

MR01

Particulars of a charge

110626/13



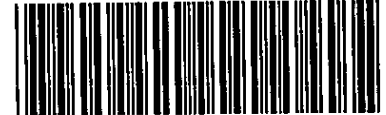
A fee is payable with this form.
Please see 'How to pay' on the
last page

You can use the WebFiling service to file this form online
Please go to www.companieshouse.gov.uk

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument

☒ **What this form is NOT for**
You may not use this form to
register a charge where there is
an instrument. Use form MR08

TUESDAY



L2NWH5EI

LD8

24/12/2013

#4

COMPANIES HOUSE

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery

☒ You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record

1 Company details

Company number 0 8 3 3 8 6 0 5 ✓

Company name in full Sadler's Wells Foundation Limited ✓

2 For official use

→ **Filing in this form**
Please complete in typescript or in
bold black capitals

All fields are mandatory unless
specified or indicated by *

2 Charge creation date

Charge creation date d 1 d 8 m 1 m 2 y 2 y 0 y 1 y 3 ✓

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees
entitled to the charge

Name The Arts Council of England ✓
14 Great Peter Street, London SW1P 3NQ

Name

Name

Name

If there are more than four names, please supply any four of these names then
tick the statement below

☐ I confirm that there are more than four persons, security agents or
trustees entitled to the charge

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Particulars of a charge

4

Description

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

Continuation page

Please use a continuation page if you need to enter more details

Description

The land and premises known as Sadler's Wells Theatre and adjoining land and premises together with the buildings now erected and any building hereafter erected thereon as the same are in part registered at Her Majesty's Land Registry with freehold absolute title under Title Numbers NGL700054, 367089, NGL759377 and NGL771910

5

Fixed charge or fixed security

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☐ Yes

☒ No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

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Particulars of a charge

8

Trustee statement ①

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

Signature

Please sign the form here

Signature

Signature

X *Clifford Chance LLP* X

This form must be signed by a person with an interest in the charge

MR01

Particulars of a charge



Presenter information

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name **Alex Hehir**

Company name **Clifford Chance LLP**

Address **10 Upper Bank Street**

Post town **London**

County/Region

Postcode **E 1 4 5 J J**

Country **United Kingdom**

DX **149120 Canary Wharf 3**

Telephone **020 7006 1000**



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



Important information

Please note that all information on this form will appear on the public record



How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.

For companies registered in England and Wales:

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ
DX 33050 Cardiff

For companies registered in Scotland

The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post)

For companies registered in Northern Ireland:

The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG
DX 481 N R Belfast 1



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8338605

Charge code: 0833 8605 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th December 2013 and created by SADLER'S WELLS FOUNDATION LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th December 2013

Given at Companies House, Cardiff on 3rd January 2014



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 18 December 2013

SADLER'S WELLS FOUNDATION LIMITED

AND

THE ARTS COUNCIL OF ENGLAND

**SECURITY REORGANISATION AGREEMENT
RELATING TO SADLER'S WELLS THEATRE**

We hereby certify that, save for material redacted pursuant to s 859G of the Companies Act 2006, this is a true copy of the original

Signed

Date

Clifford Chance LLP

10 December 2013

Clifford Chance LLP
10 Upper Bank Street
London E14 5JJ

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THIS AGREEMENT is made by way of deed on *18 December* 2013 by:

- (1) **SADLER'S WELLS FOUNDATION LIMITED** a company limited by guarantee (registered company number 08338605, registered charity number: 1150844) ("SWFL"); and
- (2) **THE ARTS COUNCIL OF ENGLAND**, a body incorporated under Royal Charter granted on 30 March 1994, which is registered at the Charity Commission with charity number 1036733 and has its registered office at 14 Great Peter Street, London SW1P 3NQ ("ACE"),

(together the "Parties").

WHEREAS

- (A) ACE and SWFL entered into agreement dated 26 June 2013, pursuant to which ACE will make available a National Lottery grant of up to £4,943,118 to SWFL for the purposes of financing a range of building and infrastructure improvements to the Property (the "Offer Letter") as annexed hereto at Schedule 2 (*The Offer Letter*).
- (B) ACE and SWFL entered into the ACE Agreement in June 2013 for the purposes of, among other things, (i) releasing the existing security held by ACE over the Property (or part thereof); (ii) transferring the legal title to the Property (or part thereof) from the Sadler's Wells Foundation to SWFL; (iii) transferring the obligations under certain grant agreements granted by ACE from the Sadler's Wells Foundation to SWFL; and (iv) creating security over the Property (or part thereof) in favour of ACE.
- (C) It is a condition to funding under the Offer Letter that SWFL undertakes a rationalisation of the existing security granted in favour of ACE by certain Sadler's Wells Entities, whereby all existing security will be released and new security will be granted in favour of ACE by SWFL. In order to give effect to this, it is proposed that:
 - (i) ACE will release SWFL from the security constituted under, and discharge the whole of the security constituted by, the ACE Agreement and related Security (as defined therein),
 - (ii) ACE will release the relevant Sadler's Wells entities from the security constituted under, and discharge the whole of the security constituted by, the Existing Security Documents;
 - (iii) SWFL will assume the Existing Obligations,
 - (iv) SWFL will charge the Property in favour of ACE as security for the Secured Obligations.
- (D) In order to implement these matters, the Parties agree as follows.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"ACE Agreement" means the agreement relating to Sadler's Wells Theatre dated 12 June 2013 between the Official Custodian for Charities, the Governors of the Sadler's Wells Foundation, SWFL and ACE, as amended by a deed of variation dated 26 June 2013.

"Enforcement Event" means the occurrence of any of the events set out in clause 12 of the Offer Letter.

"Existing Obligations" means the obligations arising in connection with:

- (a) the National Lottery Grant of £1,500,000 awarded by ACE in January 1995 with reference number 95-56;
- (b) the National Lottery Grant of £2,931,343 awarded by ACE in October 1995 with reference number 95-1959;
- (c) the National Lottery Grant of £25,568,653 awarded by ACE in October 1996 with reference number 96-2392;
- (d) the National Lottery Grant of £5,974,266 awarded by ACE in January 1998 with reference number 97-1616; and
- (e) the National Lottery Grant of £6,000,000 awarded by ACE in March 1999 with reference number 99-112,

as set out in the terms and conditions listed in Schedule 1 (*Terms and Conditions*).

"Existing Security Document" means each of

- (a) the security document dated 17 January 1999 granted by Sadler's Wells Limited in favour of ACE;
- (b) the deed of charge dated 17 January 1999 granted by Sadler's Wells Trust Limited in favour of ACE;
- (c) the security document dated 26 June 2013 granted by SWFL in favour of ACE in connection with the ACE Agreement; and
- (d) the ACE Agreement.

"Property" means the land and premises known as Sadler's Wells Theatre and adjoining land and premises together with the buildings now erected and any building hereafter erected thereon as the same are in part registered at Her Majesty's Land Registry with freehold absolute title under Title Number NGL700054, 367089, NGL444357, LN19345, NGL746757, NGL759377 and NGL771910

"Sadler's Wells Entities" means:

- (a) SWFL;
- (b) Sadler's Wells Trust Limited; and
- (c) Sadler's Wells Limited.

"Secured Obligations" means the obligations arising in connection with:

- (a) the Existing Obligations; and
- (b) the Offer Letter.

"Security" means the fixed and floating charge to be entered into on or about the date of this Agreement by SWFL in favour of ACE as security for the Secured Obligations, in the form set out in Schedule 3 (*Form of Security*).

"Security Period" means 30 years from the date of the Security.

2. RELEASE

2.1 In consideration for SWFL agreeing to assume the Existing Obligations and charge the Property in favour of ACE pursuant to Clause 4 (*Grant of Security*), ACE without recourse, representation or warranty.

- (a) releases the relevant Sadler's Wells Entities from all obligations under the Existing Obligations;
- (b) releases the relevant Sadler's Wells Entities from all obligations under the Existing Security Documents, and
- (c) releases and discharges the Property (part thereof or whole as appropriate) from all security constituted under the Existing Security Documents.

2.2 SWFL on behalf of itself and the Sadler's Wells Entities releases and discharges ACE from all its obligations under the Existing Obligations and Existing Security Documents.

3. FURTHER ASSURANCE

ACE agrees that it will, at the cost of SWFL, do all such things and execute all such documents as may reasonably be necessary to give effect to the release contemplated in Clause 2 (*Release*).

4. GRANT OF SECURITY

4.1 Assumption of Obligations

SWFL will assume the Existing Obligations.

4.2 Grant of security

As soon as reasonably practicable following the date of this Agreement SWFL will charge the Property in favour of ACE as security for the Secured Obligations on the terms set out in the Security the form of security set out in Schedule 3 (*Form of Security*).

4.3 Further Assurance

In furtherance of the grant of security contemplated by Clause 4.2, SWFL shall promptly enter into, execute and complete the Security in the form set out in Schedule 3 (*Form of Security*) and do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notarisations, registrations, notices and instructions) as ACE may reasonably specify (and in such form as ACE may reasonably require) in favour of ACE or its nominee(s).

4.4 Restriction on dealings

Except where agreed in writing by ACE or as permitted under the terms and conditions set out in Schedule 1 (*Terms and Conditions*), SWFL will not at any time during the Security Period create or permit to subsist any security over all or any part of the Property or dispose of or otherwise deal with any part of the Property, except in order to grant a lease as contemplated by Clause 5.4 (*Lease to Sadler's Wells Trust Limited*).

5. ENFORCEMENT OF SECURITY

5.1 Enforcement

At any time after the occurrence of an Enforcement Event the security created by or pursuant to this Agreement and the Security is immediately enforceable and ACE may, without notice to SWFL or prior authorisation from any court, in its absolute discretion:

- (a) enforce all or any part of that security (at the times, in the manner and on the terms it thinks fit) and take possession of and hold or dispose of all or any part of the Property; and
- (b) whether or not it has appointed a receiver, exercise all or any of the rights, powers, authorisations and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement and the Security) on mortgagees and by this Agreement and the Security on any receiver or otherwise conferred by law on mortgagees or receivers.

5.2 Restrictions

- (a) The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the Security or to the exercise by ACE of its right to consolidate all or any of the security created by or pursuant to this Agreement with any other security in existence at any time (now or in the future) or to its power of sale, which powers may be exercised by ACE without notice to SWFL on or at any time after the security created by this

Agreement or by the Security has become enforceable in accordance with Clause 5.1 (*Enforcement*).

- (b) Nothing in this Agreement or the Security shall preclude ACE, subject to the agreement of SWFL, from taking further security over the Property and/or other assets now or in the future ownership of SWFL

5.3 Power of leasing

The statutory powers of leasing may be exercised by ACE at any time on or after the security created by this Agreement or the Security has become enforceable in accordance with Clause 5.1 (*Enforcement*) and ACE may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.

5.4 Lease to Sadler's Wells Trust Limited

- (a) Nothing in this Agreement shall prevent SWFL from granting a lease of all or any part of the Property to Sadler's Wells Trust Limited (company number: 01488786; registered charity number: 279884) ("SWTL") in accordance with the terms of the ACE Agreement.

- (b) SWFL undertakes to ACE that:

- (i) it shall include as a term of any such lease that SWTL shall not sub-let, transfer or otherwise dispose of any interest in the Property without the written permission of ACE; and
- (ii) SWFL will not grant a lease of the Property to any person other than SWTL without the written permission of ACE,

in each case, such written permission not to be unreasonably withheld or delayed

5.5 Remedies and waivers

No failure on the part of ACE to exercise, or any delay on its part in exercising, any rights, powers and remedies provided by or pursuant to this Agreement, shall operate as a waiver of those rights, powers and remedies or constitute an election to affirm this Agreement.

6. POWER OF ATTORNEY

6.1 Appointment and powers

SWFL by way of security irrevocably appoints ACE and any receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all other documents and do all things which the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on SWFL by this Agreement, the Security or any other agreement binding on SWFL to which ACE is party (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Property and perfecting and/or releasing the security created or intended to be created in respect of the Property), and
- (b) enabling ACE and any receiver to exercise or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Agreement, the Security or by law (including, after the security created by this Agreement has become enforceable in accordance with Clause 5.1 (*Enforcement*)), the exercise of any right of a legal or beneficial owner of the Property).

6.2 Ratification

SWFL shall ratify and confirm all things done and all documents executed any attorney in the exercise or purported exercise of all or any of his powers.

7. REDEMPTION OF SECURITY

Upon the expiry of the Security Period:

- (a) the security constituted by this Agreement and the Security shall be automatically released; and
- (b) ACE shall, at the request of SWFL, do all such things and execute all such documents as may reasonably be necessary to give effect to this release.

8. THIRD PARTY RIGHTS

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

9. PARTIAL INVALIDITY

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

10. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement. Any Party may enter into this Agreement by signing any such counterpart.

11. GOVERNING LAW

This Agreement and all non-contractual obligations arising out of or in connection with it are governed by English law.

THIS AGREEMENT has been executed as a deed and is intended to be and is hereby delivered on the date specified above.

SCHEDULE 1
TERMS AND CONDITIONS

- A** These terms and conditions relate to:
- (a) the National Lottery Grant of £1,500,000 awarded by ACE in January 1995 with reference number 95-56;
 - (b) the National Lottery Grant of £2,931,343 awarded by ACE in October 1995 with reference number 95-1959;
 - (c) the National Lottery Grant of £25,568,653 awarded by ACE in October 1996 with reference number 96-2392;
 - (d) the National Lottery Grant of £5,974,266 awarded by ACE in January 1998 with reference number 97-1616; and
 - (e) the National Lottery Grant of £6,000,000 awarded by ACE in March 1999 with reference number 99-112 (the "Grants").
- B** These terms and conditions represent the entirety of the terms and conditions upon which SWFL will be responsible to ACE for the Grants.
- C** To the extent any amount from the Grants remains unspent, the Grants must be used for the purpose set out in the original approved application for funding made by New Sadler's Wells Limited and are non-transferable. The Grants may have to be repaid in full or in part if there is a change of purpose or ownership of the Sadler's Wells theatre during the Security Period.
- D** Where the use of the Sadler's Wells theatre changes during the Security Period, the application must be re-submitted and re-considered by the Arts Council of England.
- E** The appropriate share of any under spend on the project must be returned to the Arts Council of England
- F** In addition to the above, the lottery grant shall become repayable to the Arts Council of England, and any future payments stopped, where:
- SWFL ceases to operate or is declared bankrupt, or is placed into receivership or liquidation;
 - SWFL fails to apply the Grants (if unspent) for the purposes for which they were obtained;
 - SWFL fails to comply with these terms and conditions; and
 - SWFL has acted fraudulently or negligently at any time in connection with the Grants.
- G** SWFL agrees that the provision of lottery finance can only be guaranteed to the extent that the National Lottery continues to operate.

- H Depreciating assets or goods acquired through lottery funding shall not be sold within a specified period after the completion of the project, or at any time for land and buildings, without the written permission of the Arts Council of England (see special conditions on separate sheet).
- I Appreciating assets (including historic artefacts may not be sold at any time without the prior written permission of the Arts Council of England. When such assets are sold, the seller must take steps (and be able to demonstrate that steps have been taken) to ensure that the sale is made at a proper market value
- I Any proposal to raise a mortgage or legal charge on land or buildings, or on the strength of any other asset during its agreed economic life, will require the approval of the Arts Council of England if that asset has been financed by the lottery. This provision applies only where the lottery has contributed more than £25,000.
- J The Grants will not be increased in the event of an overspend on the project. Any variation in the level of support would have to be the subject of a revised application and re-assessment by the Arts Council of England
- K In the event of the sale or disposal of the asset or goods acquired through lottery funding, the Arts Council of England's share of the proceeds shall be in direct proportion to the share of the relevant costs originally met from lottery funds.
- L SWFL must notify the Arts Council of England if a project supported through lottery funding realises a distributable profit, or contributes to the applicant's overall distributable profit; an appropriate share at this profit must then be repaid to the Arts Council of England.
- M The Grants have or will only support actual expenditure on the items identified in the approved application.
- N The Arts Council of England and its nominees will be granted full rights of access at any reasonable time to the site of a lottery-funded project and any books, records and papers related to such a project.
- O Appropriate acknowledgement of financial support from the Arts Council of England Lottery Fund will be made on any assets created, purchased or improved with lottery assistance and in the recipients' general publicity material and annual report and account.
- P Assets and goods (other than land and buildings - see standard condition H) acquired through Lottery funding shall not be sold within 10 years of acquisition without the prior written permission of the Arts Council.



Grant offer letter

26 June 2013

Britannia Morton
Director of Visitor Services and Estates
Sadler's Wells Foundation Limited
Sadler's Wells Theatre, Rosebery Avenue
London, EC1R 4TN

Dear Britannia,

Offer of Stage Two Funding – Large Capital Grants

Programme: Capital Investment 2012 - 2015 - Large capital grants (Round Two)

Applicant name: Sadler's Wells Foundation Limited

Reference: 24223529

Congratulations on your successful Stage Two Application.

I am writing to confirm that Arts Council England will provide Sadler's Wells Foundation Limited with a Capital Grant of up to £4,943,118 towards the costs of the Agreed Capital Project Plan as attached to this letter. The grant comes from the proceeds of the National Lottery.

Beverley Dawson will be your contact for this grant. She will be in touch with you soon to discuss your capital grant in more detail. In the meantime, should you wish to discuss any matters further, please contact Beverley by email at Beverley.dawson@artscouncil.org.uk or by phone on 020 7973 6871.

1. Our Offer

This offer is subject to our Standard Capital Terms and Conditions for Large Capital Grants ("Terms & Conditions") and any additional conditions set out in this letter. A copy of the *Terms & Conditions* is attached to this letter, and you can also download it from our website (www.artscouncil.org.uk). These Terms and Conditions form part of the Funding Agreement and are standard for all Capital Grants made under this Programme; therefore they are non-negotiable and must remain attached to this letter.

2. Purpose of funding

The capital funding is provided to assist you in undertaking the work required to deliver your Capital Project set out in your Stage Two application. What we expect from you is set out in the Agreed Capital Project Plan and you will be monitored

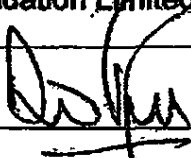
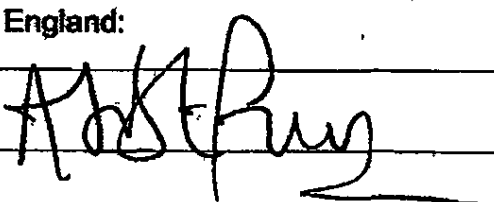
7. Additional Conditions

7.1 The Organisation will undertake an evaluation of the Capital Project to demonstrate the outcomes outlined in the Application have been achieved. This evaluation should provide relevant quantitative and qualitative evidence, including financial, beneficiary, photographic and other operational information to capture baseline, interim outcomes and final outcome data about the Capital Project and its Impact as required. This evaluation should specifically demonstrate that the Organisation's resilience has been improved as a result of the Capital Project.

The Organisation will provide the final evaluation to the Arts Council. We acknowledge that this evaluation may not be available until after the final payment of the grant has been made.

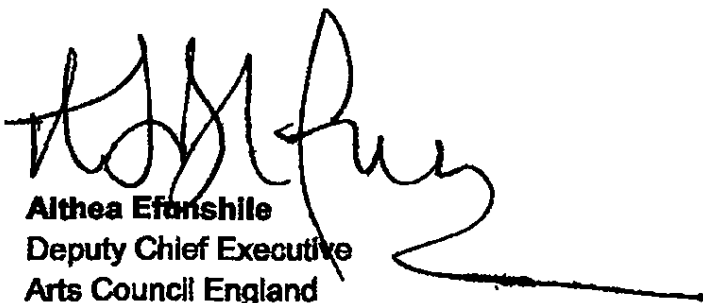
8. Signatures

I accept the Capital Grant offer on the terms and conditions stated.

Signed on behalf of Sadler's Wells Foundation Limited	Signed on behalf of Arts Council England:
	
CHAIRMAN	
Date: 17 Sept. '13.	Date: 26/6/13

Please use the reference given at the top of this letter when you communicate with us. If you have any questions, please contact Beverley Dawson.

Yours sincerely


Althea Efronshile
Deputy Chief Executive
Arts Council England

Schedule 2 – Agreed Capital Project Plan

This Agreed Capital Project Plan sets out the capital project outlined in your Stage Two application for funding.

1	Agreed Use	<p>The Sadler's Wells Theatre includes the following facilities:</p> <ul style="list-style-type: none"> a) Main auditorium (1500 seats) b) Lillian Baylis Studio (180 seats) c) Kahn Lecture Theatre (80 seats) d) Three dance studios e) Rosebery Room, Fonteyn Room, Sadler or Cripplegate Rooms f) Administrative office space g) Garden Court Café <p>The Project Asset is to be used for the following purposes:</p> <ul style="list-style-type: none"> a) The presentation and creation of dance productions b) Delivery of a learning, education and participation programme. c) Spaces for associate artists and resident companies. d) Administrative offices e) Spaces for events and venue hire f) Catering and hospitality facilities in the front of house areas.
2	Capital Project	<p>The Organisation will undertake a range of building and infrastructure improvements to provide improved facilities for theatre staff, artists and audiences.</p> <p>These improvements are grouped under the following headings:</p> <p>1) Energy Reduction</p> <ul style="list-style-type: none"> • Replacing auditorium lighting with LED luminaires, integral dimmers and controls • Replacing tungsten luminaires in the foyer, toilets and corridors with a combination of LED and low energy fittings. • Alterations to the main entrance and stage door to reduce heat loss • Replacing single glazed windows and improving roof insulation and drainage • Installation of Photovoltaic power generation for on/off site use

5	Expected Completion Date	30 October 2015
6	Grant	£4,943,118
7	Partnership Funding	£2,395,790. This includes £478,000 expenditure incurred in the eighteen months prior to us reaching a decision on your Application.
8	Partnership Funding % Secured to Date	72%
9	Total Project Cost	£7,338,908. This includes £478,000 expenditure incurred in the eighteen months prior to us reaching a decision on your Application.
10	Grant Percentage	72%. The Grant Percentage has been adjusted to reflect the £478,000 expenditure already incurred and reflects the remaining projects costs of £6,860,908.
11	Payment Expiry Date	30 April 2016
12	Project asset	Sadler's Wells Theatre, Rosebery Avenue, London, EC1R 4TN
13	Security	30-year first ranking all monies fixed and floating composite legal charge/ debenture over the assets of Sadler's Wells Foundation Limited and simultaneous release of the Legal Mortgage dated 17 January 1999 or any other security entered into in lieu of the said Legal Mortgage.

Organisation will provide the first Progress and Payment Request Form within 20 working days of accepting this Funding Agreement.

2.5 A Maximum Amount is attached to each Key Stage. The Organisation accepts that:

- **The first payment of the Grant will not be made until the Key Stage Deliverables for the first Key Stage have been satisfied.**
- **The release of the Maximum Amount for each Key Stage is subject to the preceding Key Stage Review (except the first) being satisfied and compliance at all times with all other terms of this Agreement and any Security.**
- **The Arts Council will specify the Maximum Amount for each of the subsequent Key Stages after consulting with you as part of the preceding Key Stage Review.**
- **The final payment of the Grant will not be made until the Key Stage Deliverables for the final Key Stage have been satisfied.**

2.6 In good time and two weeks before the Key Stage End Date, the Organisation will provide us with the following:

- **Completed Progress and Payment Request Form**
- **Completed Key Stage Report which includes the following documents appended to this report:**
 - **Documentation to demonstrate the Key Stage Deliverables set out in this Schedule for the relevant Key Stage have been satisfied. In the event that information to meet the Key Stage Deliverables is prepared by a third party, the Organisation is deemed responsible for the contents and accuracy of such information.**
- **Updated project execution plan detailing the activities, management and control procedures for the Capital Project.**
- **Updated risk register covering all the risks you have identified with your Capital Project. It should include:**
 - i. **the risk and the likelihood of the risk occurring**
 - ii. **the impact on your project if it does happen**
 - iii. **how much each risk may cost**
 - iv. **how you can prevent the risk or mitigate it if it does happen**
 - v. **the person responsible for dealing with the risk**

3.4 The Arts Council reserves the right to request further information in relation to your payment request and will not release funds to pay debts, liabilities and expenditure we deem, at our discretion, unreasonable.

3.5 Without limitation on our discretion as outlined in Clause 3.4, debts, liability and expenditure will be deemed unreasonable if:

- The Organisation has not followed the requirements for goods, services and contracts as stated in Clause 6.11 of the Standard Terms and Conditions in incurring the expenditure.**
- The Organisation incurs more expenditure within the Key Stage than the Maximum Amount.**
- The expenditure has not been incurred to deliver the Agreed Capital Project Plan and is not included in the agreed budget.**

3.6 In the event we vary the Partnership Funding and/or Total Project Cost in accordance with Clause 2.4 the Grant Percentage will be deemed varied to take account of that variation.

Schedule 3 (Part 2) - Key Stages

Number	Maximum Amount	Key Stage Deliverables	Key Stage End Date
Key Stage 1 (prior to the first payment)	£0	<ol style="list-style-type: none"> 1. Submission of an updated Progress and Payment Request Form. 2. Completion and registration of Security as detailed in Section 13 of Schedule 2. 3. Submission of a detailed cost plan for the works reflecting the Stage 2 Income & Expenditure included with your Stage 2 application. 4. Agree Key Stage Deliverables for Key Stage 2. 	4 October 2013

Key Stage 4 (three months after the Expected Completion Date)	£247,155 (payment to be made upon the satisfactory receipt of the deliverables)	1. Confirmation of the income and expenditure for the Capital Project Identifying the sources of Partnership Funding and the final Total Project Cost. 2. Submission of the Completion Report. 3. Agree a date for receiving the final evaluation report as required by Clause 7 of the Offer Letter.	30 January 2016
Total	£4,943,118		

Schedule 4 – Bank Details Form

Instructions for completing the bank details form

1. You must sign and date this form yourself. We cannot accept this information unless the form is signed by you or a recognised nominee. For grants to organisations, we require two signatures from people who are authorised to sign in the organisation's name.
2. The original, signed, completed form must be either:
 - o returned to us with an original pre-printed paying-in slip for the account details, or
 - o sent to your bank for confirmation of the account details. You should instruct the bank to fill in the 'Bank confirmation of account details' portion and return the original form to your regional office, or:

Capital team, Arts Council England
14 Great Peter Street
London
SW1P 3NQ

3. We can only make BACS payments into a building society account if it is linked to the BACS payment system. If your building society account has a six-digit sort code and eight-digit account number we will be able to process a BACS payment. If not, we will have to make payments to the building society account by cheque to the cheque payee.
4. We can only accept information on the original form and with an original signature. Photocopies are not acceptable.
5. Please include a phone number in case we need to contact you about this form.

You must complete the bank details form or we cannot pay your grant.

If the grant we are paying is to an organisation, you must include a second signature below.

Signed

Name

Position

Date

For Arts Council England use only

Date of receipt

Details recorded by

- 1.11 The "Monitoring and Payment Plan" means the details of how we will monitor and pay your Grant as set out in Schedule 3.
- 1.12 "Partnership Funding" means the funding from other sources in addition to our Grant to complete the Agreed Capital Project Plan.
- 1.13 The "Payment Expiry Date" means the date by which all payment claims must be made.
- 1.14 The "Project Assets" means any property (whether real, moveable or intellectual) that is purchased, renovated, created, improved or equipped using the Grant in the course of the Agreed Capital Project Plan.
- 1.15 The "Property Address" means the address where the Agreed Capital Project Plan will take place as set out in Schedule 2.
- 1.16 The "Start Date" means the date on which you start the construction works or the purchase of goods commence.
- 1.17 "Total Project Cost" means the total projected or actual cost of the Capital Project being the amount set out in Schedule 2.

2. Capital Project

- 2.1 The Organisation will deliver the Capital Project and use the Grant exclusively in accordance with the Agreed Capital Project Plan. The Organisation acknowledges that the Grant is paid on trust to the Organisation for the sole purpose of delivering the Agreed Capital Project Plan and the Organisation will hold any unused part of the Grant on trust for the Arts Council at all times and will repay any Grant (including any unused Grant) to the Arts Council immediately upon demand.
- 2.2 The Organisation accepts that these standard terms and conditions are not negotiable and the Organisation shall have no right to amend or vary the provisions of this Funding Agreement.
- 2.3 The Agreed Capital Project Plan and the Monitoring and Payment Plan will form part of the basis for the reporting, monitoring and assessment of your performance under this Funding Agreement.
- 2.4 The Organisation will get the Arts Council's written agreement before making any changes to the information contained in the Application, the Agreed Capital Project Plan or to its name, aims, structure, delivery, outcomes, duration, design or ownership.

- 3.1.2 monitor the Organisation ensuring it complies with the terms of this Funding Agreement and other requirements in accordance with the Arts Council's monitoring requirements, identify issues and share these with relevant colleagues; and,**
- 3.1.3 attend the Organisation's board meetings (or equivalent) as an observer on a regular or an occasional basis if necessary.**
- 3.2 The Arts Council will review your project at suitable stages to see how it is progressing towards meeting the Agreed Capital Project Plan and the requirements of the Funding Agreement. The Arts Council will decide when to make these reviews based on the nature and/or type of your project and these will be set out in the Monitoring and Payment Plan.**
- 3.3 The Organisation must provide all documents that we ask for to assist the Arts Council in undertaking such reviews.**
- 3.4 The Arts Council may appoint an independent project monitor, at its cost and discretion, to help with its monitoring of the Agreed Capital Project Plan as it may from time to time require. The Arts Council will notify you if it is going to do this.**
- 3.5 The Organisation must provide progress reports to the Arts Council or the independent project monitor if appointed at intervals agreed in the Monitoring and Payment Plan or in a form and on such dates that the Arts Council request.**
- 3.6 The Organisation must take appropriate steps to monitor their own success in achieving the Agreed Capital Project Plan and outcomes outlined in your Application. The Arts Council may request you to undertake an evaluation to demonstrate that the agreed project outcomes outlined on your Application have been met. We may do so at any time from the date of the Expected Completion Date for the duration of the Funding Agreement as specified in Clause 13 and you will be required to provide such information to us on request and shall continue to be accountable to the Arts Council for this.**
- 3.7 The Arts Council may monitor the progress of your Capital Project and will carry out checks after the final payment has been made to confirm it is delivering the expected project outcomes.**
- 3.8 The Organisation will ensure that it obtains sufficient Partnership Funding to meet any part of the Total Project Cost that we do not fund.**
- 3.9 The Organisation acknowledges that the Grant is the total amount of funds we will provide and will not be increased.**
- 3.10 The Organisation will notify us in writing as soon as Total Project Cost is expected or anticipated to increase explaining the reason for any overrun, and how it is intended that**

5. Building projects

5.1 If your Grant is to be used for any building works, the Organisation must ensure:

- 5.1.1** that you put in place all necessary contracts with contractors and professional advisors on standard terms and conditions that an employer with appropriate experience would enter into for projects of the same value, size and complexity; and,
- 5.1.2** that you use building professionals that have all necessary professional indemnity insurance cover.

5.2 You must ensure that satisfactory arrangements are made for the retention of all key construction documents for a term of seven years from the last instalment of Grant payment. This is to include but not limited to:

- 5.2.1** Contract drawings;
- 5.2.2** As built drawings;
- 5.2.3** Health and safety files;
- 5.2.4** Building contract with the main build contractor and key sub or specialist contractors;
- 5.2.5** Planning and/or listed building consent;
- 5.2.6** Discharge of reserved building control completion certificate;
- 5.2.7** Fire officer approval;
- 5.2.8** Contracts of engagement for professional teams; and,
- 5.2.9** Any other documents we may request.

5.3 You must ensure that the tender documents for building contractors and nominated or named subcontractors include the requirement for the completion of a performance bond. The performance bond must be entered into by all relevant parties prior to works commencing on site. The Performance Bond must:

- 5.3.1** be backed by a reputable Guarantor;
- 5.3.2** be of an amount equivalent to 10% of the contract sum;
- 5.3.3** be executed as a Deed;
- 5.3.4** be a tripartite agreement between Employer, Guarantor and Contractor;
- 5.3.5** expire no earlier than 90 days after the issue of certificates or certificate of practical completion for the whole of the works; and,
- 5.3.6** be able to be assigned by the employer without the consent of the guarantor.

6. Your Obligations and undertakings

6.1 The Organisation will apply the Grant only for the purposes of the Capital Project as defined in the Agreed Capital Project Plan.

- 6.9.4** Informing the Arts Council in writing as soon as possible if any legal claim or any regulatory investigations are made or threatened against you and/or which would adversely affect the Agreed Capital Project Plan during the period of the grant (including any claims made against members of your governing body or staff).
- 6.10** The Organisation will comply with any relevant laws or government requirements and comply with best practice in governance, reporting and operation. This includes, but is not limited to:
- 6.10.1** following best practice in having appropriate policies and procedures in place to ensure the protection of children, young people and vulnerable adults; and,
 - 6.10.2** having an equal opportunities policy in place at all times;
managing all personal information in accordance with the Data Protection Act 1998.
- 6.11** The Organisation will take all reasonable steps to obtain value for money when buying assets, goods and services in connection with the Agreed Capital Project Plan by obtaining quotations or applying competitive tendering. You must demonstrate that any assets, works or services will be acquired in an equitable and economic manner with open competition and probity and that the proposed consideration and any related costs and expenses are an accurate reflection of their open market value (including inviting such competitive tenders as we may specify). You must provide to us any information which we request in order to satisfy ourselves that you have done so.
- 6.12** The Organisation understands that in receiving public funds it must meet the relevant UK and European legislation on procurement together with the provisions of the World Trade Organisation General Procurement Agreement. You must provide to us any information which we request in order to satisfy ourselves that you have done so.
- 6.13** The Organisation will consider any possible risks involved in the Agreed Capital Project Plan by taking appropriate action to protect everyone involved including maintaining adequate and appropriate insurance at all times.
- 6.14** The Organisation will act at all times without distinction and in compliance with all relevant legislation as to race, religion, age, gender or disability.
- 6.15** The Organisation accepts that the Arts Council's staff, council members and advisers cannot give any professional advice and will not take part in carrying out the Organisation's business. The Arts Council will not be held responsible for any action the Organisation takes, or fails to take, or for the Organisation's debts or liabilities. The Arts Council will not be liable for any losses or charges if it does not make any grant payment on the agreed date. The Arts Council will not be responsible to anyone else who may take, or threaten to take, proceedings against the Organisation.

- 6.22 The Organisation will seek the Arts Council's prior written consent before entering into any agreement with any third party whereby any part of the Grant is transferred to that third party and will ensure that no other organisation or individual acquires any third party rights under this Funding Agreement.**
- 6.23 The Arts Council may impose additional terms and conditions on the Grant either in the offer letter and/or if the Organisation is at any time in breach of this Funding Agreement and/or if the Arts Council believes it is necessary to make sure that the Agreed Capital Project Plan is delivered as agreed between the Organisation and the Arts Council and/or the Arts Council has reasonable grounds to believe it is necessary to protect public money.**
- 6.24 The Organisation will get the Arts Council's written agreement before:**
- 6.24.1 changing your governing document, concerning: your aims, payments to members and members of your governing body, the sharing out of your assets (whether your organisation is dissolved or not), or the admission of any new members; and/ or**
 - 6.25.1 transferring the whole or a substantial part of the Organisation assets to, or merging or amalgamating with, any other body, including a company set up by you.**
- 6.25 The Organisation will tell the Arts Council in writing as soon as possible of any investigation concerning the Organisation, trustees, directors, employees or volunteers carried out by the Police, Charity Commission, HM Revenue and Customs or any other regulatory body.**
- 6.26 The Organisation will take all reasonable steps to minimise the environmental impact of the Agreed Capital Project.**
- 6.27 The Organisation must give us the right to use the photographs, transparencies or digital images you send us. You must get any permission you need for you and us to use the photographs, transparencies or digital images before you send them to us or before you use them.**
- 6.28 The Arts Council will monitor and assess the Organisation's activity and how effectively the Grant is being used. To enable this, the Organisation will send the Arts Council all such information as the Arts Council may in its sole discretion reasonably request from time to time. This includes, but is not limited to the information set out in the Monitoring and Payment Plan, and copies of all or any other relevant documentation about the financial and operational running of the Organisation, to include business plans, board papers or equivalent, reserves policies and any other information which the Arts Council deems relevant to its understanding of how the Agreed Capital Project Plan is being delivered and the Grant used.**

- 8.2.1** a surveyor's report on the condition of the property, its value for the purpose of the Capital Project and whether it is suitable for the Capital Project;
- 8.2.2** confirmation by the Organisation's solicitors that all necessary consents for the use of the property for the purposes of the grant have been obtained;
- 8.2.3** for the purchase of leasehold land, a copy of the future lease and agreement for lease;
- 8.2.4** an undertaking to satisfy all other requirements as set out in Clause 7 and 8.1 upon completion of the purchase of the freehold or leasehold interest; and,
- 8.2.5** any other documents or requirements that the Arts Council may request in order to meet the Legal Requirements.

8.3 If any part of the Grant is to buy or involves leasehold land, then the Organisation must send the Arts Council a copy of the lease and ensure that the lease meets Arts Council standard lease requirements and ensure that the lease is for the minimum term of:

- a)** For capital grants used for refurbishment works of up to and including £500,000: a lease of at least 5 years, without a break clause.
- b)** For capital grants used for an asset purchase of up to and including £500,000: a registered and assignable lease of at least 10 years, without a break clause.
- c)** For capital grants of more than £500,000 but less than £1,000,000: a registered and assignable lease of at least 10 years, without a break clause.
- d)** For capital grants of £1,000,000 or more but less than £5 million: a registered and assignable lease of at least 20 years, without a break clause.
- e)** For capital grants of £5 million and above: a registered and assignable lease of at least 30 years, without a break clause.

9. VAT

- 9.1** The Organisation acknowledges that the Grant is not consideration for any taxable supply for VAT purposes by the Arts Council. The Organisation understands the Arts Council's obligation does not extend to paying any amounts in respect of VAT in addition to the Grant and that the Grant made by the Arts Council is inclusive of VAT.
- 9.2** The Organisation agrees to repay the Arts Council immediately any VAT recovered whether by set-off, credit or repayment to the extent that any such VAT cost is included in the Grant.
- 9.3** The Organisation will notify the Arts Council immediately if any irrecoverable VAT claimed under the Grant becomes recoverable.
- 9.4** The Organisation will keep proper and up to date records relating to VAT, and will make such records available to the Arts Council to look at and give the Arts Council copies when requested.

- 11.4 The Organisation will send the Arts Council a copy of the annual accounts as soon as they have been approved in accordance with the Organisation governing document and in any event within ten months of the end of the financial year for each year in which grant payments are made. The accounts will need to be signed by a member of your management committee and externally audited or independently evaluated as appropriate for the Organisation.**
- 11.5 The Organisation will report regularly and fully to all members of the Organisation governing body on the financial position of the Organisation and will put in place procedures to avoid any conflict of interest arising in the provision of goods or services required to deliver the Agreed Capital Project.**
- 11.6 The Organisation will keep proper and up to date accounts and records for at least seven years after the termination of your grant, including summary profit and loss accounts and management accounts, personnel and payroll records and invoices, which show how the grant has been used. The Organisation will make these financial records available to the Arts Council to look at and give copies when requested.**

12. Termination of the Agreement

- 12.1 If the Organisation breaches any of the terms and conditions of this Funding Agreement, then the Arts Council in its absolute discretion may withhold or demand repayment of all or part of the Grant. The Organisation will repay any Grant requested immediately upon demand.**
- 12.2 The Arts Council may suspend payment of the Grant if it wishes to investigate any matters concerning the Grant (or any other grants given by the Arts Council to the Organisation). The Organisation understands and accepts that the Arts Council will accept no liability for any consequences, whether direct or indirect, that may arise from a suspension even if the investigation finds no cause for concern.**
- 12.3 The Arts Council may also withhold or demand repayment of all or part of the Grant or any other grants given by the Arts Council if the Organisation:**
- 12.3.1 closes down its business (unless, with the Arts Council's prior written consent, it joins with, or is replaced by, another Organisation that can take over this Funding Agreement and carry out the purposes of the Grant to the Arts Council's satisfaction);**
 - 12.3.2 makes significant changes to the Agreed Capital Project Plan without the prior written approval of the Arts Council;**
 - 12.3.3 does not fulfil the purpose of the Grant with reasonable care, thoroughness, competence and to a standard that the Arts Council expects from the Organisation;**

- 13.1.3 for capital grant of £1,000,000 or above but less than £5,000,000 used to purchase the project asset and/or for building work (on freehold or leasehold land already owned by you): 20 years from the date of this Funding Agreement; or,**
- 13.1.4 for capital grant of £5,000,000 and above used to purchase the project asset and/or for building work (on freehold or leasehold land already owned by you): 30 years from the date of this Funding Agreement; and/or,**
- 13.1.5 for as long as the Organisation does not carry out any of the terms and conditions of the Funding Agreement or any breach of them continues (this includes any outstanding reporting on Grant expenditure or Capital Project delivery).**

**SCHEDULE 3
FORM OF SECURITY**

DATE: 2013



PARTIES

1. **THE ARTS COUNCIL OF ENGLAND**, of 14 Great Peter Street, London, SW1P 3NQ ('the Arts Council'); and
2. **SADLER'S WELLS FOUNDATION LIMITED**, a company limited by guarantee (registered company number 08338695, registered charity number 1150844) ('the Funded Organisation')

RECITALS

- A The Funded Organisation is or will be the legal and beneficial owner of the Property, referred to in Schedule 2, and otherwise free from encumbrances
- B The Arts Council, at the request of the Funded Organisation, has agreed to or has granted monies to the Funded Organisation upon the terms and subject to the conditions contained in the Capital Funding Agreement.
- C It is a condition contained in the Offer Letter that the Funded Organisation provide consolidated fixed and floating security over its assets forthwith on request by the Arts Council as rationalisation of security granted by virtue of the Capital Funding Agreement (excepting the Offer Letter).
- D This Deed is security for the payment and discharge of the Liabilities

OPERATIVE PROVISIONS

1. **Definitions and interpretations**

1.1 **Definitions**

Unless the contrary intention appears, terms defined shall mean as follows:

Act	Law of Property Act 1925;
Administrator	any one or more administrators appointed by the Arts Council pursuant to this Deed.
Arts Council	the Arts Council England including its successors in title and assigns;
Capital Funding Agreement	shall mean all funding agreements with the Funded Organisation, whether they presently

exist or will be executed after the date of this agreement, including but not necessarily limited to the documents listed in Schedule 1, any deeds or documents varying, supplementing or novating any of them, any implied amendments arising from supplementary funds awarded for the Capital Project, and any other documents considered to be part of the Capital Funding Agreement by the parties to this Deed;

Capital Project

means the building and infrastructure improvements for which the Arts Council is providing grant monies to the Funded Organisation pursuant to the Offer Letter;

Charged Assets

all the assets Property, rights and other interests charged by this Deed both present and future;

Environment

all of the air, water and land including air within buildings and other natural or man-made structures above or below ground

Environmental Legislation

all applicable statutes, statutory instruments, common law, treaties, regulations, directives and binding statutory guidance notes, orders, notices, demands and other measures imposed by any relevant authority which relate to the pollution or protection of the Environment or the protection of the health of any living organism or the protection of human health;

Funded Organisation

the party identified as the Funded Organisation above including the Funded Organisation's successors in title and assigns,

Insurances

all insurances from time to time taken out in respect of the interest in the Property held by the Funded Organisation and all buildings, structures, plant, machinery and equipment included in or on the Property and all monies from time to time payable in respect of them;

Liabilities

the aggregate of all the monies and liabilities covenanted to be paid and discharged under this Deed and outstanding from time to time;

Movables

any fittings, furnishings, decorations, materials, furniture, plant, machinery,

	equipment, apparatus and any other chattels or movable items now or in future on the Property;
Offer Letter	means the funding agreement dated 26 June 2013 entered into with the Funded Organisation for the Capital Project;
Permitted Security Interest	<p>the security constituted by this Deed;</p> <p>liens arising by operation of law in the ordinary course of business;</p> <p>any Security Interest in favour of the Arts Council;</p> <p>any Security Interest created with the prior written consent of the Arts Council;</p> <p>any Security Interest arising out of retention of title provisions in a supplier's standard conditions of supply of goods;</p> <p>any Security Interest created in favour of a party to any action or in favour of a court as security for costs and expenses in connection with litigation;</p> <p>rights of set off arising under standard form contracts to which the Funded Organisation is a party arising in the ordinary course of trade;</p> <p>any rights of set off in favour of banks which are contained in their standard terms of business;</p>
Planning Acts	"the consolidating Acts" as defined in the Planning (Consequential Provisions) Act 1990 and any other legislation relating to town and country planning in force from time to time and all orders regulations and instruments under them or otherwise relating to the use and/or occupation of the Property;
Property	the land and premises referred to in Schedule 2 and any part or parts of them and all buildings or other structures now or from time to time erected on the land and also all easements and rights attaching to them;

Receiver	any one or more receivers appointed by the Arts Council pursuant to this deed (whether sole, joint and/or several including any substitute),
Recoveries	subject to the rights of any prior or preferential Security Interests or creditors, the proceeds of enforcement of the any security created under this deed;
Security Interest	any mortgage, charge, assignment, pledge, lien, right of set-off, hypothecation, encumbrance, priority or other security interest (whether fixed or floating) or any arrangement which has substantially the same commercial or substantive effect as the creation of security;
Trust Property	(a) all rights and interests of the Arts Council under or in connection with this Deed and any other document specified by the parties to this Deed; and (b) all Recoveries and any money or property which accrues or derives from any Recoveries; and
VAT	value added tax or any modification or replacement of it.

- 1.2 The clause and paragraph headings in this deed are for reference only and not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.3 Unless the contrary intention appears reference to numbered clauses are references to the relevant clause in this deed;
- 1.4 Words in this deed denoting the singular include the plural meaning and vice versa.
- 1.5 Words in this deed importing one gender include the other gender and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.
- 1.6 References in this deed to any statutes or statutory instruments include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force, and references to a statute include statutory instruments and regulations made pursuant to them.
- 1.7 When at any time the party of the second part to this deed are two or more persons, the expression the Funded Organisation includes the plural number and obligations in this deed expressed or implied to be made with the Funded Organisation or by the

Funded Organisation shall be deemed to be made with or by such individuals jointly and severally.

1.8 Any obligation of the Funded Organisation to do something shall include an obligation to procure that it is done and any obligation not to permit, suffer or allow it to be done.

1.9 The terms "including" and "in particular" shall be construed as not limiting any general words and expressions in connection with which it is used.

1.10 Law of Property (Miscellaneous Provisions) Act 1989

The terms of any other agreement, document or side letter between the parties to this deed are incorporated to the extent required for the purported disposition of the Property contained in this deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.11 Continuing security

Without prejudice to the generality of the security hereby constituted it is hereby declared that the security hereby created shall not be satisfied by any partial or intermediate payment but shall constitute a continuing security for the payment of all sums which shall on the execution hereof or at any time hereafter be or become owing by the Funded Organisation to the Arts Council in any manner.

2. Covenant for Payment

The Funded Organisation covenants with the Arts Council that the Funded Organisation will on demand in writing pay to the Arts Council and discharge all monies and Liabilities which shall for the time being and from time to time (and whether on or at any time after such demand or judgment) be due, owing or payable or expressed to be due, owing or payable by the Funded Organisation to the Arts Council under or pursuant to the Capital Funding Agreement, this Deed or any other agreement.

3. Security

3.1 As continuing security for the payment and discharge of the Liabilities the Funded Organisation with full title guarantee:

3.1.1 charges the Property to the Arts Council by way of first legal mortgage;

3.1.2 assigns and charges to the Arts Council by way of first fixed equitable charge each and all of:

3.1.2.1 the Insurances; and

3.1.2.2 all future easements and other rights at any time vested in or conferred on the Funded Organisation in connection with or otherwise for the benefit of the Property;

3.1.3 charges to the Arts Council by way of floating charge all of the undertaking property assets, and rights of the Funded Organisation not effectively charged or assigned pursuant to clauses 3.1.1 and 3.1.2 herein.

3.2 None of the provisions of this clause 3 shall be deemed to impose on the Arts Council or imply on its part any obligation or other liability in relation to the Charged Assets.

4. Negative Pledge

The Funded Organisation shall not (without the prior written consent in writing of the Arts Council) create, purport to create or allow to subsist, any Security Interest over the whole or any part of the Charged Assets except for any Permitted Security Interest.

5. Funded Organisation's covenants

The Funded Organisation covenants with the Arts Council that until all the Liabilities shall have been fully repaid, satisfied and discharged the Funded Organisation will duly and promptly observe and perform all the obligations on its part under or pursuant to the Capital Funding Agreement and in addition will:

- 5.1 (in the event that the Capital Project includes construction works) as soon as reasonably practicable and in any event no later than the agreed completion date procure the commencement and thereafter with all due expedition diligently the carrying out and completion of the project in a good and workmanlike manner, with good quality materials and substances of their respective kinds reasonably obtainable at the time, in accordance with the Capital Funding Agreement and also with all planning consents, building regulation approvals and other necessary approvals and consents (under statute, any lease or contract or otherwise) and all other relevant statutory or regulatory requirements, and with due monitoring by it of progress, and following completion take all reasonable steps to procure the remedy as soon as reasonably practicable of all material defects in workmanship and materials which may then be found;
- 5.2 keep the Property in good and substantial repair and condition and when necessary rebuilt and renewed;
- 5.3 permit the Arts Council and any surveyor, valuer or other person authorised by the Arts Council to enter and view the Property at all reasonable times in the daytime, and if the Arts Council then serves any notice of defect or want of repair, without delay well and substantially make them good;
- 5.4 pay and discharge or procure the payment and discharge of all existing and future rates, taxes, charges, assessments, impositions and outgoings now or at any time payable, charged or assessed on or in respect of the Property or its owner or occupier;
- 5.5 at all times maintain insurance of or in connection with the Property (including all buildings, structures, plant machinery and equipment included in or on the Property) against such risks and losses in such respective amounts with such insurers and generally on such terms as the Arts Council shall from time to time require;

- 5.6 apply or cause the application of all monies becoming payable under any Insurances in making good the loss or damage in respect of which such monies are payable or at the request of the Arts Council towards the discharge of the Liabilities;
- 5.7 use the Property only for the purposes of:
- 5.7.1 the presentation and creation of dance productions;
 - 5.7.2 delivery of a learning, education and participation programme;
 - 5.7.3 spaces for associate artists and resident companies;
 - 5.7.4 administrative offices;
 - 5.7.5 spaces for events and venue hire; and
 - 5.7.6 catering and hospitality facilities in the front of house areas;
- 5.8 observe, perform, and comply with and cause observance performance and compliance in all respects with, the provisions and requirements of all statutes for the time being in force and/or imposed by any competent authority relating to the Property and, in particular, the Planning Acts and Environmental Legislation and obtain or cause to be obtained any development or other consent and serve all notices which may be requisite by reason of any development or any other activity or works on, or use of, the Property;
- 5.9 give full particulars to the Arts Council of any notice, order or proposal for a notice or order made, given or issued under or by virtue of the Planning Acts or environmental Legislation within seven days of receipt and if required by the Arts Council to produce it to the Arts Council or its agents and also without delay to take all reasonable and necessary steps to comply with it or (if required by the Arts Council) at the cost of the Funded Organisation make such representations or appeals as the Arts Council may reasonably require;
- 5.10 observe and perform all restrictive and other covenants and stipulations (if any) for the time being affecting the Property;
- 5.11 not without the prior written consent of the Arts Council to exercise the powers of leasing, agreeing to lease or accepting surrenders of leases conferred on a mortgagee or by statute or otherwise or vary any lease or tenancy and not to enter into or permit any parting with possession or sharing arrangement whatever in respect of the Property;
- 5.12 not do, permit or suffer to be done in or on the Property any waste, spoil or destruction, nor undertake any development on, or otherwise make or permit any alteration or addition to, the Property without the prior written consent of the Arts Council and, if the Arts Council gives consent, to commence carry out and complete the relevant works without delay in accordance with any conditions of such consent and to the satisfaction of the Arts Council;
- 5.13 procure that no conveyance, assignment, transfer, sale, grant of a lease, charge or other disposal or realisation of the whole of, or any interest in, the Charged Assets

shall take place, nor any agreement to effect all or any of them, shall be entered into without the prior written consent of the Arts Council;

- 5.14 where any of the Charged Assets are held by the Funded Organisation under the terms of a lease, duly and promptly pay all rents and other sums from time to time payable by the Funded Organisation as lessee and to observe and perform all other covenants on its part as lessee and all conditions contained in that lease.
- 5.15 not do, cause or permit to be done anything which may in any way depreciate jeopardise or otherwise prejudice the value of the security created by this deed
- 5.16 on demand give to the Arts Council or its agents such information as it or they reasonably require relating to the Charged Assets; and
- 5.17 indemnify and keep the Arts Council indemnified from and against all actions, charges, claims, costs, damages, proceedings and other liabilities occasioned by any breach of any covenants or other obligations of the Funded Organisation to the Arts Council and/or the removal, storage, sale or other dealing with the Movables pursuant to clause 8.14.

6. Representations and Warranties

The Funded Organisation represents and warrants to the Arts Council, by its execution of this deed, to the intent that they continue and are deemed to be repeated until the Liabilities have been fully repaid, satisfied and discharged as follows.

- 6.1 It has all necessary corporate power, has complied with all relevant legislation (including Charities Act 1993), has formed all necessary resolutions and obtained all necessary authorities and consents and satisfied all conditions attaching to them, to enable it to enter into and give effect to its obligations and liabilities under or pursuant to or in connection with this deed and/or the Capital Funding Agreement;
- 6.2 no law, regulation, order or direction binding on it and no term of any other contract, mortgage, instrument or other undertaking will be violated or breached by it accepting and giving full effect to all the provisions of this deed and no other debt incurred or owed by it or security created by it will become enforceable by virtue of the provisions of this deed or the implementation of it, provided that the creation of a Permitted Security Interest shall not be a breach of this clause; and
- 6.3 no litigation, arbitration or administrative proceeding before or of any court, arbitration, tribunal or governmental authority is current or, to the best of its knowledge, threatened against it or any of its assets, which might prevent it from accepting and performing any of its obligations under or pursuant to this deed.

7. Rights of enforcement

- 7.1 The Liabilities shall be deemed to have become due within the meaning of section 101 of the Act immediately upon a demand being served by the Arts Council on the Funded Organisation under clause 2 and in addition to all other protection afforded by statute every purchaser (as defined by section 205 of the Act) or other party dealing with the Arts Council or the Receiver or the Administrator shall be entitled to assume

without enquiry that such a demand has been duly made and that the Liabilities are outstanding and have become due

- 7.2 The restrictions imposed by section 103 of the Act shall not apply to this security.
- 7.3 The enforcement powers of the Arts Council (in addition to the powers from time to time conferred by the Act or any other statute or otherwise under the law in force from time to time) shall be immediately exercisable upon any demand being served and shall be as follows:
- 7.3.1 for the Arts Council itself, without becoming liable as mortgagee in possession, to exercise all or any of the powers and rights specified in this deed as the Arts Council in its sole and absolute discretion shall think fit; and
- 7.3.2 to appoint a Receiver or an Administrator of the whole or any part or parts of the Charged Assets (and to remove and substitute any such appointee as and when the Arts Council in its sole and absolute discretion shall think fit) with all the powers and rights specified in this deed as well as any additional powers and rights which he may exercise under statute or general law all of which powers and rights the Receiver may exercise either in his own name or in the name of the Funded Organisation and in his sole and absolute discretion as he shall think fit
- 7.4 So far as the law allows the Receiver and/or the Administrator shall be the agent of the Funded Organisation, who shall be solely liable for his acts, defaults and remuneration but the Arts Council shall be entitled to agree the fees and expenses and the mode of payment to the Receiver and/or the Administrator as the Arts Council in its sole and absolute discretion shall think fit.
- 7.5 The Funded Organisation irrevocably appoints the Arts Council and the Receiver and the Administrator jointly and/or severally as the Funded Organisation's attorney in the Funded Organisation's name and on the Funded Organisation's behalf to execute all deeds and documents and carry out all and any such acts or matters as are mentioned or referred to in this clause or otherwise as the Arts Council and/or the Receiver and/or the Administrator shall consider necessary to give effect to and perform any said deed document act or matter.
- 8 Arts Council's and Receiver's/Administrators powers and rights**
- 8.1 The Arts Council and/or the Receiver and/or the Administrator shall have all statutory and other powers and rights and in addition to (and not substitution for) the following powers and rights and may exercise them in the name of the Funded Organisation and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.
- 8.1.1 To enter upon and take possession of the Property and undertake any works of demolition, building, reconstruction, improvement, repair or decoration on it including the commencement, carrying out and completion of any development, utilising for any such purpose any Movables then on or in the Property or otherwise attributable to any such works or which the Funded Organisation is otherwise entitled to use and any plans drawings and

specifications of the Funded Organisation or which the Funded Organisation is otherwise entitled to use and whether or not in accordance with any obligations imposed by the Capital Funding Agreement.

- 8.1.2 To pay any rent or other outgoings and payments charged on or otherwise relating to the Charged Assets or the ownership, occupation or use.
- 8.1.3 To collect all and any rent or other income or due receipts in respect of or arising from the Property, negotiate and conclude reviews of rent and otherwise deal in relation to any leases and the tenants' and guarantors' respective obligations under or pursuant to them.
- 8.1.4 To sell, convert into money or otherwise realise and deal with and transfer title to the Charged Assets (including the Property) and realisation by surrender of a leasehold estate, upon such terms including the amount and nature of the consideration and whether or not in accordance with the obligations imposed on the Funded Organisation by the Capital Funding Agreement, and on terms which bind any subsequent mortgagee.
- 8.1.5 To grant or create any lease, tenancy or licence or enter into any other agreement or contract relating to the disposal of or other dealing with the Charged Assets (including the Property) at any or no rent, with or without reviews of rents and with or without any fine or premium and whether absolutely or for such term or period and generally on such other terms as it shall think fit and accept the surrender of any lease tenancy or other such agreement or contract upon such terms as it shall agree and whether or not in any such respect in a manner consistent with the obligations imposed on the Funded Organisation by the Capital Funding Agreement, and on terms which bind any subsequent mortgagee.
- 8.1.6 To compromise any claim or claims of, against, arising out of or otherwise relating to the Charged Assets.
- 8.1.7 To effect insurances and obtain and/or enter into bonds, covenants, commitments, engagements, guarantees and indemnities or other like matters in any way relating to the Charged Assets and from time to time make all requisite payments to effect, maintain or satisfy them.
- 8.1.8 To borrow, raise or advance money whether or not in priority to the Liabilities and whether or not on the security of the Charged Assets, in such manner and for such purposes within or relating to the powers and rights conferred by these enforcement provision.
- 8.1.9 To give receipts and releases for any sums received.
- 8.1.10 To obtain all necessary planning permissions, building regulation approvals and other permissions, consents or licences as may be necessary for any development or use of the Property as it shall think fit.
- 8.1.11 To cancel or otherwise determine any agreements or contracts in anyway relating to the Charged Assets.

- 8.1.12 To commence, carry out and complete such acts and matters commence and prosecute proceedings execute such contracts deeds or other documents and otherwise deal for the preservation, improvement, enforcement or realisation of all or any of the security created by this deed in all respects as if it was and remained at all times the sole and absolute beneficial owner of the Charged Assets.
- 8.1.13 To employ for any of the above purpose solicitors, architects, surveyors, quantity surveyors, estate agents, contractors, builders, workmen, stockbrokers and others and purchase or otherwise acquire any proper materials and other matters.
- 8.1.14 To remove, store, sell, dispose of, or otherwise deal (in the name of the Funded Organisation in any such manner and on any such terms as the Arts Council and/or the Receiver shall in its sole absolute discretion consider appropriate) any Movables which are on the Property and have not been removed by the Funded Organisation within fourteen (14) days of being requested by the Arts Council to do so and, without limiting the above, and only if the Funded Organisation is a natural person, the Arts Council and/or the Receiver shall not have a right under this deed to retain or set-off any proceeds of sale of the Movables against any part of the Liabilities (except for the costs incurred in relation to their removal, storage, sale or other disposal).
- 8.1.15 All monies received by any receiver appointed under this Deed shall (subject to the rights and claims of any person having a security ranking in priority to the security constituted by or pursuant to this Deed) be applied in the following order:
- 8.1.15.1 in the payment of the costs, charges and expenses of an incidental to the Receiver's/Administrator's appointment and the payment of their remuneration;
 - 8.1.15.2 in the payment and discharge of any costs, charges or liabilities incurred by the receiver (whether or not acting as agent of the Funded Organisation in connection with the receivership);
 - 8.1.15.3 in providing for the matters (other than the remuneration of the Receiver) specified in the first 3 paragraphs of Section 109(8) of the Act;
 - 8.1.15.4 in or towards payment of any debts or claims which are by statute payable in preference to the Liabilities but only to the extent to which such debts or claims have such preference;
 - 8.1.15.5 in payment to the Arts Council towards the repayment of all Liabilities;

and any surplus shall be paid to any other person entitled thereto. The provisions of this Clause shall take effect as and by way of variation and extension to the provisions of the said Section 109 which provisions as so varied and extended shall be deemed incorporated herein.

9. Release of Security

9.1 Subject to:-

9.1.1 No demand having been made pursuant to Clause 2 and being unsatisfied; and

9.1.2 Arts Council being satisfied in its absolute discretion that the purpose/s for which the grant monies (and any subsequent grant or other funding secured by this Deed) were awarded have been satisfied,

Arts Council shall, on the 30th anniversary of the date of this Deed, at the request and cost of the Funded organisation release and discharge the security constituted by this deed and reassign or reconvey any property assigned or conveyed to Arts Council pursuant to this Deed.

10. Payments

10.1 All payments to be made to the Arts Council must be made immediately available to such accounts in the United Kingdom as it shall from time to time select, free and clear of and without any withholding or deduction for or on account of any and all present or future taxes, duties or other charges or otherwise save such (if any) as the Funded Organisation shall be obliged to make by law.

10.2 If any sum due under or pursuant to this deed is not paid promptly on the due date then, without limiting any other remedy, interest shall accrue on the sum in default until payment at the rate (as well before as after any demand or judgement) of 4% per annum above the base rate from time to time of Lloyds TSB plc, and that interest shall be payable on demand.

11. Costs

Without limiting and in addition to any other specific provision of this deed, the Funded Organisation shall reimburse the Arts Council on demand for all legal, valuation and other professional costs, fees and expenses reasonably incurred by the Arts Council in connection with the enforcement of the obligations of the Funded Organisation or any other person under or pursuant to this deed; the creation, maintenance, enforcement and realisation of the security pursuant to this deed; and any value added tax properly chargeable on these sums.

12 Section 124 Charities Act 2011

12.1 The Funded Organisation is a charity. The Property forms or will form part of the Funded Organisation's property and is or will be held on charitable trusts.

12.2 The Property is or will be held by the Funded Organisation, a non-exempt charity, and this mortgage is not one falling within section 124(9) of the Charities Act 2011, so that the restrictions imposed by section 214 of that Act apply.

12.3 The directors of the Funded Organisation, being the persons who have the general control and management of its administration certify that they have the power under the trusts of the Funded Organisation to grant this mortgage of the Property and that

they have obtained and considered such advice as is mentioned in Section 124(2) of the said Act.

13. General provisions

- 13.1** The Funded Organisation hereby consents to the entry of the following restriction in the Proprietorship Register of any registered land forming part of the Property:-

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [] in favour of the Arts Council England referred to in the Charges Register or, if appropriate, signed on such proprietor's behalf by its solicitor or conveyancer or secretary."

The Funded Organisation authorises the Arts Council to make an application on Form RX1 (or such other form as may be prescribed from time to time) to enter this restriction against the relevant registered estate.

- 13.2** Neither the whole or any part of the Liabilities and/or the security created by this deed shall be modified, released, waived or otherwise affected in any way by any grant of time, indulgence, modification, release, variation or waiver granted or allowed to or agreed with the Funded Organisation or any other person or otherwise.
- 13.3** The restriction on the right of consolidating mortgage securities contained in section 93 of the Act shall not apply to this security.
- 13.4** Without limiting any power conferred by this deed, if the Funded Organisation shall default in the observance and performance of any obligation to the Arts Council the Arts Council or its agents may (but shall not be obliged to) enter the Property and carry out and perform any necessary works of repair, reinstatement or otherwise and/or pay all due but unpaid outgoings and/or effect insurance of the Property and otherwise as the Arts Council shall consider necessary to remedy such default.
- 13.5** Any written certificate given by the Arts Council under or pursuant to this deed shall be conclusive and binding as to the relevant items save in the case of manifest error
- 13.6** The unenforceability for whatever reason of any provision of this deed shall in no way affect the enforceability of each and every other provision.
- 13.7** This security shall not be considered as satisfied or discharged by any intermediate payment, repayment, discharge of the whole or any part of the Liabilities but shall constitute and be a continuing security to the Arts Council notwithstanding any settlement of account, the contingent nature of the Liabilities or other matter or thing, and shall be in addition to and shall not operate so as in any way to limit or affect any other security which the Arts Council may now or at any time hold for or in respect of the Liabilities.
- 13.8** If any provision of this deed shall conflict with any term of the Capital Funding Agreement then the relevant term of the Capital Funding Agreement shall prevail as between the Funded Organisation and the Arts Council but without limiting the other

provisions of this deed and in particular the protection for any purchaser or any other person described in clause 8.1.

- 13.9 All notices served shall be treated as properly served if they comply with the provisions of section 196 of the Act.
- 13.10 The Arts Council shall be entitled, at its sole and absolute discretion, to assign and/or novate the benefit and burden of its rights and obligations under or pursuant to this deed either as an individual transaction or as part of a transaction involving the assignment and/or novation of other debts owing or due to the Arts Council, in any such case without the consent of the Funded Organisation.
- 13.11 This deed shall be governed by English Law and the parties submit to the jurisdiction of the English Courts.

SCHEDULE 1
The Capital Funding Agreement

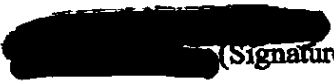
- (a) The National Lottery Grant of £1,500,000 awarded by Arts Council in January 1995 with reference number 95-56;
- (b) The National Lottery Grant of £2,931,343 awarded by Arts Council in October 1995 with reference number 95-1959;
- (c) The National Lottery Grant of £25,568,653 awarded by Arts Council in October 1996 with reference number 96-2392;
- (d) The National Lottery Grant of £5,974,266 awarded by Arts Council in January 1998 with reference number 97-1616;
- (e) The National Lottery Grant of £6,000,000 awarded by Arts Council in March 1999 with reference number 99-112; and,
- (f) The National Lottery Grant of £4,943,118 awarded by the Arts Council in June 2013 with reference number 24223529.

SCHEDULE 2
The Property

Registered Proprietors	Mortgaged Properties	Freehold/ Leasehold	Title Number
Sadler's Wells Foundation Limited	Sadler's Wells Theatre and 179 Rosebery Avenue	Freehold	NGL700054
Sadler's Wells Foundation Limited	Sadler's Wells Theatre, Rosebery Avenue	Freehold	LN19345
Sadler's Wells Foundation Limited	179 Rosebery Avenue	Freehold	367089
Sadler's Wells Foundation Limited	Part of the site of Rosebery Avenue at the Sadler's Wells Theatre and 179 Rosebery Avenue	Freehold	NGL759377
Sadler's Wells Foundation Limited	181 Rosebery Avenue	Freehold	NGL746757
Sadler's Wells Foundation Limited	29, 30 and 31 Arlington Way	Freehold	NGL444357
Sadler's Wells Foundation Limited	381 St John Street	Leasehold	NGL771910

EXECUTION PAGE

EXECUTED AS A DEED by)
SADLER'S WELLS FOUNDATION)
LIMITED)
acting by a director and its secretary/two)
directors

By:  (Signature)

Name: RAA DENNETTS

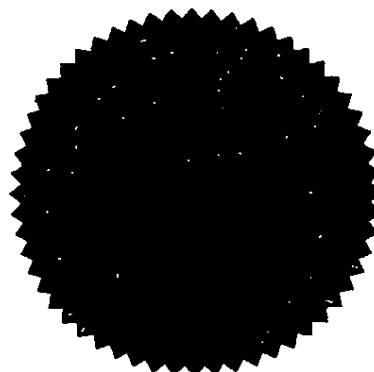
Director

By:  (Signature)

Name: ALISTAIR SPALDING

~~Director~~/Secretary

Executed as a deed by affixing the seal of)
THE ARTS COUNCIL OF ENGLAND)
and authenticated by an authorised officer)




.....

Signature

..... Alan Dawey

Name of authorised officer

..... Chief Executive

Title of authorised officer