



Scottish  
Forestry  
Coilltearachd  
na h-Alba

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# LOAN AGREEMENT

## SMALL WOODLANDS LOAN SCHEME

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LOAN AGREEMENT NUMBER:

PARTIES TO THIS LOAN:

- 1) Scottish Ministers
- 2)

Date:

**THIS IS A SAMPLE DOCUMENT AND MAY NOT  
NECESSARILY REFLECT THE LATEST VERSION, TERMS  
AND CONDITIONS FOR THE SMALL WOODLANDS  
LOAN SCHEME. ALWAYS READ YOUR OWN  
AGREEMENT FULLY BEFORE SIGNING.**

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**This agreement** is made on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**Between:**

- (1) **The Scottish Ministers** at 231 Corstorphine Road, Edinburgh, EH12 7AT (the **Lender**)
- (2) **BUSINESS NAME** under Business Reference Number (BRN) **BRN** of/whose registered address is at **ADDRESS** and who is the owner of the land associated with the Project (the **Borrower**)

**Background:**

The Small Woodlands Loan Scheme (**SWLS**) is managed by Scottish Forestry on behalf of the Scottish Ministers. Pursuant to the SWLS and subject to the terms and conditions of this Agreement the Lender has agreed to provide the Borrower with a loan facility.

**It is agreed** as follows:

**1 Definitions and interpretation**

Words and expressions used in this agreement are as defined below.

- 1.1. **Alternative Project** means any other project at or using the whole or part of the Site;

**Business Day** means a day when banks and other financial institutions are open for business in Edinburgh;

**Eligible Works** means works that are required to be carried out by the Borrower in order to complete the Project;

**Event of Default** means each of those events set out in clause 13;

**FGS Contract** means the approved and agreed Forestry Grant Scheme contract under the reference number **FGS NUMBER** to which this loan agreement relates;

**FGS Grant** means the sums advanced to the Borrower pursuant to the FGS Contract;

**FOISA** means the Freedom of Information (Scotland) Act 2002;

**Interest Rate** means the most current Bank of England Base Rate plus 3%.

**Project** means the woodland creation capital works as detailed in the Borrower's approved and agreed FGS Contract;

**Site** means the property upon which the Project is intended to be carried out.

**Woodland Creation Options** means one of the nine grant options as listed under the 'Woodland Creation' heading on the Forestry Grant Scheme website.

References in this agreement to:

- 1.2. any statute, statutory instrument, order, regulation or guidance shall be construed so as to include any amendments, re-enactments or revisions;
- 1.3. the singular shall include the plural and any gender shall include the other gender where the context so dictates;
- 1.4. headings shall be for reference purposes only and do not form a part of this agreement;
- 1.5. 'you', 'your' or 'yours' refer to the Borrower;
- 1.6. 'we', 'us' or 'our' refer to the Scottish Ministers; and
- 1.7. where the term "Borrower" includes one or more persons then the obligations of each such person shall be joint and several obligations.

## **2 Amount**

- 2.1 In accordance with the terms of this agreement the Scottish Ministers shall make available to the Borrower a loan facility (the **Facility**) of £**VALUE** (the **Commitment**).
- 2.2 Subject to the terms of this agreement generally, the Borrower shall be entitled to draw down on the Facility (the **Payment**) on satisfaction of the conditions set out in clause 4, and in accordance with clause **Error! Reference source not found.**, below.

## **3 Purpose**

In advance of claiming for an FGS capital claim for grant, the Borrower shall use the Facility to pay invoices in respect of Eligible Works incurred in connection with the Project being carried out in accordance with the FGS Contract.

## **4 Initial conditions**

- 4.1 The Scottish Ministers shall not be obliged to advance the Payment until it has received, in a form and substance satisfactory to the Scottish Ministers:
  - 4.1.1 evidence that the execution and performance by the Borrower of this Agreement has been duly authorised and approved by the Borrower and the Lender;
  - 4.1.2 evidence that the execution and performance by the Borrower of the FGS Contract has been duly authorised and approved by the Borrower and the Lender; and
  - 4.1.3 evidence that the conditions of the FGS Contract and of the Small Woodlands Loan Scheme (the **SWLS**) under which the loan is made as set out in Clause 12 are being met by the Borrower.
- 4.2 The Borrower is applying for an FGS woodland creation application that contains no more than 50 hectares and/or does not exceed £250,000 (two hundred and fifty thousand pounds) in grant value.
- 4.3 The Borrower is not in receipt of any other SWLS loan in the businesses name obtained.

- 4.4 The Borrower has satisfied in full any other loan in its name previously obtained under the SWLS and discharged all obligations under the terms of that loan.

## **5 The Payment**

The Borrower may request the Payment by returning this Agreement and the FGS Contract, signed by a person of authority, to the Scottish Ministers within the specified timescales. Scottish Forestry, on behalf of Scottish Ministers, will then agree and sign both the SWLS agreement and the FGS Contract. Subject to the remaining terms of this Agreement, the Payment will only be advanced where:

- 5.1 no Event of Default is continuing; and
- 5.2 in the reasonable opinion of the Scottish Ministers the Project remains potentially viable.

## **6 Subsidy Control**

- 6.1 No interest is applied to the sums advanced to the Borrower by the Scottish Ministers under this Agreement. The difference between this sum and the sum that would have been payable in interest at a commercial rate represents subsidy control arrangements. It is the Borrower's responsibility to keep a record of all aid received by it under all subsidy control schemes and, in accepting the Payment, the Borrower is accepting any limits will not be breached.

## **7 Repayment**

- 7.1 The Facility shall be repaid by way of set off against the payment of the FGS capital claim for grant made for FGS Contract such that the value of the Facility shall automatically be deducted from the FGS claim for grant payment. The amount deducted will equate to that advanced to you by way of the Small Woodlands Loan.
- 7.2 In the event that there exists no FGS claim for grant from which to deduct payment of the Facility in accordance with clause 7.1, the value of the Facility shall automatically be deducted from any other payments made to you by or on behalf of the Scottish Ministers.
- 7.3 For the avoidance of doubt, in the event that the Facility, or any part of it, is not repaid in accordance with this clause [7], you will be liable to pay interest at the Interest Rate on the full sum of the Facility or any balance outstanding, until repayment is made.
- 7.4 Where an event of default occurs, as described in clause [13], you will be liable to pay interest at the Interest Rate on the full sum of the Facility or any balance outstanding, until repayment is made.

## **8 Mandatory repayment**

All sums Loaned under this agreement shall become immediately due and payable to the Scottish Ministers on the first of the following events (each a **Mandatory Repayment Event**) occurring:

- 8.1 You notify the Scottish Ministers that you are not going to complete the work in accordance with FGS contract;
- 8.2 the Project is not completed before the end of the FGS claim year, as detailed in the FGS Contract, or the following Claim year in which the Loan was paid;
- 8.3 a claim for all of the capital works within the FGS Contract is submitted in accordance with the FGS Contract;
- 8.4 the Borrower enters into any licence, lease, or other transfer (or any other agreement having a comparable effect of such arrangements) of any interest in the Site (or any part of it) with any third party in relation to the development, construction or operation of the Project.
- 8.5 The Commitment will be held against the Borrower and in the Event of Default following a Mandatory Repayment Event may be offset against future payments to the Borrower.
- 8.6 You are required under the terms of the FGS Contract to repay any grant paid to you pursuant to the SWLS.
- 8.7 The early termination of the SWLS in accordance with [clause 12] of the FGS Contract.
- 8.8 Any breach of the FGS Contract.

## **9 Early Repayment**

The Borrower may repay (in full) the loan to the Scottish Ministers early, without any premium or penalty, by notifying the Scottish Ministers of their intention. The notice must specify the amount of the repayment and the reason(s). Early repayment of the loan does not affect the Borrower's on going obligations under this Agreement including those set out in clause 12 of this agreement.

## **10 Borrower obligations**

The Borrower shall:

- 10.1 give written notice to the Scottish Ministers of any agreement entered into by the Borrower (or any affiliate or other related entity) in relation to any Alternative Project;
- 10.2 ensure that it complies with all applicable laws and that all licences and consents relevant to the Project are obtained and observed at all times;
- 10.3 notify the Scottish Ministers in writing as soon as becoming aware of:
  - 10.3.1 the occurrence of any Event of Default;
  - 10.3.2 any material change to any information previously provided to the Scottish Ministers pursuant to this agreement and/or the Project generally.

## **11 Representations and Warranties**

- 11.1 The Borrower makes each of the representations and warranties set out in this Clause [11].
- 11.2 The rights and remedies of the Scottish Ministers in respect of any misrepresentation or breach of warranty on the part of the Borrower shall not be prejudiced or affected by any investigation of the Borrower or any other person by or on behalf of the Scottish Ministers or (without limitation) any other matter which but for this provision would or might prejudice or affect any such rights or remedies.
- 11.3 The Borrower has the power (and all necessary corporate authorisations have been obtained) to enter into the Agreement to which it is a party and to perform its obligations under the Agreement and has complied, or will comply, with all material statutory and other legal requirements relative to its business.
- 11.3 The Borrower warrants that all information it has provided to the Scottish Ministers in connection with or in contemplation of this Agreement (including, without limitation, information contained in the Borrower's application form and information communicated verbally) is true, accurate and complete in all respects.
- 11.4 No limit on the powers of the Borrower will be exceeded as a result of the borrowing contemplated by this Agreement.
- 11.5 Upon execution of this Agreement by the Borrower, this Agreement:
- 11.5.1 will constitute legal, valid and binding obligations of the Borrower enforceable in accordance with its terms;
  - 11.5.2 does not and will not breach any law or regulations applicable to the Borrower;
  - 11.5.3 does not and will not breach the constitution of the Borrower; and
  - 11.5.4 does not and will not breach any agreement or instrument by which the Borrower is bound, or constitute a default or termination event (however described) under any such agreement or instrument or breach any judgment, decree, judicial order or determination of any court or applicable national or supranational judicial governmental authority.
- 11.6 All authorisations required or desirable to enable the Borrower lawfully to enter into, exercise its rights and comply with its obligations under this Agreement and to make it admissible in evidence in Scotland have been obtained or effected and are in full force and effect.
- 11.7 All authorisations necessary for the conduct of the business of the Borrower have been obtained or effected and are in full force and effect.

## **12 Indemnity**

The Borrower shall indemnify the Scottish Ministers against any loss (including interest) or expense which the Scottish Ministers shall certify as sustained or incurred by it:

- 12.1 as a consequence of any default in repayment of the Loan on the due date; or
- 12.2 as a consequence of the occurrence of any other Event of Default.

### **13 Default**

the Scottish Ministers may demand immediate repayment of, or place on demand, all sums owed under this agreement or may reduce, suspend or withhold payment of the Payment, if it knows or reasonably suspects that one or more of the following events has occurred and is continuing:

- 13.1 the Borrower uses or has used all or any part of any of the Payment for a purpose other than a purpose permitted by clause 3 of this Agreement;
- 13.2 the Borrower breaches any of its obligations and/or conditions under this Agreement and in the case of breaches capable of remedy fails to remedy them to the satisfaction of the Scottish Ministers within 30 days or earlier of the date it receives notice of such breach from the Scottish Ministers, or upon becoming aware of such breach;
- 13.3 the Borrower ceases or fails to comply with any of the conditions of the SWLS as set out in clause 16;
- 13.4 any information that the Borrower provided to the Scottish Ministers in relation to the loan (in the loan application or otherwise) is subsequently found to be materially untrue, inaccurate or incomplete;
- 13.5 the Borrower becomes bankrupt, insolvent, has an administrator or receiver or administrative receiver appointed over it or over any part of its undertaking or assets or the Borrower passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the Borrower shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order or shall cease to carry on business;
- 13.6 a requirement is imposed by applicable law which requires that the loan should be varied, withheld, reduced, cancelled or recovered; or
- 13.7 it becomes apparent that monies advanced or to be advanced to the Borrower under this agreement will result in a breach of the rules relating to Subsidy Control.

### **14 Recovery of costs**

The Borrower shall, on demand, pay the Scottish Ministers the amount of all costs and expenses reasonably incurred by the Scottish Ministers in connection with enforcing or preserving any rights under this Agreement. Any costs and expenses shall increase the amount owed under this Agreement and interest shall be calculated monthly at the Interest Rate from the date of demand.



## **15 Payments and Tax**

All Payments made by the Borrower pursuant to this Agreement:

- 15.1 shall be made without set-off or counterclaim in same day funds to such account of the Scottish Ministers as the Scottish Ministers shall notify the Borrower from time to time.
- 15.2 shall be made free and clear of and without deduction or future taxes (including, without limitation, VAT, stamp duty land tax, corporation tax, income tax, capital gains tax and any penalty or interest payable in connection with any failure to pay or any delay in paying the same), levy, duties or other charges or withholdings ("Tax"). If the Borrower is compelled by law to deduct or withhold any Tax it will ensure that such deduction or withholding does not exceed the minimum liability therefor and will promptly pay to the Scottish Ministers such additional amount as is necessary to ensure that the net amount received by the Scottish Ministers is equal to the amount payable by the Borrower had there been no deduction or withholding.
- 15.3 The Borrower shall within twenty Business Days of demand pay to the Scottish Ministers an amount equal to the loss, liability or cost which the Scottish Ministers determine will be or has been (directly or indirectly) suffered for or on account of Tax by the Scottish Ministers in respect of this Agreement. The Borrower shall pay and, within twenty Business Days of demand, indemnify the Scottish Ministers against any cost, loss or liability that the Scottish Ministers incur in relation to any Tax payable in respect of this Agreement.
- 15.4 All amounts expressed to be payable to the Scottish Ministers under this Agreement which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and if VAT is or becomes chargeable on any supply made by the Scottish Ministers to the Borrower under this Agreement and the Scottish Ministers are required to account to the relevant tax authority for the VAT, the Borrower shall pay to the Scottish Ministers (at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and the Scottish Ministers must promptly provide an appropriate VAT invoice to the Borrower).

## **16 Conditions & Declarations**

By completing and signing this Agreement at [25], you agree to the following conditions and declare that:

- 16.1 you acknowledge that if you accept a SWLS offer and/or are in receipt of a loan payment, then you agree to allow the Scottish Ministers to publish details of your loan-assisted woodland creation work and you agree to provide reasonable access to the Site and to project staff for other project groups or businesses wishing to learn from the Project;
- 16.2 you agree that by accepting this loan, you confirm that you are not in receipt of any other SWLS loans or SWLS payments and you confirm that you will not apply for SWLS loans for any other woodland creation projects until this loan agreement is discharged;
- 16.3 you understand that all the capital items contained within the FGS Contract must be claimed together in only one FGS claim for capital grant which, in accordance with FGS terms and conditions, will be once all the capital

works, as laid out in the FGS contract's schedule of works, have been completed and that you will have to make a mandatory repayment of the Loan before you can make separate FGS capital claim applications and/or before You can vary the FGS Contract.

- 16.4 You understand that you can make no request to vary or alter the FGS Contract to reduce the capital value by greater than 10% of the original capital value and that you will have to make a mandatory repayment of the Loan before You can vary the FGS Contract.
- 16.5 You understand that you can make no request to vary or alter the FGS Contract to change any claim years associated with any capital items to a claim year that is not the following claim year to the claim year in which the Loan was paid and that you will have to make a mandatory repayment of the Loan before you can vary the FGS Contract.
- 16.6 You agree to complete all works, in connection to the woodland creation Project covered by the FGS Contract, in accordance with any obligations, specifications, and conditions stated in the FGS Contract.
- 16.7 You agree that all Eligible Works, in connection to the woodland creation Project covered by the FGS Contract, will be planned and implemented in accordance with the UK Forestry Standard and any other legislation relevant to the Project.
- 16.8 You agree to comply with all of your obligations under the SWLS and pursuant to the FGS Contract.
- 16.9 You confirm that your woodland creation proposal is less than 50 hectares and does not exceed a total FGS Contract value of £250,000;
- 16.10 You understand that by signing this agreement you confirm that you, to the best of your knowledge and belief, meet all the eligibility criteria required as laid out in the SWLS scheme guidance and the terms and conditions set out in this loan agreement;
- 16.11 You have read and understand this agreement fully and, to the best of your knowledge and belief, the information given in this agreement and the FGS Contract is complete, true, and accurate; and further you accept that any false or misleading information provided in this agreement or the FGS Contract constitutes an offence and may result in any funding and/or permissions based on this agreement or the FGS Contract being reclaimed or revoked at any time; and,
- 16.12 You have the necessary consents/permissions to sign this loan agreement declaration as evidenced on the administrative system, RP&S, to which the FGS Contract relates.

## **17 Confidentiality**

- 17.1 Subject to Clauses [17.2] and [17.3], each party shall treat the other party's Confidential Information as confidential, and shall not disclose it to any other person without the owner's prior written consent.
- 17.2 Clause [17.1] shall not apply to the extent that:

- 17.2.1 such disclosure is a requirement of law;
- 17.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 17.2.3 such information was obtained from a third party without obligation of confidentiality; or
- 17.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement.
- 17.3 Nothing in this Agreement shall prevent either party from disclosing the other party's Confidential Information:
  - 17.3.1 to any consultant, contractor or other person engaged by either Party; or
  - 17.3.2 for the purpose of the examination and certification of the Borrower's accounts.
- 17.4 The Borrower acknowledges that the Scottish Ministers are subject to the requirements of the FOISA and the Borrower shall assist and co-operate with the Scottish Ministers to enable them to comply with their information disclosure obligations.
- 17.5 The Scottish Ministers shall be responsible for determining in its absolute discretion whether Information (as defined in section 73 of FOISA) is exempt from disclosure in accordance with the provisions of the FOISA.

## **18 Notices**

Notices in connection with this agreement shall be in writing addressed in the case of the Scottish Ministers to the address specified on the first page of this agreement and in the case of the Borrower to the preferred communication address of the Borrower as held by the Scottish Ministers.

## **19 Disclaimer**

Neither the Scottish Ministers nor the Scottish Ministers' representatives are responsible or liable to the Borrower or to any third party for any services provided or work performed for which monies are advanced for the Eligible Works under this Agreement. It is the Borrower's responsibility to carry out its own checks to ensure that services purchased using loan monies are adequate and appropriate for the Borrower's needs and that appropriately qualified personnel are used.

## **20 No assignment**

- 20.1 Any offer of loan made by the Scottish Ministers is personal to the Borrower and accordingly the Borrower is not entitled to assign, transfer or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of the Scottish Ministers.
- 20.2 the Scottish Ministers may assign, transfer or dispose of any of its rights or obligations under this agreement and will give the Borrower notice within 30 days of any such assignment, transfer or disposal.

## **21 Information**

- 21.1 Where requested the Borrower shall prepare and submit to the Scottish Ministers a report on the outputs of the Project and any other pertinent information relating to the Project as specified in the request. The report shall be in such form and contain such information as may reasonably be specified by the Scottish Ministers.
- 21.2 the Scottish Ministers shall be entitled to use, publish or otherwise disclose to third parties the reports, studies and information provided pursuant to clauses [16.1] and [21.1] for the purposes of assessing the viability of similar projects and assessing lessons learned.
- 21.3 The Borrower shall be responsible at its own cost for granting or procuring the grant of such licences or permissions (whether from contractors or otherwise) as may be necessary to give effect to clause 21.2 above.

## **22 Registration**

The Borrower consents to the registration of this Agreement for preservation or execution.

## **23 Entire agreement**

- 23.1 This Agreement together with the FGS Contract and supporting documents submitted to the Scottish Ministers by the Borrower shall constitute the entire agreement and understanding, and shall supersede any previous agreement(s), between the parties in connection with the subject matter of this agreement.
- 23.2 Nothing in this Agreement shall operate to limit or exclude any liability for any fraudulent misrepresentation or for any other matter in respect of which liability cannot be lawfully be limited or excluded.

## **24 Governing law**

This agreement shall be governed by Scots law and any dispute or claim arising out of or in connection with the agreement shall be subject to the exclusive jurisdiction of the Scottish courts.

## 25 Signatures

This agreement is between the Scottish Ministers and **BORROWER** (the **Borrower**).

This signature page to the Loan Agreement consisting of this, the preceding 11 pages, and any additional schedules are subscribed on the date shown by the persons whose designations are shown below.

By signing this agreement you declare that you have read, understand and accept this agreement and, in particular, the conditions and declarations contained in clause 16, and hereby acknowledge that Scottish Ministers may use any of the personal data contained in or relating to this loan application in accordance with the terms of [Scottish Forestry's Privacy Notice](#) and the [Rural Payments and Services Privacy Policy](#).

SIGNATORY: THE SCOTTISH MINISTERS	
FOR AND ON BEHALF OF <b>THE SCOTTISH MINISTERS</b>	
SIGNED BY:	
PRINT:	
TITLE:	

SIGNATORY: THE BORROWER	
FOR AND ON BEHALF OF <b>BUSINESS</b>	
SIGNED BY <sup>1</sup>	
PRINT:	
TITLE:	

### Right to Cancel

In accordance with the Consumer Credit Sourcebook (CONC), as shown on the [Financial Conduct Authority](#) website, you have the right to cancel a distance contract, without penalty and without giving any reason, within 14 calendar days. If you wish to cancel you must write to your agreement issuing Scottish Forestry office to that effect within 14 calendar days.

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<sup>1</sup> Signatory must be legally entitled to sign contracts on behalf of the business shown and must also be mandated to sign the FGS Contract as per the information held by Scottish Ministers.