

Dated

2020

PARTY

and

ISLE OF WIGHT COUNCIL

**LOAN AGREEMENT FOR THE PROVISION OF LIFELINE FUNDS IN RESPONSE TO
COVID-19 CORONAVIRUS**

This agreement is made on the day of 2020

BETWEEN

- (1) **XXXX of XXXX** (the '**Borrower**'); and
- (2) **ISLE OF WIGHT COUNCIL** of County Hall, Newport, Isle of Wight, PO30 1UD (the '**Lender**');

BACKGROUND

- (A) This agreement is entered by the Lender during the Covid-19 Coronavirus pandemic in order to provide a loan facility with an option for the Lender to also provide a grant to ensure that the Borrower has sufficient liquidity to cover genuine operational costs including the payment of staff wages pending the recovery of such funds under the Government Scheme (the '**Authorised Purpose**').
- (B) The Borrower enters into this agreement with the intention to utilise the Facility for the Authorised Purpose

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this Deed

1.1 Definitions:

In this agreement, unless otherwise provided:

Business Day : means a day, other than a Saturday, Sunday or public holiday, on which banks are open for business in London;

Facility : means the sum of £XXXX (XXXX POUNDS);

Government Scheme : means the scheme published by HM Revenue & Customs on 26 March 2020 enabling employers to claim employee's wages through their Coronavirus Job Retention Scheme;

Loan : means the loan made under this agreement;

Party : means a party to this agreement; and,

Repayment Demand : a written demand by the Lender which demand shall be issued no earlier than notice by the World Health Organisation that Covid-19 Coronavirus post-pandemic period has begun.

1.2 Interpretation

1.2.1 In this agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa;
- (b) including means including without limitation;
- (c) where an act is required to be performed promptly, it shall be performed as soon as reasonably possible from the moment when the act could reasonably have been performed, having regard to all of the circumstances;
- (d) a time of day is a reference to London time;
- (e) a reference to any Party shall be construed as including, where relevant, successors in title to that Party, and that Party's permitted assigns and transferees (if any);
- (f) a reference to a person includes individuals, unincorporated bodies, government entities, companies and corporations;
- (g) a reference to this agreement or any other agreement is a reference to that document as amended, novated, supplemented, restated or replaced from time to time in accordance with its terms; and
- (h) references to legislation include any modification or re-enactment of such legislation.

1.3 Third party rights

1.3.1 Except as expressly provided for in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this agreement.

1.3.2 The Parties may terminate or rescind this agreement, or agree to any variation, waiver or settlement in connection with it, without the consent of any third party, whether or not it extinguishes or alters any entitlement they may have to enforce any of the provisions of this agreement.

2. The Loan

2.1 Subject to the terms of this agreement, the Lender makes the Facility available to the Borrower.

2.2 The Loan will be drawn down in full on the date of this agreement.

2.3 No interest is payable on the Loan.

3. Conditions

3.1 The Loan is provided on the following conditions: -

3.1.1 The Borrower confirms it is eligible for the Job Retention Scheme envisaged by the Government Scheme

3.1.2 The Borrower shall only use the Facility to contribute towards operational costs and the payment the wages of staff that are eligible for recovery under the Government Scheme;

- 3.1.3 The Facility shall be repaid in full by the Borrower in accordance with clause 6;
- 3.1.4 The Borrower shall not cause or permit the Facility (or any part of it) to be used for any purpose other than for the Authorised Purpose;
- 3.1.5 The Borrower shall ensure that receipts incurred in securing the Authorised Purpose are kept for seven years from the date of this agreement;
- 3.1.6 The Borrower shall ensure open book accounting of the Facility and shall provide such details as the Lender shall reasonably require in order to audit the use the Facility. Such details shall be provided within five working days of a request by the Lender;
- 3.1.7 The Borrower will use best endeavours to secure the prompt recovery of the Facility under the Government Scheme;
- 3.1.8 The Borrower shall give notice to the Lender of the outcome of its application under clause 5.1.7 within five working days of their receipt of such outcome;
- 3.1.9 The Lender may at its absolute discretion extend the Facility on written request of the Lender but shall not do so before a period of one month from the date of this agreement or of any previous extension of the Facility; and,
- 3.1.10 In circumstances where the Lender agrees to extend the Facility the Borrower agrees to hold such sums in accordance with this agreement and the amount of the Facility shall be amended accordingly.

4. Repayment

- 4.1 The Facility shall be repaid by the Borrower within 28 days of receipt by the Borrower of the Repayment Demand.
- 4.2 The amount to be recovered by the Lender shall not exceed the Facility.
- 4.3 On issue of the Repayment Demand the Borrower shall provide final accounts and receipts to the Lender and on the basis of the information contained therein the Lender may, at its absolute discretion, provide any part of the Facility as a grant towards the operational costs of the Borrower during the Covid-19 Coronavirus pandemic.
- 4.4 The Borrower shall have the option as to whether to accept any grant given under clause 4.3 but in doing so the Borrower warrants to the Lender that such sum is compatible with state aid regulations (including but not limited to de-minimis or block exemptions) then in force and indemnifies the Lender against any claims arising as a result.

5. Assignment

The Lender is entitled at any time to assign its rights or otherwise transfer all or any part of its rights or obligations under this agreement with the prior consent of the Borrower, such consent not to be unreasonably withheld.

6. Notices

- 6.1 Any notice or other communication (including any demand) given by a Party under this agreement shall:
 - 6.1.1 be in writing; and
 - 6.1.2 be signed by or on behalf of the Party giving it.
- 6.2 Notices will be sent to the address for each Party set out on page 1.
- 6.3 A Party may change any of its details given in this clause by giving not less than five Business Days' notice to the other Party.
- 6.4 Notices may be given and will be deemed received:
 - 6.4.1 by hand: on delivery
 - 6.4.2 by pre-paid first class post: at 9.00 am on the second Business Day after posting.

7. Amendments

No amendment, waiver or variation of any of the terms of this agreement will be valid or effective unless made in writing and signed by or on behalf of the Parties.

8. Remedies and waivers

- 8.1 No failure, delay or omission by the Lender in exercising any right, power or remedy provided by law or under this agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 8.2 No single or partial exercise of any right, power or remedy provided by law or under this agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 8.3 The Lender's rights, powers and remedies under this agreement are cumulative and they do not exclude any rights, powers or remedies that arise by law.

9. Partial invalidity

If any provision of this agreement (or part of any provision of this agreement) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this agreement (or other part of that provision of this agreement) shall not be affected.

10. Counterparts

This agreement may be signed in any number of separate counterparts and this has the same effect as if the signatures on those counterparts were on a single copy of the agreement.

11. Governing law and jurisdiction

- 11.1 This agreement and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English law.

11.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this agreement, its subject matter or formation.

Agreed by the Parties on the date set out at the head of this agreement.

Signed by)
for and on behalf of)
.....
Director
Party)

Signed by)
for and on behalf of)
.....
Authorised signatory
Isle of Wight Council)