part of this Part of the Schedule provided that if at any time no person or firm shall be appointed then the Project Monitor shall be deemed to be the Landlord;

"Method Statement" means a method statement for the Development Works;

"Planning Permission" means planning permission for the Development Works in accordance with the Approved Application (incorporating any amendments to the Approved Application which the Landlord in its discretion approves in writing);

"Practical Completion" has the same meaning as in the Building Contract;

"Professional Advisers" means (a) the Designers (other than any in-house design team of the Tenant or of a Related Company of the Tenant) and/or (b) any other professional consultants employed or to be employed in relation to the Development Works;

"Programme" means a programme of works, setting out timescales, phases and stages of the Development Works;

"Proposed Application" means an application for planning permission for the proposed

Development Works, including proposed drawings and specifications showing the Tenant's proposed Development Works in detail and all other information which would be required by the relevant planning authority;

"Works Longstop Date" means the fifth anniversary of the Date of Entry;

2 Tenant to complete Development Works

2.1 Subject to obtaining:

2.1.1 the Landlord's Approvals, and

2.1.2 the Consents (which the Tenant is obliged to obtain in accordance with this Part 4 of the Schedule),

the Tenant shall, at its sole cost, design, carry out and complete the Development Works on the Development Site, all in a good and workmanlike manner and with good quality materials in accordance with the Approved Application, the Consents, the Programme, the Method Statement, all current building regulations and statutory provisions and the requirements of this Lease and all to the reasonable satisfaction of the Landlord.

2.2 In the event that the Tenant does not commence the Development Works by the Works Longstop Date, the Landlord shall be entitled to terminate the Lease at any time thereafter (but before commencement of the Development Works is notified to the Landlord in writing) on giving written notice to the Tenant to that effect PROVIDED HOWEVER that if the Development Works are delayed by Force Majeure the foregoing date shall be extended by the period of delay on account thereof.

2.3 In the event that the Development Works have not reached Practical Completion by the Completion Longstop Date, the Landlord shall be entitled to terminate the Lease at any time thereafter (but before Practical Completion of the Development Works is notified to the Landlord in writing) on giving written notice to the Tenant to that effect PROVIDED HOWEVER that if the Development Works are delayed by Force Majeure the foregoing date shall be extended by the period of delay on account thereof.

3 Tenant to obtain approvals etc

3.1 The Tenant shall:

3.1.1 submit details of each of the following to the Landlord and obtain the Landlord's approval to the same prior to making any appointments, namely, details of (a) the identity of the proposed Designers, together with such supporting evidence as the Landlord may require to evidence that each of the proposed Designers are suitably qualified and competent to carry out the relevant tasks in a timescale appropriate to those set out in this Part of the Schedule (b) style of the proposed Appointments for the Designers and (c) the proposed project programme, together with any necessary or reasonably requested supporting documentation;

3.1.2 give the Landlord and the Project Monitor reasonable notice of any site meetings, design meetings and any other key meetings in relation to the Development Works and/or the application process for planning permission and allow them to attend the same;

- 3.1.3 take full account of the Landlord's reasonable requests and suggestions in all such meetings (and that of their Project Monitor);
 - 3.1.4 before finalising any drawings, specifications or applications in relation to the Development Works, submit the proposals therefor to the Landlord for approval and revise or amend the same if required by the Landlord, to take account of the Landlord's requests and suggestions;
 - 3.1.5 before submitting any application for planning permission for the Development Works, submit to the Landlord plans, sections, drawings and specifications of the Day Lodge to the Landlord for approval, such approval not to be unreasonably withheld or delayed;
 - 3.1.6 submit the Proposed Application to the Landlord for approval as soon as reasonably practicable after the Date of Entry, the Landlord's approval thereof not to be unreasonably withheld or delayed;
 - 3.1.7 submit the Approved Application to the relevant planning authority within 3 months of the Approval Date, and provide the Landlord forthwith with any reference number and all other information in relation thereto;
 - 3.1.8 use reasonable endeavours to obtain the Consents as soon as reasonably practicable after the Approval Date;
 - 3.1.9 submit details of each of the following to the Landlord for approval as soon as reasonably practicable after the Date of Entry, namely details of (a) the Contractors (b) any Appointments (c) the Building Contract (d) the Programme and (e) the Method Statement, together with any necessary or reasonably requested supporting documentation;
 - 3.1.10 if the Landlord's approval is refused to any of the matters for which it is required in terms of this Part 4 of the Schedule, submit to the Landlord as soon as reasonably practicable thereafter reasonable amended or alternative proposals therefor, with request for the Landlord's approval of the same; and
 - 3.1.11 keep the Landlord regularly advised as to progress with (i) the Tenant's applications for the Consents and (ii) in due course, the construction of the Development Works, in each case with all such relevant information as the Landlord or the Project Monitor may reasonably require.
- 3.2 The Tenant shall, in each case as soon as possible after the Approval Date and in any case no later than 30 Working Days following the date on which Planning Permission is granted, submit in writing its proposals for the (a) Contractors (b) Professional Adviser Appointments (if not earlier obtained) (c) Building Contract (d) Programme and (e) Method Statement, each for the Landlord's written approval. The Landlord's approval in each case is not to be unreasonably withheld provided that sufficient information is given to the Landlord, its reasonable requirements met, and that the Tenant is otherwise in compliance with its obligations under this Part 4 of the Schedule.
- 3.3 The Tenant shall not commence the Development Works until the Consents and all of the Landlord's Approvals are obtained.
- 3.4 For the avoidance of doubt, in the event of any changes being made or proposed to any

of the Contractors, Appointments, Building Contract, Programme or Method Statement, such changes also require the Landlord's written approval on the same basis *mutatis mutandis* as set out in Clause 3.3 of this Part 4 of the Schedule and the Tenant may not proceed with such changes without obtaining such approval.

- 3.5 The Tenant shall deliver, or procure the delivery, to the Landlord on or prior to the date occurring 30 Working Days after commencement of the Development Works of:
- 3.5.1 a certified true copy of the Building Contract and of each Appointment;
 - 3.5.2 a Collateral Warranty in favour of the Landlord by each Contractor and any sub-contractors having design input in favour of the Landlord;
 - 3.5.3 a Collateral Warranty in favour of the Landlord from each of the Professional Advisers, and
 - 3.5.4 a copy of all planning permissions, consents, approvals, licences, building warrants, approvals and relaxations, certificates, orders and permits in a valid form which may be required from any local or other competent authority or statutory undertaker or any fire officer to enable the construction and completion of the Development Works.

4 Carrying out the Development Works

The Tenant shall:-

- 4.1 pay and satisfy all fees, charges and other payments which are due and payable to any competent authority or public service company in respect of the Development Works;
 - 4.2 comply with all requirements or regulations of any Act of Parliament or bye law or any local authority or public service company or authority which has jurisdiction with regard to completing the Development Works and obtain all necessary statutory and other permissions, approvals, consents, licences and others for the carrying out of the Development Works;
 - 4.3 ensure that the Development Works are carried out in a regular and efficient manner and so that:-
 - 4.3.1 the date of commencement of the Development Works shall be not later than Works Longstop Date; and
 - 4.3.2 Practical Completion of the Development Works shall be not later than the Completion Longstop Date
- provided always that if the Development Works are delayed by Force Majeure the foregoing dates shall be extended by the period of delay on account thereof;
- 4.4 carry out the Development Works in such a manner as to cause the minimum practicable inconvenience to the Landlord's surrounding land, buildings and/or infrastructure and the tenants and occupiers thereof, the Tenant being obliged to procure that all damage caused to such surrounding land, buildings, roads and/or infrastructure are made good as soon as reasonably practicable at no expense to the Landlord and/or the Landlord's tenants and that all to the reasonable satisfaction of the Landlord and (if appropriate) the Local Authority;

- 4.5 not specify for use in the Development Works any materials which are generally known within the UK construction industry to be deleterious or not in conformity with British Standards and Codes of Practice at the time of specification;
- 4.6 except to the extent caused by the negligence or default of the Landlord or those for whom it is responsible at law, indemnify and keep the Landlord indemnified from and against all actions, costs, proceedings, expenses, claims, losses, demands, damages and liabilities whatsoever in respect of any injury or accident which may happen or arise to any person or property as a consequence of or incidental to the execution of the Development Works or in connection with the Premises or any part thereof by reason of the state of repair or condition thereof;
- 4.7 keep the Landlord and Project Monitor advised at least monthly as to the progress of the Development Works and without prejudice to that generality, provide on a regular basis to them copies of relevant minutes of development meetings, all relevant documents including test certificates, any specialist reports, contract programmes and progress reports and generally keep them advised of progress in relation to:-
- 4.7.1 material measures taken and stages reached by the Tenant in performance of its obligations;
 - 4.7.2 the progress of the Development Works; and
 - 4.7.3 material problems or delays affecting the Development Works;
- 4.8 permit the Landlord and/or the Project Monitor, on the giving of reasonable prior notice to the Tenant (save in the case of an emergency when no such notice is reasonably practicable) and subject to and in compliance with their reasonable requirements, access to the Premises and the Development Works (including any parts thereof in the course of construction) for the purpose of viewing and monitoring the state and progress of the same, inspecting the materials and workmanship, ascertaining generally that the undertakings, agreements, conditions and stipulations to be performed and observed by the Tenant as contained in this Part of the Schedule have been and are being duly performed and observed and all purposes incidental to the Tenant's occupation of the Premises (but so that no delay is caused in the carrying out of the Development Works); and
- 4.9 permit the Landlord and/or the Project Monitor to perform such tests and inspections as they may reasonably require in order to determine whether the Development Works are being carried out in accordance with the provisions of this Part of the Schedule (but in doing so shall ensure that no damage or delay is caused in the carrying out of the Development Works), and if the Landlord shall, as a result of any inspection or otherwise, wish to make any representation and/or requests concerning the Development Works the Tenant shall procure that due consideration is given to the same.

5 Deemed performance of obligations

The obligations undertaken by the Tenant under this Part of the Schedule shall be deemed to have been duly performed if they are performed on its behalf by the Contractor or the Professional Advisers and the obligations undertaken by the Landlord shall be deemed to have been duly performed if they are performed on its behalf by the Project Monitor.

6 Variation to Approved Drawings

The Tenant shall not make any material alterations to or deviations from the Approved Drawings, Approved Application or any other matter to which the Landlord's Approvals relates, or use any materials in substitution for those specified in them without the prior written consent of the Project Monitor (which consent will not be unreasonably withheld or delayed) and upon such consent being given or where such consent is not required by this Part 4 of the Schedule all amended drawings, specifications or instructions illustrating such alterations or deviations shall be deemed to be incorporated in the Approved Drawings PROVIDED HOWEVER that any alterations or deviations shall be deemed to be material as aforesaid (without prejudice to the generality of the word "material") to the extent that they relate to (a) the external design of the New Day Lodge or the landscaping and external features relative thereto (b) the size of the internal area of the New Day Lodge (c) the facilities and features which are to be available within the New Day Lodge (d) any matter which is reasonably likely to affect the turnover which the New Day Lodge would generate once operational (e) any matter which is reasonably likely to affect the cost or timescale of the Development Works (f) the matters set out in Clause 3.1.1 of this Part of the Schedule and (g) the availability or quality of any Collateral Warranties.

7 Insurance of Development Works

7.1 The Tenant shall procure that the Development Works are insured with the Insurers:

7.1.1 from the date of commencement of the Development Works until Practical Completion, in accordance with the requirements of the Building Contract against loss or damage by fire and against such other risks required to be insured under the Building Contract; and

7.1.2 from the Date of Entry until Practical Completion in respect of third party and public liability relative to the Development Works and the carrying out thereof.

7.2 Wherever reasonably required, the Tenant shall produce to the Landlord or cause to be so produced evidence that the insurance continues in force.

7.3 If insurance is not effected or maintained in accordance with this Clause 7 of Part 4 of the Schedule, the Landlord may effect the same and pay the premiums and the cost shall be repaid to the Landlord by the Tenant on demand.

7.4 If the Development Works or any part of them are destroyed or damaged by fire or other insured risk at any time before Practical Completion then as often as this may happen the Tenant shall use all sums recovered under any insurance policy, and shall make up from its own resources the shortfall, if any, towards the carrying out and completing of the Development Works and/or rebuilding, repairing or otherwise reinstating all damage to the Development Works in a good and workmanlike and substantial manner in accordance with the provisions of this Lease and the Approved Drawings.

7.5 The Tenant shall not knowingly permit or suffer to be done any act or thing which would vitiate any policy or policies of insurance to be effected pursuant to this Lease.

8 Practical Completion of the Development Works

The Tenant shall procure that a copy of the statement or certificate of Practical

Completion in respect of the Development Works is delivered to the Project Monitor within 5 Working Days of its issue.

9 Tenant to obtain Completion Certificate

The Tenant shall obtain and exhibit to the Landlord the Completion Certificate as soon as practicable after Practical Completion.

10 Dispute Resolution

- 10.1 If any dispute or difference of any kind should arise out of any of the provisions of this Part 4 of the Schedule and both Parties cannot reach an agreement, the Parties will attempt in good faith to resolve such dispute or claim promptly within twenty eight days through negotiations between the representatives of the Parties who have authority to settle this dispute.
- 10.2 If the matter is not resolved through negotiation then except where expressly stated otherwise, the Parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the Parties by the Centre for Effective Dispute Resolution (CEDR).
- 10.3 Unless extended by agreement of the Parties if the matter has not been resolved by an ADR procedure within three months of the initiation of such procedure, or if either Party will not participate in an ADR procedure, the dispute or difference shall be referred for determination to an Arbitrator to be agreed upon by the parties, or in default of agreement, to be appointed at the request of either Party by the Chairman of the Royal Institution of Chartered Surveyors in Scotland and such reference shall be deemed to be a submission to arbitration within and subject to the Arbitration (Scotland) Act 2010.

11 Parties to act reasonably

- 11.1 For all matters pertaining to this Part 4 of the Schedule, the Parties are each required to act reasonably, in good faith and with all due speed and diligence.
- 11.2 Neither Party shall unreasonably withhold or delay its decision on any request for approval, consent or agreement for matters set out in this Part 4 of the Schedule.

**Schedule
Part 5
Maintenance, Replacement and Upgrade**

1 Definitions

In this Part 5 of the Schedule:

- 1.1 “ARD Dates” means the dates set out as dates of deposit in Part 6 of the Schedule (and “ARD Date” shall be construed accordingly);
- 1.2 “Asset Replacement Fund” means a UK bank account held in joint names of the Parties (or in the name of the Tenant, if the Parties agree) for the sole purpose of holding and using funds for the Qualifying Replacements and Upgrade Works in accordance with this Part 5 of the Schedule;
- 1.3 “Building Obligations” means the Tenant’s obligations to carry out Maintenance Works, so far as relating to the structure of the Buildings but for the avoidance of doubt EXCLUDING ALWAYS the Tenant’s obligations to carry out the Development Works (as defined in Part 4 of the Schedule);
- 1.4 “Buildings Sinking Fund” means a UK bank account held in the name of the Tenant for the sole purpose of holding and using funds for use by the Tenant in fulfilment of its Building Obligations;
- 1.5 “Deposit Dates” means 31 March in each of the following years, namely 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2030, 2031, 2032, 2033, and 2034 (and “Deposit Date” shall be construed accordingly);
- 1.6 “Exceptional Items (Landlord)” means the items forming part of the Railway listed in Part 9 of the Schedule;
- 1.7 “Exceptional Items (Tenant)” means the items listed in Part 10 of the Schedule;
- 1.8 “Excluded Chairlifts” means the chairlifts listed as numbers 11 and 12 in Part 8 of the Schedule;
- 1.9 “FFE Sinking Fund” means a UK bank account held in the name of the Tenant for the sole purpose of holding and using funds for use by the Tenant in fulfilment of its obligations to carry out Maintenance Works to the Fixtures and Fittings;
- 1.10 “Fixed Deposit” means, for each ARD Date, the corresponding amount identified in Part 6 of the Schedule as the fixed deposit;
- 1.11 “Gross Turnover” has the meaning ascribed to it in Part 3 of the Schedule;
- 1.12 “Landlord’s Replacements” means (First) any Replacement Works to the Exceptional Items (Landlord) and (Second) any necessary refurbishment of the bogie (including three track brakes) forming part of the Railway and (Third) any maintenance and repair of the motor invertors control forming part of the Railway;
- 1.13 “Maintenance Works” means all works, operations and others which may be required to:

- 1.13.1 maintain and keep the Excluded Chairlifts in such condition and repair as will safeguard the public and the Tenant's staff at all times, including carrying out regular condition checks by a qualified person and keeping reports of such maintenance (such reports to be made available to the Landlord on demand);
- 1.13.2 save as aforementioned in Clause 1.13.1 of this Part of the Schedule, well and substantially repair, maintain, renew, rebuild and reinstate and generally in all respects put and keep the Premises (including *inter alia* the Buildings and Uplift Infrastructure (including the Exceptional Items (Tenant)) and Fixtures and Fittings) in good and substantial condition and any Buildings in wind and watertight condition, with all maintenance, rebuilding, renewal and reinstatement works whatsoever regardless of the age or state of dilapidation of the whole or part of the Premises and irrespective of the cause or extent of the damage necessitating such repair, maintenance, renewal, rebuilding and/or reinstatement and including any which may be rendered necessary by any latent or inherent defects in the whole or part of the Premises; and
- 1.13.3 without prejudice to the foregoing generality, keep the Fixtures and Fittings in good and substantial repair and condition and replace and renew those that are beyond repair; and
- 1.13.4 clean or treat in an appropriate manner to the reasonable satisfaction of the Landlord all materials, surfaces and finishes of the Buildings, Fixtures and Fittings and Uplift Infrastructure including without limitation all glass, wood, plastic, metal, cladding and concrete and to wash all surfaces requiring to be washed, and to keep the Premises clear of rubbish at all times

but EXCEPTING ALWAYS the Development Works (as defined in Part 4 of the Schedule), any Upgrade Works, and any Replacement Works (declaring for the avoidance of doubt that the Landlord's responsibilities in relation to any Replacement Works, as set out in Clause 3 of this Part of the Schedule, shall apply);

- 1.14 "Minor Replacements" means (a) any replacements or renewals which are minor or trivial (b) any replacement or renewals of minor items including, for example (but without prejudice to the foregoing generality) items such as nuts, bolts and screws (c) any replacements or renewals which are an inevitable part of maintenance or repair (d) any replacements or renewals to dynamic components of the Ski Tow Infrastructure including all individual working parts such as motors, gear boxes and haul ropes and (e) any replacements or renewals to dynamic components of the Railway including all individual working parts and the Exceptional Items (Tenant) but excluding the Exceptional Items (Landlord);
- 1.15 "Outstanding Payments" means any payments which are or would be due to be paid out of the Asset Replacement Fund in accordance with this Part 5 of the Schedule in respect of any Qualifying Works and/or Upgrade Works instructed during the Lease Period (whether or not those Qualifying Works and/or Upgrade Works have in fact been completed by the expiry of the Lease Period), to the extent that the cost of such Qualifying Works and/or Upgrade Works has not yet been fully invoiced or paid from the Asset Replacement Fund;
- 1.16 "Qualifying Works" means Replacement Works but excluding those in relation to the Exceptional Items (Landlord) and the Exceptional Items (Tenant);

- 1.17 “Removal Notice” means a valid statutory notice served by any public authority (such as Scottish Natural Heritage, the Cairngorms National Park Authority or Highland Council) under any statute requiring the owner or occupier of the Premises to remove the Excluded Chairlifts from the Premises;
- 1.18 “Replacement Works” means any necessary replacement of the Uplift Infrastructure or part(s) thereof with new item(s) which are identical to or are the nearest practicable item(s) available for to the item(s) being replaced, where the relevant item(s) to be replaced are no longer fit for purpose and beyond their economic life, and the relevant replacements would be more economically viable than repair or maintenance of the relevant item(s) as a result of the age or state of dilapidation of the said item(s) but EXCLUDING ALWAYS any Minor Replacements;
- 1.19 “Ski Tow Infrastructure” means the Uplift Infrastructure under exception of the Railway;
- 1.20 “Upgrade Works” means any works of upgrade, renewal or replacement of the Uplift Infrastructure or part(s) thereof, but EXCLUDING ALWAYS (a) any Minor Replacements and (b) any Replacement Works;
- 1.21 “Variable Deposit” means, for each ARD date, an amount equal to D where:

$$D = GT \times 0.005$$

GT = Gross Turnover for the Year immediately preceding the ARD Date;

2 Maintenance Works to Premises

- 2.1 Subject to the other provisions of this Part 5 of the Schedule, the Tenant shall, throughout the Lease Period:
- 2.1.1 carry out all Maintenance Works without necessity of demand therefor; and
- 2.1.2 without prejudice to the foregoing generality, ensure that the Uplift Infrastructure is in good and safe working order at all times (as the same may be determined by a person appointed by the Landlord who is suitably qualified with appropriate experience to determine the matter), by *inter alia* carrying out day to day maintenance and management of the same including maintaining an adequate supply of fuel and electricity to the same and clearing any obstructions, and that from its own monies and without any impact on the Asset Replacement Fund.
- 2.2 Without prejudice to the other obligations on the Tenant and notwithstanding any obligations on the Landlord, spend no less the Minimum Spend each Year on Maintenance Works (excluding any surveyors’, legal and architects’ costs and fees in relation thereto and also excluding any Tenant’s internal staff costs).
- 2.3 For each Year:
- 2.3.1 At the start of the Year, the Tenant will provide to the Landlord for approval (not to be unreasonably withheld or delayed) its plans and projections (and where applicable, specifications and other supporting documentation) for any Maintenance Works that it expects or intends to carry out in that Year, with

any quotes, estimates or other supporting evidence to show that the Tenant will spend at least the Minimum Spend for that Year;

2.3.2 the Tenant shall on each Account Date provide the Landlord with all information and all necessary supporting documentation, including properly vouched accounts, invoices and receipts, to evidence any payments made for Maintenance Works and that the same are properly incurred and reasonable; and

2.3.3 the Landlord shall, within 30 days of receiving the information set out in Clause 2.3.2 of this Part of the Schedule, provide the Tenant with (a) confirmation as to whether in the Landlord's opinion the Minimum Spend requirement for that preceding Year has been met and if not, of the amount of the shortfall and (b) a calculation of the Minimum Amount for the next Year.

2.4 Notwithstanding any other provision of this Part of the Schedule, in the event that a Removal Notice is validly served on either Party in relation to the Premises, the Landlord shall be responsible for the proper costs in respect thereof (provided always that the Tenant notifies the Landlord of the same, and uses reasonable endeavours to mitigate any loss or costs).

3 Replacement Works (to Uplift Infrastructure)

3.1 Prior to any Replacement Works being carried out, the specifications for the same must be agreed between the Parties, having due regard to all Laws (including, without limitation, Health and Safety Laws).

3.2 The Landlord shall be responsible for procuring that all Landlord's Replacements and Qualifying Works which the Parties agree are to be carried out during the Lease Period, are so carried out at the Landlord's cost (subject to any right of the Landlord to recover costs in respect of Qualifying Works in accordance with Clause 3.6 of this Part of the Schedule), but the Tenant may carry out such Landlord's Replacements and Qualifying Works on the Landlord's behalf on a basis to be agreed with the Landlord.

3.3 Unless and to the extent otherwise decided by the Landlord (in its absolute discretion), no Replacement Works may be carried out until the Party carrying out (or instructing any third party contractor(s) to carry out) the relevant Replacement Works has obtained all necessary consents and put the relevant works out to tender and completed the relevant procurement process (to the extent the Landlord may require) throughout. If any Replacement Works are to be carried out by the Tenant as aforesaid, the Tenant shall (a) involve the Landlord in the said procurement process and (b) ensure that it carries out such procurement process with all due speed and diligence and taking full account of the Landlord's requirements in respect thereto. The Landlord's decision as to any person or contractor selected through such procurement process shall be final.

3.4 The Party carrying out (or instructing, as aforesaid) the relevant Replacement Works shall be responsible for obtaining and complying with all necessary permissions and consents (including *inter alia* planning permissions and building warrants) for such Replacement Works.

3.5 The Landlord shall be responsible for the reasonable and properly incurred costs of any Landlord's Replacements being carried out by the Tenant provided in each case that where the Tenant is carrying out or instructing the Landlord's Replacements, the Tenant

provides the Landlord with a valid VAT invoice in respect thereof, BUT EXCEPTING ALWAYS any costs in relation to installation and/or labour (whether by internal or external staff or contractors).

3.6 If the Parties agree, the Landlord can recover the costs (or a proportion thereof) of any Qualifying Works (as agreed by the Parties) from the Asset Replacement Fund.

3.7 Notwithstanding any other provision of the Lease, the Tenant shall be responsible for carrying out any Replacement Works from its own monies and without any impact on the Asset Replacement Fund, where and to the extent that:

3.7.1 the need for the relevant Replacement Works has arisen as a result of an act or default of the Tenant or those for whom they are responsible (for example by dilapidation of the item(s) in question being caused or exacerbated by the failure on the part of the Tenant to repair and maintain the same in accordance with its obligations to do so under the Lease); or

3.7.2 the relevant Replacement Works are carried out by or on behalf of the Tenant otherwise than in compliance with the provisions of the Lease.

4 Upgrade Works (to Uplift Infrastructure)

4.1 Save where otherwise agreed between the Parties from time to time in relation to any specific Upgrade Works, the Landlord shall not be responsible for carrying out any Upgrade Works or the cost thereof.

4.2 Neither Party shall carry out any Upgrade Works without the other Party's prior written consent.

4.3 In the event that either Party believes that any Upgrade Works are required or desirable, that Party shall provide details of the relevant proposal and case for the same to the other Party, and both Parties shall discuss and decide whether such Upgrade Works are to be carried out.

4.4 As regards costs of any such agreed Upgrade Works, the Parties may agree that the cost (or a reasonable proportion thereof) of such agreed Upgrade Works can be recovered from the Asset Replacement Fund.

4.5 Save as otherwise agreed between the Parties:

4.5.1 no Upgrade Works may be carried out until the Tenant has obtained at its own cost all necessary permissions and consents (including *inter alia* any relevant planning permissions and building warrants); and

4.5.2 the Tenant shall be responsible for compliance with the same.

5 Asset Replacement Fund

5.1 The Tenant will establish and keep open the Asset Replacement Fund throughout the Lease Period.

5.2 The Tenant shall pay from its own monies into the Asset Replacement Fund on each ARD Date:

- 5.2.1 the Fixed Deposit relative to that date, as set out in Part 6 of the Schedule; and
 - 5.2.2 the Variable Deposit.
- 5.3 Any monies in the Asset Replacement Fund (including any interest accrued thereon) may be withdrawn from the Asset Replacement Fund in whole or part only when and to the extent that the Parties agree that the same may be withdrawn, and that only for the purpose of paying the costs of specific Qualifying Works and/or Upgrade Works as so agreed.
- 5.4 In the event of any monies being withdrawn from the Asset Replacement Fund as aforesaid, such monies shall be used to pay the properly vouched costs of the relevant Replacement Works and/or Upgrade Works (or to reimburse the relevant Party in respect thereof) and for no other purpose.
- 5.5 If, at the end of the Lease Period there are any monies still in the Asset Replacement Fund:
- 5.5.1 there are any Outstanding Payments due or which will fall due, no monies may be withdrawn from the Asset Replacement Fund until such time as the cost of the relevant Replacement Works and/or Upgrade Works has been fully paid therefrom, and notwithstanding termination or end of the Lease this provision shall subsist until fully satisfied; or
 - 5.5.2 there are at that time no Outstanding Payments, the Tenant may withdraw and keep those monies.

6 FFE Sinking Fund

- 6.1 The Tenant will establish and keep open the FFE Sinking Fund throughout the Lease Period.
- 6.2 The Tenant shall pay from its own monies into the FFE Sinking Fund a sum of ONE HUNDRED THOUSAND POUNDS (£100,000) STERLING on each Deposit Date.
- 6.3 Withdrawals from the FFE Sinking Fund, in whole or in part and including any interest accrued, may only be made by the Tenant when and to the extent required to pay for the reasonable and properly incurred costs of Maintenance Works to the Fixtures and Fittings, but PROVIDED ALWAYS that, unless otherwise agreed between the Parties:
- 6.3.1 in relation to the monies accrued in the FFE Sinking Fund from the Date of Entry to 31 March 2029 (inclusive), no such withdrawals may be made until 31 March 2029; and
 - 6.3.2 in relation to the monies accrued in the FFE Sinking Fund from 1 April 2029 until the end of the Lease Period (inclusive), no such withdrawals may be made until 31 March 2034.
- 6.4 At the end of the Lease Period, provided that the Tenant has complied with its obligations under the Lease, the Tenant may withdraw and retain any monies remaining in the FFE Sinking Fund.

7 Buildings Sinking Fund

- 7.1 The Tenant will establish and keep open the Buildings Sinking Fund throughout the Lease Period.
- 7.2 The Tenant shall pay from its own monies into the Buildings Sinking Fund a sum of ONE HUNDRED THOUSAND POUNDS (£100,000) STERLING on each Deposit Date.
- 7.3 Withdrawals from the Buildings Sinking Fund, in whole or in part and including any interest accrued, may only be made by the Tenant when and to the extent required to pay for the reasonable and properly incurred costs of carrying out the works undertaken by the Tenant in compliance with its Building Obligations, but PROVIDED ALWAYS that, unless otherwise agreed between the Parties:
- 7.3.1 in relation to the monies accrued in the Buildings Sinking Fund from the Date of Entry to 31 March 2029 (inclusive), no such withdrawals may be made until 31 March 2029; and
- 7.3.2 in relation to the monies accrued in the Buildings Sinking Fund from 1 April 2029 until the end of the Lease Period (inclusive), no such withdrawals may be made until 31 March 2034.
- 7.4 At the end of the Lease Period, provided that the Tenant has complied with its obligations under the Lease, the Tenant may withdraw and retain any monies remaining in the Buildings Sinking Fund.

8 Meetings and information

- 8.1 The Tenant shall provide to the Landlord throughout the Lease Period, monthly information on its activities, works and operations at the Premises including *inter alia* budgets, statements and anticipated and actual spend on all Maintenance Works, Upgrade Works and/or Replacement Works.
- 8.2 The Parties will meet quarterly (or at such other times as the Parties may agree) throughout the Lease Period to discuss such information and any other matters arising from this Part of the Schedule.

9 Parties to act reasonably

- 9.1 For all matters pertaining to this Part 5 of the Schedule, the Parties are each required to act reasonably, in good faith and with all due speed and diligence.
- 9.2 Neither Party shall unreasonably withhold or delay its decision on any request for approval, consent or agreement for matters set out in this Part 5 of the Schedule.

10 Arbitration

- 10.1 In the event of any dispute or disagreement between the Parties as to the provisions or application of the provisions under this Part 5 of the Schedule, Clauses 10.1 and 10.2 of Part 4 of the Schedule shall apply in terms *mutatis mutandis*.

Schedule**Part 6****Asset Replacement Fund deposits to be made by Tenant**

| Date of deposit | Amount of Fixed Deposit |
|------------------------|--------------------------------|
| 31 March 2016 | £11,000 |
| 31 March 2017 | £27,000 |
| 31 March 2018 | £42,000 |
| 31 March 2019 | £59,000 |
| 31 March 2020 | £61,000 |
| 31 March 2021 | £64,000 |
| 31 March 2022 | £67,000 |
| 31 March 2023 | £70,000 |
| 31 March 2024 | £73,000 |
| 31 March 2025 | £76,000 |
| 31 March 2026 | £79,000 |
| 31 March 2027 | £81,000 |
| 31 March 2028 | £84,000 |
| 31 March 2029 | £87,000 |
| 31 March 2030 | £90,000 |
| 31 March 2031 | £93,000 |
| 31 March 2032 | £96,000 |
| 31 March 2033 | £99,000 |
| 31 March 2034 | £102,000 |
| 31 March 2035 | £105,000 |
| 31 March 2036 | £108,000 |
| 31 March 2037 | £111,000 |
| 31 March 2038 | £114,000 |
| 31 March 2039 | £117,000 |

**Schedule
Part 7
Fixtures and Fittings**

| Asset No. | Description | Actual cost | Net book value at 31 March 2014 |
|------------------|--|--------------------|--|
| FA546 | Logic alarms | £15,000 | £9,688 |
| FA541 | Fire Alarm | £9,000 | £3,750 |
| FA524 | Security Alarm | £7,360 | £3,067 |
| FA526 | Fire Alarm | £7,000 | £2,917 |
| FA505 | Funicular Tunnel Doors | £8,302 | £2,767 |
| FA547 | Logic alarms | £3,052 | £2,225 |
| FA525 | Fire Alarm | £4,200 | £1,750 |
| FA558 | Frame for Attaching Graphic Display Ptarming | £2,750 | £1,661 |
| FA548 | Powerwise compressor for sprinkler system Pt | £2,285 | £1,571 |
| FA559 | Lockers for tbar | £1,640 | £1,162 |
| FA503 | Flow switches for pump room | £2,495 | £832 |
| FA542 | Fire Alarm | £1,966 | £819 |
| FA545 | Logic alarms | £1,200 | £650 |
| FA510 | Seating for Equipment Hire | £1,453 | £605 |
| FA543 | Frame for Attaching Graphic Display Ptarming | £1,200 | £550 |
| FA477 | Electric Oven Range | £2,925 | £549 |
| FA552 | Miniarcmig 180 amp Adaptive welder | £779 | £454 |
| FA553 | Minor sliging lathe guard | £687 | £444 |
| FA544 | Kitchen Units Staff Room | £917 | £438 |
| FA479 | Under Counter Dishwasher | £1,825 | £419 |
| FA512 | Tracers for Tunnel Door | £886 | £388 |
| FA523 | Tray Slide for Cas Bar | £825 | £361 |
| FA551 | Dill Pillar "HP | £560 | £327 |
| FA480 | Washing Machine Uniform Store | £996 | £228 |
| FA478 | H/Cupboard | £1,210 | £227 |
| FA487 | Air Compressor | £449 | £103 |
| FA482 | 30 Ton Floor Standing Press | £765 | £64 |
| | Innes Pipes | £28,411 | £26,044 |
| FA571 | PI / F614 Frey power capacitors | £22,306 | £20,819 |
| FA567 | Cas Motor & Invertor | £17,500 | £15,896 |
| FA600 | CDS Wilman PO 2896/ 2 units for Ptarm | £9,284 | £9,284 |
| FA574 | PI / G703 Grants (Dufftown) Ltd/Cas Motor final pay | £7,728 | £7,148 |
| FA573 | PI / W2442 Wernick PortaCabins | £5,900 | £5,163 |
| FA601 | PI / 1900 / Transfer of ownership of assets from Trust | £5,000 | £5,000 |

| | | | |
|-------|---|--------|------------------------|
| | PI I900 Powderhall Bronze Cast balance | £3,400 | £3,117 |
| FA570 | PL I900 Corcatch Pipe Magician | £3,509 | £2,924 |
| FA602 | PI / C249 / 31122 Coldcurve/logic chart | £2,791 | £2,791 |
| FA572 | PI / C241 Com Solutions new sensor | £1,575 | £1,378 |
| FA582 | PI / K1107 Kass Combox Hardware | £1,196 | £1,146 |
| | Leasehold Garage Improvements | £1,204 | £749 |
| | | | <u>£139,471</u> |

**Schedule
Part 8
Uplift Infrastructure**

| Nr. | Name | Type | Manufacturer | Status | Comments |
|-----------------|--------------------------|-----------------------------|--------------|-----------------|---|
| 1 | Car Park Tow | T-bar surface tow | Muller | Operational | |
| 2 | Fiacail Ridge Tow | Poma surface tow | Pomagalski | Operational | |
| 3 | Day Lodge Tow | Poma surface tow | Pomagalski | Operational | |
| 4 | Shieling Tow | Modified T-bar surface lift | Muller | Operational | Retro-fitted with 'Poma'-style hangers. |
| 5 | Coire Cas Tow | T-bar surface tow | Muller | Operational | |
| 6 | M1 Tow | Poma surface tow | Pomagalski | Operational | |
| 7 | Ptarmigan Tow | T-bar surface tow | Muller | Operational | |
| 8 | Coire na Ciste Tow | T-bar surface tow | Muller | Operational | |
| 9 | West Wall Tow | Poma surface tow | Pomagalski | Operational | |
| 10 | Polar Express Tow | Poma surface tow | Pomagalski | Operational | |
| Non-Operational | | | | | |
| 11 | Coire na Ciste Chairlift | 2-seat Chairlift | Muller | Non-operational | |
| 12 | West Wall Chairlift | 2-seat Chairlift | Muller | Non-operational | |

Schedule
Part 9
Exceptional Items (Landlord)

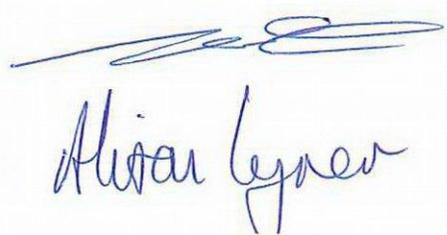
1. Haul rope
2. Counter rope
3. Rail
4. Motor Invertors control
5. Electric motors (2 x 500kW)
6. Standby generators top
7. Hydrostatic drive
8. Gearbox
9. Bogie including 3 track brakes
10. Carriage replacement
11. Train Control Computer

Schedule
Part 10
Exceptional Items (Tenant)

1. Carriage pipes & hoses
2. Standby Generator (Bottom) (as defined in the Lease)
3. *Bullwheel, idler & Main deflection wheel bearings*
4. Fibre optic cable (induction loop for train controls)

**Schedule
Part 11
Enhancement Works**

| PACKAGE # | #1 | #2 | #3 | #4 | #5 | | CML Direct | |
|------------------|--|--|---|---|--|---|-------------------------------------|-----------------------------------|
| LOCATION | MOTOR AND INVERTER DRIVE Supply & Commission CML Install | SAFETY PANEL Supply & Commission CML Install | TOWER CABLING Supply CML Install | HAUL ROPE Supply CML Install | GEARBOX Servicing/Refub Existing CML Install | TOWERS [STEELWORK] Repair Works | TOWER [CONCRETE BASES] Repair Works | TOWER SWITCHES Supply CML Install |
| GENERALLY | | | | | | ALL TOWS | ALL TOWS | |
| M1 | ✓ | ✓ | ✓ | n/a | ✓ | | | n/a |
| POMA | | | | | | | | |
| PTARMIGAN | | | | | | | | |
| T - BAR | n/a | ✓ | ✓ | ✓ | ✓ | | | ✓ |
| COIRE NA CISTE | n/a | ✓ | ✓ | ✓ | ✓ | | | ✓ |
| T - BAR | | | | | | | | |
| WEST WALL POMA | ✓ | ✓ | ✓ | n/a | ✓ | | | n/a |
| 2014 SPEND | To be awarded shortly (30 May) | To be awarded shortly (30 May) | Supply awarded to Certex | Work awarded to Lamond & Murray 26 May 2014 | To be advised | Awarded to Rowema by CML on behalf of HIE | | |
| CAR PARK | ✓ | ✓ | ✓ | n/a | | | | ✓ |
| T - BAR | | | | | | | | |
| FIACALL RIDGE | ✓ | ✓ | n/a | ✓ | | | | n/a |
| POMA | | | | | | | | |
| DAY LODGE | ✓ | n/a | ✓ | ✓ | | | | ✓ |
| POMA | | | | | | | | |
| SHEILING PLATTER | ✓ | ✓ | ✓ | ✓ | | | | ✓ |
| POMA | | | | | | | | |
| COIRE CAS | n/a | ✓ | n/a | ✓ | | | | ✓ |
| T - BAR | | | | | | | | |
| 2015 SPEND | | | Supply awarded to Certex and Poma (Day Lodge) | Work awarded to Lamond & Murray 26 May 2014 | | Awarded to Rowema by CML on behalf of HIE | | |



THIS IS THE PLAN REFERRED TO IN THE FOREGOING LEASE
BETWEEN HIGHLANDS AND ISLANDS ENTERPRISE AND CAIRNGORM
MOUNTAIN LIMITED RELATIVE TO VISITOR ATTRACTION AT CAIRNGORM



Land at Cairngorm

PDR72780/ACM
May 2014

1:10,000

