

**DATED**

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**LOAN AGREEMENT**

**between**

**CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL**

**and**

**[NAME]**

**SUZAN HEMINGWAY, CITY SOLICITOR, CITY HALL, BRADFORD, BD1 1HY**

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**THIS LOAN AGREEMENT** is dated

## **PARTIES**

- (1) **CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** of City Hall, Bradford, BD1 1HY (**Lender**).
- (2) **[NAME] [ADDRESS]** (**Borrower**).

## **BACKGROUND**

- (A) The Lender in its Scheme for Financing Schools (as defined below) has included a loan scheme arrangement.
- (B) The Borrower is a school who is eligible to apply for a loan under the loan scheme arrangement.
- (C) The Lender has agreed to provide the Borrower with an unsecured term loan of [...] for the purpose of [...], in accordance with the terms of this loan agreement.

## **AGREED TERMS:**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Business Day:** a day other than a Saturday or a Sunday

**Event of Default:** any event or circumstance listed in clause 10.

**Loan:** the principal amount of the loan made or to be made by the Lender to the Borrower under this agreement or (as the context requires) the principal amount outstanding for the time being of that loan.

**Potential Event of Default:** any event or circumstance specified in clause 10 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.

**Repayment Instalment:** each scheduled instalment for the repayment of the Loan under clause 5.

**Scheme for Financing Schools:** the Lender's scheme for financing schools, which includes the Maintained Schools' Capital Loans Protocol; as updated from time to time [in accordance with statutory guidance];

**Sterling and £:** the lawful currency for the time being of the United Kingdom.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A reference to **this loan agreement** (or any provision of it) or any other document shall be construed as a reference to this loan agreement, that provision or that document as it is in force for the time being and as amended, varied or supplemented from time to time in accordance with its terms, or with the agreement of the relevant parties.
- 1.4 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts.

## 2. THE LOAN

In accordance with the Maintained Schools' Capital Loans Protocol (as set out in the Scheme for Financing Schools section 4.10), the Lender grants to the Borrower an unsecured Loan of a total principal amount not exceeding £[...] [which shall be a maximum of 50% of the overall costs of the works however, loans for a greater proportion of the cost may be approved in exceptional circumstances and for loans relating to solar panel schemes] on the terms, and subject to the conditions, of this loan agreement.

## 3. PURPOSE

- 3.1 The Borrower shall use all money borrowed under this agreement for [insert purpose for which loan is to be used as per 2.1 or 2.4 of the Maintained Schools' Capital Loans Protocol] [and shall match fund a maximum of 50% of the overall cost of works from the school's revenue [or capital delegated resources]].
- 3.2 The Lender is obliged to monitor and verify how any amount advanced under this loan agreement is used.

## 4. LEGAL STATUS

- 4.1 A change in the legal status of the school or governing body, such that the school ceases to be a maintained school or the governing body is replaced by an Interim Executive Board shall not affect the validity of this loan agreement. In such circumstances, this loan agreement shall be binding on any successor body to the school or governing body, which can be:
- (a) any other school; or

- (b) any other body established by legislation in order to perform any of the functions that had previously been performed by the school or governing body such as an Interim Executive Board ; or
- (c) any private sector body, which substantially performs the functions of the school.

**5. REPAYMENTS**

- 5.1 The repayment arrangements together with interest payments are as follows.
- 5.2 The Borrower shall repay the Loan in full by repaying the Repayment Installment set out below opposite each Repayment Date on that Repayment Date.

For Example Purposes Only

Payment Date	Payment	Principal	Interest	Balance
				£30,000
2015	£6,000	£5,961	£39	£24,000
2016	£6,000	£5,961	£39	£18,000
2017	£6,000	£5,961	£39	£12,000
2018	£6,000	£5,961	£39	£6,000
2019	£6,000	£5,961	£39	£0

- 5.3 The school shall have the option to repay the value of the Loan in a shorter timescale than as set out in clause 5.2 above.
- 5.4 Without any obligation upon the Lender to do so, the Lender shall be entitled to allow the Borrower extended time to pay or grant any other indulgence to the Borrower without affecting any of the rights of the Lender in whole or in part.

**6. INTEREST**

- 6.1 The Borrower shall pay interest on the Loan at the rate of [insert interest rate determined in accordance the Section 4.10 (Capital Loans Scheme) of the Scheme of Financing Schools].
- 6.2 If the Borrower fails to make any payment due under this agreement on the due date for payment, interest on the unpaid amount shall accrue daily, from the date of non-payment to the date of actual payment (both before and after judgment), at 1% above the rate specified in clause 6.1.

**7. COSTS**

7.1 The Borrower shall pay, in advance or added to the loan if agreed, the sum of [£x] in respect of the arrangement fee

**8. PAYMENTS**

8.1 All payments made by the Borrower under this agreement shall be in Sterling and in immediately available cleared funds to the Lender at its account number [ACCOUNT DETAILS] with [BANK] of [ADDRESS] [SORT CODE] or any other account as the Lender may notify the Borrower.

8.2 If any payment becomes due on a day that is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day, or, if that Business Day falls in the following calendar month, such due date shall be the immediately preceding Business Day.

8.3 All payments made by the Borrower under this agreement shall be made in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding.

**9. REPRESENTATIONS AND WARRANTIES**

9.1 The Borrower represents and warrants on the date of this agreement:

9.2 It:

- (a) is a governing body of a school(s) maintained by the Council which is a school(s) falling within one of the categories of schools set out in Section 20 (New Categories of maintained schools) of the School Standards and Framework Act 1998; and
- (b) is a statutory corporation determined according to an instrument of government made under section 20 of the Education Act 2002 and
- (c) has the power to borrow money as provided by paragraph 3 and 4 of Schedule 1 of the Education Act 2002. .

9.3 It will make adequate provision in the school budget for the loan payments to be made

9.4 [It will match fund from the school's revenue or capital delegated resources a maximum of 50% of the overall costs of the works and can demonstrate that the match funding and the repayment of the Loan is affordable from the school's delegated resources.]

- 9.5 It will not use the Loan to support day to day expenditure within the school's revenue budget.
- 9.6 It has the power and authority to execute, deliver and perform its obligations under this agreement and the transactions contemplated by it. No limit on its powers will be exceeded as a result of the borrowing contemplated in this agreement.
- 9.7 The execution, delivery and performance of the obligations in, and transactions contemplated by, this agreement, do not and will not contravene or conflict with:
- (a) its constitutional documents;
  - (b) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
  - (c) any law or regulation or judicial or official order, applicable to it.
- 9.8 No Event of Default or Potential Event of Default has occurred or is continuing, or is reasonably likely to result from making the Loan or the entry into, the performance of, or any transaction contemplated by this loan agreement.
- 9.9 No litigation, arbitration or administrative proceedings are taking place, pending or, to the Borrower's knowledge, threatened against it, any of its governors or any of its assets[, which, if adversely determined, might reasonably be expected to have a material adverse effect on its operations, assets or condition, or its ability to perform its obligations under this loan agreement].
- 9.10 Its audited financial statements for the year ended [DATE] have been prepared in accordance with the requirements of Section 2 (Financial Requirements) of the Scheme for Financing Schools (Version 12, April 2014) and consistently applied accounting principles, standards and practices generally accepted in the UK and present a true and fair view of its financial condition and operations during the relevant accounting period and must not be approved by the Borrower's members unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and surplus or loss of the School.
- 9.11 The information, in written or electronic format, supplied by, or on its behalf, to the Lender in connection with the school and this loan agreement was, at the time it was supplied or at the date it was stated to be given, to the best of its knowledge and belief:

- (a) if it was factual information, complete, true and accurate in all material respects;
- (b) if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair and made on reasonable grounds; and
- (c) if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
- (d) not misleading in any material respect, nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Borrower to the Lender.

## **10. EVENTS OF DEFAULT**

- 10.1 Each of the events or circumstances set out in this clause 10 (other than this clause 10.1 and clause 10.16) is an Event of Default.
- 10.2 The Borrower fails to pay any sum payable under this loan agreement, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within [three] Business Days of its due date.
- 10.3 The Borrower fails (other than by failing to pay), to comply with any provision of this loan agreement (and if the Lender considers, acting reasonably, that the default is capable of remedy), such default is not remedied within 14 Business Days of the earlier of:
  - (a) the Lender notifying the Borrower of the default and the remedy required;
  - (b) the Borrower becoming aware of the default.
- 10.4 Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, this loan agreement is (or proves to have been) incomplete, untrue, incorrect or misleading [in any material respect] when made, repeated or deemed made.
- 10.5 If:
  - (a) any Borrowed Money is not paid when due or within any originally applicable grace period; or
  - (b) any Borrowed Money becomes due, or capable or being declared due and payable prior to its stated maturity by reason of an event of default howsoever described;



- (c) any commitments for Borrowed Money is cancelled or suspended by a creditor of the Borrower by reason of an event of default howsoever described; or
  - (d) any creditor of the Borrower becomes entitled to declare any Borrowed Money due and payable prior to its stated maturity by reason of an event of default (howsoever described).
- 10.6 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.
- 10.7 The value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities).
- 10.8 A moratorium is declared in respect of any Indebtedness of the Borrower.
- 10.9 Any action, proceedings, procedure or step is taken for:
  - (a) the suspension of payments, a moratorium of any indebtedness, , dissolution or reorganisation of the Borrower; or
  - (b) the composition, compromise, assignment or arrangement with any creditor.
- 10.10 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 of its Indebtedness (because of actual or anticipated financial difficulties).
- 10.11 Any event occurs in relation to the Borrower similar to those in clause 10.6 to clause 10.9(b) (inclusive) under the laws of any applicable jurisdiction.
- 10.12 Any provision of this loan agreement is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.
- 10.13 The Borrower repudiates or shows an intention to repudiate this loan agreement.
- 10.14 The Borrower ceases, or threatens to cease, to carry on all or a substantial part of its business.
- 10.15 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 loan agreement.

- 10.16 At any time after an Event of Default has occurred, the Lender may, by notice to the Borrower:
- (a) cancel all outstanding obligations of the Lender under this loan agreement whereupon they shall be immediately be cancelled; and/or
  - (b) declare that the Loan (and all accrued interest and all other amounts outstanding under this loan agreement) is immediately due and payable, whereupon they shall become immediately due and payable; and/or
  - (c) declare that the Loan be payable on demand, whereupon it shall become immediately payable on demand by the Lender.

## **11. REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS**

- 11.1 Any amendment to this loan agreement shall be in writing and signed by, or on behalf of, each party.
- 11.2 Any waiver of any right or remedy or any consent given under this loan agreement is only effective if it is in writing and signed by the waiving or consenting party. It shall apply only in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 11.3 No delay or failure to exercise any right or remedy under this loan agreement on the part of the Lender shall operate as a waiver of any such right or remedy.
- 11.4 No single or partial exercise of any right or remedy under this loan agreement by the Lender shall prevent any further or other exercise or the exercise of any other right or remedy under this loan agreement.
- 11.5 Rights and remedies under this loan agreement are cumulative and do not exclude any other rights or remedies provided by law or otherwise.

## **12. ASSIGNMENT**

The Borrower shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this loan agreement without the prior written consent of the Council.

**13. PUBLICITY**

- 11.1 The Lender shall obtain written approval from the Borrower prior to any publicity releases or announcements (including advertisements) regarding the loan agreement.
- 11.2 The Lender shall take all reasonable steps to ensure the observance of the provisions of this provision by all its Staff.
- 11.3 The provision of this Condition shall apply during the continuance of this loan agreement and indefinitely after its expiry or termination.

**14. NOTICES**

- 14.1 Each notice or other communication required to be given under, or in connection with, this loan agreement shall be:
  - (a) in writing, delivered personally or sent by pre-paid first-class letter or email
  - (b) sent:
    - To the Borrower at:  
[ADDRESS]
    - Fax: [NUMBER]
    - Attention: [NAME]
    - (i) to the Lender at:  
[ADDRESS]
    - Attention: [NAME]

or to any other addresses that are notified in writing by one party to the other from time to time.

**15. GOVERNING LAW AND JURISDICTION**

- 15.1 This loan agreement and any dispute or claim arising out of, or in connection with it, or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
- 15.2 The parties to this loan agreement irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with this loan agreement or its subject matter or formation (including non-contractual disputes or claims).

Signed for and on behalf of  
**CITY OF BRADFORD**  
**METROPOLITAN DISTRICT**  
**COUNCIL** by

.....  
Authorised signatory

.....  
Authorised signatory

Signed for and on behalf of  
the **GOVERNING BODY OF**  
**[NAME OF SCHOOL]** by

.....  
Member of Governing Body

.....  
Headteacher