

SCOTTISH GOVERNMENT CAPITAL BORROWING LOAN FACILITY AGREEMENT

February 2018

BETWEEN

**THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY ACTING ON BEHALF
OF THE NATIONAL LOANS FUND**

and

THE SECRETARY OF STATE FOR SCOTLAND ACTING THROUGH THE SCOTLAND OFFICE

and

**DEPUTY FIRST MINISTER AND CABINET SECRETARY FOR FINANCE, CONSTITUTION
AND ECONOMY FOR THE SCOTTISH GOVERNMENT**

**LONG TERM LOAN FACILITY AGREEMENT
£3,000,000,000.00**

Loan Provider/Lender	THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY acting on behalf of the NATIONAL LOANS FUND whose address is 1 Horse Guards Road, London SW1A 2HQ
Borrower	THE SECRETARY OF STATE FOR SCOTLAND acting through THE SCOTLAND OFFICE whose address is 1 Melville Crescent, Edinburgh EH3 7HN.
Loan Recipient	DEPUTY FIRST MINISTER AND CABINET SECRETARY FOR FINANCE, CONSTITUTION AND ECONOMY FOR THE SCOTTISH GOVERNMENT whose address is Victoria Quay, Edinburgh EH6 6QQ.
Statutory powers and frameworks detailing borrowing from the National Loans Fund:	Scotland Act 2012 (c.11) - Part 3 s. 67A Scotland Act 2016 (c.11) – Part 2 s.20 (8) 'The agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework' dated February 2016.
Statutory Borrowing Limit	15% of the Scottish Government's capital budget in any one year subject to an overall outstanding ceiling of £3 billion.
Loan Facility	The Lender issues the necessary funds from the National Loans Fund (NLF) to the Scotland Office (acting as the Sponsor Department under this Agreement) to enable the Borrower to formally issue the loan finance to the Scottish Government Loan Recipient to finance its capital expenditure as set out in the enabling legislation. The Borrower is accountable for the funds it on-lends to the loan recipient. This means that it is responsible for ensuring that the conditions under which specific loans can be made are satisfied and that repayments of interest and principal are received by the due dates.
Facility amount:	Aggregate principal outstanding limit: £3,000,000,000.00 Annual Borrowing Request limit: £450,000,000.00 (being 15% of the overall borrowing cap).

Loan type	NLF rate loan issued at fixed rates and may be repaid by means of Equal Instalments of Principal (EIP) throughout the life of the loan, Equal Repayments (ER) comprising varying proportions of interest and principal over the life of the loan or in exceptional cases, interest over the life of the loan with repayment of principal in full at maturity, to be confirmed at the time of the loan request. Loans with repayment of principal in full at maturity will only be permitted following the provision of additional information on why this loan type is necessary and with written agreement from the HMT Spending Team.
Purpose	Capital expenditure

Sponsor Department Letter of Guarantee	NLF loans can only be made where there is a reasonable expectation that they will be serviced and repaid on the due dates as the NLF is not legally allowed to make a loss (s5 (3) of the National Loans Act 1968). The Scotland Office, acting as Sponsor Department, must provide a letter of guarantee signed by its Permanent Secretary to the Treasury Accountant at Her Majesty's Treasury (HMT), standing behind all NLF loans made to the Scottish Government and confirming that the NLF will be repaid in full by the Scotland Office in case of default by the Scottish Government. This effectively means the Scotland Office must repay the NLF loans from their Estimate.
Reporting requirement	The Scotland Office will prepare and present an annual account to Parliament of sums received from, and sums paid to, the NLF.
Term	The Scottish Government will normally select a Term for each loan of ten years but where the lives of the assets being purchased through the loan justify longer or shorter terms these can be agreed with the HMT Spending team subject to a maximum of twenty-five years, provided that the Issue Date (the date on which a loan is to be made) is a Business day i.e. a day other than a Saturday, Sunday or Bank holiday in either England & Wales or Scotland.
Final Maturity date:	Open-ended

Drawdown of Loans:	<p>(i) The Scottish Government shall provide the Scotland Office with a signed loan request. Only one loan may be requested in each “Borrowing Request”. The request shall include a statement (borrowing certificate) of the Scottish Government’s outstanding borrowing against its statutory borrowing limits both in terms of aggregate overall limit and a separate spreadsheet showing the annual limit detailing the capital budget in year, amounts drawn throughout year and total drawn in year.</p> <p>(ii) The HMT Spending team must approve each Borrowing Request before the HMT EFA team will issue the loan from the NLF.</p>
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	<p>(iii) The “Borrowing Requests” are for fixed maturity periods of ten years but longer or shorter periods can be agreed subject to a maximum of twenty five years.</p> <p>(iv) Loans will be available for drawing provided that at all times the principal outstanding of the loans shall not exceed the statutory borrowing limits.</p> <p>(v) The minimum drawdown shall be £1,000,000.00 and loans above this threshold may be made in multiples of £500,000.00.</p> <p>(vi) HMT will generate a “Loan Repayment Schedule” detailing the terms of the loan including rate of interest to be used on the loan and repayment dates.</p>
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Interest calculation	<p>The interest rate used in the “Loan Repayment Schedule” will be the NLF New Loans Rate under the heading EIP, ER or Maturity (to be confirmed at the time of the loan request), determined by the Debt Management Office (DMO) using the methodology specified by HM Treasury in accordance with section 5 of the National Loans Act 1968 and as amended from time to time, published on the DMO website:</p> <p>http://www.dmo.gov.uk/index.aspx?page=PWLB/NLF_Rates.</p> <p>Interest on loans is paid twice-yearly on half-yearly fixed repayment dates. The amount due is calculated by applying half the annual interest rate to the balance of the loan outstanding at the start of the half-year. Any interest will accrue from day to day and is calculated on the basis of the actual number of days elapsed. This is known as the “actual over actual” convention and will also be used in the discount calculations for any early repayment/prepayment of loans (see below). A one-off interest charge is paid for the broken period from the issue date of a new loan to the date of the next fixed half-yearly payment date. Similarly, a one-off interest charge will be paid if there is a broken period from the final fixed half-yearly payment date to the loan maturity date.</p>

Repayments of interest and principal	<p>(i) Payments of principal and interest on loans shall be paid in accordance with the agreed “Loan Repayment Schedule” and will be collected by the Scotland Office and then surrendered to the NLF on the due date.</p> <p>(ii) Early repayment of a loan is generally not permitted unless the NLF demands repayment or HMT has approved an early repayment (see “Early Repayment” section below).</p>
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<p>Events which effect the entitlement to borrow from the NLF</p>	<p>In the event that:</p> <ul style="list-style-type: none"> (i) the statutory powers to borrow from the NLF are removed; or (ii) either the Scottish Government or Scotland Office is wound up; or (iii) the status of either the Scottish Government or Scotland Office changes from public to private sector <p>all outstanding NLF loans must be prepaid immediately (see “Early Repayment/Prepayment” below for details on calculation).</p> <p>In the event of any other Machinery of Government change or a change in ownership or control not detailed in (i) – (iii) above:</p> <ul style="list-style-type: none"> (i) the Scotland Office shall promptly notify the HMT Spending Team and EFA upon becoming aware of that event; (ii) the NLF shall not be obliged to fund any current or future “Borrowing Requests”; and (iii) the NLF may by notice to the Scotland Office:
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	<ul style="list-style-type: none"> • cancel the Commitment whereupon it shall immediately be cancelled; • declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding be immediately due and payable, whereupon they shall become immediately due and payable; and/or • declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender.
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<p>Premature repayment/Prepayment</p>	<p>In the event of the Scottish Government having genuine surplus funds (e.g. from the sale of assets or from trading activities), the HMT Spending Team will consider proposals from the Scotland Office to repay prematurely all or part of the outstanding NLF debt. Any correspondence should be copied to EFA.</p> <p>The “Premature Repayment Rate” will be the NLF premature repayment rate under the heading EIP or ER as appropriate, determined by the DMO using the methodology specified by HMT. in accordance with section 5 of the National Loans Act 1968 and as amended from time to time, published on the DMO website (or any replacement site approved by HMT after consultation with the Borrower).</p>
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<p>Event of Default:</p>	<p>Such circumstances include:</p> <ul style="list-style-type: none"> (i) Non-payment – In the event that the Scottish Government is unable to meet its interest or principal repayments, the Scotland Office would be expected to meet these payments. If the Scotland Office fail to pay on due date and debt is still outstanding after five business days this would be deemed a default. If failure to pay is caused by administrative or technical error and payment is made within five business days of its due date this would not be deemed a default; (ii) Either the Scotland Office or the Scottish Government do not comply with the Loan Facility Agreement (including all the undertakings); (iii) Misleading or incorrect information supplied by either the Scotland Office or the Scottish Government; (iv) If it becomes unlawful for either the Scotland Office or the Scottish Government to perform any of its obligations under the Loan Agreement; or (v) Either the Scotland Office or the Scottish Government refuse to comply with the Loan Agreement <p>On and at any time after the occurrence of an Event of Default the NLF may, by notice to the Scotland Office:</p> <ul style="list-style-type: none"> • cancel the Commitment whereupon it shall immediately be cancelled; • declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding be immediately due and payable, whereupon they shall become immediately due and payable; and/or • declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the NLF.
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Default	<p>The Scottish Government must notify HMT team of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.</p> <p>If the Scottish Government fails to pay any amount payable by its repayment due date, the Scotland Office should seek immediate payment from the Scottish Government or pay the amount due to the NLF itself.</p> <p>In the event of default, the NLF will charge the Scotland Office default interest for the period that the debt remains overdue being the period from the repayment due date up to the date of actual payment.</p> <p>Default interest shall accrue on the overdue amount at the daily rate equivalent to the original interest rate(s) on the loan(s) concerned, or at a current rate.</p> <p>Where the Scottish Government as the loan recipient cannot repay its outstanding NLF debt, the Scotland Office, HMT would have to assess whether further lending to the NLF should be allowed given NLF loans can only be made where there is a reasonable expectation that they will be serviced and repaid on the due dates. This would be the case even when the Scotland Office has paid the amount due by the due date from its Estimate on behalf of the Scottish Government. As a general rule, no further lending from the NLF should be allowed without the express consent of the Accounting Officers of the NLF and the Scotland Office.</p>
Tax	All sums payable will be paid without any withholding or deduction whatsoever.
Cashflows	All payment flows made by the NLF, Scotland Office and Scottish Government must be gross flows as calculated and in sterling currency.
Addresses	<p>The address, email address and telephone number (and the department or officer, if any, for whose attention the communication is to be made unless specified otherwise above) of each Party for any communication or document is that identified with its name below or any substitute address, email address or telephone number or department or officer as the Party may notify to the other Party by not less than five Business days' notice.</p> <p>Exchequer Funds & Accounts Team</p> <p>The Exchequer Funds & Accounts Team Her Majesty's Treasury</p>

	<p>1 Horse Guards Road London SW1A 2HQ</p> <p>Attention: Treasury Accountant Head of Funds Operations</p> <p>HM Treasury Spending Team</p> <p>Devolution Spending Control Her Majesty's Treasury 1 Horse Guards Road London SW1A 2HQ Attention: Devolution Spending Control</p> <p>The Scotland Office</p> <p>Scotland Office 1 Melville Crescent Edinburgh EH3 7HN Attention:</p> <p>The Scottish Government</p> <p>Scottish Government Victoria Quay Edinburgh EH6 6QQ Attention:</p>
Termination	<p>The lender may terminate the facility at any time by giving the Borrower one month's written notice. No further Borrowing Request may be made after the termination notice has been given. On the Termination Date all outstanding Loans immediately become payable on the prepayment terms and following payment of all outstanding amounts the Scotland Office shall be released from all of its covenants, liabilities and obligations.</p>

EXECUTION PAGE

The Lender

SIGNED BY:

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Treasury Accountant and Head of the Exchequer Funds and Accounts Team Date:
duly authorised for and on behalf of **THE LORDS COMMISSIONERS OF HER MAJESTY'S
TREASURY**

The Borrower

SIGNED BY:

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Director Date:
duly authorised for and on behalf of **THE SECRETARY OF STATE FOR SCOTLAND ACTING
THROUGH THE SCOTLAND OFFICE**

The Loan Recipient

SIGNED BY:

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Chief Financial Officer
Date:
duly authorised for and on behalf of **THE CABINET SECRETARY FOR FINANCE AND THE
CONSTITUTION FOR THE SCOTTISH GOVERNMENT**