**Philanthropic Loan Agreement**

**(non-land acquisition)**

|  |
| --- |
| **Before completing please note:-**   * **Complete using Microsoft Word with Tracked Changes turned on, so that any changes/insertions are clearly visible. Completing in Google docs can mess up the automatic numbering in the T&Cs so please avoid.** * Complete the details highlighted [yellow] and in [ ]s. Yellow highlighting also shows optional wording eg Payment Terms   Notes to Lenders:-   * Consider obtaining legal advice on this agreement before using or entering into it and make sure you understand it fully. * Keeping changes to those actually necessary (rather than just wording your solicitor likes to use) helps to minimise everyone’s time and legal costs – keeping this model as lean as possible and so making its impact as big as possible. * Philanthropic loans are intended to be used where both the Lender and Borrower have shared goals in restoring nature or achieving other charitable or community goals. * Please don’t lend money if any delay in it being repaid will put you in a difficult financial position. That would be incredibly generous but don’t do it. * Thanks so much for your help in enabling the Project. |

**Philanthropic Loan Outline (“Loan Outline”)**

1. Once this Agreement has been completed and signed by the Lender and Borrower (“**parties**”), the following documents will form an agreement between them to comply with the provisions of:-
   1. This Loan Outline;
   2. The Philanthropic Loan Terms & Conditions (“**Terms**”);
   3. The Loan Request (Annex 1);
   4. The Project Overview (Annex 2); and
   5. The Promotion Guidelines (Annex 3).
2. The documents referred to at paragraph 1 above together form the “**Agreement**” between the parties. In consideration of the payments and mutual promises in this Agreement, the parties agree as set out in this Agreement. In the event of any conflict between the provisions of the documents referred to at paragraph 1 above the above order of precedence shall apply (i.e., with this Loan Outline taking precedence over the other documents, the Terms taking precedence over the Philanthropic Loan Request, Project Overview and Promotion Guidelines etc).
3. In this Agreement the words in column 1 of the table below or in clause 1 of the Terms , or shown in “**speech marks**”, have the meanings set out next to them.
4. The Lender wishes to support the Project and, for that purpose, has agreed to provide the Borrower with the Loan for the Purpose.
5. The Lender’s motivation in providing the Loan is supporting the Project rather than making a financial return and they are providing the Loan with that intent rather than as an investment where a financial return is their motivation.
6. The Borrower is seeking the Loan to enable it to progress the Project in pursuit of its charitable objects and/or impact objects.

|  |  |
| --- | --- |
| **TERM[[1]](#footnote-1)** | **MEANING/DETAIL** |
| **Parties** | |
| **Lender** | **Name:** [insert]  **Type of organisation:** [N/A/charity/community benefit society/community interest company][[2]](#footnote-2)  **Registered in:** [England/insert/N/A]  **Registered charity number:** [insert/N/A]  **Registered company number:** [insert/N/A]  **Address:** [insert]  **Email address for notices under this Agreement:** [insert]  **Contact person for notices under the Agreement:** [insert] |
| **Borrower** | **Name of organisation:** [insert]  **Type of organisation:** [charity/community benefit society/community interest company]  **Registered in:** [England/insert]  **Registered charity number:** [insert]  **Registered company number:** [insert]  **Address:** [insert]  **Email address for notices under this Agreement:** [insert]  **Contact person for notices under the Agreement:** [insert] |
| **Other Lenders and Loans** | |
| **Other Philanthropic Loan Agreements** | [Agreements between the Borrower and Other Lenders governing the provision of philanthropic loans to the Borrower for the Purpose and entered into on terms substantially equivalent to the terms of this Agreement/None][[3]](#footnote-3) |
| **Other Lenders** | [The other individuals or organisations (if any) who provide a loan on substantially equivalent terms to this Agreement to the Borrower for the Purpose/None][[4]](#footnote-4) |
| **Lenders** | The Lender and the Other Lenders (if any) |
| **Purpose of Loan** | |
| **Loan Request** | The Philanthropic Loan Request dated [insert]as completed by the Borrower and provided to the Lender and attached to this Agreement |
| **Project** | [insert project name] as detailed in the Project Overview |
| **Project Overview** | The [insert project name] Project Overview received by the Lender from [insert]dated [insert] |
| **Purpose** | [insert brief description] as detailed in Project Overview |
| **Loan payment details** | |
| Loan | £[insert]  This is the amount that the individual Lender agrees to loan |
| **Total Loans** | £[insert]  This is the total amount of philanthropic loans being provided to the Borrower for the Purpose by the Lender and the Other Lenders |
| **Lender’s Share** | [insert]%  This is the % of the Total Loans being provided by the Lender |
| **Loan Date** | The day of payment of the first tranche of the Loan into the Borrower’s Bank Account |
| **Loan Cut Off Date** | The Lender’s offer of a Loan is made on condition that the Project is commenced by [insert date] (“Loan Cut Off Date”).  If the Borrower does not commence the Project by the Loan Cut Off Date then the Lender will not be required to provide the Loan. However, should the Lender choose to do so then the provisions of this Agreement shall continue to apply. |
| **Borrower’s Bank Account** | Bank account name: [insert]  Sort code: [insert]  Account number: [insert]  Reference: [insert] |
| **Payment Terms** | 1. Unless agreed otherwise by the parties, the Loan shall be paid to the Borrower in [insert number eg 4] tranches as follows:-  |  |  |  | | --- | --- | --- | | Tranche | Amount | Payment to be made on/subject to | | 1 | £[insert] | Signature of this Agreement | | 2 |  | Achievement of [insert detail or  cross-reference to Project Outline] | | 3 |  | Achievement of [insert detail or  cross-reference to Project Outline] | | 4 |  | Achievement of [insert detail or  cross-reference to Project Outline] |  1. Before requesting each of the second or any subsequent tranches of the Loan, the Borrower shall provide the Lender with progress reports on key deliverables and fundraising efforts. 2. Subject to the Borrower demonstrating compliance with paragraph 2 of the Repayment Terms and achievement of any milestones/key deliverables identified above, the Lender shall pay each tranche of the Loan into the Borrower’s Bank Account within 5 days of the Borrower requesting them to do so. |
| **Interest** | |
| **Standard Interest Rate** | |  |  | | --- | --- | | **Period[[5]](#footnote-5)** | **Interest rate payable** | | 12 months period from Loan Date | [insert]% | | 12 months period from 1st anniversary of Loan Date | [insert]% | | 12 months period from 2nd anniversary of Loan Date | [insert]% | | 12 months period from 3rd anniversary of Loan Date | [insert]% | |
| **Default Interest Rate[[6]](#footnote-6)** | Whichever is the higher of:-   * 4%; and * 2% above the Bank of England base rate at the time in question |
| **Loan repayment details** | |
| **Quarter Date(s)** | 31 March, 30 June, 30 September, 31 December in each year until the Amount Outstanding has been repaid to the Lender |
| **Loan Period End Date** | The date [insert] years after the Loan Date |
| **Amount Outstanding** | The amount outstanding from time to time of the sum loaned to the Borrower by the Lender under this Agreement, as reduced by any repayments made by the Borrower, or as increased by any interest payments or any other sums which the Borrower is required to pay in accordance with this Agreement |
| **Total Amount Outstanding** | The Amount Outstanding to the Lender plus the Amounts Outstanding due to the Other Lenders under the Other Philanthropic Loan Agreements |
| **Project Related Payments** | All income, grant, fundraising, sponsorship, donation and other payments received by the Borrower relating to the Project, or otherwise agreed by the parties to be used to repay the Total Loans, including:-   * Local Authority or Government payments for the Project * Funds raised from fundraising appeals or lottery/grant applications * Corporate sponsorship of the Project |
| **Repayment Terms[[7]](#footnote-7)** | 1. The Borrower understands that the Lender is trying to use their funds to catalyse as many projects as possible and so is relying on the Borrower to do all that they can to repay the Loan as soon as possible so that the Lender can help with more projects. 2. As soon as practical following the Loan Date, the Borrower will:-    1. Launch a fundraising appeal to raise funds to repay the Total Amount Outstanding;    2. Approach major donors to seek donations towards repayment of the Total Amount Outstanding;    3. Submit applications for appropriate grants and apply for appropriate Government payments related to the Project, in each case subject to such grants and Government payments being consistent with the Project Principles and Special Conditions;    4. Seek appropriate corporate sponsorship of the Project. 3. The Borrower shall use reasonable endeavours to repay the Total Amount Outstanding in full as soon as possible and will prioritise repayment of the Total Amount Outstanding over raising funds for other projects, unless agreed otherwise with the Lenders. 4. Until such time as the Total Amount Outstanding has been repaid to the Lenders in full:-    1. The Borrower shall maintain accounts showing all Project Related Payments received by the Borrower in the period ending on each Quarter Date and shall provide a copy of those accounts to the Lender within 30 days of each Quarter Date together with a report setting out what steps the Borrower has taken to seek Project Related Payments during that period;    2. An amount equal to [insert]% of all Project Related Payments shall be paid to the Lenders in repayment of the Total Amount Outstanding with:-       1. The Lender receiving the Lender’s Share of that payment[[8]](#footnote-8);       2. Payments due up to each Quarter Date paid to the Lender within 30 days of that Quarter Date. 5. All repayments by the Borrower to the Lender shall be applied first to accrued but unpaid interest and second to the outstanding principal amount of the Loan. 6. The Borrower must repay the Amount Outstanding in full by the Loan Period End Date. |
| **Project Principles and Special Conditions** | The Borrower shall ensure that:-  (Add here anything specific which has been agreed in relation to the Project or generally. Don’t need to repeat anything which is already set out in the Loan Request. Examples are shown below)   * The Project must aim to [insert] by [insert date] * The Project must engage key stakeholders within [insert] to [insert]. |
|  | The Borrower will:-   * Adopt a sustainability policy in a form agreed with the Lender (such agreement not to be unreasonably withheld) taking account of the resources and funds available to the Borrower and its primary charitable/community objects and addressing amongst other matters:-   + Reducing the green house gas emissions associated with the Borrower’s operations), with a target of becoming net zero as soon as possible;   + Implementing a sustainable food policy for any catering offered by the Borrower at its events;   + Reducing single use waste throughout the Borrower’s operations and prioritising reuse and purchase of second hand items in place of new;   + Sustainable travel;   + Sustainability training for its staff and volunteers;   + Improving diversity and in particular trying to involve more young people and people from more diverse backgrounds. |
|  | The Borrower will comply with the attached Promotion Guidelines. |

**Philanthropic Loan Terms & conditions (“Terms”)**

## Definitions and interpretation

* 1. In this Agreement, in addition to the Terms defined in the Loan Outline, the following words shall have the following meanings unless the context requires otherwise:-

|  |  |
| --- | --- |
| **TERM** | **MEANING** |
| Business Day | Any day Monday to Friday excluding Bank Holidays in England |
| Event of Default | Any event or circumstance listed in clause 6 |
| Potential Event of Default | Any event or circumstance specified in clause 6 which would (with the expiry of a grace period, the giving of notice, the making of any determination under this Agreement or any combination thereof) be an Event of Default |
| Security | Any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect |

* 1. References in this Agreement to:-
     1. A person includes an individual, corporate body, partnership, government or government department (in each case whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns;
     2. A statute, statutory provision or subordinate legislation (“legislation”) are to the legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation and to any subordinate legislation made from time to time under the legislation;
     3. The clause headings are for convenience only and shall not affect its interpretation; and
     4. This Agreement or any other document are to this Agreement or that document as amended from time to time in accordance with this Agreement.
  2. In this Agreement:-
     1. Use of the singular includes the plural and vice versa, and use of any gender includes all genders; and
     2. Any phrase introduced by the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the meaning of the words preceding those terms.

## The Loan

* 1. On the terms, and subject to the conditions, of this Agreement the Lender agrees to provide the Loan to the Borrower for the Purpose. Unless agreed otherwise by the Lender in writing the Borrower shall use the Loan solely for the Purpose.

## Interest

* 1. Up until the Loan Period End Date, interest shall accrue on the Amount Outstanding at the Standard Interest Rate, such interest to be simple interest calculated on a daily basis, and will be payable to the Lender in addition to the original Loan amount. Accrued interest will not itself bear interest.
  2. If the Borrower fails to:-
     1. Repay any part of the Amount Outstanding by the Loan Period End Date; or
     2. Make any other payment due under this Agreement on the due date for payment

without prejudice to the Lender’s other rights under this Agreement, the Lender shall be entitled to charge interest on the overdue amount from the due date for that payment until that payment is paid, both before and after any judgment, at the Default Interest Rate, such interest to be simple interest calculated on a daily basis.

## Repayment

* 1. The Amount Outstanding shall be repaid as set out in the Loan Outline provided that the Amount Outstanding shall become repayable in full on the Loan Period End Date, unless the Lender agrees in writing to give the Borrower extra time for repayment.

## Warranties and covenants

* 1. The Borrower warrants that entering into this Agreement, borrowing the Loan and implementing the Project:-
     1. Have been approved by the Borrower’s trustees and/or directors (as appropriate);
     2. Are permitted under its constitution and do not breach any agreement or instrument binding on the Borrower or its assets; or any law or regulation or judicial order applicable to it.
  2. The Lender warrants that:-
     1. Entering into this Agreement and providing the Loan:-
        1. Have been approved by the Lender’s trustees and/or directors and are permitted under its constitution (as appropriate and to the extent applicable);
        2. Do not breach any agreement or instrument binding on the Lender or their assets; or any law or regulation or judicial order applicable to the Lender;
     2. They have full authority to make the Loan; and
     3. The money used to make the Loan does not constitute the proceeds of crime.
  3. Whilst the Amount Outstanding remains outstanding, the Borrower agrees:-
     1. To promptly notify the Lender and provide the Lender with copies of any relevant notices) of any:-
        1. Sums that may be overdue to any of its creditors;
        2. Notices it receives regarding payments being overdue or commencing or threatening that any legal action may be taken against it;
        3. Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) on becoming aware of its occurrence;
     2. To promptly provide the Lender with such financial or other information, as the Lender may from time to time reasonably request, relating to the Project or the Borrower’s ability to repay the Loan;
     3. To carry on its activities in accordance with its charitable/impact objects, all relevant laws and codes of practice.

.

## Events of Default

* 1. In this Agreement, an Event of Default means any of the following:-
     1. The Borrower fails to pay any sum payable under this Agreement by its due date unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within 20 Business Days of its due date;
     2. The Borrower fails to comply with any provision of this Agreement and such default is not remedied within 20 Business Days of the Lender notifying the Borrower of the default and the remedy required;
     3. The Borrower ceases to operate in accordance with its charitable, community or impact objects;
     4. The Borrower fails to comply with any of the Project Principles and Special Conditions and fails to remedy such breach within 90 days of written notice from the Lender requiring it to do so. Any dispute as to whether the Project is being managed in accordance with the Project Principles and Special Conditions or the Borrower is in breach of any of the Project Principles and Special Conditions shall be addressed in accordance with clause 9;
     5. Any of the Borrower’s creditors become entitled to declare any of the Borrower’s debts due and payable prior to their stated maturity by reason of an Event of Default;
     6. The Borrower stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due;
     7. The Borrower is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or has an order made declaring it bankrupt or granting a moratorium over repayment of its debts or has a liquidator, administrator, receiver, manager, trustee or similar officer appointed over all or any material part of its assets (or a court application is made for this purpose) or has possession taken over all or a material part of its undertaking or proposes or enters into a composition or arrangement with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or is subject to any analogous event or proceedings in any applicable jurisdiction;
     8. The Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any obligation they have to pay or repay money, present or future, whether actual or contingent, sole or joint (because of actual or anticipated financial difficulties);
     9. Any provision of this Agreement is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect;
     10. The Borrower repudiates or shows an intention to repudiate this Agreement; or
     11. Any event occurs (or circumstances exist) which, in the reasonable opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this Agreement.
  2. At any time after an Event of Default has occurred that has not been remedied, the Lender may, by notice to the Borrower declare that the Amount Outstanding due to them is immediately due and payable, whereupon it shall become immediately due and payable.
  3. The Borrower shall pay, on-demand, all reasonable costs and expenses (together with any value-added tax on them) that the Lender incurs in connection with the enforcement of the Amount Outstanding.

## Assignment and transfer and death of a Lender

* 1. The Borrower may not assign any of its rights nor transfer any of its rights or obligations under this Agreement.
  2. Upon the death of a Lender, this Agreement shall remain in full force and effect, the terms for repayment of the Amount Outstanding will remain as set out in this Agreement and the rights and obligations of such Lender shall pass to that Lender’s personal representatives.

## Notices and approvals

* 1. Any approval, consent, authorisation or agreement required to be given by any party in this Agreement must be in writing (which includes email).
  2. Any notice given under this Agreement must be in writing and sent or delivered by hand, first-class post, recorded delivery or email to the relevant party at the address set out in the Loan Outline (or such other address notified for this purpose by that party). Notices sent or delivered in this way shall be deemed to have been given as follows:-
     1. If delivered by hand – when deposited at the appropriate address;
     2. If sent by first class post or recorded delivery – 2 Business Days after posting; or
     3. If sent by email – on the next Business Day provided that the email has been acknowledged by the recipient or if it hasn’t been, a copy of such notice is sent by hand, first-class post or recorded delivery within one Business Day.
  3. In all cases a copy of the notice shall also be sent by email. Notwithstanding the above provisions of this clause 8 any notice which is acknowledged by the recipient shall be deemed to have been properly served.

## Dispute resolution

* 1. The parties shall use their reasonable efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement (or its construction, validity or termination) ("Dispute"). Any Dispute shall be referred first, by notice in writing setting out the nature of the Dispute (“Dispute Notice”), to a senior representative of the Borrower who shall meet with the Lender within 20 days of such notice and endeavour in good faith to resolve the Dispute between them.
  2. If the Dispute is not resolved in accordance with clause 9.1, the parties shall seek to resolve the Dispute amicably by using an alternative dispute resolution (“ADR”) procedure agreed between them or in the absence of agreement, recommended on the application of any party by the Centre for Effective Dispute Resolution (“CEDR”) and:-
     1. The ADR shall be conducted by a mediator or expert appointed by mutual agreement between the parties or in the absence of agreement nominated by CEDR;
     2. The ADR shall be conducted without prejudice to the rights of any of the parties in any legal proceedings; and
     3. The parties agree to:-
        1. Co-operate fully with any mediator or expert appointed;
        2. Provide such assistance as is necessary to enable the mediator or expert to discharge their duties; and
        3. Bear equally between them (or on such other basis as the mediator or expert shall determine) the fees and expenses of the mediator or expert.
  3. If a party fails or refuses to participate in the ADR procedure, or repeatedly fails to comply with any timescales set out in the ADR procedure, or if the Dispute is not resolved to the satisfaction of the parties within 90 days of the date of the Dispute Notice then any party shall be free to issue court proceedings in relation to the Dispute.

## General

* 1. Subject to clause 7.2, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.
  2. This Agreement contains the entire agreement between the parties with respect to the Loan to the Borrower by the Lender and supersedes and replaces all previous agreements, whether verbal or written, relating to the Loan to the Borrower by the Lender. Each of the parties acknowledges that in entering into this Agreement they have not relied upon any representation save for the representations set out in this Agreement. The provisions of this clause 10.2 shall not exclude liability for any fraudulent representation.
  3. Each party warrants that they have full capacity and authority to enter into and perform their obligations in this Agreement.
  4. No failure or delay on the part of any of the parties to exercise any of their rights under this Agreement shall operate as a waiver of those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise of the right. Any waiver by any of the parties of any breach by the other of any of that party’s obligations under this Agreement shall not affect the rights of that party in the event of any further or additional breach or breaches. No waiver shall be binding unless made in writing by the party against which it is asserted. Unless specifically provided otherwise, rights arising under this Agreement are cumulative.
  5. If any provisions of this Agreement are held by any court or other competent authority to be illegal or unenforceable in whole or in part, all other provisions (and the remainder of the affected provisions) will remain in full force and effect.
  6. Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.
  7. This Agreement shall in all respects be governed by and construed in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the courts of England.

**AGREED** by the parties on the dates set out below

|  |  |
| --- | --- |
| **Signed on behalf of the Borrower by:-** | **Signed the Lender/ on behalf of the Lender:-:-** |
| **Insert name:**  **Insert title:** | **Insert name:**  **Insert title:** |
| Signature: | Signature: |
| Date: | Date: |

Annex 1 –Philanthropic Loan Request

The Loan Request below is included in this Agreement for information only. A few of the details of the acquisition and Loan have changed since the Loan Request was sent to Lenders. These changes are reflected in the Loan Outline and Terms above, which take precedence over the Loan Request document.

Attached

Annex 2 - Project Overview

Attached

Annex 3 – Promotion Guidelines

Attached

1. Note – This is hopefully set out in a manner that makes it easy to follow and complete. The Terms are not in alphabetical order, but topics such as Purpose and Financial details are grouped together [↑](#footnote-ref-1)
2. Where the Lender is an individual select N/A in this section as appropriate [↑](#footnote-ref-2)
3. If there are no other Lenders select None and delete wording before it [↑](#footnote-ref-3)
4. If there are no other Lenders select None and delete wording before it [↑](#footnote-ref-4)
5. Note – only list years up to the Loan Period End Date [↑](#footnote-ref-5)
6. Do not delete this. This is the **default** interest rate that applies if the Borrower fails to pay to the Lender the sums it has agreed to pay within the agreed timescales [↑](#footnote-ref-6)
7. If you have agreed different repayment terms, eg because repayment will be linked to a particular grant which the Borrower will receive once the Project has been started then amend as appropriate. [↑](#footnote-ref-7)
8. Ie if the Lender provided 25% of the Total Loans the Lender’s Share is 25% and they will receive 25% of the payment [↑](#footnote-ref-8)